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Mahanagar Door Sanchar Bhawan,

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Subject: ACTO's response to TRAI Consultation Paper No 19/2016 dated 19th August 2016 on Spectrum Usage Charges & Presumptive Adjusted Gross Revenue for Internet Service Providers & Commercial Very Small Aperture Terminal Service Providers

Dear Sir,

Association of Competitive Telecom Operators (ACTO) is pleased to submit its response to TRAI's Consultation Paper on Spectrum Usage Charge & Presumptive Adjusted Gross Revenue for Internet Service Providers & Commercial Very Small Aperture Terminal Service Providers.

We hope that our comments (enclosed as Annexure – I) will merit consideration of the Hon'ble Authority.

Thanking you,

Respectfully submitted,

Yours sincerely,

for Association of Competitive Telecom Operators

Tapan K. Patra

Director

Encl.: As above

Annexure-I

ACTO's response on TRAI CP on Spectrum Usage Charges & Presumptive Adjusted Gross Revenue for ISP & Commercial VSAT Service Providers

Introduction

The license fee which is currently based on actual revenue of the service provider should be without any linkages to the concept of presumptive Adjusted Gross Revenue (AGR). There should not be any presumptive AGR in the telecom sector as the concept itself is contrary to the principles of revenue sharing regime adopted in 1999 pursuant to the migration package.

1. Implementing Presumptive AGR regime under any license granted under section 4 of Indian Telegraph Act, 1885 whether for license fee or spectrum usage charges will entail taking the telecom sector back to the pre 1999 era wherein irrespective of the fact whether service under the telecom license is commenced or revenue is accrued or challenges in roll out or getting statutory permissions were in place, still a fixed charge was required to be paid by the licensee.
2. The concept of minimum presumptive AGR was raised and deliberated under TRAI's consultation paper titled "Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges" dated July 31, 2014. In its recommendations dated January 1, 2015, TRAI has favorably recommended.
3. Subsequently, TRAI in January 2015¹ after reviewing the responses took a well - considered view by recommending that **"the minimum presumptive AGR for the**

¹ 2.52 The allocation of spectrum (through administrative process or auction) to TSPs comes with time-bound rollout obligations. Rollout obligations in the licence conditions are prescribed to ensure that services under the licence are made available to consumers within a reasonable period; at the same time it ensures that scarce resources such as spectrum do not remain idle. The non-commencement of licenced services within the stipulated time not only results in loss of revenue to the exchequer in the form of the LF and SUC, but also in inefficient utilization of spectrum. To overcome this, the concept of a minimum presumptive AGR¹⁰ was introduced by the DoT to ensure that licencees not only make sincere efforts to start services within the stipulated time but also make efforts for the efficient utilisation of spectrum.

2.53 The Authority in its Recommendations of 11th May 2010 on 'Spectrum Management and Licensing Framework' had recommended¹¹ minimum (presumptive) AGR for the GSM segment and the CDMA segment of Access Services. The prime objective behind this recommendation was to encourage faster rollout by the TSPs especially by licencees who got licences bundled with spectrum in 2008 through an administrative allocation process.

2.54 At that time, it was noticed that some TSPs (new licencees) had not commenced operations even after the lapse of sufficient time. The Authority sought to address this issue and ensure that the TSPs rollout their networks quickly and the Government also get its share of revenue in the form of LF and SUC. Apart from this, its Recommendations of 1st May 2014 on 'Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for Provision of Internet Services and Minimum Presumptive AGR' the Authority recommended¹² minimum presumptive AGR for existing internet service providers (ISPs) holding BWA spectrum as applicable to the licencees who obtained access spectrum through competitive bidding. This recommendation was driven primarily by the consideration of ensuring a level-playing field amongst TSPs for fair competition, without going into the merits of a presumptive AGR. The Authority noted that access spectrum acquired by TSPs through the auction process since November 2012 carries obligations of minimum AGR for the purpose of LF and SUC; however, there was no such clause for the BWA spectrum acquired in May 2010. This would create a non level-playing field amongst TSPs who acquired access spectrum through the auction process but at different points of time.

2.55 In this context, the following questions were raised in the CP:

Q12: Should minimum presumptive AGR be applicable to licencees? How should minimum presumptive AGR be arrived at?

Q13: Should minimum presumptive AGR be made applicable to access licencees only or to all licencees?

2.56 In their responses, most stakeholders have argued against the concept of minimum presumptive AGR. Their argument runs on the following lines: Since, in the current licensing regime, the Government has decided to allot spectrum through auction alone, it is simply incorrect to assume that TSPs would pay huge upfront spectrum acquisition costs with the intention to hoard or underutilize it. One stakeholder pointed out that if the AGR of the licensee was lower than the presumptive AGR in any quarter, the TSP would be forced to pay the minimum LF which would only add to the losses of the financially weaker TSPs viz.,

purpose of LF and SUC should not be made applicable to any license(s) granted by Government for providing telecom services”. (Emphasis Supplied).

4. The recommendations was based on the fact that in the new licensing regime, spectrum is allocated through an auction process and TSPs are required to pay market-determined prices which can generally be expected to be sufficient motivation to licensees to start the commercial operations. Further, the respective license agreements include provisions on roll out obligations to be met by the licensee within a specified time frame, failing which there are provisions for penalty (including prospects of cancellation of assigned spectrum). Therefore, the rationale for imposition of levies based on presumptive AGR does not hold good.
5. We support the said recommendations and firmly believe that the circumstances and policy drivers which existed in 2015 hold good today as well. There is no absolutely no rationale to deviate from the earlier well considered recommendations of January 2015. TRAI recommendations on the issue of presumptive AGR should not be changed whether spectrum is allocated through auction or administrative mechanism. The matter of efficient utilization of spectrum being scarce national resource cannot be addressed by levying a license fee by presuming revenue.
6. Timely roll out of services for efficient use of resources is equally dependent on the receipt of timely statutory approvals. If there is still a delay at the licensee’s end, the terms and conditions under the license already provide for imposition of penalty for failure to meet the roll out / terms and conditions. Bank Guarantees are provided to DoT for securitizing the license obligations.
7. In wake of such enabling provisions, imposition of presumptive AGR, in addition, is a double taxation on the licensees, which still does not take away the right to impose penalty for failure to meet roll out obligations.

presumptive AGR is loaded against the smaller and financially weaker TSPs. A few stakeholders supported the imposition of the minimum presumptive AGR, with one suggesting that it should be made applicable on new licensees holding spectrum. Another stakeholder suggested that the minimum presumptive AGR should be levied on all licensees for a level-playing field. Another stakeholder suggested that the minimum presumptive AGR should be based on entry fee (defined in the NIA for each LSA).

2.57 There was no presumptive AGR or minimum amount of LF on various service licences issued till August 2007. A minimum amount of LF was introduced in the ISP licences issued after August 2007. Further the Notice Inviting Application (NIA) dated 25th February 2010 for the auction of 3G/BWA spectrum did not contain any clause regarding minimum presumptive AGR. However, in the auctions conducted from November 2012 and subsequently, a clause regarding minimum presumptive AGR was introduced. The Authority feels that its Recommendations on minimum (presumptive) AGR of 11th May 2010 (for GSM and CDMA segment) and 1st May 2014 (for ISP licensees having BWA spectrum) should be seen in the context in which they were made. The motivation for a presumptive AGR is really more relevant in a scenario where spectrum was bundled with licence and given at an administered price. However, in the new licensing regime, spectrum is allocated through an auction process and TSPs are required to pay market-determined prices. Therefore, the rationale for imposition of levies based on presumptive AGR simply does not hold good since the licensee has already paid a significant amount upfront and any idling of the spectrum resource would be to the licensee’s detriment. The move towards market-based determination of spectrum prices can generally be expected to be sufficient motivation to licensees to rollout services in time.

2.58 Moreover, the Authority notes that the respective licence agreements include provisions on rollout obligations to be met by the licensee within a specified time frame, failing which, there are provisions for penalty (including prospects of cancellation of assigned spectrum). The Authority is, therefore, of the view that the objective of early rollout of services by the TSP can be achieved in a more meaningful and effective manner by monitoring rollout obligations more stringently.

2.59 In this background, the Authority is of the considered view that the concept of minimum AGR is not relevant under the present auction-based spectrum allocation regime. Therefore, **the Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services.**

8. The License for provision of Internet services already includes a provision on presumptive AGR² as regard payment of license fee is concerned. The license also has specified time period for roll out³ and requires submission of performance bank guarantees. Therefore any decision to further impose presumptive AGR on payment of spectrum usage charges will not be appropriate and will severely impact the ISPs.
9. The aim of the policy should be to ensure that the licenses issued meet the purpose for which they have been granted. The policy should create incentives and further streamline the process for securing permissions / approvals in a timely manner. This will enable licensees to roll out timely and meet the extant requirements stated under the license. The policy framework should be realistic in terms of how soon the services can be started which will ensure utilization of licensee's network as well as the permissions / authorization accorded by the Government.
10. However, the current licensing regime imposes presumptive AGR from a period which is much before from what is stipulated even for roll out obligations. The internet license has a roll out obligation of 24 months. However, the minimum license fee is required to be paid from first year itself. So it raises a question as to what is it which the policy is trying to address by imposing presumptive AGR on the licensees.
11. If the issue of "presumptive" is to be deliberated in view of efficient roll out and utilization, then this should also entail reviewing the approval / permissions process which should incentivize licensees in case of delay in grant at the policy level. So the considerations should be balanced and apply on both sides,
12. Additionally the existing license regime continues to encourage presumptive AGR including unified license. Ironically even in the licensees which are pure resale (VNO) where no spectrum is granted nor there is any roll out obligation, still VNOs are required to pay a license fee based on presumptive AGR⁴. So there is no rationale or basis to continue with the concept of presumptive AGR.
13. The telecom sector has one of the highest levies when compared with other developed and developing economies. The policy framework should be based on holistic development of the sector so that the viability of stakeholders is maintained and consumers get an affordable and quality service. If the objectives of policy regime is

² 17.2 Licence Fees: .An annual licence fee @6% of Adjusted Gross Revenue(AGR) as defined in Condition 18 , subject to minimum of Rs.50,000/- (Rupees Fifty Thousand Only) and Rs.10,000/- (Rupees Ten ThousandOnly) shall be payable for category 'A' & 'B' service areas respectively per annum per licenced service area.

³ 8.1 The LICENSEE shall commission the Applicable Systems within 24months from the effective date of the licence and offer the service on demand to its customers. Date of commercial launch would be the dateon which commercial services are provided to the subscriber and shall be intimated to Licensor within 24 hours of such launch.

⁴ 18.2.1 In addition to the Entry Fee, an annual License fee & Spectrum Usagecharges (SUC) as a percentage of Adjusted Gross Revenue (AGR) shall be paid by theLicensee service-area wise, for each authorized service separately as the procedureprescribed in applicable chapter of UL (VNO) from the effective date of the respectiveauthorization. The License Fee is at present 8% of AGR, inclusive of USO levy, whichis presently 5% of AGR. SUC shall be applicable as per rates applicable for NSO andcan be amended from time to time.

skewed on mere financial considerations which includes the concept of presumptive AGR, it will not help in meeting the desired objectives enunciated under the policy.

14. Thus, in view of the above there is no need for imposition of any presumptive AGR and TRAI should continue to favourably recommend in this regard as stated in its earlier recommendations date January 6, 2015, when the license already has necessary provisions to address the utilization by timely roll out.

In view of the above, we now provide our responses to the questions raised under the current consultation as applicable.

Question wise response to the specific issues for the consultation:

Question 1. Should the spectrum assignment on location basis / link-by-link basis on administrative basis to ISPs, be continued in the specified bands. If not, please suggest alternate assignment mechanism. Please justify your answer.

ACTO Response:

No response is provided.

Question 2. Should minimum presumptive AGR be introduced in ISP license for the purpose of charging SUC? If yes, what should be the value of minimum presumptive AGR and basis for its computation? Please provide justification for your response.

ACTO Response:

No presumptive AGR should be introduced under any license issued by Government under section 4 of Indian Telegraph Act, 1885 which includes the ISP license. In fact the current provision of presumptive AGR under the existing ISP license should be in reviewed for exclusion. We have already provided detailed justification in the above "Introduction". TRAI has also provided complete justification while recommending non imposition of presumptive AGR under the licenses in its recommendations dated January 6, 2015.

Question 3: Is there a need to introduce SUC based on percentage of AGR for ISPs or should the existing formula based spectrum charges continue? Please give justification while suggesting a particular method of charging SUC.

ACTO Response:

No response is provided.

Question 4: If AGR base SUC is introduced, whether the percentage of AGR should be uniform for all ISP licenses or should it be different, based on revenue / spectrum-holding / any other suitable criteria? Please suggest suitable criteria with reasons.

ACTO Response:

No response is provided.

Question 5: What mechanism should be devised for ISP licensees to identify revenue generated from use of spectrum and revenue generated without use of spectrum? Please give your view on this with justification.

ACTO Response:

No response is provided.

Question 6.:In case minimum presumptive AGR is prescribed for the ISP license, what percentage should be applied on minimum presumptive AGR to compute SUC? Please provide justifications for your response.

ACTO Response:

There should not be any presumptive AGR in the telecom sector as the concept is contrary to the principles of revenue sharing regime adopted in 1999. Presumptive AGR will entail taking the sector back to the pre 1999 era wherein irrespective of the fact whether service is commenced, revenue is accrued or difficulties encountered in roll out or getting statutory permissions a fixed charge has to be paid.

The charging based on presumptive AGR being charged to enforce roll out obligation and only have serious player in the ISP segment, is principally inappropriate. The presumptive charge is a continuous levy and continues despite the operator having rolled out the services, thus the logic of it being charged to drive operator to roll-out the service or only have serious player in market, does not hold good. It is a very well-known fact that spectrum is a very scarce and equally high premium resource and operators have already made huge investment to win the spectrum in auction and can never be considered non serious players.

The better way of ensuring that the operators rollout the service within the given timeframe is to either have punitive action on operators who have not rolled out prescribed services within the stipulated timeframe or to have some other levy payable by them only till the time they start the services under the license as stipulated under the roll-out obligation.

In the present hyper competitive telecom market, where spectrum is not bundled with license and TSPs are required to pay market determined prices the rationale for imposition of levies based on presumptive AGR become redundant now, since the licensee has already paid significant amounts upfront and any idling of the spectrum resource would be to the licensee's detriment.

No presumptive AGR should be introduced under any license issued by Government under section 4 of Indian Telegraph Act, 1885 which includes the ISP license. In fact the current provision of presumptive AGR under the existing ISP license should be in reviewed for exclusion. We have already provided detailed justification in the above "Introduction". TRAI has also provided complete justification while recommending non imposition of presumptive AGR under the licenses in its recommendations dated January 6, 2015.

Question 7:In case, Formula based spectrum charging mechanism in ISP license is to be continued, do you feel any changes are required in the formula being currently used that was specified by DoT in March 2012? If yes, suggest the alternate formulae. Please give detailed justification.

ACTO Response:

No response is provided.

Question 8: Do you propose any change in existing schedule of payment of spectrum related charges in the ISP license agreement?

ACTO Response:

The schedule of payment as specified under the existing license requiring payment on quarterly basis should be instituted for sake of uniformity across licenses.

Question 9: Should a separate regime of interest rates for delayed payment of royalty for the use of spectrum be fixed in ISP license or should it be the same to the prevailing interest rates for delayed payment of license fee / SUC for other licensed telecom services?

ACTO Response:

No separate regime should be instituted. The existing provision under the license in this regard should be sufficient to address this requirement.

Question 10. Should separate financial bank guarantee or single financial bank Guarantee be submitted by the ISP licensee covering LF payable, fees/charges/royalties for the use of spectrum and other dues (not otherwise securitized)? If yes, what should be the amount of such financial bank guarantee in either case?

ACTO Response:

The existing license regime already contains provision for submission of financial bank guarantee intended to securitize the charges payable to DoT of the various levies (LF, Fee, charges, royalty etc.) payable under the license. If any dues remain unpaid the license allows encashment of the dues through the proceeds from guarantee. Therefore no separate or additional financial bank guarantee is required to be submitted.

Question 11. Is there a need to specify minimum presumptive AGR for commercial CUG VSAT license for the purpose of charging SUC? If yes, what should be the value of minimum presumptive AGR and basis for its computation? Please provide justification for your response.

ACTO Response:

No presumptive AGR should be introduced under any license issued by Government under section 4 of Indian Telegraph Act, 1885 which includes the ISP license. In fact the current provision of presumptive AGR under the existing ISP license should be in reviewed for exclusion. We have already provided detailed justification in the above "Introduction". TRAI has also provided complete justification while recommending non imposition of presumptive AGR under the licenses in its recommendations dated January 6, 2015.

Question 12. Should the SUC applicable to commercial VSAT services be reviewed? If yes, what should be the rate of SUC to be charged? Please give your view on this with justification.

ACTO Response:

No response is provided.

Question 13. In addition to the issues mentioned above, comments of stakeholders is also invited on any other-related matter / issues.

ACTO Response:

No response is provided.