

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

**Dated 11 March 2016**

**Petition No. 389 of 2014**

M/s Vodafone Digilink Ltd. New Delhi	...Petitioner
Vs.	
Union of India, New Delhi	...Respondent

**Petition No. 518 of 2014**

M/s Vodafone Digilink Ltd.	...Petitioner
Vs.	
Union of India	...Respondent

**Petition No.419 of 2014**  
(With M.A. No. 274 of 2014)

Vodafone Digilink Ltd., New Delhi	...Petitioner
Vs.	
Union of India, New Delhi	...Respondent

**BEFORE:**

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

For Petitioner(in pet.no.518/2014)	: Mr. Meet Malhotra, Sr. Advocate Mr. Navin Chawla, Advocate
For Petitioner (in pet. nos. 389/14 & 419/14)	: Mr. Navin Chawla, Advocate Mr. Anurup Narula, Advocate
For Respondent	: Mr. S.S. Shamsbery, Advocate Mr. Vikas Malik, Advocate

**ORDER**

Whether the respondent is justified in levying penalties on the petitioner on the ground that name of the person selling the SIM cards is not mentioned on the Customer Acquisition Form (CAF) is the question that arises for consideration in this batch of petitions.

The issue in all these petitions is same and the only difference of fact is that the penalties relate to different periods. In view of this, these petitions are being disposed of by this common order. However, for the deliberations, the facts are taken from Petition No. 518 of 2014.

The petitioner 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 in the service area of Rajasthan. The respondent is Department of Telecommunications (DoT), Union of India.

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.”

On 9.8.2012, the respondent issued a circular containing instructions with regard to verification of new mobile service subscriber (Prepaid and Postpaid).

Clause 3 of the circular is as under:

- “3. Activation of new mobile connection:*
- (i) A passport size photograph of the subscriber should be pasted on the Customer Acquisition Form (CAF) and the documents as proof of identity (PoI) and proof of address (PoA) of the subscriber shall be attached with the CAF, as per the instructions applicable from time to time. The person at the Point of Sale (PoS) shall get the CAF duly filled and signed (CAF, Photo & documents attached) by the subscriber with date. In case of illiterate person, the CAF may be filled by a person at the point of sale but the thumb impression of the subscriber may be taken on CAF, Photo & documents attached. A unique number should be assigned to every CAF on receipt of the same in the warehouse and in case before activation of SIM.*
- (ii) The subscriber shall be provided a counterfoil/receipt of the details of the PoI & PoA clearly mentioning the name of subscriber, Mobile number applied for, CAF Number, type of PoI/PoA, issuing authority, date of issue and serial number of PoI/PoA document duly signed with stamp of PoS.*
- (iii) The authorized person at the PoS shall record in the CAF that he has seen the subscriber and matched the photograph attached on the CAF*

*with the subscriber and verified his copies of documents of proof of address and proof of identity attached with the CAF with the original and shall put his signature on the CAF & all attached documents (along with full name & stamp containing address). For this purpose sufficient space should be provided in the CAF.”(emphasis ours).*

In terms of annexure–I of the circular, the fields to be filled by the service provider / authorized representative are as under:

*“Fields to be filled by service provider / authorized representative*

21. IMSI No. \_\_\_\_\_ 22. Mobile number allotted \_\_\_\_\_

23. Point of sale code \_\_\_\_\_ 24. Point of sale agent name \_\_\_\_\_

25. complete address of point of sale :

House no. / Flat no. \_\_\_\_\_ Street address / village \_\_\_\_\_

Locality / Tehsil \_\_\_\_\_

City / District \_\_\_\_\_ State / UT \_\_\_\_\_

Pin code 

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During the audit carried out by the respondent to check the compliance of the CAF norms for the months of July and August 2014, the respondent declared

some CAFs as non – compliant on the ground that the name of the person selling the connections was not available on the CAFs. The respondent, thereafter, issued the impugned demand notices of penalty on the petitioner. The relevant part of the TERM cell notices is as under :

Notice dated 23.9.2014

7. *AND WHEREAS it is observed from the reports of TERM Cell, Rajasthan & TERM Cell, Jaipur for the month of July-2014 that M/s.Vodafone Digilink Limited has failed to comply the essential requirement of subscriber verification (like photo on CAF, I.D. proof. and address proof) and/or supplied copy of the CAFs having gross irregularities (like signature mismatch on CAF and/or attached document, apparently forge signature of the customer on the CAF, unclear/illegible photo copy of CAF, tempering of CAF and/or PIA document etc.) and/or violation of DOT guidelines on customer verification, issued on 9/8/2012, i.e. Undated/No Signature on PIA document, Non-recording of activation date on CAF by Employee (any person up to 31.12.2012) of Licensee, Verification not recorded on CAF by Employee (any person up to 31/12/2012) of licensee. POS authorized person's Signature full name not mentioned on CAF, PIA information about the subscriber is not correctly filled in the subscriber database. Telephonically verification of local reference not done by Point of sale before issue of SIM, Cross verification of local reference not done at the time of activation etc. in 2992 number of cases.*

<i>Month- Year</i>	<i>Sample Size</i>	<i>No. of missing the activated CAFs.</i>	<i>No. of Non- Complaint PIA cases</i>	<i>No. of Missing CAFs and Non- complaint PIA cases.</i>	<i>Total Penalty Amount (Rs.)</i>
<i>July-2014</i>	<i>13331</i>	<i>0</i>	<i>2992</i>	<i>2992</i>	<i>40301000</i>

*Thus, the total numbers of violations are 2992 out of the total 13331 sample taken. It is clear from the TERM cells' report that proper verification has not been carried out by the Service provider at the time of provisioning of service to the subscribers. Hence, M/s.Vodafone Digilink Ltd has violated the terms and condition of License Agreement and the instructions issued from time to time by the Licensor on the subject by providing mobile connection\*without proper verification. The percentage of correct subscriber verification of M/s.Vodafone Digilink Ltd. for Rajasthan Service Area has been ascertained based upon the CAF Audit report jointly signed by your authorized representative and TERM Cell. The financial penalty of an amount of Rs.4,03,01,000/- ( in words Rs. Four Crores Three Lakhs & One Thousand only) has been calculated as per the letter mentioned in para 3 and judgement of Hon'ble TDSAT as mentioned in para 4. The details are enclosed as Annexure-1 and Annexure-II for both the*

*TERM cells individually. This letter is being e-mailed at the address  
sanjeev.arora@vodafone.com, jayesh.gadia@vodafone.com,  
ritesh.kumarbajaj@vodafone.com.*

8. *Accordingly, you are asked to deposit the calculated amount of penalty of Rs.4,03,01,000/- ( in words Rs. Four Crores Three Lakhs & One Thousand only) with CAO (Cash) O/o CCA Jaipur within 21 days from the date of issue of this notice through a demand draft or pay order payable at Jaipur, drawn on any scheduled bank in favour of CAO(Cash) O/o CCA Jaipur failing which the amount of the penalty shall be recovered with applicable interest (2% above the Prime Lending Rate (PLR) of State Bank of India existing as on the beginning of the Financial Year (namely 1<sup>st</sup> April) as per terms and conditions of the licence agreement for non-payment of dues. A copy of the receipt issued by CAO is to be submitted by you to the ADG-II O/o the DDG, TERM Cell, Rajasthan, Jaipur. Representation against the findings of non-compliance in the jointly signed customer report, if any, may be made to DDG, TERM Cell, Rajasthan, Jaipur within seven days from issue of this notice. Further, the Licensor shall be at liberty to encash the Financial Bank Guarantee in case of non-payment of above mentioned amount without any further notice to the Licensee.*

Notice dated 31.10.2014

7. *AND WHEREAS it is observed from the reports of TERM Cell, Rajasthan & TERM Cell, Jaipur for the month of August-2014 that M/s.Vodafone Digilink Limited has failed to comply the essential requirement of subscriber verification (like photo on CAF, I.D. proof. And address proof) and/or supplied copy of the CAFs having gross irregularities (like signature mismatch on CAF and/or attached document, apparently forge signature of the customer on the CAF, unclear/illegible photo copy of CAF, tempering of CAF and/or PIA document etc.) and/or violation of DOT guidelines on customer verification, issued on 9/8/2012, i.e. Undated/No Signature on PIA document, Non-recording of activation date on CAF by Employee (any person up to 31.12.2012) of Licensee, Verification not accorded on CAF by Employee (any person up to 31/12/2012) of licensee, POS authorized person's Signature full name not mentioned on CAF, PIA information about the subscriber is not correctly filled in the subscriber database. Telephonically verification of local reference not done by Point of sale before issue of SIM, Cross verification of local reference not done at the time of activation etc. in 1888 number of cases.*

<i>Month-Year</i>	<i>Sample Size</i>	<i>No. of missing the activated CAFs.</i>	<i>No. of Non-Complaint PIA cases</i>	<i>No. of Missing CAFs and Non-complaint PIA cases.</i>	<i>Total Penalty Amount (Rs.)</i>
<i>August-2014</i>	<i>13528</i>	<i>0</i>	<i>1888</i>	<i>1888</i>	<i>9416000</i>

*Thus, the total numbers of violations are 1888 out of the total 13528 sample taken. It is clear from the TERM cells report that proper verification has not been carried out by the Service provider at the time of provisioning of service to the subscribers. Hence, M/s.Vodafone Digilink Ltd has violated the terms and condition of License Agreement and the instructions issued from time to time by the Licensor on the subject by providing mobile connection without proper verification. The percentage of correct subscriber verification of M/s.Vodafone Digilink Ltd. for Rajasthan Service Area has been ascertained based upon the CAF Audit report jointly signed by your authorized representative and TERM cell. The financial penalty of an amount of Rs.94,16,000/- ( in words Rs. Ninety Four Lakhs & Sixteen Thousand only) has been calculated as per the letter mentioned in para 3 and judgement of Hon 'ble TDSAT as mentioned in para 4. The details are enclosed as Annexure-1 and Annexure-II for both the TERM cells individually. This letter is being e-mailed at the address sanjeev arora@Vodafone.com. Jayeshgadia@vodafone.com.ritesh.kumarbajaj@vodafone.com.*

*Accordingly, you are asked to deposit the calculated amount of penalty of Rs.94,16,000/- ( in words Rs. Ninety Four Lakhs & Sixteen Thousand only)with CAO (Cash) O/o CCA Jaipur within 21 days from the date of issue of this notice through a demand draft or pay order payable at Jaipur, drawn on any scheduled bank in favour of CAO(Cash) O/o CCA Jaipur failing which the amount of the penalty shall be recovered with applicable interest (2% above the Prime Lending Rate (PLR) of State Bank of India existing as*

*on the beginning of the Financial Year (namely 1<sup>st</sup> April) as per terms and conditions of the licence agreement for non-payment of dues. A copy of the receipt issued by CAO is to be submitted by you to the ADG-II O/o the DDG, TERM Cell, Rajasthan, Jaipur. Representation against the findings of non-compliance in the jointly signed customer report, if any, may be made to DDG, TERM Cell, Rajasthan, Jaipur within seven days from issue of this notice. Further, the Licensor shall be at liberty to en-cash the Financial Bank Guarantee in case of non-payment of above mentioned amount without any further notice to the Licensee.*

The petitioner represented against the levy of penalties vide its letters dated 10.9.2014 and 6.11.2014 on the ground that while the signatures of the authorized person has to be put on the CAF, the name and address has to be that of Point of Sale (PoS). The relevant part of these letters is as under :

Letter dated 10.9.2014

*“In this regard, we would specifically like to draw your attention, to the cases that have been alleged to be non-compliant on account of “POS authorized person’s signature/full name not mentioned on CAF as per para 3(iii) of New guidelines dated 09.08.2012 hence non-compliance.” The cases referred here have been termed as non-complaint due to POS agent name not being mentioned on CAF.*

*We would like to humbly state that as per our understanding as mentioned in para 3 (iii) the authorized person at the Point of Sale has to “put his signature on the CAF and all attached documents (along with full name & stamp containing address).”*

*It is most respectfully submitted that as per our understanding of the said instructions, the signature is of the authorized person whilst the name and address has to be of the POS. It may be appreciated that if the full name of the authorized person is to put on the CAF as is being contended by TERM, then the ‘stamp containing address’ would also be of the individual and not the ‘Point of Sale’. This would completely defeat the purpose of the instructions as the CAP would not reflect the POS entity that has verified the subscriber.”*

The contents of the other letter dated 06.11.2014 are similar. These representations of the petitioner were rejected by the respondent vide letter dated 27.11.2014.

As per the petitioner, it is the name of the Point of Sale (PoS) which has to be mandatorily mentioned along with the stamp of its address. This is essential to identify the PoS from where the subscriber has taken the SIM card. Such PoS may appoint employees. However, the names of the employees are irrelevant to the

requirement of subscriber verification as they are neither approved by the service provider nor by the respondent. The service provider approves only the PoS. As per the petitioner, the respondent's own understanding has been the same which is apparent from the fact that in the past also CAFs bearing only the names of PoS and not the person making the sale, came up for scrutiny of the TERM Cell and were found to be compliant by the TERM Cell. The petitioner has attached some sample copies of CAFs that had only the name of PoS and were yet accepted by compliant<sup>1</sup>.

As per the petitioner, the impugned penalty has been levied based upon a new interpretation of the guidelines by the TERM cell, Rajasthan circle. As per it, no penalty can be levied upon the service provider on the basis of a condition that is open to two interpretations. The respondent itself having adopted another interpretation of the clause, cannot penalize the petitioner for having adopted the same. Moreover, circular issued by the Headquarters (HQs) at Delhi is applicable through-out the country and any interpretation of the same is necessarily to be made by the HQs as its applicability is throughout the country. Rajasthan Term Cell cannot act unilaterally on such an issue and penalize the operator on the basis

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<sup>1</sup> Annexure-P7 to P11.

of its own interpretation of the circular and the same will lead to discrimination amongst operators as also inconsistency between different TERM cells. The penalty in the present case is, therefore, without jurisdiction and liable to be set aside.

The respondent on the other hand, pleaded that the person making the sale must be a natural person who can see and verify the customer and his documents.

The petitioner has attached some of the sample CAFs rejected as non-compliant for the month of July and August 2014 with the petition as Annexure P-12 (colly) at pages 63 to 66 of the brief and as Annexure P – 13 (colly) at page 67 to 70 of the brief. It can be seen from the sample CAFs that the name of PoS along with stamp and address is mentioned on the same. The fact that name of PoS and its address is available on the CAF is not in dispute. The dispute is, however, that though some signature is available on the CAF, the name of the physical person making the sale is not available.

We may see from clause 3(iii) of the circular that the authorized person at the PoS shall record in the CAF that he has seen the subscriber and matched the

photograph attached on the CAF with the subscriber, verified his copies of documents of proof of address and proof of identity attached with the CAF with the original, and shall put his signatures on the CAF and all attached documents along with full name and stamp containing address. Evidently, there may be number of employees working at a particular PoS. All these employees may not always remain with the organization. We may note that it is the PoS that acts as an agent of the service providers and not its employees. We fail to see how the name of the employee making the sale will help in case a CAF is found to be non-compliant. As far as the respondent is concerned, it will take action against the service provider and at the most against the agent of the service provider which is PoS. In our view, what is important is the name of the PoS making the sale along with its stamp and address. In case of any incorrect verification, the PoS, can be identified and held responsible.

We may also note from Annexure 1 of the circular that what is required to be filled on the CAF is PoS code, PoS agent name and complete address of the PoS.

We may also note that as per the same circular, the petitioner is required to

maintain data base of the subscribers to be submitted to the licensor as well as designated security agency containing all fields mentioned in Annexure 2 of the circular. The relevant fields in this regard are at serial no. 26 to 28 of Annexure 2 of the circular at page no. 51 of the paper book. These are as under :

"26	<i>Point of Sale code</i>	<i>10 characters</i>
27	<i>Point of sale name</i>	<i>50 characters</i>
28	<i>Point of sale address</i>	
	<i>(i) House no./ Flat no.</i>	<i>10 characters</i>
	<i>(ii) Street address / name</i>	<i>50 characters</i>
	<i>(iii) Locality</i>	<i>50 characters</i>
	<i>(iv) City</i>	<i>50 characters</i>
	<i>(v) State / UT</i>	<i>50 characters</i>
	<i>(vi) Postal code</i>	<i>06 characters"</i>

It can be seen from this that even in the data base, it is the name of PoS that is required to be given along with other details and not the name of any employee at the PoS.

We may note from the reply of the respondent that it is not penalty as such but the threat to the national security that is of importance to the respondent. We fully agree. That being the case, what matters is the correct verification of the documents relating to the identity and address of the subscriber. In case of wrong

verification, the PoS at which the lapse happened can be identified and suitable action taken against it. We do not understand how the name of a particular employee would help as neither the respondent nor the petitioner may know about such an employee.

We may further note that it is not the case where any document is found to be non-compliant but just a technicality where the name of employee working at PoS is not available on the CAF.

Be that as it may, there are a number of cases in which this Tribunal has held that while taking punitive action, a distinction must be made between a substantive non-compliance and a mere procedural lapse<sup>2</sup>. In the present case, there is no substantive non-compliance. Even the procedural lapse is not fully established in view of the different possible interpretations of the clause 3 (iii) as is evident from the respondent's own action in accepting similar CAFs as compliant in the past. We do not see how penal action can be taken against the petitioner in these circumstances.

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<sup>2</sup> For example see Reliance Telecom Ltd. Vs UOI, petition no. 24 of 2013, delivered on 28 October 2015.

In view of the above, the petitions are allowed and the impugned demands in so far as they relate to CAFs that do not bear the name of the person selling the mobile connections, are set aside.



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

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

[Redacted signature]

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