

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

**Dated 15<sup>th</sup> October, 2012**

**Petition No. 74 of 2005**

Cellular Operators Association of India & Ors. ...Petitioners  
Vs  
Tata Teleservices Ltd.& Ors. ...Respondents

**&**

**Petition No.140 of 2005**

Cellular Operators Association of India & Ors. ...Petitioners  
Vs  
Reliance Infocomm Limited & Ors. ...Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON**

**Petition No. 74 of 2005**

For Petitioners – COAI : Mr.Manjul Bajpai,Advocate  
Mr.Sarvajeet Kumar Thakur,Advocate

For Bharti Airtel : Mr. Navin Chawla,Advocate  
Ms.Nidhi Parashar,Advocate

For Respondent No.1-TTSL : Mr.Ramji Srinivasan, Sr. Advocate  
Ms.Vibha Dhawan,Advocate  
Mr. Nitin Kala, Advocate  
Mr.Kawaljit Singh Bhatia,Advocate  
Mr. Vivek Paul Oriel, Advocate

For Respondent No.2-BSNL : Ms.Maneesha Dhir,|Advocate

Mr. K. P. S. Kohli, Advocate  
 Mr. Abhishek Kumar, Advocate  
 Ms. Debopama Roy, Advocate

**Petition No.140 of 2005**

For Petitioners - COAI : Mr. Manjul Bajpai, Advocate  
 Mr. Sarvajeet Kumar Thakur, Advocate

For Bharti Airtel : Mr. Navin Chawla, Advocate  
 Ms. Nidhi Parashar, Advocate

For Respondent No.1-  
 Reliance : Mr. Ramji Srinivasan, Sr. Advocate  
 Ms. Manali Singhal, Advocate  
 Mr. Santosh Sachin, Advocate  
 Mr. Kawaljit Singh Bhatia, Advocate  
 Mr. Vivek Paul Oriel, Advocate

For Respondent No.2-BSNL : Ms. Maneesha Dhir, Advocate  
 Mr. K. P. S. Kohli, Advocate  
 Mr. Abhishek Kumar, Advocate  
 Ms. Debopama Roy, Advocate  
 Mr. Tarveen Singh Nanda, Advocate

**ORDER**

These matters are pending before this Tribunal, keeping in view the order dated 18.03.2010 whereby and whereunder, these petitions were disposed of by directing:

*“(1) Each of the petitioners, other than the petitioner No.1 shall raise their provisional bills on the*

*respondent No.1 in each case on the basis of their CDRs and records within two weeks from date.*

(2) *The respondent No.1 of each these petitions shall also supply copies of the CDRs within the said period.*

(3) *Copies of the said CDRs shall also be furnished to the respondent No.2.*

(4) *Objection to the said bills and/or call details, if any, may be made within two weeks from the date of receipt of the bills/CDRs/call details.*

(5) *Parties shall, if they so desire, meet within two weeks thereafter for reconciliation of accounts.*

(6) *All parties including BSNL should deposit court fees within two weeks from the respective date(s) after reconciliations of their accounts are finalised.*

(7) *Objections to the accounts and/or call details and/or CDRs, if not reconciled, may be filed before*

*this Tribunal within two weeks from the date of failure on the part of the concerned parties in that regard.*

*(8) BSNL shall pay the requisite amount of ADC to the cellular operators, within two weeks from the date of receipt of the CDRs/Bills.*

*It is made clear that all cellular operators will have to pay court fees on the said amounts also.*

*(9) However, in the event BSNL disputes the correctness or otherwise of the call details contained in the CDRs maintained by other cellular operators relying on or on the basis of its own CDRs, it inter alia at the time of reconciliation of accounts would provide the same to the other party."*

Pursuant to or in furtherance of the said order the parties hereto have exchanged data recorded in their respective CDRs so as to enable this Tribunal to ascertain the respective claims made by the operators against Tata Teleservices Limited (TATA) and Reliance Infocomm Limited (Reliance).

It may be placed on record that the Petitioners herein based their claim for the period 14.11.2004 to 26.08.2005.

Before, however, advertng to the respective claims of the parties including the BSNL a few order passed by this Tribunal, may be noticed.

We may notice that the question is as to whether the claim to the concerned mobile operators would be confined to the aforementioned period or would include the period from February 2004 to 13.11.2004 (P1 Period) has been taking into consideration by this Tribunal in the order dated 17.04.2012, 22.02.2011,13.02.2012,14.05.2012 and 30.07.2012.

We may furthermore notice that the orders dated 22.02.2011 and 30.07.2012 which are as under:

*“This matter relating to payment and/or refund of Access Deficit Charge (ADC) are for two periods: the first period being November, 2004 to January, 2005 governed by the Telecommunication Interconnections Usage Charges Regulation 2003 (Regulation 4 of 2003) and the second being February, 2005 to February, 2006 governed by the Telecommunication Interconnection*

*Usage Charges (Fourth Amendment) Regulation, 2005 (Regulation 1 of 2005).*

*According to Mr. Ramji Srinivasan, the learned senior counsel appearing on behalf of Tata that it has handed over 725 CDs containing CDRs to BSNL for all calls originating from Tata's network for both the periods. It has also handed over CDs containing CDRs to Bharti for the first period i.e. November, 2004, to January, 2005.*

*So far as the second period is concerned, admittedly, cellular operators have deposited the requisite CDs to BSNL so as to calculate the amount required to be refunded to the cellular operators. "*

*"Mr. Navin Chawla, learned counsel appearing on behalf of Bharti Airtel Ltd. very fairly states that it being not a subject matter of the Petition, the Petitioner shall not press the claim in respect of the aforementioned period.*

*Mr.Chawla, however, submits that for the P-II period i.e. from 14.11.2004 to 31.1.2005 Tata Teleservices Ltd. and Reliance Infocomm Ltd. have not made full payments as would appear from the CDRs which have been supplied to them. He further states that in the event the said Companies make a statement for payment of reconciliation of the CDRs no other or further amount is payable by Bharti Airtel Ltd., it shall take an appropriate action as is available to it in law. The said Companies i.e. Tata Teleservices Ltd. and Reliance Infocomm Ltd. are directed to make their stand clear by way of affidavits which should be filed within one week.*

*Mr.K.P.S.Kohli, learned counsel appearing on behalf of BSNL submits that within a period of one week it shall let this Tribunal know that how much amount is payable by it to M/s Bharti Airtel Ltd. Learned counsel furthermore submits that an affidavit shall be filed within one week.*

*It is made clear that if BSNL does not make its payment for reconciliation amount by the said period, this Tribunal shall consider imposing costs and direct interest at such rate as may be found fit and proper.*

*Mr.Kohli submits that even for P-I period a data clarifying the interoperability of the private operator being not made available to it, it still has claims with regard to P-I period.*

*Our attention has been drawn to a judgement of this Tribunal dated 13.3.2010 to contend that BSNL would be entitled to ADC for the aforementioned period also.*

*Prima facie, we do not find that any question with regard thereto was raised therein and/or considered by this Tribunal. Moreover, as it appears that even M/s Bharti Airtel Ltd. has submitted before us that its claim against Tata Teleservices Ltd. and Reliance Infocomm Ltd. is not maintainable for that period in these Petitions."*

Before, however, we advert to the aforementioned contention raised by BSNL that in terms of the Regulations it is also entitled to IUC charges even for an earlier period, I may notice certain other disputes between the parties.

Tata, Reliance, on the one hand, and Bharati, on the other, have although exchanged the CDRs, Bharati Airtel contended that it had found some more CDRs upon completion of retrieval and thus the claims against Tata Teleservices and Reliance Infocomm was revised.

An affidavit has been filed on behalf of the Tata contending that only a sum of Rs. 40 lakhs is payable to M/s Bharati Airtel Ltd. An affidavit has also been filed by Reliance that no amount payable by it to Bharati.

Mr. Naveen Chawla, learned counsel appearing for Bharati would contend that neither Tata nor Reliance have assigned any reason as to on what basis such contentions have been raised. It was submitted that in support of the statements or averments made in the affidavit Tata and Reliance must assign reasons therefor so that Bharati may pursue its own remedies.

Mr. Ramji Srinivasan, learned senior counsel, however, would submit that from a perusal of the affidavit it would appear that the amount payable to Tata and Bharati Airtel is on the basis of reconciliation of CDRs only.

In this connection attention of this Tribunal has been drawn to the following statements made in the affidavit :

Circle	Remark
Delhi, Mumbai, Kolkata, Karnataka, Kerala, Orissa, WB and Gujarat	Amount as stated to be receivable from Answering Respondent was paid to Petitioner No. 2 on 18.11.2010
Chennai	Amount receivable from Answering Respondent being Rs. 60690 as per Petitioner NO. 2's letter dated 9.3.2012, whereas rejoinder filed by Petitioner No. 2 to the reply affidavit dated 27.02.2009 file by Answering Respondent states that refund amount as Rs. 74,174.
Maharashtra	No amount receivable.
AP, PB, Rajasthan and HP	Since Petitioner NO.2 never had fixed lines during that period in the said circles hence no calls were terminated as per their own details. The only ADC amount paid is for the calls terminated on answering Respondents network. The invoices for these circles show ADC amount paid, accordingly those amount were refunded.
UP(E)	Annexure 1 of the Petitioner No. 2's letter dated 9.3.2012 erroneously states payment of Rs. 139435 by Answering Respondnet against

	UP(E) Circles, whereas such payment was made with respect to UP(W) Circles. (Please refer Annexure 1 of Petitioner No. 2's letter dated 9.3.2012)
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Reliance in its letter dated 08.10.2012 addressed to Bharati stated as under:

*Dear Sir,*

*This is in reference to the claim filed by M/s Bharti Airtel Limited in reference to the ADC on FWP/T and the CDR's provided vide their letter dated 31.08.2012. we would like to bring to your kind attention the following:*

*"1. COAI rejoinder of 6<sup>th</sup> August 2009 had claimed an amount of Rs. 74,170/- for Chennai circle and accordingly the payment had been released on 18.11.2010. but now we are finding that this amount has been shown against Tamil Nadu circle and another amount of Rs. 60,690/- has been claimed against Chennai circle. We would request Bharti to clarify this issue, so*

*that we can verify our records accordingly.*

*2. Bharti has shown an amount of Rs. 1,39,435/- as payment against UP(E) while this amount have been paid by RCOM against the demand of UP (W) on 03.01.2011. no amount is payable for UP (E), also there is no demand by Bharti for UP(E).*

*3. We have done the analysis of CDR's provided by Bharti and accordingly we find that even the CDER's support the amount less than which we have refunded. The analysis of the CDR's provided by Bharti starting from 14<sup>th</sup> Nov' 04 to 31<sup>st</sup> Jan.'05 for the circles which are Rajasthan, Punjab, HP, AP and UP(W) is attached along with as Annex. 1 giving details of the MoU's and the amount of ADC to be refunded. Also can be seen from the CDR's that there are no calls terminated into Bharti's fixed network from our FWP/T in these circles. This is also mentioned in Bharti's letter dated 09.03.2012 Annex. 3 as well as the CDR's provided by letter dated*

*31.08.2012. we would also like to highlight that the amounts which we have refunded are the ADC amounts which we have refunded are the ADC amounts which we had claimed from Bharti and these were the only amount paid by Bharti. Copy of the relevant invoices for period Nov.'04 to Jan.' 05 giving break up of the ADc amount is enclosed for your ready reference as Annex. 2."*

So far as the claim of Bharti against Reliance is concerned, various correspondences have been exchanged between the parties so far as the same related to reconciliation process of the CDRs maintained by the parties is concerned.

It is not in dispute that Reliance has paid to Bharati a total sum of Rs. 28,16,680/- towards IUC charges.

An additional claim was raised by Bharati on 09.03.2012 including the period prior to 14.11.2004 which was later withdrawn on the premise that the original petitioners were not filed in respect of the such claims.

The order of this Tribunal passed on 14.05.2012 may be noticed:

*“..... Mr. Ramji Srinivasan, learned senior counsel appearing on behalf of the Tata and Reliance, however, pointed out that by our order dated 22.02.2011 this Tribunal has narrowed down the controversies between the parties, from a perusal whereof it would appear that Tata and Reliance were not required to supply any further details other than already those which have already been supplied and thus, Tata and Reliance have furnished all the details as was directed.*

*So far as the CDRs supplied by Bharti Airtel is concerned, Mr. Ramji Srinivasan, submits that some time would be required for reconciliation of the CDRs. It is also contended that CDRs for the period of 01.02.2004 to 13.11.2004 is not the subject matter of this Petition.....” (emphasis added)*

On 06.07.2012, this Tribunal passed the following order :

*“.....It is stated by Mr.Ramji Srinivasan, learned senior counsel appearing on behalf of ‘Reliance’ and ‘Tata Teleservices’ that no further CDR is to be filed on behalf of Reliance. M/s Tata Teleservices, however, has filed an affidavit inter alia contending that although the CDRs submitted by M/s Bharti are under process of reconciliation, any claim by it prior to 14.11.2004 is not maintainable.....”*

Bharati, however, handed over some CDRs on 09.03.2012. Reliance pointed out certain discrepancies therein by its letter dated 05.07.2012, stating:

*“.....Para 2- On reading the contents of CDs it was found that there are many inconsistencies in the CDRs provided by you in a total of 12 CDE's. our finding from the CDs are listed below:*

- a) Some CDs contain CDRs pertaining to Tata  
Tele Services*

*b) Some other CDs contain CDRs having Reliance-Wireline Numbers levels as B numbers, where NO refund of ADC is to be made.*

*Para 3- Some CDRs provided pertain to the months other than the disputed period. It is pertinent to note that the total amount of demand by Bharti Airtel for refund cannot be more than the amount received by Reliance as ADC and paid by Bharti Airtel."*

By another letter dated 08.10.2012 is response to Bharati's letter dated 31.08.2012 Reliance stated that there existed various discrepancies in the said letter.

The matter has been pending before this Tribunal for a long time. The process of reconciliation of the CDRs had been gone into only for the purpose of facilitating the parties to recover their dues against each other by way of a summary proceeding. It cannot be an unending process.

In its order dated 14.07.2012, the Tribunal clearly laid down that in the event an operator like Bharati does not accept the statement made by other operators, it may take recourse to such remedies as are available to it in law.

An affidavit affirmed by a responsible person should be taken at its face value. This proceeding was not a forum where each claim by an operator against the other shall be gone into in details so as to turn also disputes as if original petitions have been filed for recovery of specified sums.

In that view of the matter this Tribunal is of the opinion that the matter related to reconciliation of the CDRs between the Reliance, Tata and Bharati and other must be put the rest leaving the parties to filing appropriate petition before an appropriate forum.

So far as claim of Bharati against BSNL is concerned, I may notice, that an affidavit has been affirmed on behalf of BSNL by one Shri J.V. Bapa Rao.

According to the said deponent except the circle of the UP (East) of Bharati Airtel would be entitled to a consolidated sum of Rs. 4,71,80,179/- in relation where to a cheque for the said sum has been handed over to Mr. Naveen Chawla.

It is, however, accepted that the reconciliation of CDRs has not taken place in respect of UP (East) circle.

The said process in the opinion of this Tribunal must be completed within a period of four weeks from date.

Ms. Dhir would urge that none of the private operators had complied with this Tribunal's direction to hand over data in respect of the P1 Period.

The said submission of BSNL has been opposed by other operators. In the opinion of this Tribunal the contentions of BSNL cannot be accepted for more than one reason.

The BSNL was not the Petitioner.

The petition was filed by COAI and other operators claiming IUC charge payable to them by Tata and Reliance on the premise that they have been sending WLL(M) services as fixed phones instead and in place of treating the same as mobile phones.

Bharati although at one point of time raised the claim for the said period, but when pointed out by Tata and Reliance that claim for the said period could not have been raised in the petition. It accepted the said contentions and withdrew its claim.

Ms. Dhir however, would contend that judgment of this Tribunal dated 18.03.2012 and some orders passed by this Tribunal have not attained finality as this Tribunal vide its order dated 30.07.2012 has directed the parties to reconcile the CDRs without mentioning any period and in that view of the matter CDRs were required to be filed even for the P1 period.

The said submission of the learned counsel be accepted. This Tribunal cannot go beyond its judgment and orders passed at the earlier stage of proceedings.

This Tribunal has undergone into the question of quantum of IUC charges payable by Tata and Reliance having regard to the decision of Supreme Court of India in *Reliance Infocomm vs. BSNL reported in 2008 (10) SCC page 535* and *Tata Teleservices Ltd. Vs. BSNL reported in 2008(10) SCC page 556*.

The Supreme court of India in its judgment has clearly mentioned the period in question to be 14.11.2004 to 26.08.2005.

It further more noticed that:

*“Before concluding, one aspect needs to be mentioned. It is alleged by the appellants and also by Reliance Infocomm Ltd. in the conjoint appeal which we will separately deal with in the subsequent judgment that BSNL have also not disclosed their numbering levels for their fixed wireless service and for their LL(M) services which they have been providing during the relevant period in the name of "Tarang", which according to the appellants, would now constitutes WLL(M) service. According to the appellants, BSNL has also been providing fixed wireless phone services which has limited*

*mobility. This is a matter of quantification. That stage has not yet arrived. However, Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of BSNL, has fairly stated that BSNL would abide by the parameters laid down in our judgment and whatever adjustments required to be made in that regard in the context of claims and counter claims, the same shall be worked out in near future. Be that as it may, we express no opinion on the point of quantification which question did not arise even before TDSAT in this case. Suffice it to state that the services of the appellants vide the instrument Walky falls in the category of WLL(M) service and, accordingly, the appellants would be liable to pay ADC in that regard during the relevant period 14.11.2004 to 26.8.2005."*

In that view of the matter, in my opinion, it would not be appropriate to allow BSNL now to urge that the data in respect of P1 period should also be directed to be furnished.

This Tribunal in its order dated 22.02.2011 which was reiterated on 13.02.2012 and 14.05.2012 clearly directed that the controversies between the parties should be narrowed down and the CDRs may be exchanged for the period of 14.11.2004 to 31.01.2005 and 01.02.2005 to 28.02.2006.

Even BSNL raised a claim for the first time on 14.01.2005 with effect from 14.11.2004 as envisaged in terms of clause 6.4.6 of the Interconnect Agreement. The other operators also raised their claim as against the Reliance from November/December 2012.

This Tribunal is, therefore, of the opinion that the question of reopening the issue does not and cannot arise. The said prayer of BSNL is, therefore, rejected.

Put up this matter after four weeks only for consideration of the claim of Bharati against BSNL in respect of UP (East) circle.

The other claims made by Bharati against Tata and Reliance are dismissed subject to the observations made heretobefore.

It is furthermore noticed that the BSNL subject to any other or further claim which may be made by Bharati against it in an appropriate proceedings, its claim against BSNL for other circles are also closed having regard to the fact that payment of a consolidated sum of Rs. 4,71,80,179/- had been paid by BSNL to M/s Bharati Airtel.

.....  
**(S.B. Sinha)**  
**Chairperson**

MM