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Sub: TCL Response towards consultation paper on the definition of Revenue
Base (AGR) for the reckoning of License Fee and Spectrum Usage Charges.

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Respected Sir,

We would like to thank the Authority for taking initiative to launch the Consultation paper(CP) on the important issue of Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges vide your Consultation Paper dated 31st July, 2014 and giving us the opportunity of presenting our views.

This initiative is in line with NTP-2012 wherein one of the key features is the need to rationalize taxes, duties and levies affecting the Telecom Sector and work towards providing a stable fiscal and regulatory regime, which will lead to reduce the LF related legal-disputes and also ensure timely & quick realization of Government dues.

It may not be out of place to mention that a stable fiscal and regulatory regime will also encourage investment and making services more affordable.

Keeping in view the above, our response towards the said CP is attached herewith as Annexure-I.

Thanking you,

Yours faithfully,
For Tata Communications Limited,

Nageswari S.
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TCL response to TRAI consultation-paper on the definition of AGR.

Before proceeding to provide our response on each of the issues raised in the Consultation Paper we would like to highlight the most critical issue facing the ISPs vis-à-vis the recommendations made by the Authority dated 01.05.2014. NTP 2012 as well as recent Digital India program of the Government has rightly laid lot of emphasis on broadband and internet access proliferation.

In this background, it is our view that for the reason of affordability of the broadband services no license fee should be levied on pure internet services in the old ISP licenses and the recommendations dated 01.05.2014 need to be reviewed. Even in respect of the new UL-ISP license where the definition of GR and AGR is being reviewed and examined by the Authority, the revenues from pure internet services should be excluded as a pass through charge for the purpose of computation of license fee.

It may be noted that pure internet services including broadband services can be provided under old BSO, CMSP or UASL license or under old ISP licenses and in the new licensing regime these can be provided under UL-AS license or under UL-ISP license. Those service providers who have been providing pure internet services under any of the old or new access service license have been paying license fee on the pure internet services as they were utilizing the network created under those access licenses. Thus the same access network was used to derive and provide access services as well as pure internet services. In case of ISP or UL-ISP licenses they are providing pure internet services from a network created under the ISP license. The pure internet services is being provided by the access providers is based on a micro cellular network using technologies such as GSM, CDMA, 3G WCDMA and BWA (LTE) whereas standalone ISPs provide pure internet services based on last mile created by them using Wireline network including fibre and administratively allocated spectrum. Thus the nature of the underlying network and cost base through which pure internet services is provided by the access provider and ISPs are different and there is no case for ensuring any level playing field between these two categories of service providers.

Presently there are about 350 ISP licenses under different categories out of which around 150 are operational as against 8 Pan Indian access providers and 2 regional access providers. At the end of March, 2014, there were around 60.87 Million Broadband subscribers majority of which are urban based and from enterprise segment. There is a great need for encouragement to the niche and stand-alone ISPs which are endeavoring to take the broadband to rural and remote areas. The Government recognized this need and has taken the first step to create much needed backbone infrastructure through NOFN project. A lot more facilitation is required through conducive policies as well as special incentives to attract the much needed investment



in this segment. We believe that levy of license fee on pure internet services would adversely impact the broadband proliferation which can be done by the stand alone ISPs.

Levy of LF will be considered as a barriers for ISPs of India when we compare the same with rest of the world;

Most mature regulatory regimes have abolished virtually all entry fees, annual charges, license fees etc. for provision of internet and broadband services. Thus:

- 26 member countries of the European Union have abolished all entry fees, license fees etc. to provide any telecommunications services including internet and broadband services except the payment for spectrum. There is no formality beyond registration.
- US, Canada, Australia similarly impose no barriers on provision of internet and broadband services by companies willing to enter into commercial arrangements
- Singapore, South Africa, Brazil, Sri Lanka specify criteria for ISPs which are less financially burdensome than in India.

As on date the levy of revenue share license fee on pure internet services would result in a very small revenue to the tune of about Rs.50.00 crore whereas exempting the pure internet services revenues as a pass through charge will result in galvanizing the ISPs and UL-ISPs in providing the broadband services with a renewed vigor.

We would therefore request that considering the present financial position of ISP segment, low level of penetration of internet services and affordability of Internet services, the revenue from pure internet /broadband services should not be considered as a part of adjusted gross revenue (AGR) both for the new UL-ISP license as well as for the old service specific ISP licenses.

Q1: Is there a need to review/revise the definition of GR and AGR in the different licenses at this stage? Justify with reasons. What definition should be adopted for the GR in the Unified License in the interest of uniformity?

Ans: It is submitted that there is a very pressing need to review/revise the definition of GR and AGR under different licenses for the sake of clarity in interpretation. The definition of GR under the Unified License should be "the revenue earned from the licensed telecom services rendered under specific licenses."

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?

Ans: We would like to submit that first and most important guiding principle for the designing the framework of revenue share regime should be that, **the revenue base for the purpose of computation of License-fee MUST be restricted to the income derived from the licensed services only.** In our view the present system is not easy to interpret, though simple to verify. However, under the present regime, scope for exercise of discretion by the assessing authority is very extensive, which leads to wrong interpretation and which in turn leads to dispute. **The deductions MUST be allowed for all the charges payable to telecom service providers (TSP). The recipient TSPs consider these charges as revenue, while computing AGR. Therefore Licensor gets the due LF on the said charges, in case the same are not allowed as deductions, it will lead to double levy of LF.**

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?

Ans. We are of the view that both, clarity in the definition of GR and AGR as well as reduction in the rate of LF is required to be considered. While the issues relating to clarity in the GR/AGR definition has been dealt elsewhere in our where in our response we would here like to delve on the Reduction of the rate of LF.

The License-fee levy on ILD and NLD Licenses have been abnormally increased from 6% to 8% (33.33%) w.e.f. 1st April, 2013 (kindly refer Table 2.1 at page no. 15 of the CP), without considering its serious financial implications on stand-alone ILD and NLD Licensees. Introduction of uniform LF @8% was done to remove the arbitrage opportunity which was available to the vertically integrated Operators but also ended up collaterally damaging the financial condition of standalone Long Distance Operators.

In case of TCL, the said 33.33% increase of License-fee under the said Licenses, have adversely affected and dented the financials of the company. It may please be noted that in cases of Access and Cellular services providers, the Licensor has reduced the LF rates from 10% to 8% for Metro circles (which contributes a significant part of revenue) , which has a positive impact on financials of the said Licensees, even after enhancement of LF rates from 6% to 8% for Category "C" circles. This has put TCL in disadvantageous position in comparison to other ILD and NLD operators, who are also holder of Access and Cellular Licenses.

Further, a careful study/analysis of the Table 2.3 at page number 17 of the Consultation-paper, it is submitted that as on 31st March, 2012 i.e. before enhancement of LF rates in two phases, 86% of LF collection comes from Access Licenses and ILD and NLD licenses contributes only 2.61% and 11.94% respectively, to the total LF collection.

We would also like to submit that out of 8% AGR LF , 5 % AGR is because of USOF levy whereas 3% AGR is the actual LF. Keeping in view of the increased coverage of services in rural areas and low utilization of USO Fund as depicted in the CP, it would in the fitness of the things that USO Fund levy component of the LF is reduced for all the services licenses from 5% AGR to 2 % AGR resulting in total LF as 5 % of AGR (3% AGR as LF and 2% AGR as USOF levy).

Keeping in view the above, TCL therefore earnestly request to kindly consider our request for reduction in LF rates from 8% to 5% of AGR.

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

Ans: We would like to submit that the revenue base for the levy of license fee and spectrum usage charges should only include income accruing from the licensed activities and MUST exclude all other revenue/income. A License agreement is between Licensor and Licensee which stipulates both, the privileges enjoyed by the Licensee and the obligations imposed upon the Licensee while the Licensor delegates, under a consideration, the sovereign right for providing the telecom services to the Licensee in accordance with the first proviso of the Section 4 of the Indian Telegraph Act 1885. Such consideration therefore has to be only in relation with the income derived from the licensed activities and therefore all other income accruing from non-licensed and non-telecom activities should necessarily be excluded from the computation of the revenue base (GR).

Q5: Should LF be levied as a percentage of GR in the place of AGR in the interest of simplicity and the ease of application? What should be the percentage of LF in such a case?

Ans: No, we are of the view that LF should not be levied as a percentage of GR in the place of AGR, in the interest of simplicity and ease of application.

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

Ans: No, in our view, the revenue base should not include 'other operating revenue' and 'other income', for calculating LF and SUC. The telecom licenses are issued only to carry out licensed services/activities and therefore while computing LF, the revenue base should be restricted to the revenue from licensed services only subject to our submission in respect of pure internet services in Section-II of the covering-letter.



Q7: Specifically, how should the income earned by TSPs from the following heads be treated? Please give the 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.;

Ans: We would like to submit that the income earned from the above mentioned activities are not derived from the licensed specific activities i.e. activities which can be done only after obtaining a license under Section 4 of the Indian Telegraph Act 1885 and hence are non-licensed income. In other words, no telecom license is needed to earn interest, dividend, interest on income-tax refund, foreign-exchange gain, income from consultancy & management-fee, property rent, dark fibre etc. **Therefore all such income MUST be excluded in the revenue base, for computing the LF and SUC.**

Q8: What categories of revenue/income transactions qualify for inclusion in the revenue base of TSPs on 'net' basis? Please support your view with the accounting/legal rules or conventions.

Ans: In our view, revenue/income earned from the licensed services only should be considered in the revenue base of TSPs . The telecom licenses are issued under Indian Telegraph Act 1885 for provision of licensed services only, therefore categories of revenue/income earned from licensed telecom services should only be included in the revenue base of TSPs.

Q9: What are the mechanisms available for the proper verification from the financial statements of TSPs of items/income proposed to be excluded from the revenue basis, especially for TSPs engaged in multiple businesses? Would new verification mechanisms be required?

Ans: We would like to submit that under the present system, licensees are required to submit license-wise annual audited AGR statements to licensor. The said statements are duly audited by statutory auditors of the licensee and the details of revenue/cost is provided on quarterly basis, which are duly reconciled with the annual audited accounts of the licensees. We understand that the present system is sufficient to identify the GR and AGR, for computation of license-fee.

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?

Ans: Accounting Standard- 9 on "recognition" of revenue is the basis for accounting the revenue by TSPs, which is subject to audit by the statutory auditors. Therefore in our opinion there is no scope for any innovative accounting that could be adopted by TSP/licensees. Exempting other income from the revenue base will have no impact on the verification mechanism to be adopted by licensor. Presently, licensees are required to submit annual audited accounts (license-wise) to licensor, with a Reconciliation-statement duly audited by the statutory-auditors of the licensee company.

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 the providing for additional exclusions from the top line?

Ans: We are of the strong belief that when the clarity in the definition of GR and AGR gives clear guidance to Licensor and Licensees, there will not be any ambiguity and hence interpretational issued between the Licensor and Licensees. Hence it is unlikely that there would be any additional cost that would be incurred by the Licensor. Given the fact that the Licensees are required to submit the annual audited AGR statement duly audited by statutory auditors.

We would also like to submit that the definition of AGR should not remain unchanged once the revenue base is reduced by providing for additional exclusions from the top line. The deductions MUST be allowed w.r.t. all charges payable to other service providers, as the same are income in the hands of other TSPs and they pay License-Fee on the same.

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

Ans: We believe there is no case for prescribing minimum presumptive AGR.

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

Ans: We believe there is no case for prescribing minimum presumptive AGR.

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

Ans: Yes, in our view, intra circle roaming charges paid to another TSP should be treated as a component of PTC, because the same is income/revenue in the hands of other TSP and considered for the computation of AGR.

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?

Ans: In our opinion, the permissible deductions should include all charges payable to other TSP. In context of the possibility of bringing IP-I providers under the licensing regime, the charges payable to them MUST be considered as deductions from the GR for computation of AGR, as the same is income/revenue in the hands of IP-I providers and considered for the computation of AGR. Further, even in the present regime, we are of the view that charges payable to IP-I providers should be allowed as permissible deductions from the GR.

Q16: Should the items discussed in paragraph 3.35 be considered as component of PTC and allowed as deductions from the GR to arrive at AGR for the purpose of computation of license fee? Please provide an explanation for each item separately.

Ans: The items discussed in paragraph 3.35 are as under:-

- (a) Lease line charges,
- (b) Port Charges,
- (c) Cable landing station charges,
- (d) Sharing of infrastructure charges,
- (e) Interconnection set-up cost,
- (f) Roaming Signaling charges,
- (g) Receipt of USO funds,

Yes, in our view the above items should be considered as a component of PTC and allowed as deductions from GR to arrive at AGR for the purpose of computation of license-fee, since such charges payable by one TSP to other TSP, for the purpose of connectivity of their networks for carriage of voice/data traffic.

The TRAI Regulation on IUC charges, also mention that Lease-line charges and Port charges are IUC charges as the same are paid by interconnection seeker to interconnection provider, for carriage of traffic. The recipient TSP of the said transaction include the same in their GR and pay license-fee to licensor and hence the same should be treated as component of PTC and allowed as deduction from GR, to the interconnection seeker TSP. In case it is disallowed, this will lead to double levy of license-fee.

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

Ans: In our view, presently licensees submit license-wise audited AGR statement along with details of Revenue, deductions and License-fee, on yearly basis. A reconciliation statement is also submitted, duly audited by statutory auditors of the licensee company.



Therefore we are of the view there is no need for any further mechanism/audit trail is required in this regard.

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

Ans: We are of the view that the charges payable by one TSP to other TSP, for network connectivity/carriage/delivery of traffic, should be considered as PTC. Such charges are revenue in the hands of recipient TSP and are considered for computation of AGR.

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

Ans: The existing formats of statement of revenue and license-fee should only include revenue earned from license specific activities i.e. from licensed services only and MUST exclude all other kinds of revenue/income. Further, all charges payable by one TSP to another TSP should be considered as PTC and should be allowed as deduction from the GR.

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.

Ans: In our view, there is no need to develop one format under Unified License for combined reporting of revenue and license-fee. Only revenue, from the services authorized under Unified License (UL), should be reported under UL regime. The present system of reporting of revenue under respective licenses (other than UL) should continue.

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 items as deduction.

Ans: In our view, presently licensees are required to submit license-wise audited AGR statements to licensor, duly audited by statutory auditors of the licensee company. The said statements include quarter-wise details of revenue, deductions claimed and license-fee, along with a reconciliation statement. The details of quarterly license-fee paid is also provided in a format provided under the license-agreement. Therefore the present system is sufficient to verify the additional deductions.

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

Ans: No, in our considered opinion, since the quarterly AGR numbers are derived from the quarterly audited (limited review by statutory auditors) financials, therefore there is no need for audit of quarterly statement of Revenue and License Fee, showing the

computation of revenue and license-fee. Further, it may please be noted that presently, licensees submit annual audited AGR statements, in which details of revenue and license-fee is provided on quarterly-basis. Keeping in view this system, the audit of quarterly statement of Revenue and License-fee will be a duplication of activity, which will burden the licensees with additional efforts and extra cost.

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?

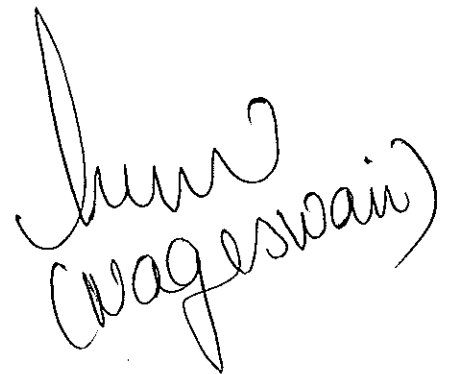
Ans. Not applicable.

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?

Ans: No, we are of the view that there is no requirement to introduce deduction of LF at source on the payment being made by one TSP to another TSP, since this would lead to significant increase in efforts by TSPs.

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

Ans: We would like to draw the kind attention of the Authority to the issues raised by us in the beginning of our Annexure-I. i.e. levy of license-fee on pure internet service in respect of old ISP license as well as the new UL-ISP license and Reduction of LF under ILD & NLD Licenses in response to question-3 , respectively.


(Anurag Swain)