

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

Dated 9th November, 2012

Petition No. 816 of 2012

Loop Mobile (India) Limited
Vs.
Vodafone India Ltd.

...Petitioner

...Respondent

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.Aman Avinav,Advocate

ORDER

This petition has been filed by the petitioner against the demand of Rs. 86.70 crores for a period from 1.4.2011 till 30.9.2012 for SMS termination charges @ 10 p per SMS raised in the letter of the respondent on 25.10.2012. In the same letter the respondent has informed the petitioner that in the event of failure to make payment, the SMS termination services will be withdrawn w.e.f. 9th November 2012.

2. The respondent has raised these demands based on deemed agreement in place with effect from 1.4.2011 at the rate of Rs.0.10 per SMS. The respondent has mentioned that it notified the SMS termination charges on the petitioner at the rate of Rs. 0.10 per SMS in its letter dated 25.08.2010.

The respondent further mentioned that it intimated the petitioner the applicability of SMS termination charges of Rs. 10 p per SMS w.e.f. April 2011. On 7th September 2011, the petitioner was notified Rs. 13.3 crores was due and payable to the respondent for the period April to July 2011.

The demand letter quoted the TDSAT judgments dated 24.9.2012 in Petition No. 130 of 2012 as well as judgment dated 30.8.2012 in Petition No. 430 of 2011 saying that demand of Rs. 0.10 per SMS has been held to be reasonable, hence the demand.

3. Mr. Meet Malhotra, the learned senior counsel on behalf of the petitioner states that each case is different and facts and circumstances in each petition is different and the demand cannot be raised based on the judgment delivered in one particular petition.

Further, no invoices are raised at any time by the respondent. There is no agreement relating to SMS between the parties but the services of SMS between the parties are being provided on the basis of 'bill and keep' arrangement.

4. It is undisputed that the SMS services are being provided by both parties to each other from the beginning and no IUC on SMS was ever paid by any party. The demand of Rs. 86.70 crores is being raised although there is no written agreement between the parties.

5. There is a need to hear both the parties after receipt of the detailed reply by the respondent.

Keeping in view the balance of convenience in favour of the petitioner, the respondent is directed not to disconnect the interconnection of SMS of the petitioner. However, this order will be subject to any other or further order passed by this Tribunal.

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(P.K.Rastogi)
Member

/NC/