



भारतीय दूरसंचार विनियामक प्राधिकरण
Telecom Regulatory Authority of India



Recommendations
on
Definition of Revenue Base (AGR) for the Reckoning of
License Fee and Spectrum Usage Charges

**(Response to the back reference dated 2nd November 2022
received from Department of Telecommunications on TRAI's
Recommendations dated 6th January 2015)**

New Delhi

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I. DoT's Back-Reference dated 02.11.2022 on Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges dated 06 January 2015

The Department of Telecommunications (DoT), through its back reference letter dated 2nd November 2022 (**Annexure-I**) has referred back TRAI's recommendations dated 6th January 2015 on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' *inter alia* stating that “*The recommendations have been examined by DoT. The recommendation no 3.8 related to minimum presumptive AGR requires reconsideration. Accordingly, the recommendation no 3.8 is being referred back to TRAI under Section 11 of TRAI act 1997 with a request to provide its considered view at the earliest.*”

II. Recommendation no. 3.8 of the TRAI's Recommendations dated 06.01.2015:

“3.8 The Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services. (Para 2.59).”

III. Views of DoT in respect of the aforesaid Recommendation no. 3.8:

“*These recommendations were made by TRAI in January 2015. Certain Developments have taken place in the interim which have an impact on the aforementioned TRAI recommendations.*”

A. Impact of Insolvency Proceedings

In view of the introduction of Insolvency & Bankruptcy code (IBC) 2016 and the ongoing insolvency proceedings in case of Aircel Group of Companies and M/s Reliance Communications Limited (RCOM) the following issues merit attention.

- (i) NCLAT in its order in Company Appeal (AT) (Insolvency) No. 733 of 2020 (relevant portion of judgement enclosed) has ordered:
- a) Spectrum, being an intangible asset of the Licensee, can be subjected to insolvency proceedings.
 - b) Dues of Central Government/ DOT under the Licence fall within the ambit of Operational Dues under I&B Code.
 - c) Deferred/ default payment instalments of spectrum acquisition cost also fall within the ambit of Operational Dues under I&B Code.
 - d) It may be noted that DOT has filed Civil appeal No. 6546/2021 in Hon'ble Supreme court against above judgment.
- ii) Spectrum has been made part of insolvency proceedings under IBC & spectrum allotted to insolvent companies is lying idle as reversion of spectrum to DoT has not taken place.
- iii) These companies pay Spectrum Usage Charges (SUC) on presumptive AGR basis.

B. License Conditions.

License fees on Presumptive AGR is levied based on clause 18.2.1 & 18.2.2 of the Unified License agreement.

C. SUC Reforms.

(i) As part of Telecom reforms 2021, government decided to remove SUC from future auctions i.e. 2022 onwards. For Telecom Service Providers (TSPs) which do not have spectrum from past auctions and acquire spectrum in the auctions from 2022 onwards, SUC rate applicable will be zero for access spectrum acquired through auctions. Thus, SUC based on presumptive AGR will not be applicable on these TSPs.

(ii) However, for TSPs which have acquired spectrum in past auctions will need to pay SUC as per presumptive AGR at weighted average rate of SUC rate (SUC will be 0% for spectrum acquired 2022 onwards), if their actual AGR is less than presumptive AGR.

3.Reference

In view of the above, TRAI is requested to re-consider the above recommendation in along with above inputs and also give its considered view on the following:

- (i) Whether the above-mentioned recommendations will be applicable to companies which are under liquidation/corporate insolvency resolution proceedings and continue to hold spectrum?*
- (ii) Presumptive AGR provides protection to government for dues emanating from use of Spectrum by companies that may go into insolvency i.e government gets SUC payments while a company is undergoing insolvency proceedings. Therefore, if this recommendation is to be implemented, should Spectrum be taken back by government from such companies to protect public interest?*
- (iii) If acceptance of above recommendations prospectively by government would mean that TSPs need not pay SUC on presumptive AGR basis for spectrum acquired in auctions prior to 2022. For Example-TSP A has-obtained spectrum in 2014,2016,2021 and 2022 auctions. It is required to make payment of spectrum usage charges at applicable weighted average rate. Due to market reasons if the company's actual AGR becomes less than Presumptive AGR (calculated based on company's spectrum holding in different auctions), will the company be required to pay SUC on Presumptive AGR basis?"*

IV. TRAI's response to the back-reference:

- 1. The Authority suo motu initiated the consultation process on the definitions of Gross Revenue (GR) and Adjusted Gross Revenue (AGR) by issuing the consultation paper on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' on 31.07.2014. The consultation was initiated to review the framework of Licence Fee (LF) and Spectrum Usage Charges (SUC) in the light of the provisions of the National Telecom Policy 2012 (NTP 12), the changes made to the licensing regime, the transition from**

the administrative allocation regime towards market-determined prices for spectrum, and to review the definition of GR and AGR, as well as on related issues such as the scope of revenue to be included in GR, the allowable deductions, and the method of calculating AGR.

- 2. After following a comprehensive consultation process with stakeholders, the Authority furnished the Recommendations on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' to DoT on 06.01.2015 and recommended, *inter alia*, that:**

"The Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services. (Para 2.59).

- 3. The Authority in its recommendations dated 06.01.2015 mentioned the reasons as to why minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence granted by Government for providing telecom services.**

- 4. The relevant paras of the TRAI's Recommendations dated 06.01.2015 are reproduced below:**

"2.57 There was no presumptive AGR or minimum amount of LF on various service licences issued till August 2007. A minimum amount of LF was introduced in the ISP licences issued after August 2007. Further the Notice Inviting Application (NIA) dated 25th February 2010 for the auction of 3G/BWA spectrum did not contain any clause regarding minimum presumptive AGR. However, in the auctions conducted from November 2012 and subsequently, a clause regarding minimum presumptive AGR was introduced. The Authority feels that its Recommendations on minimum (presumptive) AGR of 11th May 2010 (for GSM and CDMA segment) and 1st May 2014 (for ISP licencees having BWA spectrum) should

be seen in the context in which they were made. The motivation for a presumptive AGR is really more relevant in a scenario where spectrum was bundled with licence and given at an administered price. However, in the new licensing regime, spectrum is allocated through an auction process and TSPs are required to pay market-determined prices. Therefore, the rationale for imposition of levies based on presumptive AGR simply does not hold good since the licensee has already paid a significant amount upfront and any idling of the spectrum resource would be to the licensee's detriment. The move towards market-based determination of spectrum prices can generally be expected to be sufficient motivation to licensees to rollout services in time.

2.58 Moreover, the Authority notes that the respective licence agreements include provisions on rollout obligations to be met by the licensee within a specified time frame, failing which, there are provisions for penalty (including prospects of cancellation of assigned spectrum). The Authority is, therefore, of the view that the objective of early rollout of services by the TSP can be achieved in a more meaningful and effective manner by monitoring rollout obligations more stringently.

2.59 In this background, the Authority is of the considered view that the concept of minimum AGR is not relevant under the present auction based spectrum allocation regime. Therefore, the Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services.”

5. It is to be noted that the Recommendation no. 3.8 related to 'Minimum Presumptive AGR' was made after considering the facts detailed in paras 2.57 to 2.59 of TRAI's Recommendations dated 06.01.2015 (as also referred in para 4 above).

- 6. Now, through the back reference, DoT has requested TRAI to reconsider the Recommendation No. 3.8 of the TRAI's Recommendations dated 06.01.2015, keeping in view (i) the introduction of Insolvency & Bankruptcy code (IBC) 2016 and the ongoing insolvency proceedings in case of Aircel Group of Companies and M/s Reliance Communications Limited (RCOM) (ii) License fees on Presumptive AGR is levied based on clause 18.2.1 & 18.2.2 of the Unified License agreement and (iii) As part of Telecom reforms 2021, government decided to remove SUC from future auctions i.e. 2022 onwards.**
- 7. The relevant extracts of the judgement made by NCLAT vide its order in Company Appeal (AT) (Insolvency) No. 733 of 2020, as forwarded by DoT in its back-reference, has also been noted by the Authority.**
- 8. Further, DoT has mentioned that as part of Telecom Reforms 2021, Government decided that *"No Spectrum Usage Charge (SUC) for spectrum acquired in future spectrum auctions"*. As informed by DOT vide its back-reference that *inter alia* stated that *"For Telecom Service Providers (TSPs) which do not have spectrum from past auctions and acquire spectrum in the auctions from 2022 onwards, SUC rate applicable will be zero for access spectrum acquired through auctions. Thus, SUC based on presumptive AGR will not be applicable on these TSPs. However, for TSPs which have acquired spectrum in past auctions will need to pay SUC as per presumptive AGR at weighted average rate of SUC rate (SUC will be 0% for spectrum acquired 2022 onwards), if their actual AGR is less than presumptive AGR."* The said information has been noted by the Authority.**
- 9. The Authority considered the back-reference on Recommendations dated 06.01.2015 of the Government.**

10. In order to have a holistic view of the matter, the Authority vide letter dated 05.09.2023 had sought some additional information from DOT. The response on the same was furnished by DoT, vide their letter dated 14.09.2023. The said response of DoT was also considered by the Authority.
11. The Authority is of the view that the Recommendations dated 11th May, 2010, 1st May, 2014, 6th January, 2015 and 7th March, 2017, dealing with the issue of 'Minimum Presumptive AGR', were made after considering the facts prevalent during that period and may be seen in the context, intent and relevance in which they were made.
12. With regard to the points raised in the back-reference for re-consideration, the Authority takes note of its earlier Recommendations on 'Spectrum Management and Licensing Framework' dated 11th May, 2010 wherein it was recommended to levy license fee and spectrum usage charges as a percentage of a presumptive adjusted gross revenue or the actual adjusted gross revenue, whichever is higher. The said recommendations were made in the light of new licenses who were allocated the start-up spectrum at the administered price but failed to commence their operations even after the lapse of sufficient time. The Authority was of the view that due to this inefficient usage of spectrum, the government is not receiving its due share of annual licence fee and spectrum charges as a percentage of the AGR, thus resulting in loss of Government revenue. The prime objective behind this recommendation was to encourage faster rollout by the licencees to ensure that scarce resources such as spectrum do not remain idle and to protect the legitimate revenues of the Government.
13. Further, in the Recommendations on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges 6th January, 2015, the Authority considered that the rationale for imposition of levies based on presumptive AGR is not relevant under

the auction based spectrum allocation regime since the licensee has already paid a significant amount upfront and any idling of the spectrum resource would be to the licensee's detriment. Accordingly, the Authority recommended that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence.

- 14. In this context, it may be noted that in the spectrum auction of July-August 2022, the successful bidders were given two options. The first option was of full or part upfront payment where the buyer has the option of availing moratorium for the corresponding number of years for which the upfront payment has been made and the second option of 20 equal annual instalments of the bid amount. It may be noted that in the auction of July-August 2022, all the TSPs have opted to make payments in 20 annual instalments except for one TSP, which has opted for part upfront payment and paid an amount equivalent to four annual instalments. Similar payment terms have also been incorporated in the Notice Inviting Applications for the spectrum auction of 2024.**
- 15. As can be seen that since 2022, the Government has relaxed the payment terms for spectrum auctions and as such, now, there are no significant upfront payment charges to be paid by TSPs. Hence, the burden of paying a significant amount upfront in the auction-based spectrum allocation regime on the licensee does not exist. Further, the Authority is of the view that the new developments viz. introduction of Insolvency & Bankruptcy code and removal of Spectrum Usage Charges by the Government from the future auctions of 2022 onwards have an impact on the present telecom scenario and suggests the need to protect legitimate Government revenue.**
- 16. In view of the foregoing, the Authority is of the view that the Recommendation that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any**

licence(s) granted by Government for providing telecom services, is not relevant in today's scenario. Hence, the Authority withdraws its Recommendation no. 3.8 of the TRAI's Recommendations on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' dated 06.01.2015. Accordingly, the issues raised in paras 3(i), 3(ii) and 3(iii) of DoT's back-reference are no longer relevant.