

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

Dated 28th October, 2015

Petition No.24 of 2013

Reliance Telecom Limited Petitioner

Vs

Union of India Respondent

BEFORE:

**HON'BLE JUSTICE AFTABALAM, CHAIRPERSON
HON'BLE KULDIP SINGH, MEMBER
HON'BLE BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioner : Mr. Navin Chawla, Advocate
Mr. Anurup Narula, Advocate

For Respondents : Mr. S.S. Shamsery, Advocate
Ms. Aparajita Sharma, Advocate

ORDER

By Aftab Alam, Chairperson – Reliance Telecom Ltd. is a telecom service provider. It has filed this petition seeking to challenge the imposition of penalty of Rs.1,09,20,000/- by the TERM Cell, Madhya Pradesh for breach of the norms for verification of the Customer Application Forms (CAFs). The penalties pertain to the audit for the months of July, August, September and October, 2012. The TERM Cell asked the petitioner to submit certain number of CAFs as samples for audit for those months. The petitioner was unable to

submit a large number of CAFs from among the samples asked for from it. Resultantly, the TERM Cell imposed penalties, presuming all the CAFs that were not submitted before it as non-compliant with the prescribed guidelines and hence, liable to attract penalty. Given below is a table showing the number of CAFs demanded by the TERM Cell in each of the months in question, the number of CAFs which the petitioner was unable to submit and the amounts of penalty imposed, holding those CAFs to be non-compliant with the guidelines.

Sr. No.	Period	Total number of CAFs requisitioned by TERM Cell	Number of CAFs which the petitioner was unable to submit	Penalty
1.	July 2012	920	648	33,85,000
2.	August 2012	731	401	20,71,000
3.	September 2012	823	301	26,95,000
4	October 2012	887	452	39,69,000

It needs to be clarified here that even among the CAFs that the petitioner submitted before the authorities, a few were found non-compliant with the verification guidelines and penalties were imposed in respect of those CAFs as well. The number of such CAFs, however, is quite small and those CAFs are not the subject matter of the present petition which is confined only in respect of CAFs that the petitioner was unable to produce before the TERM Cell as shown in the above table.

From the materials on record, it is not clear whether or not the petitioner intimated the TERM Cell the reason for its inability to submit the CAFs within time. However, after the issuance of demand notices by the TERM Cell (vide letters dated 26.12.2012), the petitioner made representations before the

DDG(TERM), Bhopal on 28 December 2012. In its representations it explained that all the (mobile phone) numbers (relating to the CAFs not submitted before the TERM Cell) were activated only after procuring all necessary documents as per the guidelines issued by the DoT from time to time. It was further stated in the representation that “due to shifting and consolidation of Warehouse from Chattisgarh to Bhopal, we could not retrieve the CAFs within timelines set by your good office. These CAFs were always with us and now ready to be submitted to your office”. It was further stated in the representation that the transfer of CAFs to the new warehouse was completed successfully and from November 2012 the petitioner was able to submit all the CAFs asked for by the TERM Cell.

The representations were rejected by the DDG(TERM Cell) by four separate, though identical orders, passed on 16 January 2013. The gist of the orders in regard to the non-submitted CAFs is that the CAF audit is a time bound exercise and the CAFs in question could no longer be taken into consideration as the petitioner failed to submit them in time.

The petitioner then came to the Tribunal in this petition which was filed on 22 January 2013. In this petition the reason for its inability to submit the CAFs in question in time is stated in greater detail. In paragraph 3 of the petition, it is stated as under:

“3. It is pertinent to mention that during May 2012, Petitioner initiated consolidation of CAF vendors and warehouse from Chattisgarh to Bhopal. This involved

transportation of approximately 25 Lacs CAFs. In the course of transportation, the boxes carrying CAFs got damaged resulting thereby in severe disturbance in indexation of those CAFs. Due to aforesaid disturbed indexation, the Petitioner was unable to locate the CAFs for the relevant period as sought by Respondent DOT and as such Petitioner due to such unforeseen circumstance was constrained to deposit the CAFs in time. In fact, the Petitioner immediately initiated re-indexing of CAFs to the new warehouse at Bhopal. The said re-indexing exercise is still going on and Petitioner till date has completed the re-indexing of 7 to 8 Lacs CAFs out of 25 Lacs CAFs. Petitioner would be able to complete the re-indexing exercise and submit the non-submitted CAFs within reasonable time. Further, it is relevant to note that even in prior months case, Petitioner was securing higher compliance scores in submissions of relevant CAFs in time. It is only due to unforeseen circumstances the CAFs of the July-October could not be submitted by the Petitioner.”

Here it is significant to note that a few days after the filing of the petition before the Tribunal, the warehouse, managed by an agency named Ridhik Corporate Service Pvt. Ltd., where the petitioner’s CAFs are stored was visited and inspected by Director (TERM) on 29 January 2013. The inspection report, under the caption “Visit Note”, substantiates the reason assigned by the petitioner for its inability to produce the CAFs in question in time. Further, in course of submissions, Mr. Chawla, learned counsel for the petitioner stated that all the CAFs in question are now available with the petitioner and may be submitted before the authorities of the TERM Cell for inspection and proper verification. On hearing counsel for the parties and on a consideration of the materials on record we find that the plea raised by the petitioner for non-submission of the CAFs in question is not incorrect or untrue and the petitioner

was unable to submit the CAFs in question for verification by the TERM Cell for a valid reason.

A question here arises whether the petitioner can now be permitted to submit those CAFs and whether the TERM Cell is obliged to verify the CAFs even though submitted long after the due date or whether, as held by the DDG (TERM), the failure to submit CAFs in time (for whatever reason!) shuts the door permanently upon the service provider and the non-submitted forms must simply be subjected to penalty as non-compliant with the departmental guidelines. In order to correctly answer the question it is necessary to understand the object and purpose of CAF verification.

It needs to be borne in mind that the stringent scrutiny of the customer-application-form derives justification solely from the point of view of national security. The customer-application-form is verified to ascertain the identity of the customer and to ensure that the device does not fall into wrong hands and used for commission of crimes or, even worse, anti-national activities. The Supreme Court in *Avishek Goenka Vs. Union of India*¹ pointed out the risks arising from a misuse of the mobile phones and made the following observations:

“8. We have already noticed that the rapid expansion of the telecom sector and its impact on development, both, equally impose responsibility on the Government of India, the regulatory body and the various stakeholders in the telecom sector to carry out proper verification of the prepaid SIM cards and ensure national safety and security. To achieve this object, it is primarily

¹(2012) 5 SCC 321

for the expert bodies and the Government of India to act and discharge their respective functions.”

This Tribunal, in an earlier decision dated 2 July 2014 in Petition no. 48 of 2012 examined the issue of CAF right from the source of the power in clause 41.14 of the licence agreement to the practice and procedure followed in CAF audit and in paragraphs 4 and 5 of the judgement observed and held as under:

“4. Clause 41.14 of the License Agreement is a part of security considerations. The objective of this clause is that the identity as well as address details of any subscriber subscribing to the services of the licensee company should be readily available in case of need. We may note that in case of a fixed phone service, the premises where the phone is installed is well known in contrast to mobile service where the subscriber can be anywhere. It is more so in case of prepaid service for which the phone bill is not required to be issued to the subscriber and the subscriber can avail the services by purchasing prepaid vouchers and charging his account. In case of any need by a security agency, the details of such subscribers must be readily and correctly available. Since the matter may involve the security of the country, the importance of these details cannot be over-emphasized.

5. Department of Telecommunications (DoT)-Union of India has been issuing instructions from time to time for compliance with clause 41.14 of the license. It has also provided for a scheme of financial penalty for violation of terms & conditions of the license agreement in respect of subscriber verification. The Department has also been carrying out the audit of the licensees to ensure their compliance with the instructions issued from time to time. Vide letter dated 01.6.2010 the work relating to imposition of penalty has been de-centralized and put on Telecom, Enforcement, Resources and Monitoring (TERM) Cells set up under DOT in various license areas.

Subscribers, while subscribing to the services of a licensee, are required to complete a form which is called as the ‘Customer Acquisition Form (CAF)’. The subscribers are also required to submit the proof of identity as well as proof of address, for which certain documents specified by the Department of Telecommunications (DoT) are to be provided. Licensees are also

required to follow the guidelines issued in this regard from time to time. To ensure compliance with the instructions in this regard, TERM Cell of the concerned service area conducts monthly audits of the licensees on sample basis. On the total subscriber base of the licensee in that service area, a sample of one percent of the subscribers at random is taken and the licensee is asked to provide copies of the CAF Forms of the subscribers. These copies of CAF forms are checked for compliance with the instructions and guidelines issued from time to time and in cases of non-compliance, the licensees are given a week's time to discuss the cases and make available the original CAFs. The initial report indicating the findings about compliance/non-compliance is also provided to the licensee. Based on the discussions with the service provider (licensee), the report is finalized and jointly signed by both. Based on this final report, the amounts of penalty are calculated in accordance with the telescopic rate that provide for increasing amounts of penalties for higher percentage of non-compliance. The service provider, if he so desires can make a representation to the Deputy Director General (DDG), TERM whose decision is final.”

Again in paragraph 14 the judgement observed as under:

“14. It is true that verification of subscribers and obtaining CAFs is absolutely necessary to ensure national safety and security and the failure of the petitioner to do so would lead to penalties.”

It is thus well settled that CAF audit is a function of national safety and security. And the penalty for failure to comply with the departmental guidelines in filling up the customer application form and collect of the mandatory PoI and PoA of the customer is meant to be a deterrent for the service provider to ensure the compliance with the guidelines. The corollary is that the CAF audit is **not** an exercise for generation of revenue and if it is used to that end it would be difficult to defend the action of the licensor as justified or valid. It, thus, follows that all instructions issued for the purpose of CAF audit should have a co-

relation with its object and should also be followed in practice to promote the object and not to defeat it.

In the aforesaid premises, we now proceed to examine one of the circulars issued by the DoT and the manner in which it is sought to be followed and implemented by the TERM Cell. The Director (TERM Cell) in its order rejecting the petitioner's representations has observed that the CAF audit is a time-bound exercise. He is evidently referring to the office memorandum issued by the DoT on 25 June 2007 fixing the timelines for the monthly audit. This office memorandum provides as under:

“(i) The Service Providers should be requested to provide the total subscriber data base, till last day of previous month, on CD by 10th of every month.

(ii) The samples shall be indicated to all the Service Providers immediately on receipt of the subscriber data base and not later than 15th day of the month. The sample size to be indicated shall be 0.02% of the total customer base subject to minimum of 100 per operator per VTM Cell.

(iii) The Service Provider shall be requested to submit the CAFs/CEFs/SEFs by 25th day of the month. However, samples should start flowing from Service Providers within 3-4 days from the date of VTM request.

(iv) The Sample Verification shall be completed by the VTM Cell by 29th day of the month and the report shall be sent to DDG(VTM) Delhi & Co-ordination by 30th day of the month.

(v) In such cases where there are more than one VTM Cells in one License Service Area, the operators should not be insisted to provide HLR data VTM wise. They can do so Licence Service Area wise. However, the data for subscriber verification should be taken VTM wise from the Service Providers and VTM wise verification report should be sent.”

In a number of cases we have observed that the timelines prescribed for the service provider are applied with much greater firmness than the timelines relating to the TERM Cell. But that is only an aside and not the issue here. What needs to be pointed out here is that the timelines seem to be based on the assumption that everything proceeds at all times like a clock-work. In practice, however, that is not always so. The timelines fixed by office memorandum does not take into account and make allowance for *force majeure* conditions or even situations arising from business contingencies. The number of CAFs with a telecom service provider in a service area may run into several lakhs. The service provider may not have the wherewithal for the safekeeping of all the CAFs and it may outsource the storage of CAFs to some specialised agencies having warehouses for sufficient storage space. It is possible that the CAFs kept in the warehouse may be irretrievably damaged due to fire or floods or some similar natural calamity. In that case the service provider may never be able to produce the CAFs asked for by the authorities unless those are reconstructed by getting hold of the individual subscribers. It may sometime happen, as in the present case, that due to business contingencies the service provider may not be able to submit the CAFs within the timelines laid-down in the above mentioned office memorandum. The Tribunal earlier came across a case where some dispute arose between the service provider and the agency managing the warehouse and the latter obtained an injunction order from the civil court restraining the service provider or its agents from even coming near the

warehouse. In those circumstances, the service provider was naturally unable to submit the CAFs demanded by the TERM Cell within the timeline stipulated in the office memorandum and it could produce the CAFs only when the injunction order was vacated after many months of litigation. In such cases, a rigid and mechanical adherence to the timeline fixed in the office memorandum does not only lead to unfair and unjust consequences for the service provider but actually defeats the very object of the CAF audits. The authorities deem their responsibility over by imposing penalty for the non-submitted CAFs but in reality those CAFs remain un-verified and it is possible that one of the unverified CAFs may be hiding behind it some undesirable subscriber of mobile services and who would remain undetected for want of a proper verification of the CAF.

In our view, therefore, the office memorandum fixing the timelines for the monthly CAF audits is deficient in not allowing for contingencies in which the service provider may not be able to submit the CAFs by the due date for very good and valid reasons. We further find that the office memorandum is followed by the TERM Cell in a misguided manner that has no regard for the object and purpose of CAF audit but actually defeats the object of CAF verification.

We find on record the letters (dated 13 July 2012, 17 August 2012, 17 September 2012 and 12 October 2012) by which the TERM Cell demanded the CAFs from the petitioner. All these letters are identical and the relevant extract from the letter dated 13 July 2012 is reproduced below by way of sample:

“Kindly ensure that the CAFs should reach this office on or before 25/07/12 positively.

An excel sheet for cafs which are not available or not submitted should be sent at the time of dispatching the Caf folders.

Non compliance to above shall be treated as CAFs not available.

CAF received after the due date will not be accepted.”

(emphasis added)

From the above letter it is clear that for the TERM Cell, non-submission of CAFs by the due date is equal to CAFs being not available which, in turn, is equal to CAFs being not in conformity with the relevant guidelines. This approach may be unexceptionable if the object of the CAF audit is to earn revenue but it cannot be justified if the object is to ascertain the identity of the subscriber from the point of view of national security which is the sole objective of the CAF audit.

In light of the discussions made above we come to the conclusion that there may be circumstances, *though arising very occasionally*, where a service provider may not be in position to submit the CAFs by the due date for very good and valid reasons. In such situation, if the service provider informs the TERM Cell, before the due date of submission of CAFs about the reason for his inability to submit the CAFs, and shows materials substantiating the reason assigned by him, the TERM Cell should consider extending the time for production of CAFs suitably, depending upon the reason for non-submission

within time. Further, in case the service provider does not submit the CAFs within time without assigning any reason but wishes to submit them beyond time, the TERM Cell should still examine the CAFs to check if those are in conformity with the guidelines, subjecting of course the service provider to some penalty for the *procedural lapse*. The DoT will be well advised to devise a scheme making a distinction between any procedural lapses by the service provider in the monthly audit process and the substantive non-compliance with the guidelines for filling up the CAF and the necessary documents (PoI and PoA) needed as enclosures to it. Needless to say, the penalty for procedural lapses would be at much lower rates than the penalty for substantive violations of the guidelines. Further, in case the service provider does not submit the CAFs without any good reason, the authorities should not close the case by simply imposing penalty for the non-submitted CAF. The service provider should be compelled to produce the CAF or to give reason for non-production. In any event all efforts should be made to ascertain the identity of the subscriber, either by means of the data base maintained by the service provider or, if necessary, even by contacting the service provider personally.

In the facts of the case we answer the question framed above in the affirmative and hold that the CAFs for the months of July to October 2012 now being submitted by the petitioner need to be examined by the TERM Cell to judge their compliance with the guidelines. However, as noticed above there is nothing on record to show that the petitioner intimated the TERM Cell about the

reason for non-submission of the CAFs within the time as directed in the requisition letter by the TERM Cell and requested for any extension of time for submission of the CAFs. The petitioner must, therefore, face the penalty for the procedural lapse of the audit process as explained above. We accordingly set aside the impugned demands of penalty and direct that if the petitioner deposits fifteen per cent (15%) of the impugned penalty amount and submits the CAFs in question within a fortnight from to-day, the TERM Cell authorities will duly examine the CAFs and take a decision in regard to those CAFs in accordance with law.

In the facts of the case, there will be no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

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