

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

Dated 18 March, 2016  
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**Petition No. 8 of 2014**

M/s Idea Cellular Ltd., Gujarat ..... Petitioner  
Vs.  
Union of India, New Delhi ..... Respondent

**Petition No. 27 of 2014**

M/s Idea Cellular Ltd., New Delhi ..... Petitioner  
Vs.  
Union of India, New Delhi ..... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE DR. KULDIP SINGH, MEMBER  
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioner : Mr. Navin Chawla, Advocate  
Mr. Santosh Sachin, Advocate

For Respondent : Mr. S.S. Shamsbery, Advocate  
Mr. Vikas Malik, Advocate

## ORDER

### Kuldip Singh:

The petitioners are aggrieved by the penalties imposed upon them for alleged violation of the terms and conditions of the License Agreement in regard to verifications of the subscribers.

This Tribunal has examined the customer verification process in detail in its judgment dated July, 2, 2014 in petition no. 48 of 2012 as under:

“4. Clause 41.14 of the License Agreement is a part of security considerations. The objective of this clause is that the identity as well as address details of any subscriber subscribing to the services of the licensee company should be readily available in case of need. We may note that in case of a fixed phone service, the premises where the phone is installed is well known in contrast to mobile service where the subscriber can be anywhere. It is more so in case of prepaid service for which the phone bill is not required to be issued to the subscriber and the subscriber can avail the services by purchasing prepaid vouchers and charging his account. In case of any need by a security agency, the details of such subscribers must be readily and correctly available. Since the matter may involve the security of the country, the importance of these details cannot be over-emphasized.

5. Department of Telecommunications (DoT)-Union of India has been issuing instructions from time to time for compliance with clause 41.14 of the license. It has also provided for a scheme of financial penalty for violation of terms & conditions of the license agreement in respect of subscriber verification. The Department has also been carrying out the audit of the licensees to ensure their compliance with the instructions issued from time to time. Vide letter dated 01.6.2010 the work relating to imposition of penalty has been de-centralized and put on Telecom, Enforcement, Resources and Monitoring (TERM) Cells set up under DOT in various license areas.

Subscribers, while subscribing to the services of a licensee, are required to complete a form which is called as the 'Customer Acquisition Form (CAF)'. The subscribers are also required to submit the proof of identity as well as proof of address, for which certain documents specified by the Department of Telecommunications (DoT) are to be provided. Licensees are also required to follow the guidelines issued in this regard from time to time. To ensure compliance with the instructions in this regard, TERM Cell of the concerned service area conducts monthly audits of the licensees on sample basis. On the total subscriber base of the licensee in that service area, a sample of one percent of the subscribers at random is taken and the licensee is asked to provide copies of the CAF Forms of the subscribers. These copies of CAF forms are checked for compliance with the instructions and guidelines issued from time to time and in cases of non-compliance, the licensees are given a week's time to discuss the cases and make available the original CAFs. The initial report indicating the findings about compliance/non-compliance is also provided to the licensee. Based on the discussions with the service provider (licensee), the report is finalized and jointly signed by both. Based on this final report, the amounts of penalty are calculated in accordance with the telescopic rate that provide for increasing amounts of penalties for higher percentage of non-compliance. The service provider, if he so desires can make a representation to the Deputy Director General (DDG), TERM whose decision is final."

### **Petition No. 8 of 2014**

The petitioner is a telecom service provider. It has been granted license under section 4 of the Indian Telegraph Act, 1885 to provide Cellular Mobile Services in the service area of Maharashtra. The respondent, Department of Telecommunications (DOT), Union of India, is the licensor.

The facts of the case are simple. During the monthly audits conducted by the respondent for the period from April 2009 to June 2010, it found some CAFs non-compliant with guidelines issued by it. In respect of some of the CAFs, the grounds for non-compliance were on account of signature

mismatch and acceptance of documents such as Bank Passbooks and College IDs as Proof of Address (PoA) and Proof of Identity (PoI). The details of the penalties imposed as per the impugned Demand Notices are as under:

Impugned Demand Notice Dated	Audit Period	No. of CAFs allegedly non-compliant.	Amount of Penalty in Rs.
16.07.2010	April 2009 to July 2009	5015	5,59,50,000
05.08.2010	August 2009 to December 2009	5232	9,31,60,000
26.08.2010	January 2010 to May 2010	4407	2,66,55,000
07.10.2010	June 2010	810	40,50,000

The relevant part of the impugned letter dated 16.07.2010 (other impugned letters are similar) is as under:

“2. WHEREAS as per **letter No.800-20/2010-VAS dated 01.06.2010** Department of Telecommunication, Licencing Group (Access Services Cell), Sanchar Bhawan, 20, Ashoka Road, New Delhi-1 the Telecom Enforcement Resource & Monitoring Cell (TERM Cell), Department of Telecommunications are authorized on behalf of licensor to impose the financial penalty for all cases of violation of terms and conditions of license agreement in respect of subscriber verification failure cases for the licensed service area.

3. WHEREAS as per the cause no.41.14 in Part VI of CMTS/UAS License agreement, which inter-alia provides that “The licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber, instructions issued by the licensor in this regard from time to time should be scrupulously followed.

7. AND WHEREAS it is observed from the sample subscriber verification reports for MAHARASHTRA Service Area for the period from April 2009 to July 2009 that M/s Idea Cellular Ltd. has failed to supply CAFs for 1062 numbers of subscribers and has even failed to comply the essential requirement of subscriber verification like photo on CAF, I.D. proof and address proof in 4172 cases. The total number of violations are 5232. It is clear from the report that proper verification has not been carried out by the service provider at the time of provisioning of service to the subscriber. Hence M/s Idea Cellular Ltd. has violated the terms and conditions of License Agreement and instructions issued time to time by licensor on the subject by providing mobile connection without proper verification. The percentage of correct verification of M/s Idea Cellular Ltd. for Maharashtra Service area has been ascertained and financial penalty has been calculated as per the letter no. 800-52/2008-VAS – III (pt) dated 24<sup>th</sup> December 2008. The details are enclosed as ‘Annexure-I’ and ‘Annexure – II’ is emailed at the address : laxmi.narayana@idea.adityabirla .com.

8. HENCE, for the reasons stated above, prescribed graded financial penalty of an amount of Rs 9,31,60000/- (Rupees Nine crore and thirty one lakh and sixty thousands only) on the basis of correct subscriber verification percentage over the sample check for the period from April 2009 to July 2009 is HEREBY imposed on M/s Idea Cellular Ltd. for Maharashtra Service Area. This amount is to be deposited to LF cell of DoT within 21 days from the date of issue of this order through a demand draft or pay order payable at New Delhi drawn on any schedule bank in favour of Pay and Accounts Officer(HQ), Department of Telecommunications, New Delhi 110001 failing which the amount of the penalty shall be recovered with applicable interest as per terms and conditions of the agreement for non-payment of dues.”

The petitioner vide its letter dated 01.09.2010 represented against the impugned demand notices dated 16.07.2010 and 05.08.2010. As per the petitioner, 392 CAFs were wrongly rejected for accepting bank passbook as PoI/PoA. 1227 CAFs were wrongly rejected on the ground of signature mismatch. As per it, the rejection of these CAFs due to minor signature mismatch was arbitrary and wrong. 59 CAFs were wrongly rejected for accepting college ID as a valid document. Further, 996 CAFs were wrongly

rejected on ground of non-availability of signature of authorized signatory. The other grievance of the petitioner was that the penalty imposed by the respondent was not in conformity with the graded penalty prescribed under the DoT circular dated 24.12.2008. The petitioner also deposited a sum of Rs. 2,92,77,000 without prejudice to its rights and contentions.

Vide its letter dated 08.10.2010, the petitioner also represented against the demand notice dated 26.08.2010. As per it, 428 CAFs rejected on ground of signature mismatch, 358 CAFs rejected for accepting Bank Passbook and College ID as PoI/PoA, and 214 CAFs that were compliant with license conditions and extant instructions, were wrongly rejected. The petitioner also deposited a sum of Rs. 77,55,000/- without prejudice. The petitioner similarly represented against the rejection of 78 CAFs vide demand notice dated 07.10.2010 that as per it were compliant with the license conditions and extant conditions.

As per the circular of the respondent dated 10 May 2005, the service providers are required to obtain a duly filled proforma annexed with the circular as Annexures I & II. As per these annexures, certain documents can be accepted as PoI/PoA. As per clause (a) (vii) of the Annexure-I and the instructions contained in the Annexure-II, "Any other document containing

photograph” may be accepted as PoI/PoA. The relevant clause 3 of the circular and relevant part of the annexures are as under:

“3. In this regard, the Service providers are required to obtain the relevant proforma as annexed duly filled before providing the mobile telephone service to any customer (Annexure I & II). All the operators are to use these proformas with the mentioned columns. However, the operators may supplement [and not substitute] this proforma in accordance with their business considerations.

Annexure-1

XXXXXXXXXXXXXX

- (a) Please furnish proof of identity / address by furnishing any Photo Identification viz.
- (i) Income-Tax PAN (ii) Photo Credit Card (iii) Photo Identity Card (iv) Passport (v) Arms Licence (vi) Driving Licence (vii) **Any other document containing photograph**
- (b) Public Limited Cos. May enclose certificate of incorporation alongwith any proof of identity as above of the authorised officer of ‘ the Company.’
- (c) In case of Govt. of India Undertakings, Govt. of India Offices/State Govt. Offices, the aforesaid requirements are dispensed with and self-certification on the letter head will suffice alongwith the name and designation of the coordinating officer to be consulted in case of need.
- (d) In case of Foreign Missions in India and other foreign agencies, the name and designation of the authorized officer alongwith details of officials etc. for whom the Cellular Mobile Phone is intended
- (e) In case of outstation subscribers, details of local reference(s) to be given.

Annexure-II

XXXXXXXXXXXXXX

Instructions;

- (a) Please furnish proof of Identity/address by furnishing any of the following:
- (i)Income-Tax PAN (ii) Photo Credit Card (iii) Photo Identity Card (iv) Passport
- (v) Arms Licence (vi) Driving Licence (vii) **Any other document containing photograph**

- (b) Public Limited Cos. may enclose certificate of incorporation alongwith any proof of identity as above of the authorised officer of ' the Company.'
- (c) In case of Govt. of India Undertakings, Govt. of India Offices/State Govt. Offices, the aforesaid requirements are dispensed with and self-certification on the letter head will suffice alongwith the name and designation of the coordinating officer to be consulted in case of need.
- (d) In case of Foreign Missions in India and other foreign agencies, the name and designation of the authorized officer alongwith details of officials etc. for whom the Cellular Mobile Phone is intended.
- (e) In case of outstation subscribers, details of local reference(s) to be given."(emphasis supplied).

The respondent issued clarifications vide its circular dated 16.04.2008 .  
The relevant part of the circular is as under:

“Subject: Verification of Identity of subscribers.

This has reference to his officer letter No.800-04/2003-VAS/112 dated 10<sup>th</sup> May 2005 wherein detailed instructions were issued for verification of identity of subscribers. Proforma of application for prepaid as well as post paid/regular telephone connection was also enclosed in the above mentioned letter. In the said proforma, requirement of furnishing documents for proof of identity / address were also indicated. **Service Providers, their Association and VTM Cells have sought clarifications about acceptability of various documents against proof of identity address from time to time.**

2. The matter has been examined and I am directed to clarify that the documents listed in Annexure is acceptable against proof of identity/address for provision of telephone connection.

Annexure

XXXXXXXXXXXXXXXXXX

1. For Identity/Address proof

(i) Passport

(ii) Arms Licence

(iii) Driving Licence

(iv) Photo Identity Card having address

(v) Election Commission ID Card

(vi) **Any other document containing photograph includes**

- a) Ration Card with photo and address applicable for person whose photo is affixed
- b) CGHS/ECHS Card
- c) Certificate of address having photo, issued by MP/MLA/Group A Gazetted Officer in letter head
- d) Certificate of address with photo from Govt. recognized educational institutions (for students only)
- e) Certificate of address having photo issued by Village Panchayat head (for rural areas)

2. For Identity Proof (only)

- (i) Income-Tax PAN
- (ii) Photo Credit Card

3. For Address Proof (only)

- (i) Ration Card
- (ii) Water Bill (not older than last 3 months)

Telephone Bill of Fixed line (not older than last 3 months)” (emphasis supplied).

It is seen from this circular that the service providers had some doubt and sought clarifications in response to which this circular was issued. The respondent issued further circulars on 23<sup>rd</sup> March 2009 and 7<sup>th</sup> October, 2009. The circular of 23 March 2009 provided for some additional documents that may be accepted as PoI/PoA. Clause 5 of this circular is as under:

“5. Additional Documents:

Henceforth, the following documents shall also be acceptable as Proof of identity/Address:

- (i) Address Card with photo issued by Dept of Posts as PIA
- (ii) Smart card issued by CSD, Defence/Paramilitary as Pol
- (iii) Current passbook of Post office / PSU Bank as PoA, with photo as PIA”

The circular of 7 October 2009, however, gave a comprehensive list of the documents that may be accepted as Proof of Identity and Proof of Address. Since this circular is of some importance, it is reproduced below:

“Subject: Documents for Mobile Subscriber Verification

On the basis of discussions held in the workshops and meetings by DoT with the service providers and security agencies, undersigned is directed to convey the approval of competent authority for following instructions/clarifications for compliance with immediate effect and until further orders:

Proof of Identity/Proof of Address for Mobile Subscriber Verification

Following documents shall be acceptable as Proof of Identity and Proof of Address:-

<b>For Proof of Identity (All Identity proof to have Photo)</b>	<b>For Proof of Address</b>
Passport	Passport
Arms License	Arms License
Driving License	Driving License
Election Commission ID Card	Election Commission ID Card
CGHS/ECHS Card	CGHS/ECHS Card

Certificate of address having Photo, issued by MP/MLA/Group A Gazetted Officer in letter head	Certificate of address having Photo, issued by MP/MLA/Group A Gazetted Officer in letter head
<b>Certificate of address with photo from Govt. recognized educational institutions (for students only)</b>	<b>Certificate of address with photo from Govt. recognized educational institutions (for students only)</b>
Certificate of photo identity issued by Village Panchayat head or its equivalent authority (for rural areas)	Certificate of photo identity issued by Village Panchayat head or its equivalent authority (for rural areas)
Income-Tax PAN Card	Water Bill (not older than last three months)
Photo Credit Card	Telephone Bill of Fixed line (not older than last three months)
Address Card with photo issued by Dept of Posts, Govt. of India	Electricity Bill (not older than last three months)
Smart card issued by CSD, Defence/Paramilitary	Income Tax Assessment Order
<b>Current passbook of Post office / any scheduled bank, having photo</b>	Vehicle Registration Certificate
Photo Identity Card (of Central Govt./PSU or State Govt. / PSU only)	Registered Sale / Lease Agreement
Photo Identity Card issued by Govt. recognized educational institutions (for students only)	Address Card with photo issued by Deptt. of Posts, Govt. of India
Caste and Domicile Certificate with photo issued by State Govt. like Assam and other states.	<b>Current passbook of Post office / any Scheduled Bank</b>
Pensioner Card having photo	Photo Identity Card having address ( of Central Govt./PSU or State Govt./PSU only)

Freedom Fighter Card having photo	Credit card Statement (not older than last three months)
Kissan Passbook having photo	Caste and Domicile Certificate with Address and photo issued by State Govt. like Assam and other states. Pensioner's Card with address Freedom Fighter Card with address Kissan Passbook with address

In this regard it is clarified that the documents mentioned above will be accepted for future audits by the TERM cells even if these have been accepted earlier by Service Providers. However, past cases will not be reviewed / re-opened" (emphasis supplied)

The case of the respondent is that the Bank Passbook was considered unacceptable with effect from April 2008 as it was not listed as one of the acceptable documents in the circular dated 16.04.2008. The college IDs were rejected in view of the circulars dated 23.03.09 and 07.10.09. CAFs for signature mismatch were rejected only if these were found to be substantially different from those available on the attached documents. The pleadings of the respondent in this regard are as under:

Page 145 & 146 of paper book

"The Bank passbook (with photograph) was considered invalid w.e.f. April 08 onwards in view of the AS Cell Dot instructions dt: 16.04.2008 as this document was not listed as valid document in the said instructions.

Signature mismatch cases were rejected only if signatures on CAF are found categorically different in comparison with the signatures available on the attached documents. Minor variations are ignored. Your claim or arbitrarily rejecting CAFs on the ground of signature mismatch is therefore not accepted (sic).

The college ID cards were rejected by this office in view of the Dot instructions dt: 23.03.09 and 07.10.09. Therefore your claim for validity of this document issued by reputed institution is not tenable (sic).”

During the hearing, Mr. Shamsbery relied on the instructions contained in the circular dated 7 October 2009. We are unable to agree with the stand of the respondent for more than one reasons. First let us examine the validity of Bank Passbook with photograph and College ID as PoI/PoA. As we noted above, the circular dated 10 May 2005 clearly provided for any document containing photograph as a valid document. Even the circular dated 16.04.2008 provides for a photo identity card having address as a valid document. How a college ID with address and photograph can be rejected in terms of these two circulars? As regards the plea of the respondent that circular of April 2008 does not provide for Bank Passbook, we may note that Clause (vi) of this circular is an inclusive clause. While it specifically includes certain documents, it cannot be read to mean that the documents specified therein are exhaustive. No doubt that the circular dated 7 October 2009 gives a specific list of acceptable documents, we may note that a certificate of address with photo form govt. recognized educational institutes is a valid document for PoI for students. It was argued on behalf of the respondent that a college ID with address is not a certificate from the college. We are not convinced. We may further note that this circular also provides for

a current passbook of a post office/scheduled bank having photo as valid for identity and without photo as valid for address.

Secondly, we may note here that when a monthly CAF audit is conducted, the CAF samples are picked up on a random basis and these may pertain to a period prior to October 2009 and April 2008 even if the audit itself is conducted in 2010 or later. Certainly the CAFs filled based on documents that were valid at that point of time cannot be held to be invalid due to a later circular even if it no longer provided for these documents.

Further, as we have already noted above, the circulars were being issued from time to time as there was a lack of clarity to the service providers. How can then a service provider who acted bonafide in obtaining the documents understood as valid by it be penalized? We also fail to understand that if a document is found acceptable as per a later circular, how can then it be unacceptable if it was accepted in the past?

Be that as it may, we find that the documents were not only acceptable in terms of the circulars, but also that a circular cannot be applied retrospectively so as to result in invalidating the documents that were perfectly valid at the time they were obtained.

We now come to the question of signature mismatch. We may note here that both the proof of identity as well as the CAF form contains photographs of the subscriber. As long as these photographs are matched with the applicant at the point of sale, the identity is well established. We tend to agree with the plea of the respondent that the signatures undergo a change with time and may not match exactly with the document that may be quite old. Moreover, we may also note that many of the documents such as driving licenses contain signatures that are scanned and printed on the document. These tend to show some variation. Further, a person at the point of sale cannot be expected to be a handwriting expert who can match the two signatures. As per the respondent, penalties on this ground are not imposed for minor variations but in cases where there is a substantial difference. The perception regarding a difference being minor or substantial is itself highly subjective and may vary from person to person leading to arbitrariness which cannot be a basis for a penal action. We find that the respondent is not correct in levying penalties on this ground.

In view of the discussions above, the petition is allowed and the impugned letters are set aside.

With regard to some other CAFs rejected by the respondent, which as per the petitioner were fully compliant or were rejected for want of signature

of authorized signatory, we find that the representation of the petitioner against the same has been disposed of by the respondent summarily. We would have asked the respondent to examine the representation of the petitioner in this regard and pass a reasoned order but for another development that goes to the root of the matter. The imposition of penalties for CAF violations was challenged by another licensee namely Dishnet Wireless Ltd. before the High Court of Tripura in Civil Writ Petition no. W.P(C) 422 of 2012. Before the order reserved in the present case could be pronounced, the High Court of Tripura has held<sup>1</sup> the clause 10.2(ii) of the license agreement that provides for the imposition of penalties for violation of the terms and conditions of the license, as opposed to the public policy, ultra vires and against statutory provisions.

In view of the judgment of the High Court of Tripura above, the Tribunal would refrain from making any order in this regard.

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In this petition, the issue is of penalties levied on the petitioner for accepting Student College Identity Cards as PoA. Vide the impugned letter dated 11.10.2013, a supplementary penalty has been imposed for the period

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<sup>1</sup> Dishnet Wireless Ltd. Vs. UOI and anr. Judgment delivered on 08.01.2016.

from January 2011 to May 2013 in Karnataka Service area after including CAFs that have a student ID as a document.

In view of the findings in petition no. 8 of 2014 above, the supplementary demand vide the impugned letter is set aside.



*[Redacted signature]*

**(Aftab Alam)**  
**Chairperson**

*[Redacted signature]*

.....  
**(Kuldip Singh)**  
**Member**

*[Redacted signature]*

.....  
**(B.B. Srivastava)**  
**Member**