

Exhibit # 5

to the Petition to Deny the
Application filed by Tata Telecom INC

September 25, 2010

1 THE HONORABLE RICARDO S. MARTINEZ
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

10 TORONTO ASIA TELE ACCESS
11 TELECOM INC., now known as TATA
12 TELECOM INC., a company organized
13 under the laws of Canada, and
14 MANMOHAN SINGH THAMBER,
15 a natural person residing in Canada,

16 Plaintiffs,

17 v.

18 TATA SONS LIMITED, a company
19 organized under the laws of India,

20 Defendant.

No. CV 09-01356 RSM

**TATA SONS LIMITED'S FIRST
INTERROGATORIES TO PLAINTIFF
AND ANSWERS THERETO**

JURY TRIAL DEMANDED

21 **TO:** Plaintiff and Counter-Defendant Toronto Asia Tele Access Telecom Inc., now
22 known as TATA Telecom Inc. ("TATA Telecom Inc.")

23 **AND TO:** Counsel of Record for TATA Telecom.

24 Pursuant to FED R. CIV. P. 26 and 33 and the Local Rules of the Western District of
25 Washington, Tata Sons Limited ("Tata Sons") requests that TATA Telecom Inc. answer
26 separately and fully in writing, under oath, the following interrogatories within thirty (30)
27 days of the date of service:

28 TATA SONS LIMITED'S FIRST
INTERROGATORIES TO PLAINTIFF
AND ANSWERS THERETO - 1
Case No. CV 09-01356 RSM

FENWICK & WEST LLP
1191 SECOND AVENUE, 10TH FLOOR
SEATTLE, WASHINGTON 98101
telephone (206) 389-4510
facsimile (206) 389-4511

1 **DEFINITIONS**

2 1. The terms “plaintiff”, “you” or “your” shall refer to TATA Telecom Inc. and
3 shall include any past and present divisions, parents, subsidiaries, associated organizations,
4 affiliates, joint ventures, predecessor or successor companies, if any, and its past and present
5 officers, directors, employees, trustees, authorized agents, sales representatives, distributors,
6 consultants, dealers, or other representatives, including counsel and patent agents, in any
7 country, and any persons or entities from which they have the right or ability to obtain all or
8 part of the discovery requested, including but not limited to Plaintiff and Counter-Defendant
9 Manmohan Singh Thamber (“Mr. Singh”) and Toronto Asia Tele Access Telecom Inc.

10 2. The terms “Tata Sons” or “Defendant” shall refer to Tata Sons and its
11 employees or representatives.

12 3. The term “mark” means any word, name, symbol, design, shape, number,
13 slogan, or device, or any combination thereof, that is used by a person to identify and
14 distinguish the person’s goods or services from the goods or services of others.

15 4. The term “TATA” means Tata Sons’ mark as used by Tata Sons or for which
16 Tata Sons has publicly announced the intention to use in connection with Tata Sons’ goods
17 and services, including as set forth in U.S. Trademark Registration Nos. 2,929,070; 789,432;
18 2,814,916; and 2,824,913 and as set forth in U.S. Trademark Application Nos. 77/037369;
19 77/024615; 77/368944; 77/389690; 77/702983; 77/389677; and 77/117361.

20 5. The terms “Tata Sons’ goods and services” or “Tata Sons’ goods or
21 services” shall refer to any and all goods and services that Tata Sons has advertised,
22 marketed, offered for sale, distributed, rendered, or otherwise caused to be provided or that
23 Tata Sons has publicly announced the intention to advertise, market, offer for sale, distribute,
24 render, or otherwise cause to be provided under or in connection with TATA.

25 6. The term “TATA-Telecom.com” shall refer to the domain name obtained by
26 you through the registrar eNom, Inc. (“eNom”).
27

1 7. The term “TATA Telecom” means the name and mark as used by you or for
2 which you intend to use in connection with your goods or services and any variation thereof
3 or any related names and marks.

4 8. The term “Toronto Asia Tele Access Telecom” means the name and mark as
5 used by you or for which you intend to use in connection with your goods or services and any
6 variation thereof or any related names and marks.

7 9. The terms “your goods and services” or “your goods or services” shall refer
8 to any and all goods and services that you have advertised, marketed, offered for sale,
9 distributed, rendered, or otherwise caused to be provided or that you intend to advertise,
10 market, offer for sale, distribute, render, or otherwise cause to be provided under or in
11 connection with TATA-Telecom.com, TATA Telecom and/or Toronto Asia Tele Access
12 Telecom.

13 10. The term “channels of trade” refers to (a) each type of person buying,
14 leasing, or otherwise receiving each of your goods or services directly from you, each type of
15 person marketing each of your goods or services to other persons, and each type of person to
16 whom or which such persons market each of your goods or services, and/or (b) the means
17 and methods by which you promote and offer your goods or services.

18 11. The term “document” shall have the broadest meaning accorded to it by
19 FED. R. CIV. P. 34(a) and includes, but is not limited to, all of the items defined in Fed. R.
20 Evid. 1001, and all preliminary and final drafts of any such item.

21 12. The term “all documents” means any and all documents that you can locate
22 through a diligent search of all locations likely to contain documents requested herein and
23 through reasonable inquiry of all persons likely to know of the existence of documents
24 requested herein.

25 13. The term “communication” shall refer to all written, oral, telephonic or other
26 inquiries, dialogues, discussions, conversations, interviews, correspondence, consultations,
27 negotiations, agreements, understandings, meetings, letters, notes, telegrams, advertisements,

1 press releases, computer mail, e-mail and all other documents evidencing any verbal or
2 nonverbal interaction between persons and/or entities.

3 14. The terms “relate to,” “relates to,” “related to,” “relating to,” “refer to,”
4 “referring to,” “reflecting” and “regarding” mean constitute, include, comprise, consist of,
5 refer, reflect, discuss, show, state, explain, contradict, provide context to, evidence, concern,
6 demonstrate, or be in any way logically or factually connected with the matter discussed or
7 identified.

8 15. The term “person(s)” shall include natural persons, corporate or other
9 business entities, and all other forms of legal entities, whether or not in the employ of any
10 party. The acts and knowledge of a person are defined to include the acts and knowledge of
11 that person’s directors, officers, owners, members, employees, representatives, agents, and/or
12 attorneys.

13 16. “Identify,” “identification,” “describe,” or “description” means that:

14 (A) Where you are asked to identify or describe a natural person, you
15 shall state his or her full name, his or her present or last known home and business addresses
16 and telephone numbers, and his or her present or last known employer;

17 (B) Where you are asked to identify or describe a corporation, company,
18 business, joint venture, partnership, or other business entity, you are to state its name, its
19 relationship to you, its last known address, the nature of its business, the name of its last
20 known chief executive officer, and whether or not it is still transacting business;

21 (C) Where you are asked to identify or describe an oral communication,
22 you shall state the date of the communication, the type of communication (telephone
23 conversation, meeting, etc.), whether any written documents were created during or as a
24 result of the communication, the place where the communication took place, the identity of
25 the person who made the communication, the identity of each person who received the
26 communication, the identity of each person present when it was made, and the subject matter
27 discussed;

1 (D) Where you are asked to identify or describe a document or written
2 communication, you shall specifically designate the type of document (e.g., letter, inter-
3 office memorandum, report, drawing, technical report, proposal, etc.) and shall state
4 information sufficient to enable Tata Sons to identify the document, such as its date, names
5 of addressees, names of authors or signatories, title or heading, number of pages, the
6 identities and addresses of any persons to whom copies were sent, and the present or last
7 known possessor of the original of the document (or, if you are aware that the
8 communication has been lost or destroyed, you shall so state and shall provide the names of
9 the persons who lost or destroyed the document and the reasons for and circumstances of
10 such loss or destruction);

11 (E) Where you are asked to identify or describe a trademark or trademark
12 application or registration, or a service mark or service mark application or registration, you
13 shall state its country or state, application number and registration number, its date of first
14 use in that country or state and the goods or services on or in connection with which it was
15 first used and subsequently has been used, the identity of all past and present trademark or
16 service mark owners, the identity of any United States counterpart application or registration
17 and the date of first use in the United States and the goods on which or the services in
18 connection with which it was first used and subsequently has been used in the United States;

19 (F) Where you are asked to identify or describe a service, you shall state
20 the nature of the service and the goods in connection with which it is to be provided, to
21 whom and where it is to be provided, by whom it is to be provided, and the service mark or
22 other designation used by the party concerned to distinguish it from others.

23 17. The words “or” and “and” shall be construed in the conjunctive and in the
24 disjunctive when they appear, and neither of these words shall be interpreted to limit the
25 scope of these interrogatories.

26 18. The terms “any” or “each” shall be construed to include and encompass
27 “all.”

1 19. The use of a verb in any tense shall be construed as the use of the verb in all
2 other tenses.

3 20. The singular form of any word shall be construed to include the plural. The
4 plural form of any word shall be construed to include the singular.

5 **INSTRUCTIONS**

6 The following instructions shall apply to each of the requests herein:

7 1. In answering the following interrogatories, you shall furnish all information
8 which is available to you, after reasonable inquiry, including information in the custody,
9 control, or possession of your agents, employees, officers, directors, attorneys, investigators,
10 consultants, experts, and all other persons acting on your behalf, and not merely such
11 information known of your personal knowledge.

12 2. In answering the following interrogatories, you shall furnish all information
13 regarding your actual or intended use of TATA-Telecom.com, Toronto Asia Tele Access
14 Telecom, and/or TATA Telecom responsive to each interrogatory. Selection of documents
15 from files and other sources and numbering of such documents shall be performed in such a
16 manner as to ensure that the source and order of each document may be determined, if
17 necessary.

18 3. If any of the following Interrogatories cannot be answered fully and
19 completely after you have made reasonable inquiries of your agents, employees, officers,
20 directors, attorneys, investigators, consultants, experts, and others acting on your behalf,
21 answer such Interrogatories to the fullest extent possible, specifying the reasons for your
22 inability to answer the remainder of such Interrogatories, and stating whatever information or
23 knowledge you possess concerning the unanswered portions thereof. Also, where you cannot
24 answer the Interrogatory fully, please provide your best estimate, explain that it is an
25 estimate, and describe the basis upon which the estimate is made.

26 4. Where a claim of privilege is asserted in responding or objecting to any of
27 these Interrogatories and information is not provided on the basis of such assertion:

1 (A) the party or attorney asserting the privilege shall in the response or
2 objection to the discovery request identify the nature of the privilege (including work
3 product) which is being claimed and if the privilege is being asserted in connection with a
4 claim or defense governed by state law, indicate the state's privilege rule being invoked;

5 (B) the following information shall be provided in the response or
6 objection, unless divulgence of such information would cause disclosure of privileged
7 information: (i) date of the document or, if no date is indicated, an estimate of that date; (ii)
8 type of document; (iii) subject matter as described on the document or, if no such description
9 appears, then some other description sufficient to identify the document; (iv) the name and
10 address of each person who prepared it; (v) the name and address of each person to whom it
11 was sent; (vi) the name and address of each person for whom it was prepared; (vii) the name
12 and address of each person receiving or reviewing it, if any; (viii) the name and address of
13 each person now in possession thereof; and (ix) the particular request to which such
14 document is responsive.

15 (C) For oral communications, identify: (i) the name of the person making
16 the communication and the names of persons present while the communication was made
17 and, where not apparent, the relationship of the persons present to the person making the
18 communications; (ii) the date and place of communication; and (iii) the general subject
19 matter of the communication.

20 5. These Interrogatories are continuing in character so as to require you to
21 supplement your responses in accordance with FED. R. CIV. P. 26(e) if you obtain or become
22 aware of any further information responsive to these interrogatories.

1 **INTERROGATORIES**

2 **INTERROGATORY NO. 1:**

3 Identify each place of business owned or controlled in whole or in part by you,
4 including describing for each such place of business the location, the nature of the business
5 conducted at the location, and the number of persons employed at the location.

6 **ANSWER:**

- 7 1. GEO Communication AG (Switzerland)
8 Retail and wholesale telecommunications services. 3 employees
- 9 2. TATA Telecom Ltd. (United Kingdom)
Retail and wholesale telecommunications services. 5 employees
- 10 3. TATA Com Srl (Italy)
11 Retail and wholesale telecommunications services. 13 employees
- 12 4. TATA Telecom, LLC (United States)
Retail and wholesale telecommunications services. 1 employee
- 13 5. WTN Srl (Spain)
14 Retail and wholesale telecommunications services. 4 employees

15 Each of the above entities is a subsidiary of TATA Telecom, Inc., a Canadian
corporation, with the exception of TATA Com Srl, which is a joint venture.

16 **INTERROGATORY NO. 2:**

17 Identify and describe in detail your goods and services offered under the TATA
18 Telecom mark, including without limitation each good and service which you offered
19 through TATA-Telecom.com.

20 **ANSWER:** TATA Telecom sells prepaid calling card services (retail and
21 wholesale); and international toll free numbers, callshop solutions, phone portal, and
22 CallbySMS (wholesale). TATA Telecom's wholesale services are sold to wholesale
purchasers under the TATA TELECOM mark, who re-sell such services to end users under
their own brand.

23 **INTERROGATORY NO. 3:**

24 Identify and describe in detail your authority or ability to provide your goods and
25 services, including without limitation any telecommunications-related good or service in the
26 U.S., including any authority or ability provided by the U.S. government or its regulatory
27 agencies.

1 **ANSWER:** TATA Telecom does not have any authority provided by the U.S.
2 government or its regulatory agencies, nor does it believe such authority is required.

3 **INTERROGATORY NO. 4:**

4 Describe in detail how TATA-Telecom.com, Toronto Asia Tele Access Telecom
5 and/or TATA Telecom are or will be used in connection with, or in promotion of, your goods
6 and services.

7 **ANSWER:** TATA-Telecom.com is a domain name that is associated with one of
8 TATA Telecom's websites. Toronto Asia Tele Access Telecom, Inc., now known as TATA
9 Telecom, Inc., uses TATA TELECOM as a trademark. TATA Telecom, Inc., uses its
10 websites and trademark to promote the services described in TATA Telecom's answer to
11 Interrogatory No. 3. It uses its mark on its websites (www.tata-telecom.com;
www.tataring.com, www.tatavoip.com; www.fonetime.com; and www.voipwings.com;
www.fonetime.com; www.myglobaline.com; and www.cashandcall.com); on calling cards;
and on posters.

12 **INTERROGATORY NO. 5:**

13 State the location and time period, including the date of first use, that TATA-
14 Telecom.com has been used in connection with each of your goods and services anywhere in
15 the United States.

16 **ANSWER:** TATA Telecom launched the website associated with TATA-Telecom.com
17 in the second or third quarter of 2006.

18 **INTERROGATORY NO. 6:**

19 State the location and time period, including the date of first use, that Toronto Asia
20 Tele Access Telecom has been used in connection with each of your goods and services
21 anywhere in the United States.

22 **ANSWER:** Toronto Asia Tele Access Telecom first used its name in connection with its
23 services in the United States as follows:

- 24 Prepaid calling card services – April 6, 2006
- 25 International toll free numbers – 2006
- 26 Callshop solutions – 2006
- 27 Phone portal – 2006
- CallbySMS – 2006
- Information technology support services – 2006

1 Wholesale minutes trading – 2009

2 **INTERROGATORY NO. 7:**

3 State the location and time period, including the date of first use, that TATA Telecom
4 has been used in connection with each of your goods and services anywhere in the United
5 States.

6 **ANSWER:** TATA Telecom first used its TATA TELECOM trademark in connection
7 with its services in the United States as follows:

8 Prepaid calling card services – At least as early as June 2006

9 International toll free numbers – 2006

10 Callshop solutions – 2006

11 Phone portal – 2006

12 CallbySMS – 2006

13 Information technology support services – 2006

14 Wholesale minutes trading – 2009

15 **INTERROGATORY NO. 8:**

16 Identify and describe in detail, including the time period, any changes in your goods
17 and services that have occurred at any time since the inception of your first provision of those
18 goods and services.

19 **ANSWER:** TATA Telecom changed its services from its first provision of its
20 services by adding wholesale minute trading and information technology support services
(network support and telecom switching administration software development with billing,
21 prepaid calling card billing, switching, and a graphical interface) and by developing online
22 sales. See also TATA Telecom's answers to Interrogatory Nos. 6 and 7.

23 **INTERROGATORY NO. 9:**

24 Identify and describe in detail all current or prospective segments of customers of
25 your goods and services.

26 **ANSWER:** TATA Telecom's current and prospective customers for its prepaid calling
27 card services are ethnic and minority populations that reside within the United States. Its
28 wholesale services are offered to telecommunications companies (*e.g.*, WTN Group and Ping
Yin Communications). See also TATA Telecom's initial disclosures.

INTERROGATORY NO. 10:

1 Identify and describe in detail the channels of trade you have used or plan to use for
2 your goods and services.

3 **ANSWER:** TATA Telecom initially began selling its calling cards to retailers who sell
4 to immigrant populations, and advertised with point-of-sale posters. It now also promotes its
calling cards through its websites.

5 TATA Telecom trades minutes with other carriers mostly through its website or through
6 relationships made during trade shows.

7 TATA Telecom plans to distribute mobile application software from its website to enable
customers to make international calls at lower rates routed through TATA Telecom's
8 networks.

9 **INTERROGATORY NO. 11:**

10 Identify and describe in detail all goods and services that compete or would compete
11 with your goods and services, including all providers of such goods and services.

12 **ANSWER:** Goods and services that compete or would compete with TATA
13 Telecom's goods and services are calling card operators, callshop service providers, and
Mobile Virtual Network Operators.

14 **INTERROGATORY NO. 12:**

15 Separately for each year, detail the revenues earned from and expenses related to, the
16 offering, sale, or distribution of your goods or services, including any advertising, promotion,
17 and marketing expenses.

18 **ANSWER:** TATA Telecom will provide this information.

19 **INTERROGATORY NO. 13:**

20 Describe in detail the facts regarding your selection and adoption of Toronto Asia
21 Tele Access Telecom, including without limitation the reason it was selected to identify your
22 goods and services (e.g., the impression you sought to convey to consumers with Toronto
23 Asia Tele Access Telecom), the meaning of Toronto Asia Tele Access Telecom and the
24 person(s) involved in the selection and adoption of Toronto Asia Tele Access Telecom.

25 **ANSWER:** The name Toronto Asia Tele Access Telecom was selected and adopted
26 by Manmohan Singh Thamber and Dharam Singh (deceased). They lived in Toronto, were
27 Asian, and were in the business of providing telecom access to the ethnic (particularly Asian)
market. They intended the name to communicate to consumers the type of business they
were in and the market they intended to serve.

1 **INTERROGATORY NO. 14:**

2 Describe in detail the facts regarding your decision to change your name from
3 Toronto Asia Tele Access Telecom to TATA Telecom, including without limitation the
4 reason TATA Telecom was selected to identify your goods and services (*e.g.*, the impression
5 you sought to convey to consumers with TATA Telecom), the meaning of TATA Telecom
6 and the person(s) involved in the decision to change your name from Toronto Asia Tele
7 Access Telecom to TATA Telecom.

8 **ANSWER:** Toronto Asia Tele Access Telecom Inc., decided to change its name to
9 TATA Telecom Inc. because it is the acronym of the original name, is shorter, and is easier
10 to use. The persons involved in the decision were Dharam Singh, Mahmon Sing, and Jagjeet
11 Singh Kalkt.

11 **INTERROGATORY NO. 15:**

12 Describe in detail when and under what circumstances you first learned of Tata Sons,
13 Tata Sons' use or intended use of TATA, and/or Tata Sons' goods and services.

14 **ANSWER:** TATA Telecom first learned of Tata Sons, its use or intended use of
15 TATA, and Tata Sons' goods and services in connection with the WIPO arbitration between
16 the parties in 2009.

17 **INTERROGATORY NO. 16:**

18 Describe in detail each instance of actual or potential confusion, mistake, or deception
19 of any person(s) as to the source, origin, or sponsorship of TATA Telecom, including
20 without limitation any actual or potential confusion, mistake, or deception as to your
21 affiliation, connection, or association with Tata Sons, TATA, and/or Tata Sons' goods and
22 services.

23 **ANSWER:** None.

24 **INTERROGATORY NO. 17:**

25 Describe in detail any opinions, legal or otherwise, regarding the availability of
26 TATA Telecom for your use, and identify all documents, including without limitation
27 trademark search reports, related to the availability of or right to use TATA Telecom.

28 **ANSWER:** None.

1 **INTERROGATORY NO. 18:**

2 If your response to any of the Requests for Admissions contained in Tata Sons' First
3 Requests for Admission is anything other than an unqualified admission, for each such
4 response, state all facts on which you base your denial or the qualification of your admission
5 to the request.

6 **ANSWER:** See TATA Telecom's answers to Tata Sons' First Requests for
7 Admission.

8 **INTERROGATORY NO. 19:**

9 Identify each person who supplied documents, assisted, provided information, or was
10 consulted by you regarding your answers to any of these Interrogatories, and, separately for
11 each such person, specify the interrogatory number(s) for which assistance, information, or
12 consultation was provided.

13 **ANSWER:** Manmohan Singh Thamber, Ranjit Singh Masuta, Jeetender Singh Pabla,
14 Shasheill Kumar, and Lakhbir Singh.

15 DATED this 12th day of July, 2010

16 **GRAHAM & DUNN PC**

17 By: /s/ Michael G. Atkins

18 Michael G. Atkins
19 WSBA #26026
20 Email: matkins@grahamdunn.com

21 Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2010, I caused the following document

- **TATA SONS LIMITED'S FIRST INTERROGATORIES TO PLAINTIFF AND ANSWERS THERETO**

to be served on counsel as follows:

<p>Eric J. Ball Email: eball@fenwick.com Kit W. Roth Email: kroth@fenwick.com Fenwick & West LLP 1191 Second Avenue 10th Floor Seattle, WA 98101 Tele: 206-389-4522 Fax: 206-389-4511</p> <p>Attorneys for Tata Sons Limited</p>	<p><input type="checkbox"/> United States Mail, First Class <input type="checkbox"/> By Messenger <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Overnight Courier <input checked="" type="checkbox"/> By Email</p>
---	--

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 12th day of July, 2010.



Michael G. Atkins

23467/00408/LIT/1319109.5