

was not paid within 10 days. Other Telecom District offices of the Respondent in Andhra Pradesh had also been raising similar bills claiming payment of arrears. Since a directive dated 27-5-05 had been issued by the office of the Chief General Manager of BSNL, Andhra Pradesh Circle to the various Telecom District Offices, the Petitioner apprehended disconnection notices from these places also. The impugned bills received from these other offices have been listed in para 4 of the Petition and the total demand of such bills comes to Rs. 5, 15,11,650/-

2. M/s Tata Teleservices is holding a license issued in 1997 under the Indian Telegraph Act by the Government of India for providing fixed line telephone services within the State of Andhra Pradesh. M/s Bharat Sanchar Nigam Limited is a public sector telecom service provider having all India presence with a well established telecom network, including in Andhra Pradesh, and came into existence in October 2000 as a successor entity to the service providing arm of the Department of Telecommunications.

3. The following prayers have been made:

- (i) Declare the Demands of Arrears of Carriage Charges claimed in the impugned Demand notices or other similar demands as being illegal, bad in law and without any jurisdiction whatsoever and contrary to its own agreement and conduct.
- (ii) Declare that the Respondent is not entitled to recover these amounts by applying any coercive tactics for recovery of the same including disruption / denial / blocking of interconnection facilities to the Petitioner.
- (iii) Quash the impugned Demand Notices as well as the BSNL Circle Directive date 27-5-05 to the extent of Demand of Carriage Charges.
- (iv) Restrain the Respondent in any manner, whatsoever, from disconnection, disrupting or denying interconnection to the Petitioner within the Telecom Circle of Andhra Pradesh on account of non-payment of the alleged claim of arrears.

On 25-10-2006 interim protection was given to the Petitioner in the following terms:

“In the meantime, if the Petitioner pays a sum of 5 crores without prejudice to its claim in the petition within one week from today, the Respondent shall not disconnect the points of interconnection without order from this Tribunal.”

4. At the time of the filing of the above Petition, the legal position in regard to the handover of a call originating from the network of a private service provider located in one Long Distance Charging Area (LDCA) and meant to terminate in a subscriber terminal in the network of BSNL located in another Long Distance Charging Area, stood decided by the order dated 16-8-2004 of this Tribunal in Appeal No.1 of 2004. (BSNL Vs TRAI). However in separate proceedings two Appeals filed by another operator namely M/s Bharti Telenet against the determination of TRAI dated 15-6-2001, which also formed the basis of the TDSAT order of 16-8-2004, were pending consideration of this Tribunal as a result of the matter being remanded by the Hon'ble Supreme Court. This eventually got decided on 27-7-2006 by a common order in Appeal No.1 of 2002 and Appeal No.9 of 2002 in which the decision of 16-8-2004, referred to above, was confirmed.

4.1 For facility of understanding we quote the portion of the order of 16-8-2004 of this Tribunal explaining the technical terms contained in the above finding:

“..... for the purpose of telecom operations the country has been divided into different ‘circles’ and each circle is generally co-terminus with the geographical boundary of a State. Each circle is further divided into Long Distance Charging Areas (LDCAs) which roughly correspond to what is known as a ‘district’. Each LDCA is further divided into Short Distance Charging Areas (SDCAs) which roughly correspond with a ‘tehsil’. All calls originating from and terminating within a SDCA are known as local calls and therefore, SDCAs are called as ‘local area’. In a SDCA, there can be multiple exchanges and a Central Exchange which routes calls from exchange to another exchange within the SDCA is known as ‘tandem’. Normally the Tandem is located at the centre of the SDCA which is generally the headquarter of the tehsil and this is known as Short Distance Charging Centre (SDCC). A call between one SDCA and another SDCA is known as a long distance call and the charging is based on the distance between two SDCCs within a LDCA. For transiting a call from one SDCA to another either within the same LDCA or from one LDCA to another LDCA, there is requirement of an exchange which is known as ‘Trunk Automatic Exchange (TAX). In each LDCA, one TAX is designated as ‘ Long Distance Centre TAX (LDCC-TAX). This is also referred to as Level II TAX. The expression POI means the Point of Interconnection between two networks.

.....11. *In the matter argued before us, an example has been given by the petitioner and the respondent to illustrate the nature of the dispute. Here the subscriber of HFCL located in an SDCA in Amritsar LDCA wishes to connect with a subscriber of BSNL in Barnala SDCA which forms part of Sangrur LDCA. Both Amritsar and Sangrur being located in Punjab, this would constitute a long distance call within the same circle.*”

This Tribunal gave the following finding in this regard:

“ ... *the correct interpretation of the determination of TRAI dated 15-6-2001 would be that HFCL has no case for handing over its calls originating in an SDCA located within Amritsar LDCA and meant for SDCA Barnala located in LDCA Sangrur at the LDCC TAX of BSNL at Sangrur. They have option of interconnection with BSNL network, only of ‘near end hand over’ at the LDCC TAX at Amritsar vide Clause 1.7.6.5 of the license or of a ‘far end handover’ at the SDCC Tandem at Barnala but not at any intermediate point, not even at LDCC TAX of BSNL at Sangrur.*”

In other words it was held that the only permissible handover of calls/traffic by any private basic operator into the network of BSNL can either be at the ‘Near End’ (i.e. at the LDCA in which the call has originated in the network of the private basic operator) or at the ‘Far End’ (i.e. at the SDCA in which the call is meant to terminate). It was also unambiguously decided that the attempted handover of traffic/calls at any other Point of Interconnection on the route (i.e. Intermediate Handover’) is impermissible.

5. Learned Counsel for the Petitioner Shri Ramji Srinivasan has clearly stated at the outset during the course of his arguments that the Petitioner accepts these decisions of the TDSAT. We would therefore take the decisions of 16-8-2004 and 27-7-2006 in this regard as binding and treat this aspect of the matter as finally settled.

6. It has also been stated in the Petition that M/s TTSL has complied with the requirements of proper handing over of calls with effect from 15-9-2004 based on the BSNL letter of 13-9-2004 read with letter of 3-9-2004 which were addressed to the Petitioner soon after the above TDSAT order. The grievance of the Petitioner is that BSNL has raised demands for the period 1-5-03 till 14-9-2004 giving retrospective effect to the said order of TDSAT and has issued letters threatening disconnection of existing POIs in case the said demands are not met. The

Petitioner's case is that it had been the normal practice in the relationship of interconnection between the Petitioner and the Respondent in Andhra Pradesh for far end handover of calls being done in the terminating LDCA and BSNL had not insisted that handover could be only at the near end LDCA. It is further stated that BSNL had the option to block calls if this arrangement was in violation of the license conditions or the interconnect agreements but it chose not to do so. It is further contended that if BSNL was prevented by TRAI from refusing acceptance of such calls it could have sought relief from TDSAT, but it did not do so and handing over of such calls continued to be at the far end LDCC TAX. Since calls were accepted by BSNL at the far end LDCA the work of carriage was performed only from the far end LDCC TAX to the terminating SDCA. As such, there was no basis for BSNL raising a demand for payment of carriage charges from the near end LDCC to the terminating SDCC.

6.1 From the Petition itself it is clear that the Petitioner has during the course of negotiations with BSNL made an offer to pay to BSNL Access Deficit Charges (ADC) and termination charges based on the distance between the point of origination of the call and the termination of the call and in regard to carriage charges for carriage done by BSNL from the far end LDCC to the terminating SDCC in the following terms:

- “1. Assuming without admitting that ADC is payable by us in respect of these calls, ADC would be payable by us on all calls handed over at any intermediate LDCC TAX which were originated from TTSL's network in other LDCAs in AP (other than the LDCA where the calls were handed over at an LDCC TAX) based on the distance from the originating end SDCC to the terminating end SDCC. During the IUC- 1 period from May 2003 to January 2004, this ADC was based on distance slabs. During IUC-2 period from 1st February 2004 to 15th September 2004 (when the intermediate hand over of calls was terminated), this was flat rate ADC irrespective of distance.*
- 2. During the IUC-2 period the ADC was applicable only for calls originating from TTSL's LIMO DELs. Further, the TTSL's limited mobiles (LIMO or WWL(M)) were migrated to level 92 numbering plan on the mid night of 03/04 June 2004. Hence, ADC is payable by us during the IUC-2 period from 1st February 2004 to 3rd June 2004 for all calls originating only from our LIM DELs.*

3. *Assuming without admitting that Termination Charge is payable by us in respect of these calls, it would also be payable based on the distance from the originating and SDCC to the terminating end SDCC. During the IUC-1 period from May 2003 to January 2004, this termination charge was Rs.0.25 pr minute for the distance slab of 0 to 50 kms and above. During the IUC-2 period from 1st February 2004 to 15th September 2004 (when the intermediated hand over of calls was terminated) the termination charge was Rs.0.30 pr minute irrespective of the distance.*
4. *Assuming without admitting that Carriage Charges are payable by us in respect of these calls, such charges would be based on the principle of payment due for actual work done. Hence, Carriage Charges will be applicable only for the distance from the point of hand over of the calls to the point of termination. This means that the Carriage Charges will be applicable only for the distance between the LDCC TAX where the call was handed over to BSNL and the SDCC of the SDCA where the call was terminated. There should be not carriage charges levied by BSNL between the call origination point to the call handover point (i.e. terminating LDCC TAX) as TTSL has carried the calls on this leg. This carriage will be as per the applicable rates during IUC-1 and IUC-II periods.”*

As stated in the Petition BSNL has not replied to the offer.

6.2 It is also the Petitioner's case that at no stage did BSNL inform the Petitioner that the latter would be liable to pay notional carriage charges for the distance between the near end LDCC to the far end LDCC even if the handover was made at the far end LDCC.

7. BSNL's case on the other hand is that the amounts as computed in the demands are based on BSNL's entitlement towards Access Deficit Charges (ADC), termination charges and carriage charges arising out of the interconnect agreements, the license conditions and the determination of TRAI on 15-6-2001 as upheld by TDSAT on 16-8-2004 and again on 27-7-2006. It was argued by the learned counsel for BSNL Shri Maninder Singh that BSNL was prevented from blocking the calls and was specifically asked to maintain the status quo by the directives of TRAI and there was also threat of prosecution from TRAI in this regard.

7.1 On behalf of BSNL it has also been contended that certain meetings took place namely on 29.9.2005 and 30.9.2005 between the representatives of the Petitioners and the BSNL, and

minutes have been recorded expressing agreement by both sides to the deliberations. There are two such documents which are the minutes of meetings held on the above dates which are at Annexure R-6, pages 460-461 Vol. II. According to the BSNL contention in this regard these represent agreement on the part of the Petitioner to pay the amounts demanded by BSNL.

The Petitioner has contested this assertion of BSNL and has taken the stand that these meetings only represent a dialogue on the methodology of calculations which was not clear in the earlier communications of BSNL and the agreement is only in regard to the correctness of the calculations based on the stated methodology. According to the Petitioner, these minutes do not represent any agreement on the part of the Petitioner to pay the amounts indicated in the demands.

8. After hearing the arguments of the learned counsels we are inclined to accept the argument of the Petitioner that BSNL continued to accept the calls at the far end LDCC till 14-9-2004 and did not seek any relief from TDSAT against the TRAI directive in this particular case and continued with these arrangements which seemed to be in accordance with the past practice followed in this regard in Andhra Pradesh Circle. We have gone through the communications dated 30-4-2003 and 13-9-2004 which according to the Petitioner give clear indication that BSNL continued to accept the far end handover at the terminating LDCA. In the letter of 30-4-2003 it is clearly stated by the office of Chief General Manager that

“ with reference to the request of M/s Tata Teleservices Limited on the above subject, it is to intimate that it has been provisionally agreed by the competent authority to continue the present practice of accepting the intra Circle STD calls coming from Tata Teleservices Limited to BSNL network meant for termination in the LDCA at Level II TAXs of BSNL till further directions, if any, from the BSNL Headquarters. ”

In the letter of 13-9-2004 the office of Chief General Manager, Andhra Pradesh, BSNL has referred to ‘Revised routing plan in compliance of TDSAT verdict’ and has stated the position as follows:

“Hitherto TTSL (Basic) has been routing the Inter Circle Fixed traffic at the destination TAX (Far end for termination to the concerned SSA) at the following 13 SSAs:

Chittur, Guntur, East Godavari, Hyderabad, Krishna, Mahabubnagar, Medak, Nalgonda, Nellore, Prakasam, Warangal and West Godavari.

As per revised instructions conveyed by BSNL, ND, as consequence of TDSAT judgment, vide letter at Ref 1 above, all Private operators are to make over call either at near end LDCC TAX POI or at the Destination SDCC tandem POI. The above letter has also clarified that the earlier orders passed by TRAI are set aside.

Thus in compliance of the above orders, it is now decided that at the said SSAs (the present set up details are given in the annex-1), TTSL shall reprogram the interconnect POI Jns in a manner to route the traffic as below:

A. TAXs and SDCC POIs at these 13 SSAs. (This phase will be implemented by 00.00 hours of 15-09.2004 at the following TAXs and the respective SDCC POIs).

- (i) M/s TTSL shall stop sending far end handover calls of other SSAs to any Lev-2 TAX.*
- (ii) Instead TTSL shall route such traffic either to originating end LDCC TAX or to the Far end SDCC POI in a separate TGP {'AD'-Item 21 of 'A' Table of IUC-2 with relevant change bands}. For this purpose, TTSL is permitted to re-use the presently idle LIM1 (erstwhile Lev 56) Streams as per list annexed."*

These communications make it abundantly clear that BSNL had consciously decided to accept the handover of calls at the terminating LDCA till 14-9-2004.

8.1 We also do not agree with the contention of BSNL that the minutes of the meetings dated 29.9.2005 and 30.9.2005 (Annexure R-6) can be taken as agreement by the Petitioner to pay the demands claimed by BSNL. At most they can be taken as agreements on the calculations which formed the basis of the demand, but nothing beyond that. The minutes of one such meeting are reproduced below:

"Minutes of the Meeting between BSNL authorities and M/s TTSL held on 29-9-2005 at 11.00 hours in the Chamber of DE (OCB DTAX) Vijayawada.

The following officers were present in the meeting.

BSNL

M/s TTSL

Sri P. Krishna Prasad D.E. OCB DTAX Sri Varma PNSA, Manager
Sri Ch Srinivasa Rao SDE OCB DTAX Sri Srinath Kumar, Manager
Smt. Latha Sr.Executive.

...meeting was held in r/o payment of Supplementary bills raised on Intermediate handover of calls at OCB DTAX Vijayawada as per the judgment of Honourable TDSAT.

The elaborate discussions were made about charging pattern in r/o of pulse rates and the amount on ADC charges, Termination Charges and Carriage Charges on all ... calls during IUC 1 period and IUC-2 period. M/s TTSL representatives have been satisfied with BSNL, Vijayawada calculations in r/o of these Supplementary bills raised by BSNL. Vijayawada.

Sample of the CDRs during this period were explained clearly about the Radial distance for ADC, Termination and Carriage for different types of calls and the pulse rates applied for ADC, Termination and Carriage. M/s TTSL representatives have been clarified on all of the above sample calls. M/s TTSL representatives were also satisfied on mode of raising of supplementary bills in r/o intermediate handover of calls at OCB DTAX, Vijayawada.

The required information by the M/s TTSL i.e. hard copy in r/o Charging of calls were also supplied.

BSNL Side

TTSL Side

<i>Sd/-</i>	<i>Sd/-</i>
<i>Sri P. Krishna Prasad D.E. OCB DTAX</i>	<i>Sri Varma PNSA, Manager</i>
<i>Sd/-</i>	<i>Sd/-</i>
<i>Sri Ch Srinivasa Rao SDE OCB DTAX</i>	<i>Sri Srinath Kumar, Manager</i>
	<i>Sd/-</i>
	<i>Smt. Latha Sr.Executive.”</i>

The language of the minutes of the meeting held on 30.9.2005 is almost similar.

There is nothing contained in the language of the minutes which could even remotely convey that representatives of M/s TTSL had agreed to pay the amounts claimed.

8.2 We hold in these circumstances that since BSNL has not actually done the work of carriage from the near end LDCC to the far end LDCC as a result of a conscious decision taken by it as already stated in its letters of 30-4-2003 and 13-9-04 and this kind of handover was also clearly stated to be a past practice, the notional carriage charge is not payable to BSNL.

8.3 In this background we have seen the terms contained in the letter dated 26-8-2005 of the Petitioner addressed to the BSNL offering terms for a full and final settlement of all pending demands. In these terms the Petitioner has indicated willingness to discharge its liability towards payment of termination charges and Access Deficit Charges to BSNL based on the distance from the originating end SDCC to the terminating end SDCC which is in accordance with what BSNL has claimed. In regard to the liability towards payment of carriage charges it is envisaged that these would be applicable only for the carriage done from the LDCC TAX where the call was actually handed over to the BSNL and the SDCC of the SDCA when the call was terminated.

We are of the view that in the light of our analysis the terms offered by the Petitioner to the BSNL provide a sound basis for a settlement and should be accepted by BSNL towards full and final settlement of the issue.

9. Accordingly, we quash the demand notices as well as BSNL Circle Directive dated 27-5-2005 to the extent of demand of notional carriage charges from the near end LDCC TAX to the far end LDCC TAX. BSNL may issue fresh demand notices for this purpose on the basis of acceptance of the terms of settlement indicated in the letter of 26-8-2005 of M/s TTSL addressed to M/s BSNL. BSNL should reconcile the accounts with reference to the amounts already paid including the amount of Rs.5 crores paid vide our order of 22-9-2005.

10. The Petition is allowed accordingly with no order as to costs.

.....J
[Arun Kumar]
Chairperson

.....
[Vinod Vaish]

Member

.....
[D.P. Sehgal]
Member