

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

Dated 28 March 2016

Petition No. 394 of 2013

M/s Idea Cellular Ltd. ...Petitioner
Vs.
Union of India ...Respondent

Petition No. 416 of 2013

IDEA Cellular Ltd. ...Petitioner
Vs.
Union of India ...Respondent

BEFORE:

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

For Petitioner : Mr. Navin Chawla, Advocate
Mr. Santosh Sachin, Advocate for
Ms. Manali Singhal, Advocate

For Respondent : Mr. S.S. Shamsbery, Advocate
Mr. Vikas Malik, Advocate

ORDER**Kuldip Singh:**

The petitioner in both these cases is a company registered under the Indian Companies Act and has been granted license under section 4 of the Indian Telegraph Act, 1885 to establish, maintain and operate mobile telephone services, inter-alia, in the service area of Andhra Pradesh and Rajasthan. The respondent is Department of Telecommunications (DoT), Union of India.

The petitioner is aggrieved by the levy of penalties by the respondent for alleged violations of the customer verification norms.

We have explained the process of customer verification in some details 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."

Petition No. 394 of 2013

This petition has been filed against the impugned CAF (Customer Acquisition Form) penalty Demand Notices issued by the respondent for the period

from May 2010 to June 2011 in respect of its Andhra Pradesh Service Area. The case of the petitioner is that the penalties have been imposed on highly technical grounds like dim and unclear copies, signature mismatch, and on ground of CAF and/or supporting documents being forged. As per the petitioner, its representation against the penalties imposed has been incorrectly rejected in an arbitrary manner by not considering the CAFs on the ground that these had been submitted late. As per the petitioner, even though the CAFs for the period April, 2011 to June 2011 were accepted by the TERM Cell Hyderabad while deciding its representation, its representations have been rejected. No penalty can be imposed on the petitioner merely due to a delay in submission of CAFs which was due to bonafide reasons beyond its control.

It is further case of the petitioner that the real reason for rejection of its representation, as found from the response to a query sought by it under the RTI Act, is that there will be a substantial reduction in penalty if the appeal of the petitioner is considered.

Briefly stated, the facts of the case are that the respondent, vide its impugned letters dated 25.08.2011, imposed a penalty of Rs. 1,26,67,000/- on the petitioner

for the period May 2010 to October 2010 for alleged violation of the subscriber/customer verification guidelines in the A.P. (Andhra Pradesh) Service Area. . The petitioner vide its letter dated 21.09.2011 represented against the same to DDG TERM Cell , A.P., Vijayawada. The TERM Cell Hyderabad, vide letter dated 03.10.2011 called upon the petitioner to submit original CAFs of the cases contested by it and in compliance of that, the petitioner submitted 668 CAFs for reverification. The appeal was rejected by DDG TERM Cell Hyderabad on 02.07.2012. As per the petitioner the appeal was rejected on the grounds that it had not received any instructions from DDG TERM Cell, A.P. and that petitioner had not represented against the joint verification report. The petitioner represented against this rejection to DDG TERM Cell, A.P. Vijayawada, on 20.07.2012. The TERM Cell, A.P. also rejected the representation of the petitioner vide its impugned letter dated 24.07.2012. On 1.10.2012, the petitioner deposited a sum of Rs. 28,33,000/- as penalty for the uncontested cases.

The respondent further vide its letters dated 17.01.2011 imposed penalties for the months of November, 2010 to March 2011. The petitioner again represented against these penalties and though the TERM Cell , A.P., vide it e-mail dated 07.02.2012, called upon the petitioner to attend its office along with the relevant

original CAFs, the TERM Cell Hyderabad of the respondent vide its impugned letter dated 02.07.2012 rejected the representation. The TERM Cell, A.P. also rejected the representation of the petitioner vide its letter dated 06.07.2012. The petitioner vide its letter dated 01.10.2012 deposited a sum of Rs. 18,57,000/- as penalty for uncontested cases.

The respondent imposed further penalty vide its impugned letters dated 30.01.2012 on similar grounds for the period April 2011 to June 2011. The petitioner again represented against the same to TERM Cells Hyderabad and A.P. Vijayawada. In this case, the TERM Cell Hyderabad vide its letter dated 10.05.2012, after considering the original CAFs submitted by the petitioner, allowed the appeal in respect of 64 CAFs. However, TERM Cell A.P., rejected the representation of the petitioner on similar grounds as before.

At the time of admission of the petition, the petitioner was asked to deposit 25% of the impugned demand.

The case of the respondent is that the original CAFs were not submitted by the petitioner at the time of Joint Audit Report but at the time of appeal which was

after a period of 9 months, which in itself is a serious violation and fit case for rejection of appeal and imposition of penalty. Merely because the appellate authority directed the petitioner to submit CAFs at the stage of appeal does not condone the lapse on its part to maintain CAFs. As per the respondent, appeals of the petitioner for the months of April 2011 and May 2011 were accepted as these pertained to documents only whereas the cases for other months were on different issues that could not be rectified by mere submission of CAFs.

As per the respondent, a time frame has been laid out for subscriber verification by way of CAF audits. The said time frame has to be strictly adhered to. The original CAFs were not produced at the time of initial joint audit and were proposed to be produced at the time of review.

With regard to the alleged forged documents, the case of the respondent is that whenever there was a doubt about the document produced along with CAFs, the same were verified through the concerned website i.e. website for driving licenses, Election commission website for voter cards etc. Only when there was a mismatch between the submitted documents and the website, the same were termed as apparently forged. In such cases, a letter was issued to the petitioner to

launch complaint with the concerned police authorities and since the petitioner failed to lodge the complaint, penalty was levied.

Before we go into the merits of the case, we may note that the A.P. Licensed Service Area (LSA) has a number of TERM Cells. Though the monthly CAF audit is conducted by the individual TERM Cells, for the purpose of imposition of penalty, one TERM Cell, called the LSA TERM Cell, is designated. In the present case, TERM Cell Hyderabad is the non-LSA TERM Cell and TERM Cell A.P., Vijayawada is the LSA TERM Cell.

From the letters of the TERM Cell Hyderabad dated 02.07.2012, we may note that the reasons given for rejecting the representation of the petitioner are; the penalty notice was issued by TERM Cell AP for the entire LSA but the appeal is made to the TERM Cell Hyderabad and it has not received any information from the TERM Cell AP whether it can process the appeal or not; the petitioner has not represented against the joint verification report and also could not give reasons for non-submission of originals at the time of the joint verification or immediately after the same. Paras 4 and 5 of this letter are as under:

“4. It is observed that the penalty notice was issued by TERM Cell, AP for the entire LSA as per the DoT guidelines. Further, M/s.Idea Cellular Limited directly represented to TERM Cell, Hyderabad instead of DDG, TERM Cell, AP. DDG, TERM Cell, Hyderabad has not received any information on this appeal from DDG, TERM Cell, AP who is the deciding authority whether the appeal can be processed or not.

5. M/s.Idea Cellular Limited has not represented against the joint verification report / till 24.01.2012 i.e. approximately for 6 months from the date of joint verification even though the guidelines issued by DoT vide letter no.800-20/2010-VAS dated 04-11-2010 were known to M/s.Idea Cellular Limited. Also, M/s.Idea Cellular Limited could not highlight the reasons for non-submission of originals at the time of joint verification or immediately after joint verification.”

We are unable to understand that if TERM Cell Hyderabad did not have the authority to decide the appeal then why it called for the original CAFs. It could have simply advised the petitioner to represent to the correct authority. Further, if it was not entertaining the representation on this ground, the observations made in the letters on merits of the case were uncalled for. What we find strange is that for the penalties imposed for the months April 2011 and May 2011, it has not only examined the representation but also accepted the original CAFs at that stage and allowed the appeal for 64 cases. Paras 5 and 6 of this letter are relevant and reproduced under:

“5. In the above referred representation / appeal dated 06.02.2012, 131 cases were represented for April 2011 and 308 cases were represented for May 2011. However M/s.Idea has submitted 52 original CAFs for the month of April 2011 and 94 original CAFs for the month of May 2011 and did not submit the original CAFs for the remaining appealed cases. **The representation/appeal along with all the connected records is considered wherever original CAFs were submitted and the detailed observations on each case are annexed to this**

letter. During the appeal, total 64 cases were considered positively – 21 cases for the month of April 2011 and 43 cases for the month of May 2011.

6.Hence, taking into account the objective assessment of all the facts and circumstances in respect of the cases appealed for in its entirety and in view of the reasons detailed in the annexure to this letter, **the DDG, TERM Cell, Hyderabad hereby accept the appeal / representation in respect of 64 cases in total as detailed in the annexure and reject the appeal/representation in respect of the remaining 376 cases.**” (emphasis supplied).

An explanation is given by the respondent in its reply that these cases were different from those in the other months. We are, however, not convinced.

We may now examine the grounds on which the TERM Cell AP has rejected the representations. In its letter dated 24.07.2012 it has mentioned that the dispute pertaining to TERM AP is only for 281 CAFs as against 1476 mentioned in the representation. No reason is given for this. Since it is the LSA TERM Cell, it should have looked into the dispute for all TERM Cells and, therefore, also for Hyderabad TERM Cell or authorized Hyderabad TERM Cell for the same. These 281 cases are also rejected. The main ground for rejection is that the CAFs/Original CAFs were not submitted at the time of joint verification and these cannot be considered now. The letter of the respondent is as under:

1. **“First of all, the number of disputed CAFs pertaining to TERM AP is 281 only and not 1476 as mentioned in your representation.**
2. The categories into which these 281 cases fall are as enumerated below:
 - i) CAF not submitted – 174 cases
 - ii) Foreign and Outstation customer cases where none or incomplete local reference was submitted as POA – 1 case
 - iii) Unreadable POI/POA – 88 cases and
 - iv) POI/POA is not the allowed document types – 11 cases

The disposal of each of the above category of cases is as below:

- i) **CAF not submitted cases: During CAF audit process conducted in June, 2010, it may be recalled that, extension of deadline for CAF submission was granted in view of the multiple customer base submissions in that month. Since sufficient time was provided for accommodating the delay, these cases cannot be considered now.**
- ii) Foreign and Outstation customer cases where none or incomplete local reference was submitted as part of POA: No local reference was furnished along with the CAF documents. Also original CAFs were not produced during combined verification. Hence, rejected .
- iii) Unreadable POI/POA cases: **For cases where the submitted CAF and/or its documents are not in readable form, original CAFs are called for, for ascertaining the genuineness or the documents at the time of joint verification. Had the original CAFs been produced in time during the joint verification, these cases would have been cleared based on the merits of the same. As is evident, original CAFs were not brought at the time of joint verification and hence, these CAFs were rejected. The question of admissibility of these CAFs at this stage, does not arise.**
- iv) POI/POA is not the allowed document types: CAF audit is conducted in accordance with the instructions and guidelines issued, from time to time, by the DoT Headquarters, on the above subject, wherein, the list of acceptable POI / POA document types are clearly specified. Any documents produced in contravention of the above specified list at rejected

and admission of the same, at this stage, does not arise and hence stands rejected.

It is to clearly bring to your knowledge that, no CAFs were rejected by this office on any other grounds, except for the grounds mentioned above, during the audit conducted for the months of May, 2010 to October 2010.

Hence, in view of the above facts and circumstances, the 281 disputed cases mentioned in your representation are not considered and therefore stand rejected.” (emphasis supplied).

Again, from the letters of the TERM Cell dated 06.07.2012 and 07.07.2012, it is apparent that the main reason for the rejection of the appeal is that the CAFs/original CAFs were not produced at the time of joint verification and are only produced at the stage of representation. Paras 3 to 8 of the letter dated 06.07.2012 are as under:

“

1. This list of non – compliant CAFs is to be relooked at your end and the Nodal Officer is given sufficient time to represent any such case which, as per the view of TSP seems compliant, but listed as non – compliant in the initial report. He is also given sufficient time to point out discrepancies if any, and submit such information or document asked for Cases like “Documents not clear”, “Unclear Pol/PoA”, or any other such omissions found in the initial audit, are addressed by seeking the original CAF, wherever required, from the TSP and compared/counter-checked with the submitted CAF documents.
2. Only, after this exercise is done, i.e., all the non-complaint CAFs are thoroughly rechecked, the findings of the TERM Cell are jointly signed by Nodal Officer and one TERM Officer.
3. In this present case, the above enumerated process was followed and sufficient time was given to produce the original CAFs which is evident from the e-mail/letter correspondence this office had with you as mentioned in the table below:

Sl.No.	Monh – Year of CAF Verification	Date on which Joint Verification was intimated	Date on which Penalty list was finalised
1.	November - 2010	21-April-2011	27-May-2011
2.	December - 2010	16-June-2011	23-June-2011
3.	January - 2011	16-June-2011	16-July-2011
4.	February – 2011	02-July-2011	16-July-2011
5.	March - 2011	17-August-2011	05-Sep-2011

4. However, it is seen from your representation that, original CAFs were not produced during the joint verification from your side for the CAFs that were found to be non-complaint.
5. The original CAFs are being produced only now, that is, at the time of submitting the above representation.
6. If the above requirement of producing of original CAFs was fulfilled at the time of initial audit and joint verification itself, the CAFs would have been accepted, albeit, depending on the merit of each case, and the need for a subsequent representation could have been circumvented." (emphasis supplied).

This Tribunal has held time and again that in such an important matter that involves the security of the country, there must be a distinction between a substantive non-compliance and a mere procedural lapse. In case of a substantive non-compliance, in addition to the penalties, much more needs to be done to ensure that the security of the country is not compromised and the matters must be taken to their logical conclusion. A procedural lapse on the other hand, though required to be penalized, must be on different footing.

In the present case also, it was imperative on the part of the respondent to examine the original CAFs when they were submitted to ensure that there was no substantive non-compliance. Not accepting the original CAFs at the time of representation may achieve the objective of maximizing penalties. However, by doing so, the main objective of national security, which is *raison d'être* of the whole CAF and TERM scheme, is overlooked.

In a similar issue in the case of Reliance Telecom Vs. Union of India¹, the representations of the petitioner were rejected by the DDG(TERM Cell) on the ground 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 Tribunal in that case observed **“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.”** (emphasis

¹ Petition No.24 of 2013. Judgment dated 28th October, 2015.

supplied). It was held that even 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 relevant part of the judgment is as under:

“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.” (emphasis supplied).

In the present case, the Original CAFs for the disputed cases were not produced at the time of joint verification of the report but were produced at the time of the representation. As per the petitioner, there were factors, such as unrest in Telangana region, a major mishap at the petitioner’s warehouse etc., that were beyond its control. Be that as it may, we see no reason why these were not

examined by the respondent when these were submitted at the stage of representation especially when the TERM Cell Hyderabad did so for the months of April and May 2011. We are also not convinced with the plea of the respondent that the petitioner did not protest at the time of joint verification.

Coming to the issue of forged documents, recently the Tribunal has held that the petitioner would not be liable to pay penalties unless the forgeries in the CAFs were attributed to the petitioner itself². It is certainly not the case of the respondent that the petitioner itself had indulged in any forgery.

In view of the above, we allow the petition and set aside the impugned demands in this petition. The petitioner is entitled to refund/adjustment of the amount paid by it in terms of the interim order of the Tribunal.

We may clarify here that in normal course we would have directed the respondent to consider the original CAFs for the disputed cases keeping in view the observations of the Tribunal above, and impose fresh penalties, if any, in accordance with law, but for another development that goes to the root of the

² M/s Bharti Airtel Ltd. Vs. Union of India. Telecommunication Petition No. 163 of 2015 delivered on 10th March, 2016.

matter. The imposition of penalties for CAF violations was challenged by another licensee namely Dishnet Wireless Ltd. before the High Court of Tripura in Civil Writ Petition no. W.P(C) 422 of 2012. Before the order reserved in the present case could be pronounced, the High Court of Tripura has held³ the clause 10.2(ii) of the license agreement that provides for the imposition of penalties for violation of the terms and conditions of the license, as opposed to the public policy, ultra vires and against statutory provisions.

In view of the judgment of the High Court of Tripura above, the Tribunal would refrain from making any order in this regard.

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Penalties imposed by the respondent vide impugned demand letters for alleged non-compliance with CAF verification norms for the period April 2009 to July 2010 for Rajasthan Service Area of the petitioner are under challenge in this petition. A major ground on which penalties have been imposed is by treating certain subscribers as outstation customers. Other grounds on which penalties have

³ Dishnet Wireless Ltd. Vs. UOI and anr. Judgment delivered on 08.01.2016.

been imposed are mismatch of signatures on the CAF as compared with the signatures on the documents provided, apparently tempered/forged CAF and or signature, missing CAFs, copies of provided CAFs are not clear etc.

On the issue of out station customers, we may note clause 3 of the circular dated 23 March 2009 of the respondent as under :

“3 . Outstation customers,

Henceforth, applicants for mobile phones connections from within the license service area or the state/UT concern, whichever is more encompassing, shall not be treated as outstation customers, for local reference of outstation customers, the name, address and contact phone number of local referee shall be obtained from the outstation customer, apart from the PIA. The local reference shall be verified telephonically at the point of sale before issue of SIM card and cross verified by the service provider at the time of verifying clause 3(ii) of DoT order dated 22.11.06.”

It is clear from the above circular that applicants from within the licensed service area or state/UT ,whichever area is larger, cannot be treated as outstation. As per the respondent, the word “henceforth” in the circular means that this will be applicable from the date of the circular. We do not agree. In our view, treating a customer belonging to the same state of Rajasthan, which is also the licensed service area of the petitioner, as outstation prior to an arbitrary date after which it is

not treated as outstation, is not correct.

The issue of signature mismatch has been dealt in M/s Idea Cellular Ltd., Gujarat Vs. Union of India, New Delhi⁴ in which it was held as under:

“We now come to the question of signature mismatch. We may note here that both the proof of identity as well as the CAF form contains photographs of the subscriber. As long as these photographs are matched with the applicant at the point of sale, the identity is well established. We tend to agree with the plea of the respondent that the signatures undergo a change with time and may not match exactly with the document that may be quite old. Moreover, we may also note that many of the documents such as driving licenses contain signatures that are scanned and printed on the document. These tend to show some variation. Further, a person at the point of sale cannot be expected to be a handwriting expert who can match the two signatures. As per the respondent, penalties on this ground are not imposed for minor variations but in cases where there is a substantial difference. The perception regarding a difference being minor or substantial is itself highly subjective and may vary from person to person leading to arbitrariness which cannot be a basis for a penal action. We find that the respondent is not correct in levying penalties on this ground.”

As regards the other cases of non-compliance, we may note the reply of the respondent as under:

“It is also seen from the Action Taken Report (ATR) submitted by the petitioner that for the non-compliance cases, all the non compliance cases either deactivated/recycled or fresh documents have been collected for them. As such, the ATR submitted by the petitioner in respect of all non compliant cases is contradicts with the contention as represented.”

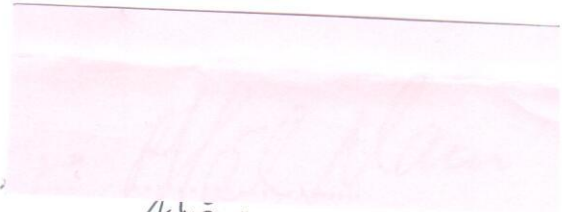
⁴ Petition No. 8 of 2014

The factum of ATR is not denied by the petitioner in its rejoinder. As per the petitioner, it was exercising due diligence to comply with guidelines issued by the respondent. For cases other than those of outstation customers and mismatch/variation in signatures, we do not find this contention of the petitioner acceptable. If for cases of missing CAFs or unclear documents, it had the original CAFs and all documents were available with it, there was no need to deactivate such subscribers or to obtain fresh documents from them. We, therefore, find the petitioner liable to pay penalties for cases other than those of outstation customers and signature mismatch.

As regards the interest levied by the respondent for delay in making payments of the penalties, since these have to be reworked in accordance with the finding of the Tribunal and payment will become due only after the revised demand is intimated by the respondent, no interest is payable for any past period.

In normal course, we would have asked the respondent to rework the penalties in accordance with the findings of the Tribunal and adjust this amount from the amount already paid by the petitioner and refund the balance amount, but for the judgment of the High Court of Tripura (supra) , we have no option but to

allow the petition and quash and set aside the demands raised by the respondent as well as the impugned letters. The petitioner is entitled to refund/adjustment of amounts already deposited in regard to the quashed demands.



(Aftab Alam)
Chairperson



.....
(Kuldip Singh)
Member



.....
(B.B. Srivastava)
Member