

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 22<sup>nd</sup> September, 2017

Telecommunication Petition No.24 of 2017

Aircel Ltd. & Anr. ...Petitioners

Versus

Bharat Sanchar Nigam Ltd. ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**  
**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**  
**HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioners : Mr. Abhishek Malhotra, Advocate

For Respondent : Mr. Tejveer Singh Bhatia, Advocate  
Ms. Vishakha Ahuja, Advocate  
Mr. Rohan Swarup, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – This petition was filed on 24.03.2017  
with the following prayers:

- “(a) Restrain the respondent from raising and enforcing time barred Emergency Change demands;
- (b) Restrain the Respondent from raising any Emergency Call Charges by applying the terms of the Addenda-III for the period prior to 13.10.2011;
- (c) Restrain the Respondent from raising any Invoices relying upon the Circular No.331-1/2013-Regln dated 29.9.2014 and 18.11.2016;

- (d) Quash and set aside the Circular No.331-1/2013-Regln dated 29.9.2014 and 18.11.2016 to the extent not permitted under law;
- (e) Quash and set aside all Invoices raised by the Respondent by applying the terms of the Addenda-III for the period prior to 13.10.2011 and / or increasing the charges by 10% for the period prior to 01.04.2014 and / or relying on the Circular No. 331-1/2013-Regln dated 29.9.2014 and 18.11.2016;
- (f) Pass an ad-interim ex-parte order restraining the Respondent from taking any coercive steps, including by not limited to encashment of Bank Guarantees submitted by the Petitioners and / or disconnection of their Points of Interconnect, to enforce any Invoices raised by the Respondent by applying the terms of the Addenda – III for the period prior to 13.10.2011 and / or increasing the charges by 10% for the period prior to 01.04.2014 and / or relying on the Circular No. 331-1/2013-Regln dated 29.9.2014 and 18.11.2016;
- (g) Pass such other and further order(s) as may be deemed fit and proper in the facts and circumstances of the case.”

2. Petitioner No.1, Aircel Ltd. and Petitioner No.2, Dishnet Wireless Ltd. are companies who have been granted CMTS/UASL Licenses by the Government of India for various telecom circles in the country and as such they are Telecom Service Providers. The respondent, BSNL, is a Government of India enterprise and also provides telecom services.

3. It is not in dispute that the parties entered into various Interconnect Agreements whose details have been mentioned in paragraph 5 of the petition. Clause 2.10.2 of the Interconnect Agreement contains provisions pertaining to “Emergency Call Charges”. It reads as follows:

“2.10.2. All public utility services including Emergency Service viz. 100, 101 and 102 etc. relating to Police, Fire and Ambulance etc. and other TOLL FREE services such as railways / road / air enquiry, police control, disaster management etc. shall be provided

by both the operators independently for their subscribers. For the purpose of using other party's network for provision of these emergency and other toll free public utility services, a separate agreement on the commercial and technical arrangements will be made on mutually agreed terms from time to time."

4. Respondent BSNL and the petitioners executed an Addenda to the Interconnect Agreement. As per Addenda-I dated 13.01.2004, clause 6.7.2 was inserted to provide that for the calls terminating in emergency services i.e. destination numbers 100, 101 and 102, the IUC payable by CMTS provider shall be at a flat rate of Rs.1.20p per minute. The respondent through a circular letter dated 14.07.2010 circulated a draft Addenda – III providing for charging of Rs.10 lakhs per annum on a lump sum basis for termination of emergency calls into BSNL's fixed line network.

5. The petitioners have pleaded that through a letter dated 04.01.2011 they expressed willingness and consent to abide by the proposed terms for emergency services from the respondent and ultimately executed Addenda-III/Agreement on 13.10.2011. According to petitioners, the Addenda could not be made effective from any date prior to 13.10.2011. The respondent subsequently through circular letter dated 21.11.2012 enhanced the emergency call charges by 10% per annum.

6. On the basis of Addenda-III, for the enhanced charges, the respondent raised fresh invoices on telecom service providers like the petitioners. A number of petitions such as Petition No.10 of 2013 [M/s Videocon Telecommunications Ltd.(Orissa) Vs. BSNL] were preferred before this

Tribunal. Those cases forming a batch were ultimately heard and decided finally on 31.07.2014 against telecom service providers similarly situated as the petitioners. Admittedly that judgment has attained finality.

7. When the legal position crystalized in view of judgment aforesaid, the respondent issued a circular dated 29.09.2014 requesting all the telecom circles not to bill emergency calls @ Rs.1.20p in future but to bill them on the basis of annual lump sum charges and normal applicable IUC charges per call. There was also a direction to adjust the amount realised on the basis of Rs.1.20p per call and realise the remaining dues for the emergency calls on the basis of annual lump sum charges. This circular was followed by another circular dated 18.11.2016 containing a clarification that in the light of judgment of TDSAT dated 31.07.2014, annual lump sum charges @ Rs.10 lakhs with annual combined increase of 10% along with IUC charges for emergency calls terminating to destinations in BSNL network was to be realised w.e.f. 24.07.2010 from all operators whether they had signed the Addenda or not as circulated vide letter dated 14.07.2010. All telecom circles were advised to take necessary action to collect the increase effective from the date after 10 days of the letter dated 14.07.2010, along with applicable IUC charges.

8. As would appear in the prayers made in this petition, the petitioners denied their liability prior to 13.10.2011 on the ground that they would be liable to pay only when they signed on the Addenda and not from any earlier date. They have raised issue of delay and limitation also but their main argument is

that the judgment of TDSAT dated 31.07.2014 will not govern their case as it is distinguishable on material facts.

9. The stand of the respondent which is supported by its reply is that the petitioners delayed in giving a reply to the communication dated 14.07.2010 but the reply dated 04.01.2011 conveyed full willingness and consent to execute the Addenda without any reservation and clearly treated the execution as a mere formality. According to respondent, since the parties accepted the terms of proposed Addenda, the fact that mere formality of signing the required document was delayed by a few months would not affect the operation of the Addenda. In support of such a stand, the respondent has placed complete reliance upon judgment of TDSAT dated 31.07.2014 in Videocon's case and connected matters.

10. The parties were heard in detail and learned counsel for the petitioners as well as learned counsel for the respondent took us through the aforesaid judgment of TDSAT in great detail. Learned counsel for the petitioners sought to distinguish the case of the petitioners on the ground that whereas Videocon had not executed the Addenda/Agreement for circles under challenge, the petitioners have executed that Addenda on 13.10.2011 and therefore, petitioners cannot be held liable to pay on the basis of changed norms for period prior to 13.10.2011. We have no difficulty in rejecting this plea. Videocon was held bound by the changed fee structure from 10 days after the circular letter dated 14.07.2010 when it had not signed the Addenda/Agreement ever. A mere delay

on the part of a petitioner in signing the Addenda/Agreement cannot, in our considered view, improve the case of the petitioners qua the case of Videocon. The uniform revised charges have been clearly made applicable to several similarly placed telecom service providers from the date indicated in the Videocon judgment and payments have been made by such service providers. It would amount to giving premium to the delay caused by the petitioners in signing the required agreement if they are absolved from paying the dues as per the Addenda only because of difference in date of execution of the Addenda/Agreement. In such matters, the earlier judgment of the TDSAT has rightly aimed for uniformity in imposing similar liability from a particular date, upon all telecom service providers responsible for maintaining emergency services.

11. Learned counsel for the petitioner has then placed reliance upon terms of payment prescribed in the Interconnect Agreement dated 18.04.2007. Reliance has been placed upon clause 7.3.1 which postulates in sub-clause (iv) that if the bill issuing authority subsequently finds that some charges have been omitted from the bills issued, he will include the omitted charges in the subsequent bills at any time, but within six months from the date of issue of the bill, except in cases where additional billing becomes necessary due to the tariffs/rates changes notified subsequently with retrospective effect by the appropriate authority. It has further been submitted that omission was required to be

corrected within six months and in any case the omitted amounts cannot be demanded after so many years even if there were some dispute.

12. From the discussions made earlier and particularly those in the judgement of TDSAT in the case of Videocon, it is clear that after holding that Videocon was bound by *sub silentio* acceptance of the Addenda/Agreement from a given date, the Tribunal applied its mind to the grievance that demands are retrospective and the internal circulars cannot bind the petitioners. The Tribunal held that the earlier bills were merely an error on the part of BSNL and that would not in any way relieve the petitioners from their liability under the contract. The relevant paragraphs in the said judgement are extracted hereinbelow:

“The issue of the bills raised by BSNL earlier at the rate fixed by addenda I can be seen in two ways. First, in view of the finding that a contract based on Addenda II had come into being on the basis of petitioners’ acceptance in terms of sections 3 and 8 of the Contract Act, the issuance of the earlier bill would appear merely as an error on the part of BSNL that would not in any relieve the petitioners from their liability under the contract. Secondly, on facts the more realistic explanation would be that it was an administrative oversight. BSNL is a very large organization. The local authorities at the circle level, under some misconception, issued the bills – a mistake that seems to have given the idea to the petitioners to try to retract from a contract that had already formed between the two sides. When the matter was examined at the central office and the mistake came to light fresh demands were raised for realization of the lawful dues of the BSNL.

The internal circulars of BSNL are similarly assailed by the petitioners on the assumption that the impugned demands are based on those circulars. The petitioners’ liability to pay the demands arises from their acceptance of the terms of Addenda II and it is wrong to assume that the demands are based on those circulars. The circulars simply advise the circle level officers to rectify their

mistake by raising demands on the petitioners at the rate fixed by Addenda II and indicate the date from when that charge will be applicable (after 10 days from the date of issuance of Addenda II), 14 July, 2010.”

13. Having thus considered the matter from all grounds urged on behalf of the petitioners, we find that petitioners' case cannot be distinguished on any material aspect from the case of the petitioners in the case of Videocon and other connected matters. That judgment will apply to the case of petitioners as well. The subsequent circular letters contain directions for implementation of revised terms as confirmed by TDSAT in Videocon judgment. Nothing has been shown to warrant quashing of these communications.
14. Accordingly, the petition is dismissed by holding that petitioners cannot be granted any relief. In the facts of the case, however, there shall be no order as to costs.



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(S.K. Singh, J)  
Chairperson

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(B.B. Srivastava)  
Member

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(A.K. Bhargava)  
Member