

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

Dated 14th June, 2016

Telecom Petition No.91 of 2015
(With MA No.25 of 2016)

Idea Cellular Ltd. ...Petitioner

Versus

Union of India & Anr ...Respondent

ALONG WITH

Telecom Petition No.80 of 2015
(With M.A. Nos. 50, 51 & 327 of 2015 & M.A.24 of 2016)

Vodafone Digilink Ltd. & Ors. ...Petitioners

Versus

Union of India & Anr. ...Respondents

Telecom Petition No.79 of 2015
(With M.A. Nos. 48 & 49,62-63 & 262, 263 of 2015)

Dishnet Wireless Ltd. ...Petitioner

Versus

Union of India & Anr. ...Respondents

Telecom Petition No.105 of 2015

M/s BhartiAirtel Ltd. ...Petitioner

Versus

Union of India ...Respondent

BEFORE:

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

- For Petitioner(Petition no.91 of 2015) : Mr. Gopal Jain, Sr. Advocate
 Mr. Manjul Bajpai, Advocate
 Mr. Shashwat Bajpai, Advocate
 Ms. Madhur Bharatiya, Advocate
- For Petitioner (Petition no. 105 of 2015) : Mr. Gopal Jain, Sr. Advocate
 Mr. Harsh Kaushik, Advocate
 Mr. Abhay Chattopadhyay, Advocate
 Ms. Stephanie V. Sonawane, Advocate
- For Petitioner(Petition no.79 of 2015) : Mr. Meet Malhotra, Sr. Advocate
 Mr. Manjul Bajpai, Advocate
 Mr. Ravi S.S. Chauhan, Advocate
 Mr. ManjeetChawla, Advocate
 Ms. Palak Singh, Advocate
- For Petitioner (Petition no.80 of 2015) : Mr. Manjul Bajpai, Advocate
 Mr. Shashwat Bajpai, Advocate
 Ms. Madhur Bharatiya, Advocate
- For Respondent (DoT) : Ms. Pinkay Anand, ASG
 Mr. Vikramjit Banerjee, Advocate
 Mr .Bharat Sood , Advocate
 Ms. Somya Rathore, Advocate
- For Respondent(TRAI) : Mr. Kirtiman Singh, Advocate
 Mr. Gyanesh Bhardwaj, Advocate

ORDER

Parties were heard on a number of dates on the petitioners' plea that relief(s) as prayed for on their behalf may be granted, even as an interim arrangement, on the basis the materials already on record without putting up the case for a full dress trial asking the parties to adduce evidences in support of their respective cases.

The four petitioners, namely, Idea, Vodafone, Dishnet and Bharti are some of the major mobile telephone service providers in the country.

The case of Idea relates to the service areas of Gujarat, Himachal Pradesh, Punjab and Jammu & Kashmir where it is operating under CMTS/UAS licences granted under section 4 of the Indian Telegraph Act 1885.

The case of Bharti relates to the Jammu & Kashmir service area where it operates under a licence granted under section 4 of the Indian Telegraph Act.

The case of Dishnet relates to the service areas of Jammu & Kashmir and Punjab where it is operating under UAS licences granted under section 4 of the Indian Telegraph Act.

The case of Vodafone relates to the service areas of Haryana and Gujarat where it is operating under UAS licences granted under section 4 of the Indian Telegraph Act.

It is the case of the petitioners that they obtained spectrums in 2100 MHz band in the respective service areas as indicated above on being successful bidders

in the auction for allocation of spectrums held by the DoT on the basis of the Notice Inviting Application (NIA) dated 25.02.2010. The brief details regarding the spectrums allocated to the petitioners and the prices paid by the petitioners for their allocation are given below in a tabular form:

Idea

S.N.	Petitioner	Service Area	Amount	Amount
1	Idea	Jammu & Kashmir	Rs.30.30 Cr.	1959-1964 (Uplink) and 2149-2154 (Downlink)
2	Idea	Gujarat	Rs.1076.0 6Cr.	1974-1979 (Uplink) and 2164-2169 (Downlink)
3	Idea	Punjab	Rs.322.01 Cr.	1959-1964 (Uplink) and 2149-2154 (Downlink)
4	Idea	Himachal Pradesh	Rs.37.23 Cr.	1969-1974 (Uplink) and 2159-2164 (Downlink)
	Total		Rs.1465.6 0Cr.	

Vodafone

S.N.	Petitioner	Service Area	Amount	Amount
1	Vodafone Digilink	Haryana	222.58	1974-1979 (Uplink) and 2164-2169 (Downlink)
2	Vodafone West	Gujarat	1076.06	1974-1979 (Uplink) and 2164-2169 (Downlink)
	Total (in cr)		1298.64	

Dishnet

S.N.	Petitioner	Service Area	Amount	Amount
1	Dishnet	Jammu & Kashmir	30.30	1964-1969 (Uplink) and 2154-2159 (Downlink)
2	Dishnet	Punjab	322.01	1974-1979 (Uplink) and 2164-2169 (Downlink)
	Total (in cr)		352.31	

Bharti

S.N.	Petitioner	Service Area	Amount	Amount
1	Bharti	Jammu & Kashmir	30.30	1974-1979 (Uplink) and 2164-2169 (Downlink)
	Total (in cr)		30.30	

It is the common grievance of all the four petitioners that the spectrums allocated in their favour in the respective service areas suffer from severe interferences causing great disruption in mobile phone services provided by them to their subscribers. It is stated that the interference in the spectrums allocated to them is so intense that at times it becomes impossible to provide any mobile service, leave alone maintaining the quality of service as stipulated in their licence conditions and mandated by the Regulator. It is submitted on behalf of the petitioners that they paid large sums of good money as market determined price for allocation of the spectrums and it is axiomatic that in consideration they ought to be given clean, interference free and commercially exploitable spectrums. The

action of the DoT in allocating them spectrums that, fully within its knowledge, constantly suffers from interference is wholly unreasonable and in violation of the petitioners' legal and contractual rights. It is further submitted on behalf of the petitioners that their licences are for a period of 20 years and they have already spent five years pursuing redressal of their grievance from the DoT but as no relief was forthcoming, they were constrained to approach the Tribunal seeking urgent remedial measures.

Idea, Vodafone and Dishnet, in their respective petitions mainly seek a direction to the Respondent to substitute/replace the spectrums in 2100 MHz allocated to them in their respective service areas by commercially usable spectrum. Bharti in its petition, however, prays for a more comprehensive set of reliefs which are as under:

(a) Direct the Respondent to immediately rectify the interference in the 3G spectrum allocated to the Petitioner in the 2100 MHz spectrum band in the J & K Service Area making it commercially usable to provide 3G services in the J & K Service Area;

(b) Or in the alternative and without prejudice to the prayer (a) hereinabove, direct the Respondent to immediately allot to the Petitioner alternative clean, interference – free, and commercially usable 3G spectrum in the 2100 MHz spectrum band in the J & K Service Area in the frequency of 1940 – 1959 MHz or in any other frequency having clean, interference – free, and commercially usable 3G spectrum;

(c) Direct the Respondent to extend the 20 year period of allotment of 3G spectrum in the 2100 MHz spectrum band in the J & K Service Area to commence from the date when the Respondent makes clean, interference –

free, and commercially usable 3G spectrum available to the Petitioner instead of commencing from 01.09.2010;

(d) Grant damages, loss, and compensation to the Petitioner on account of loss of business, unutilized infrastructure, loss of goodwill, operational costs, maintenance costs, personnel costs, and the like, caused due to the Respondent allocating 3G spectrum in the 2100 MHz spectrum band in the J & K Service Area to the Petitioner, which is rife with interference;

(e) Grant ex-parte, ad-interim orders in respect of prayer (b) hereinabove; and

(f) Pass any such other and further(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

When the petitions first came up before the Tribunal (in March 2015), it found undeniable materials on record showing that there was interference in the uplink and downlink frequencies allocated to the petitioners, at least in certain parts (mainly around the borders with Pakistan) of the service areas in question. Further, though the concern of the petitioners was primarily their commercial interests, the Tribunal found in the matter some elements of public interest as the interferences in mobile phone service would also affect the people living in those areas. The Tribunal, therefore, deemed fit to proceed in the matter in a conciliatory manner rather than following the adversarial procedure.

It was from that point of view that the Tribunal passed the order dated 20 April 2015 in which the stand of the DoT is noted as under:

“On 21 April 2015 when the cases were listed, Mr. Banerjee, on the basis of the instructions received by him stated that the DoT was willing to have a

monitoring exercise held jointly by Wireless Monitoring Organization and the petitioners so as to exactly ascertain the location, direction and strength/power of the interferences in the allotted frequencies in the areas in question. Following the monitoring, if it is found that the sources of interference are inside the country, the DoT will take corrective steps and resolve the matter within a reasonable time. If, however, on monitoring it is found that the sources of interference are from across the border, the DoT will still try to resolve the issue through bilateral meetings with the Pakistan government.”

At that stage, the proposal for a fresh monitoring exercise was strongly opposed on behalf of the petitioners who saw it as device to further delay the resolution of a pressing problem being faces by them. It was submitted on behalf of the petitioners that there were already several reports and studies before the DoT and the fact that the spectrums allocated to the petitioners badly suffered from interferences is fully within the knowledge of the DoT. There was no need for a yet another monitoring exercise.

The Tribunal, however, accepted the suggestion made on behalf of the DoT and passed the following directions constituting a committee for carrying out a monitoring exercise in Punjab, Haryana, J&K and Himachal Pradesh service areas:

“But before considering any other option, we would like to have a good grasp of the problems besetting the petitioners in their respective service areas. To that end, we deem it proper to have a survey made under the supervision of the Tribunal and by a Committee constituted under our orders.

We, accordingly, constitute a Committee to conduct a survey in the affected areas of Punjab, Haryana, J&K and Himachal Pradesh service areas. The Committee shall comprise of:

1. Mr. Dinesh Jha, Deputy Director, WMO (Wireless Monitoring Organisation), Mob: 9868133396, email: jha.dwa@rediffmail.com.

2. Mr. Tarun Chaudhary, Engineer-in-Chief (NR), WMO (Wireless Monitoring Organisation), Mob: 09968060385, email: tarun_chaudhary@hotmail.com
3. Lt. Col. Vineet Kumar, JCED (representing the Defence), Mob: 8587800986, email: vineetdhiran@gmail.com
4. Prof. Huzur Saran, Department of Computer Science & Engineering, IIT, Delhi (independent Expert Member), Mob: 9810111788, email: saran@cse.iitd.ac.in.
5. Mr. Sunil Patel, Circle CTO, Haryana (representing Vodafone Digilink Ltd.), Mob: 09999018800, email: sunil.patel1@vodafone.com
6. Mr. Pankaj Chopra, Principal Technical Officer (representing Bharti Airtel Ltd.), Mob: 9910060639, email: pankaj.chopra@airtel.com
7. Mr. Anil Tandon, CTO (representing IDEA Cellular Ltd.), Mob: 09702003300, email: anil.tandan@idea.adityabirla.com
8. Mr. Hari Om Mishra, AGM, Circle Network Head, Punjab (representing Dishnet Wireless Ltd.), Mob: 9803199309, email: hariom.mishra@aircel.co.in

Mr. Dinesh Jha shall be the Convenor of the Committee and he shall call the first meeting of the Committee at Delhi within one week from today. In the meeting, the Committee will draw out the plan and fix the time schedule so as to complete the survey and submit the survey report to the Tribunal within four weeks from the date of the first meeting.

In the first meeting of the Committee, the telecom service providers shall provide to the Committee through their representatives, the latest status of interference along with details such as Base Transmitting Station (BTS) location/areas where the interference is being observed, direction of interfering signals, power of interfering signals etc.

The term of reference of the Committee will be as follows:

1. The exact location and extent of area affected where interference is experienced.

2. The nature of interference whether continuous or intermittent or at a particular time during the day?
3. Whether interference is in the entire band or is confined to some frequencies in that band.
4. The extent to which it affects the service (frequency of call-drops, lack of connectivity, decreasing data speed etc.)
5. The strength and direction of the interfering signals.
6. The possible location and the nature of source/device emitting the interfering radiation.
7. Solutions possible including identification of alternate frequency.
8. Any other aspect of the matter on which the survey team may like to give its views.”

A second and similar committee was constituted by that order for carrying out the monitoring exercise in the service area of Gujarat.

Here it is significant to note that for the both the committees, the Deputy Director, Wireless Monitoring Organisation, DoT was appointed as the Convenor and both the committees had as members, besides the representatives of the petitioners, Engineer-in-Chief (NR), Wireless Monitoring Organisation, DoT, a representative from the Defence and Prof. Huzoor Saran of the IIT Delhi as an independent expert member.

The committees carried out the monitoring exercise based on field survey and submitted the Radio Monitoring Survey Reports for Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and Gujarat. In **Punjab**, the committee found definite

evidence of spill-over signals from the Pakistan cellular CDMA network using WLL technology. The committee, however, also found the presence of troposcattering ducts. The finding of the committee was based on the fact that even if the power in the petitioner's downlink, i.e., from BTS to handset were marginally higher than 20 watts which is prescribed in India, the electromagnetic wave could not travel upto 300 to 500 kilometres inside the Indian territory. From this, the committee inferred that there must be some phenomena which are other than that of the spill-over signals from one country's cellular network to another country's network.

In case of **Punjab**, the recommendations of the committee are as under:

“5.3 At present it is difficult to find a technical solution to prevent such interferences including those arising from troposcattering ducts and troposcattering effects by various interactions, coordination and other intervention with Pakistan. However, we could coordinate with Pakistan being another member country for utilizing the harmonized band vis-à-vis technology. The solution based on this may require years altogether because various other issues and stakes are involved. A statutory technical coordination mechanism has to be evolved among SARC member countries to address this problem in a systematic manner as the effect of troposcattering ducts is experienced even with Sri Lanka and Bangladesh.

5.4 One solution which could save the hardships faced by the valuable customers and the financial loss to M/s Idea, M/s Dishnet and the Government in particular is by temporarily **frequency swapping in some of the districts namely Amritsar, TaranTaran, Firozpur, Fazilka and Moga where both the presence of spillover signals and the radiated energy due to troposcattering ducts are present.**”

In case of **Himachal Pradesh**, the committee's recommendations are as under:

“4.1 The interference observed earlier also was only intermittent in nature and that for only short duration. At present, the interference level is in the range of -95dBm to -100dBm. The main cause of interference, that is the random transmission from the Defence Services, has stopped and thus the harmful interference has successfully been resolved. M/s Idea is satisfied with the exercise. However, the committee recommends coordinating with Pakistan being another member country of ITU for utilizing the harmonized band vis-à-vis technology. A statutory technical coordination mechanism has to be evolved among SARC member countries to utilize the harmonized bands for the mobile services.

4.2 The Defence Services should not even randomly transmit in the coordinated frequency bands as this leads to the unsatisfactory delivery of 3G mobile services by the service provider.”

In case of **Jammu and Kashmir**, the committee's recommendations are as under:

“4.4 One solution which could save the hardships faced by the valuable customers and the financial loss to M/s Idea, M/s Airtel and the Government in particular is by **temporarily frequency swapping in some of the districts namely Jammu, Samba, Kathua, Riasi and Rajauri where the presence of spillover signals is predominant most of the time.**”

In case of **Gujarat**, the committee's recommendations are as under:

“5.4 One solution which could save the hardships faced by the valuable customers and the financial loss to M/s Idea, M/s Vodafone and the Government in particular is by temporarily **frequency swapping.**”

5.5 xxxxxx

5.6 Therefore, based on the above facts and figures we may recommend to change the existing uplink allotted frequency bands of M/s Vodafone and M/s

Idea respectively from 1969-1974 MHz and 1974-1979 MHz and their corresponding downlink frequency bands to 1925-1930 MHz and 1930-1935 MHz and corresponding downlink frequency band respectively **temporarily** till the coordination with Pakistan is completed or the satisfactory technical solution to the said interference problem is found. In all probability this will remove the effects of harmful interference as in this case the said frequency bands will be uplink for 3G services in both the countries India and Pakistan.”

In case of **Haryana**, the committee in its report stated that it would be essential to do some more measurements through radio monitoring survey during the period September to March to ensure the extent of geographies in Haryana affecting the 3G by such phenomena and until then it would not recommend any change in the allotted uplink frequency bands and the corresponding downlink frequency bands of Idea and Vodafone respectively. The committee submitted a supplementary report for Haryana on 6 November 2015 in which it made the following recommendations:

“4.4 As indicated in our earlier report and based on the Radio Monitoring Survey conducted now, the effects of such harmful interferences are observed to be very severe in the vast extent of geographies in Haryana affecting the 3G services by such phenomena. In the foggy weather during September to March, the effects of such troposcattering ducts are more predominant and the 3G services may degrade quite low in the said districts. Therefore, based on the above facts and figures, **the committee recommends temporary swapping of the allotted uplink frequency bands of M/s Idea and M/s Vodafone respectively from 1959-1964 MHz and 1974-1979 MHz and their corresponding downlink frequency bands in eight districts of Haryana namely Sirsa, Fatehabad, Hissar, Ambala, Jind, Kaithal, Kurukshetra and Karnal with the bands 1940-1945 MHz and 1945-1950 MHz respectively and the corresponding downlink frequency bands.** The service providers also stressed that some other districts are also affected considerably.

The bands 1940-1950 MHz/2130-2140 MHz are free from EMI/EMC problems. As stated above, the solution lies in utilizing the harmonized bands in

both India and Pakistan to avoid causing harmful interference to one country's uplink receivers from the downlink transmission from that of the other country's."

On receipt of the committee's report before the Tribunal, it was stated on behalf of the DoT, on more than one dates in the proceedings, that the report was fully accepted by it and it was bound to carry out its recommendations. But when the stage came for actual swapping of frequencies as recommended as a temporary measure in the committee's report, the DoT took a complete turn around and adopted a stridently adversarial posture. It took the stand that it was not bound by the recommendations of the committee constituted by the Tribunal. The DoT also formed an internal committee without any prior information to the Tribunal and produced the report of the committee formed by it as counter to the report by the committee constituted by the Tribunal. The DoT's refrain is that the interferences in the spectrums allocated to the petitioners have their source across the border. It has taken up the issue bilaterally with Pakistan and also before the ITU, a specialized agency of the United Nations for information and communication. The DoT is strongly and vehemently opposed to any swapping of the uplink and downlink frequencies allocated to the petitioners in the affected service areas, even as a temporary measure. It is not bound to make any proportionate refund from the prices paid by the petitioners for allocation of the spectrums to them and there is no question of extension period of licence granted to them. In short, the petitioners

were granted spectrums and allocated uplink and downlink frequencies as per the Government policy and they must live with it and make use of it as best as they can, until the matter is resolved in coordination with Pakistan.

In view of the stand taken by the DoT, the Tribunal made it clear to the petitioner that the only course open in the matter was for the two sides to adduce evidences in support of their respective cases in light of which the Tribunal may consider either dismissing the petitions or granting reliefs as claimed by the petitioners or as may be considered legal, suitable and equitable by the Tribunal.

On behalf of the petitioners, however, it was contended that there are already sufficient material on record to direct swapping of frequencies or to grant any other suitable relief as may be deemed proper by the Tribunal. The parties were heard accordingly on a number of dates. In course of hearing, counsel for the petitioners took us through a large number of documents in the form of correspondences and internal reports from the DoT. The materials referred to by the petitioners indeed leave no room for doubt that the spectrums allocated to them suffer from serious interferences and in face of those materials, it would be foolhardy to even try to deny that the spectrums allocated to the petitioners are completely clean and absolutely free from interference. But in our considered view, such a broad finding may not justify a direction for swapping of frequencies which may have serious consequences in spectrum management for the Government of India.

In our view, no proper relief can be granted to the petitioners unless the territorial and operational extent of interference is ascertained with some reasonable exactitude. What is meant by “territorial extent”, is the extent of the affected area in proportion to the total of the service area, the proportion of population/number of subscribers in the unaffected and the affected areas within that service area, the revenue generated from the unaffected/affected areas in that service area. What is meant by “operational extent”, is the extent of interferences in mobile telephone service in terms of number of calls and period of time.

In our view, it is only when the Tribunal is in a position to arrive at a finding on the issues as indicated above, which are all pure questions of fact, that it will be possible to consider whether the petitioners are entitled to a direction to the DoT for swapping of their frequencies or some monetary compensation or some other suitable relief.

At this stage, Mr. Meet Malhotra, senior counsel appearing for Dishnet submitted that the report of the committee constituted by the Tribunal has recommended for swapping of the frequencies as a short term measure. He further submitted that the Tribunal may at least direct the DoT not to take any steps or alter the position so that if finally such a relief is granted by the Tribunal, it may not be in a position to comply with the Tribunal’s direction.

Ms. Pinky Anand, Additional Solicitor General appearing for the DoT was asked to get instructions on this limited issue. She informed the Tribunal that the DoT is not willing to make any commitment whatsoever. She, however, stated that a very positive response from the concerned authorities in Pakistan has been received in response to our request for a proper coordination in the use of spectrums for mobile services so as to eliminate any cross border spill-over and the DoT hoped and expected that the whole issue will be resolved quite soon.

We note the response of the DoT but in the facts and circumstances of the case, refrain from making any directions.

Put up for framing of issues on 23.08.2016.

Sks




(AftabAlam)
Chairperson


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(B.B. Srivastava)
Member