

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

**DATED 12<sup>th</sup> APRIL, 2005**

**PETITION No.20 OF 2003**  
(M.A.No.136 of 2004)

**Indian Paging Service Association**  
(representing its member service providers  
being licensees under section 2(e) of TRAI Act)  
C-22, Safdarjung Development Area,  
New Delhi 110016

...Petitioner

Vs

**Union of India**  
(through Secretary)  
Department of Telecommunications  
Ministry of Communications,  
Sanchar Bhawan,  
New Delhi 110001

...Respondent

**BEFORE:**  
**HON'BLE MR. JUSTICE D.P. WADHWA,**  
**CHAIRPERSON**  
**LT.GEN.D.P.SEHGAL(RETD.),MEMBER**

For Petitioner : Mr.Amit Chaddha,  
Mr.Nipun Malhotra,Advocate

For Respondent : Mr.Jaideep Gupta,Senior Advocate with  
Mr.Sanjay Hegde,  
Mr.Deb Malaya Banerjee,  
Mr.Anil KumarMishra, Advocates

**Catchwords:**

**Radio Paging Service Providers – City Paging and Circle Paging – plea for migration to revenue sharing – different areas of operation – difference of one year in starting service – Central Government as licensor offering migration package of shifting to revenue sharing regime from fixed license fee from second year in favour of Circle Paging Operators and from third year in case of City Paging Operators –**

**discrimination alleged by City Paging Operators – difference in two services – stand of Government upheld.**

**ORDER**

Petitioner is an association of Radio Paging Service Providers (RPSPs). Its members – (i) DSS Mobile Communications Limited, New Delhi; (ii) Modi Korea Telecom Limited, New Delhi; (iii) Microwave Communications Limited, New Delhi; (iv) Page Point Services (I) Pvt. Ltd., Bangalore; (v) RPG Paging Services Limited, New Delhi; (vi) Easy Call Communications Ltd., Hyderabad; (vii) Telesistem (I) Private Limited, Bangalore; (viii) Matric Paging (I) Pvt. Ltd., Bombay; (ix) ABC Communications (I) Pvt. Ltd., New Delhi; (x) Usha Martin Telekom Limited, Chennai; (xi) Hutchison Max Telecom, Bangalore; (xii) BPL Telecom Limited; (xiii) Punwire Paging Services Limited, Chandigarh; (xiv) Punwire Mobile Communications Limited; (xv) BPL Wireless Telecom Limited, Bangalore - are licensees within the meaning of Telecom Regulatory Authority of India Act 1997 (in short TRAI Act), of the Union of India, Department of Telecommunications, as Licensor.

2. As will be seen hereinafter there are two types of Radio Paging Service Providers, depending upon the area of operation i.e. City Paging & Circle Paging. At the outset it was stated by the learned counsel for the Petitioners that he is confining this Petition only to City Paging Service Providers. By this petition under Section 14 A (1) read with Section 14 (a) (i) of the TRAI Act, the Petitioner seeks the following relief:-

- “a) pass an appropriate order/direction directing the Respondent to waive fixed license fee of Radio Paging Operators from the beginning and consequent directions for refund of the same and/or adjustment against dues on the basis of revenue sharing;*
- b) pass an appropriate order or directions directing the Respondent to allow the Radio Paging Operators to continue to operate on the basis only of sharing of revenue with the Respondent;*
- c) pass an appropriate order or direction directing the Respondent to ensure directly or indirectly to compensate monetarily the loss of profit and business of RPSPs and fix the future terms and conditions of the license in a reasonable, rational and non-arbitrary manner;*

- d) *pass an appropriate order or direction directing TRAI to look into and examine the grievance of the Applicant, the economic structure of the paging industry and recommend suitable measure for relief to RPSPs so that level playing field is ensured; and*
- e) *pass such further or other order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*
3. Facts and circumstances giving rise to this petition are briefly as under:-

- ❖ With the privatization of telecom services in 1992 the Government of India started the process of awarding license to private operators for providing both Cellular and Radio Paging Services in the country.
- ❖ Paging provides one way text communication basically used for employees of service sector e.g. carpenters, electricians, deliverymen etc. The communication is in the form of audio text service in alpha-numeric code.
- ❖ For awarding the license for Paging Services, the Government classified them into two categories depending on the area of operation i.e. City Paging and Circle Paging. City Paging License restricted the licensees to operate within the city for which license was given. Whereas Circle license defined a large area including a few cities also. There was no duplicity, however, as regards operation was concerned in the sense that a Circle licensee could not provide service in a city if there was a City licensee for that particular city. Such cities were excluded from Circle licenses.
- ❖ Both City Paging and Circle Paging, Licenses were issued in 1994 and 1995 respectively and they were valid for 10 years. They started operating an year later. In case of City Paging there was a fixed License Fee for the first 3 years to be paid in the said 3 years; in respect of License Fee for the balance 7 years it was to be fixed later on. The payment was made in first 3 years in the ratio of 1:2:3 in each year. In so far as Circle Paging was concerned, License Fee was fixed for 10

years at the initial stage itself. The payment was to be made spread over a period of 10 years in the ratio of 1:1:1:1:1:1.2:1.2:1.2:1.2:1.2 in each year.

- ❖ Since the targets set out in the National Telecom Policy 1994 (NTP 1994) could not be achieved, the Government formulated the National Telecom Policy 1999 (NTP 1999) to boost the development of telecom sector and announced a Migration Package for shifting from the Fixed Licence Fee Regime to the Revenue Sharing Regime. The Paging Operators were offered Migration Package on 2.9.1999 which was same for City and Circle Paging Operators providing for License Fee @ 15% of revenue from the 4<sup>th</sup> year onwards. The Circle Paging Operators accepted this package but could not honour the term subsequently. Since the package did not offer any concession or benefit to City Paging Operators (since their fixed licence fee obligations was there only during the first 3 years and after that TRAI had already recommended a license fee of 5% of the revenue) they did not accept the offer of migration.

4. Learned counsel for the Petitioner, Mr. Amit Chaddha, pleaded the case for relief only for City Paging Operators. He said that the treatment meted out to City Paging Operators vis-à-vis Circle Paging Operators was discriminatory.

5. While arguing the case, Mr. Amit Chaddha, learned counsel for the petitioner, brought to our notice that TRAI had recommended a license fee @ 5% of the revenue which was not accepted by the DoT who in turn decided a license fee @ 15% of the revenue.

6. The petitioner filed a Writ Petition being CWP No. 578 of 2003 in the Delhi High Court against the discriminatory treatment being meted out by the Respondent against the City Paging Service Providers vis-à-vis Circle Paging Operators. The said Writ Petition was disposed by an Order dated 29<sup>th</sup> January 2003 directing the Respondent to consider the representation of the Appellant. The Respondent, however, rejected the representation through their letter dated 28<sup>th</sup> February 2003.

7. Various representations were made by the Paging Industry to the Government for waiver/concession in the license fee.

8. The Union Government approved and offered a relief package on 26<sup>th</sup> April 2004 for shifting of the Paging Operators to the system of Revenue Sharing Regime from the Fixed Licence Fee regime only from the second year in favour of Circle Paging Operators and from the third year in case of City Paging Operators.

9. We heard the arguments from both sides.

10. We find that there are five prayers in this petition which revolve around one basic question i.e. migration to Revenue Sharing Regime and relief has been sought for all the Paging Operators in both categories i.e. City Paging and Circle Paging. However, as pointed out above, the argument put forward by Mr. Chaddha during the hearing was to get relief for City Pagers and make them at par with Circle Pagers so far as the year of migration was concerned. This was the main contentious issue according to him.

11. Mr. Chaddha, learned counsel for the Petitioner, reiterated about the discrimination meted out to City Paging Service Operators against Circle Paging Service Operators. He stated that there was a similarity in both the services in terms of service provided, technology used, customers operation, tariff, equipment & instrument and even on the basis of working out of Adjusted Gross Revenue (AGR). He stated that City Paging Service Operators needed more assistance since the salary paid, cost of land, rentals, overhead in terms of advertisements and publicity, are all on the higher side in the cities as compared to paging in Circles. The concessions, therefore, should have been identically same for both.

12. Mr. Jaideep Gupta, learned counsel for the Respondent, however, stated that the City Paging and Circle Paging services are not comparable and therefore a level playing field for both cannot be claimed. He said that the date of entry was different for the two categories and also payment conditions for both the paging services were different. Also the terrain, environment and coverage areas for the services were different for the two paging services. Mr. Gupta explained to us the logic of differential in the year of offer of the Migration Package for the City Paging vis-à-vis Circle Paging Services. He said that it was accepted by the petitioner that the services till May 1998 had a decent growth. The Union of India, therefore, offered a relief package on 26<sup>th</sup> April 2004 by virtue of which the license fee shall be charged on Revenue Sharing basis with effect from 3<sup>rd</sup> payment

year in case of City Paging and 2<sup>nd</sup> payment year in case of Circle Paging operators. This date for both the services i.e. City and Circle Paging falls in the year 1997-98. This was the year when the decline in paging industry started and the government decided to help the industry. In fact he went on to state that the relief has been given to paging industry much before the subscriber base started decreasing.

13. Learned counsel for the Respondent brought to our notice that the Migration Package was offered to Radio Paging Operators in 1999 but could not be implemented as some of the City Paging operators had not accepted the same and the Circle Paging Operators had not cleared their outstanding dues, a pre-condition for the Migration Package.

14. Prayer (a) in the Petition is for directing the Respondent to waive fixed license fee of Radio Paging Operators from the beginning and consequent directions for refund of the same and/or adjustment against dues on the basis of revenue sharing. Since the Radio Paging Operators did not accept the initial offer of migration, we fail to understand as to how at this stage we can consider their migration from the initial date itself. The basic requirement for migration to revenue sharing regime is acceptance of the offer by the licensor to the licensee, which the City Paging Operators did not accept without any condition. The prayer, therefore, cannot be granted.

15. Having heard both the counsels, it appears that the Migration Package offered to City Paging Service Operators and the Circle Paging Service Operators was with effect from different years but it had a justifiable reason for the government to implement it from a particular year. Since the industry started declining from the year 1997-98 and the date of entry of the two services were different, the position of the government is fully justified and we find no discrimination in the order of the Government of India. We need not go into details of the infrastructure required for provision of this facility in a City by a City Paging Service licensee vis-à-vis in a Circle by a Circle Paging licensee. Both have different parameters in terms of coverage, area and number of cell sites and also the number of customers. Evidently, therefore, the revenue earned by both of them will be different. We, therefore, feel that both the services warrant to be considered separately

for the purposes of Migration Package as has been done correctly by the Department of Telecommunications.

16. It was also brought to our notice that it was the Cellular Mobile Services which was responsible for the decline of the paging industry. The learned counsel for the Petitioner also stated that no license fee was charged from the cellular operators for the Short Messaging Service (SMS). This argument doesn't hold much ground since the advancement in technology has to continue and the services have to be upgraded in the interest of the consumer at large and overall development of the country. We possibly cannot stick to one particular technology which is a ground reality today. The licenses for paging services and cellular mobile services were issued at the same time by the government and, therefore, the paging industry has no reason to contend that their fall is attributable to the introduction of cellular mobile services.

17. The remaining prayers of the petitioner are also an extension of his prayer (a) i.e. migration to revenue sharing regime. Since the petitioner's prayer (a) has not been acceded to his other prayers (b), (c), and (e) also fall through. As regards prayer (d) of the petitioner, representations had already been made by the applicants to the government which were either not accepted or subsequently found favour by way of relief package offered. At this stage, without going into the question whether we can refer the matter to TRAI, we find no useful purpose would be served to adopt that course.

18. In view of the above, we do not find much substance in the petition and accordingly dismiss the same. No costs.

.....J  
**(D.P. Wadhwa)**  
**Chairperson**

.....  
**(D.P. Sehgal)**  
**Member**