

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

Dated 19th December, 2012

Petition No. 942/2012

Loop Mobile (india) Ltd. ...Petitioner

Vs

Idea Cellular Ltd. ...Respondents

BEFORE:

HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner : Mr. Meet Malhotra, Sr. Advocate
Mr. Yoginder Handoo, Advocate
Mr. Ravi S.S. Chauhan, Advocate

For Respondent : Mr. Gopal Jain, Advocate
Mr. Ankur Sood, Advocate
Mr. Aman Avinav, Advocate

ORDER

By a letter dated 9th November, 2012, the Respondent has raised a demand for SMS termination charges for a period from 1st July, 2012 to 31st October, 2012 for an amount of Rs. 17,27,27,162/-.

Again on 29th November, 2012 the Respondent wrote to the Petitioner demanding to pay the said amount and execute an agreement for SMS termination @10 paisa by 6th December, 2012. The Petitioner was further informed that in the event of failure to make payment of the said amount and executing an agreement for SMS termination, the SMS termination services shall be withdrawn by 7th December, 2012.

2. The Petitioner has filed this petition against the demand raised by the Respondent and against the threat of disconnection of SMS services of the petitioner's network.

3. In its letter dated 9th November, 2012, the Respondent has raised the demand based on the judgement of this Tribunal in Petition No. 430/2011 dated 20th August, 2012 and in Petition No. 130/2012 dated 24th September, 2012.

4. It is seen from the agreement dated 17th July, 2007 executed

between the parties that no provision exist about the payment or otherwise of termination charges for SMS services. However, the SMS services are being provided by the parties without raising any bills or making any payment to other party. In its interim prayer the Petitioner has requested that the Respondent may be directed not to withdraw the SMS termination charges.

5. Mr. Gopal Jain, Advocate appearing on behalf of the Respondent showed an agreement dated 8th June, 2009 between Idea Cellular Limited and Loop Telecom Private Limited, wherein Loop Telecom signed an interconnection agreement with the Respondent where the party agreed to pay SMS charges @ 10 paisa per SMS for SMS originating from either party's network and terminated on other party's network.

6. Mr. Meet Malhotra, Sr. Advocate appearing on behalf of the Petitioner pointed out that the agreement produced is not related to the Petitioner but it relates to a different Company namely Loop Telecom Private Limited, while the Petitioner in this petition is Loop Mobile (India) Ltd. I agree with the submission of Mr. Meet Malhotra

that the two companies are different and therefore the agreement submitted by the Respondent is not a relevant document to rely.

7. There is a need to get a detailed reply of the Respondent to finally adjudicate this petition. However, keeping in view the interest of the consumers I am of the view that end of justice would be subserved if a similar order is passed in this petition also as in Petition No. 843 of 2012 dated 23-11-2012 where there was no agreement between the parties for SMS termination charges.

8. Therefore, pending final hearing, it is directed that the SMS services of the Petitioner shall not be disconnected and if disconnection has taken place in any circle, the same shall be restored with immediate effect, subject to the condition that Petitioner will start paying 50% of the amount demanded by the respondent @ 10 paisa per SMS on net inflow of traffic basis. This amount will be calculated and paid with effect from the date of filing of this petition.

9. This payment will be without prejudice to the rights and contentions of the parties and equities will be adjusted between the

parties at the time of final hearing.

10. Reply may be filed within three weeks. Rejoinder thereto, if any may be filed within two weeks thereafter.

11. Put up the matter for framing of issues on 5-2-2013

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(P.K. Rastogi)
Member

K.D.