

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

Dated 9<sup>th</sup> March, 2016

**Petition No. 88 of 2014**

M/s Bharti Airtel Ltd., New Delhi

..... Petitioner

Vs.

Union of India

..... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**

**HON'BLE DR. KULDIP SINGH, MEMBER**

**HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioner

: Mr. Navin Chawla, Advocate  
Mr. Anup Narula, Advocate

For Respondent

: Mr. S.S. Shamsery, Advocate  
Mr. Vikas Malik, Advocate

## ORDER

### Kuldip Singh:

The petitioner is aggrieved by the penalty imposed on it by treating 552 Customer Acquisition Forms (CAFs) as missing vide impugned demand letter dated 19.07.2013.

The petitioner is a telecom service provider. It has been granted license under section 4 of the Indian Telegraph Act, 1885 to provide Unified Access Services (UAS) in the service area of Delhi. The respondent, Department of Telecommunications (DOT), Union of India, is the licensor.

This Tribunal has examined the customer verification process in detail in its judgment dated July, 2, 2014 in petition no. 48 of 2012 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."

The facts of the present case are simple. In terms of the guidelines and directions issued by the respondent, the service providers are required to submit a monthly database of all its subscribers on a Compact Disk to the TERM Cell of the respondent. This database gives details of mobile phone subscriber's name, address, activation/de-activation date etc. in a format prescribed for the purpose.

In the database for March 2013 submitted by the petitioner to the respondent, 552 SIM<sup>1</sup>s were found issued in the same name. The respondent, assuming this to be a case of bulk subscribers, asked for the CAFs for these SIM cards on 05.04.2013. The scanned copies of the CAFs for these SIM cards were provided by the petitioner to the TERM Cell, Delhi, of the respondent on 15.04.2013. However, the CAFs submitted by the petitioner had different names and addresses of the subscribers. The respondent did not accept them as those asked by it and treating the 552 CAFs to be missing, issued a notice dated 23.05.2013 to show cause to the petitioner as to why a penalty of Rs. 2,30,97,000/- should not be imposed on it. Thereafter, the respondent, stating that it did not receive any reply, imposed the penalty vide the impugned letter dated 19.07.2013.

As per the petitioner, the CAFs submitted by it to the respondent were correct and while copying the database on the CD, the name and demographic details of the same subscriber were inadvertently copied on to the CD. On 17.07.2013, the petitioner responded to the show cause notice. The petitioner represented that it was due to this inadvertent technical error that the CAFs did not match with the particulars on the CD. It further submitted that all the 552 number had been activated prior to October, 2010 and the details on the

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<sup>1</sup> Subscriber Identity Module. One SIM is required for each mobile connection.

CAFs were identical to those submitted on the CD to the respondent way back in October, 2010. The relevant part of the representation is as under:

“This has reference to your office letter bearing No.TERMD/TE-1/2013-14/16 dated 23<sup>rd</sup> May,2013 on the subject.

In this regard, it is submitted that during the submission of database in March, 2013, for certain numbers, **there was mismatch in demographic details of the subscribers due to an inadvertent technical error in pulling the data and burning it on CD, which caused the same demographic details for the aforesaid numbers.** The same were corrected immediately and reported in the subsequent month’s database submitted to TERM Cell.

As per the aforesaid letter, TERM Cell after analyzing the monthly database of March, 2013 has directed us to submit CAFs of 552 specific numbers which were duly submitted to TERM Cell, DoT. However, this reported in a mismatch as per the reported database due to the above-mentioned reason. It is pertinent to mention here that the CDs submitted to TERM Cell in October,2010 were of the subscribers with correct details and are the same as per details captured in our database. **Furthermore, there is no reason to submit the wrong information when already previous data submitted was matching the subscriber details as per the enrolment form, which can be validated from the earlier details submitted to TERM and the CAFs submitted to TERM Cell. Hence, that there has been no deliberate violation of instructions and guidelines issued on activation of SIM in these cases and any reason for a graded financial penalty is not justified.”** (emphasis supplied)

Again on 23.07.2013, the petitioner appealed against the penalty imposed on it. The relevant parts of this appeal are as under:

“We would like to submit as highlighted in our earlier reply vide letter bearing NO.BAL/TERM/2013-14/Subs/01 dated 17<sup>th</sup> July, 2013 that the mismatch in demographic details of certain subscribers was due to an inadvertent technical error in pulling the data and burning it on CD. The same were corrected immediately and reported in the subsequent month’s database submitted to TERM Cell.

Based on instructions given by TERM Cell, CAFs of 552 numbers were duly submitted to TERM Cell in April, 2013. However, due to aforesaid-mentioned reason, this reported mismatch in the details of these numbers. **It would not be out of place to mention here that the data submitted earlier matched with the subscriber details as per the enrolment forms. The same can be validated from the earlier details submitted to TERM and the CAFs submitted to TERM Cell.** There was no deliberate violation of instructions and guidelines issued on activation of SIM in these cases and any reason for a graded financial penalty is not justified. Moreover, from the activation date of these numbers, it can be seen that 456 (out of 552) number of the aforesaid connections were activated prior to 01<sup>st</sup> April, 2009 before the graded penalty structure came into effect from 01<sup>st</sup> April 2009. It is pertinent to mention here that the CDs submitted to TERM Cell in Oct 2010 were of the subscribers with correct details and are the same as per details captured in our data base.” (Emphasis supplied)

We may note from the e-mail of the Director TERM , Delhi dated 1 August, 2013 that the petitioner was asked to conduct a reverification of all the customers involved in the case and to submit a report by 02.08.2013. The e-mail is as under:

“ xxxxxxxx

Dear Sir,

Kindly refer to the trailing mail and your subsequent representation on the issue. In this case, competent authority has desired for the Physical Verification of all the Customers involved in the case, before deciding your representation. Your report must reach this office by 1200 hrs of 02.08.2013 positively.

Best Wishes.

P.C.Gupta, Director (TERM), Delhi  
Tel No. +91-11-26443841, 26443830 (Fax)  
Mobile No.9868268688  
----- Original Message -----

From: Dir TERM Delhi  
To: [gaurav.mohan@in.airtel.com](mailto:gaurav.mohan@in.airtel.com) ; [Hiteshkr.Singh@in.airtel.com](mailto:Hiteshkr.Singh@in.airtel.com)”

As per the e-mail of the petitioner dated 02.08.2013, it got the reverification done and 520 numbers were positively verified and 32 could not be verified due to brevity of address. This e-mail is as under:

“Kind Attention: Mr. P.C.Gupta

Dear Sir,

As desired, we got the field verification done for 552 numbers. Out of these, 520 numbers were positively verified and 32 could not be verified due to brevity of address. If any other information is required, please let us know.

Regards

Gaurav Mohan / Legal & Regulatory  
Bharti airtel limited  
Plot No.16, Udyog Vihar, Phase-IV”

We may note here that in a previous judgment of the Tribunal in Reliance Telecom Ltd. Vs UOI, petition no. 24 of 2013, delivered on 28 October 2015, it was observed that CAF audit is a function of national safety and security and not an exercise for revenue generation and there had to be a different treatment for a procedural lapse vis-à-vis a substantive lapse. In that case, there was a delay in submission of CAFs and penalties were imposed taking those CAFs to be missing. It was observed as under:

“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 present case, CAFs were not only available but also submitted in a reasonable period of time. If these CAFs were not genuine, the respondent was well within its rights to impose the penalties. Further, in such a case, a detailed enquiry was called for as the objective of the verification is not revenue generation but the security of the country.

The genuineness or otherwise of the CAFs could have been easily ascertained by more than one means. Physical verification was one such way. From the e-mails of the parties above, apparently it was carried out and 520 were positively verified. Though 32 could not be verified, it is certainly not the case where all the SIMs were allotted to a single party and the CAFs were missing.

Secondly, we may note that the subscriber database is to be submitted monthly by all the service providers. As per the petitioner, all the 552 numbers had been activated prior to October, 2010 (highlighted part in the appeal of the petitioner noted above). The details of these numbers could have been verified from the monthly data for the earlier months submitted on CDs

to the respondent. It was a simple matter to check if the data submitted for the earlier months was in conformity with the CAFs or not.

Finally, even the actual database available with the petitioner from where the data is copied on to the CDs could have been checked. The data could have been confirmed by simply calling a few subscribers.

In our view, in a matter of such importance as national security, it was imperative on the part of the respondent to get to the bottom of the whole affair. If any substantive non-compliance was found, not only penalties but further corrective action was also required. On the other hand if it was a genuine and inadvertent technical error, the matter cannot be treated on the same footing as a substantive non-compliance. The positive verification of so many subscribers clearly establishes that there was an error in the database on the CD that mentioned the same subscriber for all these numbers. The petitioner can only be held negligent in so far as the data copied on the CD is concerned. The guidelines at that point of time did not provide for any penalty for such negligence. Be that as it may, there was no reason for the respondent to treat these CAFs as missing when these were very much available.

In view of the above, we find that the respondent is not justified in imposing the penalty, and the impugned demand letter needs to be set aside. The petition is accordingly allowed with no order as to costs.

[REDACTED]  
**(Aftab Alam)**  
**Chairperson**

[REDACTED]  
.....  
**(Kuldip Singh)**  
**Member**

[REDACTED]  
.....  
**(B.B. Srivastava)**  
**Member**

