MTNL/RA/TRAI Consultation paper-09/2014
Dated 29.08.2014

To,

The Advisor (F& EA-II)
TRAI, New Delhi

Sub. : Comments on TRAI Consultation Paper on "Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges" .

TRAI issued consultation paper on 31.07.2014 on the aforesaid subject and asked the various stakeholders to comment on the issues mentioned in the consultation paper. In this regard, the point wise submission to issues raised in Consultation paper is as follows:

Q1: Is there a need to review/ revise the definition of GR and AGR in the different licenses at this stage? Justify with reasons. What definition should be adopted for GR in the Unified License in the interest of uniformity?

MTNL Comment: Yes, the definition of GR should include only the revenue directly related to telecom business for which license has been issued. Other revenue such as Rental from properties, Interest Income which are not directly related to the telecom business and thus does not fall under the purview of License and hence should not be included in the definition of GR. However, any product sold as bundled product with the licensed activity, the revenue of complete bundled product irrespective of the fact that it falls in the scope of licensed activity or not will form part of GR and AGR to avoid concealment. In addition non revenue item such as bad debts recovered, excess provisions write back etc. should not form part of GR Or alternatively AGR should be arrived at after deducting non revenue items. In other words revenue shall include only the receipts resulting into or expected to result in cash inflows directly attributable to the generation of revenues from out of the activities related to the license only.

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?

MTNL Comment: Below mentioned points are submitted for consideration:

- The revenue sharing and revenue are to be accounted for on accrual basis by all the licensees as per the Indian Accounting Standards and therefore the dichotomous approach in taking revenue on accrual basis and revenue sharing on actual payment basis has no correlation with the accounting principles, besides it complicates the whole issue as the payments are to be made as per the interconnect agreements which may contain clauses for settlement by netting or practices of settlement by netting. Not only that, the payments may be withheld for valid reasons and penalties could be deducted from out of payments as per the contractual agreements and reconciling the payments with actual cash outflows will therefore become cumbersome and also unwarranted. It is also logical that if the insistence is on actual payments made to other operators, the provision should be made available for taking GR on the basis of actual collection or cash inflows less cash outflows due to revenue sharing. Therefore, the guiding principles are required to be aligned with the fundamental concepts of accounting instead of unilateral procedures.

- Besides the above, the document verification is very cumbersome process. The deductions claimed are required to be submitted along with the bank details of such payments made, payment vouchers and bank statements. Various additional documents viz. copy of invoice of other operator, copy of each cheque accompanied by bank statement showing clearance, inter unit adjustments with supporting invoice (whereas no such invoices are raised for intra group transactions), extract of general ledger account of each settlement date along with such settlement note duly signed by authorized signatory etc. are sought unlike in any assessment process anywhere in the country for any tax assessments. This is despite the fact that each of the AGR calculation is duly certified by statutory auditors and the deductions claimed are also verified by the auditors. Therefore the insistence on audit of AGR for which extra fees are being paid has no relevance, if the same is not to be relied upon by licensor or else it is requested that the audit process may be prescribed by DOT, instead of taking over the entire audit of the GR and AGR after the same are comprehensively audited by statutory auditors i.e. duplicacy of audit procedure may be avoided.

- Even in the cases of accounting adjustment between two operators, the same are being disallowed in the absence of bank vouchers, despite the fact that one operator is accounting revenue and other is claiming deduction which do not lead to any loss of revenue to the Govt. Even the inter-unit/ segment transactions from cellular to basic and vice-versa are disallowed despite the fact that the same enterprise cannot issue a cheque to itself and such transactions are normally knocked off at corporate accounting level. Therefore the logic accounting may be considered instead of old procedures with arbitrariness.

- In tax administration certain dues, which remains unpaid at the end of 150/180 days are added back to income and tax is paid. Similarly it can be prescribed

that all IUC deductions allowed earlier on accrual basis but remain unpaid at the end of next year should be added back in AGR of that year for the purpose of computation of LF.

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?

MTNL Comment: Definitions of GR/AGR needs to reviewed instead of changing the rate since changing of the rate for the purpose of simplicity, verifiability and administration can not be quantified in terms of commensuration of time and cost benefits, those could accrue or associate vis-a-vis such rate change and with the present uncodified procedures of assessment by licensor, unlike in other Tax levy procedures, the commensurating relief could be a mere conjecture or surmisal, while placing more burden on account of rate hike on licensees, if hike is contemplated and while reduction is proposed without unraveling the complicated and unilateral assessment procedures, of DoT, the practical relief would still be elusive. As such codification of process of assessment by licensor to simplify the entire issue is the viable option.

Q4: If the definitions are to be reviewed/ revised, should the revenue base for levy of license fee and spectrum usage charges include the entire income of the licensee or only income accruing from licensed activities? What are the accounting rules and conventions supporting the inclusion or exclusion of income from activities that may not require license?

MTNL Comment: The revenue base for levy of license fee and spectrum usage charges should include only the income accruing from licensed or its related activities including the revenue from sale of any product bundled with the licensed activity, such as income from sale of equipment including handsets etc. So that the revenue of complete bundled product irrespective of the fact that it falls in the scope of licensed activity or not will also form part of GR and AGR to avoid concealment. Further, the levy of license fee should be on all activities which are licensed under telegraph act or/ and given certain privileges / rights as per the provisions in the telegraph act such as right of way etc.
The main other income items (for which no telecom license is required and easily verifiable) to be excluded from the present definition of GR/AGR are summarized below:

Items resulting into cash in flows:

Income from Dividend: Investment of idle cash to earn dividend does not require a telecom license and dividend is earned on account of non telecom activity viz. investment of idle cash in securities. It is verifiable from Dividend warrants issued by company.

Interest Income: Service providers earn interest income by investing funds in banks or through lending money without having telecom license and therefore income earned from the interest cannot be considered as licensed activity. As such it should not be part of AGR. Bank statement or interest certificate may be asked as proof.

Capital Gains: - Capital gains/losses arise on account of sale of immovable property or security. It is never set off with the GR where there is capital loss in the same way capital gain should not be included in GR for computation of LF /SUC. The capital gains are in the nature of capital receipt and are not normal revenue accrued from operating activities and also an income from non licensed activity.

Rental income from Property: Leasing a portion of land/property to any party is not a licensed activity and accordingly the revenue earned through this may be excluded from the GR/AGR. Rent agreement/Bank statement may be asked for verification.

Receipts on account of insurance claim: It is not revenue and merely the reimbursement of losses incurred by company and easily verifiable.

Items not resulting into cash in flows and are mere a book adjustment:

Gain from Foreign Exchange rate fluctuations: It results when liabilities for payment in foreign exchange decrease 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. These gains or losses are notional and remain unrealized and therefore should not be included in the GR. It is also not set off in the eventuality of loss on account of foreign exchange fluctuation.

Excess provisions written back: It is actually not revenue but a reversal of provision made in earlier period. As this amount of provisions was not claimed as deductions or was part of deduction process in the concerned year and license fee was paid on the whole of the revenue during that year, hence there is no basis for considering this accounting reversal as revenue. Therefore while writing back, this should not be included in revenue for calculation of LF and SUC again. This can easily be verified through the audited financial statements.

Bad debt recovered: Bad debts recovered are the amounts not realized in the year in which the income was booked. However the LF and SUC were paid on such booked income rather than on realized income in that year. Hence imposition of LF and SUC on such bad debts recovered in subsequent year is not justified since LF is already paid in the first instance itself. Further it is easily verifiable through the audited financial statements.

Inter segment revenues: Inter segment revenues are the amounts accounted for by each segment viz. Basic and GSM etc. against each other which is normally knocked off at corporate/entity level accounting and hence there is no cash inflow of such revenues knocked out of accounts at entity level and as such the same should not be considered for GR and be allowed as deduction if considered as part of GR on the basis of duly audited accounts of entity.

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?

MTNL Comment: It is suggested for not levying LF/SUC on GR at all. Further as already specified in consultation paper, the percentage rate of LF including USO levy is maximum 2% in neighbouring countries Viz. Pakistan and that too on the GR less inter-operator payment. Accordingly TRAI/DOT should also revise the % levy of LF to the operators to make it less burdensome.

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

MTNL Comment: The revenue base for calculating LF and SUC should not include 'other operating revenue' and 'other income' as the license has been given only for providing telecom related services. Accordingly the LF and SUC should be taken on Telecom revenue only. 'Other operating revenue' and 'other income' are either from non licensed activities or late fees or
surcharges on delayed payments of debts by telecom service receivers and therefore should be excluded from LF/SUC calculations.

Q7: 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.;

MTNL Comments: Comments to Q4 may please be referred.

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.

MTNL Comments: **(i)** The content and data providers including IP TV etc. are business associates of telecom service providers and share the revenue under various agreements and the interface with customers including billing and recovery of the value of the content provided is with telecom service providers. Since such content provision is not any telecom license related expense like bandwidth charges etc., therefore such sharing of revenue also needs to be considered for the purpose of deduction so that the charges being paid for 'such non-license required provision of content' through the telecom medium would not form part of AGR and therefore could be excluded from levy of LF by way of deduction either as revenue sharing or as admissible deduction against payment proof. Alternately the rate of LF in the case of internet shall be 2 or 3 % less than the normal rate if the exclusion is not agreeable.
(ii) Present Framework along with the exclusion proposed in the comments to Q4 above may be considered which will ensure that the verified transactions are only deducted from GR and will also avoid any revenue loss to exchequer.

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?

MTNL Comment: Other Income head as appearing at the face of the Profit & Loss A/c of TSPs may be excluded from the revenue base for calculation of LF & SUC for cross verification of GR. Further reply to Q4 above may please be referred for suggested exclusions.

Q10: 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?

MTNL Comment: No comment, as MTNL has not invented or adopted any innovative mechanism as such and has no such plans. The verification mechanism to be adopted by the licensor will be more simplified if the proposed exemptions of other income from the revenue base are accepted. For cross verification of the exemption of other income, the detailed list of items in the 'other income' note of financial statements can be got prepared and submitted as part of audited AGR after getting the same audited by statutory auditors .

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?

MTNL Comment: It appears that there would not be any additional cost of strengthening the assessment, accounting and monitoring system. Besides in view of non time bound assessment process in DOT in case of LF audit of DOT and pending assessments for more than 5-7 years in many cases without giving a fair opportunity to the service providers to submit their view points, the adaptation of a fair and time bound monitoring system compliant with the practice of principles of natural justice is very much necessary even if costs are involved to DOT.

The definition of AGR should remain unchanged once the revenue base is reduced by providing for additional exclusions from the top line.

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

MTNL Comment: No, there should not be any minimum presumptive AGR applicable to licensees. It should be based only on the actual revenue.

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

MTNL Comment: No, there should not any minimum presumptive AGR be applicable to licensees. It should be based only on the actual revenue.

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

MTNL Comment: Yes, otherwise it will result in double charging of license fees.

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 licensing regime in future?

MTNL Comment: Deduction from GR should be allowed for the charges paid to IP-I providers, once they are brought under license regime.

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 license fee? Please provide an explanation for each item separately.

MTNL Comment: Item discussed in paragraph 3.35 like leased line charges/Bandwidth Charges, port charges, sharing of infrastructure with **licensed** TSPs, interconnection setup cost, roaming signaling charges should be considered as components of PTC and allowed as deduction from GR to arrive at AGR for the purpose of computation of license fee because all these charges are essentially incurred in providing the services and passed on to other TSPs out of the revenue received from the customers. Similarly in case of service providers receiving revenue on account of interconnection setup cost, port charges etc., the related expenses may also be allowed as deduction excluding the profit margin (included in the charges levied), since the charges billed are cost based charges.
Moreover the charges paid to other TSPs are licensed in the hands of those TSPs and again if these are not allowed as deductions this would tantamount as double charge of license fee on the same income.

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

MTNL Comment: The deductions claimed, may be verified with invoices as a proof of billed amount and payments may be verified from the bank statements.

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

MTNL Comment: No comments.

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

MTNL Comment: To be amended after permission of exclusion as proposed above.

Q20: 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.

MTNL Comment: Separate reporting for each telecom service as in present license system (as per respective license) should continue as UL also describes different telecom services allowed to the operators and UASL also provides for bringing optionally all or individual services under the purview of it and also allows the licenses to remain out of UASL till their expiry period.

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.

MTNL Comment: The new items of deductions claimed may be verified with invoices as a proof of billed amount and payments may be verified from the bank statements.

Q22: Is there a need for audit of quarterly statement of Revenue and License Fee showing the computation of revenue and license fee?

MTNL Comment: No, it should be audited on yearly basis. Annual statement of AGR duly certified by auditors has to be filed by 30th June and it can be complied with.

Q23: 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?

MTNL Comment: Not applicable.

Q24: 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?

MTNL Comment: No Comments.

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

MTNL Comment: Levying of interest is prescribed for default in payment of LF besides penalty on late payments whereas in case of any of the tax levies no such penalty is levied normally unless there is a concealment of income or tax and that too the levy of penalty is not automatic and is discretionary based on the facts and circumstances leading to such default in the tax laws. Levying of interest and penalty

is automatic in case of LF and it has no nexus to the facts and circumstances of the case and besides the same are abnormally high with interest rate being 5% above the PLR compoundable on monthly basis in case of delay in payment. In the Income Tax Act, 1961 interest is charged @ 12%. In this case the effective interest is 19.75% (SBI PLR+5%). Besides penalty is also leviable automatically @ 150% of short paid amount if self-assessment based LF paid falls short by more than 10%. No such penalty is leviable in the case of income tax for delay in payment except in case of concealment of income/tax is payable. This will lead to penalization of the service providers as interest levy and penalty are clamped on the service providers. The procedure of appealing against orders of assessment on License Fees is not available and no scope is left to get the same reviewed at higher levels of DOT as no appellate tribunal is available for these matters and the question of legal recourse is remote as it is not a telecom dispute but on licensing. This is not in consonance with the system of dispensation of claims and counter claims in a fair and arbitrable manner. As such the system of departmental appellate authority in case of LF, AGR and GR matters is very much required so that the assessment can get adjudicated without prejudice to and with in the purview of the licensing agreement along with detailed codified procedures for assessment and penalization and review etc.

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