

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

**DATED 30<sup>th</sup> AUGUST, 2007**

**Petition No.119 of 2006**

1. Internet Service Providers  
Association of India (ISPAI)  
through its Secretary  
612-A, Chiranjeev Tower  
43, Nehru Place,  
New Delhi
  
2. C J Online Private Ltd.  
through its Director  
C-109, Industrial Area  
BSR Road  
Ghaziabad – 201 001
  
3. DELDSL Internet Pvt. Ltd.  
through its Vice President  
E-322, Purvasha, Anand Lok  
Mayur Vihar-I  
Delhi – 110 091
  
4. EXATT Technology Pvt. Ltd.  
through its Vice President – Operations  
406, Akruiti Arcade, 4<sup>th</sup> Floor  
IP, Road Andheri (West)  
Mumbai – 400 058
  
5. ESTEL Communication Pvt. Ltd.  
through its President  
Estel House, Plot No.126  
Sector – 44, Industrial Area  
Opp.Amity International School  
Gurgaon – 122 002
  
6. Hathway Cable & Datacom Pvt. Ltd.  
through its Head – Legal  
Rahejas, 4<sup>th</sup> Floor

Corner of Main Avenue & V.P. Road  
Santacruz (West)  
Mumbai – 400 054

7. ICENET.NET Ltd.  
through its CEO & MD  
905, Silicon Tower  
Behind Pariseema Building  
Off C.G. Road  
Ahmedabad – 380 006
8. Netmagic Solutions Pvt. Ltd.  
through its Managing Director  
23, Seagul Carmichael Road  
Mumbai – 492 026
9. Primus Telecommunications Pvt. Ltd.  
through its Vice President (Finance)  
B-124, Preet Vihar  
Delhi – 110 092
10. Reach Network India Pvt. Ltd.  
through its Financial Controller  
4P, 1<sup>st</sup> Floor, Nirlon Complex  
Off. Western Highway, Goregaon (East)  
Mumbai – 400 063
11. Tulip IT Services Ltd.  
through its Chief Executive Officer  
C-160, Okhla Industrial Area Phase-1  
New Delhi – 110 020
12. World Phone Internet Services Pvt. Ltd.  
through Manager Finance  
C-153, Okhla Phase – 1  
New Delhi – 110 020
13. Trak Online Net India Pvt. Ltd.  
through its Director  
H-175 B, Nihal Vihar  
Nangloi  
New Delhi – 110 041
14. Pacific Internet India Pvt. Ltd.

through its General Manager  
105, Sumer Kendra, P B Marg, Worli  
Mumbai – 400 018

15. IQARA Telecoms India Pvt. Ltd.  
through its Manager – Legal  
24-C/406, Maintri CHS  
Bimbisar Nagar, MHADA Complex  
Off Western Express Highway, Goregaon (E)  
Mumbai – 400 065

16. VEBTEL Obconic Internet Protocol Pvt. Ltd.  
through its Manager Director  
12 A, Somavarapu Heights  
Erramanzil  
Hyderabad – 500 082

17. Tata Internet Services Ltd.  
through its Company Secretary  
B/14, Tata Symphony  
Off. Saki Vihar Road  
Chandivali, Andheri(E)  
Mumbai – 400 072

....Petitioners

Versus

Union of India  
through its Secretary  
Department of Telecommunications  
Ministry of Communications  
Sanchar Bhawan  
20, Ashoka Road  
New Delhi – 110 001

.....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE ARUN KUMAR, CHAIRPERSON  
LT.GEN. D.P. SEHGAL(RETD.), MEMBER**

For Petitioners : Mr.Ramji Srinivasan,  
Ms.Mandakini Singh, Advocates

For Respondent : None

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**ORDER**

The Petitioner No.1 is an Association of Internet Service Providers while Petitioners 2 to 13 are its members. The members of the Petitioner Association hold ISP (Internet Service Provider) Licenses issued by the Respondent, Union of India. In 2002, the Government permitted inclusion of Telephony within ISP license. Revised licenses were issued. The license fee remained a nominal amount of Re.1/- because according to Petitioners the Government wanted to encourage the trade. The ISP license for Telephony was a separate license but the license fee was kept the same as in case of ordinary ISP licenses. Schedule B of the ISP License with Internet Telephony provides as under:

**“1.1 QUANTUM OF LICENSE FEE AND SCHEDULE OF PAYMENTS”**

(i) The license fee is payable by the licensee in consideration for grant of this license, for the complete duration for which this license is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider/BSNL/MTNL/VSNL/Departments of the Central or State Government/local or statutory bodies.

(ii) The Telecom Authority has decided to waive the License Fee for a period upto 31.10.2003 and a nominal license fee of One Rupee per annum will become payable from 01.11.2003; however, the Telecom Authority reserves the right to review an imposed license fee including Universal Service Obligation (USO) levy anytime during the validity of the license, which decision with its terms and conditions, shall be binding on the licensee.”

In exercise of power under Clause 1.1(ii) of Schedule B of the license, the licensor announced an increase in the license fee for the ISP license holders like petitioners from Re.1/- per annum to a revenue share at license fee of 6% of the Adjusted Gross Revenue (AGR) with effect from 1<sup>st</sup> January, 2006. The petitioners have challenged this amendment of the licenses. Besides, this the petitioners have challenged the method of computation of AGR by the respondent. Under the amendment to the license, the petitioners are required to pay a share of the AGR to the

respondent as a condition of grant of license. The following prayers were pressed by the learned counsel for Petitioners:

“(a) declare that the increase of Licensee Fee from One Rupee to an additional 6% of the Adjusted Gross Revenues of the ISP (with Internet Telephony) is illegal, arbitrary, unreasonable, violative of Section 11 of TRAI Act and contrary to Cabinet Decision and wholly without jurisdiction.

(b) alternatively, declare that the Respondents are not entitled to recover License Fee as Revenue Share out of any revenues arising out of non-licensed activities and further declare that the Revenue Share License Fee is exigible only on Adjusted Gross Revenue accruing directly out of the (Internet Telephony) activities/operations licensed under Section 4 of the Indian Telegraph Act, 1885, after adjustment of write-offs and revenues not directly attributable to such licensed activities, including interest income, dividend income, rebates, discounts etc.”

So far as prayer (b) is concerned, this Tribunal has decided the issue in the connected batch of cases vide a separate order passed today in Petition No.7 of 2003. The decision of the Tribunal in the said case will govern prayer (b) of the present petition.

So far as prayer (a) is concerned, the petitioners have challenged the amendment of the license by which license fee of Re.1/- has been enhanced to 6% of the AGR. To sustain the challenge, two grounds were urged. It is submitted that it is a unilateral decision of the Government without giving an opportunity to the affected parties like the petitioners to present their point of view before such an amendment was made. Secondly, it is submitted that the amendment is ultra vires the Telecom Regulatory Authority of India Act (TRAI Act) and as such it is liable to be quashed. So far as point regarding the decision being a unilateral decision of the Government is concerned, attention is invited to the relevant Clause 1.1(ii) of Schedule B of the license which has been quoted herein before. Under this clause the Telecom Authority has reserved the right to review the license fee and the same is ordained to be binding on the licensee. This is a contractual obligation under the license. The license is an admitted

document accepted by both parties. The petitioners have not shown anything which may suggest that they objected to this condition forming part of the license. Therefore, the decision of the respondent to amend the term relating to license fee cannot be challenged on this ground.

The other point of challenge to the amendment is based on Section 11 of the TRAI Act. Sub-section (1) of Section 11 enumerates the functions of Telecom Regulatory Authority of India. Sub-clause(a)(ii) of sub-Section (1) provides that it will be a function of the Authority to make recommendation either suo motu or on request from the licensor on matters relating to terms and conditions of license to a service provider. It is submitted that the recommendations of TRAI were neither made suo motu nor the licensor requested for recommendation on the question of terms and conditions of license to service provider i.e. the petitioners. It is further submitted that seeking recommendation of the Authority was mandatory and in the absence of recommendation the license could not have been granted/amended. This challenge is towards amendment of the license and it is not qua the original license.

The learned counsel for the petitioner argued that amendment of the term of original license regarding license fee is actually to be treated as a case of grant of a new license and, therefore, such a recommendation was necessary. It is submitted that factually neither recommendation was sought nor it was made. In the absence of the recommendations of the Authority the amendment is bad and liable to be quashed. Reference to second proviso to Section 11, sub-section(1) will show that the requirement of seeking or making a recommendation in relation to grant of license is applicable only in case of grant of a new license issued to a service provider. To overcome this hurdle in their way the petitioners have tried to argue that the amendment in original license means it is a case of grant of a new license. We are unable to agree with this submission. Amendment of a term of license cannot be said to be a case of grant of a new license. The power to amend the relevant terms of license is contained in the original license and the respondent in exercise of that power has amended the

term relating to license fee. This cannot be said to be a case of grant of a new license. Therefore, this argument made on behalf of the petitioner is untenable. When we hold that this is not a case of grant of a new license, the requirement of recommendation of TRAI also goes because as per the proviso this requirement comes into picture only in case of grant of a new license. Therefore, we find no merit in the argument on behalf of the petitioners that the amendment of the term of license regarding license fee is illegal and is liable to be quashed. Prayer (a) is, therefore, rejected.

The petition is disposed of accordingly.

.....**J**  
**(Arun Kumar)**  
**Chairperson**

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