



TCL/RA/TRAI-CP/2012-13/01

January 31, 2013

Advisor (NSL)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi – 110002

Sub: Response to TRAI Consultation Paper on Definition of AGR in License Agreement for provision of Internet Services

Dear Sir,

Kindly find enclosed herewith the Tata Communications Ltd. response to TRAI Consultation Paper dated 28.12.12 on Definition of AGR in License Agreement for provision of Internet Services for your consideration and perusal please.

With kind regards,  
For Tata Communications Ltd.

A handwritten signature in black ink, appearing to read 'Praveen Sharma', with a horizontal line underneath it.

(Praveen Sharma)  
Head – Regulatory Affairs

Encl: a/a.

**TATA COMMUNICATIONS**

**Tata Communications Limited**

VSF Bangla Sahib Road New Delhi 110001 India  
Tel +91 11 66501111 66501234 Fax 91 11 66501140  
Regd office: VSF, Mahatma Gandhi Road, Fort, Mumbai 400 001 India

## **TCL Response to TRAI CP on ISP License AGR**

This is with reference to TRAI Consultation Paper No.19/2012 dated 28<sup>th</sup> December, 2012 for definition of AGR in License agreement for provision of Internet Services and minimum presumptive AGR. In this connection, we thank the Hon'ble Authority for providing the opportunity to respond on the very vital issue of computation of License Fee for ISPs.

The consultation Paper seeks responses to 3 questions highlighted below for which following general comments/ inputs are offered below for kind consideration of the Hon'ble Authority.

TCL recommends that the following principle may be adopted while framing the AGR definition for provision of internet services:-

- a. Levy license fee on the revenues which have been accrued on the strength of the license granted under section 4 of the Indian Telegraph Act, 1885 i.e. revenues accruing from the licensed services only.
- b. Exclude revenue of Licensee Company which has not been accrued on the strength of Internet Service License, granted under section 4 of the Indian Telegraph Act, 1885. To say that revenue from non-licensed activities/services should not be considered for the purposes of computation License-fee liabilities of the licensees.
- c. The above principles were duly adopted by the Respected TRAI, while submitting its Recommendations dated 13<sup>th</sup> September, 2006, to Hon'ble TDSAT in the matter of AGR disputes in 2006. The TDSAT judgment dated 30<sup>th</sup> August 2007 in the said dispute, has duly acknowledged the said recommendations of TRAI including the broad principles and rationale thereof.
- d. Recognition of the concept 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 (i.e. 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).

- e. While, the ISP policy of 1998 was remarkably clear in terms of the direction, barring only internet telephony, the amendments subsequently have truncated the broad objectives established earlier. Government at that time had taken decision to exclude revenue from pure internet service from the definition of AGR for ISP license, due to the reasons of promotion of internet access services, affordability, socio-economic benefits and its role in e-governance services to all especially to rural India. However, the growth has not been able to reach the desired mark leaving it still at a very nascent stage and as on September, 2012 there are only 24 Million broadband connections. In order to ensure the proliferation of broadband services in the country on the lines of mobile telephony growth, it is an absolute must and a policy imperative that internet access services should not be levied any license fee and should be part of pass through charges. TRAI should use this opportunity to unshackle the Internet access services once again, not only with a view to grow and boost broadband internet, but also to boost innovation and development of new content and applications.

### **TCL Comments on issues for consultation:-**

**Q.1. Stakeholders are requested to give their comments on definition of AGR for all three categories of ISP licenses.**

#### **TCL comments:-**

In the Consultation Paper following categories of ISP License are mentioned:

“The definition of AGR in the ISP License Agreements for provision of Internet Services, and amendment in the license(s) thereof, in the following categories:-

- ISP license(s) granted under 1998 guidelines (ISP Category Licence)
- ISP license(s) granted under 2002 guidelines and subsequently under 2007 guidelines (ISP-IT Category Licence)”

We recommend the following definition of AGR for provision of Internet services for the ISP IT licenses granted under 2002 guidelines as well as under 2007 guidelines:-

“Adjusted Gross Revenue for the purpose of levying License Fee as a percentage of revenue share shall mean the “Gross Revenue” accruing to the licensee by way of operations of the internet access service including internet telephony services (as covered under the scope of clause 35 of Schedule “C” Part I under the heading “DEFINITIONS, INTERPRETATIONS AND PROVISIONS RELATING TO THE CONDITIONS” included in our License agreement no.820-7/2002-LR dated 03/05/2002) and as reduced by the following items:-

- (a) Revenue from pure Internet access/Broadband service.
- (b) Government levies and taxes;
- (c) Charges paid to other telecom service providers/NIXI
- (d) Bad debts written off

**Q.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?**

**TCL comments-**

We recommend that there shouldn't be any presumptive AGR. As we believe that a presumptive fee cannot be 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 license, they cannot prevent further market entry by virtue of being early entrants. The entry fee for the ISP license is not a sufficient deterrent to new players. Therefore, *there is no reason to impose a presumptive License fee on any licenses, which offer no exclusive rights, when there is no limit on number of market players and cost of entry is low.*

Presumptive AGR goes against the very principles of the move towards revenue sharing adopted in 1999 under NTP-99. The basis of that move was that operators must not be burdened with fees, a priori, but must share, with the government, a portion of actual revenues for services that they provide or accrued from these services.

**Q.3. Please suggest the amendments required in the formats of statement of revenue and license fee reported by various categories of Internet service licensees and UAS licensees.**

**TCL comments:-**

We recommend that the formats of statement of revenue and license fee should be modified in light of the submissions /points given in response to question number 1 above of this response .

There are number of issues concerning inclusion of certain revenue/ income streams in the AGR definition which are not from telecom activities. It is important that statement of revenue & license fee is corrected to take care of these concerns.

License Fee as a percentage of Adjusted Gross Revenue should be applicable only from the revenues accruing to the licensee from the

provision of licensed activities under the license. Pass through revenues should comprise of all revenues paid out to the other licensed telecom service providers and deduction should be allowed for payments made to other telecom licensees to avoid double incidence of license fee. We suggest following corrections in the format for statement of revenue & license fee.

S. No	Item	TCL Recommendations
1	INCOME FROM DIVIDEND	Exclude from the AGR definition should not be included in the AGR being a non-licensed activity
2.	<p>Interest Income :</p> <p>a) Interest Income Interest earned on investment of savings made by a licensee after meeting liabilities including liability on account of share of the Govt. in the gross revenue.</p> <p>b) Interest earned on investment of funds received by way of deposits received by licensees on account of securities against charges, particularly, from customers using international long distance calls service whose bills are heavy.</p> <p>c) Interest earned on deposits received by way of deposits from customers on account of concessions given in the charges payable for sing the telecom services.</p>	Interest income should not be included in the AGR as this income is not from the telecom activity.
3.	Capital Gains	Please exclude from the AGR definition being a non-licensed activity
4.	Gains from foreign exchange rate fluctuations	Please exclude from the AGR definition being a non-licensed activity
5.	Reversals of provisions and Vendors' credit	Please exclude from the AGR definition being a non-licensed activity
6.	Income from property rent	Exclude property rental income as this income is from other than telecom

		activity.
7.	Income from sale /lease of Passive Infrastructure like Towers, Dark Fibres etc	<p>a) Many charges which are paid by one operator to another operator are treated as revenues at the hands of both the operators resulting in cascading license fee applied at every stage in the supply chain without any deduction for license fee already paid at earlier stage. For example charges under leased circuits, port charges, co-location, dark fiber, towers etc. telecom operator to the other. These charges are not allowed as deduction.</p> <p>b)</p> <p>c) As per Value Added taxation principle charges for input services should be allowed to be off against the final product else there is cascading impact of taxation. In view of this it is suggested that input services like leased circuits, port charges, Dark Fiber etc should be allowed exclusion from AGR as pass thru charges.</p>
8.	<p>Other including Misc Income</p> <p>a) Revenue streams like sale of tenders, directories, forms, forfeiture of deposits/earnest money, management fees, consultancy fees, and training charges from the telecom service should form part of AGR</p> <p>b) Revenue from sale of fixed assets which is in nature of capital receipts and insurance claims should not be part of AGR.</p> <p>c) Payments received on behalf of third party</p> <p>d) Other items falling under</p>	<p>a) Exclude</p> <p>b) Exclude</p> <p>c) Exclude</p> <p>d) Include/Excluded on case to case basis.</p>

	the categories of miscellaneous/other income will have to be decided for taking a view regarding its inclusion or exclusion on a case to case basis	
9.	Any other miscellaneous receipt from investments	Please exclude from the AGR definition being a non-licensed activity
10.	Revenue from sale of equipment including CPEs/handset	Exclude (provided the sale is discernible and on stand-alone basis. In case of bundled sales include only if equipment is priced higher than costs plus say 10% profit and against such higher price telecom services are provided free or on subsidized basis.
11.	Deduction of Leased Line charges, Port Charges, Interconnection Set Up costs, Signalling charges.	Allow deduction as these are akin to PSTN charges (on bulk basis).
12.	Bad Debts, Waivers, Discounts from AGR	a) License Fee is payable by the TSPs even in cases no amount is collected against issued invoices. This is undue hardship on the licensee as there is not only loss of the revenue but also loss of License fee on the same. The amount of bad debt in the telecom sector is high. Equity demands that at least license fee corresponding to the amount written off by the service provider be allowed to him to be adjusted against his future liability.
13.	Inclusion of items of revenue on accrual basis but exclusion of items of cost on actual payment basis.	Inclusion/ exclusion of an item should both be on accrual basis.
14.	Notional income	Any income, which is not going to accrue telecom

		operators directly or indirectly, should not be included in AGR.
15.	Third party Contract	Any income which is accruable to a third party for providing services to subscribers, which does not require any telecom license, should not be included in AGR of telecom operator, viz. Charging Installation charges by third party to subscribers for installing customer premises Equipment (CPEs).