

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

Dated 31 March, 2016

**Telecommunication Petition No.934 of 2012
with
(R.A.No.18 of 2012)**

Tata Teleservices (Maharashtra) LimitedPetitioner
Vs.	
Idea Cellular Limited	...Respondent

**Telecommunication Petition No.935 of 2012
(with R.A.No.19 of 2012)**

Tata Teleservices LimitedPetitioner
Vs.	
Idea Cellular Limited	...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. Ramji Srinivasan, Sr. Advocate Mr. M.A. Shoket, Advocate Mr. Nitin Kala, Advocate Mr. Kunal Singh, Advocate
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For Respondents	: Ms. Stephanie V. Sonavane, Advocate Ms. Chimnaye Chandra, Advocate
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ORDER

Kuldip Singh:

Both the petitioner and the respondent are telecom service providers and have been granted licenses by the Department of Telecom, Union of India, under section 4 of the Indian Telegraph Act. The petitioner holds licenses to provide Unified Access Service in all 21 telecom circles.

Since the issues in both these petitions are same, these are being disposed of by this common order. However, for the purpose of discussion, the facts are taken from petition no. 935 of 2012.

The petitioner is challenging the legality, propriety and validity of communications of the respondent dated 09.11.2012 and 28.11.2012 vide which it has asked the petitioner to a sum of Rs. 30,79,18,703/- towards SMS termination charges for the period from 01.07.2012 to 31.10.2012, and asked it to execute agreement for SMS termination.

On 6th December, 2012, the Tribunal passed the following interim order:

“4. Therefore, pending final hearing, it is directed that the SMS services of the Petitioner shall not be disconnected and if disconnection has taken place in any circle, the same shall be restored with immediate effect, subject to the condition that Petitioner will start paying 50% of the amount demanded by the respondent @ 10 paisa per SMS on net inflow of traffic basis. This

amount will be calculated and paid with effect from the date of filing of this petition. This payment will be without prejudice to the rights and contentions of the parties and equities will be adjusted between the parties at the time of final hearing.”

Following the notification of the 2013 regulation, on 23rd July, 2013, the Tribunal modified the order as under:

“Since the statutory provision been brought into effect from June 1, 2013, the interim orders passed in each of the cases need to be modified and brought in accordance with the statutory provision. That is to say, from 1.6.2013 ‘termination of SMS charges’ shall be payable @ Re 0.02 paise per SMS only.”

In order to provide various services to their subscribers, the parties entered into interconnect agreements. We have explained the process of interconnect as well as the regulatory mechanism in Aircel Vs. Vodafone¹. As far as the SMS termination charges are concerned, the interconnect agreement between the parties have different clauses as follows.

For the circles of Madhya Pradesh, Himachal Pradesh, Rajasthan, U.P. (East), Punjab, Bihar and Mumbai, there is no clause and no rate specified for SMS termination charge.

¹ Petition No. 843 of 2012.

For Gujarat, Delhi, Andhra Pradesh and Maharashtra, a supplementary agreement was entered in the months of October/November, 2003 as per which the charge for SMS termination was specified as Rs. 0.30/0.40 per SMS.

For the circles of Karnataka, U.P.(West), Kerala, and Haryana, initially there was no clause/rate for SMS termination but subsequently, on 05.05.2004, a clause 2.4 has been introduced that specifically provides for “Bill and Keep”. For Gujarat, Delhi and Andhra Pradesh also, the 30/40 paisa charge has been modified to “Bill and Keep” by clause 2.4 on 05.05.2004. Further, for the circles of Assam, Jammu and Kashmir, Kolkata, North East, Orissa, Tamil Nadu including Chennai², and West Bengal, there is a clause 1(A)(ii) of Schedule 1 as per which no termination charge is to be paid.

Clause 1(A)(ii) of Schedule 1 and Clause 2.4 are as under:

“Schedule 1

1(A)(ii)

No Termination Charge for SMS originated from either Party’s network and terminated on other Party’s network shall be payable.”

“ 2.4 The Parties, therefore, agree that till such time TRAI does not specify the Interconnect Usage Charge for SMS exchanged between Operators, the Parties will have Bill and Keep arrangement in circles for all SMS originated in one Party’s network and successfully terminated on other Party’s network.”

² In this case also clause 2.4 was inserted on 05.05.2004.

As per the petitioner, even for circles that provide for SMS termination charge, such terms have never been implemented and no invoices have ever been raised by either party. To this extent, agreements have been novated to keep these charges under Bill and Keep.

We have already dealt with the case where there was a specific clause for Bill and Keep/no payment for termination charge for SMS, in *Aircel Vs. IDEA*³. The case of the petitioners herein for circles that have specific clauses for Bill and Keep/No payment, whether from beginning or introduced later, is covered by our order in that case. No charges are payable by the petitioners for such circles.

The case for remaining circles, where there is no specific clause for Bill and Keep, are covered by the judgments of the Tribunal in *Aircel Vs. Bharti*⁴ and *Aircel Vs. Vodafone*⁵. For these circles, we direct the respondent to provide the necessary details including bifurcation of SMS data to the petitioner. The petitioner is directed to complete the reconciliation of data within four weeks of the receipt of these details. Based on the reconciliation, the amount found payable shall be paid within a period of four weeks after adjusting the amount already paid in terms of the interim order of this Tribunal dated 6th December, 2012.

³ Petition No. 943 of 2012.

⁴ Petition No. 130 of 2012 delivered on 24th September, 2012.

⁵ Petition No. 843 of 2012.

The petitions are allowed to the extent above and with the above directions.

There will be no order as to costs.

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(Aftab Alam)

Chairperson

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(Kuldip Singh)

Member

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(B.B. Srivastava)

Member