September 14, 2014

The Telecom Regulatory Authority of India
Mahanager Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi – 110 002

Kind attention: Shri Maruti P. Tangirala, Advisor (F&EA-II)

Subject: Comments sought by TRAI on Consultation paper on "Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges"

Dear Sir,

At the outset we would like to submit that Idea Cellular Limited (Idea) welcomes the initiative of Authority to invite through consultation the views of all stakeholders on "Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges". The consultation initiated by the Authority gives an opportunity to simplify the complexities arising out of varied interpretations on computation and applicability of License Fee (LF) which currently is cause of several litigation.

The issue of validity of license clauses and interpretation of definition of AGR are subject matter of various ongoing litigations. Our submissions in this response may thus be treated as without prejudice to our submissions at various forums/ Courts on this issue.

We also submit that the Industry through COAI has given detailed responses and Idea Cellular supports broadly the submissions made by COAI. We particularly support the recommendation of centralized filing at a national level accompanied by a centralized national level assessment. We also support the mechanism of deduction at source @ 1% and filing information on a common portal as a means to have transparency of information and ease of online verification as a part of assessment process thus eliminating the cumbersome process of physical verification of documents that is currently practiced.

Detailed Idea submissions on this consultation is covered in two parts – Introduction & responses to specific queries, both of which are enclosed as per Annexure A.

We are confident that our submissions will be taken into consideration while preparing the final Recommendations to the Government.

Please get in touch for any clarifications etc.

Thanking you,
For **Idea Cellular Limited**

Rahul Vatts
Vice President – Regulatory & Corporate Affairs

Encl. : A/a

Annexure A

Introduction

I. PREAMBLE

A) BACKGROUND

The National Telecom Policy 1994 (NTP 94) liberalized the telecom sector and opened it up to multiple service providers, including those from the private sector. The early telecom service licenses operated in a fixed License Fees (LF) regime. A new licensing regime came through New Telecom Policy (NTP 99) which introduced the charging of license fee on a revenue-sharing basis. The Authority recommended that Gross Revenue (GR) accruing to the licensee for the purpose of levying LF shall be revenue generated by way of operation of the service mandated under the license. On the other hand, DoT defined GR to include all revenues accruing to the licensee. Thus LF as recommended by the Authority and adopted by DoT differed substantively.

The definitions of the levies to be charged under the license, should be clearly established for achieving the objectives of NTP 2012 i.e. for the rationalization of taxes, duties, and levies affecting the telecom sector, eliminate the current litigation on AGR and provide a stable fiscal and regulatory regime to stimulate investments and making services more affordable within the unified licensing framework.

B) ISSUES RELATING TO DEFINITION OF REVENUE BASE FOR DETERMINING LICENSE FEES (LF) & SPECTRUM USAGE CHARGE (SUC)

Despite the Authority giving such clear direction on the scope of the revenue base in its recommendations of 2006, the licensor chose to keep an inclusive definition for Gross Revenue and interpreted it independent of accounting norms leading to multiple disputes, many of which are still sub-judice and have not attained finality. These are also arising from treating one part i.e. Gross Revenues on accrual basis while treating the other part i.e. deductions for pass through on payment basis and others cases where pass through amounts have been unreasonably disallowed.

For determining treatment for any item that is to be part of the assessable base on which LF and SUC is made payable, the Authority should keep the following three principles which should be followed for designing any system –

a. Revenue from activities which are pursued under the License (which should be in line with the activities defined under Sec 4 of the Indian Telegraphs Act 1885) and which could not have been pursued in the absence of a license should be part of GR. Revenue or Income from any activity which could be pursued independent of the license should be excluded from the purview of GR.
b. Avoidance of double taxation i.e. in case any licensee who is subject to payment of LF provides service under the license and earns revenue from another licensee, then such other licensee should be allowed to deduct such payment made to the first licensee from the Revenues of such other licensee to arrive at the AGR.

c. The assessing Authority / any auditor should rely on the audited financial statements of the licensee to determine the GR and AGR. They could ask for suitable certification from the auditors, Verification should move from 100% physical to a process of e-verification.

As mentioned in the consultation paper, the rationale adopted by Government while formulating the definition of AGR should be easy to interpret, simple to verify, should be comprehensive and should remove the possibility of exercise of discretion at the level of assessing Authority.

Currently the methodology and practices followed by assessing Authority vary from person to person and from place to place. There is no standard assessment guidelines made available to the assessing officers since inception of the licenses which has therefore increased the scope of discretion by the individual assessing authorities since they look at assessments to maximize revenue demands by applying their own individual interpretations. Moreover, there is no finality of assessments till date.

In the absence of standard assessment guidelines, baseless interpretation of the inclusive definition of Gross Revenue has created disputes and litigation. Such disputed liabilities which are ballooning with every passing year are impacting the financials of Telecom Service Providers (TSPs) adversely and hence this unhealthy situation for the telecom sector needs redressal.

C) RECOMMENDATIONS FOR RE-DEFINING THE DEFINITION OF GROSS REVENUE FOR THE PURPOSES OF LF & SUC LEVY

The present definitions of Gross Revenues (GR) and Adjusted Gross Revenues (AGR) are not easy to interpret and are resulting in disputes and litigations as described earlier. There is an urgent need to review / revise these definitions. The Consultation paper issued by the Authority provides an opportunity to simplify the LF regime. **We believe that the system of levying any kind of fee or tax on revenues arising from services covered by CMTS/UASL/Unified License should be based on below mentioned three guiding principles which should form the basis for designing the framework of revenue share regime in future:**

1. **Only those revenues which arise from activities which necessarily require a License (Unified, ISP etc.) should be the subject to any levy.** Also,

   a. As per the provisions of Section 4 of the Indian Telegraph Act 1985, the Government has the exclusive privilege of establishing maintaining and working of a Telegraph (Telecommunication). Therefore, this right conferred under Section 4 of the Telegraph Act is confined to the activities of "**establishing**", "**maintaining**" and "**working**" of a telecommunication network.
   b. Further the Act empowers the Central Government to transfer that privilege of establishing, maintaining or working of a telecommunication network to any person by way of License for consideration of payment. This indicates that the consideration anticipated is linked to the parting of the privilege i.e. for "**establishing**", "**maintaining**" or "**working**" of a telegraph network and not beyond that.
   c. Since the License is granted in lieu of the transfer of privilege of establishing, maintaining or working of a Telecommunication network, hence income from any other activity cannot be subject to a levy as a compensation for transfer of such privilege – there has to be a nexus between the "privilege" and the "Revenue" which is the subject matter of this levy.

2. **Any revenue on which a levy has been paid by one licensee, if it becomes a cost to another licensee, then that amount should be allowed as a deduction to the other licensee.**

3. **The financial statements as audited and certified by the statutory auditors of the licensee company should be the final basis for acceptance of any computations in relation to the levy.** The financial statements prepared are in accordance with mandatory accounting standards and hence there is no reason to distrust the audited financial statements, which are the basis for all other taxes. In case the required information is not available directly from the financial statements as prepared in line with the Companies Act and mandated Accounting Standards, a separate certificate for that information can be obtained from the statutory auditors of the company. In effect, the annual audited financial statements and statements of the statutory auditor of the company should be final for all figures relating to the levy under the license. **Since audited financial statements are prepared on accrual basis for all revenues and costs, the same principle should be followed for determining AGR for the purpose of levying taxes and hence the figures reconciled to the audited financial statements should be treated as final.**

<u>We further submit as follows</u> :

Revenue for License Fee and Spectrum Usage (hereafter called Revenue) should be specifically defined to include only those Revenue streams which are earned from services provided under the license i.e. services which could not have been provided or revenues which could not have been earned if the entity did not have the license. Also it must be recognized that a license is acquired by a legal entity, which could have sources of income other than those earned by virtue of the license and hence the requirement of a Revenue being a subset of the Gross Revenues of a company. The definition of Revenue should specifically exclude the following items of income, which form part of the income and can be earned by any legal entity by activities which do not require the license –

(i) Interest Income
(ii) Dividend Income
(iii) Foreign Exchange Fluctuation
(iv) Profit on sale of Assets / Capital Gain
(v) Reimbursement or payment collected on behalf of third parties and passed on
(vi) Write Back of Provisions / Vendor Credit Balances relating to Expenses
(vii) Capital Receipts
(viii) Income from Trading Activities
(ix) Sale of Equipment
(x) Insurance Claims
(xi) Reversal of telecom service usage from Employees
(xii) Management consultancy fees
(xiii) Miscellaneous Income

This Revenue should then be adjusted for “pass through” to arrive at the “Adjusted Revenue” for License Fee and Spectrum Usage’ (AR) as per the recommendation given in proposal 1 below:

D) Based on the above guiding principles, <u>our recommendations</u> are as follows:

1. <u>KEY PROPOSAL</u>

In the current license fees regime deductions of pass through charges are allowed to avoid double taxation. These are however disallowed on illogical basis by the assessing officers which are resulting in major disputes and litigations. **It is therefore suggested that a withholding mechanism be adopted where the Licensee claiming the pass through charges as deduction is required to deduct a portion of the levy at source (we recommend 1% of base amount) while paying for the invoices to the invoicing licensee and remit such amounts to DoT on his behalf, issue a certificate for deduction at source to the invoicing Licensee.** The process being recommended is similar to the prevailing Income Tax Deduction at Source (TDS, also known as Withholding Tax). The process is explained below:

a) Every Licensee will obtain or be issued a Unique Identification Number (UIN). This UIN would be mentioned on all invoices that it raises on other licensee entities i.e. third party licensed service providers. The other Licensee entity while making payments would deduct the prescribed percentage (1% is recommended) of the levy at source for all invoices from such UINs.
   Since for transactions between different LSAs of the same legal entity, there is no payment required, there is no question of deduction at source. Hence, in such cases it is recommended that these can be treated as transactions subject to "zero" deduction at source and filing can be made on the portal (as described in "c" below") even in case of inter LSA transactions between the LSAs.
b) The amounts thus deducted at source for the respective UINs will be deposited with the DoT within specified time periods.
c) The deductor licensee will file the statement or return of deductions in prescribed format on a DoT portal, the information of which small also be available to the invoicing licensee.
d) The deductor licensee would also issue an LF deduction certificate to the recipient Licensee who will then take credit of this amount while discharging his final LF liability for the quarter / year.
e) SUC would also be paid on the same assessable value on which the LF is determined as above.

The above mechanism brings transparency, facilitates easier online verification, and would prevent any leakage of LF & SUC.

The implementation of this methodology would require system and the process changes at both ends i.e. DoT and Licensee. <u>DoT would be required</u> to setup a central Authority for administration of this process which can be on the line of existing available setup adopted by Income tax Department for collection of Tax Deducted at Source. There will also be a need to set up a portal on the lines of current portal which is maintained by NSDL for Tax Deducted at Source. It may be noted that while the structure will be similar, in terms of size and complexity the proposed system for part LF deduction at source will be much simpler as the number of registered licensees is expected to remain within one hundred and hence this will be very simple to implement. <u>The licensee shall</u> also be aligning their systems to adopt the proposed changes. The DoT should also need to define the process of verification and validation of such credit along with standard assessment rules.

The Authority may also note that the introduction of uniform SUC charges applicable to the respective licensees will smoothen this process completely. As such, the acquired spectrum allocated in future is

under an auction process on market determined rates. Therefore we propose that the current methodology of charging SUC at differential rate should be replaced by flat fees of 1% of the revised AGR which should be sufficient to take care of administrative cost associated with spectrum.

This above recommendation of ours is in line with the detailed industry proposal as submitted by COAI.

2. ALTERNATE PROPOSAL

REPLACE GR and AGR WITH "Revenue from Services to Non-Licensee Customers"

In current LF regime, disallowance of Pass-through Charges (PTC) charges forming part of AGR is one of the most contentious disputes. Inter-operator revenues are offered for LF & SUC charges by the invoicing operator and it becomes PTC / expenses in the hands of the payer operator. If such PTC are disallowed illogically either partially or completely while determining the "Adjusted Gross Revenue" for LF & SUC, it would mean double taxation at the industry level finally.

Moreover if one were to sum up the AGR at the industry level , it would tantamount to only those revenue streams arising from services rendered to customers who are not licensees themselves since the inter-operator revenues and PTC would offset each other at the industry level. Therefore in order to simplify this process at the operator level and to avoid the double taxation arising out of PTC disallowances, **we suggest that the Authority look at only revenues arising out of services rendered to non-licensee customers and exclude revenues arising from other licensees currently forming part of revenues from interconnect usage, revenues from roaming, revenues from telecommunication infrastructure sharing either on passive or active basis, revenues from bandwidth etc.** Since for this purpose international operators will not be considered as licensees and revenues earned from them would be part of Revenue subject to levies, would be correct if the payments to international operators for telecom services provided by them (roaming, interconnect, carriage etc.) be allowed as deduction from the Revenue as pass through to arrive at the Adjusted Revenue (AR) which will be subject to levy of LF and SUC.

The recipient Operator will not include revenue from other licensees / operators for calculation of regulatory levy and correspondingly the payer operator will not need to claim any deduction of such amounts shown as payable to other operators/ licensees.

By following this basis and taking only the specified and earmarked revenue streams that accrue from non-licensee customers and ignoring the interconnect, roaming and other streams that arise from other licensed operators, the need for allowing a PTC deduction in arriving at the "Adjusted Gross Revenue" as is currently being done on which LF & SUC is made applicable is eliminated (except deduction for payments to international telecom service providers) thereby simplifying the whole process of determination.

In effect, revenues from services are required to be bi-furcated between those from non-licensee customers and those from operators / licensees. Only revenues from non-licensee customers net of payments to international operators will be taken as the assessable base on which LF / SUC is attracted. It can be mandated that the licensees disclose the two categories of Revenues i.e. Revenues from non-licensee customers and Revenues from Licensee customers in the annual audited financial statements.

Based on our above submissions, we now proceed to respond to the specific queries raised by the Authority :

ISSUES FOR CONSULTATION

Q1 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?

Idea Response

Yes, there is an urgent need to review/ revise the definition of GR/ AGR in different licences, due to the following reasons:

- The current definition of GR/AGR is ambiguous, is inclusive and in its present shape and form includes anything and everything under its scope. This has resulted in interpretation issues between the licensor and the licensees which have led to frequent litigations/disputes.
- The revenue from non-telecom business which does not require a licence is also included in the definition of GR.
- Current definition of GR includes several revenues unrelated to licenced activities and some of them do not even fall under the definition of revenue. Certain items which are in the nature of capital receipts are also included in the current definition.
- The current definition of GR was made on the principle of avoiding double taxation, whereby revenue on which one licensee was subject to license fee was allowed as a deduction to the licensee from whom the revenue was realized. However, this definition was coined in an era where voice was the main service and there was practically no sharing of assets. In the current era of multiplicity of services including data and sharing of assets and resources between licensees the list of items of deduction needs to be extended to ensure that the principle of avoidance of double taxation is uniformly applied to all services.
- It includes notional income that is unrealized / remains uncollected by the licensee

In fact we should revise the terminologies to "Revenue" (the term actually defined in the accounting standards) and "Adjusted Revenue". While this is the correct terminology, in this document we have continued to use the old abbreviations GR and AGR to refer to Revenue and Adjusted Revenue for the sake of convenience.

The proposed definition of Gross Revenue (or Revenue as per suggested new terminology) as derived from the Telegraph Act, Licence Agreement, Migration Package and NTP is as under:

"Revenue for the purpose of "Revenue Share" shall be based on the Revenue reported in the audited financial statements and shall:

a. Include Revenues from activities which can be provided only under the license; and
b. Exclude any revenue or income that is generated that would ordinarily not require the license to provide such service;

For the sake of clarity a list of specific items to be included and excluded from the definition are listed as Exhibit 1.

<u>"Adjusted Revenue for the purpose of "Revenue Share"</u> ***shall be the Revenue as reduced by***

a. the amounts invoiced by other licensed TSPs to the licensee; and
b. pass through charges for interconnection, roaming and other costs paid to international operators.

This revised definition would eliminate the various interpretation related issues which exist under the current definition regarding inclusion of income from activities which do not require the license.

Also, all companies incorporated in India prepare their financial statements in accordance with the accounting principles generally accepted in India as per the GAAP. These financial statements are accepted by all other regulatory bodies for levying their taxes and charges (including the Income-Tax, service-tax, etc). The auditors are required to qualify the financial statements of the Company in case of any material deviation from the accounting standard and the AGR statement of the operators in case of wrong reporting of gross revenue. Accordingly, the Authority should place reliance on the audit opinion issued by the auditors on the computation of the Licence fee which is based on their audit of the statutory financial statements.

Q2 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?

<u>Idea Response</u>

As highlighted in Introduction, there are three basic principles for designing the framework of the revenue sharing regime

a) Revenue from activities which are pursued under the License and which could not have been pursued in the absence of a license should be part of GR. Revenue or Income from any activity which could be pursued independent of the license should be excluded from the purview of GR.
b) Avoidance of double taxation i.e. in case any licensee who is subject to payment of LF provides service under the license and earns revenue from another licensee, then such other licensee should be allowed to deduct such payment made to the first licensee from the Revenues of such other licensee to arrive at the AGR.
c) The assessing Authority / any auditor should rely on the audited financial statements of the licensee to determine the GR and AGR. They could ask for suitable certification from the auditors, but verification should be done on a selective basis relying on scanned documents and information in the ERP systems and physical verification of documents should be resorted to only in exceptional cases.

In addition the following objectives as stated in the consultation paper are important in designing a revenue share regime:

- easy to interpret to obviate any litigate concerns
- easy to verify and ensure a transparent and easy procedure for verification
- to be comprehensive to ensure that there all potential new pricing/products are covered
- simple and yet comprehensive so that interpretation and discretion at the level of assessing Authority is minimized.

However, the areas where the current system violates these principles are:

- As per the clause 19.1 of UASL, GR is defined as "The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc." The definition itself is ambiguous and subject to different interpretations. For items like revenue on account of interest, dividend it does not clarify whether these revenue are only from the licenced activities or otherwise. DoT includes all types of interest and dividend as part of GR under the ambit of this definition. "Any other miscellaneous revenue" is equally ambiguous. DoT takes the liberty of including all types of revenue whether due to licenced or non-licenced activities under this miscellaneous revenue head.
- CCAs insist on certification from Banks for the payments made through the demand drafts to verify the deductions claimed, which reflect the kind of varying interpretations that are being made by individual assessing authorities in 22 different locations.
- CCAs ask for operator's confirmation for payment and bank entries to show name of the operator as proof for payment to allow deduction. In case name of the beneficiary does not appear in the bank statement, in some cases certificates from banks have been insisted upon. These are unreasonable verification requirements which should be resorted to only in extreme cases and not as a matter of practice.
- In cases where net settlement with an operator results in inflow, confirmation from other operator has been sought.
- Circle-wise Statutory Auditor certification is being demanded for tax deduction on payments to operators.
- Circle-wise Statutory Auditor certification for settlement to NLD licence books within the Company.
- Service Tax is discharged by the company based on the central registration obtained as per the regulations of Finance Act. Remittance for service tax follows such registration and is not made circle-wise. Service Tax payment is after considering CENVAT credit allowed under the Act. Proof is sought for payment circle-wise.
- Sales Tax is paid after considering VAT credit for purchases allowed as per Sales Tax Rules prevalent in States. Payment Proof will reflect payment net of such VAT credit.
- Certification from Statutory Auditor for allowing deduction of pass through charges in case of all net settlements
- Inter-circle Interconnect and Roaming transactions of single legal entity are disallowed in absence of payment proof
- Claim of Domestic / International Roaming is entirely disallowed due to lack of clarity on assessment procedure
- CCAs are not allowing IUC charges payable to other Operators pertaining to previous quarters / years claimed as deduction in subsequent quarters / years.
- While the revenue is to be recognized following accrual accounting, deferral of revenue (Processing Fees, Activation Fees etc) per acceptable standard accounting practices under the GAAP have been challenged by the authorities.
- Reimbursement of expense has been treated like revenue (e.g. site sharing etc)
- Revenue reversals arising for cessation of revenue are not allowed (e.g. bad debts, Goodwill Waivers etc)
- All receipts (irrespective of whether it's a Capital or Revenue receipt) are being subjected to LF.

- The present regime is not comprehensive and there is scope of exercise of discretion by CCAs.
- There is no standard process for assessment of verification of deduction claims.
- Some CCAs have disallowed pass through charges without assigning details and reasons thereof even though for the similar submission, while other circles have allowed pass through deductions for the same items.

We, therefore, suggest the following guiding principles, as detailed out in sections 1.2 of section 1 and Q1 above:

a. **Defining Gross Revenue as revenue from only Licenced activities -** Gross Revenue (GR) should be gross revenue from services provided to subscribers from licenced activities only. In addition to above, reference is drawn to discussion on terms of Migration Package, which clearly refers to 'revenue under the Licence' and thereby gross revenue under UASL should also be interpreted to mean as revenue earned from SERVICES provided by telecom service providers ('TSP') telecom operations which can only be carried out by a Licensee for which a licence is required (i.e. only encompass revenue that can be generated from permissible services requiring a Licence). In the wake of digital convergence as discussed in para 1.4 above, it would be critical for the Authority to acknowledge that the non-Licenced activities would co-exist with the Licenced activities of an entity.

b. **Principles of Gross revenue to be in line with applicable Accounting Standards -** All companies incorporated in India prepare their financial statements in accordance with the accounting principles generally accepted in India as per the accounting standards notified under the GAAP. These financial statements are accepted by all other regulatory bodies for levying their taxes and charges (including the Income-Tax, service-tax, etc). Revenues are accrued as per the principles defined in the Accounting Standards and other like Accounting Standard Interpretation, Guidance Note and Exposure Drafts on Revenue recognition issued by ICAI from time to time. Hence the Revenues and Expenses as reported in audited financial statements should be accepted and should not be subjected to further verification in terms of evidences of payment, receipt, tax deduction, which some assessing authorities are asking for today. Also since financial statements are prepared on the basis of accrual prescribed by the accounting standards, both the Revenue and pass through should be taken on accrued basis, as against the current practice of taking Revenues on accrued basis and pass through on payment basis.

c. **Avoidance of double levy of regulatory fees –**
As detailed out earlier, the double levy currently exists as certain payments made for critical inputs like bandwidth charges, port and infrastructure sharing charges etc, are not allowed a deductions while calculating AGR of the payee, whilst the same is subject to AGR in the hands of the receiving licenced entity.

d. **Making the compliance process simple and comprehensive –**
The regime should be simplified and brought in parity with other revenue related taxes like tax deducted at Source. Simplification of existing regime has also been propagated as one of the main objectives of NTP 2012. We need to move to a system of singe return filing on a national basis with audit and assessment also happening at one location instead of 22 different locations, which is the current practice.

e. **Uniformly applying the percentage of licence fees and reducing the percentage of USO levy –** In the current scenario where spectrum is delinked from LF and is driven more by market determined price, the existing LF percentage should be thoroughly revisited. The Authority should consider the following-

- Uniform reduced levy of LF
- Removal of SUC based on revenue share, if at all there is a need for additional levy of spectrum a flat charge per LSA should be considered
- The existing 5% levy of LF for USO funds should be phased out on basis that the collections from USO levy are largely unutilized.

Other considerations -- Digital convergence

In the world of digital convergence, consumer offerings like DTH and Cable are blurring boundaries with Telecommunication services like IPTV and Internet OTT viewing. In order to give consumers a seamless interface including single consumer billing, TSPs may wish to add a bouquet of non-telecommunication services to their existing telecommunication services. Under the existing Licence regime such non telecommunication services would be charged levies pertaining to telecommunication which would not be the intent of the government.

Q3 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?

<u>**Idea Response**</u>

There is a need to change the definition of GR and AGR as discussed in preceding discussions. Reducing the rate of LF per se will not be able to fairly address the issues with respect to definition. Thus rationalization of LF Rate should not be used as a substitute to cure the anomalies of the definition of GR and AGR.

However, independent of the above, there is an urgent need to reduce LF and SUC to achieve the objectives of telecom policy as explained below:

<u>**Need to review the regulatory levies:**</u>

India is a price sensitive market and yet offers amongst the lowest tariffs in the world in a highly taxed regime. The telecom sector is in dire need of long term investments to meet national objectives such as creation of 'broadband highways'. Therefore, there is a need to review the regulatory levies (including the cost of compliances for TSPs) across the board as enunciated in the National Telecom Policy 2012 and in line with global best practices. In fact, TRAI's consultation paper itself shows the regulatory charges levied in other countries wherein rates being levied for LF/Spectrum are only nominal charges (especially in a regime of market determined spectrum pricing). Revenue share of 8% Adjusted Gross Revenue (AGR) per annum is the highest licence fee regime when compared to other Asian countries. Our suggestions on the same are as follows:

Licence Fee

The country has been able to achieve the growth as the telecommunication services in India is offered to the customers at one of the lowest tariff in the world. In addition to the overall growth, mobile and fixed wireless phones are spreading towards the areas where no telecom facility existed and helping to bridge the digital divide. Since the future expansion would be in rural and remote areas, the government's support in form of incentives and concessions for bringing down costs and rolling out networks is imperative

The USO was fund set aside for the development of access services to the unconnected in rural India. It was started in 2002 and its present corpus has been identified in the TRAI consultation as approximately Rs Rs. 33,682 crores, which is equivalent to ~5 years of accumulation. This huge sum of unallocated funds implies that there is patently no further use of collecting it from each operator. Furthermore the rural penetration by each operator has reduced the vast number of unconnected India. Is there still any justification to levy a usurious fee of 5% when the eventual burden is borne by the very same unconnected community, which it is expected to serve.

Thus the contribution towards USO fund needs to be reviewed considering the current accumulation and future requirement. There is clear and necessary rationale for dicontinuing with the levy immediate effect. This would facilitate licensees to release necessary funds for rural expansion. Hence, the LF should be brought down to 3% by discontinuing the USOF levy of 5%.

Spectrum usage charges

With the spectrum de-linked from the licence, and the telecom operators now required to acquire spectrum in auctions, there should be no requirement for further annual payments beyond specific (and relatively minor) administrative fees because the intrinsic value of spectrum has already been paid in the auction in full. **Hence, the spectrum charges should be reduced to a flat administrative charge, instead of the current structure.**

Q4 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 Licencee 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?

<u>Idea Response</u>

As already mentioned in this submission, the need to revise the definition and specify the "revenue base" to be used for computing the levy of license fee and Spectrum Usage charge is compelling. This need stems from the fact that the revenue base on which the levy is to be charged is required to be limited to the actions under the license that result in generation of such revenues and as such should be directly linked to "establishing", "maintaining" and "working of a telegraph network for which the license has been issued in the first place.

Therefore,

a) the components for defining "Revenue" under the license must have a nexus with the telecom services provided to subscribers.

b) the reading of the license agreement clearly shows that license fee is payable out of revenue earned *under the license.* This is the basic structure of the licence.

c) the expression 'under the licence' is clearly embedded/forms part of the Licence and is evident from the scheme of the Licence.

d) the license recognizes principles under the Accounting Standards issued by the Institute of Chartered Accountant of India and the Indian Companies Act. These have to be applied to give proper and effective meaning to the terms of the license agreement. Applying these principles to the commercial contract it would be clear that "revenue" under the license cannot include revenues, which are not realisable or items which are not arising from licensed activities.

Having made our point categorically on this issue, **we are of the view that segment reporting requirements which are mandatory for companies to follow can be used for the reporting requirements of bi-furcating the total revenues of an entity into revenues from licensed activities and income from activities which do not require any license which can be certified by the statutory auditors.** This revenue base after the specified allowable deductions arising out of activities under the license should be the amount on which the License Fee and Spectrum Usage charges are computed.

Q5 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?

Idea Response

License Fee should continue to be levied at the AGR level and not GR level. AGR is based on the principle of avoidance of double taxation and use of GR instead would defeat that objective.

It may also be appreciated that as sharing of assets between licensees' increases, the inter se transactions between licensees will only increase. The extent of increase cannot be estimated and in any case it will impact different operators differently. **Hence, it is essential to stick to AGR based levy to avoid double taxation**, unless the definition of Revenue is changed to include only revenue from licensees who are not customers, as suggested in the alternate proposal.

Q6 Should the revenue base for calculating LF and SUC include 'other operating revenue' and 'other income'? Give reasons.

Idea Response

Reference our response to Q1 and Q2 and as stated elsewhere, **the revenue for the purpose of calculating the LF should be in relation to the services permitted under the Telecom Licence and Indian Telegraph Act. Revenue that has got no nexus with Licenced services shall not be considered for the purpose of LF.**

Also, reference is drawn to the discussion on the terms of Migration Package which clearly refers to '*revenue under the Licence'* and thereby gross revenue under UASL should also be interpreted to mean as revenue earned from SERVICES provided by telecom service providers ('TSPs') which can only be carried out by such TSPs under a licence (i.e. only encompass revenues that can be generated from permissible services requiring a Licence). The exclusions and inclusion mentioned in the Exhibit I should be considered in arriving at revenue from licensed activities.

In the event the percentage levy is continued, SUC should be payable as a percentage of revenue from only those licensed telecommunication services which require spectrum.

Q7 Specifically, how should the income earned by TSPs from the following heads be treated? Please give reasons in support of your views.

1. **Income from dividend;**
2. **Income from interest;**
3. **Gains on account of profit on assets and securities;**
4. **Income from property rent;**
5. **Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);**
6. **Income from sale of equipment including handsets;**
7. **Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;**

<u>**Idea Response**</u>

(a) Income from dividend;
(b) Income from interest;
(c) Gain on account of profit on securities

The Treasury function of each organisation undertakes the fund management activities. Treasury Income mainly arises out of Interest on Fixed Deposits, Income from dividend and Gain on account of profit from securities. Considering the time value of money it is almost important for any Organisation not to keep ideal money at any point of time. Generally surplus fund are invested back into the business or temporarily park for optimization. For avoiding any potential loss by keeping the money ideal, it gets invested into financial instruments. On the other hand the TSPs have substantial borrowing for carrying out business activities for which they make significant interest payment each year. Due to such timing difference of fund flow / cash flow it is very natural for the TSPs to simultaneously have temporary investment and related interest / dividend income. It is irrational that interest cost is disallowed as deduction whereas the interest income is chargeable under regulatory levy.

Further the part of income which is invested by TSPs and which earns interest / dividend has already been subjected to legitimate deduction on account of LF & SUC charges paid out of the gross revenue. LF & SUC charges have already been paid as per the revenue sharing regime on the income/revenue accrued in the first instance. Thereafter, any return earned by TSPs by investing any surplus amount in fixed deposit / securities or mutual funds cannot be said to be income from activities defined under license. That is an income generated from money saved after meeting all the liabilities including payment of regulatory levies and hence cannot be subjected to further double charging.

(d) Gains on account of profit on assets and securities;

Response on gains on account of profit on securities is already covered above. Gain on account of profit on assets is in the nature of capital receipt and not the service revenue. Gain on account of assets arising only due to difference in the sale value and existing carrying value of asset. The carrying value is already subject to year on year depreciation charged to profit and loss account of licensee while the gross value is different. There will not be any gain on sale or disposal of assets if we consider the gross value of such assets.

(e) Income from property rent;

TSPs permit third parties (who may or may not be telecom licensee companies) to use immoveable properties such as Land / Buildings owned by them when they do not fully or partly require such properties for their own operations. Such use by third parties does not require any authorization under a telecom license and can be done by the TSPs even in the absence of telecom license.. Therefore, income from property rent should not be part of GR and AGR as it is not arising from activities for which a license is required.

(f) Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);

Setting up of passive infrastructure like towers is not an activity which requires License. Even under the current scenario, the tower structure is being erected by the independent parties and offered to TSPs. Since passive infrastructure is being set up by independent companies and offered to service providers on rent, similar activity when carried out by service providers should not be treated as part of the licensed activity. Therefore revenue earned from rent/leasing of passive infrastructure should not form part of GR and AGR.

(g) Income from sale of equipment including handsets;

Sale of telecommunication equipment including handset is in the nature of trading of goods is not a service. Sale of handsets is an activity which can be carried out without the need for a license. The activity of sale is nowhere related to service unless otherwise TSP's themselves bundle the equipment and service and leverage on that bundle to earn revenue, in which case the accounting guidance under GAAP takes care of such cases for segregating the bundle into service revenue and the value realized from sale of handset and the same is reflected in the audited financial statements of the Company. Hence, Income from sale of equipment cannot be a part of GR or AGR.

(h) Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;

i) **Insurance claim & Consultancy fees –** Other income are generally in the nature of capital receipts and revenue receipts. The capital receipts cannot be part of the GR as such revenues generally do not arise from provisioning of telecommunication services. Receipts of such nature are insurance claims or profit on sale of fixed assets. Taking insurance is a normal business practice in any industry, whether regulated or not. The cost of the asset / depreciation is not claimed as a deduction from the AGR hence there should be no justification for including the claim against loss suffered in the GR or AGR for LF levy. Money received from Insurance claim is an amount to replenish the loss due to damage/destruction

of property. Also, taking insurance is not an activity to earn revenue. It is rather done to safeguard and maintain continuous and uninterrupted flow of revenue. Thus when an entity receives money for Insurance Claim, it is not a revenue or gain in its hand. It is rather an indemnification of loss.

Consultancy services can be provided by anyone and a license is not required for providing these services. Hence income from such services cannot be part of GR or AGR.

ii) **Foreign Exchange gain –** the Para 3 of Accounting Standard-9 Revenue Recognition (AS-9) issued by the Institute of Chartered Accountants of India (ICAI) which reads as under-

"Examples of items not included within the definition of "revenue" for the purpose of this Statement is: "……..Realized or unrealized gains resulting from changes in foreign exchange rates and adjustments arising on the translation of foreign currency financial statements…."

Foreign exchange fluctuations arising out of re-statement of payables towards capital equipment and foreign currency loans for mark to market or hedged closing rates as of the end of any closing date is NOT REVENUE as per accounting standards. Fluctuations in foreign exchange rates have nothing to do with the Revenue of the TSPs. Hence the impact of foreign exchange fluctuations, whether upward or downward should be ignored to determine GR or AGR. Foreign exchange gain and exchange loss in any given period cannot be looked at in isolation and there cannot be any mathematical or accounting or legal reason for such segregation to be made. Exchange gains and losses occur real time every day and hence gains and losses are taken together. If the term used is only gain, then mathematically losses must be recorded as negative gains. Further it may be noted that the unrealized exchange gain / loss is only a notional amount calculated based on period end exchange rate, but does not always reflect the actual gain or loss to the company. Foreign Currency exchange fluctuations accounted to reflect change in payable for capital liabilities and loan borrowings at closing / hedged rates on any cutoff date is NOT REVENUE and therefore cannot be a part of AGR.

Q8 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.

<u>Idea Response</u>

1) Accounting rules for recognition of revenue or cost should be followed in case of determining the inclusion and exclusion of items from GR. The Accounting Standards are formed by Institute of Chartered Accountant of India and are recognised by Companies Act 2013. Further these accounting standards are in conformity with the global accounting practices & conventions and thus appropriate revenue is being booked by the licensee.

2) The revenue accounted by the TSPs should be consistent with principle mentioned in Accounting Standard – 9 "Revenue Recognition". As per this standard "gross inflow of cash" is the amount which should be considered as revenue. Thus the trade discount which is offered at the time of sale should not be added back for the purpose of determining the revenue. The revenue should be only gross amount which is receivable for the TSPs and not beyond.

3) Further while computing GR for the purpose of regulatory levy, Bad Debt / Goodwill waiver / discount should not be considered as revenue. In these cases GR is first declared in anticipation of cash inflow, but in reality cash inflow does not happen for these items and hence these then need to be reduced from Revenue to arrive at GR and AGR.

Q9 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?

Idea Response

1) All TSPs are maintaining service area-wise books of accounts as defined under the License agreement. Further as defined under the Companies Act 2013 all TSPs are maintaining separate ledger accounts for different kind of revenue and expense heads.

2) For determining the revenue the items mentioned in Exhibit-I as disclosed in audited financial statement from the licensed activity should be excluded from the revenue. The revenue which is out of the purview of the license should not be included for calculation of regulatory levy.

3) For required verification, reliance should be placed in the audited accounts of the TSPs. The details can be easily verified from the financial statements of the TSPs and any further requirements can be sought on case to case basis. Along with this a mode of self-certification of the data should also be introduced.
4) The Companies Act 2013 has different formats of Profit & Loss Account for Banking and Insurance sectors and hence changes required for TSPs to disclose revenues from licensed activities and income which are excluded from the levy under the license can be mandated to bring transparency, certification and verification.

Q10 What is the impact of new and innovative business practices adopted by telecom service providers and Licencees 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?

Idea Response

The telecom industry in India is today a global benchmark in many ways given that it has one of the lowest if not the lowest tariff globally despite such high level of taxation. **This has been possible because of various innovative business practices adopted by TSPs. The essence of these innovative practices is sharing of assets, resources and infrastructure between TSPs**. From a LF perspective this has meant that the shared resources are able to provide coverage to more subscribers compared to a scenario where these assets were not shared resulting in higher revenues and higher LF. However, sharing of assets involves inter se transactions between TSPs. It is important that these practices while beneficial for the subscribers and the country should not result in incidence of higher tax. Hence, for these innovative practices to sustain and flourish, it is essential that double taxation is avoided. Hence, as has already been mentioned is necessary that

amount of Revenue subjected to LF in the hand of one licensee should be available as a deduction to another licensee as PTC independent of the nature of service provided.

The recommended verification mechanism of creating a portal where all licensees file relevant details of their Invoicing to other licensees will make the verification process transparent and simple and there is no cause for concern on that account.

As regards verification mechanisms for "other income" excluded from the revenue base, it is quite simple as most of the items falling under the head "other income" are separately disclosed in the annual audited financial statements. This has already been explained above in response to Q9. In case any item of "other income" is not independently verifiable from the audited annual financial statements, an auditor's certificate can be provided for the same.

Q11 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?

Idea Response

The definition of revenue in its current shape and form is very wide and leaves the scope for judgment and interpretations. This has led to a situation of complexity and dispute. As the dispute arose, the governance mechanism and its' implementation got further complicated. Once the definition of GR is clarified for its scope and content eliminating the scope for judgment / interpretation, the issue of complexity goes away.

Further aligning the processes in line with other Acts / Rules e.g. accepting the GAAP, applicability of accounting standard etc. shall bring in uniformity and consistency as to reporting.

In the current regime paper based system of verification of individual transaction in not only creating avoidable confusion but is also against the nature of the industry which is highly technology driven and paperless. This also adds to the cost of compliance which can be avoided.

Once the definition is prescribed with the negative list of exclusions and credit for ALL payments to licenced TSPs, it would make the assessment process simpler and reduce the quantum of disputes. There are two specific recommendations which need to be implemented to bring efficiency to the whole process –

a. Have a single filing and assessment a national level instead of filings at 22 LSAs.

b. Create a portal where each licensee files the relevant details of Invoices which it has issued to other licensees on a periodic basis. This portal will enable easy verification.

If these suggestions are implemented, the costs of administration will significantly reduce and not increase.

The definition of AGR will need to be changed in any case, because the change in definition is for two reasons and both need to be addressed by having a clearer unambiguous definition –

a. Exclusions on account of revenue other than that from licenses activities.

b. Deductions on account of revised definition of PTC based on principle of avoidance of double taxation.

Q12 Should minimum presumptive AGR be applicable to Licencees? How should minimum presumptive AGR be arrived at?

And

Q13 Should minimum presumptive AGR be made applicable to access Licencees only or to all Licencees?

Idea Response

The concept of minimum presumptive AGR should not be applicable for Licensees of any category

Q14 Should intra circle roaming charges paid to another TSP be treated as a component of PTC? If so, why?

Idea Response

Intra Circle Roaming (ICR) Charges paid to another TSP should be treated as a component of PTC for the following reasons –

1. Roaming has already been recognised as an element of PTC and no distinction was made between the types of roaming. There is **no reason for not considering ICR charges as PTC**.

2. ICR has actually resulted in better utilisation of spectrum (as subscribers of more than one operator get services using the limited spectrum), better utilisation of telecom assets (in rural areas where there is limited subscriber base) and more competition (operators who do not have a network can offer services through roaming). Hence, it supports all policy objectives.

3. 3G ICR has resulted in availability of broadband to a much larger number of subscribers and increased competition.

4. In any case ICR results in more revenue for the government as more subscribers get coverage for voice and data services with the help of ICR.

ICR is roaming has been held by TDSAT and was also confirmed by DoT. Hence, ICR Charges paid by one licensee to another licensee would necessarily be a part of PTC deduction to arrive at AGR.

Q15 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 licencing regime in future?

<u>**Idea Response**</u>

While deciding on the permissible deductions the following should be the guiding principles:

i. Any amount paid or payable to another registered licensee for which filing has been made on the portal created for this purpose (and on which LfDS has been deposited, if the scheme of deduction at source is implemented) should be entitled to deduction from GR to arrive at AGR;
ii. Any amount paid to international telecom operators should be allowed as deduction from GR to arrive at AGR.

Primarily the IP-1 providers should not be brought under the licencing regime as the services provided by IP-I operators do not come under the purview of Indian Telegraph Act. In fact, in its letter no. 10-51/2008-CS-III dated 29th October 2008, the DoT made it clear to the Authority that as per the statutory provisions, the activity pertaining to installation of towers does not qualify for grant of licence and higher valuation cannot be a reason to bring IP-I under licencing regime. **Therefore, we do not see any reason to abandon this position by the government and the Authority now as detailed below:**

- "IP-I was created in the year 2000 to facilitate infrastructure development. IP-I companies are required to register with DoT without any financial burden such as entry fee and licence fee to build telecom resources such as towers, ducts etc. It was expected that these concessions would help in creating infrastructure facilities"

- The tower industry has an IP-I registration with the status of an infrastructure provider. Therefore IP-I providers should not be equated with telecom service providers, who are licensees under the Indian Telegraph Act, 1885.

- Further, the IP-I registration certificate clearly mentions in Clause 2 "In no case the company shall work and operate or provide telegraph service including end to end bandwidth as defined in India Telegraph Act, 1885 either to any service provider or any other customer".

- There is a fundamental difference between a telecom operator/ licensee who is granted a licence under Section 4 of the Indian Telegraph Act and IP-1s who are granted registration certificates and have no means of establishing and working of telegraphs under the present registration. The, IP-1 and IP-II Registrations are issued by the DoT keeping in view the difference between passive infrastructure and active infrastructure providers. The DoT had in the past consistently taken the position that IP-I providers (offering passive infrastructure) cannot be brought under the licencing regime [which was also incorporated in the Registration certificate granted by the DoT.

- The Tower Industry in most of the countries is not licenced.

However, despite whatever is stated above, if IP-I operators are brought under the purview of licence fee, TSPs need to be given deduction for payments made to IP-I as pass through charges to avoid double taxation. Based on recommendations already given, if IP-1 is also covered by a license, then the Invoicing by a tower operator to a telecom operator will be available as PTC to the TSP since this will be invoice raised from one licensee to another licensee which will be subject to levy of LF in hands of the licensee issuing the Invoice.

Q16 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 Licence fee? Please provide an explanation for each item separately.

a) Leased Line/bandwidth Charges
b) Port Charges
c) Cable Landing Station Charges
d) Sharing of Infrastructure Service
e) Interconnection Set-Up Costs
f) Roaming Signalling Charges
g) Receipts from USO Fund

Idea Response

TSPs are making payment of above mentioned items to other TSPs who are considering it as part of their GR and accordingly LF & SUC charges are also being paid on the same. While one TSP is offering such revenue under GR the other TSPs not getting deduction is resulting in double taxation over the Industry as whole. TSPs should get deduction of these items to the extent of the amounts paid to other TSPs operating in India. Further items no “a” to “f” mentioned above are revenues from licensed activities for the invoicing TSPs on which they are paying LF / SUC and hence the paying TSP must get the benefit of pass through for these expenses.

With respect to the Item (g) in para 3.35, Receipts from USO fund are in the nature of subsidy from DoT for losses incurred by services providers hence these should not be included for the purpose of AGR. A subsidy payment by an Authority should not be taxed again by the same Authority. The same is included in the negative list included in Exhibit I.

Q17 If answer to Q16 above is in the affirmative, please suggest the mechanism/audit trail for verification.

Idea Response

The current mechanism / audit trail available for verification of IUC and Roaming charges is sufficient to take care of the verification of items mentioned under Q16. Further as mentioned in Preamble in point D (1), the proposed procedure to be adopted on similar line of Tax Deducted at Source under the Income Tax Act will suffice the requirement of verification of such items. Moreover such transactions are covered under Statutory Audit conducted as per Companies Act 2013. If required specific certification can be obtained from Statutory Auditor where required.

Q18 Is there any other item which can be considered for incorporation as PTC?

Idea Response

To avoid double levy, the current concept of pass through needs to be changed from specific items to be based on deduction of any payment made to another TSP on which the other TSP is subject to pay a LF. This principle will ensure that going forward all such transactions will get covered automatically as PTC.

Considering the above following items should be considered for incorporation as PTC,

a) Leased Line/bandwidth Charges
b) Port Charges
c) Cable Landing Station Charges
d) Sharing of Infrastructure Service
e) Interconnection Set-Up Costs
f) Roaming Signalling Charges
g) Payment to ISP

Q19 Please suggest the amendments, if any, required in the existing formats of statement of revenue and licence fee to be submitted by service providers.

Idea Response

It is suggested that :

a. there should be only one format at national level (not LSA level filing);

b. providing service wise revenue with a split between revenue earned for services utilizing spectrum and those services which do not require spectrum; and

c. LSA wise details may be provided to take care of the different SUC rates applicable in the current regime.

Q20 Is there a need to develop one format under unified Licence for combined reporting of revenue and Licence fee of all the telecom services or separate reporting for each telecom service as in present Licence system (as per respective Licence) should continue? If yes, please provide a template.

Idea Response

There should be single format specifying:

a) 'Revenue from Operations' as per Audited Financial Statements of the Company

b) Less: Exclusion for revenue earned from non licensed activities
c) Less: PTC to other Licensees
d) Less: PTC to other international operators / TSPs
e) AGR = (a- b- c- d)
f) Gross LF and SUC Payable = Prescribed % x AGR
g) Less: LF deducted at source
h) Net LF and SUC Payable = (f)-(g)

Considering the recommendations the format should be aligned and can be discussed in detail after the definitions and methodology have been finally decided.

Q21 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.

Idea Response

As mentioned in Preamble D (1) it is suggested that withholding mechanism be adopted where the Licensee claiming the pass through charges as deduction is required to deduct a portion of the levy at source while paying to the invoicing licensee and remit such amounts to DoT. A statement or return of deductions in prescribed format will be uploaded on DoT portal by the licensees. Such deduction claimed by the TSPs can be verified from the portal.

Q22 Is there is need for audit of quarterly statement of Revenue and Licence Fee showing the computation of revenue and licence fee?

Idea Response

No. The present practice of accepting quarterly payments based on self-certification of AGR statements may be continued. The current requirement of annual audit by the statutory auditors and reconciliation to the audited financial statements is adequate.

Q23 If response to Q22 is in the affirmative, should the audit of quarterly statement of Revenue and Licence 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?

Idea Response

A quarterly audit is not recommended. However, in case such an audit is prescribed, we recommend for an auditor under Section 139 of the Companies Acts i.e. Statutory Auditors of the Company.

Q24 Is it desirable to introduce deduction of LF at source as far as PTC payable by one TSP/ licencee to another are concerned, in the interest of easy verification of deductions?

Idea Response

There is a need to improve the administration to get away from the cumbersome and archaic verification procedures being used today. This can be achieved through different mechanisms. **Hence while there is no need for deduction of LF at source in general**, however, if a deduction of a limited amount (say 1%) at source alongwith creation of a portal helps in better administration and simplified verification, then the same can be introduced. This has been discussed in some detail below and in the introduction to this response.

We believe that a portal where all licensees file the details of their Invoices issued to other licensees is essential. This portal will be similar in concept and structure to the one managed by NSDL for tracking income tax deducted at source. This portal will make the process very transparent and verification easier.

The actual administration and collection of LF and SUC can be done in either of the two ways –

a. License Fee deducted at source mechanism (LfDS)
   A mechanism where an amount equal to 1% of Revenue is deducted as LF deduction at source (LfDS) in case of payments made by one licensee to another (excluding cases where licensees raise Invoices / Debit notes to other licensees within the same entity as in the case of one LSA invoicing to another LSA) and such deduction of LfDS will be available as a credit against the final payable amount of LF. This option has also been explained in the introduction to this response.

b. Revenues arising from only non-licensee customers subject to LF and SUC
   Another alternative to achieve the same objectives without getting into the complication of deducting license fee at source (LfDS) could be based on LF and SUC only applicable on GR earned from non-licensee customers. Hence, every licensee will have to segregate all Invoicing into 2 categories – one to other Licensees and the other to customers other than licensees. LF and SUC can then be paid only on the GR from non-licensee customers. In terms of verification mechanism, the same can be based on a reconciliation of Revenue reported in annual financial statements with the GR from non-licensees – such reconciliation can be filed annually and be certified by the statutory auditor.

Q25 Is there any other issue that has a bearing on the reckoning of GR/ AGR? Give details.

Idea Response

"Norms for preparation of Annual Financial Statement" given under License agreement should be aligned with the disclosures requirements as per the Companies Act 2013 as mentioned elsewhere, revenues arising out of licensed activities can be disclosed as a schedule forming part of the Profit & Loss Account.