Preamble

At the outset we would like to thank the Authority for initiating this consultation exercise. Varied interpretations of the definition of Revenue between the Government and Telecom Service Providers (TSPs) have led to long legal disputes, first in TDSAT, then in the Supreme Court and now again in TDSAT and various High Courts. Whilst the other revenue collection mechanisms of the Government (direct, indirect taxes) have evolved, been codified and simplified over the years, telecom regulatory levy mechanisms have not kept pace.

This was a much needed consultation paper and a progressive step by the Authority. In addition to the definition of Gross Revenue (GR) and Adjusted Gross Revenue (AGR), the consultation paper also tries to achieve the objectives of rationalizing taxes, duties and levies and providing stable fiscal and regulatory regimes to stimulate investments and make services more affordable under NTP 2012. We believe that the settlement of the issue of revenue share and definition of GR/AGR by ensuring complete clarity and certainty on the heads/components that should be included/excluded from AGR, would provide a significant boost to the industry, which is otherwise struggling with stiff regulatory challenges, enormous litigations, a sluggish economy and a hyper competitive market. We also believe that clarity on GR/AGR could potentially enhance government collections which today may be stuck in litigation due to the prevalent ambiguities.

In order to settle this long disputed issue, we believe that there must be a clear set of five guiding principles to define the revenue for imposition of regulatory levies such as LF and SUC. These principles are highlighted below:

1. The Gross Revenue /Adjusted Gross Revenue on which regulatory levies are payable is consistent with the Licence
2. Determination of revenue is consistent with the prevalent Accounting Concept and Conventions
3. Simplify methodology of levy of License Fees / SUC and ensure there is no cascading impact of regulatory levies in line with other Government levies
4. Ensure there is no incidence of tax on tax while charging of regulatory levies. The process for determination and assessment of regulatory levies is simplified along the lines of processes followed by other government departments while levying taxes.
5. Rationalization of taxes and duties is in line with the vision of NTP 2012

These principles are elaborated on in the paragraphs that follow:

1. ***The Gross Revenue /Adjusted Gross Revenue on which regulatory levies are payable is consistent with the Licence***

   The definition of revenue in its current shape and form has given rise to disputes and the instances of double as well as multiple levies. In order to settle this long pending dispute, the licence fee as a share of revenue must only be levied on licensed activities as stated in the licence. Only components/ heads which fall under the license should form the basis for computing license fee whereas heads/ components which fall outside the scope of licensed activities must be excluded. There should be unambiguous clarity in the definition of GR and AGR to avoid any subjective interpretation and related disputes.

In the era of technology convergence, while TSPs would be liable to pay revenue share (LF/SUC) for services like cable TV, OTT applications, M2M, data center, e-commerce, broadcasting, handsets, etc.; their non-licensed counterparts would not be subject to such regulatory charges. The present interpretation of DoT not only stifles innovation and the provision of converged services by TSPs, but also creates a serious non-level playing field. Therefore, revenue from services offered by TSPs, which can also be provided by non-licensed entities, should not be subject to the same.

In order to reduce litigations, bringing a level playing field and making it more relevant to new technologies & convergence, the Gross Revenue / Adjusted Gross Revenue for a License, for the purpose of revenue share, should only include revenue from activities that fall under the scope of the licence.

2. Determination of revenue is consistent with prevalent Accounting Concept and Conventions

The interpretation of revenue must be consistent with accounting concepts such as the prevalent accounting standards of the Institute of Chartered Accountants of India [ICAI]. TSPs should be mandated to follow the Accounting Standards notified under the Companies Act 2013 to ensure consistency with other Financial Acts viz. Income Tax Act, Service Tax, etc. Revenue as defined by AS 9, (Accounting Standard on revenue recognition issued by the ICAI should also be mandated. These standards for the purpose of interpretation and applications can be further supported by Accounting Standard Interpretation, Guidance Note and Exposure Drafts on Revenue recognition issued from time to time.

The above will ensure consistency in revenue reporting across TSPs and remove any scope for ambiguity with the Government on the constituents of revenue. This will also bring in parity with other laws and increase transparency besides bringing in procedural simplicity. Thus, accounting principles and standards must be the yardstick for determining the various heads/components of revenue.

3. Simplify methodology of levy of License Fees & SUC, thereby ensuring that there is no cascading impact of regulatory fees

The present License Fees & SUC regime levies these charges based on Adjusted Gross Revenues (AGR) which allows deductions for various pass through charges from Gross Revenues. We believe that one of the reasons for introducing AGR was to give relief to Operators from dual taxation. However, the process of deduction verification is extremely complex and has not had the intended consequences with the changes in telecom sector.

While the LF/SUC charges should continue to be based on Adjusted Gross Revenues, the process of collection of License Fees and SUC levies requires simplification. It is suggested that a concept of License Fees (including SUC) Deducted at Source (LFDS) should be introduced. This will ensure that the LF amounts are paid to government at the time the invoices are getting paid by one operator to other operator. This is exactly in line with the methodology adopted by the country's Direct Taxation regime (Income Tax). This shall also have the following benefits:

a) Simplify the collection of levy
b) Allows better control in terms of collection of levies and simplify the process of verification of deduction

c) It shall allow Working Capital to Government since a part of the revenue shall be received in advance on a monthly basis.

At present there are different methods for payments of LF & SUC. While LF is paid after the end of the quarter, SUC is being paid in advance at the beginning of the quarter on the basis of estimated revenue. The difference between the actual and estimated payout is adjusted in the subsequent quarter. Thus the process of SUC payment leads to several rounds of reconciliations.

It is therefore requested that the method of payment of SUC should also be aligned with LF especially when, like LF, SUC dues are also secured by way of bank guarantees. This shall simply the process of collections and reconciliations.

In addition, the AGR definition of allowing only voice pass through charges was done during the period of TSPs providing largely voice services. With the change in technologies and increase in Data services, large revenue streams (POI, Lease Line, Internet, IPLC) are suffering dual taxation since they are being taxed in the hands of various intermediary TSPs without set offs. Hence the same rationale for allowing voice pass through should be followed for data pass through charges. We believe the current cascading tax regime only increases end customer prices and hampers infrastructure sharing (active and passive) as well as the dream to build a 'Digital India'.

Therefore, the telecom sector should follow the proven principles as laid down by the Income Tax. The concept of Tax Deducted at Source (TDS) should be introduced for regulatory levies. It is suggested to manage the entire process of LFDS through a portal (in line with the Income tax department managing TDS) wherein after filling in all details including payment, a certificate is generated basis which the operators can avail a credit.

Simultaneously, it is also suggested to put in place a documented annual assessment/appeal procedure for such regulatory levies along the lines of processes followed by other government revenue departments. The assessment should then be made a time bound affair.

4. Ensure there is no incidence of tax on tax while charging of regulatory fees

Currently, telecom regulatory levies are the only revenue based government charges (unlike Excise Duty, Services Tax, VAT, Entertainment Tax etc.) which are imposed as a tax on tax. Since Gross Revenues of the company include the amount of Regulatory charges collected from the customers, the LF/SUC rates charged by the Government on these Gross Revenues already include the LF/SUC charge thereby becoming a tax on tax. In other Revenue based government levies like Service Tax etc. the Revenue on which the Service Tax (rate) is applied is net of the Government levy. Accordingly LF rates should be reduced to 8% x (100-8%)=7.36% of Gross Revenues (and similarly for SUC)

5. Ensuring that the overall regulatory levy regime for the telecom sector is rationalized as enunciated in the NTP 2012

India is a price sensitive market, and yet offers amongst the lowest tariffs in the world. In a highly taxed regime, over 30% of TSPs' revenue goes towards various government levies and taxes. The precarious financial position of the industry, as a result of operating in a highly taxed regime, is further aggravated by the fact that LF, USO levy and SUC are levied on revenue from

non-licensed activities along with several incidences of double levy. This must also be factored in by the Authority when formulating its recommendations.

The NTP 2012 has recognized the need to rationalize taxes, duties and levies affecting the telecom sector. We propose that the current levy of 8 % of AGR as LF (including 5 % USO levy) should be immediately reduced to 6% with a roadmap of further reducing the USO levy which currently remains under-utilized. It should be recognized that TSPs have already rolled out networks in large parts of rural India where they should have received these USO subsidies. In October 2008, the Government decided to reduce the USO levy by 2% after achieving 95% development blocks; however, the said order was withdrawn abruptly. Similarly, SUC is currently levied at a higher percentage especially when spectrum is awarded through auctions. This charge should not exceed 1% and only be towards the recovery of administrative and maintenance costs as is currently being followed in many countries.

The above principles, if followed, shall not only bring to an end the era of disputes and litigations but shall also open up doors for much needed reform in the license fees regime. This will restore investor confidence in the market and will surely accelerate growth with greater transparency.

Keeping the above principles in mind, our replies against each of the issues raised in the consultation paper are as below:

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?

Reply: As per the migration package signed between the DoT and TSPs and also in the spirit of the revenue share regime, it is inappropriate for DoT to impose regulatory levies over the revenue from non-telecom and non-licensed activities. DoT should only seek a revenue share for licensed activities, on the following grounds:

1. Under the NTP- 1999, CMTS were required to pay LF on the basis of revenue share in addition to a one time entry Fee of a fixed amount. DoT offered a Migration Package to existing CMTS to migrate from a Fixed Licence Fee Regime to a Revenue Share Regime, which was accepted by TSPs and therefore, became a settlement between the DoT and TSPs. Clause 1 (ii) of the said Migration Package reads as under:

   *"The licencee will be required to pay one time Entry Fee and Licence Fee as a percentage share of **gross revenue under the licence**. The Entry Fee chargeable will be the licence fee dues payable by existing licencees upto 31.07.1999, calculated upto this date duly adjusted consequent upon notional extension of effective date as in para (ix) below, as per the Conditions of existing licence."*

   The Migration Package specifically provided that the LF would be payable as a percentage share of "gross revenue" "under the Licence". Further, Clause (iii) thereof reiterates that the LF as a percentage of gross revenue "under the licence" shall be payable w.e.f. 1st Aug 1999.

   The above migration package relates to revenues that are derived by a TSP solely and directly in relation to its telecom operations performed within the scope of the licence.

Thus for LF and SUC payouts, these revenues must be in direct nexus with telecom activities and the services licenced by DoT and should not extend to anything else and ought to be considered as the "revenue" of the Licencee.

2. The existing definition of 'GR' and 'AGR' as indicated in the UAS licence is as below:

   "Gross Revenue: The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc"

   "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:

   - PSTN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;
   - Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;
   - 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"

   In the above definition, the inclusion of certain clearly expressed items indicates that the GR as defined under the licence agreement cannot be interpreted as the GR of a legal entity/company from all its activities and operations in its entirety but rather the GR that pertains to revenues earned directly in relation to telecom operations performed within the scope of the licence.

   Any interpretation to the contrary would lead to an absurd result since licensed entities whose scope of business extends no further than contemplated under the license, would pay a much lower revenue share than another entity conducting both licensed and unlicensed activities. It is important to note that in both cases, what has been granted by the DoT through the issue of the grant of the license is essentially the same.

Therefore, the definition of 'GR' and 'AGR' as indicated in the licence agreement is required to be read along with the interpretation derived from the Migration Package.

3. In order to avoid any ambiguity, we proposes the following definition of Gross Revenue:

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

Gross Revenues should follow the Accounting Standards issued by the Institute of Chartered Accountant of India (ICAI), AS 9 on Revenue Recognition, to avoid any doubt as to constituent of revenue and its determination.

According to our views, the modified definition of GR will remove any ambiguity on the scope of the revenue for the purpose of LF payouts. Similarly, for SUC, the definition of GR should only be limited to revenue generated by use of such spectrum.

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?

Q4: If the definitions are to be reviewed/ revised, should the revenue base for levy of licence fee and spectrum usage charges include the entire income of the licensee or only income accruing from licenced activities? What are the accounting rules and conventions supporting the inclusion or exclusion of income from activities that may not require licence?

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?

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

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.

Reply: The principles to be applied should be

1. The Gross Revenue /Adjusted Gross Revenue on which regulatory levies are payable is consistent with the Licence
2. Determination of revenue is consistent with prevalent Accounting Concept and Conventions
3. Simplify methodology of levy of License Fees and ensure there is no cascading impact of regulatory fees in line with other Government levies like Service Tax
4. Ensure there is no incidence of tax on tax charging for regulatory fees. The process for determination and assessment of regulatory levies is simplified along the lines of processes followed by other government departments while levying taxes e.g. Service Tax and there is no cascading impact of regulatory levies
5. Rationalization of taxes and duties is in line with the vision of NTP 2012

These principles are elaborated on in the paragraphs that follow:

The Gross Revenue /Adjusted Gross Revenue on which regulatory levies are payable is consistent with the Licence

The definition of revenue in its current shape and form is 'very wide' and uncertain which has given rise to disputes and to the instances of double levy as well as multiple levies. In order to settle this long pending dispute, the licence fee as a share of revenue must only be levied from activities arising under the licence. Only components/ heads which arise under

the license should form the basis for computing license fee whereas heads/ components which fall outside the license must be excluded.

In the era of technology convergence, while TSPs would be liable to pay revenue share (LF/SUC) for services like cable TV, OTT applications, M2M, data center, e-commerce, broadcasting, handsets, etc.; their non-licensed counterparts would not be subject to such regulatory charges. The present interpretation of DoT not only stifles innovation and the provision of converged services by TSPs but also creates a serious non-level playing field. Therefore, revenue from services offered by TSPs, which can also be provided by non-licensed entities, should not be subject to any LF/SUC.

In order to reduce litigations, bringing a level playing field and making it more relevant to new technologies & convergence, the Gross Revenue for a License for the purpose of revenue share should only include revenue arising under the licence.

Determination of revenue is consistent with prevalent Accounting Concept and Conventions

The interpretation of revenue must be consistent with accounting concepts such as the prevalent accounting standards of the Institute of Chartered Accountants of India [ICAI] must be followed. TSPs should be mandated to follow the Accounting Standards notified under the Companies Act 2013 to ensure consistency with other Financial Acts viz. Income Tax Act, Service Tax, etc. Revenue as defined by AS 9, (Accounting Standard on revenue recognition issued by the ICAI should also be mandated. These standards for the purpose of interpretation and applications can be further supported by Accounting Standard Interpretation, Guidance Note and Exposure Drafts on Revenue recognition issued from time to time.

The above will ensure consistency in revenue reporting across TSPs and remove any scope for ambiguity with the Government on the constituents of revenue. This will also bring in parity with other laws and increase transparency besides bringing in procedural simplicity. Thus, accounting principles and standards must be the yardstick for determining the various heads/components of revenue.

Simplify methodology of levy of License Fees thereby ensuring there is no cascading impact of regulatory fees

The present License Fees & SUC regime levy these charges based on Adjusted Gross Revenues (AGR) which allows deductions for various pass through charges from the Gross Revenues. We believe that the one of the reasons for introducing AGR was to give relief to the Operators from dual taxation. However, the process of deduction verification is extremely complex and has not had the intended consequences with the changes in telecom sector.

While the LF/SUC charges should continue to be based on Adjusted Gross Revenues the process of collection of License Fees and SUC levies requires simplification. It is suggested that a concept of License Fees (including SUC) Deducted at Source (LFDS) should be introduced. This will ensure that the LF amounts gets paid to government at the time the

invoices are getting paid by one operator to the other operators. This is exactly in line with the methodology adopted by the country's Direct Taxation regime (Income Tax). This shall also have the following benefit:

a) Simplify the collection of levy
b) Allows better control in terms of collection of levies and ease out the process of verification of deduction
c) It shall allow a Working Capital to Government as a part of revenue shall be received in advance on monthly basis

In addition, the AGR definition of allowing only voice pass through charges was done during the period of TSPs providing largely voice services. With the change in technologies and increase in Data services, large revenue streams (POI, Lease Line, Internet, IPLC) are suffering dual taxation since they are taxed in the hands of various intermediary TSPs without set offs. Hence the same rationale which was used for allowing voice pass through should be followed for allowing data pass through charges. We believe the current cascading tax regime only increases end customer prices and hampers the initiatives of infrastructure sharing (active and passive) and dream of a 'Digital India'.

Therefore, the telecom sector should follow the proven principles behind the Income Tax. The concept of Tax Deducted at Source (TDS) should be introduced for regulatory levies. It is suggested to manage the entire process of LFDS through a portal (in line with the Income tax department managing the TDS) wherein after filling in all the details including payment, a certificate gets generated basis which the credit can be availed by the operators.

Simultaneously, it is also suggested to set out a documented annual assessment/appeal procedure for such regulatory levies along the lines of processes followed by other government revenue departments. The assessment should then be made a time bound affair.

Ensure is no incidence of tax on tax charging of regulatory fees

Currently, telecom regulatory levies are the only revenue based government charges (unlike Excise Duty, Services Tax, VAT, Entertainment Tax etc.) which are imposed as a tax on tax. Since Gross Revenues of the company include the amount of Regulatory charges collected from the customers, the LF/SUC rates charged by the Government on these Gross Revenues already includes the LF/SUC charge thereby becoming a tax on tax. In other Revenue based government levies like Service Tax etc. the Revenue on which the Service Tax (rate) is applied is net of the Govt. levy. Accordingly LF rates should be reduced to 8% x (100-8%)=7.36 % of Gross Revenues (and similarly for SUC)

Ensuring that the overall regulatory levy regime for the telecom sector is rationalized as enunciated in the NTP 2012

India is a price sensitive market, and yet offers amongst the lowest tariffs in the world. In a highly taxed regime, over 30% of TSPs' revenue goes towards various government levies and taxes. The precarious financial position of the industry, as a result of operating in a highly taxed regime, is further aggravated by the fact that LF, USO levy and SUC are levied on non-

licensed activities along with several incidences of double levy. This must be factored into the recommendations by the Authority.

The NTP 2012 has recognized the need to rationalize taxes, duties and levies affecting the telecom sector. We propose that the 8 % LF (including 5 % USO levy) should be immediately reduced to 6% with a roadmap of further reducing the USO levy which currently remains under-utilized. It should be recognized that TSPs have already rolled out networks in large parts of rural India where they should have received these USO subsidies. In October 2008, the Government decided to reduce the USO levy by 2% after achieving 95% development blocks; however, the said order was withdrawn abruptly. Similarly, SUC is currently levied at higher side especially when spectrum is awarded through auctions. This charge should not exceed 1% and only be towards the recovery of administrative and maintenance costs as is currently being followed in many countries.

The above principles, if followed, shall not only bring to an end the era of disputes and litigations but shall also open up doors for much needed reform in the license fees regime. This will restore investor confidence in the market and will surely accelerate growth with greater transparency.

<u>On Designing the Revenue Sharing Framework</u>

While designing a framework for the revenue share regime, the following two guiding principles should be followed:

1. Scope of the revenue i.e. what kind of items should be construed as 'revenue' - *This is to ensure that LF is payable only on the revenue generated from licensed activities*
2. Determination of revenue i.e. methodology to compute the amount of 'revenue' – *This is to ensure that the methodology for determining the revenue for LF and SUC payouts is consistent with accounting principles and other financial laws.*

1. <u>Scope of Revenue</u>

   While designing the scope of revenue the following should be the basic guiding principles:
   - There must be revenue with TSP
   - This revenue has been realized with TSP

   It is to be noted that revenue from all other activities (non-telecom and non-licensed) performed by the licensed company should be out of the purview of the scope of revenue for the purpose of LF payouts.

2. <u>Determination of Revenue</u>

   There is a clear and present need to recognize the appropriate constituents of revenue in order to ensure that an appropriate revenue share is paid to the Government. On the guiding principle for determination of revenue, a) rendering of services and b) realization of money are two prime considerations that need to be adhered to. Moreover, the three basic accounting concepts i.e. accrual, consistency and going

concern which are fundamental to accounting also need to be adhered to while recording any transaction. Briefly stated the following should be adhered to:

- Services have been rendered and money has been realized with the TSP
- There should be no attempt to levy regulatory fees on money that has not been realized by the TSP or which although realized may have ceased to exist later and require a reversal.
- The revenue accounting under the telecom license should be consistent with the Accounting Polices and Standards AS-9 as issued by Institute of Charted Accountants of India and being practiced under various other Financial Acts and Laws.

Consequent AGR determination

Under the current regime while Revenue (for income) is primarily allowed on Accrual basis, deduction of expenses is allowed on Cash Basis. This leads to an inconsistency between two similar natured transactions (as both income and expense are of revenue nature). This defeats the very fundamental principles of accounting. Therefore it is suggested that both, income and expenses, should be allowed to be included on accrual basis only as both are of revenue nature.

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?

Reply: We recommend that rationalization of LF Rate should not be used as a substitute policy to eliminate the anomalies in the definition of GR and AGR which have been clarified above.

The Indian telecom sector is highly taxed and over 30% of TSPs' revenues go towards various taxes and levies, such as - licence fee, spectrum usage charges, service tax, entry fee, octroi, stamp duty, customs duty, regular corporate income tax, etc. The situation is further aggravated by the fact that LF, USO levy and SUC are levied on the revenue from non-licensed activities and there are incidences of double taxation.

We request the Authority to reduce the regulatory levies, which would facilitate more investments and affordability in a sector that is otherwise struggling from increased costs, shrinking operating margins and a staggering economy. With the above in mind, we propose the following:

- **Licence Fee:** In May 2010, TRAI recommended a uniform LF at 6% in a phased manner based on a revenue-neutral principle which we suggest should be immediately implemented.
- **USO fund** which gets 5 % of the 8 % LF is largely unutilized. Rural infrastructure has been developed by TSPs on their own. Therefore, the following options should be considered:
  - To reduce USO levy after achieving prescribed rural coverage:
    - In May 2010, TRAI recommended reducing the USO levy by 0.5% to 2% subject to the extent of rural coverage achieved by TSPs. The same is yet to be accepted by DoT.

  - Earlier recommendations by TRAI in 2008 to reduce the USO levy by 2% were approved by DoT for TSPs that cover more than 95% development blocks. However, for reasons unknown, this reduction was never implemented.
- To reduce USO levy in a phased manner with at least 2-3% reduction immediately with a sunset clause.
- Any unutilized USO funds at the end of each fiscal year should be distributed back to the TSPs.
- No USO levy for fixed line services, both for urban and rural areas to contain its declining growth and to encourage more TSPs to provide fixed line services. Besides mobile, other countries have also focused on the growth of fixed line services. For instance, in China, fixed line connections are greater than 275 million along with over 1.155 billion mobile connections. In contrast, India has a mere 28.03 million fixed line connections along with 915 million mobile connections. India needs, at the very least, 200 million fixed lines connections.

- **Spectrum Usage Charge:** The current SUC rate of 5% for auctioned spectrum requires a downward revision immediately. Wherever spectrum is sold globally, against an upfront price determined through auction, the SUC is always kept at a nominal/minimal level so as to recover the cost of spectrum management and administration. Therefore, the annual SUC for auctioned spectrum should be no more than 1% of wireless revenue.

- **Double taxation to avoid the tax on tax impact:** Since LF/SUC are part of Gross Revenues already and the LF/SUC are taxed on Gross Revenue, the LF rates should be reduced to 7.36 % (8 % x 100-8%)) and SUC rates to 4.75 % (5 % x (100-5%)) which are the correct rate of LF/SUC to be applied on Gross revenue to avoid tax on tax. This methodology is in line with other revenue levies imposed by government.

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.;

Reply: Placing reliance on explanations and principle as discussed in the preamble and also our response to Q. No 1 and Q. No. 2, 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:**

Every Company has its own treasury function that takes care of its fund requirement and manages overall funds. These cash management teams not only manage capital requirements but are also entrusted with the duty of not keeping the money idle. As

money has time value, any surplus is either invested back into the business or is kept at a place that keeps it optimized. It also happens at times that even though the Company borrows money for utilization in business, due to the long gestation periods of projects, the entire amount is not required immediately. To avoid keeping idle cash balances (as money has time value), it is invested into financial instruments. Most (if not all) TSPs have significant debt on their balance sheets for which they make thousands of crores of interest payments every year. Due to timing issues of fund flows/outflows, it is natural for TSPs to simultaneously have temporary investment/deposits that consequently earn interest/dividend. It is inappropriate for interest income to be chargeable to LF but interest costs to not be allowed as deductions.

Sometimes these surplus funds are generated from profits made from the sale of telecom services and are therefore generated after paying all legitimate LF and telecom levies (revenue share). Revenues on which gains have been made have already suffered regulatory taxation (LF/SUC) and subsequent investments that have no nexus with licensed activities have been made. It is inappropriate to double tax the gains on interest/dividend revenues. This is akin to levying both a Sales Tax and an Income Tax at the same time (with the rider that that the Income is only interest income and not an offset for interest losses). These surplus funds essentially represent the residual which belongs to the shareholders of the Company.

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

- The money has no nexus with licensed services.
- These are not revenue from rendering services but are gains recognized under the head “Other Income”
- These are a part of promoters equity which has been generated after payment of all taxes and regulatory levies (LF/SUC)

d) Income from property rent;

Income from rent of property cannot be construed as revenue from telecom services. These are some of the miscellaneous revenues that a company receives for appropriate utilization of its non-telecom resource. As such if this gets included in revenue for the purpose of regulatory levy: the same shall extend beyond the License.

For example, if a portion of a building that has been let out to others which thereby generates some rental income which has no nexus with license should be kept outside the scope of revenue for the purpose of LF.

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

At present, the infrastructure business is not a telecom activity requiring a license. The following factors merit consideration before deciding on whether income from passive infrastructure should be included in the definition of revenue for the purpose of LF:

- Passive infrastructure does not include any active telegraph equipment. It only has assets or infrastructure like building, tower, etc. on which a telecom network can be built.
- It is only when this equipment is activated that a license is required.
- Thus, unless an active communication medium is established, the Telegraph Act is not invoked e.g. right to do a civil construction, whether commercial or personal in nature, procuring cables, equipment etc does not require a license.
- Globally, infrastructure companies provide utility services that are indistinguishable from 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. Extending the scope and bringing such infrastructure providers with common investments under a licence fee regime bears no character to providing telecommunications services.

Keeping all these factors in mind, coupled with the fact that Telecom is a highly Capital intensive business with a long gestation period, the Government introduced the regime of IP1 registration, which enabled operators to share the cost of passive infrastructure and thus brought in affordability in the mobile telecommunication sector.

Over a period, stiff competition in the market forced these players to keep costs at their minimum. However, the fact remains that:

- These are primarily infrastructure services
- These serve the TSP and thus are input suppliers like in any other value chain
- If at all these are to be bought under a Licence Fee regime then the LF paid to them by a TSP shall be allowed as deduction.

Therefore, these items should not be considered as revenue for the purpose of telecom services.

f) Income from sale of equipment including handsets;

Sale of equipment including handsets is an independent activity that does not require a license. The activity of sale of hardware/devices is in no manner related to the provisioning of telecom service unless 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 revenues from sale and are not a generated by rendering of services. Thus, inclusion of these items under the revenue from services for the purpose of levy of LF is neither correct nor prudent. Inclusion of such revenue in GR prohibits the TSP from procuring the CPE/Equipment/handsets on behalf of their customers and hence TSPs are not only dis-incentivized from providing the convenience of one stop shopping to customers but it are also prevented from augmenting the creation of handset/device eco systems for newer technologies.

It is submitted that as a principle, a product or service that is otherwise not subject to a license should not be subjected to any incidence of LF/SUC solely for the reason that the

same is provided by a TSP. At the same time, the Government should also not deter TSPs who would like to leverage on such product or services by subjecting them to regulatory levies. Such an approach would discourage innovation and hamper the emergence of converged services and increase in broadband penetration. At the same time, it would be desired that such mechanisms should not be used for revenue diversions thereby depriving Government of its legitimate revenue share.

It is suggested that in all such cases, where product and services are bundled and sold as a single offering, the concept of fair valuation may please be adopted in line with Accounting Standards. In cases where more than one product or service gets bundled, the Accounting Standard requires revenue from sale and services to be disclosed separately. A fair valuation rule (based on arms-length principle) is to be applied for the purpose of separation of such revenue between revenue from sale and revenue from services. A reference may also be made to the Exposure Draft on Revenue Reporting for Telecom companies, which clearly lays down guidelines for the fair valuation of bundled services.

Thus, revenue from the sale of equipment including handsets (with or without bundle) should not be considered as revenue for the purpose of levy of LF under the license.

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

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

I. Insurance Claim: Monies received from Insurance claims are used to replenish losses due to damage/destruction of property. Taking insurance is not an activity that is carried in the ordinary course of business to earn revenue. It is rather done to safeguard and maintain the continuous and uninterrupted flow of revenue. Insurance is one of the tools for disaster recovery, and helps restore normalcy in case of loss / damage to the property / asset of an entity.

   Thus, when an entity receives money from an Insurance Claim, it is neither revenue nor 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 management support/ consultancy services. These consultancies vary in their scope and area of expertise.

   There may be situations in which individuals provide consultancy (business or legal or manpower support etc) and generate revenue. Such revenue is generated from the personal efforts of the service provider based on their experience and expertise, and does not require any telecom license. If a company holding a telecom license renders consulting services, these services do not become licenced activities so as to be included in the scope of revenue.

III. Foreign exchange Gains: Foreign Exchange Gains result when liabilities for payments in foreign exchange decrease on account of appreciation of domestic currency vis-à-vis a foreign currency. Foreign Exchange gains generally result on account of revaluation of foreign currency bank balance, revaluation of provisions made for overseas vendors etc. Further, Forex Gains/Losses cannot be termed as Revenue for the following reasons:

a. Forex Gain is not Revenue:

i. As per the Accounting Standard (**"AS"**) 9 (on Revenue Recognition) of the Institute of Chartered Accountants of India (**"ICAI")** Foreign Exchange Gains have been specifically excluded from the definition of Revenue (the extract has been reproduced below).

> *"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. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration."*
>
> *"3. Examples of items not included within the definition of "revenue" for the purpose of this statement is:*
>
> *i. Realised gains resulting from the disposal of, and unrealised gains resulting from the holding of, non-current assets e.g. appreciation in the value of fixed assets;*
> *ii. Unrealised holding gains resulting from the change in value of current assets, and the natural increases in herds and agricultural and forest products;*
> *iii. Realised or unrealised gains resulting from changes in foreign exchange rates and adjustments arising on the translation of foreign currency financial statements;*
> *iv. Realised gains resulting from the discharge of an obligation at less than its carrying amount;*
> *v. Unrealised gains resulting from the restatement of the carrying amount of an obligation"*

b. Forex Gains and losses is dynamic and indeterminable:

i. Foreign exchange gains and losses are dependent transactions (i.e. there can be either a gain or a loss on a particular transaction but there can be a gain and loss on a particular transaction during the period of transaction) and they are added to present a true and fair view of these items in the financial statement. These cannot be equated with “set-off of related items” of expense, as “losses” and “expenses” need to be differentiated. Thus, there cannot be a separate yardstick for gain and for loss so far as foreign exchange fluctuations are concerned.

   It would be arbitrary and premature to only take the gain and not to consider loss as the position on same liability changes from period to period. For e.g. the spot rate of the Dollar is Rs. 54 and the company borrows $100. In Q1, if the $ rate is Rs. 52 then there is a notional gain of Rs. 104 ($2 x 52). Again in Q2, for the same underlying asset, if the dollar rate is Rs 56, then the loss is Rs. 224 (i.e. $4 x 56). It is not fair that in Q1 the gain is chargeable for LF and in Q2 loss is ignored for the same transaction.

ii. There are differential treatments available to account for the forex gain/loss. Firstly, it can be adjusted with carrying value of assets or can be charged off to the Profit & Loss account of the company. Just because a company has followed one practice, it should not have to bear an additional LF liability. (Please refer differential treatment of Forex Gain/loss in IGAAP). Additionally, foreign exchange gains/losses are not specifically covered in the definition of GR in the license agreement.

Thus these gains/losses on account of foreign exchange fluctuation become indeterminable / unascertainable for a particular period as the position taken on this count keeps on changing for the same underlying asset from one period to another.

c. <u>Different Accounting Treatment for Forex Gain:</u>

i. Forex gain/losses could be either be of a CAPEX nature (when it pertains to the loan/liability pertaining to the acquisition of assets) or of an opex nature. These gains/losses of CAPEX nature should not at all be considered as miscellaneous income as per Ministry of Corporate Affairs (**“MCA”**) notification reproduced below as part of AS 11 of ICAI) and is an allowed adjustment of such forex with the cost of assets

   “46.7 In respect of accounting periods commencing on or after 7th December, 2006 and ending on or before 31st March, 2018 at the option of the enterprise (such option to be irrevocable and to be exercised retrospectively for such accounting period, from the date this transitional provision comes into force or the first date on which the concerned foreign currency monetary item is acquired,

whichever is later, and applied to all such foreign currency monetary items), exchange differences arising on reporting of long-term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, in so far as they relate to the acquisition of a depreciable capital asset, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset, and in other cases, can be accumulated in a "Foreign Currency Monetary Item Translation Difference Account" in the enterprise's financial statements and amortized over the balance period of such long-term asset/liability but not beyond 31st March, 2018, by recognition as income or expense in each of such periods, with the exception of exchange differences dealt with in accordance with paragraph 15……"

ii. The unrealized forex gain/loss is primarily a notional adjustment in accordance with the Indian Accounting Standards at a Balance Sheet date and does not represent any cash inflow or outflow; i.e. the impact is primarily due to the cutoff date for the reporting period (Balance Sheet). It may be possible to have an unrealized gain at the end of the one year on account of reinstatement of liabilities/loans denominated in foreign currency into Indian Currency; whereas the same may be completely reversed by unrealized loss in the subsequent balance sheet period/on settlement in the subsequent period. This clearly indicates that forex gains/losses are notional book adjustments and not something that cannot be construed as revenue.

iii. As unrealised gains/losses in a period would not reflect net fluctuation since inception on a transaction, and are notional pending settlement on the settlement date, it is not relevant for this purpose. Many companies enter into hedge contracts to minimize the volatility of foreign exchange gains/losses. It is odd that a company that has entered into a hedge transaction for an underlying foreign exchange asset/liability will have a different LF/SUC liability than a company that has not, since set offs for hedge costs are not allowed. Accordingly, this could be off-setting in nature and would have no impact on GR/AGR.

d. The realized / unrealized forex gains / losses are nothing but an overall business risks that each company with transactions in foreign currencies assumes. **This is not an activity that is controlled and sold** by the entity but is rather a fluctuation due to international market conditions, which are beyond the control of an enterprise. Such gains/losses on account of reduction/increase in the liabilities/loans cannot be considered to be revenue from telecom operations and should not be included in the GR.

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

h) **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 is 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.

i) **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 that needs to be considered as revenue. Thus, the trade discount 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.

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 reach 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 not reached the Company.

While deciding the gamut of revenue and consequent LF & SUC, it is requested that the Authority conduct a judicious and fair analysis of the issues at hand. While doing so references can be taken from other Financial Laws. For example, in case of Excise wherein MRP based taxation is followed, an abatement from MRP is allowed to determine the value of goods on which excise duty needs to be paid. While deciding the abatement, the Government takes into account the cost of goods manufactured as well as a reasonable profit margin. Once this abatement % is fixed, the manufacturer is then allowed to take this abatement on MRP and thus comes the Excise Value on which excise duty gets paid.

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?

Reply Placing reliance on explanations and principle as discussed in the preamble and also our response to Q. No 1 and Q. No. 2, we believe that there is no need to specifically verify non-telecom revenues.

In case the Government wishes to verify the same, reliance may be placed on the audited accounts of the TSP in all such cases. The details can be verified from the financials and if required, further details on any particular item may be sought in a timely manner. A self-certification regime and Self Assessments should be promoted in line with other Financial laws / Acts e.g. Income Tax, Company Law etc.

Details may be asked for under a self-certification or if required further, under certification from 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.

In case further desired, the Department may recommend for a peer review of auditors by an independent firm appointed by CAG to ensure the independence and veracity of audits carried on by the Statutory Auditors of the TSP.

Thus, there is a need for a multi-layered structure in the matter of verification and governance with a clear focus on quality review. Moreover, in our response to Q. No. 2, we have suggested that the LF should be payable on AGR of the licence along with the principles of accounting rules. This will obviate the need of stringent verification, which has become a norm these days.

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?

Reply Licenses are granted only to Companies formed under Indian Companies Act. Once a Company is formed under the Companies Act, they are subject to 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 recommended that these standards should be mandated under the license as well.

Further as per accounting rules, if there is any change / deviation in the accounting policies thereby impacting consistency in accounting in any year the same needs to be reported / disclosed in the financial statement.

In the matter of exempt revenue, it is suggested that the exclusion of non-telecom revenue should not be seen as exempt revenue. These are items that are primarily not part of revenue at all for the purpose of LF levy as these do not have a direct nexus to licensed activities (e.g. dividend, interest etc) or do not fall under the ambit of revenue at all (e.g. forex gain / loss). Since these items are not at all a part of the revenue, it should not be seen as exemption of revenue. It needs to be appreciated that every receipt is not a revenue.

Further, in the matter of verification of revenue from non-telecom activities, the same can be reported as separate line items in the audited financial statement and thus would have no negative impact.

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?

Reply In our response to Q. No.2, we have suggested a simple and judicious revenue share regime with ample clarity on the scope of revenue as well as the determination of revenue. Once the same is implemented, the regime shall automatically become simple. Therefore, we do not see any reasons for increased costs of compliance.

Further, as explained in our response to Q3, changing the level at which LF or SUC is to be applied, or reducing the rate of LF / SUC should not be looked at as substitutes to eliminate the anomalies in the definition of GR / AGR. Instead, both the rates of LF, USO and SUC as well as definition of GR/AGR should be reviewed simultaneously.

Once a system of LFDS gets introduced the collections of levies on transactions between TSPs shall become much more simple and transparent. Thus, the current assessment process which is carried out at CCA levels and are very subjective at present would not be required. However, in order to put in place a better control and governance mechanism, it is suggested that the assessment exercise should be done centrally. Such an approach will remove the instances of subjective interpretation and other administrative hassles.

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?

Reply The concept of minimum Presumptive AGR and consequent levy shall be applied to the licensees only for SUC. The same should not be applied to license fees. Spectrum is a government asset and therefore the government would potentially lose the revenues for its non-utilization. On the other hand no national resource is wasted by applying for a telecom license and therefore the concept of presumptive levy should not be applicable to LF.

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

Reply Intra or Inter roaming charges should be allowed as deductions, due to the following reasons:

a) There is no difference between intra or inter circle roaming since both pertain to using another TSPs network. Hence if inter circle roaming deduction is permissible there is no valid reason for not allowing intra circle roaming deduction.

b) If not allowed as a deduction, there would be a double levy of LF /SUC, which is not the intention of Government and would thereby have a cascading impact on consumer pricing.
c) Intra circle (like inter circle roaming) brings in additional revenue to Government since more customers can enjoy services provided by the Roaming seeker operator. These customer revenues are chargeable to LF/SUC.

Therefore, Roaming will have the same meaning for the purpose of revenues as well as deductions. It cannot be the case that ICR is part of Roaming for Revenues and is not part of Roaming for deductions.

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?

Reply We request the Authority to consider the principles, as explained in our preamble and response to Q. No. 1 & 2.

We also submit that the tower industry has an IP-I registration with the status of an infrastructure provider. Therefore IP-I providers should not be equated with telecom service providers, who are licensees under the Indian Telegraph Act, 1885.

The IP-I registration certificate clearly mentions in Clause 2 "In no case the company shall work and operate or provide telegraph service including end to end bandwidth as defined in India Telegraph Act, 1885 either to any service provider or any other customer".

The difference between the activities under a license granted under S.4 of the Telegraph Act and activities carried out by IP-1s under a registration certificate was recognized in OIL India Ltd vs. Union of India, Petition No.272/2011 whereby the TDSAT has held that:

"Activities in terms of a registration certificate ex facie are not the Activities of a licensee; the same being distinct and separate ones. The Activities of a certificate holder of IP-I Registration being not the Activities carried out by a licensee, the same would not be subject to payment of any license fee while assessing an NLD licensee".

In fact, pursuant to TRAI's recommendations that IP-I operators should be brought under the licensing regime, DoT, in its letter no. 10-51/2008-CS-III dated 29th October 2008, made it clear to the Authority:

"… (i) The matter has been examined and as per the statutory provision, such activity does not qualify for grant of license.
(ii) The revenues and profits from such activities attract necessary statutory charges as applicable e.g. income-tax, corporate tax etc.
(ii) Higher valuation cannot be a reason to bring IP-I under licensing regime.
(iii) There is no bar for a company providing telecom services diversifying its business to other activities such as real estate, licence of space by way of construction of buildings, towers, ducts etc.
(iv) USOF activities are reviewed from time to time and necessary action taken.

(v) Further, TRAI Act does not envisage reconsideration of a final decision' taken by the Government after due consideration, when time span after the decision is short and there is no change in the ground reality.
(vi) Hence there is no case for reviewing the Government decision"

Therefore, we do not see any reason to abandon this position by the government and the Authority now.

However, in case the same is done, deductions should be allowed to TSPs for amounts paid towards availing such infra facilities so that there is no incidence of cascading taxation.

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.

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

Reply The concept of pass through charges is primarily adopted to avoid incidences of double revenue share where two or more operators provide end to end services to customers. During the signing of the earlier set of licenses, voice was the major service and therefore pass through charges were allowed only for voice interconnection and roaming charges. With the changed scenario, non-voice traffic i.e. internet, data, leased line, MPLS, IPLC etc is on the rise and more than two operators collaborate to provide end to end services to customers. While the revenue is collected by one of the operator, it is shared between all operators collaborating to provide end to end services. Non allowance of pass through charges for non-voice traffic leads to incidences of double revenue share for the purpose of LF and SUC. All items listed in paragraph 3.35, except the sharing of infrastructure, fall under licensed activities as none of these could be performed without having a valid telecom license. Irrespective of the charging mechanism employed the fact remains that each of these is essentially input services availed by one TSP from another. While that other TSP pays a LF on the same, no pass through is allowed 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) Interconnection Set-up cost
e) Roaming Signaling Charges

In the matter of sharing of passive infra, as explained in our response to Q15 under the consultation, we are of the strong opinion that no LF/SUC is payable. However inspite of the same, in case IP-I is brought under the licensing regime, a pass-through should be allowed for the same.

Additionally pass through should also be allowed for the following:

a) Pass through for ISP: It is recommended that since the provision for Internet Services has also now been subjected to LF levy, a Pass through for pure internet services should be allowed.

b) Internet bandwidth charges paid by UASL to NLD/ILD operators

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

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.

Reply As explained in our response to Q. No 16, the concept of pass through charges for voice traffic is not different from the non-voice traffic. Therefore, there is no reason for having a different and separate verification / audit trail for ascertaining the pass through charges between two TSPs for non-voice traffics.

Further reference our response to Q. No. 24 it is suggested to introduce a concept of deduction of regulatory levy at source. The same should be implemented through an e-portal managed and maintained by the licensor. The same shall be in line with the TDS mechanism existing under the Indian Income Tax Laws and shall be implemented accordingly. A credit for fee paid should be allowed to the operator basis the certificate generated by the portal. This shall solve the issue of audit trail and evidence as to transactions.

Q19: Please suggest the amendments, if any, required in the existing formats of statement of revenue and licence fee to be submitted by service providers.

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.

Reply Please refer annexure 1 for the format of AGR

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

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?

Reply The requirement of separate audited statements of revenue for the purpose of LF & SUC is recommended. While the audited statement should be provided annually showing quarterly

details, quarterly compliance under self-certification should continue. This is in line with other government levies such as Excise Duty/Service Tax/Income Tax etc.

It is also suggested that there should be a separate statement of revenue for the purpose of levy of LF and SUC, and these should be considered as final documents in the matter of assessment of LF and SUC.

While the Department may ask for further clarification in any matter, however, primary reliance should only be placed on these documents for the purpose of LF & SUC assessment. Such clarifications should be in-line with other Financial Acts / Laws.

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

At present there is no formalized assessment regime followed by DoT and therefore demands are issued by DoT without any recourse/appeal mechanism.

We propose that there should be a formal and time bound annual assessment process (in line with other Financial Acts). This should be followed by DoT as well as TSPs on the basis of which show causes etc may be issued, which after an appropriate Appeal mechanism can translate into Demands.

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

Reply It is recommended that the deduction of LF / SUC at source should be introduced. This shall have the following benefits:

a) It shall bring in more transparency as the Licensor would be in a position to verify the transactions and related LF/SUC paid and claimed by the TSPs
b) It shall simplify the collection of levy
c) Its shall ease out the process of verification of deduction
d) A part of money shall be deposited with Licensor in advance on a monthly basis allowing them a working capital.
e) It shall remove the possibility of items escaping the LF/SUC levy for which deduction has been claimed.

Thus in order to simplify the regime, it is recommended to introduce the concept of LFDS (LF Deducted at Source).

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

Reply While reviewing the regime of revenue share, the following need to be considered favorably:

1. **To promote convergence of technologies:** In the era of convergence of technologies (viz. telecom and broadcasting) the customer expects to receive all kinds of communication and broadcasting services from one entity, e.g. calling and broadcasting (e.g. DTH, Cable). Such convergence with enhanced and innovative

customer services can only be achieved by a single legal entity holding two different licences (say telecom and DTH). However, as on today, the right to grant and administer telecom and broadcasting (say DTH) is vested with two different ministries of the government.

While services like broadcasting, cable, HITS are not subject to any LF; broadcasting services like DTH are subject to LF under a different definition of revenue and format. In order to promote convergence, better customer experience and innovation, the following should be considered:

- If a single legal entity provides telecom, broadcasting, cable and HITS services under one roof to its customers, that legal entity should not be subject to any LF over the revenue earned from broadcasting, cable and HITS services, which otherwise is not subject to LF.

- If a single legal entity provides telecom and DTH services under two different licences then such legal entity should be allowed to segregate the revenue of telecom and DTH separately so that while paying the LF for DTH services to Ministry of Information & Broadcasting, no LF is paid on revenue from telecom revenue and vice versa. This will ensure that it has no bearing on the overall licence fee payouts to the Central Government; while at the same time will avoid any incidence of double licence fee on the same revenue.

2. **Do not hinder the growth of multiple businesses:** TSPs have been asked to pay LF/SUC on the revenue from non-licensed activities. For instance, Arvind Mills with a core business of textiles diversified into telecom for providing Public Mobile Radio Trunking Service. The revenue from telecom activity was miniscule when compared to revenues from core business activity. However, DoT raised the demand of LF on the revenue from those activities, which were non-telecom activities in nature. Such instances should be avoided through a fair and proper regime.

Our overall Recommendations in the matter of defining the scope of Gross Revenue and Adjusted Gross Revenue are as follows:

1. The definition of Gross Revenue and Adjusted Gross Revenue should be consistent and aligned with the License granted for telecom services.

2. The definition of Revenue for levy of Spectrum Charges should also be directly linked to revenue generated by utilization of such Spectrum only and not beyond.

3. The accounting concepts and conventions should be followed and Accounting Standards as laid down by the ICAI should be made part of license. The three fundamental underlying assumption of accounting (i.e. Going Concern, Consistency and Accrual) should be followed consistently and there should not be any discrimination between revenue and expense for that matter.

4. On the issue of making the regulatory levies (i.e. LF & SUC) simple and easy to comply and yet comprehensive, it is suggested to align the process of levy and collection of LF & SUC dues and introduce the concept of levy deducted at source (i.e. LFDS).

5. In line with other Financial Acts / Laws prevailing in the country, the self-rule regime must be promoted. Reliance must be placed on the Audited Accounts / Statements. The rule of self-certification and Audit should be promoted rather than multiple level investigations of TSPs.

6. While allowing deductions, the scope of dual levy should be evaluated and eliminated. There should be allowance for pass-through towards ISP as well as leased line.

7. Primarily there should be no levy of LF on income from provision of Infra Services however incase the Authority decides to levy LF on such income, deduction for such payments made by the TSPs to infra Companies should be allowed.

8. Amendment to Statement of Revenue and License Fees is recommended.

9. The Regulatory architecture and framework must be simple and transparent. The regulatory regime must be rationalized in consonance with the regime of good governance. This will give a boost to the telecom industry which is presently at a critical stage. This will bring conformity with global best practices which is vital for the next generation of telecom reforms.

Annexure-I

ABC Limited						
Circle Office : ________________________						
Corporate Office : ___________________________						
Unified Access Services in XYZ Service Area						
Statement of Revenue and License fee / Spectrum Charges for the quarters ended June 30, September 30, December 31, XXXX, March 31, XXXX and year ended March 31, XXXX						
S.No.	PARTICULARS					(Amount in Rupees)
		Quarter ended June 30, XXXX	Quarter ended September 30, XXXX	Quarter ended December 31, XXXX	Quarter ended March 31, XXXX	Year ended March 31, XXXX
1	**Revenue from services to subscribers**					
A	**Revenue from wireline subscribers:**					
	Post Paid Options					
	Pre Paid Options					
B	**Revenue from WLL subscribers**					
	Post Paid Options					
	Pre Paid Options					
C	**Revenue from Mobile Subscribers:**					
C (a)	**Revenue from GSM including 3G:**					
	Post Paid Options					
	Pre Paid Options					
C (b)	**Revenue from CDMA based Mobile Services:**					
	Post Paid Options					
	Pre Paid Options					
D	**Revenue from BWA Services:**					
	Post Paid Options					
	Pre Paid Options					
2	**Revenue from other OPERATORs** (Provide Operator Wise Detail)					
A	**Call Charges**					
B	**Port Charges**					
C	**Leased Line**					

D	**Cable Landing Stations**					
E	**Revenue from Roaming**					
	……….					
3	**Revenue from sharing/ leasing of infrastructure** (Operator wise Detail)					
4	**Revenue from sale/ lease of bandwidth, links, R&G cases, turnkey projects etc.**					
5	**Any other revenue from telecom license**					
	……….					
	……..					
AA	**GROSS REVENUE: (Add 1-5)**	-	-	-	-	-
	DEDUCTION					
1	**Pass Through Charges (Operator wise detail)**					
A	**For Call Charges**					
B	**Port Charges**					
C	**Leased Line**					
D	**Cable Landing Stations**					
E	**Roaming charges (Operator wise detail)**					
2	**Sharing/ leasing of infrastructure (Operator wise detail)**					
BB	**TOTAL DEDUCTION**					
CC	**ADJUSTED GROSS REVENUE (AA-BB)**					
DD	**REVENUE SHARE @ 8%**					
EE	**LFDS (including SUC)**					
FF	**PAID (DD-EE)**					
Note:						
Separate statement may please be prepared for License Fees, Spectrum Usage Charges and Spectrum Charges on BWA.						
Separate statement may please be prepared for GSM and CDMA.						