

Issues for Consultation

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

There are three different categories of licence granted by DOT for provision of Internet services -

The first category of licence was granted on the basis of guidelines issued in November 1998 when provisioning of Internet Services was opened for Private Sector. The services that are permitted in this licence include all types of Internet Access/content services but exclude telephony on Internet. The second category of licence for provision of Internet Service (Including Internet Telephony) was granted on the basis of guidelines issued in April 2002, when ISPs were permitted to provide internet telephony with restrictions on the type of the technology and devices which can be used. ISP licensees were permitted to offer Internet telephony services only after signing the licence agreement for provision of Internet Service (Including Internet Telephony). The permitted services include all types of Internet Access/content services and Internet telephony services with some restrictions. Finally, the third category of licence for provision of internet service was issued in October 2007. The licence for provision of Internet service (including Internet Telephony) was done away with and all the Internet access services including internet telephony and IPTV were allowed under one licence.

In our view, as there are three different categories of licence granted by DOT for provision of Internet services, they should all be brought under one umbrella. Having done that, for ISP's to provide a service and also to do the billing they will require a license under The Indian Telegraph Act, 1885. Upon receiving the license, ISP's can provide the services like internet access/content services and internet telephony.

However, with the restrictions that telephony is only possible from desktop/laptop to any international number and not within the country, the government is allowing internet telephony (meaning thereby a call from a desktop/laptop terminating into any PSTN or

mobile telephony and vice versa), therefore becoming a complete service provider. Once they are complete service provider, they will gradually take away the customers from their conventional operator. This in turn will lead to loss of revenue for the government. So once this happens, they should pay a license fees for the same. However, if the restrictions imposed are not lifted and ISP's are only for borrowing file downloads and for one way teleservice, the revenue/entry fees etc should be minimal.

We believe that with the technological advancements and by using artificial barriers, way and means would definitely be found for by passing the system. Because of same reasons, it becomes difficult to know how service is provided and how much revenue is made from the service. The best way could be to account the capital and if someone is making money let there be a reasonable amount of profit sharing/revenue sharing say 4%-5%, this is basically to prevent any flaw in accounting of the revenue.

Following are the two principles we strongly recommend -

- Whatever be the methodology of calculation of AGR and license fees imposed, must not offer any arbitrary opportunity. This may be especially true in case of complete service providers who are holding multiple licenses.
- For all the three categories who are pure ISP's, care must be taken that they only pay for the services which they provide under ISP license and any rental etc paid for leasing or hiring capabilities should be netted appropriately.

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?

Elsewhere in the world, there are squatting charges in order to prevent hoarding of the spectrum which the service providers may have been won by auction or through normal documented procedure, either way spectrum is paid off. There is no doubt that non-utilization of these resources is resulting in zero revenue. Also, there are some service

providers who do not commence their operations even after the lapse of sufficient time from the effective date of their licences.

Indeed government does lose revenue and no doubt the service provider who has paid for the spectrum should earn money by using the same. However, if the service provider is not using the spectrum nor is earning by using the spectrum bought, they should give a valid reason for it. Alternate method of calculating spectrum hoarding charges/squatting charges should be imposed, which could be on the basis of percentage of the price paid for spectrum. Any other method of calculation could lead to a legal challenge.

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.

No Comments.