

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

Dated 3rd August, 2015

Petition No.284 of 2013

M/s Vodafone India Ltd.
Vs.

...Petitioner

...Respondent

Mahanagar Telephone Nigam Ltd **BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON HON'BLE MR.
KULDIP SINGH, MEMBER HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

For Petitioner : Mr. Navin Chawla, Advocate

For Respondent : Ms. Maneesha Dhir, Advocate
: Mr. Abhishek Kumar, Advocate
: Ms. Neha Singh, Advocate

Kuldip Singh:

The petitioner is seeking recovery of following amounts from the respondent.

An amount of Rs. 3,53,71,905/- which, as per the petitioner, is due on account of wrongful deductions made by the respondent from

the Interconnection Usage Charge (IUC) for the period between July, 2007 to March, 2010. This amount is with respect to the Cuff Parade Point of Interconnect (POI) between the parties and comprises of a principal amount of Rs. 2,25,15,731 and an interest on account of delayed payment of Rs. 1,28,56,174/-.

Another amount of Rs. 7,38,73,066/- which, as per the petitioner, is due to short payments of the IUC by the respondent for the period from August, 2009 to July, 2013. This amount also includes an interest component of Rs. 39,55,201/An amount of Rs. 45,89,293/- as interest on the above payments till 20.08.2013 and further interest till all these amounts are paid.

The petitioner holds a Unified Access Service License (UASL) granted by the Department of Telecom (DOT) under section 4 of the Indian Telegraph Act, 1885. The respondent is a Public Sector Undertaking providing basic, cellular mobile, etc. services in the areas of Delhi and Mumbai.

In order to provide interconnectivity between their subscribers, the parties entered into two interconnect agreements for mobile and fixed/basic services. Copies of these agreements are annexed with the petition as Annexure P-4 (Colly). In terms of clause 6.4 of these

agreements, both the parties are required to pay IUC to each other. The clause reads as under:

“6.4 INTERCONNECT USAGE CHARGES

6.4.1. For purposes of calculating the IUC / access charge, the point at which the calls are delivered to / received from MTNL's network is treated as originating point. The calls will be measured from the point of entry to the destination at the IUC prescribed by TRAI.

6.4.2. Both parties will pay IUC (Rate) for calls originated, carried and terminated on each others network in terms the IUC Regulation of TRAI in force from time to time or amended by any judicial or statutory direction.

6.4.3. The traffic delivered on / from any MTNL's Tandem/Local exchange connected to POI from UASP's TAX/Tandem/Local exchange will be measured on the incoming/ outgoing junctions of the MTNL's Tandem /Local exchange.”

It is the contention of the petitioner that though it was raising bills for the IUC in terms of the above agreements, there were short payments for the period between July, 2007 to March, 2010 at the Cuff Parade POI and short payment/non-payment of other bills towards IUC for the period August, 2009 to July, 2013.

Subsequent to the filing of the petition, the respondent has paid an amount of Rs. 2,25,15,731/- for IUC at Cuff Parade and Rs. 6,49,40,392/- towards other bills for IUC. Only two issues in the petition now survive.

One is regarding Rs. 50 Lakhs, which is the balance of principal claimed by the petitioner, and the other is with

regard to the interest claimed by the petitioner.

With regard to the first issue, we find that during a meeting held between the parties on 29.3.2014, minutes of which are available at page 854 of the paper book, the difference was found to be on account of difference of rounding off policy followed by the petitioner and the respondent. The petitioner was requested to share the details about its outgoing traffic with the respondent as per its billing system. The respondent in turn was to share its CDRs (Call Data Record) for both incoming and outgoing traffic to the petitioner for the month of February, 2014. Para 2 of the minutes reads as under:

“2. M/s Vodafone has raised the issue of non-payment of amount which has been kept as dispute by MTNL PSTN LOB amounting to about Rs. 40 lakhs from August '09 to date, DGM(ICB) intimated that the difference is due to the rounding off policy difference between MTNL and M/s Vodafone and requested M/s Vodafone to share the details about the traffic as per their billing system for is outgoing traffic to MTNL against the bills raised by MTNL for the terminating traffic. It was agreed that the difference due to rounding off can be analyzed on receipt of the above data and a consensus can be reached. MTNL to share the CDRs of both the incoming and outgoing Vodafone India Ltd. for the month of February 2014. The target date for the same will be before 30.04.2014.”

Mr.Chawla, Ld. Counsel for the petitioner stated that the petitioner has already provided the CDRs for the month of February,

2014 to the respondent. Ms. Dhir, Ld. Counsel for the respondent, however, denied this and further submitted that all CDRs for the disputed period should be provided by the petitioner.

We find that for the purpose of finding the difference due to rounding off policy, all the CDRs are not required and only some sample CDRs for the relevant period should be sufficient. We may note that the period of dispute being quite old, to retrieve all CDRs for this period and compare the same will be cumbersome and time consuming. In our opinion comparing the CDRs for any three months, say the month of February for the years 2011, 2012 and 2013 should serve the purpose.

We now come to the issue of interest claimed by the petitioner. With regard to the Cuff Parade POI, it is the contention of the respondent that the claim of the petitioner is on account of discrepancy at Cuff Parade which is not attributable to the respondent and subsequently, it was agreed between the parties that the petitioner will route its calls for Cuff Parade POI from Fountain POI and the traffic would be observed for applying the ratio for the period for which there is difference of traffic noted at Cuff Parade POI.

From the submissions made by the parties and the record of correspondence exchanged between them, we are satisfied that the ^{18%}

deductions made for Cuff Parade POI were in regard to some discrepancy of a technical nature as the transit CDRs (Call Data Record) were not generated in MSC¹-4 switch at Cuff Parade. After the POI was shifted to Fountain POI, there was a difference between the parties regarding the average difference of variation to be taken. From the email of the petitioner dated December 29, 2011 (page 736 of the paper book), it is evident that even the demand note raised by the petitioner was not yet final. We note that payment of principal has been made by the respondent in terms of the meeting held between the parties on March 29, 2014 (copy of minutes at page 854). We may also note the relevant clauses of the interconnect agreement in regard to interest on delayed payments and settlement of disputes regarding wrong/excess billing as under:

“7.5 In the event of delayed payment by UA SP Interest will be charged on the due amount at the following rates (subject to Court decision of BSNL in interest case):

<i>Period of delay</i>	<i>Interest Rate</i>
<i>A. For the first two occasions of delay:</i>	
<i>i. Delay of 15 days beyond the due date</i>	<i>15%</i>
<i>ii. Delay beyond 15 days</i>	
<i>B. For the third and subsequent occasions of delayed payments:</i>	

¹ Mobile Switching Centre

i. Delay of 15 days beyond the due date 18%*

ii. Delay beyond 15 days 21%*

*Note 1 This stipulated interest rate or the prevailing prime lending rate of State Bank of India plus 5% (Five Percent) per annum (compounded monthly), which ever is higher, shall be applicable.

2. MTNL shall have a right to levy a higher rate of interest if UASP provider continuously defaults in payments. This may be applied vice versa also i.e. if MTNL defaults.

Explanation

The interest referred above will also be applicable in case the bill is disputed but subsequently it is found to be in order by the appropriate authority."

"7.6 Settlement of Disputes Regarding Wrong/Excess Billing

7.6.1 The bills issued by MTNL based on CDR/METER READING shall be final. In case of difference up to 2% +/- with the billing record of UASP, the amount billed by MTNL shall be treated as final. Variance beyond this limit shall be subject to dispute resolution mechanism to be specified in the Interconnect agreement. However, UASP shall pay to MTNL the undisputed amount plus 50% of the disputed amount subject to a minimum of an amount equal to previous month's billed amount immediately.

7.6.2 In the event the UA SP/MTNL disputed the accuracy of a bill delivered by MTNL/UASP pursuant to this agreement, MTNL/UASP shall, as soon as practicable, but in any case before the pay-by-date notify the billing liaison contact of the MTNL/UASP of the nature and extent of the dispute along with

all details reasonably necessary to substantiate its claim, which shall be reasonably capable of being verified by the MTNL/UASP.

7.6.3 In case of calculation or clerical error in the bill, the bill issuing authority after verifying the bill, if it finds the errors genuine, will correct the relevant bill accordingly within three days of the receipt of the dispute.

7.6.4 In cases other than those referred in clause 7.6.3, UASP shall immediately obtain a provisional bill from MTNL before the pay by date of the original bill on the basis of the number of call units of the previous month. The provisional bill shall be paid by the UASP before the pay by date indicated in the provisional bill. Thereafter, within 7 days of the issue of the provisional bill, the UASP shall approach the designated authority of MTNL along with all his relevant records based on which the UASP disputes the bill issued by MTNL. The UASP shall, in consultation with the designated authority of MTNL, settle the dispute within 15 days of the issue of the provisional bill referred in this clause. In this consultation, the records made by the measurement devices located at the MTNL interface point shall have precedence over the records of the UASP. If after consultation, it is found that the original bill issued by the MTNL/UASP is correct, the balance amount of the original bill, being the amount that remained unpaid after taking into account and adjusting the amount received under the provisional bill, will have to be paid by the MTNL/UASP, as the case may be, within 7 days of the settlement of such dispute.

7.6.5 If the payment of the Provisional Bill is not made within the period stipulated therein, or, if after the settlement of the dispute, if balance of the due payment is not made within the period referred to in clause 7.6.4, the UASP

shall be considered to be in serious default and MTNL shall discontinue the use of its facilities by the UASP immediately on occurrence of this default. Restoration of the facility will be made only on clearance of the dues payable by the UASP. The UASP shall also take action to open irrevocable Bank Guarantee in favour of MTNL as per clause 7.4.1 of the Interconnect Agreement in the event of such a default.

7.6.6 If the parties dispute the accuracy of the traffic information or any related matter, the same shall be referred to coordination committee for reconciliation and settlements of accounts within 7 days, after making payment for the undisputed amount within 7 days of issue of the provisional bill. The full amount shall however be paid if disputed amount is less than 2%. In case of reconciliation is not achieved within 15 days in the manner already provided the dispute shall be refereed to the Auditor, jointly appointed by both the parties with the cost to be borne by both the parties. The amount payable after due date shall carry interest from the due date at the rate of interest specified in the agreement.

7.6.7 Coordination committee consists of designated nodal officer of the concerned MTNL's Telecom circle and an authorized representative of UASP.

7.6.8 In the event of dispute, the disputing party will pay 100% of undisputed amount and 50% of the disputed amount to the other.

7.6.9 UASP shall neither be allowed to reduce any amounts reported nor remitted to the other Party pursuant to this Article as a set-off or compensation for amounts owing under any other obligation between the UASP and other Party."

As per clause 7.5 Note 2 Explanation, the interest as per the clause will also be applicable in case the bill is disputed but subsequently it is found to be in order by the appropriate authority. Though the variation initially claimed by the respondent was more than what was finally agreed between the parties, it is certainly not a case where the dispute was without any basis or the bill was subsequently found to be in order. Since the payment of the amount has been made in terms of the agreement arrived between the parties, we find that the interest clause is not applicable in this case and there is no merit in the claim of petitioner for interest on this account.

In regard to the short payments of IUC Bills, we note that the dispute is due to difference of MOU²s as claimed by the petitioner vis- a-vis the records of the respondent's billing system. We note from the correspondence on record that the respondent has been withholding certain amounts asking for reconciliation of CDRs. We further note that in terms of clause 7.6.8 of the interconnect agreement, the disputing party is required to pay 100% of undisputed amount and 50% of the disputed amount to the other. Accordingly, the respondent should have paid 50% of the amount that it was withholding from time to time and to that extent is in default of payments that would attract

² Minutes of Usage

imposition of interest in terms of clause 7.5 of the Interconnect agreement.

Though Ms. Dhir, Ld. Counsel for the respondent submitted that the interest clause is not reciprocal, we do not agree. Firstly, there are a number of judgments of this Tribunal in this regard³. Secondly, clause 7.5 Note 2 of the interconnect agreement makes it amply clear that the agreement also envisages payment of interest for delayed payments by the respondent. However, this clause as well as the applicability of interest on reciprocal basis as per the Tribunal's Judgments, is subject to outcome of the appeal pending before the Hon'ble Supreme Court in this regard.

In view of the foregoing, we direct as under:

1. Both the parties shall furnish CDRs for the month of February for the years 2011, 2012 and 2013 to each other within 4 weeks(In case of any practical difficulty in this regard, CDRs for any three months of the relevant period may be furnished with mutual consent). The balance amount payable by the respondent shall be finalized within 2 weeks thereafter and paid in another 2 weeks.

³ Latest dated May 27, 2015 in Petition No. 518 of 2012, Vodafone India Ltd. Vs. Bharat Sanchar Nigam Ltd.

2. The petitioner shall calculate interest on 50% of the amounts withheld by the respondent (for IUC bills other than Cuff Parade) from the dates such payments were due till September 2, 2013 when the petition was filed, at the rate as stipulated in clause 7.5 for the agreement. The petitioner may also charge interest for the delay in payment of IUC bills for the months of May 2013 to July 2013 from the due date of payment till the date of filing of this petition. The interest shall be paid by the respondent within 4 weeks of the receipt of intimation from the petitioner. Further, this payment shall be subject to outcome of the appeal pending in the Apex Court in this regard.

3. In view of the facts and circumstances of the case, there is no order as to costs.

(Aftab Alam)
Chairperson

(Kuldip Singh)
Member

(B.B. Srivastava)
Member