

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED 11th NOVEMBER 2005

PETITION NO. 48 of 2004

- Cellular Operators Association of India** **Petitioner No. 1**
14, Bhai Veer Singh Marg,
New Delhi-110001.
- Aircel Limited,** **Petitioner No. 2**
327, Anna Salai, Teynampet,
Chennai-600006.
- Aircel Cellular Limited** **Petitioner No. 3**
No. 769, Spencer Plaza,
Anna Salai, Chennai-600002.
- Bharti Cellular Limited,** **Petitioner No. 4**
H-5/12, Qutab Ambience,
Mehrauli Road
New Delhi-110030.
- BPL Mobile Cellular Limited** **Petitioner No. 5**
BPL Centre, #1045/1046,
Avinashi Road
Coimbatore-641018.
- Hexacom India Limited,** **Petitioner No. 6**
H-5/12, Qutab Ambience,
Mehrauli Road,
New Delhi-110030.
- Hutchison Telecom East Limited** **Petitioner No. 7**
Constantia Office Complex
11 Dr. U.N. Brahmachari Street
Kolkata-700017.

Idea Cellular Limited

Suman Towers,
Plot No. 18, Sector-11
Gandinagar-382011.

.... **Petitioner No. 8**

Reliance Telecom Limited

Main Admin Building,
Block No. GF-1, Village Meghpar/Padana
Taluka Lalpur, Distt. Jamnagar,
Gujarat-361280.

.... **Petitioner No. 9**

Spice Communications Pvt Limited

60-D, Sainik Farms
New Delhi-110062.

.... **Petitioner No. 10**

Vs.

Bharat Sanchar Nigam Limited

B-613, Statesmen House
Barakhamba Road,
New Delhi-110001.

.... **Respondent No. 1**

Mahanagar Telephone Nigam Limited

Jeevan Bharti Tower-1,
12th Floor, 124-Connaught Place,
New Delhi-110001.

.... **Respondent No. 2**

Telecom Regulatory Authority of India

A-2/14, Safdarjung Enclave
New Delhi-110029.

.... **Respondent No. 3**

BEFORE:

**HON'BLE MR. JUSTICE N. SANTOSH HEGDE,
CHAIRPERSON**

MR. VINOD VAISH, MEMBER

LT.GEN. D.P.SEHGAL (RETD.), MEMBER

For Petitioners

:

Mr. C.S. Vaidyanathan, Senior Advocate
with Mr. Manjul Bajpai, Ms. Jayne
Kuriakose, Ms. Neyha Bhandar, Advocates

For Respondent No. 1 – BSNL : Mr. Maninder Singh, Advocate with
Mrs. Prathiba M. Singh, Mr. Ankur Talwar
Mr. Angad Mirdha, Mr. Kirtiman Singh, Mr.
Sunil Fernandes, Advocates

For Respondent No. 2 – MTNL : Mr. Arun Kathpalia, Advocate with
Mr. Samir Sagar Vasishta, Mr. Amit Dhupar,
Advocates

For Respondent No. 3 – TRAI : Mr. Meet Malhotra, Advocate

ORDER

The Petitioner No. 1 is a society registered under the Societies Registration Act, 1908, and all the Cellular Licensees including some Unified Access Service Licensees (hereinafter referred to as the “Member Operators”) are members of the said Association. Petitioners No. 2 to 10 are Member Operators holding Licenses to provide Cellular Mobile Services / Unified Access Services to their Subscribers in their respective Service Areas.

2. Respondent No. 1 is a Telecom Service Provider engaged in providing, *inter-alia*, various telecommunication services in the whole of India excluding Delhi and Mumbai.

3. Respondent No. 2 is also a Telecom Service Provider engaged in providing various telecommunications services in Delhi and Mumbai.

4. Respondent No. 3 is a Regulatory Authority constituted under Section 3 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) for the purposes of, *inter-alia*, regulating telecommunication services in India.

5. In the present petition, the petitioners are challenging certain acts/actions of BSNL and MTNL which are alleged to be violative of relevant Regulations/Directions/Letters of TRAI and are discriminatory, arbitrary, unfair, unreasonable and against the established principles of equity, justice and good conscience. The actions of Respondent Nos. 1 & 2 being challenged are also alleged to

be in breach of the principle of reciprocity. These actions of the Respondents No. 1 & 2 in this petition are summarized, as under:-

- (a) Billing on per MCU basis in violation of TRAI's IUC Regulation dated 24.01.2003 and 29.10.2003; and also applying Non-Reciprocity in the billing methodology, i.e., BSNL and MTNL are billing Member Operators on call-by-call basis while they pay to them on aggregate total seconds expressed in terms of minutes basis.
- (b) Imposition of distance based carriage charge (Re. 0.65 for 50 – 200 Kms; Re. 0.90 for 200 – 500 Kms and Rs. 1.10 for over 500 Kms instead of a uniform Re. 0.20) with effect from 01.02.2004 for Intra Circle Intra LDCA Calls from Cellular Network to PSTN handed over to BSNL at Level II TAX.
- (c) Not refunding the excess amount of ADC collected by BSNL on WLL (M) calls.
- (d) Non-payment/delayed payment of dues of Petitioners by Respondent No.1.
- (e) Charging interest on delayed payments of IUC bills by Member Operators and non-payment of any interest on reciprocal basis for long delays in payment of bills by BSNL / MTNL to Member Operators.
- (f) Seeking irrelevant and unnecessary information and in absence thereof delaying payments by withholding the bills of the Petitioners.

6. In the light of the aforesaid, the petitioners have prayed that this Tribunal may be pleased to:-

- (a) Direct BSNL and MTNL to implement the mandatory billing system stipulated in Clause 3.3 of Schedule III of the IUC Regulation dated 29.10.2003 i.e. the settlement must be on the aggregate total seconds expressed in terms of minutes with the figure being rounded off in terms of the nearest minute and not to bill Cellular Mobile Service Providers (Member Operators) on call by call basis at Re. 0.10 per Metered Call Unit (MCU) for calls originating from private Member Operators to BSNL/MTNL;

- (b) Direct BSNL and MTNL to refund to the Member Operators all such amounts as have been overcharged/levied in excess by BSNL and MTNL on account of BSNL/MTNL implementing and charging IUC on call by call MCU basis together with interest at the rate at which BSNL/MTNL charges interest from Member Operators as per their respective Interconnect Agreements, calculated from the date of payment till the date of refund i.e. with effect from 01.05.2003;
- (c) Strike down the IUC Table – Annexure II of the BSNL Circular No. 208-15/2003-Regln dated 24.04.2003 as also strike down the IUC Table – Annexure II of the BSNL Circular No. 208-20/2003-Regln dated 28.01.2004;
- (d) Strike down the MTNL's Circular No. MTNL/RA/TARIFF/TTO/2003 dated 30.04.2003 as also strike down the MTNL's Circular No. MTNL/RA/IUC/2003 dated 31.01.2004 to the extent these Circulars bill Member Operators at Re. 0.10 per Metered Call Unit (MCU) for calls originating from private Member Operators on call by call basis instead of billing on the basis of aggregate total seconds expressed in terms of minutes with the figure being rounded off in terms of the nearest minute.
- (e) Direct BSNL not to levy the distance based carriage charge of Re. 0.65, Re. 0.90 and Rs. 1.10 for the distance slabs of 50 to 200 kms, 200 to 500 kms. and above 500 kms. respectively in case of Intra-Circle call from Cellular Network handed over to BSNL at the Terminating LDCA TAX in which the call is to be terminated and further direct BSNL to levy a carriage charge of only Re. 0.20 per minute for all calls handed over at the Terminating LDCA TAX;
- (f) Direct BSNL to refund to the Member Operators all such amounts as have been overcharged/levied in excess by BSNL on account of levy of the distance based carriage charge of Re. 0.65 paise, Re. 0.90 paise and Rs. 1.10 paise for the distance slabs of 50 to 200 kms, 200 to 500 kms and distance above 500 kms. respectively in case of Intra-Circle call from Cellular Network handed over to BSNL at the terminating LDCA TAX together with interest at the rate at which BSNL charges interest from Member Operators as per their

respective Interconnect Agreements, calculated from the date of payment till the date of refund, i.e. with effect from 01.02.2004;

- (g) Direct BSNL to forthwith refund to Member Operators the amount of the Access Deficit Charge levied and collected by them on Cellular to WLL(M) local, intra circle and inter circle calls for the period between 01.05.2003 to 31.01.2004 together with interest at the same rate at which BSNL charges interest from Member Operators as per their respective Interconnect Agreements, calculated from the date of payment till the date of refund;
- (h) Direct BSNL not to levy any Access Deficit Charge on local or intra circle calls from Cellular to WLL (M) with effect from 01.02.2004;
- (i) Direct BSNL to forthwith refund to Member Operators the amount of the Access Deficit Charge levied and collected by them on Cellular to WLL (M) local and intra circle calls for the period between 01.02.2004 till the date of refund together with interest at the same rate at which BSNL charges interest from Member Operators as per their respective Interconnect Agreements, calculated from the date of payment till the date of refund;
- (j) Strike down Annexure III of BSNL Circular No. 208-20/2003-Regln dated 28.01.2004, to the extent it requires Member Operators to provide:
 - (i) Separate data for each telecom circle on type of Terminating Network i.e. basic [Fixed/WLL(M)] and Cellular Mobile with respect to all outgoing calls from Member Operators Network in Serial I of Clauses A, B and C of Annexure III of the Circular No. 208-20/2003-Regln dated 28.01.2004 for collection of ADC amounts by BSNL and NLDOs;
 - (ii) Data/information mentioned in Serial II of Clauses A, B, C, of Annexure-III of the Circular No. 208-20/2003-Regln dated 28.01.2004;
 - (iii) Strike down Clause 2(e) of Annexure III of the BSNL Circular No. 208-20/2003-Regln dated 28.01.2004 as being unfair, unjust, unreasonable and discriminatory;
- (k) Direct BSNL to make the payment of all bills to Member Operators withheld on account of absence of the information mentioned in prayer (j) above,

together with interest at the rate at which BSNL charges interest from Member Operators as per their respective Interconnect Agreements, calculated from the due date of payment till the date of actual payment;

- (l) Direct BSNL to forthwith implement the Inter Operator CDR based billing system;
- (m) Until implementation of the mandatory billing system stipulated in Clause 3.3 of Schedule III of the IUC Regulation dated 29.10.2003, direct BSNL and MTNL to implement reciprocal billing arrangements by paying to Member Operators at Re. 0.10 per Metered Call Unit (MCU) for calls terminating on private Member Operators network on call by call basis, with effect from 01.05.2003;
- (n) In the alternative direct BSNL and MTNL to use Member Operators' CDR details to raise bills and accept payments of IUC charges for calls terminating on BSNL Network on the basis of aggregate total seconds expressed in terms of minutes;
- (o) To pass ex-parte/interim/ad-interim orders in respect of the above prayers; and
- (p) To pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

7. Senior Counsel for the Petitioners, Mr. C.S. Vaidyanathan, while arguing the case stated that the call Originating Operator is required to pay termination charges to the Terminating Operator. Each Terminating Operator raises its respective bill on the Originating Operator. He said that all billing arrangements between private operators and Respondents No. 1 and 2 have to be reciprocal. He stated that Respondents No. 1 & 2 were not following the same terms and principles for charging the petitioners as they are doing while paying to the petitioners. While Respondents No. 1 & 2 are charging the Petitioners on Metered Call Unit (MCU) i.e. call by call basis for calls from them to Respondents, the Respondents pay on cumulative actual basis i.e. aggregate basis and not call by call basis for calls made by the Respondents No. 1 & 2 to the Petitioners. This results in Respondents No. 1 & 2 charging an excess amount of 6 to 10% from the Petitioners. He brought to the notice of the Tribunal, Section 4 of The

Telecommunication Interconnection Usage Charges Regulation, 2003 (2 of 2003) {IUC Regulation (2 of 2003) in short} dated 29th October 2003 wherein under the heading 'Reconciliation and Settlement of ADC' it is mandated that the payment would be based on Bulk Basis. An extract of the same is reproduced below:-

“3.3 Reconciliation and Settlement of ADC

ADC, carriage and termination payments would be based on aggregated usage in seconds (on bulk basis). The settlement would be for the aggregate total seconds expressed in terms of minutes, with the figure being rounded off in terms of the nearest minute, over the settlement period as applicable in the Interconnect Agreement. Failing agreement amongst Service Providers on the settlement period, the settlement shall be done on monthly basis on bulk basis.”

8. Mr. Vaidyanathan, produced a chart which is reproduced below, which gives the difference of the two methods of collection and payment which shows that by adopting two different methods Respondents No. 1 & 2 are collecting additional amount. The chart is reproduced as under:-

Collection

	<i>Call Duration in seconds</i>	<i>Number of MCUs charged by BSNL @ 10 paise/MCU is charged for every 7.5 seconds when IUC payable is Re. 0.80 per minute</i>	<i>Applicable metered call unit charge</i>	<i>Total IUC = no. of metered call units x applicable MCU charge</i>
1	10	$(>7.5) = 2$	10 paise	20 paise
2	20	$(>7.5 \times 2) = 3$	10 paise	30 paise
3	40	$(>7.5 \times 5) = 6$	10 paise	60 paise
4	50	$(>7.5 \times 6) = 7$	10 paise	70 paise
5	60	$(7.5 \times 8) = 8$	10 paise	80 paise
<i>Total Cumulative minutes</i>	<i>180 seconds = 3 minutes</i>	<i>26 MCUs</i>	<i>10 paise</i>	<i>260 paise</i>

Payment

<i>MCU Method</i>		<i>Cumulative Basis</i>		<i>Excess amount collected by BSNL</i>
<i>Call Duration</i>	<i>180 Seconds</i>	<i>Call Duration</i>	<i>180 seconds</i>	
<i>MCUs</i>	<i>26</i>	<i>Pulse</i>	<i>60 seconds</i>	
<i>Rate per MCU</i>	<i>10 paise</i>	<i>Rate per minute</i>	<i>80 paise</i>	
<i>Total</i>	<i>26 MCUs x 10 paise = 260 paise</i>	<i>Total</i>	<i>180/60 = 3 min x 80 paise = 240 paise</i>	<i>20 paise</i>

9. He further contended that the Respondent No. 1 is taking a plea that they have no facility in the form of Call Data Record (CDR) to bill the petitioners on the same format as was being used by it for making payments to the petitioners. He said that it was highly unjustified on the part of Respondent No. 1 that while it accepts payment on the basis of the CDR generated by the petitioners it does not pay to them based on that CDR. He stated that Respondent No. 3 vide their letter had clearly directed BSNL to implement the CDR based billing system. Relevant portion of the TRAI's letter no. 409-16/2003-FN dated 15th December 2003 addressed to the Respondent No. 1 is reproduced below:-

“...10. Billing issues between BSNL and other operators:

A number of operators have represented that in the absence of CDR based billing system in the BSNL network, BSNL is making payment to them at the rate of Re. 0.10 per MCU for local, intra-circle and inter-circle calls and Rs. 1.20 for international calls. It has been suggested that if MCU is fixed at 1 paise it will be equal to a call duration of a second for all calls attracting IUC of Re. 0.60 per minute. At the same time BSNL is charging them on the basis of CDRs in bulk seconds. In this way they are making excess payment to BSNL because of difference in the pulse rate.

It may be recalled that in a TRAI meeting with all operators in Hotel Samrat in April 2003, BSNL had informed that they would be implementing CDR based billing over a period of next 6 months. The period is already over. BSNL as such should implement CDR based billing over a period of next 3 months or so. Till the same is not implemented, alternate arrangements must be on reciprocal basis.”

While quoting the above direction of TRAI he emphasised on the mandate, “implementation on reciprocal basis” which is not being adhered to by the Respondents No. 1 & 2.

10. Mr. Vaidyanathan stated that in yet another letter no. 409-16/2003-FN dated 20th January 2004 addressed to the Respondent No. 1, Respondent No. 3 has reiterated the point that BSNL is benefiting by the differential billing system. An extract of the relevant portion of the said TRAI's letter is reproduced below:-

“(d)termination charges for terminating access provider shall be paid by BSNL on successful calls on cumulative actual minutes of usage of the network and not call-by-call basis.....The BSNL would be benefited by the range of 1 paise to 92 paise per minute. In most of the cases relating to IUC charges for ILDO the pulse rate needs to be rounded off to the nearest 10 millisecond so as to be in line with the applicable IUC charges. However in cases where BSNL exchange is not able to round off the pulse rate to the nearest 10 millisecond, the ILDO has to pay more than the applicable IUC charge. The difference could be in the range of 10 Paise (where the applicable IUC charge is Rs. 11.15/Minute to Rs. 0.34/Minute (where the applicable IUC charge is Rs. 6.90). In some cases BSNL could be benefited up to Rs. 0.06/Minute by rounding off the pulse rate to the nearest 10 millisecond. Hence, till CDR based billing is introduced, BSNL should implement reciprocal arrangements in billing as clarified in Authority’s letter of even number dated 15th December, 2003. BSNL should also take urgent action to implement CDR based billing in their network. BSNL had earlier made commitment of CDR based implementation by November, 2003 not only to DoT but also to TRAI in the special session with service providers in Hotel Samrat, New Delhi, when IUC implementation was being discussed on 7th April 2003.”

11. He said that Respondent No. 1 in support of its action is relying on the only document, which according to them is to be considered the approval in this regard of TRAI i.e. letter no. 317-7/2003-TRAI(Eco.) dated 23.4.2003 addressed to BSNL. Extract of this letter is as under:-

“Please refer to your letter no. F.208-15/2003-Regn dated 28th March 2003 on the above mentioned subject and the clarification given on 21st April 2003.

The Interconnection Usage Charge proposals submitted by you vide the above letters has been approved by the Authority for implementation. This is without prejudice to the cases pending in TDSAT on the IUC issues.

You are requested to make wide publicity on the above IUC charges and inform all service providers.”

12. Learned Senior Counsel for the Petitioners stated that this was not an approval of TRAI and quoted letter no. 208-15/2003-Regln dated 28th March 2003 referred to in the so-called approval letter wherein the Respondent No. 1 has conveyed their difficulty of technical limitations. In para 9 of this very letter they themselves have stated as under:-

“...9. ...The bills for such calls shall be raised by BSNL to the private operators based on the bulk billing on the incoming trunk groups as detailed above.”

So, the approval is for “bulk billing”, he said. Also according to him, how can TRAI give approval against their own regulation without amendment of the same?

13. Mr. Vaidyanathan, learned Senior Counsel for the petitioners, stated that when IUC Regulation (2 of 2003) was to be implemented, Respondent No. 1 wrote to TRAI vide letter no. 209-67/2003-Regln dated 28.11.2003 where it again reiterated its stand on billing which is reproduced below:-

“...10.5 Billing Settlements – Implementation of per Second Basis

TRAI has recommended the billing on per second basis and the rates on per minute basis. Present technical arrangement with BSNL does not permit measurement of calls on per minute basis. Hence, BSNL has no option than to continue with the present trunk group arrangement and billing on modified pulses so that per minute charge comes to the amount recommended by TRAI.”

14. He stated that Respondent No1. further unilaterally issued implementation instructions to all BSOs, CMSPs, NLDOs and ILDOs through an endorsement recorded on its Letter no. 208-20/2003-Regln dated 28th January 2004 addressed to TRAI. Relevant extract of para 3 of this letter is reproduced below:-

“3. Due to non-availability of CDR based billing platform, IUC applicable for the calls handed-over to BSNL at the POI (Point of Interconnect) have been converted into different pulse rates as per Annexure II. The pulse rates have been calculated at a per MCU (Metered Call Unit) rate of Re. 0.10 for all calls except outgoing ISD calls which shall be measured at a rate of Rs. 1.20 per MCU.”

15. Mr. Vaidyanathan went on to state that BSNL is still to reconcile with the fact that they are no more DoT and are corporatised. They continue arm twisting of the private operators and have no consideration for either IUC Regulations or directions of TRAI. It is so very evident from the fact that despite repeated instructions they are not implementing the CDR system.

16. He said that Respondent No. 1 has failed to realize that reciprocal non-discriminatory billing arrangement can be implemented even without CDR based billing

system. This can be done by adopting the correct pulse rate. In case of Cellular Mobile Service Providers (CMSPs), the pulse rate would be 20 seconds for an MCU of 10 paise because CMSPs receive 30 paise termination charge. Therefore, when IUC is 30 paise for call duration of 60 seconds, the call duration for 10 paise MCU will be equal to $60/30 \times 10 = 20$ seconds. The MCU of 10 paise should remain the same for both, BSNL as well as CMSP, in order to ensure reciprocal billing arrangement. In case of the January IUC, the Termination Charge was 40 paise in Circles. Therefore, in such cases the Pulse Rate would be 15 seconds ($60/40 \times 10 = 15$ seconds) for MCU of 10 paise. He further submitted that, until CDR based billing system is fully implemented by the Respondents No. 1 & 2 at all the locations and at all Level-I and Level-II TAXs, reciprocal billing arrangements ought to be followed by Respondents No. 1 & 2.

17. He stated that the CDR system has been implemented in all Level-I TAX but not in Level-II TAX. He said that the Respondent No. 1 was fully aware that 70% of the traffic of private operators is terminated on Level-II TAX. He said that even where CDR system has been implemented i.e. Calcutta and Chennai, the Respondents are not following the billing system on reciprocal basis. He said that it was by design that Respondent No. 1 was not implementing CDR based system which is highly discriminatory and has resulted in overcharging the Petitioners of approximately Rs. 150 crore per year by Respondent No. 1.

18. On the issue of 'Carriage Charges' the learned Senior Counsel stated that Petitioners handed over their Intra-circle calls to Respondent No. 1 at Level-II TAX. They are obliged to pay Carriage Charges to Respondent No. 1 for these calls. These charges are covered in Schedule-II of the IUC Regulation (2 of 2003) dated 29.10.2003. He brought to the notice of the Tribunal, Table-II which deals with applicability of carriage charges on various types of calls, relevant extracts of which are reproduced:-

Table II
Applicability of Carriage Charge
(F = Fixed or WLL (Fixed); W = WLL(M); C=Cellular Mobile)

Type of Traffic	Carriage Charge	Carrier (Handover at)
<u>Within SDCA</u>		
F/W ↔ C	Nil (Tandem: Metro)/TAX usage carriage charge (Level II TAX)	BSO (Tandem: Metro) / BSO (Level II TAX)
<u>Intra Circle i.e. Inter (SDCA)</u>		
F/W ↔ C	Same as Intra SDCA except TAX charge is “applicable” charge since more than one TAX may be involved	BSO (Level II/TAX)
<u>Inter-Circle</u>		
F ↔ C	Carriage as per Schedule-II	NLDO (TAX)

He stated that it is clearly written in the Explanatory Memorandum of the TRAI’s Notification No. 409-5/2003-FN dated 29.10.2003 in IUC Regulation (2 of 2003) that

“Traffic hand-over for or from Cellular Mobile Networks shall normally take place at Level II TAX POIs and a carriage charge of Rs. 0.20 per minute would be applicable. If handover is at any other TAX level, the relevant carriage charge must be paid.”

He said that for transit carriage charge for Level-II TAX an amount of Re. 0.20 has to be paid to Respondent No. 1. He further stated that the contention of Respondent No. 1 that the Petitioners have to carry this hand-over further is not correct. He referred to Respondent No. 1’s reply to the Petition where the Respondent No. 1 has adopted the principle of work done for collecting the carriage charges. This is reproduced as under:-

“E. REPLY TO CARRIAGE CHARGES LEVIED BY BSNL IN VIOLATION OF THE IUC REGULATIONS

19. *...It is submitted that the IUC Regulations has provided 20 paise per minute as carriage charges which in the respectful submission of the Respondent No. 1 is against the work done principle.....The distance based charging from POI is continuing from the initial roll out of the cellular services. This has also been prescribed by the TRAI in its earlier IUC Regulation dated 24.1.2003 and the charging mechanism was also approved by the Authority before implementing the said IUC Regulation from 1.5.2003.*

20. *That in reply to para 20 of the petition it is submitted that the BSNL had written to TRAI as regards to carriage charges of 20 paise to be applicable to cellular mobile service networks only. In the representation made to the TRAI it has clearly been pointed out by the respondent herein that the flat rate of 0.20 paise carriage charges levied for CMSPs is arbitrary and is against the principles of level playing field and is also in violation of the work done principle.”*

19. Mr. Vaidyanathan said that this was a unilateral stand taken by Respondent No. 1 and against the principles laid down by Respondent No. 3. He said further that it means that the Respondent treated the Regulation as wrong and also took unto itself to interpret it the way it wanted and is also implementing it accordingly which is an arbitrary and blatantly wrong action. He said that neither Respondent No. 1 has challenged the Regulation nor has TRAI amended the Regulation and its plea is unacceptable. He said that Respondent No. 1 vide its letter no. 208-20/2003-Regln. dated 12.12.2003 expressed its intention of charging Rs. 1.20 for an Intra-circle CMTS to Basic (F) STD call – 50 to 200 kms and informed Respondent No. 3 of this intention vide their Letter No. 208029/2003-Regln. dated 29.12.2003. Petitioners objected to such charging vide its letter no. SN/COAI/013 dated 13.01.2004. Respondent No. 3 took note of Petitioner’s objections and realizing that Respondent No. 1 intended to incorrectly levy a carriage charge for such calls in violation of October IUC Regulation, wrote to Respondent No. 1 vide its letter no. 409-16/2003-FN dated 20.01.2004 stating that this distance based charging, intended to be implemented by Respondent No. 1 even where the call is handed over at Lever-II TAX, was not correct. He further submitted that Schedule C of the Respondent No. 1’s Letter No. 208-20/2003-Regln. dated 12.12.2003 specifies distance based carriage charges for calls terminating in their Fixed Line Network handed over at Level II TAX. Mr. Vaidyanathan also quoted from the BSNL’s letter no. 208-15/2003-Regln. dated 29th March 2004 addressed to TRAI, extracts of which are as follows:-

“...1.5 In view of above, it is requested that the Authority may kindly reconsider its decision communicated vide above-referred letter dated 8.3.2004 and allow BSNL to charge distance based carriage charges in non-discriminatory manner based upon the principle of actual work done followed by TRAI for prescribing the cost based IUC regime.”

Although TRAI has not agreed to reconsider this matter, Respondent No. 1 is still illegally charging distance based carriage charges.

20. He further pointed out that for calls handed over at Tandem in a Metro, Respondent No. 1 is charging Re. 0.20 additionally as TAX charges. The IUC Regulation in Table II has prescribed Nil carriage charge in the case of Cellular Metro Circles where the call is handed over at Tandem. Similarly, in the case of Intra-Circle call from Cellular Network handed over to BSNL at the TAX in which the call is to be terminated a carriage charge of only Re. 0.20 per minute would be applicable irrespective of the distance from that TAX to the terminating Tandem. In case call is handed over at any other TAX the relevant distance based carriage charge would be applicable.

21. While summing up his argument on this issue, Mr. Vaidyanathan said that Respondent No. 1 had no reason or rationale to introduce their own Carriage Charge regime.

22. On the issue of Access Deficit Charge (ADC), Mr. Vaidyanathan stated that no ADC is leviable on Cellular to WLL (M) as per calls January IUC Regulation dated 24.1.2003. The relevant portion of the Explanatory Memorandum thereof reads as under:-

“17....For Cellular mobile and wireless in local loop with limited mobility services do not have any access deficit on account of Rentals and free calls. The Authority has allowed for Cellular Services a tariff regime under which there is no access deficit. The same has been permitted in the case of WLL (M) as well.”

He said that BSNL has, however, been charging ADC on such calls, which still remains to be refunded. According to him, Respondent No. 1 in its reply has stated that they are having a legacy network and switching equipment of various technologies. Admittedly they have accepted that this ADC is to be refunded after verifying the CDR. Learned

Senior Counsel for the petitioners requested that directions be given to Respondent No. 1 that this should be refunded at the earliest.

23. The learned Senior Counsel for the petitioners stated that BSNL was never clearing their bills in time on the plea that these were either being reconciled or being verified. He said that there were dues pending since 2003. He brought to the notice of the Tribunal pending bills since May 2003 which forms part of the rejoinder as Annexure-K and stated that these dues have not been denied by the Respondent No. 1 but still the payment has not been made. He said that in some cases Respondent No. 1 deducts amounts arbitrarily without any explanation or reasons and bills were invariably paid late.

24. The next point of Petitioners was on the issue of interest on delayed payments. Mr. Vaidyanathan stated that on delayed payments BSNL is charging 24% interest from them whereas they pay no interest on dues to the petitioners and stated that this has to on a reciprocal basis and on all outstanding amount BSNL should pay the same interest rate which they are charging from them.

25. The last point of argument by Mr. Vaidyanathan was that Respondent No. 1 is asking unnecessary details from the Petitioners about calls to/from other NLDOs also for calls terminating in Member Operators Network. Under the cover that Respondent has to collect ADC, details absolutely not linked with ADC are being asked thereby burdening the Petitioners. He requested the Tribunal to direct Respondent No. 1 appropriately.

26. Responding to the arguments of the petitioners, Mr. Maninder Singh, learned Counsel for Respondent No. 1 stated that all the Member Operators are having individual interconnect agreements with the Respondent No. 1. He said that the billing was being done as per these agreements and stated that these agreements prevail over the IUC Regulation. He brought to our notice the relevant paragraph of this aspect which is an agreement part of the Addenda to Interconnect Agreement after Migration dated 21st July

2004 between Bharati Cellular Limited and BSNL pertaining to Uttar Pradesh (West) service area.

“6.5.2 At present CDR based billing system for POIs is not available in BSNL’s network at all locations. Wherever BSNL is having CDR based billing system for POIs BSNL shall bill the IUC based on processing of CDRs. However, wherever CDR based billing system is not available in BSNL’s network, the billing of IUC shall be done based on IUC pulses as described in Schedule I. The per MCU charge for these IUC pulses being Re. 0.10 for all types of calls except originating ISD calls and any other call specially specified in which case per MCU charge shall be Rs. 1.20. BSNL reserves the right to charge Access Deficit Charge (ADC) based on distance from originating SDCC to terminating SDCC as and when necessary technical arrangements are put in place by BSNL.”

Mr. Vaidyanathan, Sr. Counsel for the Petitioner, at this stage interjected and stated that this Interconnect Agreement was with the operator on migration to UASL Regime.

27. He said that all billing is done based on this mutually agreed system as per interconnect agreement. He also stated that no averment of the said agreements has been made by the petitioners in their prayers. Mr. Singh stated that since TRAI cannot supersede the interconnect agreements the prayers (a), (b) & (c) of the petitioners automatically fall. He also referred to BSNL’s Letter No. 208-20/2003-Regln. dated 28th January 2004 wherein it had informed all the users about the implementation of the IUC Regulations and stated that the approach of BSNL did not violate the Regulations.

28. He said that issues that have been raised in the petition have been specifically incorporated in the Interconnection Agreements executed between Member Operators and Respondent No. 1 and hence they had no case to agitate. He said that an approximate amount of Rs. 400 crore was needed to create CDR facility at the points of interconnection which the Petitioners refused to fund and hence the need for continuity of MCU based billing, which was the only option available if interconnection to the BSNL network was to be maintained at the various POIs.

29. Mr. Singh contended that neither under the unamended TRAI Act, 1997 nor with the amendment carried out in the Act in the year 2000 w.e.f. 24.01.2000, TRAI has any

jurisdiction to pass any order, direction or regulation which has the effect of either (i) altering, modifying or superseding any term or condition of any existing agreement/contract including any arrangement for interconnection between different service providers and (ii) altering, modifying or superseding any term or condition of any licence. In support of his contention he cited the judgments of TDSAT in *Appeal No. 11 of 2002 (BSNL vs. TRAI) dated 27.4.2005* and in *Appeal No. 31 of 2003 (BSNL vs. TRAI) dated 3.5.2005* and Delhi High Court in *CWP Nos. 6543 and 6583 of 1999 decided on 17.1.2000*.

30. Mr. Singh submitted that Petitioner has failed to disclose that its Member Operators have separately signed interconnection agreements with Respondent No. 1. He said that even in the agreements executed before coming into force of IUC Regulation w.e.f. 1.2.2004, it has been clearly agreed between the parties that the traffic shall be measured at the distance wise pulse rates. It has been further agreed that the rates of interconnection usage shall be MCU based. The applicability of the TRAI norms was qua the rates for the MCU. The rates prescribed by the TRAI for MCU was to be a variable. Further the computation of IUC charges at the distance wise pulse rates being MCU based had to be billed on bulk billing of traffic. The stipulation of bulk billing of traffic, under the terms and conditions of this agreement did not mean that the bulk billing was on the basis as contended by the Petitioner but is apparently based on distance wise pulse rates being MCU based.

31. He submitted that Clause 6.5.2 of Addenda I to Interconnect Agreement after Migration between Respondent No. 1 and M/s. Bharati Cellular Limited signed vide No. 361-2/2004-Regln/UPW dated 21.7.2004 states that Respondent No. 1 is not having CDR based billing system and therefore billing will be as per Schedule-I of the said Agreement. Mr. Singh said that the stipulation of bulk billing of MCUs by the Respondent No. 1 in this manner is agreed to by the parties and thus arguments of Petitioner based on Clause at 6.5.1 by emphasizing on words "*bulk billing*" is misconceived and unsustainable. Besides Mr. Maninder Singh was not in agreement with the Petitioners' meaning of '*bulk billing*'. He said that the phrase '*Bulk Billing*' was used

by Respondent No. 1 even before the October Regulation. According to him this meant that the computation of access charges for each POI would be made by taking into account all the MCUs at each junction of an interconnecting port at the POI (each port has 30 junctions) and the combined bills all such ports and junctions at each POI would be in the form of a bulk bill.

32. On the issue of Respondent No. 1 not challenging the Regulation as contended by the Petitioner, Mr. Singh said that it was not necessary since TRAI has no jurisdiction to override the interconnect agreements.

33. He refuted the contention of the Petitioner that Respondent No. 1 is not raising any bills where CDR is in place. He said that they are raising bills for August 2005 wherever CDR is in place. In support of this he informed by way of example that for August 2005, billing based on CDR had been done in 16 circles of BSNL at all POIs. He further stated that Respondent No. 1 is trying to implement CDR based billing system in all parts of the country as expeditiously as possible.

34. On the second issue of Carriage Charges the learned Counsel for Respondent No. 1 stated that TRAI has stipulated distance based slabs which are applicable to fixed and cellular phones. He said that all the agreements between the Respondent No. 1 and members of the Petitioner are based on these slabs and as per the main provisions of the Regulation. He stated that the petitioners had read the portions of Carriage Charges from the Explanatory Memorandum and not the main provisions. He referred to Carriage Charges as at Table-I of Schedule-II of the IUC Regulations where various distance based slabs are given. He relied on the judgment of TDSAT in Petition No. 41 (C) of 2005 [Star India vs. Sea TV] where it has been mentioned that “*once the delegated legislation in its text is unambiguous, it is not necessary for us to go into the Explanatory Note ...*”

35. Mr. Vaidyanathan, learned Senior Counsel for the Petitioners, interjected at this stage stating the learned Counsel for the Respondent was referring to the distance slabs

which pertained to Long Distance calls and are not applicable in this case in view of the clear stipulations in Table-II. He said that the charges at Table-I are not applicable and the applicability of carriage charge would be as per Table-II of Schedule-II of the IUC Regulations which formed part of the main body of the Regulations.

36. Mr. Maninder Singh said that all the interconnect agreements between the service providers have specific clause for charging the carriage charges as per distance based slabs. (Reference Agreement nos. 114-10/2003-Regln./Kolkata dated 19.12.2003, 361-2/2004-Regln./UPW dated 21st July 2004 and 114-1/2004-Regln./Bihar dated 26.03.2004).

37. On the issue of ADC, he stated that some allegations have been made by the Petitioner during the arguments that Respondent No. 1 is not refunding ADC to them. He said that this was not the case and Respondent No. 1 will refund the amount on submission of correct ADC bills and relevant traffic data.

38. On the issue of payment due to the operators Mr. Singh stated that the Respondent is committed to make all the payments and asked the petitioners to give details to them so that all outstanding dues can be cleared.

39. In regard to information being sought by BSNL in regard to certain ADC payments he said that only relevant details were being asked so that there is no evasion in the payment of ADC to BSNL.

40. On the issue of interest Mr. Singh stated that 24% interest is being charged based on the agreement and this has since been reduced. He stated that further action will be taken to take care of this aspect.

41. Mr. Arun Kathpalia, learned Counsel for Respondent No. 2 stated that in his case the CDR system is already in place in Mumbai and it will be implemented in Delhi soon.

With this, problems between Petitioner and Respondent No. 2 would stand resolved, he said.

42. Having heard the arguments and also having gone through the written submissions by the Petitioner and Respondent No. 1, we find that there are basically two important issues which need to be addressed i.e. Billing Arrangements and Carriage Charges. The other issues i.e. Refund of ADC, Delayed Payments by Respondent No. 1, Interest Charges, reciprocity thereof and Respondent No. 1 seeking details from Petitioner are virtually factual in nature and do not need much deliberation or discussion. This is also evident from the fact that during the arguments only these two issues were debated and on the remaining mention was made by the Petitioner for directions and in defence Respondent No. 1 responded by stating that it would be prepared to act constructively on the matter.

43. The IUC regime specifies the charges to be paid to the terminating operator by the originating operator. For this purpose the bills are raised by the terminating operators on the originating operators. IUC Regulation dated 29th October 2003 which became operational with effect from 1st February 2004 mandates that these IUC payments must be made on bulk basis on per minute calculation of IUC. During the course of arguments by both the parties, it has come out very clearly that in case of calls from petitioners' network to the Respondent No. 1's network, Respondent No. 1 charges the Petitioner on Metered Call Unit (MCU) basis which is Call by Call basis whereas for their calls to Petitioner, Respondent No. 1 pays to the petitioners on Cumulative Actual Minutes basis and not on Call by Call basis. So is the case between Petitioners and Respondent No. 2 also. This results in imbalances in charges wherein according to the Petitioners the Respondents stand to gain on an average from 6 – 10%. BSNL, however, admits that it stands to gain around 1%. This was explained by the Petitioner with the help of Table-I which is reproduced earlier in this judgment. This point was refuted by the Respondents and they took umbrage to the fact that they do not have a Call Data Record System of billing and as such had no other option while providing interconnection but to resort to

Call by Call billing method, which is permissible under the interconnect agreements entered into between the Petitioners (Member Operators) and Respondent No. 1.

44. We find from the records that TRAI has been insisting upon BSNL to implement CDR based billing to obviate this differential in charges being made by the Petitioners and the Respondent Nos. 1 & 2. It is also clear that TRAI vide its letters dated 15th February 2003 and 20th January 2004 respectively has taken note of the difficulties pointed out by BSNL but has also mandated that till CDR system is implemented by Respondent No. 1, it should implement reciprocal arrangement in billing. This has been accepted by Respondent No. 1 as is evident from their reply at paragraph (A) of Para-wise reply to the Petition. We do find that Respondent No. 1 has been assuring that it would put the CDR system in place but the indicated time limit have been exceeded since long. At present they do not have a CDR system at a number of exchanges and therefore they have continued with the Metered Call Unit (MCU) billing method. In our view Respondent No. 1 being in fact a stronger player in the field should have come out with the CDR based billing system long back. Had they done so this dispute would not arisen and both the petitioners and respondents would have been on a level playing field as regards billing. We also see no reason why for non-availability of a facility Respondent should have carried on with its own systems of billing for receipt and payment without caring for the need to establish reciprocity in this regard. We are of the view that since the CDR of the Petitioner is acceptable to the respondent for accepting the payments due to it, the same should be acceptable for raising bills also. In the alternative, the pulse rate could also have been adjusted for the purpose of the payments to be made by BSNL to the Member Operators and reciprocal non-discriminatory billing arrangement implemented on that basis till such time as CDR systems was installed.

45. We find that the dispute before us does not relate to access charges per se but in regard to the method of billing of these charges. Although stipulation in this regard has been made in the IUC Regulations, it was pointed out by BSNL to TRAI that it could provide interconnection only on the basis of bulk billing by making use of MCUs till the CDR system comes into place. We find it difficult to agree with the contention of the

petitioners that TRAI did not have the authority to intervene in these circumstances to ensure implementation of interconnection without amending the Regulation. When it was pointed out to TRAI by BSNL that they did not have the technological capabilities to implement the CDR based billing system and needed time to implement the same and that it would involve a capital expenditure of around Rs. 400 crore, TRAI gave time to BSNL to install the CDR system and till such time also directed that billing of access charges be done on reciprocal basis. This meant that if BSNL was charging the private cellular operators on MCU basis, the same method should be made applicable by BSNL for making payments to the private cellular operators for the access charges.

46. We, therefore, have no doubt whatsoever in coming to the conclusion that in the interest of reciprocity and level playing field Respondent No. 1 (BSNL) should have introduced the billing on reciprocal basis i.e. where CDR system was available it should have been done on the basis of CDR and when it was not yet installed the MCU based billing should have been made applicable for payments by either side to each other and further BSNL should have hastened the implementation of the CDR system so that in every circle the reciprocal billing on bulk basis could be implemented without the need to adopt the MCU based system. In this regard we have taken note of the communication of TRAI dated 15.12.2003 wherein it is mentioned that BSNL had informed that it would install CDR based billing system in the next six months and in the communication of TRAI dated 20.1.2004 it has been clearly brought out that BSNL had earlier given commitment that it would install the CDR system by November 2003. However, all indicated time limits in this regard had expired. During the hearing of the matter learned counsel for BSNL gave us to understand that CDR system would definitely get installed within 3 months time, out of which over about one month has already elapsed.

47. We accordingly direct that the necessary arrangements be worked out by Respondent No. 1 (BSNL) and Respondent No. 2 (MTNL) and Member Operators of COAI and Respondent No. 3 (TRAI) should monitor the implementation of the same, so that level playing field in this respect gets established within the time frame which we are indicating below. We direct the Respondents No. 1 & 2 to implement the CDR system in

all the remaining Level-II TAX within a period of 90 days from the date of this order. Further, until then there should be reciprocity in the billing in as much as that wherever CDR based billing by BSNL and MTNL for charging the private cellular operators is not possible and MCU based charging needs to be resorted to, then this system should be adopted for the purpose of making payments as well by BSNL and MTNL to the private cellular operators. We direct TRAI to lay down the arrangements in this regard within a period of 15 days from the date of this order. Keeping the totality of circumstances we do not consider it appropriate to order any refunds to be made in this regard by BSNL/MTNL to the Member Operators of the Petitioner Prayers (a) to (d) and (l), (m), (n) stand disposed of accordingly

48. We have taken note that the IUC Regulations of 24.1.2003 were implemented w.e.f. 1.5.2003 and IUC Regulations of 29.10.2003 w.e.f. 1.2.2004 and the present petition has been filed in November 2004 i.e. after a considerable lapse of time and many interconnect agreements have been entered into between the Petitioners and Respondent No. 1, which have not been challenged or called into question in the present petition. We feel that the approach of establishing reciprocity in the manner envisaged by us as indicated above should resolve the conflict between the Petitioners and Respondent No. 2 & 3. In the above approach of resolving this issue we do not consider it necessary to go into the question of any conflict between the interconnect agreements and the concerned Regulations.

49. On the issue of distance based Carriage Charges we notice that the petitioners are obliged to pay carriage charges to the respondents for handing over intra-circle calls at Level-II TAX in the terminating LDCAs. The IUC Regulations of October 2003 lay down applicability of these charges at Table-II in Schedule-II. Para 84 of the Explanatory Memorandum of the IUC Regulation of October lays down the carriage charge of only Re. 0.20 per minute for intra-circle calls irrespective of the distance from Level-II TAX to the Terminating Tandem / Local Exchange. We, however, find that BSNL is charging additional amount based on the distance based charges, which is not in accordance with the stipulation of Table-II. The arguments based on the principle of

work done are not of much merit in view of the clear stipulations in IUC Regulation of October 2003, which are not under challenge by BSNL. TRAI has also clearly clarified to BSNL in this regard vide its Letter No. 409-16/2003-FN dated 20.1.2004 in the following terms:

“(c) In Schedule C of the BSNL’s letter, BSNL has specified distance based carriage charges for call terminating in their Fixed Line Network handed over at Level-II TX. Further for calls handed over at Tandem in a Metro BSNL is charging Re. 0.20 additionally as TAX charges. The IUC Regulation in Table-II has prescribed Nil carriage charge in the case of Cellular Metro Circles where the call is handed over at Tandem. Similarly in the case of Intra-Circle call from Cellular Network handed over to BSNL at the TAX in which the call is to be terminated a carriage charge of only 0.20 paise per minute would be applicable irrespective of the distance from that TAX to the terminating Tandem. In case call is handed over at any other TAX the relevant distance based carriage charge would be applicable.”

50. We feel that the distance based carriage resorted to by BSNL needs to be brought in tune immediately with what is authorized as per the Regulation of October 2003 as stated in Table-II and therefore we allow the prayers to this effect and direct BSNL not to levy the distance based carriage of Re. 0.65, Re. 0.90 and Rs. 1.10 for the distance slabs of 50 to 200 kms, 200 to 500 kms and above 500 kms, respectively in case of Intra-Circle call from Cellular Network handed over to BSNL at the Terminating LDCA TAX in which the call is to be terminated, as they are entitled to levy a carriage of only Re. 0.20 per minute for all such calls as per the said Regulation.

51. In regard to prayer of the Petitioner for refund of amount we are not inclined to accept the same since it will not be paid back to the consumers. Prayers (e) and (f) thus stand disposed of.

52. There are four more minor issues which were mentioned by the Petitioner and responded in the same manner by the Respondent No. 1, which are now discussed as follows:-

- (a) Access Deficit Charges – Refund – No ADC is leviable on several kinds of WLL (M) calls, according to the Petitioner. Since Respondent No. 1 does not have the capability to segregate the calls, ADC is being collected with the promise that the same will be refunded to the petitioners within 45 days. The Petitioners state that they need refund of these amounts in a time-bound manner. The Respondent has accepted that refunds have to be made. We direct that the Respondent must refund these amounts within a period of 3 months on monthly basis from the date of collection. We feel that three months period is adequate to check the details.
- (b) Non-payment/Part-payment of Bills – Respondent No. 1 has kept some amounts pending on account of unpaid bills and some amounts have been deducted by them from the dues. We feel that for harmonious working relationship between the operators and healthy competition to prevail the Petitioners and the Respondents must fulfill their commitments as per the agreement so that payments are not delayed either way.
- (c) Reciprocity in Interest – The petitioners have pointed out that large amounts of bills are not paid in time by the respondents and when paid after considerable delay there is no payment of interest whereas an interest of 24% per annum compounded quarterly is charged from them on their dues. We direct that this should be on reciprocal basis. Both parties are directed to enter into agreement regarding the rate of interest which will be applicable for both the parties on reciprocal basis.
- (d) Information regarding NLD/ILD Calls – The petitioners state that the respondent is asking for unnecessary details which are neither required nor mandated by the Regulator. We direct that this matter may be gone into by TRAI and the format of details that BSNL should be getting from the petitioners be prescribed so that these are in conformity with the requirements of the Regulations pertaining to the ADC.

Prayers (g), (h), (i), (j) and (k) are disposed of accordingly.

53. By our above findings and the directions given in the foregoing paragraphs we dispose of the petition with no orders as to costs.

.....J
(N. Santosh Hegde)
Chairperson

.....
(Vinod Vaish)
PMember

.....
(D.P.Sehgal)
Member