



Dated: 02.09.2014.

To  
The Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhavan  
Jawaharlal Nehru Marg  
New Delhi 110 002

Dear Sir,

Sub: Reply to your consultation Paper on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges New Delhi dated 31.7.2014 – req.

1. Atria Convergence Technologies Private Limited ('ACT') a company incorporated under Companies Act 1956 and has its registered office at #1, Palace Road, Bangalore 1. We submit this representation for and on behalf of ACT and M/s Beam Telecom Private Limited (Beam). ACT is in the business of providing Cable TV services and internet broadband services. ACT holds a valid Class – A license issued by the Department of Telecommunications, Govt. of India. ACT has been providing internet broadband services in the cities of Bangalore, Chennai and few other parts of Andhra Pradesh such as Vijayawada, Vizag, Nellore, Eluru etc., It is pertinent to mention here that ACT has been providing wired internet broadband services using Fiber to Home/ Building technology (FTTH/FTTB). Beam is providing Broadband internet services at Hyderabad, Andhra Pradesh.
2. **No license fee on pure broadband service:**

Amongst various aspects detailed under this consultation paper in reply herein, ACT is primarily concerned about the reference by TRAI in this consultation paper about its recommendations dated 1<sup>st</sup> May 2014 on the Definition of AGR in license agreements for provision of internet services. TRAI has referred in this consultation paper and also in its recommendations dated 1<sup>st</sup> May 2014 that in order to prevent the regulatory arbitrage, uniform license fee is being proposed. It is to be noted that wireless service providers who give a combined offering of voice and broadband through mobile phones can hypothetically reduce license fee (currently applicable only on voice services) by charging artificially higher price for internet/broadband services vis-a-vis that for voice and report the same as pure data revenue and not pay license fee on the same. TRAI has mentioned that the primary objective of this levy is to remove regulatory arbitrage. As a consequence of this proposal, along with wireless telecom services, the wire line broadband services will also be subjected to this levy. In our opinion this is a regressive step. We would submit that wire line broadband should be exempted from levy of license fee for the following reasons:

  - i. To begin with the wire line broadband is not a level playing field when compared with wireless telecom services. It is extremely capital intensive business with relatively uncertain returns. It is also very effort intensive to put in last mile connections. This is reflected in very low wire line broadband penetration in the country by global benchmarks as well as lack of any large scale investment in this field. There are only about 16 million wireline broadband connections in the country of which 13 million connections are provided by BSNL/MTNL. Any further taxation of this industry will hamper the growth of wired internet broadband services.

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- ii. On the other hand, wire line broadband needs to be nurtured, as it can provide ultra-high bandwidth at affordable prices. Only wire line broadband can give large scale high speed connectivity on tap. It is important to know that India still doesn't have gigabit services which only wireline Fiber to home service broadband can provide.
- iii. As the Authority is well aware that the Internet/Broadband services provided through wireline requires huge investment for every additional subscriber (between Rs. 15,000/- to Rs. 25,000/-). This is a preferred mode of delivery of internet services to common man in India to improve the communications, education and participation in E-Governance. The subscribers under this service can be verified through physical verification and audit. Hence the opportunities for under-reporting and arbitrage are negligible in this mode of services. The Levy of License fee on the wireline service shall come in the way of the sustainability of said business and maintaining the affordability of cost in providing the service.
- iv. All businesses should normally pay only two taxes – Goods & Services Tax (in this case Service tax) and Income tax. The only exception to this rule is when a scarce national resource is being used. Spectrum is a scarce natural resource and the state can sell it at market price and levy other appropriate tax (such as license fees) on its use. Wire line broadband on the other hand doesn't involve use of any such resource and therefore should not be subject to any additional levy such as license fee. It also needs to be noted that the separation of spectrum price and license fee for wireless services is optical. If there were no license fee, the auction price of spectrum would have appropriately gone up. In other words, the total consideration for spectrum is sum of license fees and auction price.
- v. The problem of regulatory arbitrage can be mitigated by an appropriate presumptive tax on those offerings which offer both voice and broadband services. In any case pure play Wireline broad band business should not be subjected to tax for the wrong doings of possibly a few.

The Hon'ble Prime Minister of India during his inaugural speech on National Telecom Policy 2012 stressed the importance of Broadband by adding that, "Broadband improves the lives of people by providing affordable access to information and knowledge. Many Information and Communication Technology applications such as e-commerce, e-banking, e-governance, e-education and telemedicine require high speed Internet connectivity. Studies show that there is a direct correlation between an increase in broadband connectivity and growth in a country's GDP. "The advent of smart phones and tablets at reasonable prices along with wide availability of telecom infrastructure across our country would provide an opportunity for us to ensure an equitable spread of broadband services. We must, therefore, seize this opportunity. Recognizing the significance of broadband connectivity as a tool for empowering our rural masses, our government has launched the National Optical Fiber Network project to provide broadband connectivity to all our Panchayats. I am confident that this unique project will usher a new era in telecommunications by establishing information highways across the whole length and breadth of our country, particularly in

rural areas. I would urge all government departments and the private sector to work creatively to ensure that this infrastructure is efficiently used to make broadband services truly affordable.”

The objectives of National Telecom policy 2012 envisages the “**Broadband on Demand**” that “to Provide affordable and reliable broadband-on-demand by the year 2015 and to achieve 600 million by the year 2020 at minimum 2 Mbps download speed and making available higher speeds of at least 100 Mbps on demand”.

India stands at 117<sup>th</sup> position (out of 159 countries) in global ICT development index and at 20<sup>th</sup> position (out of 27 countries) in ICT development index of Asia Pacific region as per the Measuring the Information Society 2010 report released by International Telecommunication Union.

3. **License fee should be levied only on license revenue:**

Further specific reference is drawn to Paragraph no 3.14 of this Consultation paper and also to recommendations by TRAI on Digital Addressable Cable TV Systems dated 5.8.2010. It is to be noted that an existing ISP shall also hold valid license issued by the Ministry of Information and Broadcasting and shall be an MSO distributing Digital Addressable Cable TV Systems. It is to be noted that TRAI in its recommendations on DAS dated 5.8.2010 has highlighted under Para 2.72 that “cable TV network, like telecom infrastructure, is important infrastructure for the country. Besides delivering digital television signals, it can be effectively used to deliver broadband services. Internationally, cable TV networks are widely used for broadband.” In the above scenario, If one will have to go by the wide definition of Gross revenue and AGR as prescribed by the Licensor and as duly upheld by the judgment delivered by the Hon’ble supreme court in [(2011) 10 SCC 543], it is open for DOT to direct a Licensee to include revenue earned by a licensee through other non-licensed business which does not have anything to do with License granted by the Licensor. It is also submitted that in order to have better governance, ease of administration and for better convergence of facilities and technology a Licensee might hold other licenses such as an MSO license and it cannot be right on the part of the Licensor to include or interpret the definition of Gross revenue under the License to include “any other miscellaneous Revenue” and demand Licensee to pay License Fee for revenue earned by it out of non-licensed activity. It is humbly requested that the authority considers this genuine concern and makes this as a part of its recommendations.

In addition to the concerns highlighted hereinabove, we would like to add our specific inputs with respect to each of the queries sought by the Authority in its consultation paper.

1. **Is there a need to review/ revise the definition of GR and AGR in the different licences at this stage? Justify with reasons. What definition should be adopted for GR in the Unified Licence in the interest of uniformity?**

The Definition of Gross revenue needs to be reviewed and revised so as not to include revenue from non-licensed activity and non-core business. The revenue from pure internet services should continue to be exempted as the same is essential for the growth of internet broadband services especially wired internet broadband services. We suggest following

items may be included in addition to the present deductible under clause 18.2 of the ISP License

1. Expenses incurred for sharing/leasing of infrastructure.
2. Expenses incurred for purchase/subscribe/lease renting of bandwidth links, R & G Cases, Turnkey projects etc.,

The above said two expenses category may be allowed as Deductibles from Gross Revenue of the company while arriving AGR for the purpose of calculation of License fee.

**Reasons:**

The above expenses are paid to another Telecom Service Provider and the same is revenue for the said Service Provider. Who will in turn including the same in its revenue and are paying the License fee for the said revenues. The Levy of License fee on the above two line items as revenue from one operator and not allowing other operator to deduct from the AGR as expenses will amount to multiplicity of License fee being collected on the same accounts. Hence it results in cascading license fee applied at every stage of business - without any deduction for which license fee paid by another service provider.

Even though unified license do not directly apply to us as we currently hold ISP class A license issued on 19.12.2008 and the Guidelines issued by Dot do not mandate compulsory migration. We would request the definition of Gross revenue and AGR be reviewed and revised in line with the above suggestions.

2. **What should be the guiding principles for designing the framework of the revenue sharing regime? Is the present regime easy to interpret, simple to verify, comprehensive and does it minimize scope for the exercise of discretion by the assessing authority? What other considerations need to be incorporated?**

No, the current regime does not minimize the scope for exercise of discretion by the assessing authority. The definition of Gross Revenue under the License Agreement needs to be reviewed in light of the recent technological developments and keeping in mind the future growth of the sector. The definition has been interpreted to include anything and everything which is being earned by the Licensee. Many a time even non-licensed activities which are completely outside the scope and purview of the Licensor are being brought in so as to include them as being earned in pursuant to the license issued by the Licensor.

It is suggested that the words such as "Supplementary services, any other miscellaneous revenue" may be avoided. Convergence of Technologies and facilities in recent times have made it explicitly necessary that in order to be aligned with the National Telecom Policy 2012 and National broadband policy 2010 it is important that the above aspects are considered.

*Hushat*

3. **In the interest of simplicity, verifiability, and ease of administration, should the rate of LF be reviewed instead of changing the definitions of GR and AGR, especially with regard to the component of USO levy?**

The definition of Gross revenue and AGR needs to be revisited and reviewed for the above mentioned reasons. In light of the huge infrastructure cost involved in providing wired broadband services, the rate of LF should be zero so that internet broadband services shall make its foray as envisioned under the National Telecom Policy 2012 and National Broadband Plan 2010.

4. **If the definitions are to be reviewed/ revised, should the revenue base for levy of licence fee and spectrum usage charges include the entire income of the licensee or only income accruing from licenced activities? What are the accounting rules and conventions supporting the inclusion or exclusion of income from activities that may not require licence?**

The Reply to Query No 1 may be read as reply to this query as well.

5. **Should LF be levied as a percentage of GR in place of AGR in the interest of simplicity and ease of application? What should be the percentage of LF in such a case?**

No, we do not prefer LF being levied as a percentage of GR in place of AGR.

6. **Should the revenue base for calculating LF and SUC include 'other operating revenue' and 'other income'? Give reasons.**

"The words other operating Revenue" does not form part of the Gross Revenue under ISP Class – A License. Hence we are not traversing into the same.

7. **Specifically, how should the income earned by TSPs from the following heads be treated? Please give reasons in support of your views.**

- a) **Income from dividend;**
- b) **Income from interest;**
- c) **Gains on account of profit on assets and securities;**
- d) **Income from property rent;**
- e) **Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);**
- f) **Income from sale of equipment including handsets;**
- g) **Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;**

Income from the heads mentioned under this query and income from investments under any heading or nomenclature shall be excluded from the definition of AGR as the same is separate activity of the Company and does not accrue in pursuant to the License issued by DOT.



8. **What categories of revenue/income transactions qualify for inclusion in the revenue base of TSPs on 'net' basis? Please support your view with accounting/ legal rules or conventions.**

Revenue earned directly in pursuant to the License granted by DOT shall alone qualify for inclusion in the revenue base. However the current AGR definition which excludes revenue from pure internet services and other taxes paid to the Govt. shall continue to be available.

9. **What are the mechanisms available for proper verification from the financial statements of TSPs of items/ income proposed to be excluded from the revenue base, especially for TSPs engaged in multiple businesses? Would new verification mechanisms be required?**

The mechanism that is currently available would suffice.

10. **What is the impact of new and innovative business practices adopted by telecom service providers and licensees on the definition of GR? What impact will exempting other income from the revenue base have on the verification mechanism to be adopted by the licensor?**

Pl. refer to our reply in paragraph no. 5 hereinabove.

11. **Do the potential benefits accruing to TSPs by moving from a simpler to a more complex definition of the revenue base (providing for additional exclusions) justify the additional costs of strengthening the assessment, accounting and monitoring system? Should the definition of AGR remain unchanged once the revenue base is reduced by providing for additional exclusions from the top line?**

Pl. refer to the reply to Q.no. 8 hereinabove.

12. **Should minimum presumptive AGR be applicable to licensees? How should minimum presumptive AGR be arrived at?**

No Comments.

13. **Should minimum presumptive AGR be made applicable to access licensees only or to all licensees?**

No Comments.

14. **Should intra circle roaming charges paid to another TSP be treated as a component of PTC? If so, why?**

No comments.

15. **How should the permissible deductions be designed keeping in view future requirements? Specifically, what treatment should be given to charges paid to IP-I providers in the context of the possibility of bringing them under the licensing regime in future?**

No Comments.



16. **Should the items discussed in paragraph 3.35 be considered as components of PTC and allowed as deduction from GR to arrive at AGR for the purpose of computation of license fee? Please provide an explanation for each item separately.**

Please refer to our response in Query No 1, the same may be treated as reply here.

17. **If answer to Q16 above is in the affirmative, please suggest the mechanism/audit trail for verification.**

The various components such as bandwidth charges or co-location charges or sharing of infrastructure charges is currently being carried out by entering into a valid contract between the concerned Telecom service provider and the same are duly accounted by the concerned parties in their respective books of accounts. Further, the regular audit mechanism followed currently for auditing other components of revenue may be adopted here and the same would suffice.

18. **Is there any other item which can be considered for incorporation as PTC?**

Please refer to our response in Query No 1, the same may be treated as reply here.

19. **Please suggest the amendments, if any, required in the existing formats of statement of revenue and licence fee to be submitted by service providers.**

No Comments.

20. **Is there a need to develop one format under unified license for combined reporting of revenue and license fee of all the telecom services or separate reporting for each telecom service as in present license system (as per respective license) should continue? If yes, please provide a template.**

No Comments.

21. **In case any new items, over and above the existing deductions, are allowed as deduction for the purpose of computation of AGR, please state what should be the verification trail for that and what supporting documents can be accepted as a valid evidence to allow the item as deduction.**

The verification trail and the process that is being currently followed for the exiting deductions may also be extended when further deductions are allowed in computation of AGR.

22. **Is there is need for audit of quarterly statement of Revenue and License Fee showing the computation of revenue and licence fee?**

No further audit is required.





23. **If response to Q22 is in the affirmative, should the audit of quarterly statement of Revenue and License Fee be conducted by the statutory auditor appointed under section 139 of Companies Act, 2013 or by an auditor, other than statutory auditor, qualified to act as auditor under section 139 & section 148 of Companies Act, 2013 or by any one of them?**

The quarterly license fee that is being paid and also the Annual license fee that is being paid is duly audited by the statutory auditors appointed by all the service providers. Further compliances under The Accounting Separation Regulations, 2012 prescribed by TRAI also provide for sufficient clarity and hence no further audit is required.

24. **Is it desirable to introduce deduction of LF at source as far as PTC payable by one TSP/ licensee to another are concerned, in the interest of easy verification of deductions?**

The option may be considered.

25. **Is there any other issue that has a bearing on the reckoning of GR/ AGR? Give details.**

The specific issues have been duly highlighted in the paragraphs herein above the same may be considered as reply here.

Thanking you,

Yours Faithfully

For and on behalf of M/s Atria Convergence Technologies Private Limited

M/s Beam Telecom Private Limited

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Authorised Signatory.