# Acara Insights - Telecom

## Bombay High Court grants relief to Vodafone Idea and Bharti Airtel. Holds One time Spectrum Charge imposed on Telecom Operators as unreasonable and arbitrary.

8.06.2026

**Dear Reader,**

In its judgement dated 08.06.2026, the Division Bench of the Hon'ble Bombay High Court has in ***Bharti Airtel & Anr. v. Union of India, W.P. 1461 of 2013 and in Vodafone Idea Limited v. Union of India & Ors. W.P. 2029 of 2013***, set aside the demand notices raised by the government for levy of one-time spectrum charge (**OTSC**), granting relief to the telecom operators.

***Facts:***

The petitions were filed by telecom operators, Vodafone Idea Limited and Bharti Airtel Limited, challenging the decision of the Union Government to levy OTSC in 2012 on spectrum holdings exceeding 6.2 MHz with retrospective effect from 2008.

The operators contended that under the telecom licensing regime established by the National Telecom Policy, 1999 (**NTP-99**), they had already paid the prescribed entry fees, licence fees on a revenue-sharing basis, and spectrum usage charges. They argued that neither Section 4 of the Indian Telegraph Act, 1885 nor the licence agreements empowered the Government to impose an additional one-time charge retrospectively for spectrum already allocated and used.

The dispute arose against the backdrop of the evolution of telecom licensing in India. Under the 1994 policy, operators paid fixed licence fees and separate charges for spectrum usage. Following NTP-99, the regime shifted to revenue sharing, and operators migrated to the new framework by paying a one-time entry fee and agreeing to revised licence conditions. Over the years, various recommendations of the Telecom Regulatory Authority of India (**TRAI**), departmental committees, and government policies addressed spectrum allocation and pricing. While earlier recommendations generally contemplated enhanced revenue-share-based spectrum charges, the Government ultimately decided in November 2012 to levy OTSC for spectrum held beyond 6.2 MHz from 1st July 2008 onwards. Pursuant to this decision, demand notices were issued to the petitioners, who challenged the levy before the Bombay High Court.

***Findings***:

1. **Maintainability of writ petitions despite TDSAT remedy:** The court noted that power of the respondent under Section 4 of the Telegraph Act was one of the issues raised on behalf of the petitioners and that such an issue

*“The least that private parties like the petitioners expect from the respondent i.e. the Union of India when such contracts / license agreements are executed, is that the State as the contracting party would act within the terms and conditions of the contract and that there would be consistency in decision making, demonstrating good administration.”*

–Division Bench, Bombay High Court.

along with other aspects of the matter deserved to be considered and determined by this Court exercising writ jurisdiction.

2. **Spectrum as a Natural Resource:** While recognising spectrum as a scarce natural resource held by the Union of India in public trust, as held by the Hon’ble Supreme Court in *State Bank of India v. Union of India & Ors., 2026 SCC OnLine SC 202*, the High Court observed that such status does not confer unfettered authority on the Government to impose financial liabilities outside the governing statutory and contractual framework.

3. **Source of Power of the Government to levy OTSC:** The Court found that neither Section 4 of the Telegraph Act nor the relevant licence agreements contained any provision authorising the retrospective imposition of OTSC. The Court affirmed that licences granted under Section 4 of the Telegraph Act constitute contracts between the Government and telecom operators, making the terms of the licence agreements the primary source of rights and obligations between the parties.

4. **Interpretation of the License clauses, Policies, Communications & Orders of the Government:** The clauses relied upon by the Government, including the provisions permitting modification of licence terms in public interest, were held insufficient to justify the impugned levy of OTSC, particularly in the absence of any formal modification of the licence agreements.

5. **Retrospective Operation**: The Court held that the impugned decisions effectively imposed a retrospective liability through executive action without any identifiable statutory or contractual authority, rendering them unsustainable in law.

6. **Contractual Certainty and Legitimate expectations:** The Court emphasised that once licences were granted and operators had acted upon them, the Government could not alter the agreed consideration by introducing a new financial burden years later. The operators had legitimate expectation that the Government would adhere to the contractual framework and act in a consistent, predictable, and legally authorised manner.

***Relief:***

The High Court allowed the Writ Petitions and set aside the impugned decisions and subsequent demand notices with respect to levy of OTSC imposed by the Government of India on the Petitioners.

***Conclusion:***

The judgment re-affirms that the Government cannot impose additional financial obligations on telecom licensees in the absence of clear statutory authority or a valid contractual basis, underscoring the primacy of contractual certainty in the telecom licensing regime.

**Yours Truly,**
**Acara Law LLP**