



31st January 2013

Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi – 110 002

Kind Attention: Mr. Arvind Kumar, Advisor (NSL).

Subject: Response to Consultation Paper on Definition of Adjusted Gross Revenue (AGR) in License Agreements for provision of Internet Services and minimum presumptive AGR

Dear Sir,

Tata Teleservices recommends that the following principles should be adopted by the Authority while framing the AGR definition for provision of internet services:

- a. Levy license fee on the revenues which have been accrued from subscribers on the strength of the license granted under section 4 of the Indian Telegraph Act, 1885 i.e., revenues accruing from the licensed services only.
- b. Exclude revenue of Licensee Company which has not been accrued on the strength of Internet Service License, granted under section 4 of the Indian Telegraph Act, 1885 i.e. revenue from non-licensed activities/services should not be considered for the purposes of computation License-fee liabilities of the ISPs.
- c. The above principles were duly adopted by the Authority, while submitting its Recommendations to Hon'ble TDSAT in the matter of AGR disputes in 2006. The TDSAT judgment dated 30th August 2007 in the said dispute, has duly acknowledged the said recommendations/principles of TRAI.
- d. Recognition of the concept of Value added Tax (VAT) in order to avoid multi-stage assessment of license fee thereby avoiding cascading impact of license fee on the end user i.e. double taxation. This is specifically in the context of data service providers who are providing telecom services by taking input bandwidth from other telecom service providers. (Presently, ISP operators are subject to the double-assessment of license fees because input costs (ie wholesale bandwidth costs which already reflect the 7-8% license fee) are not deductible from the adjusted gross revenue on which the license fee is calculated).

Based on above, please find below our responses against each question:

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

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TTL: We recommend the following definition of AGR for provision of Internet services:

Adjusted Gross Revenue (AGR) for the purpose of levying Licence Fee as a percentage of revenue share shall mean the "Gross Revenue (GR)" accruing to the licensee by way of operations of the internet access service including internet telephony services and as reduced by the following items:

- Revenue from pure Internet access/ Broadband service
- Government taxes and levies
- Charges paid to other telecom service providers/ NIXI.

We would also like to bring to the kind notice of the Authority that while DoT had already permitted UASL and CMTS operators to provide Internet telephony, Internet Services and Broadband services in November 2005 itself but DoT did not exclude revenue from internet services from the AGR for the purpose of calculation of license fee of these licensees. This **inequality** has led to an unnecessary financial burden on UASL/ CMTS operators providing the same internet services to the masses. Hence, to remove this anomaly, we request the Authority to allow this exclusion of revenue from pure internet services while calculating AGR for the purpose of license fee in case of UASL/CMTS licenses also.

In view of above, we suggest to the Authority not to include any revenue from pure internet services in the definition of AGR of the ISP license and also suggest that definition of AGR for UASL/ CMTS should be amended accordingly.

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?

TTL: We recommend that there should not be any presumptive AGR applicable.

We believe that a presumptive licence fee cannot be justified when there is no opportunity or likelihood of hoarding resources under ISP such as spectrum and numbering, which imposes an opportunity cost on others. More so, since the ISPs do not have an exclusive licence, they cannot prevent further market entry by virtue of being early entrants. Also, the entry fee for the ISP licence is not a sufficient deterrent to new players. Therefore, there is no reason to impose a presumptive licence fee on any licences which offer no exclusive rights, and the cost of entry is very low.

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Presumptive AGR goes against the principles of the move towards revenue sharing adopted in 1999 under NTP-99. The basis of that move was that operators must not be burdened with fees but must share a portion of actual revenues for services that they provide or accrued from these services with the government.

In case the Authority decides to implement the minimum presumptive AGR, then it must be applicable on the new ISP licensees and those ISPs who won the BWA spectrum in the 2010 auction but are yet to provide their commercial services. This will ensure the efficient utilization of the scarce spectrum and faster rollout of the BWA commercial services.

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.**

TTL: There are number of issues concerning inclusion of certain revenue/ income streams in the AGR definition which are not from ISP activities. It is important that statement of revenue & license fee is corrected to take care of these concerns.

License Fee as a percentage of AGR should be applicable only from the revenues accruing to the licensee from the provision of licensed activities under the ISP license. Pass through revenues should comprise of all revenues paid out to the other licensed telecom service providers and deduction should be allowed for payments made to other telecom licensees to avoid double incidence of license fee. We suggest following corrections in existing definition of AGR or format for statement of revenue & license fee which will be applicable for all categories of license like UASL, CMTS, ISP etc:

S. No	Item	TTL Suggestions
1	Income from Dividend	Please exclude from the AGR definition should not be included in the AGR being a non licensed activity
2.	Interest Income : a) Interest Income Interest earned on investment of savings made by a licensee after meeting liabilities including liability on account of share of the Govt. in the gross revenue. b) Interest earned on investment of funds	Interest income should not be included in the AGR as this income is not from the ISP/licensed activity. If interest is to be included in revenues then it should be on net basis. Finance costs incurred by entity should be allowed as deduction.

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	<p>received by way of deposits received by licensees on account of securities against charges,.</p> <p>c) Interest earned on deposits received by way of deposits from customers on account of concessions given in the charges payable for using the licensed services.</p>	
3.	Capital Gains	Please exclude from the AGR definition being a non licensed and non revenue activity
4.	Gains from foreign exchange rate fluctuations	<p>Please exclude from the AGR definition being a non licensed and non revenue activity undertaken to meet accounting standards requirements.</p> <p>If these are to be included then deduction for losses should be allowed.</p>
5.	Reversals of provisions and Vendors' credit	Please exclude from the AGR definition being a non licensed/non revenue activity undertaken as per accounting standards.
6.	Income from property rent	Please exclude property rental income as this income is from other than licensed activity.
7.	Income from sale /lease of Passive Infrastructure like Towers, Dark Fibres etc	<p>a) Many charges which are paid by one operator to another operator are treated as revenues in the hands of both the operators resulting in cascading license fee applied at every stage in the supply chain without any deduction for license fee already paid at earlier stage. For example charges under leased circuits, port charges, co-location, dark fiber, towers etc. telecom operator to the other. These charges are not allowed as deduction.</p> <p>b) As per Value Added taxation principle charges for input services should be allowed to be set off against the final product else there is cascading</p>

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		impact off taxation. In view of this it is suggested that input services like leased circuits, port charges. Dark Fiber etc should be allowed exclusion from AGR as pass thru charges.
8.	Other including Misc Income: a) Revenue streams like sale of tenders, directories, forms, forfeiture of deposits/earnest money, management fees, consultancy fees, and training charges b) Revenue from sale of fixed assets which is in nature of capital receipts and insurance claims. c) Payments received on behalf of third party d) Other items falling under the categories of miscellaneous/other income will have to be decided for taking a view regarding its inclusion or exclusion on a case to case basis.	a) Please exclude b) Please exclude c) Please exclude d) To be Included/ Excluded on case to case basis.
9.	Any other miscellaneous receipt from investments	Please exclude from the AGR definition being a non licensed activity
11.	Revenue from sale of equipment including customer equipment	Please exclude (provided the sale is discernable and on stand-alone basis. In case of bundled sales include only if equipment is priced higher than costs plus say 10% profit and against such higher price licensed services are provided free or on subsidized basis.
12	Deduction of Leased Line charges, Port Charges, Interconnection Set Up costs, Signalling charges.	Allow deduction as these are akin to PSTN charges (on bulk basis).
13.	Bad Debts, Waivers, Discounts from AGR	License Fee is payable by the TSPs even in cases no amount is collected against issued invoices. This is undue hardship on the licensee as there is not only loss of the revenue but also loss

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		of License fee on the same. The amount of bad debt in the ISP and telecom sector is high. Equity demands that at least license fee corresponding to the amount written off by the service provider be allowed to him to be adjusted against his future liability.
14.	Inclusion of items of revenue on accrual basis but exclusion of items of cost on actual payment basis.	Inclusion/ exclusion of an item should both be on accrual basis.
15.	Notional income	Any income, which is not realized by licensee directly or indirectly, should not be included in AGR.
16.	Third party Contract	Any income which is accruable to a third party for providing services to subscribers, which does not arise from any licensed service, should not be included in AGR of telecom operator, viz. recovery of Installation charges charged by vendors for installing customer premises Equipment (CPEs).
17.	Service Tax / Sales Tax	Service Tax / Sales Tax are statutory dues paid to government. Payment of the dues is related to provisions under the act and benefits are given for investments or procurement of the company as per such provisions. These should not be treated as sources of revenue. Accordingly, these should be excluded from statement of computation.

We hope that our views will be given due cognizance by the Authority. We would be happy to address any further query in this regard.

Thanking you and assuring you of our best attention always.

Yours sincerely,


Anand Dalal
Senior Vice President – Corporate Regulatory Affairs
Tata Teleservices Limited
And
Authorized Signatory
For Tata Teleservices (Maharashtra) Limited

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