
(2021) 12 TDSAT CK 0074

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Telecom Petition No. 1 Of 2021 With Misc Application 517 Of 2021

Vodafone Idea Limited

APPELLANT

Vs

Telecom Regulatory Authority Of India

RESPONDENT

Date of Decision : 24-12-2021

Acts Referred:

Telecom Regulatory Authority Of India Act, 1997 — Section 13

Citation : (2021) 12 TDSAT CK 0074

Hon'ble Judges : Shiva Kirti Singh, Chairperson; Subodh Kumar Gupta, Member

Bench : Division Bench

Advocate : Maninder Singh, Manjul Bajpai, Ajay Mehta, Tushar Mehta, Arjun Natarajan, Lakshmi Kant Srivastava, Darpan Wadhwa, Rajat Sehgal

Final Decision : Disposed Of

Judgement

This appeal is admitted. No Notice need be issued because the respondent is represented by Learned Solicitor General of India in view of advance notice to the respondent.

Mr. Darpan Wadhwa, learned senior counsel has requested for intervention of Telecom Watchdog, an NGO said to be interested in the subject matter of this appeal. If so advised, he may file an application seeking intervention within one week. If the same is filed within one week, parties interested in filing a response to that application may do so within three weeks thereafter. The application for intervention shall also be considered on the next date, if filed.

Mr. Maninder Singh, learned senior counsel for the appellant has prayed for an interim protection to the appellant against the directions contained in impugned communication dated 7.12.2021(Annx. A). According to him, the appellant as a telecom service provider, is in full compliance with the provisions of The Telecommunication Mobile Number Portability Regulations, 2009 (MNP Regulations) as amended till date as well as the Tariff Regulations. According to him, the appellant has facilitated in its entire network, MNP to all subscribers

both pre paid and post paid and upon request it is committed to provide the same on a non discriminatory basis.

On the other hand, learned SG has referred to impugned directions to point out that the Regulator - TRAI has issued the directions in view of various complaints from subscribers that they are not able to send SMS on Short Code 1900, necessary for UPC generation for availing MNP facility even when there is sufficient balance in the concerned pre paid accounts. According to him, in order to enable all subscribers regardless of nature of subscription plan opted by them, the service provider is under obligation to provide outgoing SMS facility in certain pre-paid vouchers atleast to empower the subscriber to avail of the benefits under the MNP Regulations.

In Reply, the stand of the appellant is that certain pre-paid plans do not have SMS facility unless they are topped up upto a certain level and such plans have the necessary approval under the tariff forbearance scheme and a subscriber opting for such a plan not only opts for limited facilities where SMS facility is not provided, but if he wishes to avail of such facility, he can top up his plan by required standards to enjoy SMS facility for all purposes.

The stand of the appellant is that direction for providing SMS facility in such plans which do not have this facility and still the subscribers have opted due to a lesser price, would amount to revision of the subscriber plan / tariff. Such changes in the tariff as are being indirectly forced upon the appellant by the impugned direction will amount to changes in Tariff Regulations and the same cannot be done through directions under section 13 of the TRAI Act.

Prima facie, the effect of the direction appears to be to ask the Telecom Access Providers to ensure that in all their tariff plans including pre paid plans, a minimum facility of SMS must be provided, may be by charging for the cost of messages necessarily required for MNP.

The issue noted above requires consideration. But till decision on the issue raised, respondent shall not take any precipitate action against the appellant. Reply to the memo of appeal etc. may be filed within four weeks. Rejoinder, if required may be filed within three weeks thereafter.

Post the matter for reconsidering the interim arrangement or if possible for final disposal on 22.2.2022 under the head "for directions".