

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

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**DATED THE 7<sup>th</sup> FEBRUARY 2002****PETITION NO.21 OF 2001**

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Internet Service Providers Association of India  
And others  
...Petitioners

Vs.

Union of India  
Respondent

...

**BEFORE:-**

**HON'BLE MR. JUSTICE SUHAS C. SEN, CHAIRPERSON  
MR. R.U.S. PRASAD, MEMBER  
MR. P.R. DASGUPTA, MEMBER**

For Petitioners

Mr. M.G. Ramachandran,  
Mr. K.V. Balakrishnan and  
Ms. Mahima Singh, Advocates

For Respondent

Mr. Navin Chawla, Advocate

**Licensing Policy - Internet Licence - Audio text, voice mail, unified messaging service capable of being provided without using internet backbone,- therefore, policy requirement of separate licence for these service upheld. Refused to interfere with Performance Bank Guarantee - not being a payout and when it is Customer oriented.**

**ORDER**

The petition is devoid of merit and deserves to be dismissed.

2. The Petitioners have filed a Petition under Section 14 and 14A of the Telecom Regulatory Authority of India Act, 1997 as amended by TRAI (Amendment) Act, 2000, against the Union of India, challenging the decision of the Respondent to prescribe a separate license for Voice Mail, Audio Tex and Unified Messaging Services for holders of Internet service license. The Counsel for the first Petitioner in the course of arguments stated these services are essentially part of the Internet access services and as such the Internet Service Providers licensees who are authorized to provide internet services including all types of internet access content/services, excluding only telephony on the Internet should not be required to take separate license for the above-mentioned services. It was also urged that the Respondent should issue only one type of license viz. the Internet service provider license and allow the licensees to undertake the activities of Voice Mail, Audio Tex and Unified Messaging Services under the same license.

3. During the course of the arguments the Counsel for the Petitioner dwelt at length on the conditions envisaged in the license issued by the Respondent to the Internet Service Providers. It was stated that Schedule 'C' Part I of the License dealing with the definitions defines service or services as under:

*"24. Service or Services means all types of Internet access/content services except telephony on Internet."*

Clause 1 of the Licence Agreement provides as under:

*"In consideration of observance of mutual covenants as well as payment of the License fee payable in terms of Schedule B and due performance of all the terms and conditions on the part of the licensee, the LICENSOR does, hereby grant on non-exclusive basis, License to establish, maintain and operate service in the area given in Schedule 'A' on the terms and conditions mentioned in Schedule 'C' annexed hereto".*

4. The above provisions in the License, the Counsel maintained authorized the Licensee to provide services such as Voice Mail, Audio Tex and Unified Messaging Services, which according to him are integral part of the Internet access services. As such the Internet service providers do not require any additional license or authorization from Licensor to provide the above services.

5. The Counsel for the Petitioner has admitted that Voice Mail and Audio Tex services can be provided independent of Internet connectivity but maintains that this does not hold good in case of Unified Messaging Services. Basing plea on the guidelines issued by the Respondent on 16 July 2001 which envisage the internet service License as a necessity for undertaking Unified Messaging Services, it was further argued by the Counsel for the Petitioner that so long as Unified Messaging Services can be provided using the internet as back-bone and so long as it is not telephony on the internet, the License already issued to Internet Service Providers would cover such services within its scope.

6. The Counsel of the Respondent maintained that each of the three categories of the License i.e. (i) internet license; (ii) Voice Mail/Audio Tex License; and (iii) Voice Mail, Audio Tex/Unified Messaging license, is distinct, separate and bear particular meaning. While the licenses for the Internet were granted since November 1998, in case of Voice Mail/Audio Tex/Unified Messaging, licenses were granted since August 2001, and that of Voice Mail/Audio Tex services were issued since February 1995.

7. The specifications prescribed by Telecom Engineering Centre (TEC) for Voice Mail Services reads as follows:

*"Voice Mail Service enables the subscriber to send a message to one or more recipients and to receive messages via a telecommunication network using a combination of store and forwards, and store and retrieve techniques. A Voice Mail Service (VMS) subscriber has a voice mail number and a mailbox. Any person can leave his message in the mail box of a VMS subscriber by dialing the mail box number from where it can be retrieved at the convenience of the VMS subscriber".*

Access attributes of the Voice Mail as under:

*"The service shall be provided using junction of Public Switched Telephone Network (PSTN) with DID (Direct Inward dialing) facility as per TEC Specification No.G/PBX-02/01. May 94 or Direct Exchange Lines".*

In so far as Audio Tex Service is concerned the Telecom Engineering Centre prescribed the following specifications

*"It is either a passive or an interactive service which provides through appropriate access by standardized procedure for users of Audiotex service to communicate with databases via telecom network. A subscriber can retrieve the information at any time by interacting with the Audio Service Equipment by using the existing telephone line. For any interaction with the computer, DTMF telephone instrument is required."*

In case of Audio Tex Service also, this service needs to be provided using junction of Public Switched Telephone Network (PSTN) with Direct Inward Dialing facility.

In so far as Unified Messaging Service (UMS) is concerned, the TEC prescribed the following specification:

*"UMS shall have the ability to record, send and process Voice, Fax and E-Mail messages of subscribers. The terms "Message" in the document shall collectively indicate Voice, Fax and E-mail unless otherwise indicate. The system shall consist of Voice Processing sub-system, Storage sub-system (for voice, fax and e-mail), and Network Interfaces and Maintenance sub-system."*

*The objective of UMS is to allow subscribers to send, retrieve and manage messages in a uniform way, regardless of whether the message is a voice mail, a fax mail or an e-mail. In addition it shall be possible to manage the messages from various terminal types including phones, web browsers, standard e-mail clients and WAP terminals."*

8. It was argued by the Counsel for the Respondent that the specifications and access attributes of these three services do not require Internet connectivity and in the case of Unified Messaging Service also the Internet may be used as only one of the several methods for providing this service. It was further submitted by the Counsel for the Respondent that the requirement of UMS Service is a voice processing sub-system, storage sub-system, network interfaces and maintenance sub-system. This can be provided by using ordinary telephone connection via telephone instrument, a fax machine, etc. It does not require Internet as compulsory medium. It was further stated that even e-Mails can be exchanged without Internet and Internet is not a compulsory medium. Hence, it is not correct to treat UMS as Internet access or content service. The counsel for the Respondent also submitted that licenses for Voice Mail, Audio Tex and Unified Messaging services are being issued on non-exclusive basis and do not require any license fee to be paid, but licensing has been made a pre-condition for provision of these services to ensure their orderly growth.

9. The petitioner had also represented to the Respondent on 29.8.2001, as per the direction of the TDSAT which was disposed of on 1.10.2001 and a clarificatory reply was issued rejecting the contention of the Petitioner to regard Voice Mail, Audio Tex and Unified Messaging as a part of the internet access/content service.

10. It is clear from the arguments advanced by both the sides that Audio Tex and Voice Mail can be provided independent of Internet connectivity and that Unified Messaging Services can also be provided either way by using the internet backbone or otherwise. We, therefore, do not see any flaw in the scheme of providing a separate license for these services. If the Respondent has decided to prescribe separate licenses for Audio Tex, Voice Mail and Unified Messaging services as a matter of policy and made applicable to all categories of service providers, this

cannot be viewed as unreasonable and unfair. We also feel that undue reliance need not be placed on the provision that for taking a license for the Unified Messaging Service the Internet license would also be required.

11. The Counsel for the Petitioner also argued at length on the requirement of providing a performance Bank Guarantee for Rs. 3 lakhs for each service area for providing these services and maintained that this would add up to an enormous amount. Since this is only a performance Bank Guarantee and not a payout, we see no reason to interfere with this requirement prescribed in the License Agreement, particularly, when it is customer oriented. It is, however, open to the Petitioner to prefer a representation to the Respondent for lowering the limit of performance Bank Guarantee and if such a representation is preferred, the Respondent will consider the same in accordance with law and pass suitable orders on the representation.

12. With the above observations, we are of the view that the Petition is without any merit and is hereby dismissed.

.....Sd/-.....J  
(SUHAS C. SEN)  
CHAIRPERSON

.....Sd/-.....  
(R.U.S. PRASAD)  
MEMBER

.....Sd/-.....  
(P.R. DASGUPTA)  
MEMBER