

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

DATED 27th July 2006

**APPEAL No.1 OF 2002
(M.A.No.1 of 2002)**

Bharti Telenet Limited	...	Appellant
Versus		
Union of India and Others	...	Respondents

APPEAL No.9 OF 2002

Bharti Telenet Limited	...	Appellant
Versus		
Union of India and Others	...	Respondents

BEFORE :

**HON'BLE MR. JUSTICE N. SANTOSH HEGDE,
CHAIRPERSON**

**MR. VINOD VAISH, MEMBER
LT.GEN.D.P.SEHGAL(RETD.),MEMBER**

For the Appellants : Mr.Ramji Srinivasan with
Ms.Mandakini Singh,
Mr.Prashant Kumar Mishra, Advocates

For Respondent No.1-DOT : None

For Respondent No.2-BSNL : Mr. Maninder Singh with
Mr.Yoginder Handoo,
Mr.Tejeev Singh Bhatia,Advocates

For Respondent No.3-TRAI : Mr.Meet Malhotra with
Mr.Raghvinder Singh,Advocates

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ORDER

Both these Appeals have been heard by us after these were remanded back to this Tribunal by the Hon'ble Supreme Court vide their order of 31-3-2005 in Civil Appeal No. 7200 of 2002 which was dealt along with Civil Appeal No.1816 of 2003. Both the matters were remitted for a fresh decision on merits of the disputes and in accordance with law. The Hon'ble Supreme Court basically held as erroneous the earlier orders of TDSAT dated 29-7-2002 and 19-12-2002 by which the above Appeals were dismissed by the TDSAT on grounds of limitation.

The parties in both the Appeals are same. Appeal No.1 of 2002 is regarding the Basic Telephone Service License of the Appellant for the State of Madhya Pradesh while Appeal No.9 of 2002 relates to the Basic Telephone Services of the Appellant in the State of Haryana.

2. The facts of the case have been very aptly summarized by the Hon'ble Supreme Court in their judgment of 31-3-2005:

“We are stating the facts as found by the Tribunal, as there is no dispute on them.

Appellant is a licensee to provide basic telephone services to subscribers in Madhya Pradesh. As a part of the license agreement the Appellant is expected to develop its own telecommunication network within its own service area, viz., Madhya Pradesh and also interconnect with the network of Bharat Sanchar Nigam Limited, respondent No. 2, [for short "the BSNL"] so as to provide national and inter-circle links which is currently available with only BSNL. This link is also required to connect the subscribers of the Appellant with the subscribers of BSNL within the same service area, viz., Madhya Pradesh. The issue under dispute is the location of points of interconnection between the Appellant and BSNL. The Appellant claims that as per the terms and conditions of its license it is entitled to carry the traffic originating from its own subscribers to the farthest point through its own network before handing it over to BSNL at the point of interconnection [for short "the POI"]. BSNL, on the other hand, is of the opinion that the license agreement clearly stipulates that the two respective networks and the points of interconnection of the Appellant and BSNL would have to be at equivalent level. Thus within the short distance charging area [for short "the SDCA"], the interconnections would have to be at the level of local and tandem exchanges. In so far as long distance charging area [for short "the LDCA"] are concerned, the point of interconnection would have to be located between the trunk automatic exchanges of the long distance charging area of both BSNL and the Appellant. For this, BSNL contends that the Appellant would have to build up a parallel network within their long distance charging area on the same pattern as the network hierarchy of BSNL starting with the short distance charging area. In case the Appellant does not have its own trunk automatic exchange in the long distance charging area it would have to bring the traffic from its own short distance charging area tandem with local exchange to the nearest to the trunk automatic exchange of BSNL for onward transmission/carriage to any other trunk automatic exchanges. Since BSNL has the trunk automatic exchange in each long distance charging area this practically means that the Appellant would have to handover all long-distance traffic in the same long distance charging area in which it has originated.

The dispute arose in October 2000 when the Chief General Manager, Madhya Pradesh Circle, BSNL informed the Appellant in a meeting about the manner in which BSNL would provide points of interconnection in handing long distance traffic originating from the subscribers of the Appellant. Since mutual discussions held subsequently did not prove fruitful, the Appellant approached Telecom Regulatory Authority of India [for short "the TRAI"] for appropriate orders and directions on 6.12.2001.

After hearing both the parties, TRAI decided the case as under:

"In the light of the foregoing the Authority has come to the following conclusions:-

- (i) BSNL's refusal to accept at Ujjain and Indore, the STD inter network traffic for calls originating in other LDCAs is in accordance with the stipulations in the license agreement as well as interconnect agreement signed by both the contending parties.

- (ii) Clause 1.7.6.5. of the license agreement gives the licensee option of carrying a STD call entirely on his own network within the circle/service area.
- (iii) This clause (1.7.6.5.) also gives the licensee the option of far end hand over of calls to BSNL for termination only. The licensee may, therefore, also use his network to carry inter-Network calls to the Far End and hand over in the terminating LDCA/SDCA to the DOT (now BSNL) in the same manner as is permitted to the DOT (now BSNL) in the license agreement. The BSNL should not refuse such Far End hand over from licenses received by them for termination within the LDCA.
- (iv) Intermediate hand over of calls for terminating is not in conformity with the license agreement as well as interconnect Agreement and, therefore, neither the licensee nor the BSNL is obliged to accept any such hand over of calls.

Though this Order has been made in relation to the specific complaint relating to Madhya Pradesh Circle, it will have general applicability in similar interconnect scenarios." [Emphasis supplied]

Appeal No. 1 of 2002 is against the above determination of TRAI.

3. The facts of Appeal No.9 of 2002 are slightly different in as much that it was filed on 27-9-2002 i.e. much after filing of Appeal No. 1 of 2002 and was filed after the Appellants representation to TRAI was rejected on 29-8-2002.

TRAI had rejected the Appellants' representation by the said letter of 29-8-2002 based on the dismissal of Appeal No.1 of 2002 on 29-8-2002. Earlier TRAI had put on hold the Appellants' representation for awaiting the decision of the Tribunal in Appellants appeal No.1 of 2002 relating to the Madhya Pradesh Telecom Circle.

4. In both the matters basically the determination of TRAI dated 15-6-2001 has been challenged by the Appellant and the subject matter relates to interconnectivity of the Appellant's networks in Madhya Pradesh and Haryana with the telecom network of Bharat Sanchar Nigam Limited (BSNL) which is the successor of the telecom service providing function of the erstwhile Department of Telecommunications (DoT), BSNL has actively contested the Appeals as Respondent.

5. On behalf of BSNL additional affidavits were filed in both the Appeals on 25.7.2005 almost on identical terms. Our attention was drawn that this Tribunal in Appeal No.1 of 2004 (BSNL vs TRAI) vide order dated

16-8-2004 had decided the issues involved in the present appeals and thus the issues raised in the present appeals are no more *res integra*. The relevant paragraphs of the said judgment (which is often referred to the HFCL matter) have been quoted for this purpose in the said affidavit and are extracted below.

“2. it would help in achieving easy understanding of the technical complexities in this case if at the outset we take on board certain basic aspects relating to the telecommunication network in the country. As we understand, for the purpose of telecom operations the country has been divided into different ‘circles’ and each circle is generally co-terminus with the geographical boundary of a State. Each circle is further divided into Long Distance Charging Area (LDCAs) which roughly correspond to what is known as a ‘district’. Each LDCA is further divided into Short Distance Charging Areas (SDCAs) which roughly correspond with a ‘tehsil’. All calls originating from and terminating within a SDCA are known as local calls and therefore, SDCAs are called as ‘local area’. In a SDCA, there can be multiple exchanges and a Central Exchange which routes calls from exchange to another exchange within the SDCA is known as ‘tandem. Normally the Tandem is located at the Centre of the SDCA which is generally the headquarter of the tehsil and this is known as ‘Short Distance Charging Centre (SDCC). A call between one SDCA and another SDCA is known as a long distance call and the charging is based on the distance between two SDCCs within a LDCA. For transiting a call from one SDCA to another either within the same LDCA or from one LDCA to another LDCA, there is requirement of an exchange which is known as ‘Trunk Automatic Exchange (TAX). In each LDCA, one TAX is designated as ‘Long Distance Centre TAX (LDCC-TAX). This is also referred to as Level II TAX. The expression POI means the Point of Interconnection between two networks.

.....11. In the matter argued before us, an example has been given by the petitioner and the respondent to illustrate the nature of the dispute. Here the subscriber of HFCL located in an SDCA in Amritsar LDCA wishes to connect with a subscriber of BSNL in Barnala SDCA which forms part of Sangrur LDCA. Both Amritsar and Sangrur being located in Punjab, this would constitute a long distance call within the same circle. The relevant clauses / provisions of the license agreement which lay down the procedure for handing over of such a call need to be now gone through. These are extracted as under:

“1.7.6.5 - Inter-connectivity for STD/ ISD calls shall be ordinarily only between DOT’s LDCC TAX and Licensee’s LDCC TAX. In case Licensee does not have his own TAX in the LDCC, STD/ISD calls from Licensee’s SDCC Tandem/ Local exchange in an SDCA in the LDCA shall be routed to DOT’s LDCC TAX. This requires the Licensee to connect to the nearest DOT TAX even for Intra-Circle calls that may be between two LDCCs. However, the Licensee is free to have his Network for carrying the traffic entirely over his own Network within the Circle/ Service Area.”

“1.7.6.6 – Calls from DOT subscriber or DOT network to LICENSEE’s network will be routed in the DOT network up to the farther point i.e. up to DOT’s SDCC Tandem / local exchange in the terminating SDCA and then will be delivered to the LICENSEE’s SDCC Tandem / Terminal exchange. National numbering plan, which is revised periodically from time to time, shall have to be adhered to / complied with.

1.7.6.7 – If the LICENSEE serves multiple SDCCs through one large exchange, DOT shall deliver the traffic directly into LICENSEE's large exchange from its TAX except for local and intra SDCA calls. For calls delivered from DOT's TAX to LICENSEE's main exchange, the letter shall be treated as terminal exchange and no access charges shall be payable to DOT to the LICENSEE.

The above situation of one main exchange serving multiple SDCCs does not exist in DOT at present. However, if a similar situation arises at a later date, the same facility shall be extended to the LICENSEE as well, provided it is not technically feasible to accept the calls directly by remote DOT exchange in the SDCC.

The Numbering and Charging plans shall always be adhered to by both DOT as well as LICENSEE.”

13. At this stage we need to also take note of the determination made by TRAI dated 15-6-2001 which has been quoted both by HFCL and BSNL in their favour in which TRAI went into the question regarding the manner in which a call could be handed over by a Basic Service Operator (BSO) to the BSNL Network for termination in the terminating LDCA. In the matter before TRAI one of the private service providers wanted to hand over long distance call from its network to BSNL, not at the terminating LDCA but at an intermediate point. We do know under what circumstances TRAI undertook to intervene in this matter which seems to be really a dispute between two service providers. We have nevertheless gone into the conclusions given by TRAI in the said determination. These were as under:

‘28. In the light of the foregoing the Authority has come to the following conclusions:-

- (i) BSNL's refusal to accept at Ujjain and Indore, the STD inter network traffic for calls originating in other LDCAs is in accordance with the stipulations in the license agreement as well as interconnect agreement signed by both the contending parties.
- (ii) Clause 1.7.6.5 of the license agreement gives the licensee option of carrying an STD call entirely on his own network within the circle/service area.
- (iii) This clause (1.7.6.5) also gives the licensee the option of far end hand over of calls to BSNL for termination only. The licensee may, therefore, also use his network to carry inter-Network calls to the Far End and hand over in the terminating LDCA/SDCA to the DOT (now BSNL) in the same manner as is permitted to the DOT (now BSNL) in the license agreement. The BSNL should not refuse such Far End hand overs from licensees received by them for termination within the LDCA.
- (iv) Intermediate hand over of calls for transiting is not in conformity with the license agreement as well as Interconnect Agreement and, therefore, neither the licensee nor the BSNL is obliged to accept any such hand over of calls.

The Authority determines and orders accordingly. This Order is made under Section 11(1)(b)(i) and (ii) of the Telecom Regulatory Authority of India Act 1997. Though this Order has been made in relation to the specific complaint relating to Madhya Pradesh Circle, it will have general applicability in similar interconnect scenarios

14. During the arguments, it was clearly stated by counsel for HFCL that under the clauses in the license agreement of HFCL and as per the determination of TRAI dated 15-6-2001, referred to above, there is no dispute that HFCL could hand over its call from SDCA locate within Amritsar LDCA at LDCC TAX at Amritsar. Also there was no dispute that such a call could also be handed over by the HFCL to the BSNL network at SDCC Barnala. The dispute is regarding the handing over of the HFCL calls at LDCC TAX – Sangrur.

We need to go over the determination made by the TRAI dated 15-6-2001 somewhat carefully as the language used in the concluding para of the determination thereof has been interpreted in vastly differing ways by BSNL and HFCL. Also TRAI in their affidavit as well as through arguments of their learned counsel have also taken a view more akin to the stand by the HFCL. The relevant para is quote again for sake of clarity:

This clause (1.7.6.5) also gives the licensee the option of far end hand over of calls to BSNL for termination only. The licensee may, therefore, also use his network to carry inter-Network calls to the Far End and hand over in the terminating LDCA/SDCA to the DOT (now BSNL) in the same manner as is permitted to the DOT (now BSNL) in the license agreement. The BSNL should not refuse such Far End hand overs from licensees received by them for termination within the LDCA.’

15. As already mentioned above, we need to go into the question as to how ‘far end hand over’ of calls can be given by HFCL to BSNL for termination. If we look carefully into the language of the second sentence of the above extracted paragraph, it leaves no room for doubt that such ‘far end hand over’ can be made in the same manner as is permitted to the BSNL in the license agreement. This manner of handing over is clearly spelt out in clause 1.7.6.6 and 1.7.6.7 of the license agreement which have been extracted and reproduced in para 11 above. It is quite clear that as per this stipulation in the license agreement, BSNL is required to carry its calls, for termination in the HFCL network up to the farthest point i.e. its SDCC tandem / critical exchange in the terminating SDCA. The only exception permitted is that if the receiving service provider is serving multiple SDCAs through one large main exchange then the calls be can be handed over through such a main exchange in the terminating LDCA instead of the terminating SDCC Tandem. This means that if there is no BSNL tandem exchange in SDCA Barnala then HFCL could hand over the call at the main exchange of BSNL located in LDCA Sangrur serving SDCA Barnala. However, such a situation does not exist on ground. BSNL has its SDCC Tandem at Barnala and there is no question of HFCL therefore having the option to hand over the call in exercise of the exception mentioned above at 1.7.6.7 of the license.

16. We find it difficult to understand why in spite of the clear position existing in regarding to the manner in which BSNL is permitted under the license to give ‘far end hand over’ of calls and it being clearly enjoined that a such a ‘far end hand over’ by HFCL can be given only in the same manner as was allowed for the BSNL, both HFCL and TRAI are holding the view that HFCL is entitled to make far end hand over of calls at LDCC TAX Sangrur. In fact, TRAI should not have used the words ‘in the same manner as is permitted by DOT (BSNL)’ in the license agreement if it really meant to allow the type of hand over which HFCL is wanting to make, namely at LDCC TAX – Sangrur....

20. Based on the above, it is clear that the correct interpretation of the determination of TRAI dated 15-6-2001 would be that HFCL has no case for handing over its calls originating in an SDCA located within Amritsar LDCA and meant for SDCA Barnala located in LDCA Sangrur at the

LDCC TAX of BSNL at Sangrur. They have no option of interconnection with BSNL network, only of 'near end hand over' at the LDCC TAX at Amritsar vide clause 1.7.6.5 of the license or of a 'far end hand over' at the SDCC Tandem at Barnala but not at any intermediate point, not even at LDCC TAX of BSNL at Sangrur....”

6. The Tribunal in its above judgment has held that the Appellant in that case namely HFCL could “either hand over the traffic for termination to BSNL at the far – end i.e. SDCA in which the traffic is to be terminated or at the Near-end, i.e. Long Distance Charging Centre (LDCC) TAX in the LDCA in which the traffic has originated.” It was clearly held that “no intermediate handing over of traffic is permitted as per clause 1.7.6.5 of the License.”

7. During the hearing of the arguments learned counsel for the Appellants, Shri Ramji Srinivasan admitted that the license conditions in the HFCL case referred to above were the same as in the current appeals. According to him the question to be decided was whether the said license permitted intermediate level handover of calls. His interpretation of the license was that under Clause 1.7.6.5 interconnectivity for STD calls was to be at the LDCA level. He further stated that by a circular dated 12-5-98, DoT had decided that private telecom operators were free to take their calls as far as they could on their networks before handing over to BSNL. He argued that the DoT letter of 12-5-98 had not been taken into account by TRAI and in the order of TDSAT in the HFCL case the DOT letter of 12-5-98 was not all considered. According to him intermediate level handover was being allowed on the basis of the clarification given by DOT in its letter of 12-5-98 and this position continued until 2001. Since this was an interpretation given by the licensor, TRAI could not ignore it.

In Appeal No 9 of 2002, according to Shri Ramji Srinivasan, an interconnect agreement was signed between the Appellant and BSNL incorporating a line that handover of calls would be in accordance with the TRAI determination of 15-6-01. The Appellant subsequently asked for a review of the said determination by TRAI.

8. Shri Maninder Singh, Learned counsel for BSNL stated that the HFCL case squarely covers the issues involved in the current appeals. The order of TDSAT in the said case was based on interpretation of the license conditions. He further stated all agreements entered into after the determination of TRAI dated 15-6-2001 are based on the said determination which has been basically upheld by TDSAT in the said judgment.

In his rejoinder argument Shri Ramji Srinivasan again stated that the circular letter of 12-5-98 has not been disowned by DOT and it clearly stated in para 2(i) that “ licensee is free to have his network for carrying the traffic entirely over his own network within the licensed Circle/Service area in the light of the license condition 1.7.6.5 and therefore Licensee may carry the traffic to the farthest point within the licensed circle before handing it over to DOT network” which gave the flexibility to the licensee to take the calls to the

farthest point in his network before handing over to DOT network (now BSNL's network). According to him this issue was not addressed in the TDSAT order in the HFCL case.

9. On the basis of the above arguments it is clear that both sides do agree that the determination by TRAI dated 15-6-01 which has been challenged in these appeals was the subject matter of Appeal No.1 of 2004 in BSNL vs TRAI (which has been referred to as the HFCL matter) and a clear finding has been given herein by TDSAT based on interpretation of the license conditions. The only point to be considered is whether the letter of DOT dated 12-5-98 which was not considered by TDSAT would in any way alter the situation and did TRAI err is not duly taking into account the said letter or in other words whether the finding of TDSAT in the HFCL case would undergo any change in the light of that letter.

9.1. We have specially examined this aspect. As regards the determination of TRAI of 15-6-2001 it would not be right to say that the said letter was not considered. We find that while M/s BTNL who are the Appellants before us relied on the said letter to support their contention in regard to intermediate level handover of calls, BSNL took the stand that the said letter does not in any manner alter the contention under the license agreement or the Interconnect Agreement. TRAI in its determination of 15-6-2001 has analysed this position as follows:

“27. BTNL has quoted in support of their contention of transiting traffic at any of the TAXs, a DOT letter of 12-5-1998. This letter was an internal communication addressed by the DOT to some of its General Managers. In this connection the Authority has noted that in its letter dated 24-5-2001 DOT has clarified that their letter dated 12-5-1998 does not alter the license agreement and interconnect agreement. BSNL have also confirmed vide their letter of 23-5-2001 that the stipulations contained in the DOT letter of 12-5-1998 have not been embodied into any agreement between BSNL and the licensees. The contents of this letter do not appear to have been conveyed to any of the licensees nor any action thereupon appears to have been taken to effectuate it with any kind of mutual agreement. The Authority had endorsed to the BTNL a copy of its letter dated 18-5-2001 seeking clarification from BSNL. No response has been received from BTNL to this endorsement. The Authority is, therefore, of the view that BTNL have not succeeded in drawing any support for their case from the aforesaid letter dated 12-5-1998 of DOT addressed to its field operatives.”

9.2 We have tried to independently go through the contents of the letter of 12-5-1998. We directed BSNL/DOT to show us the relevant case files regarding the letters dated 12-5-98 and 24-5-2001.

9.3 The letters dated 18-5-2001 and 24-5-2001 referred to in the TRAI determination extracted above do not throw any significant light. We quote these letters so as to remove the element of mystery related to these letters.

Letter of 18th May 2001.

“TELECOM REGULATORY AUTHORITY OF INDIA
1st Floor, Jawahar Vyapar Bhawan

No.408/1-2001-FN

Dated the 18th May 2001

To

DDG(Basic Services)
Department of Telecom
Sanchar Bhawan, New Delhi
FAX: 3372061.

Subject: Issues relating to National Routing Plan dispute between BSNL and BTNL Telenet Ltd with respect to non acceptance of STD Codes (except own LDCA Codes) at BSNL's TAXs in MP Telecom Circle.

This is with reference to the submission made by BSNL before the Authority on 10-05-2001. BSNL had stated that letter No. 115-4/98-PHQ dated 12th May 1998 was an internal communication and was addressed to the Chief General Managers of Telecom Circles having Basic Service Licensee was not circulated to Basic Service Operators.

The last paragraph of the letter reads. 'However, before providing the aforesaid connectivity, the DOT Circle units may seek any undertaking / confirmation from the Licensees for his compliance to the above provisions and conditions.'

TRAI would like to get a confirmation

- a) Whether the above letter was forwarded to Basic Service Licensees?
- (b) Whether an undertaking was taken by the MP Circle Units while providing the connectivity referred in the letter dated 12th may 1998 ?
- (c) Whether the letter issued by DOT in any way had modified the License Agreement terms and conditions.

Response on the above points may be submitted by 23rd May 2001.

Yours sincerely

(R.K.Bhatnagar)
Advisor (Fixed Network)"

Letter of 24-5-2001.

"F.No.10-3/97-BS-II/Vol.II
Government of India
Ministry of Communications
Department of Telecommunications
Licensing Cell (BS Group)

622, Sanchar Bhawan
New Delhi 110001
Dated: 24th May 2001

To

Shri R.K.Bhatnagar
Advisor (Fixed Network)
Telecom Regulatory Authority of India
16th Floor, Jawahar Vyapar Bhawan
Tolstoy Marg
New Delh-110001.

Subject: Issues relating to National Routing Plan dispute between BSNL and Bharti Telenet Ltd. (BTNL) with respect to non-acceptance of STD Codes (except own LDCA Codes) at BSNL's TAX in MP Telecom Circle.

With reference to your letter No.408/1-2001-FN dated 18th May 2001 regarding above mentioned subject, undersigned is directed to state that:

- i) the letter No. 115-4/98-PHC dated 12th May 1998 was not issued by "BS Cell" i.e. on behalf of Licensor for Basic Telephone Services.
- ii) Therefore, the queries raised in paras (b) and (c) of your letter, do not arise.

(Jeet Singh)
Asstt. Director General(BS-II)

Copy to DDG (LR) for information"

The letter of 12-5-98 is already part of the record at page 174 Vol 1 in Appeal No. 1 of 2002.

9.4 Our analysis of this letter and the background in which this was issued is that it was in the context of 'Interconnection of network of the Basic Service Private Operator with DOT network – reg. Serving multiple LDCAs with one large switch / main exchange by Licensee of Basic Telephone Service in a Telecom Circle' as clearly indicated in the heading of the said letter. We find that the said DOT letter deals with extension of permissibility of a dispensation to the private Basic Telephone Service Operators for serving multiple Long Distance Charging Areas (LDCAs) with one large switch / main exchange by them in the licensed telecom circle. In fact, the license granted to basic telephone service operators already provided for the flexibility in its Clause 1.7.6.7 for serving of multiple Short Distance Charging Areas (SDCAs) through one large exchange / main switch. The same concept / flexibility of serving multiple SDCAs with one large switch was extended to make permissible the serving of multiple LDCAs with one large switch without deviating from the interconnection principles enunciated in the license and interconnect agreements, which required the licensed basic telephone service operator to have connectivity with other operator (BSNL / erstwhile DOT operator) at equivalent level i.e. local /SDCC tandem exchange to local / SDCC tandem exchange and from LDCC TAX to LDCC TAX (Clause 1.7.3.2). Further, the interconnection seeking licensee was responsible for providing the

required transmission links between his network and the interconnection provider operator's network (Clause 1.7.3.3). The clarification sought for, as is evident from first para of DOT letter dated May 12, 1998 was as to whether connectivity from private basic telephone operator's main exchange / large switch in one LDCA can be provided to the DOT's TAX and DOT's local exchanges in other LDCAs where private operator had his Remote Line Unit(RLU) / Remote Subscriber Unit (RSU) parented on his main exchange / large switch. The said DOT letter dated May 12, 1998 clarified that the type of connectivity sought for is permissible and can be provided based on the license provisions referred to therein.

9.5 Much has been made, in the arguments advanced on behalf of the Appellants, about the language used in para 2(i) of the said letter that the private licensee may carry the traffic to the farthest point within the licensed telecom circle before handing it over to DOT network. However as per Clause 1.7.6.6 of the License, the 'farthest point' in the licensed telecom circle / service area has already been defined as 'SDCC tandem / local exchange in the terminating SDCA.' Further, in case of STD (both intra & inter-Circle)/ISD calls, Clause 1.7.6.5 permits delivery of these calls by private licensee to the nearest DOT(BSNL) TAX (i.e. in the originating LDCC) from either private licensee's originating LDCC TAX or SDCC tandem / local exchange (in case private licensee's LDCC TAX is not there.) However, the private licensee is free to have his network for carrying the traffic entirely over his own network within the licensed telecom Circle / service area. This stipulation provides for carriage of traffic by licensee entirely over his own network i.e. when no handover to other operator is required / considered necessary. Therefore, in cases where handover of traffic by one operator to another is required / considered necessary, the private licensee as well as DOT operator (BSNL) has an obligation to carry their respective traffic either to the terminating SDCC tandem / local exchange in terminating SDCA(i.e. farthest point) in the licensed telecom circle before handing over the same to each other or deliver / handover the same to each other in the originating (i.e. nearest) LDCC TAX itself.

9.6 The purpose of para 2(iv) of the said letter appears to be to define charging / measurement principle for calls / traffic handed over by one operator to other i.e. from the point of entry to the destination. Also, the very fact that the DOT letter dated 12th May 1998 called for private licensee to establish its direct transmission links from its main / large exchange to the BSNL's (erstwhile DOT) local exchanges to terminating SDCAs makes it clear that intermediate handover of calls / traffic was not permissible. Again as per paras 2(iii) & 2(iv) of the said letter no access charges were made payable by DOT/BSNL to licensed private basic telephone service operator / licensee who did not provide a terminal exchange with switching / routing facility in every terminating LDCA / SDCA and served the same from its large exchange / main switch by installing there what is called a RLU/RSU (not having switching / routing facility to other exchanges) because of the private licensees' inability to follow the hierarchy of providing telephone exchanges in Public Switched Telephone Network for having connectivity to DOT/BSNL exchanges at equivalent level.

9.7 The intention of the letter of 12-5-98 therefore did not appear to give any kind of dispensation which would violate the terms of the license, which clearly did not allow for an intermediate level handover of calls but it did extend the facility of use of one large exchange to serve multiple LDCA's to the Basic telephone Service licensees in a Telecom Circle.

The argument on behalf of the appellants that clause 1.7.6.5 of the license provides that interconnection for STD/ ISD calls shall be ordinarily only between DOT's LDCC TAX and licensees LDCC TAX, as such the licensee could handover its STD calls of the LDCA at the LDCC TAX of another LDCA has to be seen in relation to the very next sentence of the said clause which reads as follows:

“In case Licensee does not have his own TAX in the LDCC, STD/ISD calls from Licensee's SDCC Tandem / local exchange in an SDCA in the LDCA shall be routed to DOT's LDCC TAX. This requires the Licensee to connect to the nearest DOT TAX even for intra-circle calls that may be between two LDCCs.”

Further this has to be read along with clauses 1.7.6.6 and 1.7.6.7 reproduced below for ease of reference:

“1.7.6.6 – Calls from DOT subscriber or DOT network to LICENSEE's network will be routed in the DOT network up to the farther point i.e. up to DOT's SDCC Tandem / local exchange in the terminating SDCA and then will be delivered to the LICENSEE's SDCC Tandem / Terminal exchange. National numbering plan, which is revised periodically from time to time, shall have to be adhered to / complied with.

1.7.6.7 – If the LICENSEE serves multiple SDCCs through one large exchange, DOT shall deliver the traffic directly into LICENSEE's large exchange from its TAX except for local and intra SDCA calls. For calls delivered from DOT's TAX to LICENSEE's main exchange, the latter shall be treated as terminal exchange and no access charges shall be payable by DOT to the LICENSEE.

The above situation of one main exchange serving multiple SDCCs does not exist in DOT at present. However, if a similar situation arises at a later date, the same facility shall be extended to the LICENSEE as well, provided it is not technically feasible to accept the calls directly by remote DOT exchange in the SDCC.

The Numbering and Charging plans shall always be adhered to by both DOT as well as LICENSEE.”

10. Therefore taken in its totality we do not see any reason to interfere in the TRAI determination that intermediate handover of calls for transiting is not in conformity with the license agreement; and we do not see any relaxation having been given by DOT as stated on behalf of the Appellants and rightly so as that would have meant modification of the terms of the license which did not seem to have been the intent of the letter of 12-5-98.

11. Shri Ramji Srinivasan has also argued that none of the letters of DoT or BSNL were supplied to the Appellant and the Appellant has also not been given any opportunity to rebut the same. However, TRAI has proceeded to decide the matter against the Petitioner by placing reliance on these communications, thus breaching the fundamental principle of natural justice. He also stated that the two letters, namely, DoT letter dated 24-5-01 and BSNL letter dated 23-5-2001 were summoned by this Tribunal, but have not been supplied to the Appellant and the Appellant has submitted that if reliance of any kind was being placed on those letters, then natural justice required that the same be also made available to the Appellant. The file containing letter dated 24-5-2001 was produced on 11-7-2006. It was orally mentioned that the DoT in its letter dated 24-5-2001 has merely stated that the Circular dated 12-5-98 was issued by a separate sector (sic). If this be true, then TRAI has clearly misinterpreted this document and has given it a colour that it does not possess. Likewise, the order 18-5-06 passed by this Tribunal appears to note that the document was of no consequence.

At the outset we would state that our order sheet of 18-5-2006 inadvertently mentioned the date of the DoT circular of 12-5-98 as 12-5-2006 and the date of the DOT letter to TRAI in this connection as 22-5-2001 instead of 24-5-2001. Nowhere has it been indicated in the order of 18-5-06 that the document was of no consequence. We subsequently directed the Respondent DoT to submit the relevant files in which the letters were issued for our perusal. File No. 10-3/97-BS-II/Vol.II containing the letter dated 24-5-2001 was forwarded by DoT which is a collection of miscellaneous papers and does not throw any light on the circumstances and background in which the circular of 12-5-98 was issued. File No.115-4/98-PHC containing the letter of 12-5-98 was produced by BSNL under our directions and it was stated that BSNL as successor of the service providing functions of erstwhile DoT was now in custody of the said file. This file does throw some light on the background on which the letter of 12-5-98 was issued however this is made clear in the opening para of the said letter which is quoted below.

“Recently a reference was received from the office of CGM Telecom, Gujarat Telecom Circle, DoT seeking certain clarifications as to whether connectivity from Basic Telephone Service/ Licensees’ main exchange / large switch in one LDCA can be provided to the DoT’s TAX and DoT’s local exchange in the other LDCA where licensee’s RLU / RSU is located. This issue was brought by the Association of Basic Service Telecom Operators in their meeting with Chairman (Telecom Commission) on 11-4-98 seeking clear guidelines on interconnection arrangements

between a large capacity switch of Licensee employing distributing architecture and SDCA exchanges / TAXs of DOT.”

Since this letter is part of the record we take it the Appellants are aware of this aspect.

We have fully taken into account the arguments made on behalf of the appellants in regard to the circular of 12-5-98 and we have also reproduced in our order the letters dated 18-5-2001 (of TRAI) and 24-5-2001 (of DoT in response to the letter of 18-5-2001 of TRAI). We have analysed the letter of 12-5-98 on merits fully taking into account the arguments in that regard of the learned counsel for the appellants and the provisions in the related licenses before drawing our conclusions. According to us there has been no breach of natural justice as we had not relied on the letters of 18-5-2001 and 24-5-2001 for drawing our conclusions and neither have we relied on the analysis of TRAI in their determination of 15-6-2001 for reaching the conclusion that we have finally reached in this matter.

12. We would now like to address the argument of learned counsel Shri Ramji Srinivasan that this Tribunal has vide its judgment dated 21-2-2004, in Appeal No.2 of 2004 (Bharat Sanchar Nigam Limited vs Telecom Regulatory Authority of India) held that TRAI has no jurisdiction whatsoever to determine disputes between Service Providers and therefore, the impugned Determination dated 15-6-2001 to the extent that it purports to resolve a dispute between the Appellant and Respondent No.2 deserves to be set aside. He also states that in terms of the decision of the Hon'ble Supreme Court dated 31-3-2005, the Tribunal is required to decide the dispute on merits which in turn required interpretation of the licensor's own circular dated 12-5-1998. The licensor is in the best position to interpret the license condition, hence its own interpretation regarding the stipulations in the license should not be ignored while deciding the present dispute.

13. At the outset, we must notice that this argument of lack of jurisdiction in TRAI to settle a dispute between service providers is not taken in the main petition, obviously because when this Appeal was originally filed, the judgment of this Tribunal in Appeal No.2 of 2004 was not available. Therefore, this point has been raised during the course of arguments as also in the written submission filed on behalf of the Appellant. While considering this argument, we must bear in mind the facts subsequent to the decision of TRAI dated 15-6-2001. In numerous interconnection agreements signed thereafter the determinations made by TRAI had become the basis and these arrangements assumed finality. We have independently considered in the case BSNL vs TRAI, Appeal No.1 of 2004 (also known as HFCL case), the reasoning of TRAI in the impugned order with which, for reasons already noted hereinabove, we have expressed our agreement.

In the present set of appeals we have again looked into the various licensing provisions for the purpose of interpreting the 12-5-98 circular of DOT on which heavy reliance was placed by the appellants and we have after giving detailed reasons agreed with the findings of TRAI contained in its determination of 15-6-2001.

Thus even if one were to assume that there was lack of jurisdiction we find that on merits the determination of TRAI was fully justified and in accordance with the license conditions and the DOT letter of 12-5-98 could not be construed as having allowed to the private basic service operators the dispensation of intermediate level handover of their traffic to DOT (now BSNL).

Therefore, we do not think it proper in the interest of justice to allow this appeal on the above technical ground urged by Mr. Ramji Srinivasan. As stated hereinabove, since as an appellate authority we have independently reconsidered the issues considered by TRAI in the impugned order and on such consideration we have agreed with the findings of TRAI not only in this case but also in the case of BSNL vs TRAI, Appeal No.1 of 2004, we find no reason to set aside the impugned order of TRAI on the sole ground that as a regulator it could not have adjudicated the dispute between the service providers. Hence this argument is rejected.

14. In the light of above we see no merit in the Appeals and dismiss the same.

.....J
(N. Santosh Hegde)
Chairperson

.....
(Vinod Vaish)
Member

.....
(D.P.Sehgal)
Member