



Comments on Consultation paper

Of

**Definition of Adjusted Gross Revenue (AGR) in License Agreements for
provision of Internet Services and minimum presumptive AGR**

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

1. **Reliance Communications Ltd (RCOM)** welcomes the opportunity extended to comment on issues raised in the Consultation Paper on ‘Definition of Adjusted Gross Revenue (AGR) in License Agreements for provision of Internet Services and minimum presumptive AGR.’”

2. The current definitions of AGR for payment of license fee in different telecom service licenses including licenses for ISPs has number of flaws as these include number of revenue components which are not purely from telecom services. The existing AGR definition also does not allow adjustment of inter-operator transactions for services like Bandwidth, International Bandwidth Connectivity, port charges, collocation charges etc. **This charging of license fee at every stage in the supply chain, without any deduction for the License Fee already paid at earlier stages has cascading impact on TSPs.** Imposition of license fee at every stage in the supply chain is against the fundamental principles of Value-Added Taxation. **To eliminate the multiple impositions of license fee, service providers should be allowed to take deduction of payments made to other service providers. Thus principles underlying AGR definition requires review.**

3. **RCOM suggests that in the current review corrective actions must be taken to define an unambiguous new AGR definition which is free of any flaws. The recommendations on principles underlying new AGR definition should be robust enough which going forward also serves as foundation for the AGR definition for Unified Licenses. No purpose will be served if TRAI continues with the archaic definition which is prone to discontent and frequent litigation.**

4. **Inclusion of revenue from pure internet in AGR will have adverse impact on affordability.** Many operators have started increasing broadband prices based on DSL. It is widely recognized that internet is catalyst for economic and social development of a country. Availability of broadband services at affordable price levels would contribute to higher GDP growth rates, provide for a larger and more qualified and informed labour force, and make that labour pool more efficient. Broadband is an extraordinarily transformative technology which can fundamentally change lives of many individuals. This service can help address many of our nation’s most pressing challenges in health-care, education, job creation and economic development. **In view of large scale benefits we suggest revenue from pure internet should not be included in AGR.**

5. RCOM's detailed comments on issues raised in the paper are given below:

(1) **RCOM's Comments on definition of AGR for all three categories of ISP License.**

1. There are three different categories of Licenses granted by DoT for provision of internet services. These are as follows:

- a) First category Licenses granted on the basis of guidelines issues in Nov 1998. There is no license fee on these licenses. Only a token License fee of Re. 1/- per annum is payable.
- b) Second category of License for provision of Internet Services including internet telephony
- c) Third category ISP licenses were issued on the basis of guidelines of October 2007.

2. Presently no license fee is applicable on first category licenses hence no definition of AGR has been prescribed in these licenses. However, for other categories Licenses, the existing AGR definition is erroneous as:

- (i) It includes several revenues unrelated to licensed activities under the license.
- (ii) It includes service items that strictly do not fall under the definition of revenue.
- (iii) It includes notional income that is unrealized/remains uncollected by the Licensee.
- (iv) License Fee is applied at every stage in the supply chain, without any deduction for the License Fee already paid at earlier stages

3. All possible revenue streams in the profit and loss account cannot be part of AGR. The detailed examination of individual components of AGR which should not be part of AGR for the purpose of levying licence are discussed below:

I. **License Fee on revenues unrelated to licensed activities under the license.**

- a) The Central Government has the exclusive privilege of establishing maintaining and working of a Telegraph. The Government can take percentage of the share of revenue of a licensee realized from activities of the licensee under the license. The right conferred under Section 4 of the Telegraph Act is confined to "establishing", "maintaining" and "working of a telecommunication". As the scope of the Licence does not go beyond these three activities, it would unfair to impose license fee

on activities which revenues which do not require license.

- b) It is suggested that revenue earned from interest, dividend, property rent, sale of goods like handsets, sale of immovable property, securities, warrants or debt instruments, other items of fixed assets etc should not be part of AGR as the revenue is not earned on the strength of Licenses under Section 4 of the Indian Telegraph Act, 1885.

II. License Fee on Notional Revenues

- a) Adjustments are carried out in accounting statements for FOREX gain/loss. Revenue which arise out of FOREX gain is only notional revenue as these arise due to liabilities for payment in foreign exchange change on account of appreciation of domestic currency vis-à-vis foreign currency. The FOREX gains generally result on account of revaluation of foreign exchange reserves lying in bank accounts, revaluation of provisions made for overseas vendors etc. and their gains or losses are notional and remain unrealized and therefore should not be included in the AGR.
- b) Provisions for made for known liabilities. TSPs keep provisions for various expenses to ensure that they have sufficient funds in hand when they are required to make payment for such expenses. In case a company's liability ceases to exist or crystallizes upon occurrence of any specific event, the company writes back such provisions to the extent that they are no longer required. Therefore, reversal of provisions is not actual inflow of cash from business activities but only an adjustment in the accounting heads.
- c) In view of the above it is suggested that revenue from FOREX gains etc should not be part of AGR**

III. Cascading License Fee applied at every stage in the supply chain, without any deduction for the License Fee already paid at earlier stages

- a) Many charges which are paid by one operator to another operator are treated as revenues at 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 and set up facilities are paid by one telecom operator to the other. These charges are not allowed as deduction even though these are interconnection or access charges which are essentially incurred for interconnected networks. In the existing AGR definition deduction of these charges is not permitted and therefore it is resulting into dual levy of licence fee on the same revenue.

- b) As per Value Added taxation principle charges for input services should be allowed to be off against the final product. However under existing AGR regime there no setoff for few input services resulting in cascading impact of multiple charging of license fee. **In view of this it is suggested that input services like leased circuits, port charges etc should be allowed exclusion from AGR as pass thru charges.**

IV. License Fee on Bad Debts Written Off or Unrealized Revenue by the Licensee.

- a) 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 of License fee on the same. The amount of bad debt in the 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.
 - b) TSPs give waivers and discounts to subscribers and as such this unrealized revenue should not be included in AGR. Imposition licence fee on revenue which is not even realised is not justified.
 - c) In view of the above it is suggested that licence fee should be payable on net realization of revenues and any amount which is being discounted, rebated or waived off to the end customer or bad debts written off should be allowed to be deducted from AGR.
4. Therefore, in line with the above submission, the revised definition for all categories of ISP License should be as follows:

Definition of 'Adjusted Gross Revenue':

a) Gross Revenue:

The Gross Revenue shall be inclusive of Internet access service, internet content service, Internet Telephony service, installation charges, late fees, revenue from permissible sharing of infrastructure and any other revenue earned from ISP activities under license, without any set-off for related item of expense, etc. Gross Revenue shall not include revenue earned from activities like interest, dividend, property rent etc which do not require telecom license.

b) Adjusted Gross Revenue

For the purpose of arriving at the “Adjusted Gross Revenue (AGR)” the following shall be excluded from the Gross Revenue to arrive at the AGR:

- (i) Pass through charges like leased circuits, port charges etc paid to other telecom service providers
- (ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.
- (iii) Charges paid to other Licensees for any input Telecom Service
- (iv) Bad debts written off
- (v) Roaming revenue actually passed on to other eligible/entitled telecom service provider.
- (vi) Revenue from pure internet.

(2) RCOM’s Comments on Presumptive AGR

The objective of presumptive AGR is to encourage licensees to roll out services on time and generate the revenue. Hence the presumptive AGR should be applicable only to new licenses. This should not be applicable to ISPs who have signed license agreement prior to this new regulation.

(3) RCOM’s Comments on Formats of AGR Statements

As mentioned in Para 1, AGR for ISP services should not include any revenue from non ISP activities namely trading activities, interest dividend and any other misc income from non telecom activities. Further it is also suggested to allow deductions of charges paid to other operators for input telecom services and bad debts in AGR. Continue to permit deduction of revenue from the Gross Revenue on account of pure internet.

Hence format of AGR statement should also be modified accordingly. All items related to non ISP activities including miscellaneous income should be removed from the format and new line items should be included in deduction section of the format for charges paid to other Telecom Service Providers and Bad debts written off.
