



**Mobile Trunked Radio  
Operators Association**

To.

Date: 08/09/2014

The Advisor (F& EA-II),  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
(Old Minto Road),  
New Delhi- 110002.

Kind Attn : Shri Maruthi P. Tangirala

Dear Sir,

In reference to your Consultation Paper No 09/2014 dated 31/07/2014, on definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Uses Charges, please find enclosed our comments.

Thanking You,

For Mobile Trunked Radio Operators Association of India,

  
(Ashok Bahal)

Sr. Manager (Regulatory affairs)



**Mobile Trunked Radio Operators Association of India**

MCD No. 94, 1st Floor, Old Ishwar Nagar, Shambhu Dayal Bagh, Near Coca Cola Godown  
Okhla Industrial Estate, New Delhi – 110020, Tel: 011-49678800 Fax : 011-49678804

**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?**

**Ans.** Most definitely. The reasons from MTROA's point of view are:

- a). Present definitions of AGR include elements that if allowed to continue shall tantamount to double taxation besides disturbing the level playing field.
- b). Because licenses issued in 1990s are going to run their full term in the next 2-3 years coupled with the fact that the Telecom Industry and Telecom Services have reached a massive scale and high degree of market penetration, the Government / Licensor can consider a reduction in the LF% while largely protecting its non-tax revenues besides moving closer to international practices followed.
- c). For fear of attracting license fee, many TSPs have moved some AGR elements viz. sale & handsets to a subsidiary company, causing loss of LF to the Licensor / Government while making the TSPs administratively inefficient – compliances for new Co., dilution of management bandwidth.

We believe that this issue can be addressed in a win-win manner if the Licensor / Government allow the cost of a handset to set off against income (aka PTC). Please refer to Annexure 1 for details.

- d). With 12 years of data available to us now the Licensor / Government can take a much more informed decision on why / how the GR / AGR definition can be revisited. For example, we know that the average utilization of USO fund over the last 12 years is approx. 30% of what is collected for the same.

Given the above and the fact that BSNL / MTNL no longer need to be compensated for LF & spectrum charges, the Licensor / Government can actually reduce the USO charges to 1.5% (instead of 5%) without affecting their non-tax revenues.

- e). Historically, the Licensor / Government has been following different norms for SUC – for some services it is charged as a % of AGR while for some it is a fixed fee which is formula based. There is also an additional aspect of level playing field which is applicable for such Telecom Services for which Captive Licenses are being issued by the Licensor / DOT.

We believe now is the time to migrate to a standard SUC for all services especially since many services have been clubbed under U/L.



**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?**

**Ans.** The guiding principle for designing the framework for revenue sharing regime is:

- a). Consider revenues generated by the Telecom Service only i.e. revenue generated from licensed activities only.
- b). Include income from sales / rental of related hardware based on levying the License Fee of a minimum 'presumptive margin on cost'. Please refer to Annexure 2 for details.
- c). Ignore income from:
  - i. *Dividend*
  - ii. *Interest*
  - iii. *Capital gains on sale of assets & securities*
  - iv. *Gain from foreign exchange fluctuations*
  - v. *Income from property / rent*  
– Revenue from sale of tenders, sale of fixed assets, management & consultancy fees, training charges, etc.
  - vi. *Receipts from USO funds*
  - vii. *Waivers & discounts from AGR*
- d). Provision for bad & doubtful debts & reversal of same.

Licensees should be allowed to provision for bad debts which should be allowed as a deduction while computing AGR.

Likewise reversal of bad debts should be treated as income which should be added to AGR for purpose of levy of License Fee.

In so far as the present regime being 'easy to interpret, simple to verify & is comprehensive' is concerned, the suggestions made above leave no area of doubt.

The other considerations that must be included in the regime are:

- e). Interconnection with Telecom Operators or any charges paid to another Licensee for using his network or leased line charges paid to a TSP for enhancing connectivity of the network should be allowed as a deduction while computing AGR. Similarly any charges received should be added to the AGR for computation of License Fee.
- f). The Telecom Industry has grown in scale & market penetration since inception of AGR regime in 1999-2001. From 2008-09 to 2013-14 the License fee has increased by 32% & SUC by 92%. Going forward there is thus a very good case to review the license fee & SUC downwards which in turn will fuel a further growth in revenues & AGR especially since the Government has made market price for airways as a general policy and in line with international practices, authority may consider aligning LF & SUC regime in line approach international practices.



**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?**

**Ans.** We believe that it is better to review the rate of LF for two reasons:

- a). Since the USO disbursement is only 30% of collections and the TSPs (Basic & Cellular) have to look for tertiary markets for growth coupled with dismantling of the ADC regime & fully compensating BSNL already, the need to collect 5% of AGR (rather collect at all) needs a serious downward review. In view of the fact that Government is keen for rural coverage to increase and given its plan for a Digital India, all TSPs and PSUs need to be treated on an equal footing. The current bias for a PSU to utilize these funds was against the doctrine of level playing and competition law.
- b). While definitions largely remain the same, the principle of double taxation inherent in the AGR regime (sale of handsets, charges other than interconnect paid to other TSPs or revenue arising from non-licensed activities) needs to be reviewed as per answer provided to Q2.

**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?**

**Ans.** The income only from licensed activities ought to be taken. The accounting rules & conventions supporting the exclusion of income from activities not requiring a license are:

- a). Sale of handsets, accessories or other hardware sale: According to convention, income earned from sale of handsets, accessories or other hardware can be computed only based on selling price less cost price. Therefore, even if sale of handsets needs to be included for levy of license fee, it is the income (selling price less cost price) which should be added to AGR.

In its present form today, Licensees have to pay LF on the selling price of the handset. This approach amounts to:

- i. A virtual double taxation for the Licensee, over & above the applicable VAT.*
- ii. Since the subscriber has a choice of obtaining the handset from another source, the Licensee is rendered uncompetitive (disturbing the level playing field) due to the LF levy on selling price.*

There could be an apprehension of TSPs subsidizing hardware should the Licensor introduce a provision of levying LF on the net income (Selling price minus cost price). This can be eliminated by introducing another convention of a Minimum Presumptive Margin of 5% on Cost of handset or actual margin, whichever is higher for the purpose of inclusion in AGR.



Similarly, where any hardware is bundled with Services, a minimum presumptive margin of 50% on the bundled tariff may be considered for levy of LF.

- b). Similarly, discounts / waivers offered to subscribers or provision of bad/doubtful debts, etc. are easily verifiable & should be allowed for deduction under AGR as they are part & parcel of the business realities.
- c). Treatment for other revenue / expense leads as mentioned in answer to Q2 should be similar to point 6 above based on the convention of:
  - i. *Equivalence to Pass through Charge*
  - ii. *Revenue / income not being from Licensed activities*
  - iii. *Not amounting to double taxation & distortion of the level playing field w.r.t. alternate / substitute services or options available to the end user.*

**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?**

**Ans.** No, LF should continue to be levied on AGR only. This is because different services have a different scope of activities which are or are equivalent to pass through charge.

As an example, the PTC as a % of GR on various services in the year 2013-14 was as below:

- a). Access : 29%
- b). NLD : 23%
- c). ILD : 55%
- d). Others : 91%

It is clear from the above that LF levied as a uniform percentage on GR in place of AGR shall leave ILD & others severely disadvantaged w.r.t. other services such as Access & NLD.

For example if we were to theoretically define a new norm of 5% of GR instead of 8% of AGR as exists today , and assuming that the GR was Rs 100 for all the above services ,the LF payable today and for the new norm is :

	<u>Today</u>	<u>New Norm</u>	<u>Difference</u>
For Access Service Licensee	5.68	5.00	-0.68 (- 12%)
For Other Services Licensee	0.01	5.00	-4.99 (- 49,900%)



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

**Ans.** The principle to be applied should more be 'is it revenue from other licensed activities'. If not, LF & SUC should not be applied to revenue accruing from these activities.

If at all the 'other income' or 'other operating revenue' should arise from licensed activities, the 'costs' associated for these activities should be allowed as deduction either based on actual (if these are charges transparently obvious as being paid to third parties) or on a 'minimum presumptive margin'.

**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.;**

**Ans. a). Income from dividend:**

Income from dividend shall arise based on a TSP investing its post LF & post tax earnings into a financial instrument / option. Also, dividend received in the hands of the TSP has already been prior subjected to Dividend Distribution Tax.

Imposing a LF & SUC levy on the same will not only tantamount to double taxation but will also distort the level playing field of the TSP w.r.t. rivals & substitutes either not making such an investment or if they are unlicensed.

**b). Income from interest:**

The logic is pretty much the same as Income from dividend. The TSP needs to even temporarily park surplus funds in short term financial instruments or in FDs required for obtaining & operating working capital limits (CC, L/C, and BG). The proceeds which are deployed are in any case net of LF & SUC payment. Taxing interest such deployments again amount to double taxation (over & where) TDS / Income tax) forces the TSP to compromise on working capital conservation initiatives which call for maximizing return on short term funds.

Moreover most TSPs carry a very high debt burden. The Government / Licensor should let the small gains in interest income accruing to the TSP offset some of interest costs on the extremely high debt carried by the TSPs.



**c). Gains on account of profit on assets & securities:**

It is rare to see any fixed Telecom assets or securities appreciate in value over time with a few exceptions like land owned or liquid assets like securities held or mutual funds.

Again these are incomes from unlicensed activity and any gains that the TSP might realize from them would eventually end up in improving profitability of the TSP which in turn shall improve the ability of the TSP to invest more in a perennially investment hungry business that Telecom Services represent.

The Government should be content to reap gains through LF from increased revenues following increase in investments, rather than subject income from profit on assets & securities.

Because of the present AGR regime TSPs may be following complex methodologies to transfer surplus cash flows, if at all, outside the TSP legal entity.

**c) Income from rent / lease of passive infrastructure (towers / dark fibre):**

Since it is anyway proposed to bring passive infrastructure (towers / dark fibre) in the ambit of Infrastructure Providers, which will be licensed & given that these do not either grow in terms of scale or growth rate or generate EBIDTA as a % of revenue similar to an Access service, these should be covered in the ambit of LF but a rate much lower than what is applied to Telecom Services.

**d) Income from sale of equipment including handsets**

Covered under answer to Question 4 above

**e) Other income on account of insurance claims, consultancy fees, foreign exchange gains.**

Both insurance claims as well as foreign exchange gains have an inherent component of loss also built-in as a possibility, besides not resulting in their accrual as a result of rendering a Telecom Service.

While in insurance it is never feasible to recover 100% of the loss / damage incurred / experienced the foreign exchange gain or loss is a component / element of cost & not revenue. Especially in the context of a foreign exchange gain, the TSP may have budgeted a higher cost (than actually experienced) of foreign exchange because of which the TSP may have charged a higher price, resulting in higher revenue, thus already paying LF on the revenue incremented due to higher price. To punish the TSP again with slapping of LF on foreign exchange gain shall be extremely unfair, especially since there is no compensation if TSP experiences a loss in foreign exchange.

**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.**

**Ans.** a). Sale of handsets or hardware or accessories, whether bundled with airtime or not:

The convention is very simple – the gain to the Licensee is the difference of selling price & cost; else it shall amount to double taxation (VAT + Service Tax + LF) continuing to



levy LF only on selling price shall also disturb the level playing field wherever a 'captive license' option legally exists to a given Telecom Service viz. PMRTS. In its Captive License version (called CMRTS) the same handset does not attract any LF since it is meant for captive use, whereas if it is bought from the PMRTS operator, it will be priced higher because of 8% LF payable by the PMRTS Licensee.

- b). Intra Circle Roaming charges paid to another TSP (or subscriber's loaded on another TSPs network infrastructure), Leased Line charges paid to another TSP for connecting own network sites, Interest income, gains from profit on assets & securities, insurance claims, foreign exchange gains.... All these income / revenue transactions also have a cost element attached which is not factored or allowed as deduction under AGR.

The International Accounting Standards Board (IASB) defines income as 'Income increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases in liabilities that result in increases in equity, other than those relating to contributions from equity participants.

Thus enhancement of assets or increases in equity can only happen if the 'net' effect of revenue & attendant costs are taken in the context of all the income / revenue transactions mentioned in points a & b above. If eventually that is not implemented, at least corresponding deductions are allowed.

**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?**

**Ans.** For items proposed to be excluded from revenue.....

1. Sale of handsets or H/W including accessories: A minimum presumptive margin over cost of 5% or actual, whichever is higher.

All TSPs account for sale of hardware / accessories separately from Service Income and also account for cost of goods sold for such sale of hardware / accessories as a 'gross' number, less of taxes.

The existing Statutory Auditor's certificate to be obtained once every quarter & once at the end of the year for actual margin earned & minimum presumptive margin is adequate

2. Similarly, the Statutory Auditor's certificate shall be adequate for the following items to be excluded:
  - a. *Income from interest*
  - b. *Income from dividend*
  - c. *Income from sale of property*
  - d. *Income from sale of fixed assets*
  - e. *Insurance claims*
  - f. *Gain from foreign exchange*
  - g. *Profits on assets & securities*



Since the above items in principle do not form part of licensed activities, they are easily identifiable & certifiable by the Statutory Auditor.

No new verification mechanism is therefore required.

**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?**

**Ans.** If the principle of bringing only the License related activities in the ambit of LF then there is no impact of new innovative business practices adopted by TSPs and Licensees on the definition of GR. Only the pre-defined exclusions/deductions duly certified by the Statutory Auditor should be allowed, rest all other activities may be considered the License related activities and liable for LF.

**Q11: Do the potential benefits accruing to TSPs by moving from a simpler to a more complex definition of the gross 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?**

**Ans.** No, if the principle of bringing only Licensed activities under the ambit of LF then there is no increase in complexities and there is no additional cost of strengthening the assessment, accounting and monitoring system. Yes, once the exclusions are defined from the top line the definition of AGR can remain unchanged during the license period.

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

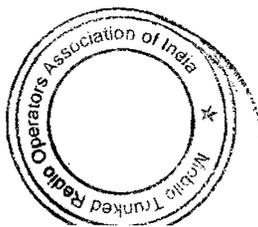
**Ans.** In our opinion minimum presumptive AGR should not be applicable. The Licensee faces a lot of implementation challenges because of delays caused by various Government agencies over which Licensee has no control viz.

- 1) SACFA approvals
- 2) Issue of spectrum
- 3) Issue of import license where required

Some of the above issues have entailed a delay ranging from 9 – 20 months in the case of PMRTS in the last 2 years

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

**Ans.** The minimum presumptive AGR should be made applicable to all Licensees.



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

**Ans.** Yes, intra circle roaming charges paid to another TSP should be treated as component of PTC because the TSP earns revenue by availing roaming service received from other TSP. Since the revenue from same is also liable for LF, therefore the intra circle roaming charges paid to another TSP should be treated as component of PTC.

**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?**

**Ans.** Covered in answer point (e) to Question 7.

**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.**

**Ans.** Yes, all the item mentioned in paragraph 3.35 is considered as components of PTC and allowed as deduction from GR to arrive at AGR for the purpose of computation of license fee.

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

**Ans.** This can be done based on a Statutory Auditor's certificate. The income of one TSP is the expense of the other TSP, both can be cross verified.

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

**Ans.** The airtime purchase from other TSPs be considered for incorporation as PTC.

**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.**

**Ans.** As recommended, suitable format can be evolved.

**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.**

**Ans.** The existing format may be kept to get a clear idea of how each Telecom Service is doing.



**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.**

**Ans.** Already explained above.

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

**Ans.** There is no need for audit of quarterly statement. The certificate from the Statutory Auditor in the prescribed format can be obtained, however if current quarter revenue is less than 10% of previous quarter revenue in such a case department may order for special audit at its discretion.

**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?**

**Ans.** The audit can be conducted either by statutory auditor or Chartered Accountant under section 139 & section 148 of Companies Act, 2013.

**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?**

**Ans.** No, there is no need to introduce deduction of LF at source as the TSPs are already providing BGs to department and there is no need to introduce LF deduction at source.

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

**Ans.** No



## Annexure 1

	<b><u>Quantity</u></b>	<b><u>Today</u></b>	<b><u>Proposed</u></b>
Sale of Handset	1	**	Rs. 16,000
Cost of Handset	1	N.A.	Rs. 15,000
Net Margin / Income from Handset	1	**	Rs. 1,000
Minimum presumptive margin @ 5%	1		Rs. 750

*\*\* Today TSPs have transferred activity of selling handsets to a separate Company, depriving DOT of any License Fee, because the present AGR regime dictates charging LF at 8% on Rs. 16,000 = Rs. 1,280/-*

In the proposed regime, LF @ 8% shall be payable on the minimum presumptive margin (Rs. 750 in this case) or actual not margin (Rs. 1,000), whichever is higher.

Thus DOT starts getting additional revenue of Rs. 60 or Rs. 80 as the case may, per handset sold.



## Annexure 2

	<u>Quantity</u>	<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>
Sale of Handset	1	Rs. 15,000	Rs. 15,000	Rs. 15,000
Cost of Handset	1	Rs. 16,000	Rs. 14,000	Rs. 12,000
Net Margin	1	(-) Rs. 1,000	Rs. 1,000	Rs. 3,000
Minimum presumptive margin @ 5%	1	Rs. 800 <sup>1</sup>	Rs. 700	Rs. 600
Margin on which LF payable		Rs. 800	Rs. 1,000	Rs. 3,000
LF payable @ 8% per handset		Rs. 64	Rs. 80	Rs. 240

<sup>1</sup> 5% on Cost of handset = Rs. 800

