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AGNSI/TRAI/NSL/AGR-CP/2012-13
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Shri Arvind Kumar
Advisor (Networks, Spectrum & Licensing)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi - 110 002

Sub.: Consultation Paper [No. 19/2012 dated December 28,2012] on Definition of Adjusted Gross Revenue (AGR) in Licence agreements for provision of Internet Services and minimum presumptive AGR

Dear Sir,

This is with reference to the captioned Consultation Paper No. 19/2012 released by Hon'ble Authority on December 28,2012.

AT&T Global Network Services India Private Limited ("AT&T") is pleased to submit its comments on the issues raised in the captioned paper for consultation as Annexure - I (attached).

We trust you will find our submissions in order and will duly consider the same while finalizing the recommendations.

Thanking you,

Respectfully submitted,

Naveen Tandon
Authorised Signatory

Encl.: As above

**Comments of AT&T on the Consultation Paper on
Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for
Provision of Internet Services and minimum presumptive AGR**

Introduction and Summary

AT&T Global Network Services India Private Limited ("AT&T") respectfully submits these comments on the TRAI consultation paper on Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for Provision of Internet Services and minimum presumptive AGR issued on December 28, 2012 (the "Consultation Paper"). In India AT&T currently provides services under the International Long Distance (ILD), National Long Distance (NLD), and Internet Service Provider (ISP) licenses.

The consultation paper seeks comments of stakeholders on the following issues:

- a) Definition of Adjusted Gross Revenue (AGR) for all three categories of ISP licences.
- b) Applicability of minimum presumptive AGR to BWA Spectrum holders under Internet Service / Access Service license (s) and other licenses with or without spectrum, including access service license. If applicable, what should be the value of minimum presumptive AGR.
- c) Amendments required in the formats of statement of revenue and licence fee reported by various categories of Internet service licensees and UAS licensees.

Before we provide our comments on the above issues, we would like to humbly submit as under:

The current consultation seeks comments on definition of AGR and Format of statement of revenue limited to ISP and UAS licensees only and excludes other types of telecom licenses namely ILD, NLD etc.,. Ministry of Communications & Information Technology vide press release dated May 31, 2012 has already announced the Cabinet Approval to the introduction of Unified License and authorized Department of Telecommunications (DoT) to finalise the new Unified License Regime with the approval of Hon'ble Minister of Communications & IT.

Given the above announcement, it is quite important that there should be a wider consultation on the definition of GR/AGR in the context of Unified License.

TRAI recommendations dated 16th April 2012, on Unified Licence / Class Licence and Migration of Existing Licenses has somehow not addressed the definition of GR/AGR in the context of Unified Licence. Chapter 2, (H. Financial Conditions) clause 2.49 of the said recommendations state: ***"Regarding the revenue which shall be taken into account for calculating GR /AGR for levying licence fee, the Authority is of the opinion that at this stage, it does not propose any change in the definition of GR/AGR as the issue requires deeper study"***. (Emphasis Supplied).

In view of the above, we would like to humbly request Hon'ble Authority to consider holding a wider consultation on the definition of GR/AGR in the broader context of Unified License.

We now respectfully provide our responses on the issues raised in the current consultation:

The definition of **Adjusted Gross Revenue** should conform to the following broad principles:

- i. Ensures level playing field among the service providers.
- ii. Includes only those revenue items which are accrued on the strength of the underlying telecom licence.
- iii. Excludes revenue items which are not accrued on the strength of the underlying telecom licence. This means any item unrelated to licensed activities should not be included.
- iv. Eliminates possibility of multi stage assessment of licence fee resulting in cascading impact on the end user. It should not result in dual charge of the same revenue in the hands of different service providers which leads to double taxation.
- v. Permissible deductions relating to pass through charges should be uniformly applied to both voice and data services (bandwidth, lease line charges etc) provided under the license.

In the background of above broad principles, AT&T now provides comments as below on the issues raised in the current consultation. We would be pleased to provide any additional information that would be helpful to the Hon'ble Authority.

Issue 1 Comments on definition of AGR for all three categories of ISP licences.

Response

All 3 categories of ISP licenses i.e., issued under 1998, 2002 and 2007 guidelines should consider revenues accrued only from telecom sources for license fee payment purposes. The revenue should not include any item of revenue which is not accrued on the strength of the license. Interconnection cost should also consider payment made for input bandwidth charges which forms an integral part of internet / 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 internet, 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. In the context of ISP licenses, revenue from pure internet services as currently allowed should continue.

Presently telecoms service providers are subject to double assessment of license fees as input costs i.e., charges towards bandwidth cost, are not deductible from Gross revenue to arrive at the AGR on which license fee is payable. These input costs / charges which are paid by one telecom service provider are treated as revenues and costs at the hands of carriers resulting in double assessment of license fee on the same revenue.

This point is particularly important to enable the level playing field between vertically integrated telecoms operators that essentially act as Access Suppliers and non-integrated operators that buy



telecoms resources from them. Without the removal of such so-called multi stage assessment, alternative, non-integrated / standalone operators will systematically be at a cost-disadvantage relative to vertically integrated operators.

The definition should capture (as applicable):

Gross Revenue (A):

- Revenue from Pure Internet Service.
- Revenue from Internet Telephony Service.
- Revenue from any other value added service as permitted under the scope of license
- Revenue from sale / lease renting of bandwidth links.
- Revenue from IPTV services
- Any other revenue accrued on the strength of the ISP license

Reduced by (B):

- Revenue from pure internet services
- Charges from internet access related charges (including installation/activation)
- Service tax and Sales tax paid to the Government if gross revenue had included as component of Sales and Service tax
- Payment for port charges, lease line and bandwidth charges

AGR = A - B subject to licence fee.

Issue 2 Should minimum presumptive AGR be applicable to BWA Spectrum holders under Internet Service/Access Service license(s) and other licenses with or without spectrum, including access service licenses? If yes, what should the value of minimum presumptive AGR?

Response

There should not be any concept of presumptive AGR prevalent in the telecom sector as the concept is contrary to the principles of revenue sharing regime adopted in 1999. Practically all telecom licenses today have a stipulated roll out obligation which is linked to liquated damages which will be imposed if those are not achieved. This is also to ensure that the roll out / delivery of service is achieved within the stipulated time frame. However, there cannot be a case of presuming revenue of a service provider from a assumed date for levying licence fee. As and when the service is commenced, licence fee is duly paid on the revenue accrued. Presumptive AGR will entail taking the sector back to the pre 1999 era wherein irrespective of the fact whether service is commenced, revenue is accrued or difficulties encountered in roll out or getting statutory permissions a fixed charge has to be paid.



Issue 3 Please suggest the amendments required in the formats of statement of revenue and license fee reported by various categories of Internet service licensees and UAS licenses.

Response

Since we do not have a UAS license, our comment is limited to Internet Service License. The formats of statement of revenue and license fee should be drawn based on the broad principles stated above and response stated under Issue 1.
