

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

Dated 5th September, 2007

Petition No.20 of 2002

M/s Hughes Escorts Communication Ltd.
NIRLAC Centre, 2nd Floor
B-25, Qutab Institutional Area
New Delhi – 110 016

....Petitioner

Versus

Union of India
through the Secretary
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001

....Respondent

BEFORE:

-

**HON'BLE MR. JUSTICE ARUN KUMAR, CHAIRPERSON
LT.GEN.(RETD) D.P. SEHGAL, MEMBER**

For Petitioner : Mr. Ramji Srinivasan, Advocate with
Ms. Mandakini Singh, Advocate

For Respondent : Mr. P.P. Malhotra, Additional Solicitor General
with Mr.Rakesh Gosain, Advocate

-
ORDER

A licence was issued in favour of the petitioner by the respondent on 3rd August, 1994 under Section 4 of the Indian Telegraph Act, 1885 to establish, maintain and operate a Closed User Group Domestic 64 KBPS Data Network via satellite using 'Very Small Aperture Terminal (VSAT) Systems throughout India. Under the licence the petitioner was required to pay a licence

fee of Rs.50,000/- per year per VSAT. In pursuance of the license granted in its favour, the petitioner commenced the service of installing and operationalising VSATs. The liability of the petitioner under the licence had to be worked out on the basis of number of VSATs installed and the date of installation of each. Therefore, the dispute in the present petition is about the number of VSATs which the petitioner allegedly did not report and pay for and the date from which payment of licence fee has to be made for each such VSAT. It is a case of the respondent that petitioner under-reported some VSATs and did not pay licence fee with respect to the same which is in violation of the terms of the licence. According to the respondent there were 243 VSATs under-reported by the petitioner. The respondent claimed licence fee on these 243 VSATs from the date of start of service by the petitioner i.e. the year 1995 instead of claiming licence fee on the basis of actual dates of installation and commercial commissioning of such alleged under-reported VSATs.

The Licence permits licensor to carry out routine inspections and verify the VSAT connections and Hub facilities. Accordingly, first inspection was carried out in January, 2000. This was a general inspection for all VSAT operators. Based on their inspection the respondent came up with figure of under-reported VSATs. Though the petitioner disputed the figures suggested by the respondent about non-reported VSATs, yet from time to time it made payments to the respondent as claimed by the respondent under protest. We do not propose to go into the aspect of payments demanded by the respondent from the petitioner and the payments made by the petitioner to respondents. This is because before us the question is not how much the petitioner has paid to the respondent. The question is how much the petitioner is liable to pay to the respondent. To determine the liability of the petitioner to the respondent only two things are necessary to be ascertained:

1. Number of non-reported VSATs
2. Date when each such non-reported VSAT became operational.

The respondent's demand for licence fee for 243 allegedly under-reported VSATs was w.e.f. 17th February, 1995 which is the date from which the petitioner's first VSAT became operational. The petitioner made a detailed representation against demand alongwith material to support its stand. The respondent constituted a committee on 8th November, 2000 which submitted its report on 9th March, 2001. A Second Inspection Committee was constituted on 17th January, 2002 which submitted its report on 31st January, 2002. The report of the committee was challenged by the petitioners before this Tribunal. For purpose of the inquiry of number of VSATs and their date of commissioning, this Tribunal found that enough material was not there on record. Therefore, after hearing the counsel for the parties and with their concurrence this Tribunal appointed Mr. Vijayaditya, Director General, National Informatics Centre, MC&IT as the Commissioner to make this inquiry in order to enable this Tribunal to finally decide the issue. The following is the extract of relevant portion of the order dated 22nd May, 2006 of this Tribunal:

“We were however, unable to identify from the pleadings and even arguments the exact number VSATs which were allegedly reported by the petitioner”.

In view of this, this Tribunal directed:

“4. To arrive at the final solution and to pin-point the number of VSATs which were actually under-reported, we, with the concurrence of the learned counsel for both the parties, have today decided to appoint a Commissioner for the same. We have identified and requested Dr. N. Vijayditya, Director General, National Informatics Centre, MC&IT, A-Block, CGO Complex, Lodhi Road, New Delhi-110003 for this purpose. The Commissioner will be assisted by the nominees of the petitioner and respondent who are as under:

- (a) Nominee of the petitioner - Mr. Partho Bannerjee, President
& Managing Director, HECL
- (b) Nominee of the respondent - Mr. Arun Golas, DDG (Satellite),
TEC, New Delhi

5. We hereby request the committee headed by Dr. Vijayaditya to go into the following aspects to identify the allegedly non-reported 243 terminals with their locations

and to find whether they were made operational or not:-

- (i) The committee will identify all the VSATs of the Company which were procured and were to operate under the license in SCPC DAMA MESH Configuration from the date of issuance of license for the same.
- (ii) The date of procurement, the date of receipt and the date of installation of each terminal to be identified.
- (iii) SACFA clearance for each terminal with location to be listed.
- (iv) Petitioner will give details of all the terminals with SACFA clearance which were declared as operational, with date of installation/ commissioning.
- (v) The committee will check remaining terminals with their locations whether they were made operational or not and identify the exact number of such VSATs.”

Dr. Vijayaditya submitted his report to this Tribunal on 15th October, 2006. Copies of summary report were supplied to the parties and liberty was granted to the parties to inspect the report in the office of the Tribunal. It is a bulky report and supplying copies thereof was not practical. Respondent has filed objections to the report. We have heard the learned counsel for the parties.

The main argument advanced on behalf of respondent is that the petitioners had accepted the Migration Package and signed the same. The Migration Package is dated 16th July, 2001. The dues which are subject matter of dispute are of period prior to the Migration Package. As per the Migration Package all disputes prior to the date of the Package do not survive and are to be taken as settled. On this basis it is submitted on the behalf of the Union of India that it is not open to the petitioner to raise any dispute about the dues pertaining to pre-migration period. In our view, this argument is not open to the respondent. This Tribunal passed the order dated 22nd May, 2006 appointing Dr. Vijayaditya as Commissioner in the presence of and with the concurrence of counsel for both the parties. The inquiry entrusted to the Commissioner was to identify the allegedly non-reported 243 VSATs with their locations and when they were made operational. The argument being raised now by the respondent should have been addressed at the stage of the said

order of the Tribunal. The respondent agreed to the appointment of the Commissioner for the purpose of aforesaid Inquiry. If respondent's this argument was to be accepted, there would have been no need for any inquiry. The report of the Commissioner has come, which is partly in favour of the respondent and partly against it. The respondent cannot now be permitted to raise the plea of waiver based on the Migration Package.

We have perused the detailed report of Dr. Vijayaditya. He held 6 meetings in the presence of representatives of the petitioner as well as the respondent. Effort was made to find out the position about 243 allegedly non-reported VSATs and the date of their installation so as to determine licence fee payable with respect to each. Dr. Vijayaditya is an expert in the field and from his report we find that he has taken great pains to carry out the assignment entrusted to him by this Tribunal. According to the Commissioner, the total number of non-reported VSATs was 272 instead of 243. 243 unreported terminals as given by the respondent Union of India comprised of 150 terminals as purely unreported and 93 terminals which were hardware disabled. The Commissioner after going into details of all the VSATs came to the conclusion that non-reported terminals of first category were 160 instead of 150. He also came to the conclusion that besides 93 hardware disabled terminals there were 19 terminals which were used by the petitioner as test sites. According to the respondent there was no dispute about these 19 VSATs and, therefore, the respondent had submitted the details of 243 unreported VSATs. The Commissioner came to the conclusion that the petitioner was liable to pay for these 19 test sites also. Therefore, he proceeded to establish the details of commissioning of 272 VSATs break-up of which is as under:

160	Non-reported (SCPC VSATs)
93	Hardware disabled TDMA VSATs
19	TDMA (test VSATs)

After giving his findings the Commissioner has given a summary in the form of tables to show the commissioning date of the said 272 VSATs.

We have no reason to differ with the report of the Commissioner. The learned ASG appearing for Union of India has not been able to challenge the report of the Commissioner on any cogent or worthwhile ground. We are fully satisfied about the manner in which the Commissioner has carried out his task. No procedural irregularities have been pointed out by the learned counsel for respondent. The Inquiry before the Commissioner was as to whether the figure of 243 VSATs said to be under-reported by the government was correct, if not what was the correct figure? Secondly, it was to be determined as to when each such VSAT became operational so as to find out the licence fee payable.

As per the Commissioner's report the details of yearwise commissioning of 160 VSATs is as under:

<u>S.No.</u>	<u>Type of VSATs</u>	<u>Yearwise</u>	<u>Total number of VSATs</u>
1.	SCPC	1997	14
2.	SCPC	1998	62
3.	SCPC	1999	84
Total			160

About 93 hardware disabled VSATs, the Commissioner has established that 34 terminals were only commissioned before 16th March 2000 and the details of these 34 are as under:

<u>S.No.</u>	<u>Type of VSATs</u>	<u>Yearwise</u>	<u>Total number of VSATs</u>
1.	TDMA	1995	17
2.	TDMA	1997	1
3.	TDMA	1998	8
4.	TDMA	1999	2
5.	TDMA	Before 16 March 2000	6
Total			34

Out of the remaining 59 VSAT terminals 50 VSATs were commissioned after 16th March 2000, 3 were pilot sites and 6 were included in the list of 2726, thus not making the petitioner liable to pay for these 59 VSATs.

Yearwise break up of 19 test sites as established by the Commissioner is as under:

<u>S.No.</u>	<u>Type of VSATs</u>	<u>Yearwise</u>	<u>Total number of VSATs</u>
1.	TDMA	1995	7
2.	TDMA	1996	7
3.	TDMA	1997	2
4.	TDMA	1998	3
		Total	19

We find that the report of the Commissioner is fair and needs no interference. The report is accepted and we direct the parties to work out the payment of licence fee for the pre migration period on the basis of facts and figures given by the Commissioner. The liability of petitioner will be determined on that basis and whatever petitioner has already paid to respondent will be accounted for. Further payment, if any, by petitioner or refund to it will depend on it. Parties will be bound by this order and will comply with whatever emerges on basis of working out liability of petitioner as per findings of the Commissioner vide his report dated 15th October, 2006.

This petition is disposed of in these terms. No costs.

.....J
[Arun Kumar]
Chairperson

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

