

VTL/Reg/TRAI/1409/4242
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Subject: VTL Response on Consultation Paper on "Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges"


Ref: TRAI Consultation Paper No. 09/2014 dated 31st July, 2014

Respected Sir:

Videocon Telecommunications Limited welcomes the opportunity to give our comments to TRAI's consultation Paper ""Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges"". Please find attached herewith our response on the same.

This is for your information and kind consideration please.

Kind Regards



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Encl: as above

VTL RESPONSE TO CONSULTATION PAPER

ON

**“DEFINITION OF REVENUE BASE (AGR) FOR THE RECKONING OF
LICENCE FEE AND SPECTRUM USAGE CHARGES”**

Introduction

The Telecom Regulatory Authority of India (“TRAI”) has invited comments from stakeholders on the Consultation Paper No. 9 of 2014 dated July 31, 2014 on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges (“Consultation Paper”). The Consultation Paper has been prepared by the TRAI pursuant to its *suo moto* decision to conduct the present consultation process.

At the outset, we sincerely welcome TRAI’s initiative of releasing a consultation paper on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges.

This response is being made by Videocon Telecommunications Limited (“Videocon/Company”), without prejudice to any of its rights and contentions that Videocon in any of the pending proceedings or any proceedings instituted in future before any court of law/authority.

Overview

Indian Telegraph Act, 1885 provides for an exclusive privilege of establishing, maintaining and working telegraphs within India to the Central Government and also empowers DoT to grant Licence to private parties to establish, maintain or work a Telegraph, on such conditions as it deems fit. Thus, these conditions must necessarily relate to and have a direct nexus to the establishment, maintenance or working of Telegraph. Any activity which does not relate to or does not have a direct nexus to the establishment, maintenance or working of a Telegraph is not fair on the part of DoT should not be considered outside the scope of the License.

In the current licensing regime, the accruals from any of the activities undertaken by the licensee is included in the gross revenue for reckoning the payment of revenue share on account of LF/SUC/MW. The scope of Gross Revenue (“GR”) is unclear, ambiguous and mis- interpreted to include every receipt or surplus or gain a) irrespective of it being real or notional b) without corresponding deficits or losses for the same item, which otherwise does not warrant any revenue share.

That such interpretation of the definition of Gross Revenue has resulted in serious of litigations between the government and the operators since 2003, in terms of earmarking what should be construed as licensed



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activities and what not. The Authority vide its recommendations dated September 13, 2006 'over the components of Adjusted Gross Revenue' also recommended that the revenues from the non-licensed activities needs to be excluded from gross revenue of the operators. All recommendations except few were accepted by Hon'ble TDSAT but the same was challenged by the Government in Supreme Court.

Therefore in order to avoid the long existing ambiguity, misinterpretation at various levels, we request the Authority that while reviewing the definition of Gross Revenue, to make it clear that (a) GR will include only the revenues arising from licensed activities (and excluding the revenues from non-licensed activities). (b) The incidence of levying the Double levy should be removed since the government earns revenue from each of the operator for the licensed activities carried out by them; they disallow the credit for utilizing of services of one TSP by another TSP thus leading to a dual levy.

Further, while considering the matter of inclusion / exclusion of items in the Gross revenue it is submitted that the accounting rules for recognition of revenue/income or cost should be followed. The Accounting Standard - 9 as formulated by ICAI and accepted and adopted under the Company Law should be the guiding principle.

In this regard, we sincerely request the authority that while formulating the definition of GR the primary objective as mentioned herein should be considered (i) it should be easy to interpret; (ii) it should be easy to verify; (iii) it should be comprehensive; and (iv) the scope for exercise of discretion at the level of assessing authority should be minimized.

Revenue Share by the operators on the telecom revenue includes various heads like License Fees, Spectrum Usage Charges Microwave Usage charges. The Revenue share by the operator should be payable only on revenue from licensed telecom services and not on other incomes or non-licensed activities. Accordingly, income from interest, dividend, capital gains, profit on sale of assets & other incomes which are distinct from telecom revenue should not be subject to revenue share by whatever name called.

There must not be double taxation. This currently exists as payments made for critical inputs like bandwidth/leased lines etc. are currently not allowed as deductions while calculating AGR on which license fee is payable by a telecom operator. This is even when the bandwidth provider is subject to license fee on revenue received from service provider. This could seriously hamper the dream of deep penetration of internet & broadband in the country in future and is grossly unfair to telecom industry.

The calculation mechanism must not leave room for interpretation & thereby loss to exchequer on account of differential percentages of levies/license fee for different services – e.g. 8% applicable as general rate for Input Services and 12-13% payable on Mobile Services (including SUC & Microwave charges).

License fee should only be on revenue retained by the licensee and not on gross amount including the license fee.

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The definition of GR should be (i) easy to interpret; (ii) easy to verify; (iii) comprehensive; and (iv) the scope for exercise of discretion at the level of assessing authority should be minimized.

License fee should be on the revenue retained by the operator/licensee and not on the revenue which are collected on behalf of other operators/authorities.

While defining the base for License Fee disparity in SUC, roaming cost and IUC across the licensees also be kept in view so that the new structure be fair and equitable for the licensees as well as the government.

Suggestions:

In our views, the current regime of calculation of GR and AGR may continue with the following modifications:

- a. Review and modify the definition of the GR to the extent that the same shall include only the revenue which gets generated from the licensed activities and accordingly we propose the following definition of Gross Revenue:

“Gross Revenue shall be the gross inflow of cash, receivables or other consideration arising in the course of the ordinary business of the licensed enterprise from the activities for which it has been granted the license. The same shall be inclusive of installation charges, value added services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other income or receipt for which the license has been granted.”

- b. To facilitate the reconciliation with audited books of accounts, deductions be allowed on accrual basis instead of current regime of allowing the deductions on cash payment basis.
- c. Leased line/Bandwidth Charges port charges, cable landing station charge, interconnection set-up charges, roaming signaling charges are paid by one telecom operator to the other. These are in the nature of interconnection or access charges which are essentially incurred for carriage and termination of calls. These also result into dual levy of license fee on the same revenue in the hands of the recipient liable to licence fees and are not allowed as deductions. While calculating the GR deduction should be allowed for these items of revenue exchange.
- d. Bad debts are normal costs attached to business and are standard items of expenditure in the profit and loss account. Being part of business such risks including recovery of such costs is build-in in the tariff structure. There is inherent possibility of its occurrence in business. Therefore, bad debts need to be allowed as deductions at least upto a defined percentage of GR.

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- e. The Income from dividend, interest, Gains on account of sale of assets and securities, property rent, sale of equipment including handsets, and other income on account of insurance claims, consultancy fees, foreign exchange gains etc. should not be part of GR as these are not part of licensed activity.
- f. The discount provided to the distributors/ retails/agents should be allowed as deductions while calculating the GR and shall not be considered as revenue to the operator.

Response to the Consultation Paper

Our response to the issues stated in the Consultation Paper in seriatim order are given below for your kind consideration:

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?

Videocon's Response:

Yes, there is requirement to review and revise the definition of GR/AGR based on the present scenario of the interpretation of the definition by various operators/authorities & to have uniformity to avoid ambiguity in interpreting the definition of GR /AGR.

We consider it fair that the definition of the GR should be modified to the extent that the same shall include only the revenue which gets generated from the licensed activities and accordingly we propose the following definition of Gross Revenue as below:

"Gross Revenue shall be the gross inflow of cash, receivables or other consideration arising in the course of the ordinary business of the licensed enterprise from the activities for which it has been granted the license. The same shall be inclusive of installation charges, value added services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other income or receipt for which the license has been granted."

In the current licensing regime, the definition of Gross Revenue, as is given under various licenses, is inclusive and in its present shape and form includes anything and everything that accrue to the licensee from any of its activities under its scope. In its literal interpretation the scope of revenue includes every receipt or surplus or gain (irrespective of it being real or notional), despite the fact that any and every receipt can't be of revenue nature. If the same is to be accepted it shall mean the reach of revenue, for the purpose of License Fees, shall be beyond Licensed Services and thus beyond the activities authorized under the License.

Further, with the technology and service offerings being more varied from a pure call based revenue model to a more complex in the digital convergence environment, there is an urgent need to rehash the manner of computation and also re-calibrate the percentage of revenue share based on the revised computation mode.

Currently, only interconnect and roaming charges are eligible for deduction for computation of AGR. With the concept of avoidance of double taxation

The concept of AGR also needs to be revised to ensure that the complexity, interpretation litigation and administrative prudence are given due consideration. We propose the following definition of Adjusted Gross Revenue as below:

“For the purpose of arriving at the “Adjusted Gross Revenue (AGR)” the following shall be excluded from the Gross Revenue to arrive at the AGR:

- I. Interconnection related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;*
- II. Roaming revenues accrued on to other eligible/entitled telecommunication service providers and;*
- III. Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax*
- IV. payment to the international operators for ILD /hubbing services.*
- V. Payment of Port charges to other operators, Site sharing charges if the recipient operator is paying the license fee, Leased line /Bandwidth charges paid by one TSP to another. Interconnection setup cost, Roaming signaling charges, Charges for cable landing station, Bed debts, waivers, discounts, Income from dividend, Income from interest, Gains on account of sale of assets and securities, Income from property rent, Income from sale/lease of Passive infrastructure like towers, dark fiber etc, Income from sale of equipment including handsets, other income on account of insurance claims, consultancy fees, foreign exchange gains etc.*

The above definition would clearly bring uniformity across the different licenses and related operations as this would eliminate the various interpretation related issues which exists under the current definition regarding inclusion of income from non-licensing activities. As further explained in more details in our response to Q2 in paras below, it is suggested that the definition of revenue should be consistent with the License and the Indian Telegraph Act. It should not go beyond the license and licensed activities.



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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?

Videocon's Response:

Though the current regime is comprehensive, it includes revenue from non-licensed activities and is highly prone to varying interpretation and also shows lack of precision resulting into room of discretion, thus, creates ambiguity. The fact that the determination of GR and AGR has resulted in such a lot of litigation is ample evidence enough to call for review.

No, the present regime is not easy to interpret, simple to verify, and it does not minimize scope for the exercise of discretion by the assessing authority. Rather the present

It is for the reasons of inconsistency in both scope as well as computation/determination that has led to varied interpretations and different practices giving lacuna to exercise of discretion, eventually creating non-uniformity in the system.

Therefore the Company suggest that an clear and unambiguous provisions be issued in order to make the regime easy to interpret, simple to comply and easy to verify and yet comprehensive to cover all the aspects.

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?

Videocon's Response:

We suggest that the Authority should review the current LF, SUC and USO rate downward as well as the definition of GR/AGR to ensure that there is no incidence of levying LF on non-licensed activities and double levy over the same revenue.

We also note that the USO levy is 5% of 8% of the AGR and balance 3% for LF levy. The same is largely unutilized and getting to the USO Fund (thereby not flowing into the Govt coffers). The rural infrastructure has been developed by mobile operators on their own and without much of financial support from the USO fund.

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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?

Videocon's Response:

Placing reliance on the explanation provided under response to Q1 and Q2, the definition of revenue for levy of LF and SUC, these should be imposed only on the pure licensed revenue form subscribers and not the revenue of the company. As a general rule, in a revenue sharing regime, the consideration should flow from its related source but not beyond.

Thus there should be ample clarity with respect to definition of terms under the license and it should be ensured that these terms are not interpreted beyond the license and licensed activity/services. Accordingly definition of revenue should only include income of the Licensee from licensed activities and not beyond. Income which are incidental to any business but does not arise from the Licensed Services should not be brought under the ambit of revenue. E.g. incomes such as Interest, Dividend etc should not be included in the scope of revenue.

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

It is also recommended that a uniform and consistent accounting policy as adopted under the Companies Act for preparation of accounts should also be adopted under the License and accordingly the Indian GAAP (i.e. Generally Accepted Accounting Practices) as issued by the Institute of Chartered Accountants of India shall be accepted and should be made a part of the licence. This shall remove the scope for any ambiguity.

Thus, Revenue base for license fee should only include the GR from licensed activities to subscribers with a reduced rate of License fee should be considered.

The generally accepted accounting principles does not prescribe whether it should be included or excluded as income from licensed or non-licensed activities, however, it prescribes the accounting

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guidance w.r.t. the accounting of separate components of bundled transactions and there by enables the separate recognition of revenue from licensed and non-licensed activities.

As the Companies Act requires accounting for revenue as per Generally Accepted Accounting Principles and even the Income Tax Act, requires calculation of MAT based on audited book profit, it would be appropriate to consider the License fee at an adjusted % on the audited revenue of the licensee company.

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?

Videocon's Response:

Keeping in view that (a) License fee should be on the revenue retained by the operator/licensee and not on the revenue which are collected on behalf of other operators/authorities. (b) there is a disparity in SUC, roaming cost and IUC across the licensees.

We therefore suggest the Authority to continue to the existing methodology i.e. the LF be levied as a percentage of AGR and the revise and review of the definition of GR and AGR should be amended with the concrete clarity in terms of the elements to get considered.

In such a case the percentage of license fee may be reviewed and reduced as suggested in response to point no. 3 above.

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

Videocon's Response:

Kindly refer to our response to Q1 and Q2 above, the revenue for the purpose of calculating the LF and SUC should have relation to the services permitted under the telecom Licence. Revenue that has got no relation with licensed services or has no linkage with spectrum utilization shall not be considered for the purpose of LF & SUC.

Further, as stated in response to Q4, With the spectrum de-linked from the licence fees, and the telecom operators pay market determined spectrum fee by way of acquiring the spectrum in auction and making the payment upfront, there should be no requirement for further annual payments beyond specific (and relatively minor) administrative fees because the intrinsic value of spectrum has already been realized by the government in the auction in full. However, if at all it has to be

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levied, SUC should be based on an uniform fixed price per Mhz instead of a percentage levy, considering it to be an administrative charge.

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.;**

Videocon's Response:

As more fully explained in response to point no. 2 above, while reviewing the scope for revenue and its determination the following basic principles need to consider the revenue only from the licensed activities:

- There must be a revenue with the TSP which is emerging out of license
- Prevalent Accounting Concepts & Conventions and Accounting Standard are being applied for determination of revenue. (AS-9)
- There is no dual levy on TSPs

Therefore the following heads should be treated as non-telecom activity.

- (a) Income from dividend; Non telecom income;**
- (b) Income from interest; - Non telecom income**
- (c) Gains on account of profit on assets and securities; - Non telecom income**
- (d) Income from property rent; - Non telecom income**
- (e) Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.); - Non telecom income, however, currently we are paying LF under protest**
- (f) Income from sale of equipment including handsets; - Non telecom income**
- (g) Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.; - Non telecom income**

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Since a telecom licence is not required to earn the above stated income or to carry out the above stated activities, hence, the income of above nature should be excluded from Gross revenue.

In the matter of specific heads of revenue / income under the consultation please find our submissions as below:

a) Income from dividend; b) Income from interest; and c) Gains on account of profit on assets and securities;

The treasury function of every company undertakes fund requirement and fund management activities. These are the cash management team which not only manages the Capital requirements but is also entrusted with the duty of not keeping the money ideal.

As the money has time value, any surplus is either invested back in the business or is kept at a place which keeps it optimizing. To avoid keep idle cash balances (as money has time value), this gets invested into financial instruments. Most (if not all) TSPs have significant debt on the balance sheets for which they make thousands of crores of interest payments each year. Due to timing issues of fund flows/outflows it is very natural for TSPs to simultaneously have temporary investment/deposits which consequently earn interest/dividend. It is perverse that the interest cost is disallowed as deduction but the interest income is chargeable to tax.

Sometimes these surplus funds are generated from the profits made from sale of telecom services and are therefore generated after paying all legitimate taxes and telecom levies. Since the revenues have already suffered regulatory taxation it will be perverse to double tax the gains on the revenues again in the form of interest/dividend income. This is akin to levying both a Sales Tax and Income Tax at the same time (with the rider that that the Income is only interest income and not any offset for interest losses).

These items of gains should not be considered as revenue for the purpose of levy of license fees for the reasons:

- These are not revenue from rendering services but are gains recognized under the head "Other Income"
- These are part of promoters equity which has been generated after payment of all taxes and levies
- The money has got no nexus with licensed services.

The authority it-self vide its recommendation dated 21st Sep'2006 has recommended that as such revenues / gains; a) does not arise from the rendering of services b) are accounted for separately and c) can be verified separately hence it should not form part of the GR

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b) Income from property rent;

Income from rent of property cannot be construed as revenue from telecom services. These are some of the miscellaneous revenue that a Company gets for best utilization of its resource. For example, a portion of building has been let out to others thereby generating some income. Such type of activities has got no correlation to with license and hence should be kept outside the scope of revenue for the purpose of LF.

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

At present infra business is not under the licensed regime. The following are the factors which require a consideration before deciding whether income from passive infrastructure should be included in the definition of revenue for the purpose of LF:

- a. The passive infrastructure does not carry any transmission network. It only carries assets or infrastructure on which a telecom network can be build.
- b. It is only when these networks are activated is that they come under the Telegraph Act and thus requirement of license.
- c. Thus unless an active communication medium needs to be established, Telegraph Act does not come into picture. E.g. right to do a civil construction commercial or personal in nature, procuring cables, equipment etc does not require permission / clearance under the Telegraph Act unless the same is an active communication device/equipment.
- d. Globally, as well infrastructure companies provide utility services which are indistinguishable with common underground conduits for electricity, water, gas and telecommunication services. Many of these are actually owned by local municipalities and local governments who are not telecom operators. Thus the income from lease of passive infrastructure should be excluded as being beyond the purview of licensed services

d) Income from sale of equipment including handsets;

Sale of equipment including handset is an independent activity which does not require a license. The activity of sale is nowhere related to service unless otherwise TSP's themselves bundle the equipment and service and leverage on that bundle to earn revenue.

The independent sale of equipment/ handset should not be brought under the definition of revenue as these are revenue from sale and not rendering of services. Thus inclusion of these items under the revenue from services for the purpose of levy of LF is neither correct (in terms of Accounting Standard) nor prudent.

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

As a basic rule, incomes / revenue which have got no nexus with License should not come under the definition of revenue. Accordingly the reasons for the specific items as below:

- I. Insurance Claim: Money received from Insurance claim is an amount to replenish the loss due to damage/destruction of property. Taking insurance is not an activity which is carried in the ordinary course of business to earn revenue. It is rather done to safeguard maintain the continuous and uninterrupted flow of revenue. Taking insurance is one of the method of a disaster recovery plan which helps in getting back to normalcy in case of loss / damage to the property / asset of the entity.

Thus when an entity receives money from Insurance Claim, it is not a revenue or gain in its hand. It is rather a recovery of loss or more appropriately replenishment of lost capital.

- II. Consultancy or Management Fees: Any company or person can undertake a management support/ consultancy services. These consultancies may be in varied field basis the experience and expertise gained by the Company or person.

There may be situations wherein individuals provide consultancy (business or legal or manpower support etc) and generates revenue. Such revenue arises from the personal efforts of the provider basis the experience and expertise gained and does not require license for the purpose. Thus consultancy is rendered by a company having telecom license does not mean that consultancy itself becomes a licenced activity so as to be included in the scope of revenue.

- III. Foreign exchange Gains: Foreign Exchange Gains result when liabilities for payment in foreign exchange decrease on account of appreciation of domestic currency vis-à-vis foreign currency. The Foreign Exchange Gains generally result on account of revaluation of foreign exchange reserves lying in bank accounts, revaluation of provisions made for overseas vendors etc. Further, the Forex Gain/Loss cannot be termed as Revenue due to the following reasons:
 - a. Forex Gain is not Revenue as stated in AS 9 on Revenue Recognition of the Institute of Chartered Accountants of India (ICAI) and has been specifically excluded from definition of revenue
 - b. Forex Gains and losses is dynamic and indeterminable. In addition forex gains arising on account of telecom services cannot be considered as Revenue, since at any point of time, while the value of Rupee may appreciate against one set of currencies, it may also depreciate in value vis-à-vis another set of currencies. Over a period of time this would change in a dynamic way such that gains may offset losses
 - c. Different Accounting Treatment for Forex Gain:

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Further our submissions on some additional heads are also detailed below:

f) Profit on Sale of Assets

An asset is an item of economic value owned by an entity / corporation with a view to generate / derive income by utilizing it in the ordinary course of its business. Thus revenue being an economic benefit derived by the entity by utilizing these assets in its ordinary course of business. Any profit / gain on sale of such asset is a capital receipt and does not come under the scope of revenue.

g) Trade discount

As per AS 9 of the Institute of Chartered Accountants of India (Revenue Recognition),

“.....4.1 Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them.....”

It may please be noted that the “Gross inflow of cash” is the amount which needs to be considered as revenue. Thus the trade discount which is being offered at the time of sale, is to be excluded while recognizing the revenue. Revenue should only be the Gross Amount which is receivable by the service provider and not beyond.

A Company sells its products or renders its services through a dedicated network of distributors to whom certain margins are allowed as consideration for their services. These margins are revenue of these distributors and never reaches the Company. This amount is nothing but a Trade Discount. Inclusion of such margins in the definition of revenue would not only be erroneous in terms of accounting but would also not be prudent as these revenues have never reached the Company.

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.

Videocon’s Response:

Only telecom revenues from the licensed activities shall be considered as a part of GR/AGR. No other revenue from the non- licensed should be considered.

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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?

Videocon's Response:

With regard to proper verification of items / income proposed to be excluded from the revenue base, it is submitted that none of the revenue from licensed activity has been proposed for exclusion from the scope of revenue. It is only suggested that the items of revenue which do not arise from the license should be kept outside the purview of revenue for the purpose of levy of License.

Thus there is no need to specifically verify these none telecom revenues. In case Government wants to verify the same reliance can be placed on the audited accounts of the TSP in all such cases. The details can be verified from the financials and if required, the details of any particular item may be sought. The regime of self-certification and Self Assessments shall be promoted in line with other Financial laws / Acts e.g. Income Tax, Company Law etc.

The details may be asked for under a self-certification or if required further, under certification from the Statutory Auditors of the Company. There should also be a system of calling for records on sample basis post documenting the reason for the same.

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?

Videocon's Response:

Licenses are granted only to the Companies form under Indian Companies Act. Once a Company is formed under the Companies Act, they become subject matter of various controls, compliances and regulations with various Government Agencies. Accordingly, as per Section 129 & 133 of the Companies Act, 2013 every Company has to mandatorily follow the Accounting Standard as laid down by the Institute of Chartered Accountants of India. It is requested that these standards should be mandated to be followed under the license as well.

Once uniformity in accounting standard is maintained, the possibility of innovative business practices impacting the definition of GR gets ruled out. Further as per accounting rules, if there is any change / deviation in the accounting policies in any year, the same needs to be reported / disclosed in the financial statement.

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Other income, such as dividend, forex gain/loss etc., do not arise from the licensed activities since these items are not a part of revenue, they should not be seen as an exemption. It needs to be appreciated that every receipt is not revenue and every revenue also does not arise from the license so as to be applicable for levy of LF / SUC.

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?

Videocon's Response:

The definition of revenue in its current shape and form is very wide and leaves the scope for discretion and interpretations. This has led to a situation of complexity and dispute. As the dispute arose, the governance mechanism and its' implementation got further complicated. Once the definition of GR is clarified for its scope and content minimizing the scope for discretion / interpretation, the issue of would reduce goes away. Further aligning the processes in line with other Acts / Rules e.g. accepting the accounting concepts and conventions, applicability of accounting standard etc, shall bring in uniformity and consistency in reporting.

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

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

Videocon's Response:

In our view the licensee may continue to pay the LF on minimum presumptive AGR based on the entry fee. Since the Operators who have been granted the spectrum in Auction have already paid the market determined price for the Spectrum, the concept of presumptive AGR based on the auction determined price either for SUC or for license fee is not justifiable and such a demand amounts to double levy on the Spectrum. However, the Government may indicate minimum fixed administrative charges based on the bulk on the spectrum allocated.

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

Videocon's Response:

Yes, we respectfully submit that ICR pass through is presently also allowable as deduction under the License Agreement since ICR is nothing but roaming. It is primarily for the following reasons:

- a) It is first a Roaming which benefits the consumers and brings in competition in the market.
- b) If not allowed as deduction, there would be a double levy of LF /SUC
- c) It brings in additional revenue to Government since more customers can enjoy services provided by the Roaming seeker operator.

Besides, the revenue earned by the provider operator from seeker operator is any case subject to LF/SUC.

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?

Videocon's Response:

Primarily the IP-1 providers should not be brought under the licensing regime. However, in case the same is done, deductions should be allowed to the TSP's for amount paid towards availing such infra facilities based on this principle that there is no incidence of double taxation.

Further the Energy revenue is in nature of reimbursements should not to be considered for purposes of LF and only rentals to be considered but should be allowed as deduction to operators.

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.

Videocon's Response:

Yes, all the items as mentioned under paragraph 3.35 of Consultation Paper should be considered as component of PTC as none of these items could be performed without having a valid telecom license. Irrespective of charging mechanism the fact remains that each of these items are essentially input services availed by one TSP from another. While that other TSP pays a License Fees on the same no pass through is allowed to the other TSP leading to a double levy. Thus a pass through should essentially be allowed for the following items:

- (a) Leased Line / Bandwidth Charges paid by one TSP to another
- (b) Port charges
- (c) Charges for Cable Landing Stations

- (d) Sharing of Infrastructure Service, if the recipient operator is paying the license fee.
- (e) Interconnection Set-up cost
- (f) Roaming Signaling Charges
- (g) Receipts from USO Fund

However, if one has to continue with the existing license fee regime of AGR, then Items (a), (b), (c), (e) and (f): Leased line/bandwidth charges, port charges, cable landing station charge, interconnection set-up charges, roaming signalling charges are paid by one telecom operator to the other. These are in the nature of interconnection or access charges which are essentially incurred for carriage and termination of calls. These also result into dual levy of license fee on the same revenue in the hands of the recipient liable to licence fees.

Item (d): Charges paid for sharing of Infrastructure, primarily for tower should not be deductible to arrive at the AGR, as the IP-I operators are not under the regime of the licence fee and as such not in the in which case it would result in dual levy.

Item (g): Receipts from USO fund are in the nature of subsidy from DoT for losses incurred by services providers hence these should be allowed as deduction from AGR. A subsidy payment by an Authority should not be taxed again by the same Authority.

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

Videocon's Response:

In the matter of audit trail / mechanism to verify such transactions, it may be noted that these charges are no different from PSTN related call charges in terms contract, there should not be any separate requirement as verification mechanism / audit trail for such deductions. Further, these transactions are any way getting certified / audited as part of routine audit. Similar to the CENVAT Register maintained for Service Tax, similar details of invoice wise input/PTC payments made alongwith LF/SUC amounts can be maintained by the recipient operator. This can be audited annually by DOT similar to annual service tax/excise duty audits conducted by the Service Tax Department.

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

Videocon's Response:

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Kindly refer to response to point no. 16 above. We would suggest that items listed therein should also be considered while considering the PTC like payment to the international operators for ILD /hubbing services, Site Sharing if the other party is paying the LF, payment of Port charges to other operators, Bed debts, waivers, discounts, any other item on which AGR is paid by other operator or service provider should be allowed PTC and all the items mentioned in 16.

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.

Videocon's Response:

For the purpose of calculating the GR and AGR, the revenue as per the financial books reduced by the PTC and other revenue from the non-licensed activities should be considered in the format.

The format should cover all services as a separate line item which can easily be mapped with the financial statements.

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.

Videocon's Response:

A single format may be prescribed giving GR details of all the services under a single legal entity with reconciliation of the Income as per audited financial statement. This may be useful for DoT to identify the incomes which have been considered in GR and which have been excluded. Also this will lead in reduction of work load both at the end of the DoT and the operator.

The template for reporting of revenue and license fee is attached as Annexure A.

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.

Videocon's Response:

Kindly refer reply for point no. 17, if any new items are allowed as deductions, then verification process would be based on audited Financial Statements of the Licensee.

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

Videocon's Response:

The present practice of accepting quarterly payments based on self-certification of AGR statements may be continued with the requirement of annual audit by the statutory auditors and reconciliation to the audited financial statements.

The current practice of annual audit should continue.

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?

Videocon's Response:

The present practice of requirement of certification from the statutory auditor under section 139 of the Companies Act, 2013 should be continued to ensure consistency in policies and practices in the audited financial statements and statement of revenue and licence fees.

We recommend for an auditor under Section 139 of the Companies Acts i.e. Statutory Auditors of the Company.

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

Videocon's Response:

Whilst, it may ease cash flow and payment, this may not be desirable as it would increase the administrative hassles that are currently plaguing the compliance requirement under Income Tax with respect to TDS and the risk of inter-operator reconciliation would still prevail.

The deduction of LF at source will not be fair and equitable for the licensees as well as the government because of the disparity in SUC, roaming cost and IUC across the licensees.

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

Videocon's Response:



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While reviewing and revising the definition of the GR/AGR, it is proposed to have a re-look into the items like the discount given to distributors, Bad Debts or Goodwill Waivers etc. These items are not part of revenue at all. It is also required to be ensured that no other credits (not in the nature of revenue) should be included for eg Vendor credits, reversal of accruals/provisions (even for licensed activities) for the purpose of the licence fees. Such transactions are merely adjustment in the accounting books and there were no deductions claimed at the inception of such debit transactions. The revenue given in the profit and loss account for such transactions is only notional revenue and there is no actual inflow of cash.

Annexure A

Format of Statement of Revenue and Licence Fee

(Name and address of operator)

Access Services in (Service Area)

Statement of Revenue and Licence Fee for the Quarter
of the financial year.....

(AMOUNT IN RUPEES)

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.	Perposed Changes
1	Revenue from services				
A	Revenue from wireline subscribers:				
(i)	Rentals				
(ii)	Call revenue within service area				
(iii)	National LONG DISTANCE CALL revenue				
(iv)	International LONG DISTANCE CALL revenue				
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)				
(vi)	Service tax				
(vii)	Service charges				
(viii)	Charges on account of any other value added services, Supplementary Services etc.				
(ix)	Any other income / miscellaneous receipt from wireline subscribers.				
B	Revenue from WLL subscribers : (Fixed)				
(i)	Rentals				
(ii)	Call revenue within service area				
(iii)	National LONG DISTANCE CALL revenue				
(iv)	International LONG DISTANCE CALL revenue				
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)				
(vi)	Service tax				
(vii)	Service charges				
(viii)	Charges on account of any other value added services, Supplementary Services etc.				
(ix)	Any other income / miscellaneous receipt from WLL subscribers.				
C	Revenue from WLL subscribers : (handheld)				
(i)	Rentals				
(ii)	Call revenue within service area				
(iii)	National LONG DISTANCE CALL revenue				
(iv)	International LONG DISTANCE CALL revenue				
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)				
(vi)	Service tax				
(vii)	Service charges				
(viii)	Charges on account of any other value added services, Supplementary Services etc.				
(ix)	Any other income / miscellaneous receipt from WLL subscribers.				
D	Revenue from Mobile Services:				
D (a)	Revenue from GSM and 3G spectrum based Mobile Services:				
D(a) 1.	Post paid options:				
i.	Rentals				
ii.	Activation Charges				
iii.	Airtime Revenue				
iv.	Pass through charges (provide operator-wise details)				

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.	Perposed Changes
v.	Service Tax				
vi.	Roaming charges				
Vii	Service charges				
viii.	Charges on account of any other value added services. Supplementary Services etc.				
ix.	Any other income/ miscellaneous receipt from post paid options.				
D(a) 2.	Pre-paid options:				
i.	Sale of pre-paid SIM cards including full value of all components charged therein.				
ii.	Activation Charges				
iii	Airtime Revenue				
iv	Pass through charges (provide operator-wise details)				
v	Service Tax				Excluded
vi	Roaming charges				
vii	Service charges				Excluded
viii	Charges on account of any other value added services. Supplementary Services etc.				
ix	Any other income/ miscellaneous receipt from pre paid options.				
D(a) 3. i.	Revenue from Mobile Community phone service including full value of all components charged therein.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.				
D (b)	Revenue from CDMA based Mobile Services:				
D(b) 1.	Post paid options:				
i.	Rentals				
ii	Activation Charges				
iii.	Airtime Revenue				
iv.	Pass through charges (provide operator-wise details)				
v.	Service Tax				
vi.	Roaming charges				
Vii	Service charges				
viii.	Charges on account of any other value added services. Supplementary Services etc.				
ix.	Any other income/ miscellaneous receipt from post paid options.				
D(b) 2.	Pre-paid options:				
i.	Sale of pre-paid SIM cards including full value of all components charged therein.				
ii.	Activation Charges				
iii	Airtime Revenue				
iv	Pass through charges (provide operator-wise details)				
v	Service Tax				Excluded
vi	Roaming charges				
vii	Service charges				Excluded
viii	Charges on account of any other value added services. Supplementary Services etc.				

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.	Perposed Changes
ix	Any other income/ miscellaneous receipt from pre paid options.				
D(b) 3. i.	Revenue from Mobile Community phone service including full value of all components charged therein.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.				
D (c)	Revenue from BWA Services:				
D(c) 1.	Post paid options:				
i.	Rentals				
ii	Activation Charges				
iii.	Airtime Revenue				
iv.	Pass through charges (provide operator-wise details)				
v.	Service Tax				
vi.	Roaming charges				
Vii	Service charges				
viii.	Charges on account of any other value added services. Supplementary Services etc.				
ix.	Any other income/ miscellaneous receipt from post paid options.				
D(c) 2.	Pre-paid options:				
i.	Sale of pre-paid SIM cards including full value of all components charged therein.				
ii	Activation Charges				
iii	Airtime Revenue				
iv	Pass through charges (provide operator-wise details)				
v	Service Tax				Excluded
vi	Roaming charges				
vii	Service charges				Excluded
viii	Charges on account of any other value added services. Supplementary Services etc.				
ix	Any other income/ miscellaneous receipt from post paid options.				
D(c) 3. i.	Revenue from Mobile Community phone service including full value of all components charged therein.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.				
E	Revenue from Voice Mail /any other value added service				
2	Income from trading activity (all including of sales tax)				Excluded
(i)	Sale of handsets (Excluding Sales Tax)				Excluded
(ii)	Sale of accessories etc (Excluding Sales Tax)				Excluded
(iii)	Any other income/ miscellaneous receipt from trading activity. (Excluding Sales Tax)				Excluded
3	Revenue from roaming.				
i.	Roaming facility revenue from own subscribers.				
ii.	Roaming revenue from own subscriber visiting other networks including STD/ISD/pass thru charges for transmission of incoming call during roaming.				

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.	Perposed Changes
iii.	Roaming Commission earned.				
iv.	Roaming revenue on account of visiting subscribers from other networks (provide operator-wise details).				
v.	Service Tax if not included above.				Excluded
vi.	Any other income/miscellaneous receipt from roaming.				
4	Income from investments				
(i)	Interest income				Excluded
(ii)	Dividend income				Excluded
(iii)	Any other miscellaneous receipt from investments.				Excluded
5	Non-refundable deposits from subscribers				
6	Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&IB				
7	Revenue from sharing/ leasing of infrastructure				
8	Revenue from sale/ lease of bandwidth, links, R&G cases, turnkey projects etc.				
9	Revenue from other OPERATORS on account of pass through call charges (provide operator-wise details).				
10	Revenue from other OPERATORS on account of provisioning of interconnection (provide operator-wise details)				
11	Miscellaneous revenue				
AA	GROSS REVENUE OF THE LICENSEE COMPANY: (Add 1-11)				
BB	DEDUCT:				
1	Charges actually paid to other SERVICE PROVIDER(s) (OPERATOR-wise)				
2	Roaming revenues actually paid to other CMSPs And GMPCS service providers. (operator-wise)				
3	Service Tax paid to the Government				Excluded
4	Sales Tax paid to the Government				Excluded
BB	TOTAL DEDUCTIBLE REVENUE (1+2+3+4)				
CC	ADJUSTED GROSS REVENUE (AA-BB)				
	REVENUE SHARE @ ----- OF ADJUSTED GROSS REVENUE				