

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

Dated 22 March 2016

Broadcasting Petition No. 526 of 2015

(with M.A.No.62 of 2016)

M/s. Home Systems Pvt. Ltd., Mumbai ...Petitioner
Versus
Star India Pvt. Ltd., Mumbai ...Respondent

BEFORE:

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

For Petitioner : Mr. Jayant K. Mehta, Advocate
Mr. Diggaj Pathak, Advocate
Ms. Shweta Sharma, Advocate

For Respondent : Mr. Sai Krishna Rajagopal, Advocate
Mr. Saurabh Srivastava, Advocate
Ms. Shilpa Gupta, Advocate
Ms. Arpika Singhal, Advocate

For BECIL : Mr. Rajeev Sharma, Advocate

ORDER

This application(M.A. No. 62 of 2016) is filed seeking a review of the order of the Tribunal dated 21.1.2016 passed in the above petition.

As per the petitioner, SMS count given by BECIL for the period in dispute is total number of subscribers on the network and not the total number of

authorised subscribers, which as per the petitioner, is the relevant number for making payments to the broadcaster.

Heard Mr. Mehta, counsel for the petitioner / applicant for a considerable period of time. Mr. Mehta was assisted by a technical person from the client company. Also heard Mr. Sai Krishna, counsel for the respondent and Mr. Rajeev Sharma, counsel for BECIL who was assisted by the technical person who conducted the audit of the petitioner's network.

As per Mr. Mehta, the figure calculated by BECIL for active subscribers is based on command logs of SMS. He submitted that some times a command is given in the SMS with wrong STB number or VC Card Number and this leads to counting the same subscriber multiple times. As per him, BECIL has made an error in arriving at the figure of active subscribers. He further submitted that there are three different numbers possible in SMS and that is why there is a need to reconcile the SMS and CAS data.

As per BECIL, it has taken active subscribers both from the SMS data base and CAS data base. Further, since the figures obtained from SMS data base were lower than the CAS data base, BECIL discussed this with the petitioner at the time of audit. As per BECIL, it is due to a stop (suspension) command which may suspend a subscriber temporarily in the SMS but the entitlement for the

subscriber still remains intact in CAS. BECIL accordingly added all such subscribers that were in suspension to the active subscribers to arrive at the SMS figures.

As per BECIL, a subscriber who is temporarily suspended cannot be considered as de-activated. If such a subscriber was to be counted as de-activated this could lead to a situation where there is under-reporting of subscribers as the service provider may use this command to suspend the subscribers temporarily for some time at the time of taking the SMS figures and immediately thereafter, restore them to active status.

With regard to the submissions made by Mr. Mehta on command logs, we may note here that the difference between the SMS and CAS figures is so large that explanation given by Mr. Mehta is not convincing.

It may not be the intent of the petitioner to use the stop command to doctor the SMS reports but due to this, the SMS reports lose their credibility and legitimately become suspect in the eyes of the respondent. Such SMS reports can not be relied upon to objectively determine the subscribers of the petitioner.

After considering the rival submissions, we are convinced that the procedure adopted by BECIL, which is also the statutory authority for carrying out technical audits, is absolutely correct and there is no error in the report of BECIL. The application is dismissed accordingly.

Put up for further directions on 6th April 2016.



(Handwritten signature)
(Aftab Alam)
Chairperson

(Handwritten signature)
(Kuldip Singh)
Member

/NC/