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To:
Mr. Arvind Kumar, Advisor
(Networks, Spectrum & Licensing),
Telecom Regulatory Authority of India,
New Delhi-110002
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Dear Sir,

Sub: Consultation Paper (“CP”) on “Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR” released on 28.12.2012.

We are Category ‘A’ ISP-IT Licensee (NO. 820-49/2002-LR dated 01.04.2002) and with reference to the above subject, we wish to furnish our comments in summary form as under and in detail as in Exhibit attached:

Summary:

Issues	Sify’s Comments
Issue no. 1	<p>1. License fee shall be levied only on the revenues which have been accrued on the strength of the license granted under section 4 of the Indian Telegraph Act, 1885 and not on the revenue from non-telecom activities i.e activities for which no telecom license is required to carry on such activity.</p> <p>2. The concept in the lines of VAT (Value added tax) need to be introduced to avoid double taxation for the Data Service Providers who are providing services by taking input bandwidth from other service providers.</p> <p>3. To encourage ISPs to provide internet / broadband services at affordable services, the following shall be excluded from the Gross Revenue to arrive at the AGR:</p> <p>a. Revenue from Pure internet services (means any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-design, web-hosting and web-colocation which is available on internet without access restriction), Internet access, Internet Content and Internet Access related installation;</p> <p>b. Government levies and taxes if Gross Revenue had included such component of levies and taxes;</p> <p>c. Pass-through charges paid to other service providers i.e. payment for port charges, lease lines charges, bandwidth charges on which license fee has already been paid by the licensee as an input cost.</p>
Issue no. 2	<p>Since ISPs are not granted exclusive rights, there is no limit on number of market players and the cost of entry is low – <u>Presumptive AGR is not seen as to be introduced at this point in time.</u></p>
Issue no. 3	<p>Proposed statement is Annexed.</p>

EXHIBIT

We have provided our opinion based on the following facts and analysis:

1. Internet Service Industry was opened to private operators in 1998 with a view to encourage growth of Internet and increase Internet penetration. A supportive policy regime with liberal regulatory approach was adopted with no license fee, no entry fee, very liberal roll out obligations and no cap on number of Internet service providers in a license area.
2. Supported by Government policies, a good number of players (388 ISPs as of 31.12.2011) entered the market which resulted in awareness of benefits of Internet usage, fall in internet tariffs and thereby increase in usage of Internet across the country. The subscriber base grew from 0.28 million in March 1999 to 3.04 million by March 2001 and to 24.01 Million by September 2012. However, considering the aspirations of general public, the objectives of the Government and the potential the Internet can bring a change in the lives of common people, students, employees, various organizations, etc. the reach of internet is still far behind than it would have been.
3. Importance attributed to the Broadband in India can be envisaged from the speech of The Hon'ble Prime Minister of India Dr. Manmohan Singh during his inaugural speech on National Telecom Policy 2012 where he stressed the importance of Broadband by adding that, "Broadband improves the lives of people by providing affordable access to information and knowledge. Many Information and Communication Technology applications such as e-commerce, e-banking, e-governance, e-education and telemedicine require high speed Internet connectivity. Studies show that there is a direct correlation between an increase in broadband connectivity and growth in a country's GDP. "The advent of smart phones and tablets at reasonable prices along with wide availability of telecom infrastructure across our country would provide an opportunity for us to ensure an equitable spread of broadband services. We must, therefore, seize this opportunity. Recognizing the significance of broadband connectivity as a tool for empowering our rural masses, our government has launched the National Optical Fiber Network project to provide broadband connectivity to all our Panchayats. I am confident that this unique project will usher a new era in telecommunications by establishing information highways across the whole length and breadth of our country, particularly in rural areas. I would urge all government departments and the private sector to work creatively to ensure that this infrastructure is efficiently used to make broadband services truly affordable."
4. The objectives of National Telecom policy 2012 envisages the "Broadband on Demand" that "to Provide affordable and reliable broadband-on-demand by the year 2015 and to achieve 175 million broadband connections by the year 2017 and 600 million by the year 2020 at minimum 2 Mbps download

speed and making available higher speeds of at least 100 Mbps on demand". TRAI in its Recommendations on The National Broadband Plan 2010 envisaged the provision of 75 million broadband connections (17 million DSL, 30 Million cable and 28 million wireless broadband) by 2012 and 160 million broadband connection by 2014. However, the actual number 24.01 million is far below the target envisaged by TRAI.

5. The Global Information Technology Report 2012, World Economic Forum published by ITU (International Telecommunication Union) -
 - a. revealed that broadband penetration is directly related to its cost, relative to an average family income, as well as to the availability of products and services that accommodate the general population's purchasing ability. For example, as the annual cost of broadband drops below 3 % of a family's annual income, its use begins to increase dramatically.
 - b. indicated that India cannot afford broadband at the 3 percent GNI PPP income threshold. It is further noted that as per ITU Measuring the Information Society, 2012 report of ITU, in India, the mobile broadband prices as a percentage of GNI per capita (2011) was 8.9% and in the case of fixed broadband prices, it was 5.5% as percentage of GNI per capita (2011).

From the above facts, it is clearly demonstrated that the Broadband services need to be fast-tracked and at the same time shall be made available at the affordable Prices. This further throws a challenge to both the Government and ISPs to achieve the set milestones by cooperating with each other in the best interests of the Nation.

Therefore, basis above facts and analysis, we recommend **to the Issue no.1** that the following need to be considered while framing the AGR definition for provision of internet services:

- a. ISPs shall not be treated on par with UASL (Unified access Service Licence), CMTS (Cellular Mobile Telephone Service) and BSO (Basic Service Operator License) Licenses to provide level playing field for ISPs
- b. **Exclude** revenue of Licensee Company which has not accrued on the strength of license granted under section 4 of the Indian Telegraph Act, 1885. The revenue from non-telecom activities shall not be considered.
- c. Recognition of a concept like that of Value added Tax (VAT) in order to avoid multi-stage assessment of license fee thereby avoiding cascading impact of license fee on the end user i.e. double taxation. This is specifically in the context of data service providers who are providing telecom services by taking input bandwidth from other telecom service providers. (Presently, ISP operators are subject to the double-assessment of license fees because input costs (ie wholesale bandwidth costs which already reflect the 7-8% license fee), are not deductible from the adjusted gross revenue on which the license fee is calculated).

Proposed definition of AGR for provision of Internet services:

“Adjusted Gross Revenue for the purpose of levying Licence Fee as a percentage of revenue share shall mean the “Gross Revenue” accruing to the licensee by way of operations of the internet service included under the Licence as reduced by the following items:

- a. *Revenue from Pure internet services (means any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-design, web-hosting and web-colocation which is available on internet without access restriction), Internet access, Internet Content and Internet Access related installation;*
- b. *Government levies and taxes if Gross Revenue had included such component of levies and taxes;*
- c. *Pass-through charges paid to other service providers i.e. payment for port charges, lease lines charges, bandwidth charges on which license fee has already been paid by the licensee as an input cost.*

Note: Any taxes having cascading effect shall be allowed to be deducted.

Issue No.: 2

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

Our comments-

The presumptive fee is not justified when there is no opportunity or likelihood of hoarding resources, such as spectrum and numbering, which imposes an opportunity cost on others. More so, since the ISPs do not have an exclusive licence, they cannot prevent further market entry by virtue of being early entrants. The entry fee for the ISP licence is not sufficient deterrent to new players. *Therefore, there is no reason to impose a presumptive Licence fee on any licences, which offer no exclusive rights, when there is no limit on number of market players and cost of entry is low.*

Issue No. 3: Please suggest the amendments required in the formats of statement of revenue and licence fee reported by various categories of Internet service licensees and UAS licensees.

Our comments:

We propose the *Annexed format* to be applicable to ISPs:

Annexure

Format of Statement of Revenue and Licence Fee (Name and address of operator)

ISP Licence No. in _____ (Service Area)

Statement of Revenue and Licence Fee for the Quarterof the financial year.....

(AMOUNT IN RUPEES)

S.N	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.
1	Revenue from services			
A	Revenue from Internet Access Service:			
A1.	Post-paid options:			
i	Rentals			
ii	Activation Charges			
iii	Service Tax			
iv	Service charges			
v	Charges on account of any other value added services. Supplementary Services etc.			
vi	Any other income/ miscellaneous receipt from post-paid options.			
A2.	Pre-paid options:			
i.	Sale of pre-paid option including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
B	Revenue from Internet Content Service:			
B1.	Post-paid options:			
I	Rentals			
Ii	Activation Charges			
Iii	Service Tax			
Iv	Service charges			
V	Charges on account of any other value added services.			

	Supplementary Services etc.			
vi.	Any other income/ miscellaneous receipt from post-paid options.			
B2.	Pre-paid options:			
i.	Sale of pre-paid option including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
C	Revenue from Internet Telephony Service:			
C1.	Post-paid options:			
i	Rentals			
ii	Activation Charges			
iii	Service Tax			
iv	Service charges			
v	Charges on account of any other value added services. Supplementary Services etc.			
vi	Any other income/ miscellaneous receipt from post-paid options.			
C2.	Pre-paid options			
i.	Sale of pre-paid option including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
D	Revenue from any other value added service			
i.	MPLS, VPN			
ii.	Others			
2	Revenue from Sale/ Lease of bandwidth, links, Rent			

	and Guarantee (R & G) cases, turnkey projects etc.			
AA	GROSS REVENUE OF THE LICENSEE COMPANY: (Add 1 + 2)			
3	DEDUCT:			
A	Revenue from Internet Access Service (1 A)			
B	Revenue from Internet Content Service (1 B)			
C	Service Tax paid to the Government			
D	Pass-through charges paid to other telecom service providers i.e. payment for port charges, lease lines charges, bandwidth charges on which license fee has already been paid by the licensee as an input cost			
E	Other taxes and levies paid to the Government			
BB	TOTAL DEDUCTIBLE REVENUE = (3A+3B+3C+3D+3E)			
CC	ADJUSTED GROSS REVENUE (AA-BB)			
	REVENUE SHARE @ ----- OF ADJUSTED GROSS REVENUE			