

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

**Dated 25<sup>th</sup> November, 2014**

**Petition No. 617 of 2012**

Bharti Airtel Ltd., New Delhi ...Petitioner  
Vs  
Bharat Sanchar Nigam Limited ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner : Mr. Harsh Kaushik, Advocate  
Mr. Abhay Chattopadhyay, Advocate  
For Respondent : Mr. K.P.S. Kohli, Advocate  
for Ms. Maneesha Dhir, Advocate

**JUDGMENT**

**Kuldip Singh:**

The dispute in the present petition pertains to demand for certain Interconnect Usage Charges raised by the respondent on the petitioner for the months of August 2006, September 2006 and April to June 2007. The petitioner is claiming refund of an amount of Rs. 1,01,55,734/- on account of

amount paid under protest against this demand. It is also aggrieved by the further demand of interest by the respondent amounting to Rs. 79,63,785/- demanded vide impugned letters dated 19.07.2012, 25.07.2012 and 16.08.2012.

### **Facts of the case**

2. The petitioner has been granted a license under section 4 of the Indian Telegraph Act to provide Cellular Mobile Telephone Services (CMTS) in the service area of Gujarat Telecom Circle. It entered into an Interconnect Agreement with the respondent on 12.01.2002, which was subsequently amended and updated vide addenda dated 19.07.2005.

3. Chapter 6 of the interconnect agreement between the parties provides for interconnect charges. Clause 6.4 of the same provides for Access charges. Sub-clause 6.4.1 reads as under :

“Access Charges shall be payable by CMTS Provider to BSNL for the calls originating in CMTS Provider network and terminating in BSNL network. There shall not be any access charge for the calls originating in BSNL network and terminating in the CMTS provider network.”

Sub-clause 6.4.2 provides that access charges payable by CMTS provider to BSNL shall be as per standard tariff plan of TRAI, as applicable from time to time.

As per existing arrangement between the parties, the following access charges were to be paid :

S. No.	SLAB	Rate/ Min (Rs.)
1.	CMTS to basic, ISPs, pagers, Level I services like 131, 141 etc in same SDCA and Intra circle STD (except emergency services & VAS)	0.50
2.	CMTS to emergency services (100, 101 and 102) of BSNL	1.20
3.	International roaming – CMTS to basic, ISPs, pagers, Level I services like 131, 141 etc in same SDCA and Intra circle STD (except emergency services & VAS)	3.75
4.	International roaming CMTS to emergency services (100, 101 and 102) of BSNL	4.45
5.	National roaming – CMTS to basic, ISPs, pagers, Level I services like 131, 141 etc in same SDCA and Intra circle STD (except emergency services & VAS)	0.80
6.	National roaming CMTS to emergency services (100, 101 and 102) of BSNL	1.50

The above charges were inclusive of the termination charge of 30 paise per minute which was as per the regulation of TRAI.

4. The dispute pertains to the Anand Point of Interconnect (POI), Gujrat. On 19.03.2007, the petitioner received a letter from the respondent demanding Rs. 40,07,270.90 on account of outstanding revenue share charges for national and international roaming traffic terminating at the respondent's network. The letter is as under :

“Sub : payment of outstanding revenue share charges for national and international roaming traffic terminating at the BSNL's network.

Since BSNL has filed an appeal in the H'ble TDSAT against decision dated 11.09.06 of TRAI, you have to pay the revenue share on roaming traffic at the prescribed rate already billed by this office. In view of the above, it is requested to release the withheld amount by 25.03.07 as per details below :

Srl No.	Billed Month	Amount
1	March - 06	0041152.00
2	April - 06	0010375.00
3	May - 06	0025635.45
4	June - 06	0013496.45
5	July - 06	0045880.00
6	August -06	1430833.00
7	September - 06	1539796.00
8	October - 06	0883541.00
9	Nov - 06	0016562.00
		4007270.90

In case of non-payment of such revenue share action as applicable in the case of non-payment of IUC bill shall be initiated by BSNL.”

5. This letter was replied by the petitioner on 23.03.2007 stating that the

respondent has wrongly charged this amount of Rs. 40,07,270.90 as the petitioner had deducted only 1,95,088.34 on account of roaming revenue share. As per the petitioner an amount of Rs. 3812162.58 was wrongly charged for the Anand POI for August,2006 to October,2006. This letter of the Petitioner is as under :

“Dear Sir,

Sub : Payment of National and International Roaming revenue share  
Ref : TR/IUC/IOBAS/2006-07 dated 19<sup>th</sup> Mar’07

Please refer to above mentioned letter in which you have claimed unpaid roaming revenue share for national and international roaming traffic for Rs. 40,07,270.90 (Forty Lakh seven thousand two hundred seventy and ninety paise only) which is incorrect.

We have deducted only Rs. 1,95,088.34 (Rupees one lakh ninety five thousand eighty eight and thirty four paise only) on account of roaming revenue share. Balance amount is wrongly charged by your office due to error at you Anand POI. A month wise summary details of the same are as follows :

Srl No.	Billed Month	Amount claimed by BSNL	Other than Roaming revenue share	Net Roaming revenue share	Remarks
1	March - 06	41152.00		41152.00	
2	April - 06	10375.00		10375.00	
3	May - 06	25635.45		25635.45	
4	June - 06	13496.45		13496.45	
5	July - 06	45880.00		45880.00	
6	August - 06	1430833.00	1419234.28	11598.73	Wrong Anand POI chgs
7	September - 06	1539796.00	1527261.50	12534.50	Wrong Anand POI chgs
8	October -	883541.00	865686.79	17854.22	Wrong

	06				Anand POI chgs
9	Nov - 06	16562.00		16562.00	
		4007270.90	3812182.50	195088.34	

Request you to rectify your records and send us revised letter if any for further action at our end.”

6. Subsequently, the respondent raised invoices for the months of April 2007 for Rs. 64,11,187 payable by 28.5.2007 , May 2007 for Rs. 84,18,153 payable by 27.06.2007 , and June 2007 for Rs. 74,11,923 payable by 26.07.2007.

The petitioner wrote letters dated 28.05.2007, 25.6.2007 and 27.07.2007 enclosing statements showing difference in respect of rates charged for the Anand POI calls to the tune of Rs. 13,32,054 for the month of April 2007, Rs. 31,20,798 for the months of May 2007 and Rs. 27,56,385 for the month of June 2007.

7. On 13.6.2007, the respondent referring to its letter dated 19.03.2007 revised the amounts towards the roaming revenue charges for August,2006 to October,2006 and subsequently on 22.6.2007, the petitioner made the payment of Rs. 1,95,088.35 demanded by the respondent under protest subject to the outcome of Appeal No. 16 of 2006 and petition no. 319 of 2006 that was pending before the Tribunal at that time.

8. On 3.8.2009, the petitioner sought augmentation of E1's for its CMTS services in Gujarat Circle. We may note here that E1 refers to a group of junctions that provides connectivity between the network of the petitioner and the respondent. In response to this letter, the respondent wrote to the petitioner on 26.08.2009 asking it to make certain payments in order to process the case for augmentation of E1's. An Annexure-1 was also enclosed with the letter. In this annexure, against the amounts for September 2006, and April 2007 to June 2007, it was mentioned that they were "under examination". Further, there was no mention for August 2006 and October 2006. The relevant portions of the letter and the Annexure-1 are reproduced as under :

"Sub : Your request for Augmentation E1s for CMTS service at GMSC Cell One, Vastrapur, Ahmedabad in Gujarat Telecom Circle

This has reference to your request for augmentation E1s for CMTS service at GMSC Cell One, Vastrapur, Ahmedabad in Gujarat Telecom Circle, vides your letter no. CMTS/BSNL/Gujarat Circle/2009/13 dated 03/08/2009.

In continuation of your above cited demand, it is intimated to make the payment of un-disputed out standings dues of IUC bills which are submitted by CAO(IOBAS) as per Annexure-1(enclosed herewith).

In this context, I have been directed to inform you to make the payment immediately as per Annuxure - 1, to make it convenient to take concluding action on process of prompt provision of E1s. If out standing dues are already paid, kindly send payment particular to this office for further course of action.

Note - if any query regarding bill may be (IOBAS) circle office Ahmedabad.

Encl : Annexure -1"

"IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	19.11.2005	30045	Daywise calls and duration spent for Godhra POI
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	16.12.2005	268523.80	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	17.01.2006	422951.0	
Jan06	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	27.02.2006	501642.00	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	16.03.2006	422538.00	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	17.05.2006	443	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	17.06.2006	466027	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	12.07.2006	55	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	12.08.2006	694796.75	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	16.10.2006	1527262	Under examination
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	14.05.2007	1332054	Under examination
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	13.06.07	3120798.00	Under examination
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	12.07. 2007	2756384.92	Under examination
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	14/29.08.2007	44.6	
dc	1a	M/s Bharti Televenture Ltd.	CMTSdc	CMTS	10.09.07	279.8	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	16.10.2007	148138.35	
dc	1a	M/s Bharti Televenture Ltd.	CMTSdc	CMTS	09.10.2007	50390.75	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	14.11.2007	53473.58	
dc	1a	M/s Bharti Televenture Ltd.	CMTSdc	CMTS	06.12.07	253.8	
IUC	1	M/s Bharti Televenture Ltd.	CMTS	CMTS	12.01.2009	103228.00	
dc	1a	M/s Bharti Televenture Ltd.	CMTSdc	CMTS	08/04/2009	230840.15"	

9. On 2.9.2009, the respondent, in reply to the petitioner's letter dated 28.8.2009 stated as under :

"7. Invoice dated 16.10.2006, 14.05.2007, 13.06.2007, 12.07.2007 – The issue has been taken with appropriate level to resolve the issue."

Subsequently, on 13.10.2009 the respondent asked the petitioner to pay 50% of the disputed amount for September 2006 and April – June 2007.

10. On 16.06.2010, the respondent rejected the petitioner's contentions regarding excess charges for August 2006, September 2006 and April 2007 to June 2007 and asked it to pay the amount of Rs. 1,01,55,232/- within 30

days, failing which it may disconnect the POI. This letter is as under :

“Sub : Notice for payment of withheld amount in Anand POI during the month Aug-06, Sep-06, Apr-07, May-07 & Jun-07 invoice

Dear Sir,

“With reference to the above cited subject, it is to intimate that your office has disputed a total amount of 1,01,55,232/- in the month of Aug-06, Sep-06, Apr-07, May-07 & Jun-07 invoices on the ground of excess billing by BSNL @ 3.75 instead of @ .50 in Anand POI against bill line. Inter National Roaming – CMTS to basic, ISPs, pagers, Level1 services like 131, 141 in same SDCA and Intra Circle STD (except Emergency Services & VAS) The dispute has been verified and confirmed as correct by BSNL billing zone that the calls terminated/handed over by M/s Bharti Airtel Limited (CMTS) at the BSNL TGP were found partial / NO-CLI. Therefore, the highest rate of 3.75 has been billed instead of normal rates as per provisions of IUC agreements. The outstanding details are attached herewith for information and payment.

Therefore you are requested to make the payment of the above outstanding dues within 30 days of the date of issue of this notice otherwise POIs may be disconnected as per IUC agreement without any further notice.”

11. On 15.7.2010 the petitioner sought 7 days extension stating that they were in the process of verification and validating the CDRs (Call data records) for the period under dispute and same was likely to take some time as the issue pertained to 2006-2007. This letter of the petitioner is as under :

“Sub : Request for extension of time

Ref : your letter dated 16<sup>th</sup> June 2010 having Ref No. TR/IOBASOS – Review Bharti CMTS/09-10/57

This is with reference to the captioned letter issued by your kind office to the company demanding the disputed amounts for the month of Aug 06, Sept 06 and April 07 to May 07 as mentioned in the said letter and the

meeting held with you at your office with our company officials today morning.

We would like to inform you that we are in the process of verification and validation of the CDRs for the period under dispute and the same is likely to take some being the issue pertains to 2006-2007.

In light of above, we have requested to kindly grant 7 (seven) days time so that the company can ascertain the exact amount payable to your kind office vide demand raised through above referred letter and we sincerely appreciate for accepting our request and granting the extension in the above matter.

Thanking you for your kind co-operation.”

12. On 23.7.2010, the petitioner made the payment demanded by the respondent vide letter dated 16.06.2010, under protest. In this letter the petitioner also represented stating that as per analysis of the sample CDRs provided by the respondent, the details of party 'A' was available in the petitioner's CDRs corresponding to the party 'B' in the respondent's CDRs with the same date, time and duration. The petitioner requested that it is a fit case to review the dispute at the respondent's end. Further, it stated that the dispute should have been settled within 6 months but the same had been pending for four years and has arbitrarily been finalized by the respondent.

The petitioner also requested that it be given an opportunity of hearing for full reconciliation of the CDRs for the period in dispute. This letter is annexed as Annexure 'P' at page 115 of the paper-book.

13. On 4.1.2011 the respondent wrote to the petitioner stating that the respondent's technical branch has verified the petitioner's CDRs and the CDRs of the Anand POI for the relevant period and found that the petitioner had handed over No-CLI calls in the respondent's TGP, and that therefore, the respondent's bill was correct at its end. It further wrote that as per clause 7.6.4 of the agreement, the records of the respondent's measurement devices located at the interface point would take precedence over those of the petitioner. As per this letter of the respondent, the petitioner's payment of June 2007 excluded the service tax outstanding of Rs. 3,40,688/-. This amount alongwith interest on the wrongly withheld amounts for August and September 2006 and April to June 2007 in accordance with clause 7.5 of the IUC agreement, amounting to Rs. 83,04,473/- is to be paid by the petitioner as per the invoice dated 04.01.2001 and the interest was thus claimed from the due date of the invoice till the date of payment under protest i.e. 23.07.2010.

14. On 28.5.2011, the respondent served the petitioner with a disconnection notice. Subsequently a meeting was held in the chamber of PGM (F), office of CGM(T), Gujarat, which was attended by the representative of both the petitioner and the respondent. It was agreed in the meeting that no POI will be disconnected till the time CDRs are provided by the respondent to the petitioner. Subsequently, the respondent vide letter dated 27.09.2011 offered the complete CDRs subject to payment of Rs. 7,44,905/- by the petitioner. After some further correspondence between the parties, when the matter could

not be resolved, the present petition was filed on 30.08.2012.

### **Submissions**

15. Mr. Harsh Kaushik, learned counsel for the petitioner submitted that as soon as the first demand was raised on 19.3.2007, the petitioner raised the dispute on 23.03.2007 for an amount of Rs. 38,12,183/- out of Rs. 40,07,270/-, being wrongly charged for Anand POI and gave detailed calculations. Subsequently, in response to the invoices raised by the respondent for the months of April 2007 (Invoice No. 43107 dated 14.05.2007), May 2007 (Invoice No. 43749 dated 13.6.2007), and June 2007 (Invoice No. 44187 dated 12.07.2007) charging some calls of Anand POI @ Rs. 3.75 per minute, the petitioner raised dispute vide its letter dated 28.5.2007, 25.06.2007 and 27.7.2007 respectively.

16. Mr. Kaushik submitted that the demand raised by the respondent on 16.6.2010, rejecting the dispute raised by the petitioner is time bared in so far as the demand raised on 19.3.2007, which was disputed by the petitioner on 22.3.2007, and the invoice of April 2007, which was disputed by the petitioner on 28.5.2007 are concerned. The three years limitation period in respect of these two invoices expired on 23.03.2010 and 27.5.2010 respectively.

17. He further submitted that the respondent, while rejecting the dispute raised by it for the months of August 2006, September 2006, April 2007, May

2007 and June 2007 invoices vide its letter dated 16.6.2010, dropped the demand for October 2006 without giving any reason or explanation for the same. While disputing the total amount of Rs. 1,01,55,232/- on merits, he submitted that an amount of Rs. 42,78,549/- which pertains to the demand raised vide letter dated 19.03.2007 and 14.05.2007 are in any case barred by the statute of limitation.

He submitted that though the petitioner had made payment under protest on 23.7.2010, the respondent kept silent till 4.1.2011, when it suddenly raised a demand for interest for the first time for an amount of Rs. 79,63,785/-. He submitted that there was no demand for interest in the original communication and the same was clearly an afterthought.

Mr. Kaushik referred to the BSNL's letter dated 4/1/11 and submitted that the respondent's own understanding of pay by date while calculating interest pay by date for bill dated 11.9.2006, 16.10.2006, 14.05.2007 are 25.9.2006, 30.10.2006 and 28.5.2007 respectively.

18. With regard to the submissions on merit, Mr. Kaushik referred to Judgment of the Tribunal in Reliance Communications Ltd. Vs. BSNL<sup>1</sup> and Reliance Communications Ltd. Vs. MTNL<sup>2</sup> and submitted that no CDRs were provided to the petitioner by the respondent and no chance for reconciliation of

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<sup>1</sup> Petition No. 142 of 2007

<sup>2</sup> Petition 143 of 2007

the same was given to it. He further referred to the para 88 of the above judgment and submitted that the prime burden was on the respondent to prove the correctness or otherwise of the bills. Further referring to the para 103 of the same judgment, he submitted that there are certain conditions precedent to apply the clause 6.4.6 of the interconnect agreement.

Mr. Kaushik referred to the Tribunal's judgment dated 11.02.2010 in Tata Teleservices Limited vs BSNL<sup>3</sup> and submitted that since the details of calling line number are available in the CDRs of the petitioner, it could not be penalized if the same are not available in the CDRs of the respondent. He argued that there is no averment whatsoever that the petitioner's CDRs were defective.

19. Mr. Kaushik referred to two letters of the TRAI; first dated 24.11.2003 addressed to the petitioner as per which it advised all service providers not to tamper with CLI of any calls and not to offer any calls without CLI unless these calls involved CLIR and in case any call is received by any service provider without CLI, the same might be rejected; the second letter is of 20.01.2004 addressed to the respondent stating that TRAI has already issued a direction on 24.11.2003 to all service providers not to tamper with CLI of any calls and not to offer any calls without CLI unless these calls involve CLIR and in case any call is received by any service provider without CLI, the same may

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<sup>3</sup> Petition No. 111/2007

be rejected. As per this letter, BSNL's decision to accept the calls without CLI and charging them at the highest slab is against the TRAI directions. He submitted that even if the calls were received by BSNL without CLI due to any reason, it was supposed to reject such calls.

20. With reference to his submission on limitation, Mr. Kaushik relied on the judgment of the Tribunal dated 17.07.2012 in Sistema Shyam Teleservices Ltd Vs. BSNL<sup>4</sup> (An appeal Dy No. 36394 / 2012 against the judgment is pending in the Hon'ble Supreme Court and there is no order on the interim relief) and M/s Tata Communications Ltd. Vs BSNL<sup>5</sup>.

21. With regard to demand for interest raised by the respondent, Mr. Kaushik submitted that there can be no question of any interest liability on the petitioner due to the following :

- (a) The delay of three years was due to respondent's own delay in verifying the dispute raised by the petitioner, which it had done contemporaneously.
- (b) There was no mention of any interest in the initial letter and it was a clear case of an afterthought on the part of the respondent.
- (c) The payment for interest as even its calculation, is contrary to the clause 7.5 of the interconnect agreement.

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<sup>4</sup> Petition No. 417 of 2011

<sup>5</sup> Petition No. 423 of 2010

Relying on the judgment of the Hon'ble Supreme Court of India in Kusheshwar Prasad Singh Vs State of Bihar<sup>6</sup>, he submitted that respondent cannot be permitted to take advantage of its own wrongs.

22. On the issue of limitation, Mr. K.P.S. Kohli, Ld. Counsel for the respondent submitted that there were ongoing consultations between the parties. He referred to a letter of the respondent dated 13-10-2009 and submitted that the details of the outstanding were provided to the petitioner as discussed during a meeting held with it. He further submitted that while making the payment under protest vide letter of the petitioner dated July 23, 2010, no such ground of invoices being time barred was taken. Mr. Kohli relied on State of Kerala Vs. T.M. Chacko<sup>7</sup> and submitted that the petitioner had admitted the liability to pay and there was a jural relationship between the parties. He further submitted that no ground of limitation is taken by the petitioner in its pleadings.

Mr. Kohli submitted that there was a procedure prescribed for the resolution of disputes under various clauses of chapter 7 of the interconnect agreement. He specifically referred to clause 7.1.2 and 7.6 and argued that the petitioner could have asked for the inspection of the books and records but no such action was taken by it.

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<sup>6</sup> (2007) 11 SCC 447

<sup>7</sup> (2000) 9 SCC 722

23. On the merits of the case, Mr. Kohli submitted that the respondent has been receiving the CLI from all other operators at the Anand POI and it was only in the case of the petitioner the calls were received without CLI. He submitted that non-CLI calls were recorded in two tranches, the first period being August 2006 to September 2006 when most of the calls were received without CLI, and the second from April 2007 to June 2007 when CLI was partially recorded. Other than this, the CLI recorded at the exchange of the respondent is correct and as no change was made in the configuration of the respondent's exchange, the non-receipt of CLI was due to reasons at the petitioner's end. An investigation carried out by the Data Centre, Noida also found that the calls were with partial or without CLI. As per the interconnect agreement, the records made by the measurement devices located at the BSNL interface point shall have precedence. The respondent asked the petitioner to collect complete CDRs for the 5 disputed months requested by it, vide letter dated 27.09.2011 but in spite of several reminders sent to the petitioner, it failed to collect the same. Referring to various clauses under chapter 7 of the Interconnect Agreement, he further submitted the petitioner did not follow the prescribed procedure for dispute resolution. The respondent applied rate of Rs. 3.75 as per clause 6.4.6 (b) of the interconnect agreement.

24. The three issues that arise in the matter are as under:

- i. Whether the petitioner terminated non-CLI calls at Anand point of

interconnect (POI) with the respondent for the months of August 2006, September 2006, and April 2007 to June 2007 and as a consequence was liable to be charged for all calls at the highest rate of Rs. 3.75 per minute for these months?

- ii. Whether the petitioner is liable to pay interest of Rs. 79,63,785 demanded vide impugned letters of the respondent dated 19.07.2012, 25.07.2012 and 16.08.2012.
- iii. Whether the amount demanded vide letter dated 19.3.2007 and invoice for April 2007 payable by 14.05.2007 totaling to Rs. 42,78,549 is barred by the statute of limitations as claimed by the petitioner.

## **Findings**

25. The dispute pertains to the Point of Interconnection (POI) between the parties at Anand, Gujrat. The mobile calls, other than those of International and National Roamers<sup>8</sup>, handed over to the respondent were to be charged at the rate of Rs. 0.50 per minute. This included the Mobile Termination Charge (MTC) of Rs. 0.30 per minute prescribed by TRAI. However, the calls from International Roamers, whose home network is in some other country, handed over at the same POI were to be charged at Rs. 3.75 per minute in terms of the interconnect agreement between the parties<sup>9</sup>. It is the case of the respondent that for the months of August 2006, September, 2006, and April,2007 to June

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<sup>8</sup> Roamers are subscribers whose home network is different from that of the petitioner and who, when they are in the petitioner's area, latch on to its network and use it for receiving and making calls.

<sup>9</sup> This was also under litigation in a separate matter.

2007, the petitioner handed over calls at this POI without CLI and, therefore, in terms of the clause 6.4.6 (b) of the interconnect agreement, it was entitled to charge all calls at the highest rate of Rs. 3.75 per minute.

Clause 6.4.6(b) of the interconnect agreement is as under :

“(b) The CLI based barring facility shall be activated at the POIs wherever technically feasible to ensure that the traffic handed over to BSNL is in the appropriate trunk group only. Wherever it is technically not feasible to activate CLI based barring, periodic monitoring of the incoming trunk group shall be done by BSNL to ensure this objective. The calls received by BSNL without CLI or modified / tampered CLI from UASL shall be charged at the highest slab i.e. as for ISD calls. In case such calls are received by BSNL on any trunk group, then all the calls recorded on this trunk group shall be charged at the rates applicable for IUC of incoming ISD calls from the date of provisioning of that POI, or for the preceding two months, whichever is less.” (emphasis supplied)

26. The petitioner has analyzed the CDRs generated at its end vis-à-vis the CDRs generated at the respondent's end (Annexure-R1 to the respondent's reply). These CDRs are available in the folder containing documents submitted by the petitioner in compliance with the Tribunal order dated 28.04.2014 at pages 1 to 13. A comparison of the two CDRs, one generated at the end of the petitioner and the other at the respondent's end for part of the month of September, 2006 (page 18 of the folder), is as under.

BSNL END CDR's					AIRTEL END CDR's						
S No.	calling_no	called_no	calldate	calltime	duration	S No.	Date	Time	Dur	A No	B No
1	9980	2691253831	11/9/2006	0:00:56	128	1	10-Sep-06	235902	128	9998501202	2691253831
2	9980	2694246446	11/9/2006	0:01:24	200	2	10-Sep-06	235819	200	9898025833	2694246446
3	9980	2682551101	11/9/2006	0:01:29	238	3	10-Sep-06	235746	237	9898046678	2682551101
4	9980	2692257312	11/9/2006	0:01:47	46	4	11-Sep-06	116	45	9898197803	2692257312
5	9.9E+09	2691252896	11/9/2006	0:03:27	29	5	11-Sep-06	313	29	9898680601	2691252896
6	9980	2682552211	11/9/2006	0:04:25	77	6	11-Sep-06	323	76	9898575082	2682552211
7	9980	2692263389	11/9/2006	0:05:22	60	7	11-Sep-06	436	60	9898178231	2692263389
8	9980	2682552211	11/9/2006	0:05:37	50	8	11-Sep-06	502	50	9898575082	2682552211
9	9980	2698224370	11/9/2006	0:05:58	38	9	11-Sep-06	536	37	9998202128	2698224370
10	9.9E+09	2682532822	11/9/2006	0:11:44	59	10	11-Sep-06	1102	58	9898404044	2682532822
11	9.9E+09	2698284760	11/9/2006	0:12:45	39	11	11-Sep-06	1221	39	9898339673	2698284760
12	9980	2682553011	11/9/2006	0:13:28	22	12	11-Sep-06	1321	22	9898146065	2682553011
13	9980	2691253831	11/9/2006	0:13:52	21	13	11-Sep-06	1347	20	9998501202	2691253831
14	9980	2692251586	11/9/2006	0:14:50	34	14	11-Sep-06	1431	33	9898610953	2692251586
15	9980	2691246791	11/9/2006	0:17:42	67	15	11-Sep-06	1650	66	9998458767	2691246791
16	1E+10	2698256541	11/9/2006	0:17:43	44	16	11-Sep-06	1715	44	9998147033	2698256541
17	9980	2696286558	11/9/2006	0:18:25	265	17	11-Sep-06	1414	265	9898827498	2696286558
18	9980	2696286558	11/9/2006	0:19:34	21	18	11-Sep-06	1928	21	9898827498	2696286558
19	9980	2692238891	11/9/2006	0:21:19	1908	19	10-Sep-06	234947	1907	9898203074	2692238891
20	9980	2696286558	11/9/2006	0:21:48	106	20	11-Sep-06	2017	105	9898827498	2696286558
21	9980	2697251001	11/9/2006	0:22:08	114	21	11-Sep-06	2030	113	9898475948	2697251001
22	9980	2698242878	11/9/2006	0:24:07	48	22	11-Sep-06	2335	47	9898275872	2698242878
23	9.9E+09	2692222670	11/9/2006	0:24:27	74	23	11-Sep-06	2330	73	9898503548	2692222670
24	9980	2682527488	11/9/2006	0:24:35	176	24	11-Sep-06	2155	175	9898716003	2682527488
25	9.9E+09	2682532822	11/9/2006	0:24:51	66	25	11-Sep-06	2401	65	9898404044	2682532822
26	9980	2682532553	11/9/2006	0:24:54	28	26	11-Sep-06	2440	28	9898441026	2682532553
27	9980	2692238891	11/9/2006	0:29:15	120	27	11-Sep-06	2730	119	9898203074	2692238891
28	9980	2696220392	11/9/2006	0:29:30	82	28	11-Sep-06	2823	81	9998043525	2696220392
29	9980	2694222034	11/9/2006	0:29:50	78	29	11-Sep-06	2847	77	9998145370	2694222034

It is seen from the above that as per the CDR of the respondent, for a call originated at 0.00.56 , with called number ,also known as the “B” number, as 2691253831, the respondent’s CDR shows the calling party number, also called the “A” number in common parlance, as 9980 (This same number is shown in a number of cases and as per Mr Kohli when the calling party number is not received, the number of the trunk group on which the call is received is mentioned in its place). For the same called party , the petitioner’s CDR shows the calling number as 9998501202. Both the calling and the called numbers are available in the CDR generated at the petitioner’s end but for the same call, as is evident from the time and duration of the call, the CDR

generated at the respondent's end does not show the calling party number but in its place the number of the trunk group on which the call is received is mentioned. The statement of Mr. Kaushik that there is no averment with regard to the tampering of the CDR is not contested. Obviously, there is a technical glitch.

27. Let us examine the matter in a little more detail. When a call is to be handed over by the petitioner's network for termination in the respondent's network, the Mobile Switching Centre (MSC) of the petitioner composes signaling messages in accordance with a standard signaling protocol called CCS7 (Common Channel Signaling 7). The CCS7 or the SS7 (signaling System 7) is a set of protocols. "The protocols used within SS7 each have a specific application and are used according to the services they provide."<sup>10</sup> There are protocols like ISUP (ISDN user part), SCCP (Signaling Connection Control Part), etc. "ISUP is the protocol used to set up and tear down telephone connections between end offices."<sup>11</sup> The ISUP protocol uses different message types, each having a distinct format, with mandatory and optional parameters. The calling and called party numbers are contained in the Initial Address Message (IAM) in the Signaling Information Field. While the called party number is a variable mandatory parameter, the calling party number is one of the optional parameters. The signaling information is transmitted using Service Switching Point (SSP) which is generally part of the exchange and Signal Transfer Point

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<sup>10</sup> Travis Russell, *Signaling System #7*, 2<sup>nd</sup> Edition, USA: McGraw-Hill,p-115

<sup>11</sup> Ibid,p116

(STP) which acts as a router for the signaling packets. The STP can be a part of the exchange or standalone in which case it is also known as SSTP (Standalone Signal Transfer Point).

28. There can be no doubt that certain equipment/components were used for the exchange of signaling information between the exchanges of the two parties. The respondent has taken around three years to analyze the dispute raised by the petitioner but there is nothing on record to show that any analysis was done to find the cause of the same. It is quite possible that the calling line information (CLI), which is an optional parameter of signaling, was lost while composing the signaling message at the petitioner's end or during its transmission, which could be due to the equipment of the petitioner or the respondent, or while extracting the information from it at the recipient's end. Since the CDRs generated at the petitioner's end show the CLI but the same is not available at the respondent's end, there is a good possibility of this getting lost during the above process due to faulty or incompatible equipment of any party.

In the case of Reliance Communications Ltd. Vs. BSNL and Reliance Communications Ltd. Vs. MTNL (supra), the Tribunal observed as under :

“ 103. Clause 6.4.6 indisputably would be attracted only when the conditions precedents therefor are found to be attracted and not otherwise; wherefor it was obligatory on the part of the Respondents to prove that

- (i) the calls have been terminated at a wrong trunk group;
- (ii) the calls were unauthorized and/or improper; and
- (iii) such calls did not terminate without any CLI in the network of the Respondents herein due to any technological default or otherwise, and/or the calls were masked ones.”

The Tribunal further observed in para 126

“ 126. It is, therefore, difficult to accept the submissions of Mr. Kohli that the bills were raised on the basis of the data generated by the Respondent and it was for the Petitioner to show how they are not wrongly routed although no details have been furnished with regard thereto and on the failure to do so the bills would become unassailable.....”

In the case of Tata Teleservices Ltd. vs. Bharat Sanchar Nigam Ltd. (supra), the Tribunal had observed as under :

“.....It has not been denied or disputed that the ordinarily CDRs of both the parties should match. If calling line identification of the caller is available on the CDR of the petitioner on the basis whereof the petitioner might have raised bills in terms of IUC Regulations but not shown in the CDR of the respondent, the fault lay in the system of the respondent itself for which the petitioner cannot be penalized.....”

In the present case we find that not only the CLI was available in the CDRs of the petitioner, the fault could have been in any of the equipment including that of the respondent. The respondent has made no effort to verify the authenticity of the CDRs generated at the petitioner’s end which it could have easily done by even calling the subscribers to verify that the calls were made by them. More than three years after the petitioner raised the dispute for

the first time, the respondent, vide its letter dated 10.06.2010 has rejected the same without giving any reasons for the missing CLI.

29. Mr. Kohli argued that the respondent has been receiving the CLI from all other operators at the Anand POI and it was only in the case of the petitioner the calls were received without CLI and that too for the particular period of the dispute and other than this, the CLI recorded at the exchange of the respondent is correct. He argued that his equipment, therefore, must be correct. It can equally be argued for the petitioner's equipment also since CLI for all the other months and other POIs was being sent correctly by it.

30. With regard to the contention of the respondent that as per the interconnect agreement, the recordings made by the measurement devices located at the BSNL interface point shall have precedence, we can understand if the discrepancy is, for example, in the nature of a variation in the duration of the call which may be due to measurement devices and synchronization of the clocks. We do not see how this clause can be applied to the present case.

31. In view of the facts and circumstances of the case, we do not see how the petitioner can be held responsible for the non-receipt of CLI at the respondent's end during the months of August, 2006, September, 2006 and April 2007 to June 2007.

32. On the issue of limitation, the demand raised by the respondent vide its letter dated 19.03.2007 was to be paid by 25.03.2007. The invoice dated 14.05.2007 was payable on or before 28.05.2007. On 4.01.2011, the respondent, amongst other things, asked the petitioner to pay interest on the wrongly withheld amounts and enclosed an invoice no. 13/2010-11 dated 04.01.2011 (copy is available in the paper book at P-172). As per this invoice also, the bills to be paid and the pay by date were as under:

Bill Date	Pay by date	Amount
11.09.2006	25.09.2006	Rs. 14,19,234
16.10.2006	30.10.2006	Rs. 15,27,262
14.05.2007	28.05.2007	Rs. 13,32,054

33. With regard to the demand raised on 19.3.2007, the petitioner vide letter dated 23.04.2007 raised the issue of wrong charges amounting to 38,12,182.50 . For invoice for the month of April, 2007 dated 14.05.2007, the petitioner raised a dispute vide letter dated 28.05.2007. It is only on 16.06.2010, the respondent rejected the petitioner's claim of excess charging and claimed the amount of Rs. 1,01,55,734.

34. With regard to the submission of Me. Kohli that petitioner did not raise the dispute in accordance with the clauses of the agreement, we may note the clauses 7.1.2, 7.6.1, and 7.6.3 as under:

“7.1.2 The BSNL or the CMTS provider shall have the right in case of dispute, having given the other not less than ten clear and working days advance written notice to such effect, to inspect the books and records of the other relating to a period not exceeding two years prior to the date of inspection, for the purpose of verifying the billing information provided by the other in respect of such period.”

“7.6.1 In the event the CMTS provider disputes the accuracy of a bill delivered by the BSNL pursuant to this agreement, it will, as soon as practicable, but in any case before the pay-by-date notify the billing liaison contact of the BSNL of the nature and extent of the dispute alongwith all details reasonably necessary to substantiate its claim, which shall be reasonably capable of being verified by the BSNL.”

“7.6.3 In cases other than those referred in clause 7.6.2 CMTS provider shall immediately obtain a provisional bill from BSNL before the pay by date of the original bill on the basis of the number of call units of the previous month. The provisional bill shall be paid by the CMTS provider before the pay by date indicated in the provisional bill. Thereafter, within 7 days of the issue of the provisional bill, the CMTS provider shall approach the designated authority of BSNL alongwith all his relevant records based on which the CMTS provider disputes the bill issued by BSNL. The CMTS provider shall, in consultation with the designated authority of BSNL, settle the dispute within 15 days of the issue of the provisional bill referred in this clause. In this consultation, the records made by the measurement devices located at the BSNL interface point shall have precedence over the records of the CMTS provider. If after consultation, it is found that the bill issued by BSNL is correct, the balance amount of the bill, which was kept under dispute after the issue of the provisional bill, will also have to be paid by the CMTS provider within 7 days of the settlement of such dispute.”

We may also note that though Mr. Kohli claimed that all the relevant information was available in the invoices, he was unable to show us anything either in the letter dated 19.03.2007 or the invoices that would indicate that

call charged at the rate of Rs. 3.75 was due to non-availability of the CLI at the respondent's end. Be that as it may, we find that the petitioner not only raised the dispute of excess charging contemporaneously but also provided the details that it reasonably could have.

35. With regard to his submission that the petitioner had admitted its liability to pay, we may note that the letter dated 13.10.2009 referred by Mr. Kohli is written by the respondent to the petitioner. Even the letter of the petitioner dated 15.07.2010 is for grant of 7 days' time as the petitioner was in the process of verification and validation of the CDRs for the period and did not acknowledge that it was liable to pay any amount. In the case of J.C. Budhraja Vs. Chairman Orissa Mining Corporation Ltd. and Anr.<sup>12</sup>, Hon'ble Supreme has observed as under:

“15.....If a defendant writes to the plaintiff requesting him to send his claim for verification and payment, it amounts to acknowledgement. But if the defendant merely says, without admitting liability, it would like to examine the claim or the accounts, it may not amount to acknowledgement. In other words, a writing, to be treated as an acknowledgment of liability should consciously admit his liability to pay or admit his attention to pay the debt.....”

36. In view of the fact that we have already answered the question on merit of charging at the highest rate in favor of the petitioner and also the submission of the petitioner that it has already paid the admitted amount, which is not disputed by the respondent, we find that the question of limitation and interest are no more relevant in the present case.

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<sup>12</sup> (2008) 2 SCC 444

37. We, accordingly quash and set aside the impugned communications dated 19.07.2012, 25.07.2012 and 16.08.2012 demanding payment of Rs. 79,63,785/- towards interest. We further direct the respondent to refund the principal amount of Rs. 1,01,55,734/-paid under protest by the petitioner within 4 weeks of the date of this order.

There will be no order as to costs.

.. ..  
**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

/NC/