Please find enclosed our comments to the Telecom Regulatory Authority of India (TRAI) Consultation Paper No. 09/2014 dated 31st July 2014 titled 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges.

We have been requesting for this review of AGR definition via our association ACTO on many occasion and happy to see this consultation paper on AGR. The need to streamline the same is ever so important in today's time when telecom industry if facing multiple hardship due to the overall industry growth being slow. It's also nice to see that TRAI has in this consultation paper taken up other related topics thereby broadening the discussion on AGR. Thus we are very hopeful that the recommendation by TRAI shall be pro-industry and shall lead to affordability to telecom resources to the end customer.

TRAI had in past too made reference in its recommendations on Unified License dated 16th April 2012 wherein under clause 2.49 it has stated -"*Regarding the revenue which shall be taken into account for calculating GR/AGR for levying of licence fee, the Authority has not proposed any change in the definition of GR/AGR as the issue requires deeper study*". Also in its recommendation of 13th January 2005, TRAI had recommended "*AGR shall include only the revenue accrued out of telecom services and shall not include sale of capital goods, sale of handsets, dividend and interest earned on various deposits. To ensure that bundling of handsets with tariff schemes is not misused, the existing provision of tariff schemes with bundling to be made available to subscribers even without bundling, shall continue".*

It would also be pertinent to mention here the need for any amendment or introduction of new policy to be aligned with the National Telecom Policy 2012. The current definition of revenue has several anomalies which needs to be corrected for an orderly growth of the sector. Thus, any revenue which has been derived from an activity which does not requires a telecom license should be outside the purview of license fee. Only the revenue which are derived on the basis of activities and services carried out on the strength of the relevant telecom license and/or can be directly attributable to the service permitted under the telecom license.

- Thus, the revenue accrued only from telecom services on the strength of the telecom license needs to be considered for license fee payment purposes.
- The AGR definition should eliminate the issue of multi stage assessment of license fee which severely impedes competition. Thus, Pass through charges like leased circuits, port charges etc. paid to telecom service providers should be excluded.

- The license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR.

Our response on the question raised by the Authority.

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?

Response :: Yes, there is an urgent need to review /revise the definition of GR and AGR in the different licenses and **the same principal should be uniformly applied on all Telecom Licenses**.

The current definition of revenue has several anomalies which needs to be corrected for an orderly growth of the sector. Thus, the need to review the same.

Thus, any revenue which has been derived from an activity which does not requires a telecom license should be outside the purview of license fee. Only the revenue which are derived on the basis of activities and services carried out on the strength of the relevant telecom license and/or can be directly attributable to the service permitted under the telecom license.

Key aspect requiring review

- Thus, the revenue accrued only from telecom services on the strength of the telecom license needs to be considered for license fee payment purposes and unrelated revenues be excluded.
- The AGR definition should eliminate the issue of multi stage assessment of license fee which severely impedes competition. Thus, Pass through charges like leased circuits, port charges etc. paid to telecom service providers should be excluded.
- The license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR.
- It includes notional income that is unrealized/remains uncollected by the Licensee (for example Forex gain, bad debts written off etc.).
- It includes item on accrual/billed basis but allows deduction on collected/paid basis.

The definition of GR/AGR for payment of license fee needs to be reviewed to ensure level playing field among the service providers. The current definition subjects all sources of revenue (telecom and non-telecom) accrued to the licensee company to license fee. Also the permissible deductions are restricted only to switched voice call and that too on call by call basis, service tax and sales tax paid. It does not accord similar treatment for telecom provider providing data services and operators taking leased facility for carriage of voice services.

Interconnection cost should also consider payment made for input bandwidth charges which forms an integral part of data services. This will eliminate the issue of **multi stage assessment of license fee** which is currently in vogue and severely impedes competition in the enterprise services and data sector. Therefore, input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

We do not agree with the views shared in the consultation paper that no pass through shall be considered on charges paid to other operator, where the operator had the option to build the infrastructure on its own.

- As enough infrastructure is already there on ground and there is no scarcity of same
- Adding its own infrastructure will not in any manner change the revenue collection of the government, thus we see no correlation between License Fees and set-up of infrastructure (capacity building)
- It also goes against the principal of sharing of infrastructure which has been advocated actively by the Government.
- Interconnection charge paid to foreign carriers
- Similar question may arise if the IP1 are brought under the license fees regime and shall result in drastically increase the burden on license fees on telecos.
- If the infrastructure is built by all the operators then we would result in unnecessary investment on already sufficiently built capacity and resulting in unnecessary fiber being deployed all over the place (resulting in issues like ROW, cable cuts and maintenance etc.) with end result of increased cost burden on the operators.

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?

Response :: The license is governed under section 4 of ITA, 1885, all its constituents should also be governed accordingly. **Thus revenue from all activities which requires a telecom license to undertake should only qualify for a revenue sharing regime, while excluding the rest**.

If the regime would have been simple and calls for minimal intervention of assessing authority, then we should not have witnessed plethora of litigations; / show cause notices etc.

Therefore the guiding principle of charging license fees only on licensed service should be followed which will eliminate the need for any subjectivity or interpretation.

Key parameters being

i. Only revenue from service under the license scope to be part of Revenue Base for license fees;
ii. Multistage regulatory levies should be eliminated
iii. It should be easy to verification
iv. There should be transparency and minimum scope for exercise of discretion by the assessing authority.
v. The license fee should be based on actual revenue of the service provider which has received from subscribers without any linkages to the concept of presumptive revenue base.

Thus to be aligned to NTP-12, it is submitted that present regime of regulatory levies on telecom sector may amended and also move towards international best practices and only administrative cost should be recovered.

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?

Response :: There is definitely a need to review the rate of LF along with other anomaly pointed out in our response. Just reviewing the rate of license fees may be a short term solution at best. Thus, our methods and definition should be aligned with NTP-12, Digital India and international best practices etc.

It is further submitted that the rate of license fee especially the USO levy which is a major portion (5%) needs to be significantly reduced or deferred till the existing corpus be put to use. TRAI in its recommendations on Unified License dated October 2003 has already noted that the license fee should cover USO (5%) and administrative cost (1%) in contrast to 3% currently. The license fee has been significantly reviewed from 15% to 8% currently. However, the USO levy has remained consistent at 5%.

We note that TRAI in its October 2003 recommendation has noted that the license fee should be in the form of an administrative cost which is to take care of managing, licensing and regulating the sector. On the USO levy TRAI stated that with technological developments, flexibility in the licensing regime, deployment of more and more wireless technologies and the growth of telecom services even in backward areas from telecom point

of view, the Government may consider reviewing the level of USO levy and Administrative fee.

we strongly support to review the present rate of LF and especially the USO component should be reduced gradually.

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 licensee or only income accruing from licenced activities? What are the accounting rules and conventions supporting the inclusion or exclusion of income from activities that may not require licence?

Response :: The revenue base should factor only those activities which require a telecom license to undertake. Any other income of the TSP should not be included in the AGR for the purpose of License Fees. The accounting rules are clear in this respect , for example, of the reversals of the provision of bad debts , reversal of the excess liabilities created in the earlier years, notional foreign exchange fluctuation gains etc which , by any stretch of imagination can be termed as a 'revenue'

Likewise, any interest or dividend earned cannot be termed as a revenue as they do not arise on the basis of the licensed activities.

We believe that generally accepted accounting principles (GAAPs) and industry best practices should be adopted for the purpose of inclusion or exclusion of income from activities which may not require license.

Exclusion List:: Income from Dividend, Other interest income, Capital gains on account of profit on sale of assets of telecom business, Capital gains on account of profit on sale of other securities, Gains from foreign exchange fluctuations, Provisions reversal, Payments received on behalf of third party (Say for telecom services for other country due to central billing from India), Income from sale of equipment.

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?

Response :: **The essence is to charge License fees only on licensed services and not on all revenues of the telecom operator. Thus, as long as this principal is followed, AGR or GR would not be an issue.**

The license fee be levied as a percentage of AGR to factor the various underlying legitimate inter operator payments whereby the consumer can get access to various services. The percentage of LF in such case should be on the same principle as recommended by

TRAI in October 2003. It is an accounting principle that revenue should be recognized after adjusting the underlying costs. Thus, whether you include only certain element in GR or include all element in GR and then reduce non licensed revenue, it boils down to the same. Thus, we once again urge that only revenues directly attributable from the telecom license be considered for License Fees calculation and also the issue of multi-stage assessment be addressed. The Authority has already placed many best practice prevalent in many countries including those in APAC region, which maybe a good practice to follow.

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

Response :: No, The revenue should only factor income or sources of revenue which are derived based on activities requiring a telecom license. All other income which are derived from activities not requiring a telecom license should be excluded.

Inter operator charge should also be consider for the purpose of admissible deduction from Gross revenue (like payment made for input bandwidth charges which forms an integral part of data services). This will eliminate the issue of **multi stage assessment of license fee** which is currently in vogue and severely impedes competition in the enterprise services and data sector. Therefore, input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

We do not agree with the views shared in the consultation paper that no pass through shall be considered on charges paid to other operator, where the operator had the option to build the infrastructure on its own.

- As enough infrastructure is already there on ground and there is no scarcity of same
- Adding its own infrastructure will not in any manner change the revenue collection of the government, thus we see no correlation between License Fees and set-up of infrastructure (capacity building)
- It also goes against the principal of sharing of infrastructure which has been advocated actively by the Government. The access facilities either can be taken on lease or built by the operator based on the commercial considerations. It is well recognized that pursuant to entry of private telecom service providers , significant investments have been made in creation of telecom infrastructure which is necessary for providing a variety and quality of telecommunication services required and expected by the customers. Thus it is not the case that further investments are needed to create duplicative infrastructure. However building access facilities entails significant capex and the Honble authority has from time to time issued recommendations aimed at encouraging sharing of infrastructure between the service providers as creation of duplicative infrastructure not only makes the investment inefficient but also leads to incidence of higher cost being on passed to end customer by the service provider.
- Similar question may arise if the IP1 are brought under the license fees regime and shall result in drastically increase the burden on license fees on telecos.
- If the infrastructure is built by all the operators then we would result in unnecessary investment on already sufficiently built capacity and resulting in unnecessary fiber being

deployed all over the place (resulting in issues like ROW, cable cuts and maintenance etc.) with end result of increased cost burden on the operators.

- Similar multi stage levy has been allowed as deduction in many regimes, in order to ensure that the cost to the end customer is reasonable and similar principal has also been adopted by DOT in the case of "Resale of IPLC" License
- Interconnection charge paid to foreign carriers allowed for links taken for the service relating to the service outside India jurisdiction.
- It is important to mention that the unified licensing regime envisages migration towards a flexible and technology neutral licensing framework paving the way for the migration to IP based networks. Such a migration would also entail making the segregation between traditional telecom networks as redundant. This would also bring about convergence of networks which allows different services such as voice, video & data etc to be offered and merged together on a single unified network. In such a converged scenario it would be difficult to associate cost linked with a particular service or network function. Such a convergence of the networks would also mean that the telecom service provider (TSPs) would be converging its network infrastructure which may currently be segregated and consolidate it in such a way as to provide enormous bandwidth and reduce its operating cost. Thus the observation by Honble authority wrt bandwidth /lease charges being part of the cost associated with network functioning in a converged network scenario would not be relevant.
- The License fee paid by the licensee to DoT is a contractual obligation on the TSP as per the License agreement. However such a contractual arrangement can be reviewed & amended based on mutual arrangements and in line with emerging technologies & requirements. In fact the terms and conditions of the current telecom License agreement has been reviewed and amended many times by the Licensor to reflect the changing requirements.

Thus the cost associated with network functioning is embedded in the service/product cost which is also on passed to the end user by the telecoms service provider to recover the cost incurred on creation of the network facility , therefore the end user is ultimately paying pas through charges to the telecom service provider for using the telecom network of another service provider.

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;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License .

(b) Income from interest;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License.

(c) Gains on account of profit on assets and securities;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License.

(d) Income from property rent;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License.

(e) Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License. Also explained in detail in previous question response.

(f) Income from sale of equipment including handsets;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License.

(g) Other income on account of insurance claims, consultancy fees, foreign exchange gains etc;
Needs to be excluded from the revenue base for LF purposes as it not directly attributable to License.

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.

Response :: The revenue realized from subscriber should only be considered for revenue base. It is also submitted that the revenue should be recognized as per industry best practices and accounting standards issued by the Institute of chartered accounts of India (ICAI) with the consultation of the National Financial Reporting Authority, Ministry of Corporate Affairs.

For example, if Forex gain/loss is considered as licensable, then any FX gain/loss should be allowed to be netted. Forex gain should not be viewed in isolation by DOT for license fee calculation purposes. This is in line with the audited financial statements accounting treatment of Forex gain/loss whereby they are presented as net. This is without prejudice to our contention that the gains from foreign exchange fluctuations should not form a part of the AGR. Similarly in the case of bad debts written off.

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?

Response :: No new verification mechanism is necessary as the license fees paid / payable is

also certified by the statutory auditors of the TSPs as being paid as per the existing regulations.

We believe that presently there are sufficient mechanisms available for proper verification from financial statement under the new companies Act, 2013 and the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules 2002.

In view of the provisions/instructions of companies act, **"No"** new mechanism is required.

In case the Government wants to verify the same, trust can be placed on the audited accounts of the TSPs in all such cases. It is submitted that the regime of self-certification and self-assessments should be promoted in line with other Financial laws / Acts e.g. Income Tax, Company Law etc.

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?

Response :: Excluding other income will make task of verification quite simple. We believe that there is perhaps no impact of the new and innovative business practices adopted by telecom service providers and licensees on the definition of GR if the definition of GR is clear and easy to interpret.

Presently, licensees are required to submit annual audited accounts (license-wise) to licensor, with a Reconciliation-statement duly audited by the Statutory-Auditors of the licensee company and TSPs are also liable for number of other audits i.e. TRAI's audit, C&AG's audit and DoT special audit etc. In addition to this companies are also under the scrutiny of the other statutory authorities Sales Tax, Service Tax and Income Tax who rely on the same information as duly audited by the statutory auditors, thus, we only see a positive impact in building the confidence of the investor, which needs to be strengthened to bring investors back into India. There is a need for stable and investor friendly regime, which results in invocative offerings to the end consumer.

One example could be that of bundled handsets, the handset being offered to consumer in attractive contract in other countries vis none in India.

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?

Response :: The current framework for audit and assessment is sufficient and there is no requirement for any additional over the top monitoring. The definition of AGR should be aligned with the principle stated in aforesaid paragraphs.

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

Response :: As stated above, we do not support any type of presumptive AGR framework, specially after the unbundling of spectrum from License regime and completion of 20 years of liberalization of Telecom regime, resulting in sufficient infrastructure across the country.

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

As stated above, we do not support any type of presumptive AGR framework.

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

No Response

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?

Response :: Principally in inter operator payments should be allowed as a PTC being the underlying cost.

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.

Response :: We support for deduction of Items indicated in paragraph 3. 35, since these are necessary inputs to complete the end services. These are not in the nature of PTC or charges paid by one operator to another, hence should be outside the ambit / format of GR/AGR.

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

Response :: Licensees submit license-wise audited AGR statement along with details of Revenue, deductions and License-fee, on yearly basis along with reconciliation statement, duly audited by statutory auditors of the licensee company, over and above, Licensee are also liable for number of other audits, therefore, we believe that there is no need for any further mechanism in this regard.

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

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.

Response :: The existing formats should be revised to reflect the principle stated above in terms of what should and should not form part of revenue base.

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.

Response :: Separate reporting if required can be done after the year end as part of the accounting separation requirement (as is being done under the accounting separation to TRAI)

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.

Response:: No additional verification trail is needed.

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

Response:: The current framework of yearly audit by the statutory auditors appointed under Section 139 of the Companies Act , 2013 should continue. **Presently too, licensees submit annual audited AGR statements after the yearly audit is over, in which details of revenue and license-fee is provided on quarterly-basis.**

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?

Response:: Not applicable

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?

Response:: We believe that the introduction of such system i.e. deduction of LF at source, would further increase the administrative hassles.

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

Response:: The regulatory levies of India should be aligned with the similarly placed competitive telecom markets and USO Fund be deferred till the existing corpus is put to use.

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