

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

Dated 31 March, 2016

Telecommunication Petition No. 823 of 2012

Reliance Communication Limited & Anr. ...Petitioners
Vs.
Vodafone India Limited & Ors. ...Respondents

BEFORE:

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

For Petitioner : Mr. Meet Malhotra, Sr. Advocate
Ms. Shally Bhasin, Advocate
Mr.Chaitanya Safaya, Advocate
Ms. Shruti Garg, Advocate
Ms. Vasudha Gupta, Advocate

For Respondents : Mr. Saket Singh, Advocate
Ms.Sangeeta Singh,Advocate

ORDER**Kuldip Singh:**

Both the petitioner and the respondent are telecom service providers and have been granted licenses by the Department of Telecom, Union of India, under section 4 of the Indian Telegraph Act.

The petitioner is aggrieved by the demand letter dated 25.10.2012 of the respondent, vide which it has raised a demand for Rs. 11.30 crores towards SMS termination charges @ of 10p per SMS for the period from 1.4.2011 to 30.9.2012.

The respondent has since filed a counter claim for Rs. 15.11 crores in respect of SMS termination charges for the period from 01.04.2011 to 31.05.2013.

On 19th December, 2012, the Tribunal noted as under:

“4.Mr. Ramji Srinivasan , learned senior counsel appearing on behalf of the petitioner has brought to my notice the interconnection agreements including the supplementary agreements for various circles between the Petitioner and the Respondent executed on different dates. He has brought to my notice the clause existing in the agreements for certain telecom areas as mentioned below wherein it is provided that no termination charges for SMS originating from either party's network and terminating on other party's network shall be payable. They are:

1. Punjab
2. Andhra Pradesh
3. U.P. (West)
4. West Bengal
5. West Bengal
6. New Delhi
7. Chennai
8. Mumbai
9. Kolkata
10. Kolkata
11. Karnataka
12. Gujarat

There is no mention of the SMS services in the interconnection agreements for the following circles:

1. Maharashtra
 2. Assam, Bihar, H.P., M.P. North East and Orissa
 3. Bihar, H.P., J&K, M.P. and Orissa
 4. Haryana, Rajasthan and U.P. (East)
 5. Kerala
 6. Tamil Nadu
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The Tribunal on that date passed an order to the effect that the respondent shall not disconnect the interconnection of the petitioner for 12 circles i.e. Punjab, Andhra Pradesh, U.P. (West), West Bengal, West Bengal, New Delhi, Chennai, Mumbai, Kolkata, Kolkata, Karnataka, Gujarat, and for these circles no charge shall be payable to each other during the pendency of the petition. However, in respect of other circles, the petitioner was to start paying 50% of the amount demanded by the respondent @ 10p per SMS on net inflow of traffic basis. The order was without prejudice to the rights and contentions of the parties.

Following the notification of the 2013 regulation, the Tribunal vide its order on 23rd July, 2013, modified the earlier order as under:

“Since the statutory provision been brought into effect from June 1, 2013, the interim orders passed in each of the cases need to be modified and brought in accordance with the statutory provision. That is to say, from 1.6.2013 ‘termination of SMS charges’ shall be payable @ Re 0.02 paise per SMS only.”

We have already dealt with the case where there was a specific clause for Bill and Keep/no payment for termination charge for SMS, in Aircel Vs. IDEA¹. The case circles, where there is no specific clause for Bill and Keep are covered by the judgments of the Tribunal in Aircel Vs. Bharti² and Aircel Vs. Vodafone³. In the present case, however, the parties are not ad idem on facts. As per the petitioner, there was a specific clause for bill and keep in thirteen circles, whereas the respondent states that there was no such clause in 17 circles. The parties also take a contradictory stand with regard to Kerala Circle.

In view of the contradictory stand taken by the parties on facts, we think that for adjudication of the matter, a proper trial is required in which the parties may adduce their respective evidences. We direct accordingly.

¹ Petition No. 943 of 2012.

² Petition No. 130 of 2012 delivered on 24th September, 2012.

³ Petition No. 843 of 2012.

List the matter for further directions on 8th April, 2016.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member