

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY  
REGULATORY COMMISSION  
AT THIRUVANANTHAPURAM**

**Petition No.                      of 2022**

**Petitioner: -**

M/s. Vodafone Idea Ltd., (Telecom Service Provider),  
VJ Tower, Service Road, Vytilla P.O,  
Ernakulam – 682019.

**Respondent: -**

Kerala State Electricity Board,  
Represented by its Secretary/CMD,  
Vydyuthi Bhavanam, Pattom,  
Thiruvananthapuram – 695 004.

**PETITION FILED BEFORE THE HON'BLE KSERC IN THE  
MATTER OF TARIFF ORDER DATED 25-06-2022.**

***Petitioner begs to submit as follows:***

1. Petitioner is a Telecom Service Provider (TSP) having due registration with the Central Government as per Section 4 of the Indian Telegraph Act, 1885. The relevant extract of the Certificate of Incorporation of the petitioner and extract of the License are produced herewith and marked as **Exhibit P1 and P1(a)**. Petitioner is a notified Telegraph Authority as per Section 19B of the Indian Telegraph Act, 1885. The relevant extract of the notification is produced herewith and marked as **Exhibit P2**. It is further submitted that the petitioner is a classified Essential Service Provider (ESP) as per Essential Services Maintenance Act, 2005 and Disaster Management Act as well. The service of Telecom is a Public Utility Service as per Industrial Disputes Act. The

petitioner submits these legal aspects about its classification in order to avail the best tariff rate applicable in relation thereto.

2. The petitioner submits that the petitioner provides and renders Information Technology services and Information Technology enabled services to its subscribers as of Telecom. The Technology and gamut of petitioner's service is in the realm of Information Technology and the provisioning of service is enabled through Information Technology itself.

3. It is submitted that the telecom towers and the switch room operating as a telephone exchange and the like are managed through Information Technology and subscribers are serviced through Information Technology itself. Thus, for a telecom tower, for switching centre which coordinates the entire telecom network, for provisioning of telecom services or Tele calling or data provisioning or data usage or the like, Information Technology is in use. Therefore, petitioner for **innumerable and multiple reasons entitles petitioner to be treated as a provider of IT or IT enabled services which were to be brought under LT-IVB or under LT-IVA.**

4. It is further submitted that the '*Information Technology Act*' defines '*information*' as an inclusive definition as of data, message, text, image, sound, voice, codes, computer programme, software and data bases or micro film or computer-generated micro fiche. Applying the above definition in a rudimentary manner itself, it could be seen that the Telecom Service clearly comes within the expanse of Information Technology and on that basis itself extending the tariff applicable to IT enabled or IT service to petitioner as well is indubitably unavoidable and the same renders due justice as well.

5. It is submitted that the service through telecom tower is in relation to information which takes in data, message, text, images, sound and voice.

Therefore, the service of telecom comes within the ambit of Section 2(v) of the Information Technology Act.

6. The Petitioner submits that the Telecom services are rendered to innumerable customers and further provides **free of cost** service to many Public/Government institutions and Security Agencies 24/7 as directed by the government. It is further submitted that, as per the orders issued IT department of the State of Kerala, Telecom had been given prime most consideration treating the same as back-bone of the vary growth of the Nation. The Indian Telegraph Right of Way Rules, 2016 by the Central Government and the IT orders in succession by the State Government of Kerala are proof of the above recognition to Telecom Industry in order to specify the special consideration given to the Telecom alone. The relevant extract of the Government order and the relevant extract of the RoW rules stated above are produced herewith and marked as **Exhibit P3 and P4**. A notification issued by State Disaster Management Committee appreciating the prime relevance of Telecom is produced herewith and marked as **Exhibit P5**.

7. Further, in the above context, the petitioner submits that the Telecom service needs to be extended with utmost priority considering the same as back-bone for the infrastructure growth and National development and the telecom towers and switching rooms are essential and inevitable for the rendition of telecom services as well which are electrified as per the supply provided by the KSEB.

8. In the hearing of latest tariff proposal forwarded by the KSEB, the petitioner duly appeared and made its representations requesting for classification of petitioner under ***LT-IVA*** or ***LT-IVB***. The tariff applied to the petitioner had been under ***LT-VIF(G)*** tariff category and on the very face of it, it could be observed that the cross-subsidy percentage is at ***137%*** just after the highest tariff category at ***139%***. It is needless to mention that the Telecom sector

had been bifurcated from *LT-VIIA* category finding the need to provide a special and privileged treatment for Telecom sector from usual commercial sector.

9. As per the declared policy in the latest tariff policy, the attempt was to unify the Telecom sector tariff category with the commercial sector tariff category by 2026-'27. The same shall have extremely disastrous consequences for the Telecom sector itself. In the above context, *the judgment and observations of the Hon'ble APTEL in Multiplex Association of India Vs. Tata Power Co. Ltd. (Appeal No. 68 and 69 of 2008) assumes relevance*. The relevant extract from the judgement is given hereunder for easy reference. The Hon'ble APTEL observed that “.....*section 62(3) of the Electricity Act directs that Commission shall not show any undue preference to consumers of electricity while it does allow differentiation according to the consumer's*

*a) load factor*

*b) power factor*

*c) voltage*

*d) total consumption of electricity during a specified period or when supply is required*

*e) the geographical position of any area*

*f) the nature of supply and*

*g) the purpose for which the supply is required”.*

10. As per the above judgment, based on the enumerated factors, the telecom sector needs to be given a special priority and entitled for concessional tariff. It is pertinent that the Telecom service being a service rendering National development and Public service including Health services, especially during the COVID 19 pandemic and further as the same provides special services to the Law enforcement agencies, Defence services and the like, the *telecom sector is deserving a special consideration at least at par with IT and IT enabled industries.* The special treatment for Telecom service while fixing tariff category is essentially unavoidable. The same is obviously not applied in the present tariff fixation by this Hon`ble Authority which necessitates a reconsideration of the tariff category applied to Telecom sector. The omission in this regard is an error apparent on the face of the order.

11. The company provides round the clock supports to Governmental Security agencies and Judicial Forums through Nodal officers and other special category of officials. Further, TSPs mostly function on the basis of revenue sharing with the Government and huge contributions are made by the way of License fee, frequency allocation charges and the like and thus pools-in substantial amounts for the development of the Nation itself. The commendable service of the TSPs to the **Health workers** and the like during the **COVID 19** pandemic era, which had provided free of cost services for the fight against the pandemic also needs to be considered with special relevance.

12. Further, we may refer to the judgment of APTEL in Appeal Nos. 102 of 2010 in relation to cross subsidy, the judgment in the above appeal states that ***“According to the tariff policy, the tariff of all the category of consumers except those below the poverty line have to be within plus or minus 20 percent of the total average cost of supply”***. The judgment further observes that the variation of tariffs of different categories with respect to average cost of supply has not been correctly determined and clubbing of different consumer categories having different tariff in one category based on voltage of supply had been found as erroneous.

13. Similarly, in ***Tata Steel Ltd., Vs. Orissa Electricity Regulatory Commission and another, the APTEL observed and commented on cross subsidy and cost of supply that the tariff of consumer categories should be within plus or minus 20 percent*** of the average supply in relation to cross subsidy. Further, according to section 62(3) alone, the tariff differentiation could be permitted.

14. In the case of the petitioner, the cross-subsidy impact is drastically varying and the same at 149 percent on implementing the tariff policy as proposed by the KSEB shall pave way for extreme impropriety. A table showing cross subsidy impact on the petitioner during the tariff policy period shall be furnished.

15. Presently, the average cost applicable to ***LT-VI F(G)*** for the consumer is more than **Rs. 10.57** per unit. The consumer under the specified category of telecom uses about 4800 units per month and base rate is **Rs. 9/-** and added with fixed charges or the like, the average rate per unit comes to **Rs. 10.57** which will be on incremental, year after year and finally the same shall reach **Rs. 11.29 per unit**. A table showing average cost applicable to ***LT-VI F(G)*** shall be furnished.

16. The petitioner submits that the separation from *LT-VIIA* category commercial to *LT-VI F(G)* category was on the basis that telecom is a prioritised sector. Presently, the latest tariff policy ransacks the very purpose of the bifurcation itself and proposes to unify *LT-VIF* with *LT-VIIA*.

17. *However, the petitioner submits that the IT enabled services under category LT IVA/IVB are provided special rates and petitioner also is to be treated at least at par with the IT enabled industries. If not, with a priority over IT enabled industries.*

18. The petitioner submits that the present tariff proposal in relation to the Telecom and presently settled Tariff Order needs to be modified bringing the Telecom sector under the IT enabled industry category under *LT-IVB* or under *LT-IVA* and the petitioner submits the same on the following mainly among other grounds.

1) The service through telecom tower is in relation to information which takes in data, message, text, images, sound and voice. Therefore, the service of telecom comes within the ambit of Section 2(v) of the Information Technology Act.

2) Section 62(3) of the Electricity Act, 2003 essentially requires non-discriminatory and equal treatment to consumers including under IT enabled industries and telecom industry. The differentiation between telecom sector specifically providing essential services of telecom as recognised by the Government is in a better position or at least at par with IT enabled industries, is supported by logic and fulfils the riders and guidelines imposed by APTEL and Electricity Act, 2003.

3) The egregious discrimination upon the telecom sector placing at 149 per cent cross subsidy impact as against substantially reduced cross

subsidy that too for IT enabled industries is improper. The APTEL essentially mandates the cross-subsidy variation maximum at *plus* or *minus* 20 per cent.

4) The petitioner on one hand provides free of cost service to Government and Public utilities in various fields including in Security segment, Law enforcement segment, Health care, Educational development and the like and on the other hand is mulcted with exemplary high cost for the supply of electricity to it as against IT enabled industries which are not providing any of these public services. Therefore, the treatment of telecom sector in a substantially discriminatory pedestal compared to IT enabled industries is an anathema to the Article 14 of the Constitution of India.

6) The proposal for merging LT IVF with LT VIIA needs to be seen as merging of LT VIF with LT VIIA as there is no LT IVF as on date.

7) It is essentially to be noted that *unlike normal commercial loads those have higher consumption during the peak hours, telecom load profile is flat for 24 hours and 7 days a week.* Therefor the average cost for telecom consumers shall be much less than the normal commercial consumers. The said pattern of consumption relieves the KSEB of peak load challenges as been posed by other consumers. Thus the above pattern reduces the average cost for KSEB in relation to supply to telecom sector.

8) It is pertinent that the average sanction load for a mobile tower is 23 KW and the fixed charges are paid on that basis. The actual deployment is less than 7 KW per tower. This obviously improves the average revenue of KSEB as huge fixed charges are paid by the telecom consumers.

9) It is to be noted that the fixed charges is proposed to be increased from Rs. 210/- to Rs. 220/- since financial year 2023-'24 in the proposal. The



same is shown against financial year 2024-'25 as well which apparently is an error which may lead to future confusions.

- 10) Likewise, the energy charge shown as being incremental from 9.1 to 9.2 is repeatedly shown for the financial year 2025-'26 and in financial year 2026-'27 which also is an obvious error.
- 11) It is submitted that the load factor is at 1 (one) throughout the period as the tower sites are unmanned and the load is not changed as per requirement. Therefore, average and the maximum load remains the same throughout.
- 12) The power factor for the mobile towers is at 1 (one). Mobile tower load is mainly SMPS, whereas the load is reactive for commercial and other consumers. On this count as well the KSEB is benefitted as per telecom sector consumption.
- 13) The consumption is uniform all throughout for the telecom towers whereas the same is ranging from 0 to peak consumption for commercial consumers, particularly during holidays in comparison with other working days. Here also the KSEB is benefitted as there shall be no idle capacity for telecom loads compared to commercial loads.
- 14) It is submitted that the above aspects were not considered in the tariff order dated 25.6.2022 and a due consideration of the above would have extended the benefit of the Tariff under IT and IT enabled service to petitioner as well. The provisions of Information Technology Act were also not considered in the tariff order. The APTEL judgements and extending tariff of IT or IT enabled services or Industrial tariff in other States in India also may be considered in the matter. Therefore, for a due consideration of all these relevant aspects, the present petition is submitted which may be allowed.

In the above circumstances, petitioner most humbly prays that this Hon'ble Commission may be pleased to reconsider the Tariff Order dated 25-06-2022 in OP No. 11 of 2022 and place the petitioner under LT-IVA or LT-IVB category under Industrial Tariff or under IT/IT enabled services category.

Dated this the 20<sup>th</sup> day of September, 2022.

Petitioner