

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

Dated 10th March, 2022

Telecom Appeal No.1 of 2021

Vodafone Idea Ltd.Appellant

Versus

Telecom Regulatory Authority of IndiaRespondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER

For Appellant : Mr. Maninder Singh, Senior Advocate
Mr. Manjul Bajpai, Advocate
Dr. Shashwat Bajpai, Advocate
Mr. Prabhash Bajaj, Advocate
Mr. Ajay Mehta, Advocate

For Respondent(TRAI) : Mr. Tushar Mehta, Ld. Solicitor General
of India,
Mr. Arjun Natrajan, Advocate,
Mr Lakshmi Kant Srivastava, Advocate

For Intervenor / Telecom
Watchdog : Mr. Darpan Wadhwa, Sr. Advocate,
Mr. Rajat Sehgal, Advocate

ORDER

By S.K. Singh, Chairperson – This appeal is directed against Direction dated 07.12.2021 passed by respondent, Telecom Regulatory Authority of India (TRAI). The impugned order contained in **Annexure ‘A’** discloses that TRAI has issued Direction under Section 13 read with Section 11 of the TRAI Act, 1997 to telecom service providers such as the appellant, Vodafone for ensuring compliance with TRAI’s Regulations/Directions in respect of SMS facility to porting out customers.

2. The impugned Direction refers to Regulation 4 and 5(1) of the Telecommunication Mobile Number Portability Regulations, 2009 (MNP Regulations) to highlight that every Access Provider shall facilitate in its entire network, Mobile Number Portability (MNP) to all subscribers, both prepaid and postpaid and shall, upon request, provide the same on a non-discriminatory basis. Regulation 5(1) requires every Access Provider to set-up in its mobile network, a mechanism for the purpose of receiving SMS from its subscribers requesting for a unique porting code and forwarding the same to the MNP zone to which the mobile number belongs.

3. The impugned order also notes that as per various complaints, subscribers were not being able to send SMS on short code 1900 specified for UPC generation for availing MNP facilities even while having sufficient balance in their prepaid accounts. On enquiry, TRAI found that telecom service providers are not providing outgoing SMS facility in certain prepaid vouchers. TRAI viewed it as a contravention of provisions of MNP Regulations because it curtails consumers' right to avail MNP facility as provided for in the MNP Regulations. For that reason the impugned direction was issued directing all Access Providers to enable for all mobile subscribers, both prepaid and postpaid, requesting for a unique porting code, the facility to send SMS on short code 1900 for availing their right to avail porting facilities in accordance with MNP Regulations, irrespective of the value of the tariff offers/vouchers.

4. Paras 7 to 8 of the impugned order have been seriously assailed by learned counsel for the appellant during the arguments, hence, the same are extracted hereinbelow:

“7. And whereas the Authority is of the view that this practice of non provision of the facility of sending MNP related SMS in certain prepaid vouchers / plans is in contravention of the provisions of MNP Regulations,

as it takes away the consumer's right, provided for in the regulations, to avail mobile number portability facility;

8. Now, therefore, the Authority, in exercise of the powers conferred upon it under section 13, read with section 11, of the TRAI Act, 1997, hereby directs all access service providers to enable, with immediate effect, for all mobile subscribers, both prepaid and postpaid, requesting for a unique porting code, the facility to send SMS on short code 1900, in order to exercise their right to avail porting facility in accordance with the Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009), irrespective of the value of the tariff offers / vouchers.”

5. The MNP Regulations, 2009 have been annexed as **Annexure ‘C’(Colly.)**. Regulation 5 was amended on 13.12.2018 through MNP(7th Amendment) Regulations 2018. Post the amendments, Regulations 4 and 5 read as follows:-

“4. Obligation to provide Mobile Number Portability – Every Access Provider shall facilitate in its entire network, Mobile Number Portability to all subscribers, both pre-paid and post-paid and shall, upon request, provide the same on a non-discriminatory basis.”

- “5. Obligation to set up mechanism for allocation of unique porting code** – (1) Every Access Provider shall set up, in its mobile network, a mechanism for the purpose of receiving Short Message Service (SMS) from its subscribers requesting for a unique porting code and forwarding the same to the Mobile Number Portability zone to which the mobile number belongs;
- (2) Every Mobile Number Portability service provider shall set up, in its network, a mechanism for the purpose of –
- (a) receiving requests for unique porting code forwarded by the Donor Operator as per sub-regulation (1) of regulation 5;
 - (b) checking from the database of the Donor Operator through query response mechanism, on the applicable grounds of rejection of request for Unique porting code;
 - (c) allocating a unique porting code for each such request and communicating it to the subscriber forthwith through Short Message Service; and
 - (d) retaining such unique porting code on its records for the purpose of verification of the porting request of such subscriber to be received from the Recipient Operator.

Provided that the Mobile Number Portability service provider shall –

- (a) identify and allot a distinct identification code denoted with prefix 'C' for the request received from the distinct corporate mobile numbers; and
- (b) in case of a request for simultaneous porting of more than one corporate mobile numbers, allocate separate unique porting code for each corporate mobile number.”

6. Mr.Maninder Singh, Learned Senior Counsel for the appellant has referred to Section 11 of the TRAI Act and to Regulations 4 and 5 extracted above to submit that there is no mandate of law or under the aforesaid Regulations that outgoing SMS must be a feature in all categories of services, packs, vouchers on offer under the tariff plans of an Access Service Provider. To support the basic contention that the impugned order wrongly assumes that non-provision for SMS facility in all prepaid vouchers/plans is violative of MNP Regulations, relevant Consultation Papers for framing of tariff issued by TRAI in 2012 and 2019 have been referred. The purpose is to show that TRAI has consistently decided in favour of a regime of forbearance in the matter of tariff fixation and there has been no disapproval or grievance against various vouchers and packs of the appellant.

7. The aforesaid contention is not in dispute. The respondent have not mentioned in the impugned order nor they have contended during arguments that appellant's vouchers including prepaid vouchers not providing SMS facilities are in violation of any tariff regulation or direction. The stand of the respondent is that on reading Regulations 4 and 5(1) of the MNP Regulations, there is no ambiguity that TRAI has created an obligation upon every Access Provider to provide mobile number portability to all subscribers, both prepaid and postpaid so that upon request of the subscriber such facility is made available through the mechanism provided under Regulation 5(1) which requires receiving of SMS from the subscribers for a unique porting code. According to respondent, the Access Provider has to facilitate the enjoyment of such right by all subscribers and for such enjoyment the subscriber is required to request through SMS and hence, a mechanism for sending such SMS has to be read as part of the facilities to be provided by the Access Provider.

8. On the other hand, stand of the appellant is that the obligation upon Access Provider is only to set-up a mechanism so that SMS are received from the subscribers making a request for porting code. In other words, the appellant's stand is that when the tariff mechanism does not disapprove of giving choice to the consumers of a pack/voucher with no SMS facilities and when a subscriber opts for

such an offer, he decides to forego, for the time being, his right to send SMS from such pack even if such action may amount to temporarily giving up a facility which affects the exercise of the right for MNP. If the subscriber chooses to opt for this course, there is no violation of MNP Regulations.

9. On considering the submissions of both the parties, first of all it is found necessary to clarify that as per respondent, there is no intention or requirement to curtail the regime of forbearance with regard to tariff formulation, as prevailing at the present. According to submissions advanced by Learned Solicitor General, the MNP Regulations are not under challenge and they are in operation for long. Regulations 4 and 5(1) read together are sufficient to support the view taken by TRAI in Para 7 of the impugned order that not providing a limited SMS facility for the purpose of enjoying MNP facility is a contravention of the provisions of MNP Regulations.

10. Having considered the stand of both the parties, there is no difficulty in holding that the requirement of Regulations 4 and 5(1) read together creates an obligation upon every Access Provider to provide mobile number portability facility to all subscribers and for such a right to be real, the facility must include not only a mechanism for the purpose of receiving SMS from the subscribers but also a corresponding obligation to facilitate all subscribers with a mechanism for the limited purpose of sending such SMS so that they may, whenever occasion

arises, request for a unique porting code. Such unique porting code has to be made available to the subscriber forthwith by another SMS message through an automated process. Reading the obligations upon Access Providers under MNP Regulations in a restricted manner as pleaded on behalf of appellant would make the MNP Regulations unworkable for many subscribers. On the other hand the interpretation or meaning of the Regulations 4 and 5(1) of MNP Regulations as urged by TRAI does not have any substantial effect upon the regime of forbearance in matters of tariff formulation. Hence the stand of the respondent is found fair and reasonable. It is accepted accordingly.

11. It has been conceded on behalf of respondent that Access Service Providers shall be entitled to charge for the SMS messages requesting for a unique porting code and also for communicating such code to the subscriber through SMS message, at the usual rate for SMS which is charged from subscriber having such facility. This issue should be clarified by TRAI through an addendum or independent clarification in the impugned direction so that the facility of even limited SMS to serve the purpose of MNP Regulations is not free of cost and is made chargeable from the concerned subscribers, when availed for the purpose of availing mobile number portability. TRAI shall also provide a reasonable time to the appellant to implement the impugned directions for all its subscribers, irrespective of the value of the tariff offers/vouchers.

12. The argument on behalf of appellant that by opting for a voucher/pack which has no SMS facility, the subscriber concerned can choose to surrender its right to avail MNP facilities does not merit consideration when the MNP Regulations, as held above, independently create an obligation upon Access Providers to facilitate all subscribers so that they may request through SMS and avail the facility of MNP on a non-discriminatory basis. Such obligation flows from careful reading of the MNP Regulations. TRAI cannot be faulted for issuing directions to enforce such obligations.

13. In view of aforesaid discussions, the impugned order of TRAI dated 07.12.2021 is found to be within its powers and requires no interference.

14. The petition is, therefore, dismissed. There shall be no order as to costs.

Sd/-

.....J
(Shiva Kirti Singh)
Chairperson

Sd/-

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(Subodh Kumar Gupta)
Member