

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated rd 23 December, 2017 ^{January, 2018}

Telecommunication Petition No. 492 of 2012

(with M.A. Nos. 361 & 476 of 2012)

Reliance Communications Ltd.

...Petitioner

Vs.

Bharati Airtel 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 Petitioner

: Mr.Saket Singh,Advocate
Ms.Shally Bhasin,Advocate
Mr. Chaitanya Safaya, Advocate
Mr.Vaibhav Niti,Advocate
Ms.Shruti Garg,Advocate

For Respondent

: Mr.Gopal Jain,Sr.Advocate
Ms.Chinmoyee Chandra,Advocate
Mr.Harsh Kaushik,Advocate
Mr.Abhay Chattopadhyay, Advocate
Ms.Kriti Awasthi,Advocate

ORDER

By A. K. Bhargava, Member - The petitioner, Reliance Communications Limited, and the respondent, Bharati Airtel Limited, are both licensed access service providers. The petitioner entered into an Interconnection Agreement with the respondent on 04-03-2003 to which a Supplementary Interconnection Agreement was added on 08-05-2007. Under this supplementary agreement, the respondent's subscribers were accessing petitioner's toll free service/free phone

service. Vide a letter dated 27-01-2012, the respondent raised an issue that the petitioner is routing domestic toll free traffic for termination to an international location and that this diversion of DTFS traffic outside India is against the regulatory framework. It further asked the petitioner to provide an undertaking within 7 days to the effect that the Domestic Toll Free Service (DTFS) traffic handed over by Airtel to Reliance is not being hauled outside India, failing which they will be entitled to withdraw the existing interconnection for IN services. Further communications followed during which the respondent blocked and unblocked its subscribers from accessing petitioner's freephone service. Petitioner then filed this petition on 25-07-2012 with the following prayers

- (a) Hold and declare that the Free Phone Service being provided by the petitioner to its IN customers in India in the 1800 series originating in India is in accordance with the Supplementary Interconnect Agreement dated 8.5.2007 and the NNP 2003 and in terms of the UASL and there is no prohibition in such calls terminating either in or outside India.*
- (b) Hold and declare that the unilateral withdrawal of access to the interconnection for Intelligent Network Services between the petitioner and respondent no. 1 is illegal and in breach of the UASL issued to the Respondent 1, the interconnect agreement and the supplementary Interconnect agreement and the TRAI regulations "Intelligent Network Services in Multi Operator and Multi Network Scenario Regulations" dated 27.11.2006.*
- (c) Permanently restrain the respondent no. 1 from withdrawing access to the interconnection between the petitioner and respondent no. 1 on the ground that the Intelligent Network Free Phone Services under 1800 numbering plan cannot be terminated outside India.*

- (d) *Permanently restrain respondent no. 1 from demanding or coercing or otherwise forcing the petitioner to pay any amount higher or beyond what has already been agreed upon under the Supplementary Agreement dated 8.5.2007 for such IN Freephone service terminating within or outside India.*
- (e) *Alternatively, direct the DoT to decide the petitioner's representation dated 14.5.2012, 25.06.2012 expeditiously and till such time the access to the interconnection between the petitioner and the respondent for IN Freephone services for all numbers provided by the petitioner be not disconnected or withdrawn or blocked and restore all such numbers that have blocked.*

1. On the first hearing, an interim order to maintain status quo was passed which has continued since then. Subsequently, on 29-08-2012, following issues were framed

- i. *Whether the scope of the Interconnect Agreement and Supplementary Interconnection Agreement permits the parties to terminate the IN Calls (i.e. free phone calls) outside India?*
- ii. *Is there any distinction between the IN free phone call terminating within India and IN free phone calls terminating outside India under the applicable regulations and whether the same is permissible in terms of UAS license?*
- iii. *Whether the provision of the Petitioners Freephone IN Services terminating calls outside India is prohibited by the Supplementary Interconnection Agreement dated 8.05.07?*
- iv. *Whether TRAI's Regulations dated 27.11.06 prohibit the provision of the Petitioners Freephone IN services terminating calls outside India and what is the scope and effect of Appendix1, Table 1 to the*

Explanatory Memorandum to the said Regulations?

- v. *Whether the provision of the Petitioners Free phone IN Services terminating calls outside India is in accordance with the National Numbering Plan 2003?*
- vi. *Whether the impugned actions for the Respondent No.1 in blocking access to the Freephone Numbers provided by the Petitioner and demanding new commercial terms are in breach of the mutually agreed and binding Main Interconnection Agreement dated 4.3.03 as well as the Supplementary Interconnection Agreement dated 8.5.07?*
- vii. *To what relief, if any, the Petitioner is entitled to?*

2. Union of India was named as Respondent-2 and filed a short affidavit on 28-08-2012. Vide our order dated 29-08-2012, name of R2 was expunged from the memo of parties.

3. Learned Counsel for the petitioner, Mr. Saket Singh, has essentially made the following submissions

(a) As per regulations, interconnection is a "must" and accordingly the respondent cannot unilaterally back out of the signed interconnect agreement

(b) The agreement clause 19 of agreement dated 04-03-2003 provides for parties to approach DoT/TRAI in the event of any dispute regarding the interpretation of any clause of the agreement leading to disconnection. In this case, the respondent interpreted the regulation himself and effected disconnection

- (c) As per TRAI regulation dated 27-11-2006 related to Intelligent Network (IN) Services in Multi operator and Multi Network scenario, IN is not a separate service. It is a network architecture and exact implementation of the architecture is left open to the operator
- (d) The supplementary agreement does not mention that the calls will not be translated to international destination. If the respondent wanted to, it could have so specified in the agreement dated 14-10-2007. As an example, petitioner's agreement dated 14-10-2006 with BSNL specifically makes this provision
- (e) Petitioner's service is in conformity with the National Numbering Plan which does not specify how translation of the call is to be done. Telecom Engineering Center's General Requirement document also does not specify that translated destination number cannot be an international number.
- (f) TRAI regulation dated 27-11-2006 has Appendix-1 in the Explanatory Memorandum listing IN services as defined in TEC GR where Freephone service is mentioned as "National". This is erroneous since TEC GR does not mention the service as "National".
- (g) Interconnection charges prescribed in the agreement are in accordance with the TRAI direction dated 05-12-2007 which specifies charges of Rs 0.52 (in case rate is not mutually agreed). Respondent cannot arm twist and claim higher charges unilaterally
- (h) IUC charges are cost based on the principal of work done. If a call is translated to international destination, work done by the respondent remains the same and he is not entitled to higher charges merely on the basis that the call is getting routed to international destination.

(i) Translated International call is being routed through licensed ILD operator and there is forbearance on the tariff charged from the enterprise customer for this purpose. Thus, there is no loss to the respondent R1 or to the Licensor R2.

4. Learned Counsel for the respondent, Mr. Gopal Jain, has advanced the following submissions

(a) Petitioner is in breach of NNP-2003 which allots 000800 level for International Toll Free Service (Bilateral) and level 1 for special services including IN services (which also includes Freephone service with 1800 as prefix).

(b) Supplementary agreement specifically mentions that NNP will be followed. Breach of this clause invites disconnection.

(c) Agreement also provides that the parties will not divert traffic. Petitioner in this case is diverting international traffic using national freephone service.

(d) Upon receiving notice, the petitioner wrote to DoT but got no reply. However, DoT has filed an affidavit with this Tribunal. This affidavit states that in freephone service, call should be terminated nationally and hence the petitioner is in breach of the license condition which requires NNP to be followed.

(e) TRAI in its draft notification dated 2-12-2005 has mentioned Freephone service as "National" in Annexure-C. Same table has been repeated in Explanatory Memorandum of IN regulation dated 27-11-2006. Since EM is by way of explanation/clarification, Petitioner is in breach of this regulation by terminating the calls internationally.

- (f) Respondent has entered into a separate agreement for international toll free service (using 000800 level) on 26-3-2016 in which respondent pays interconnect charges to the petitioner as Rs. 5.85 depending on volume, while he gets only Rs. 0.52 as interconnect charge for international calls on freephone service. This is thus discriminatory and needs to be rectified.
- (g) There has been a loss to the respondent (and also to the licensor) by way of "leveraging" or "masking" and consequent lower interconnect charges.
- (h) Clause 2.14 of the agreement dated 4-3-2003 provides that in case of any breach of any of the terms of the agreement by either party, the party shall be entitled to levy damages. Respondent is thus entitled to levy damages
- (i) Since the status quo has been maintained under Tribunal's orders, respondent is entitled to restitution claims.

5. We now proceed to analyze and determine the issues as enumerated in para 1. Since all the issues are inter-related, following discussion is not in sequence of the issues enumerated.

6. As per regulation, all the service providers must adhere to the National Numbering Plan (NNP) issued by the Licensor/DoT. NNP-2003 specifies the numbering scheme for licensed services. The services under discussion here are Freephone service (FPH) and International Toll Free Service (ITFS) (Bilateral). The numbering scheme for ITFS is "00080+CC+Toll Free Number" wherein the international called party pays. Service under dispute is the FPH

service provided by the petitioner. As per the NNP-2003, *“level 1 is used for accessing Special Services like emergency services, supplementary services, inquiry and operator assisted services. Some sub levels have been allocated for use by access providers (operators). These levels can be used for providing the services within their network.”* Further, Number-Prefix 18 is allotted for IN services and Number-prefix 1800 has further been allotted for Free phone service. The structure of the Numbering scheme for FPH is 8 to 13-digit numbers (1800+YYY+IN Number). This service falls under Category II which means that these services are not mandatory, but Access Providers shall use only these codes if such services are provided. NNP-2003 thus only mentions type of service and the numbering scheme thereof. Issue arises in the way this service has been implemented. NNP does not provide implementation details/features/specifications of a particular service. It does however state that one of the objective of NNP is *“to plan in conformity with relevant and applicable ITU standards to the extent possible.”* A relevant ITU-T recommendation is E.152 for *“International Freephone Service”* (IFS) which has two access methods:

“Access Method No. 1 - Access in the country of origin in the country of origin via dialing a national freephone number. A number is assigned to the IFS customer from the available national freephone numbers in each country from which the IFS customer wishes to receive IFS call. The IFS caller dials the national freephone number, which is translated into a routing number and routed to the country of destination....

Access Method No. 2 has been withdrawn from this recommendation.

Access Method No. 3 – Access in the country of origin via dialing a universal international freephone number. A unique Universal International Freephone

Number (UIFN) that is the same throughout the world is assigned to the IFS customer. The IFS caller dials the international prefix followed by the UIFN, which is translated into a routing number and routed to the "country of destination."

The petitioner's case is that his service is in conformity with the provisions in ITU-T Recommendation E.152 and NNP refers that ITU standards are to be followed to the extent possible. No reason has been advanced for not following the ITU standards in this case.

7. Implementation details of the freephone service are also given in the document "Intelligent Network System and Service Description" (GR/INS-01/04 Mar. 2006) issued by DoT (Telecom Engineering Center). As per this GR, service description is as follows

"2.2 This service shall allow a call to FPH service subscriber to be routed to different destinations depending on various conditions such as geographical location of the caller, the time and day the call is made. In addition, the call shall be routed to any public number or to announcements depending on the re-routng conditions given to the call(e.g. Busy/No Answer).

2.3 Freephone service shall use single number nation wide for calls to FPH subscriber. The IN service shall convert this number depending on the conditions stated above to the desired public number"

This description does not specify that the translated "public number" should not be an international number. This TEC document is also referred to in para 9 of Explanatory Memorandum of TRAI Regulation dated 27-11-2006 on IN services. The Table 1 further merely refers to the service as Freephone (National). It has been observed time and again that the Explanatory

Memorandum (EM) can only be used by way of help, if needed, to clarify provisions of a regulation. In this case Regulation does not mention Freephone as national service. Moreover, the TEC GR referred to in the Table above does not mention so. Even allowing for this, the above labelling apparently does not clarify much. Equating "National" to mean that translated number from IN cannot be to an international destination is not so obvious. It has been argued that in case of the VCC service defined in the same table, calls to the international destinations are allowed. Further, if NNP and TEC GR are closely examined, what can be positively surmised in the sense of "National" service requirement for FPH is that the IN system (SCP, SSP etc.) must be located within the network of operator in India, SCP codes and IN Number used must be assigned by the licensor, owner of such toll-free number must be Indian entity, and billing must be done by the operator in India. We find that these requirements are not violated in this case. We thus find that not much reliance can be placed on the Table 1 of EM as above.

8. Further analysis on this issue has been provided in the affidavit filed by the DoT. Summary of DoT's analysis is as follows

(a) NNP-2003 specifies two access methods for calling numbers outside India i.e. (i) using 00+CountryCode+National Number (ii) 00080+CC+Toll Free Number. Practice adopted by the petitioner of terminating its IN calls on 1800 number series outside India is not covered under any of above methods.

(b) DoT has not yet adopted the ITU-T recommendation E.152

- (c) Series 1800 i.e. FPH has been mentioned in Annexure-IV of NNP-2003. It is noted that all codes mentioned in Annexure-IV are for providing services within India. These are allocated to organizations within India. Hence the petitioner cannot make exception to code 1800.
- (d) TRAI Regulations dated 27-11-2006 on IN services identify 1800 service as "National" service.

In respect of DoT's contention (a) above, there is no doubt that there are only two methods for calling numbers outside India. However, in FPH service, the calling subscriber is only dialing the FPH toll free number and is not aware of the destination number. IN system decides and dials the destination number. If it happens to be an international destination, it uses the 00+CC+NN scheme as per NNP-2003 and routes it through ILD operator. There is no provision in the regulation that IN system cannot generate such calls. We thus find not much force in the contention (a) above. We have already also dealt with contention (b) to (d) in our analysis in paras above and feel that DoT's analysis is somewhat incomplete.

9. Respondent 1 has also raised the question of loss to him and to the licensor. Respondent's contention is that the petitioner's service results in an "arbitrage" by converting domestic toll free service to international toll free service. It is noted that in this service, calling subscriber does not pay and the called subscriber pays for both the domestic and international leg of the call. Tariffs in this case are under forbearance and called subscriber duly pays as per the agreed tariff. Thus, a case of "arbitrage" is not made out. Accordingly, we also find no basis for respondent's claim for restitution as

well. As far as loss to the licensor is concerned, Dot is best placed to comment on it. However, DoT has chosen not to comment on this aspect. Respondent has also raised the question of traffic diversion which is prohibited in their agreement. So long as the calling subscriber is dialing FPH number and that traffic is getting routed to IN as per the allocated SCP code and IN is translating and routing as per agreement with its IN subscriber, we find no diversion of traffic. However, in case the translated number from IN is further routed to 000800 service (which is a bilateral service), it would mean indirect routing of one type of toll free traffic through another toll-free service and would require closer scrutiny. The petitioner in this case has indicated in the petition that the translated number is normal international number (00+CC+NN) and no evidence to the contrary is provided by the respondent. DoT has also not examined this aspect. It will, therefore, be open to the respondent to enquire further and if needed, pursue this aspect of traffic diversion, if any, with DoT.

10. In facts of the case above and discussion in para 6 to 9 above, the issues from (i) to (v) as listed in para 1 are decided in favor of the petitioner subject to the condition that the translated number in IN is not routed to 000800 service (which is a bilateral service). Consequently, issue (vi) is also decided in favor of the petitioner. However, liberty is granted to the respondent that if it has the evidence of translated number in IN being routed to 000800 service, it may approach DoT and proceed against the petitioner in accordance with the interconnect agreement.

11. There will be no cost to either of the parties.

12. We also note that the petitioner has filed a rejoinder to the affidavit filed by DoT which contains response to some of the contentions of DoT. It would be appropriate and in the interest of justice that DoT considers these contentions and our observations above and issues a clear guideline and or clarification to NNP and or TEC GR in respect of Free Phone service. Accordingly, we direct DoT to issue a clear guideline and or clarification to TEC GR and or NNP in respect of Free Phone service, preferably within four months.

Telecom Petition No. 492 of 2012 is disposed of in above terms.



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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