

BY EMAIL

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**Shri Maruthi P. Tangirala,
Advisor (F&EA-II),
Telecom Regulatory Authority of India
New Delhi – 110002
Email mptangirala@traigov.in**

Sub.: Response to TRAI consultation paper No. 09/2014 -‘Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges’ dated 31st July 2014.

Sir,

With reference to above, we please to submit our response to TRAI Consultation Paper on “Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges”

We hope that our submissions/inputs will merit for your kind consideration.

Thanking you,

Yours truly,
S.M. Gautam
Consultant
M/S SMG Associates
Consultants
New Delhi

Encl:A/A

Introduction

We thank the TRAI for bringing out this consultation paper No. 09/2014 dated 31st July 2014 titled 'Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges' and we are happy to submit our comments .

The executive summary of our comments are submitted below;

- i. The present AGR regime may be changed to Pure Licensed Gross Revenue from Licensed activities (P-LGR Regime), where only revenue from licensed activities under the licensed should be considered.
- ii. The definition of "Pure- Licensed Gross Revenue" would be 'revenue accrued from the licensed activities carried out under the license, without any pass-through charges (PTC)'. It is clarified that revenue/income from non-licensed activities should not be considered as a part of Gross revenue here.
- iii. The License fee (LF) may be less than 5% on Gross Revenue from licensed activities and it should be gradually reduced to 3 %(2% USO+1% LF) on P-LGR. It is also clarified that the revenue share regime (License fee) cannot be compared with any taxation regimes which have been approved by the Parliament.
- iv. The Gross Revenue should be recognized as per Generally Accepted Accounting Principles (GAAP) mandated under the Companies Act, 2013 or TRAI/DOT as the case may be.
- v. The Revenue and License fee payable statement should be audited by the "joint auditors" appointed by the company. The joint auditors include the statutory auditor of the company and a qualified auditor (under section 139 of the companies Act) from the panel of C&AG of India or as nominated by DOT/TRAI as the case may be. If there are any anomalies in the revenue and license fee payable, it may be directly reported to DOT/ TRAI and C&AG of India.

Question-wise response

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?

Yes, there is a need to review of the present definition of GR and AGR. We have observed from the TRAI's various documents that there are serious anomalies in the

present definitions which have direct impact on the whole eco-system of telecommunication Industry.

There should be a uniform definition of Pure Gross Revenue across the all licenses and telecommunication sector.

Pure -Licensed Gross Revenue (P-LGR) should be “the revenue generated or accrued from the licensed activities under the license only and there should not be any setoff in the name of pass-through charges or deduction of input costs”.

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?

It is submitted that the following guiding principles may be considered:

- A. Pure Licensed Gross Revenue (P-LGR) from licensed activities under the license to be part of Revenue Base;
- B. It should be easy to verification;
- C. There should be transparency and minimum scope for exercise of discretion by the assessing authority; and
- D. Revenue should be recognized as per GAAP or guidelines issued by DOT/TRAI.

It is understood from the TRAI’s consultation paper/ documents that the present AGR regime is not easy to interpret, simple to verify, comprehensive and it does not minimize the scope for the exercise of discretion by the assessing authority.

To overcome the existing problems it is submitted that present regime of regulatory levies on telecom sector may gradually move towards Pure Licensed Gross Revenue (P-LGR) concept for the purpose of levying the license fee or regulatory levies.

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?

It is submitted that the present definition of GR and AGR and rate license should be reviewed and may be modified/ corrected accordingly, based on the industry inputs etc.

The present rate of LF and especially the USO component should be reduced gradually at the level of 2% only.

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?

Only P-LGR should be considered. The Revenue should be recognized as per generally accepted accounting principles (GAAPs).

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?

Yes, it should be on P-LGR. The License fee (LF) may be less than 5% on Gross Revenue from licensed activities and it should be gradually reduced to 3 % (2% USO+1% LF) on P-LGR

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

No, because these are not licensed activities.

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;

The said income items (a to g) as stated in the question no. 7, are not revenues accrued/earned from licensed activities, therefore, these should not be considered.

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.

Only P-LGR should be considered. The Revenue should be recognized as per generally accepted accounting principles (GAAPs).

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?

Presently there are sufficient mechanisms available for proper verification from financial statement under the new companies Act, 2013 and TRAI Act 2007. "No" new mechanism is required.

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?

We understand that there would be no 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?

Yes.

No, we believe that suggested P-LGR will address the all issues of the industry.

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

"No specific Comments"

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

“No specific Comments”

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

Not Applicable in the P-LGR regime

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?

“No specific Comments”

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.

Not applicable under the P-LGR.

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

We understand that Licensee are liable for number of audits i.e. TRAI’s audit, DoT’s audit and C&AG’s audit etc ,therefore, we believe that there is no need for any further mechanism/ audit trail for verification.

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

Not applicable under the P-LGR.

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.

Present format of statement of Revenue and license fee may be modified in such a manner so that it may account for revenue from the licensed activities under the License i.e. P-LGR.

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.

“No specific Comments”

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.

Not Applicable under P-LGR.

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

No, there is no need for audit of quarterly statement of Revenue and License Fee, showing the computation of revenue and license-fee.

We recommend that the concept of “join auditors” may be introduced in the telecom sector which may be comparable with the Banking Industry.

The join auditors should include the statutory auditor of the company and a qualified auditor (under section 139 of the companies Act) from the panel of C&AG of India or as nominated by DOT/TRAI as the case may be. If there are any anomalies in the revenue and license fee payable, it may be directly reported to DOT/ TRAI and C&AG of India.

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?

Not applicable, please refer to Q 22. However, it is submitted that the Revenue Statement should be audited by the “join auditors” who may be appointed as an auditor under section 139 of Companies Act, 2013.

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?

No

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

No specific comments.

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