Collaborating for Competitiveness

ASSOCIATION OF COMPETITIVE TELECOM OPERATORS
601, Nirmal Tower, 26, Barakhamba Road, Connaught Place, New Delhi 110001
Tel. : +91-11-43565353, +91-11-43575353, Fax : +91-11-43515353,
E Mail: info@acto.in, Website: www.acto.in

No.: 068/TRAI/2014-15/ACTO
Dated: 22nd September, 2014

Shri Maruthi P. Tangirala
Advisor (F&EA-II)
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan,
JawaharLal Nehru Marg,
New Delhi-110002

Subject: **Consultation Paper (09/2014) on Definition of Revenue Base (AGR) For Reckoning of License Fee (LF)& Spectrum Usage Charges(SUC) – Counter Comments**

Ref.: ACTO's response vide letter No. 067/TRAI/2014-15/ACTO dated 15th September 2014

Dear Sir,

This is with reference to the captioned consultation paper (No. 09/2014) released by Hon'ble Authority and our detailed response submitted vide letter dated 15th September 2014.

We are thankful to the Hon'ble Authority for placing the responses in the public domain which will allow stakeholders to provide further comments / counter comments/ analysis on the responses received on the captioned consultation paper.

We have reviewed the responses provided by stakeholders. Views of majority of the stakeholders are aligned on the issues for consultation except a few where there is a divergent view point.

The Association of Competitive Telecom Operators (ACTO) would like to submit its ccunter comments on these issues (as stated below) for kind consideration of Hon'ble Authority.

a) Review of License Fee including USO contribution. [**Q. No. 3**]
b) Definition of Revenue to be GR based or AGR for the purpose of payment of license fee. [**Q. No. 5**]
c) Applicability of Issue of minimum presumptive AGR. [**Q. No. 12 and 13**].

We hope that our counter comments (enclosed as Annexure - I) will merit consideration of the Hon'ble Authority.

Thanking you,

Respectfully submitted
For Association of Competitive Telecom Operators

Tapan K Patra

Tapan K. Patra
Director
+91-9899242273

Encl: As above

Annexure-I

Counter Comments from ACTO on TRAI consultation paper on Definition of Revenue Base (AGR) for the Reckoning of License Fees & Spectrum Usage Charges

Q. No. 3 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

We note that few stakeholders have suggested that more than review of LF rate, the definition of GR and AGR should be reviewed.

We would like to humbly submit that both - rate of license fee along with its respective definition of GR and AGR should be reviewed and these should be aligned both with the vision envisaged in NTP-12 as well as international best practices.

The NTP 2012 has clearly stated as one of its objectives:

12.3. To ***rationalise taxes, duties and levies affecting the sector and work towards providing a stable fiscal regime to stimulate investments and making services more affordable.***

The telecom sector continues to grapple with high taxes and levies which are amongst the highest as compared to other economies. Currently the LF rate of 8% is uniformly applicable to all licenses. Of which 5% goes to USO fund and not to exchequer's kitty which remains at the balance 3%. The USO fund has not been utilized for couple of years and currently has a significant unutilized corpus of INR 33682.85 crores as on 31st March 2014 (and continues to grow) as reported at para 3.6 by TRAI in its aforementioned consultation paper.

It is therefore important that the immediate need of the hour is to review the rate of license fee and especially the USO levy to be reduced significantly.

As rightly noted by TRAI in its recommendations on Unified License dated October 2003 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% and there is an urgent need for reduction in the rate of USOF contribution.

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**.

The sector has and continues to witness significant technological developments, attained flexibility in the licensing regime, wireless technologies have outpaced wireline and continues to be the preferred option for faster roll out. All these make a clear case for substantial reduction in the USO levy. The fund which has been built based on the contributions made by the telecom operators should be efficiently utilized. The corpus has attained a reasonable limit and will continue to grow if the 5% levy is significantly reduced given the fact that the revenue continues to grow with more emphasis now on data services.

Therefore it is the need of the hour to gradually reduce the license fee starting with immediate reduction of USO levy. The same needs to be reduced to start with and gradually brought to a level that brings affordability in the sector. We believe that under the current circumstances, there is no need to continue to burden operators for continuation of such fund with a 5% levy when operators are themselves rolling out their networks across the country in time bound manner including rural and remote areas.

This will certainly help the sector improve its financial viability by reduction of cost leading to affordability at the hands of the consumers.

We strongly support to review the present rate of LF and especially the USO component should be reduced substantially. Mere review of GR and AGR definition alone will not suffice, as the 8% levy will still continue to make cost of doing business expensive. Therefore in order to ensure long term sectoral viability, competition and affordability for the consumers, now is the time to act on it by reviewing the cost elements which are unnecessary in the present scenarios.

Whatever was relevant in 1994-95 may not necessarily be the case today. Therefore the urgent need of the hour is to review the USO and LF levy apart from review the definition of GR and AGR.

Q. No. 5 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?

We note that few stakeholders have suggested a GR based model as against AGR for the purpose of levying LF.

ACTO does not support such a model and firmly believe that the LF should be based on revenue which incorporates streams which are accrued on the strength of the license and allows for legitimate deduction of the charges paid by an operator to another telecom operator. Therefore for the purpose of computation of License fee, AGR based model should be followed.

There are following anomalies in the current framework of Revenue Share under the telecom licenses. These can be corrected by streamlining the framework as against migrating to a new model or framework.

- It includes several revenues unrelated to licensed activities under the licence.
- It includes service items that strictly do not fall under the definition of revenue.
- It results in dual charge of the same revenues twice in the hand of different telecom operators.
- It includes notional income that is unrealized/remains uncollected by the Licensee.

- It includes item on accrual/billed basis but allows deduction on collected/paid basis.
- It includes several items of pass through revenues resulting in differential treatment of similar revenue.

In summary:

- The revenue accrued only from telecom services on the strength of the telecom license, granted under section 4 of ITA 1885 needs to be considered for license fee payment purposes.
- The AGR definition should 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.

ACTO recommends that the following should be excluded from the Gross Revenue to arrive at the AGR:

(i) Pass through charges like leased circuits, port charges etc paid to other telecom service providers.
(ii) Charges paid to other Licensees for any input Telecom Service as cost of providing services.

Profits and Gains which are not in the nature of telecom revenue should not form a part of AGR, such as:

- Foreign Exchange Gains (including set off for losses on account of foreign exchange fluctuations).
- Dividend.
- Interest on other than refundable security deposits received from the customer,
- Capital Gains on sale of immovable property, securities, warrants or debt instruments, other items of fixed assets.
- Gains from Foreign Exchange Fluctuations (Forex Gain).
- Exclusion of Recovery of Bad Debts, Waivers, Discounts.
- Reversal of Provision & Vendor Credits from AGR.
- Income from Property Rent.
- Income from Sale / lease of passive infrastructure like towers, dark fibres, etc. – is a reduction of cost, of that portion of assets which are not used by the licensee to provide the license services.
- Sale of any kind of Customer Premise Equipment (CPE).
- Other income including Miscellaneous Income.

Furthermore, the National Telecom Policy 2012 (NTP 2012) highlights the need to move towards convergence between telecom, broadcast and IT services, networks, platforms, technologies and overcome the existing segregation of licensing, registration and regulatory mechanisms in these areas to enhance affordability, increased access, and delivery of multiple services and reduced cost.

In view of above analysis it is recommended that revenue share adjustment should be made on all the charges paid to the other licensed TSPs, so that there is an avoidance of double taxation and there is no further interpretation issue in the era of digital convergence and increased infrastructure share between the TSPs.

The definition of GR/AGR for payment of license fee needs to be reviewed to ensure level playing field among the service providers.

Streamlining the definition of GR/AGR has direct relation to the affordability of services to the end customer as well as the financial / business viability of a service provider.

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

and

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

We note that few stakeholders have suggested for a minimum presumptive AGR equal to Financial Bank Guarantee to prevent hoarding of licenses.

ACTO does not support any type of minimum presumptive AGR frame work. In the present hyper competitive telecom market, where spectrum is not bundled with license and TSPs are required to pay market determined prices the rationale for imposition of levies based on presumptive AGR becomes redundant now, since the licensee has already paid significant amounts upfront and any idling of the spectrum resource would be to the licensee's detriment.

The license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR. **There should not be any presumptive AGR in the telecom sector as the concept itself is contrary to the principles of revenue sharing regime adopted in 1999. Presumptive AGR will entail taking the sector back to the pre 1999 era wherein irrespective of the fact whether service under the telecom license is commenced or not, revenue is accrued or challenges in roll out or getting statutory permissions were in place, still a fixed charge was to be paid by the licensee.**

The financial bank guarantee amount itself is subject to review based on past license fee payments. Therefore the guarantee truly reflects the revenues accrued to a licensee. This has no relationship to a presumptive model at all.

****