

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

**Dated 31<sup>st</sup> March, 2016**

**Telecommunication Petition No. 824 of 2012**

Reliance Communication Limited &Anr. ...Petitioners  
Vs.  
Bharti Airtel Limited &Anr. ...Respondents

**BEFORE:**

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

For Petitioner : Mr. Ramji Srinivasan, Sr. Advocate  
Ms. Shally Bhasin, Advocate  
Mr. Chatanya Safaya, Advocate  
Ms. Shruti Garg, Advocate  
Ms. Vasudha Gupta, Advocate

For Respondents : Mr. Navin Chawla, Advocate  
Mr. Ketan Anand, Advocate

**ORDER****Kuldip Singh:**

Both the petitioners and the respondents 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 petitioners are challenging the demand of Rs. 11.86 crores towards SMS termination charges raised by the respondents vide letter dated 08.10.2012. They are also aggrieved by the disconnection of their interconnection for SMS termination in Mumbai, Bihar and Madhya Pradesh service areas.

On 3<sup>rd</sup> December, 2012, the Tribunal passed the following interim order:

“15. There is need to examine the factual aspects regarding the agreement/arrangement between the parties about SMS services and whether the demand raised by the Respondent through its letter dated 05.10.2012 is in accordance with the Telecommunication Interconnection Usage Charges Regulations 2009. Further it is to be examined whether the charges raised by one party fulfils the criteria of reciprocity, transparency and non-discrimination. Therefore, keeping in view the rival contention of the parties, the factual and legal aspects have to be gone into detail for determining the claim of the parties.

16. However, it is not in the interest of the consumers or any of the parties herein to discontinue the interconnectivity of SMS services. I am of the view that end of justice would be sub-served if during the

pendency of this petition, a direction is given on the lines of the Petition No. 826 of 2012 and 843 of 2012.

17. It is directed that the SMS services of the Petitioner shall not be disconnected and if disconnection has taken place in any circle, the same shall be restored with immediate effect, subject to the condition that **Petitioner will start paying 50 % of the amount demanded by the Respondent @ 10 paisa per SMS on net inflow of traffic basis. This amount will be calculated and paid with effect from the date of filing of this petition.**

**This payment will be without prejudice to the rights and contention of the parties and equities will be adjusted between the parties at the time of final hearing.”**

(emphasis supplied)

The above interim order was modified by an order of the Tribunal dated 12<sup>th</sup> August, 2013 to bring the same in accord with the Short Message Service (SMS) Termination Charges Regulation, 2013 (7 of 2013). As per this order, the termination charges payable with effect from 1 June 2013 were as provided in the statutory regulations.

In order to provide various services to their subscribers, the parties entered into interconnect agreements. We have explained the process of interconnect as well as the regulatory mechanism in AircelVs. Vodafone<sup>1</sup>.

The respondents have filed a counter claim in the matter.

The Tribunal in its order dated 3<sup>rd</sup> December, 2012 noted as under:

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<sup>1</sup> Petition No. 843 of 2012.

“4. From the pleadings, it is clear that the interconnect agreement existed between the parties for 15 service areas prescribing a charge of Rs.40 paise and 30 paise per SMS. However, according to the Petitioner these were never acted upon by either of the parties and later modified by the arrangement agreed between the parties not to make payment for SMS termination service and instead only follow ‘Bill and Keep’ method. According to the Petitioner both the parties agreed to continue to raise bill on each other for exchange of SMS between the two networks. However, no payment shall be made by either party till such consensus is reached on the issue within the industry.

5. The Respondent in its reply denied that there was any agreement between the parties prescribing for ‘Bill and Keep’ method for SMS termination charges. The Petitioner in its rejoinder has submitted copies of the minutes of the meetings dated 19.8.2004 and 04.1.2006. Copies of these minutes submitted by the Petitioner are not signed by any of the party.

6. It is undisputed that SMS termination charges were not paid by any party to the other party any time. It is also seen that no invoices have been raised by any party to the other party anytime.

7. In other circles, there is no agreement for SMS termination charges between the parties. However, the SMS services are being provided by both the parties to each other in these circles also.”

It was argued on behalf of the petitioner that the parties had agreed not to make payment for SMS termination charges and a reference was made to the meetings held between that parties. We note that there was no agreement even on the minutes of these meetings. Be that as it may, there was no written agreement for bill and keep. The written agreement was for 30/40 Paise per SMS in some cases and there was no agreement in the others.

We have already dealt with the case where there was no specific clause for Bill and Keep in the interconnect agreement in *Aircel Vs. Bharti*<sup>2</sup> and *Aircel Vs. Vodafone*<sup>3</sup>. The present case is fully covered by our judgment/order in *AircelVs. Vodafone*. We accordingly direct the respondent/counter claimant to provide the necessary details including bifurcation of SMS data to the petitioner. The petitioner is directed to complete the reconciliation of data within four weeks of the receipt of these details. Based on the reconciliation, the amount found payable shall be paid within a period of four weeks after adjusting the amount already paid in terms of the interim order of this Tribunal dated 3<sup>rd</sup> December, 2012.

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**(AftabAlam)**  
**Chairperson**

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

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

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<sup>2</sup> Petition No. 130 of 2012 delivered on 24<sup>th</sup> September, 2012.

<sup>3</sup> Petition No. 843 of 2012.