

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

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

**Telecommunication Petition No. 826 of 2012  
(With M.A. No. 13 of 2013)**

Tata Teleservices Limited & Anr. ...Petitioners  
Vs.  
Vodafone India Limited ...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. Ramji Srinivasan, Sr. Advocate  
Mr. M.A. Shoket, Advocate  
Mr. Nitin Kala, Advocate  
Mr. Kunal Singh, 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 holds licenses to provide Unified Access Service in all 21 telecom circles.

The petitioner is challenging the legality, propriety and validity of communication of the respondent dated 07.11.2012 vide which it has asked the petitioner to a sum of Rs. 183.7 crores towards SMS termination charges along with applicable service tax.

On 27<sup>th</sup> November, 2012, the Tribunal passed the following interim order:

“4. It is indisputed that there is no written agreement for SMS termination charges between the parties. However, both the parties are using each other’s network for terminating their SMSs and no termination charges are being collected by any party.

5. This Tribunal has passed an interim order in Petition No. 843 of 2012 on 23rd November, 2012 wherein certain directions were issued. The facts and circumstances in this petition are similar to the Petition No. 843. Therefore I am of the view that the end of justice would be sub-served if similar order is issued in this petition also.

6. Therefore, pending final hearing, 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 contentions of the parties and equities will be adjusted between the parties at the time of final hearing.

Following the notification of the 2013 regulation, the Tribunal vide its order on 23<sup>rd</sup> 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.”

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 *Aircel Vs. Vodafone*<sup>1</sup>. As far as the SMS termination charges are concerned, the interconnect agreement between the parties have different clauses as follows.

For the circles of Maharashtra, Tamil Nadu, Haryana, Madhya Pradesh, Himachal Pradesh, Rajasthan, U.P. (East), Kolkata, Punjab, U.P. (West), West Bengal, Kerala, Bihar, Orissa, Assam, North East and Jammu and Kashmir, there is no clause and no rate specified for SMS termination charge.

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

For the circles of Mumbai, Andhra Pradesh, Chennai, Delhi, Karnataka, and Gujarat , initially there was no clause/rate for SMS termination but subsequently, on 17.11.2004, a Clause 2 of Schedule 1 has been introduced that specifically provides for no SMS termination charge to be paid. Further, for Andhra Pradesh, there is such a clause since beginning.

Clause 2 of Schedule 1 is as under:

**“SCHEDULE 1**

**2. SMS Termination Charges**

No Termination Charges shall be payable for SMS terminated by either Party on other Party's network from the date of start of traffic.”

The respondent has filed a counter claim in the matter.

During the hearing, Mr. Saket Singh, Ld. Counsel for the respondent, stated that all the agreements except that for Mumbai and Andhra Pradesh, have expired by efflux of time on 27.04.2008 and have not since been renewed. However, there was some uncertainty with regard to the subsistence of agreement for Maharashtra. That is not of much consequence due to the fact that there was no clause/rate for SMS termination in the agreement for Maharashtra.

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. IDEA*<sup>2</sup>. The case of the petitioners herein for circles that have specific clauses for Bill and Keep/No payment, and which were subsisting during the period in dispute, namely Mumbai and Andhra Pradesh, is covered by our order in that case. No charges are payable by the petitioners for these circles.

The case for remaining circles, where there is no specific clause for Bill and Keep, or which have come to an end on 27.04.2008, are covered by the judgments of the Tribunal in *Aircel Vs. Bharti*<sup>3</sup> and *Aircel Vs. Vodafone*<sup>4</sup>. For these circles, we 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 27<sup>th</sup> November, 2012.

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<sup>2</sup> Petition No. 943 of 2012.

<sup>3</sup> Petition No. 130 of 2012 delivered on 24<sup>th</sup> September, 2012.

<sup>4</sup> Petition No. 843 of 2012.

The petitions are partially allowed to the extent above and with the above directions. There will be no order as to costs.

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**(Aftab Alam)**

**Chairperson**

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**(Kuldip Singh)**

**Member**

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**(B.B. Srivastava)**

**Member**