

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

Dated 31 March, 2016

Telecommunication Petition No.939 of 2012

Reliance Communication Ltd.	...Petitioner
Vs.	
Idea Cellular Ltd.	...Respondent

Telecommunication Petition No.940 of 2012

Reliance Telecom Ltd.	...Petitioner
Vs.	
Idea Cellular Ltd.	...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. Meet Malhotra, Sr. Advocate Ms. Shally Bhasin, Advocate Mr.Chaitanya Safaya, Advocate Ms. Shruti Garg, Advocate Ms. Vasudha Gupta, Advocate
For Respondents	: Ms. Stephanie V. Sonavane, Advocate Ms. Chimnaye Chandra, Advocate

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 is aggrieved by the demand letter dated 14.11.2012 of the respondent, vide which it has raised a demand for Rs. 5,96,44,086/- towards SMS termination charges @ of 10p per SMS for the period from 1.7.2012 to 31.10.2012. The respondent further called upon the petitioner to pay the said sum latest by 6th December 2012 and also to execute an agreement for SMS termination by that date in case it wished to continue availing SMS termination facility.

On 10th December, 2012, the Tribunal noted as under:

“3. Mr. Ramji Srinivasan, learned senior counsel appeared on behalf of the petitioner and has pointed out that in 11 circles, namely, Himachal Pradesh, Rajasthan and UP(East), Bihar, Mumbai, Orissa, Tamil Nadu, Chennai, Kolkata, Jammu and Kashmir and West Bengal, there exists a clause 1(iii) of the Schedule 1 to the Interconnect Agreement specifically mentioning that no termination charge for SMS originated from either party's network and terminated on other party's network shall be payable.

In 9 circles, there was no clause relating to the SMS termination charges but the parties were allowing the SMS services on each other's network without collecting or paying any SMS termination charges to each other.

In 5 circles Gujarat, Maharashtra, Andhra Pradesh, Delhi and Madhya Pradesh, out of nine circles mentioned above, interconnection agreement was amended on 26.10.2003 which provided the SMS termination charges at the rate of 30 p /40 p. Even in these circles, no amount was ever paid or received by any party. Mr. Ramji Srinivasan contends that the existing status of payment of SMS termination charges by any party should not be disturbed at this stage by way of an interim order.”

The Tribunal on that date passed the following order:

“6. It is undisputed that there is a written agreement between the parties in respect of 15 circles namely, Himachal Pradesh, Rajasthan and U.P.(East), Bihar, Mumbai, Orissa, Tamil Nadu, Chennai, Kolkata, Jammu and Kashmir and West Bengal, Gujarat, Maharashtra, Andhra Pradesh, Delhi and Madhya Pradesh, wherein it is provided that no termination charge for SMS originating from either party's network and terminated on other party's network shall be payable. Again the parties do not have right to terminate the agreement except in the circumstances as provided in the agreement itself. The agreement provides that the termination can be done only in case of breach of certain conditions as provided in clause 20.2. The respondent has not made out any case of any breach of contract.

7. In the circumstances, prima facie, I am of the view that parties do not have right to change the terms of the agreement unilaterally. Both the parties are bound by the terms and conditions of the contract. Further, I am of the view the clause 1(iii) relating to interconnection usage charge at Schedule 1 of the interconnect agreement does not seem to violate the Interconnection Usage Charges Regulation, 2009. Therefore, it is

directed that the respondent shall not disconnect the signals of the petitioner in respect of 15 circles aforementioned and no termination charge will be payable by any party to other party during pendency of these petitions.

8. In respect of other circles where there is no agreement for SMS interconnection usage charges or there is an agreement for payment of certain amount and no amount is being paid by any party, I am of the view that the end of justice will be sub-served, if similar direction as in Petition No. 843 of 2012 is issued.

Accordingly, it is directed that in respect of circles namely, Kerala, U.P.(West), Haryana, Punjab, Karnataka, Andhra Pradesh, Delhi Madhya Pradesh, Maharashtra the SMS services of the petitioner shall not be disconnected and wherever disconnection has taken place, the same will be restored immediately subject to the condition that petitioner will start paying 50% of the amount demanded by the respondent @ 10 paise 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.

9. This order is without prejudice to the rights and contentions of the parties and subject to any other or further order passed by this Tribunal.”

(Emphasis supplied)

Following the notification of the 2013 regulation, the Tribunal vide its order on 23rd July, 2013, modified the earlier 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.”

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*¹. The case of the petitioners herein for circles that have specific clauses for Bill and Keep/No payment is covered by our order in that case. No charges are payable by the petitioners for these 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*² and *Aircel Vs. Vodafone*³. 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 10th December, 2012.

¹ Petition No. 943 of 2012.

² Petition No. 130 of 2012 delivered on 24th September, 2012.

³ Petition No. 843 of 2012.

The petitions are partially allowed to the extent above and with the above directions. There will be no order as to costs.

.....

(Aftab Alam)

Chairperson

.....

(Kuldip Singh)

Member

.....

(B.B. Srivastava)

Member