

Sub.: TRAI's Consultation Paper on Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR .

Given the fact that the Unified Licensing will be introduced shortly, it is important that the previous aberration that exists in the licenses need to be reviewed and addressed. Accordingly the definition of Adjusted Gross Revenue (AGR) for payment of license fee needs to be reviewed to ensure level playing field among the service providers. The present definition subjects all avenues of revenue (telecom and non-telecom) accrued to the licensee company to license fee. Also the permissible deductions are restricted only to voice based pass through charges (interconnection), service and sales tax paid.

The revenues accrued only from telecom sources need to be considered for license fee payment purposes. This will eliminate the issue of **multi stage assessment of license fee** which is currently in vogue and severely impedes competition in the enterprise services and data sector. Therefore input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

Further the license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR.

Our comments on the specific questions of the consultation paper are given below:

Question No. 1

Stakeholders are requested to give their comments on definition of AGR for all three categories of ISP licences.

Response

First category of license was granted on the basis of guidelines issued in November 1998

The AGR definition was not applicable under this category. As for those operators to whom the License was granted prior to 31.10.2003, the License Fees was waived and subsequent to which a nominal token fees of Re. 1 per year was charged. This was done mainly to promote the ISP operators and to boost the industry. This was indeed a good initiative taken to encourage operators to acquire ISP license and many operators did acquire ISP license, however not many operators could sustain this high initial capital with low intensive revenue in the initial years due to multiple reason including low penetration of PCs in India.

The second category of license for provision of Internet Service (Including Internet Telephony) was granted on the basis of guidelines issued in between April 2002 to Sep. 2007

This category can be broadly divided into two category.

First the Internet (including Internet Telephony) allowed to the USAL Operators : The definition of the AGR under this category did not allow deduction of revenue on pure internet revenue. Thus creating a disparity amongst the internet services provided by USAL operator and that provided by ISPs. This resulted in none of the UASL operator reporting /commissioning any internet services under the USAL license. Thus, the objective of the Government to give boost to the Internet Industry never met its end objective and neither did the Government make any revenue due to this anomaly. As all USAL operators also possessed ISP license and it would be significantly in the interest of reduction of levy to continue to offer the internet services (including Internet Telephony) under their ISP License instead of rolling out the same under USA License. There was no significant advantage to UASL Operator in offering the services under USAL viz ISP license. Even for the Internet Telephony revenue there was a delta between the License Fees under the ISP License viz a vis USA License.

Second the Internet (including Internet Telephony) allowed to the ISP Operators :: The ISP operators were made to pay 6% of the AGR on their Internet Telephony Revenue vis a vis a token amount of Re. 1 per year. This did have its adverse impact on the internet telephony industry, in addition to the multiple service restriction under which the Internet telephony was allowed to the ISP operators (including restriction on converged voice). The UASL Operator were allowed unrestricted Internet Telephony, which was always restricted to ISP operators. The USAL operators never rolled out the unrestricted telephony due to commercial reason. Thus, this direction of levying license fees on pure internet revenue of UASL operators never really got exercised in practice. However, its pertinent to note that even under this regime for ISPs, the pure internet revenue was still kept free from the burden of License Fees, which helped to ISP industry keep its cost in check and were able to float to some extent.

The third category of license for provision of internet service was issued in October 2007 (the Internet access services including internet telephony and IPTV were allowed under one license)

The practice of minimum presumptive annual license fees was introduced in the ISP License on 10th May 2007 with the introduction of amendment in clause 17.2 as reproduced below.

The clause related to license fee and definition of AGR are as follows:

*“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 Thousand Only) shall be payable for category ‘A’ & ‘B’ service areas respectively per annum per licenced service area.”*

The basis of charging this was made to keep only serious player in the market. We however does not feel this is the right approach to tackle the concerned issue. As the presumptive charge is a continues ongoing levy and continues to be levied despite the operator having rolled out the services, thus the logic of it being charged for being charge

to drive operator to rollout the service or only have serious player in market does not hold good. It would not be correct to levy any presumptive AGR charge on all operators across the board and also on those operators who have been in services for many years.

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

Though we do not agree with this principal of Minimum Presumptive AGR, the amount introduced under the 2007 guideline being nominal did not burden the ISP operator to great extent.

Question No. 2

Should minimum presumptive AGR be applicable to BWA Spectrum holders under Internet Service/Access Service license(s) and other licenses with or without spectrum, including access service licenses? If yes, what should the value of minimum presumptive AGR?

Response

We do not support the levying of minimum presumptive AGR on BWA Spectrum holders under Internet Services/Access Services License and also other licenses with or without spectrum. The charging presumptive AGR being charged to enforce rollout obligation and only have serious player in the ISP segment, is principally inappropriate. The presumptive charge is a continues levy and continues despite the operator having rolled out the services, thus the logic of it being charged to drive operator to rollout 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 operator 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 rollout obligation. We also understand that the invitation application dated 25th February 2010 issued by DOT for auction of 3G and BWA spectrum did not prescribed for any minimum presumptive AGR. Thus, these kind of additional levy would greatly affect the business models of these operators.

It would not be correct to levy any presumptive AGR charge on all operators across the board and specially on those operators who have been in services for many years. Just because few operators have not commissioned the services within the stipulated time frame and there is an impression that scarce natural spectrum resource is going waste in all cases. Treating all operators on the same basis and imposing any levy on the same yardstick is not appropriate, especially on those ISPs who do not even hold any spectrum. This is like saddling the efficient operators with the burden of presumptive AGR, due to the inefficiency of other operator, thereby punishing the efficient operator. Moreover, one cannot apply the same point of reference for operators holding spectrum and those not holding spectrum. Charging any presumptive AGR on non-spectrum holding operators, on the basis of hoarding of scarce resource or misappropriation of spectrum hold good for ISPs without any spectrum.

Thus, we do not support any levying of minimum presumptive AGR for any of the licenses in question.

Question No. 3

Please suggest the amendments required in the formats of statement of revenue and licence fee reported by various categories of Internet service licensees and UAS licensees.

Response

We support the continuation of the format given under Annexure II and III respectively for ISP license issued under 2002 and 2007 guidelines respectively with some modifications. We are of the view that the revenues accrued only from telecom sources need to be considered for license fee payment purposes. Revenues from internet services should also be excluded for the purpose of calculating the AGR. Thus any income from pure internet should be allowed as admissible deduction in all cases. Annexure II and III are modified accordingly.

Argument in support of continuation of format prescribed under Annexure II & III

It would be very pertinent to mention here that the decision to impose a ULF of 8% is much against the industry wishes. The increase in uniform license fee has already hit the Internet Industry very adversely and will certainly make the cost of doing telecom business in India more expensive, thereby affecting the consumers adversely. Disallowing pure internet revenue is going to be a double whammy on the ISP operators, who are already paying License Fees @7% of AGR presently and would soon pay @8% of AGR on revenue other than pure internet revenue. Thus, any decision taken contrary to the one suggested under Annexure III, will have huge cascading effect on the entire ISP industry and also act as a roadblock in achieving the high growth target set by the Government for the Internet and Broadband in the country.

The regulatory charges imposed on the Indian Telecoms Sector are among the highest in the world. Despite TRAI's recommendation on Unified License Fees to DOT to set a uniform license fee at 6% of AGR, the DOT has already mandated the same at 8%. This increase of license fees to 8% of AGR has significant impact on our costs and returns on investment. The earlier License fee had been integrated into the cost structure of our members' companies' long-term contracts with their customers and they would not be able to pass on this increased burden of License Fees to their existing customer in most cases.

Some data on License Fees levies in comparable markets in Asia

The regulators in Indonesia, Malaysia and Pakistan charge just 0.5% while Singapore charges 1% of revenues for the annual license fee. Hong Kong imposes a low, flat fee of HKD 1 million (USD 128,965) or less.

In analyzing the total annual fees, we found that, of the Asian countries, Singapore charges the lowest total fee of just 1% of revenues while Malaysia charges the highest total fee (annual fee plus USF fee) of 6.5% of revenues, with Macau following at 5% of revenues. The total amount of fees charged in all other countries is 2% or less.

Thus in comparison to the above regions, License Fees charged in India is already much higher and the recent proposal of DOT to disallow pure internet revenue from the permissible deduction of AGR will very adversely affect the whole Internet Industry.

Needless to mention here again, we are already an affected party due to the Double Taxation Levy issue (cumulative assessment of License Fees). Even today due to the above issue our members are already effected by multiple assessment of License fees on their revenue generated under NLD, ILD & ISP License, as permissible deduction are limited only to voice-based pass through charges, service and sales tax paid.

With respect to Format under Annexure IV & V, we does not wish to comment on the format with respect to UAS license including the format for UAS licensee holding 3G/BWA spectrum via auction.