



TELECOM REGULATORY AUTHORITY OF INDIA

Recommendations

On

Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services And minimum presumptive AGR

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CONTENTS

	TITLE	PAGE NUMBER
	INTRODUCTION	1
CHAPTER-1	ISSUES AND RECOMMENDATIONS	5
CHAPTER-2	SUMMARY OF RECOMMENDATIONS	28

INTRODUCTION

1. Telecom Regulatory Authority of India (TRAI) received a reference from the Department of Telecommunication (DoT) vide letter No. 820-1/2006-LRVol(II)Pt. dated 22.10.2012 seeking Authority's recommendations under Section 11(1)(a)(ii) of TRAI Act, on the following:
 - (i) 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)
 - (ii) Applicability of minimum presumptive AGR and value, if applicable, for BWA Spectrum holders under Internet Service/Access Service license(s), keeping in view the provisions of NIA of 3G/BWA spectrum auction and in case of other licenses with or without spectrum, including access service licenses.
 - (iii) Amendment in the "Format of Statement of Revenue and Licence Fee" to be reported by various categories of Internet Service Licensees and UAS Licensees. [Annexure-I]
2. For framing the recommendations, the Authority issued a consultation paper on "Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR" on 28th December 2012.

Through this consultation paper views of the stakeholders was sought on the definition of AGR for ISP licence agreements; applicability of minimum presumptive AGR and value, if applicable, for BWA Spectrum holders under Internet Service/Access Service license(s) and amendment in the “Format of Statement Revenue and Licence Fee” for Internet Service Licensees and UAS Licensees. In response to the consultation paper, twenty three comments were received from the stakeholders. These have been posted on TRAI’s web site www.trai.gov.in. Open house discussions on this subject were held at New Delhi on 21st February 2013.

3. During the consultation process some of the stakeholders proposed a uniform licence fee across all telecom services. The Authority was also given to understand that the DoT was contemplating seeking recommendations of TRAI on review of definition of AGR for other licenses. The Authority had, therefore, suggested to the DoT in August 2013 that a reference may be made at the earliest so that comprehensive review could be undertaken. It was also indicated to the DoT that recommendations on the definition of AGR for only ISP licence may create a non-level playing field among various Telecom Service Providers (TSPs).
4. In response to this letter, the DoT in February 2014 communicated that “non finalization of definition of AGR/LF is leading to delay in migration of existing ISPs to Unified Licence [UL] and the issue of new ISP licenses under UL. Accordingly the recommendations of the Authority on ISPs may be expedited without linking the same with the other issues.”. [Annexure-II]

Thus the points of reference made earlier by the DoT stand confined to ISPs only.

5. Therefore, based on the submissions received from the stakeholders in writing and in the open house session, the issues have been examined and appropriate recommendations have been given in the following Chapters.

CHAPTER-1

ISSUES AND RECOMMENDATIONS

A:- Definition of AGR in the ISP Licences granted under the 1998, 2002 and 2007 guidelines

Brief background of the various ISP licences and relevant provisions

1.1. The DoT reference covers three different categories of licences granted for provision of Internet services. The first category of licences were granted on the basis of guidelines issued in November 1998. No licence fee was applicable on these licensees till 31.10.2003. From 01.11.2003 a token licence fee of Rs 1/- per annum was payable. The clause related to licence fee in the licence is as follows:

“1.1. Quantum of Licence fee and Schedule of Payments

(i) The licence fee is payable by the licensee in consideration for grant of this licence, for the complete duration for which this licence is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider/DOT/MTNL/VSNL/Departments of the Central or State Government/local or statutory bodies.

(ii) The Telecom Authority has decided to waive the Licence Fee for a period upto 31.10.2003. For those ISPs also who obtain licences prior to 01.11.2003, a nominal licence fee of One Rupee per annum will become payable from 01.11.2003.”

1.2 The second category of ISP licences[ISP (IT)] issued under the 2002 guidelines, permitted provisioning of Internet Service including Internet telephony. Till 31.10.2003 there was no licence fee imposed on the licensees providing Internet telephony. From

01.11.2003 a token licence fee of Rs 1/- per annum was payable by this set of licensees too. The clause related to licence fee in this category of ISP licenses is as follows:

(i) The licence fee is payable by the licensee in consideration for grant of this licence, for the complete duration for which this licence is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider/DOT/MTNL/VSNL/Departments of the Central or State Government/local or statutory bodies.

(ii) The Telecom Authority has decided to waive the Licence Fee for a period upto 31.10.2003 and a nominal license fee of One rupee per annum will become payable from 01.11.2003; however, the Telecom authority reserves the right to review and impose license fee including Universal Service Obligations (USO) levy anytime during the validity of the license, which decision with its terms and conditions, shall be binding on the licensee.”

1.3 On 03.03.2006, DoT amended the ISP licence agreement for provision of Internet Service (Including Internet Telephony). A licence fee of 6% of AGR was made applicable on these licensees w.e.f. 01.01.2006. AGR included revenue earned from Internet telephony but excluded revenue from Internet access and Internet content. The ISP licence agreement was amended as follows:

1.1 Quantum of Licence fee and Schedule of Payments

(i) The licence fee is payable by the licensee in consideration for grant of this licence, for the complete duration for which this licence is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider /BSNL/MTNL/VSNL/ Departments of the Central or State Government/local or statutory bodies.

(ii) The Telecom Authority has decided to waive the Licence Fee for a period upto 31.10.2003 and a nominal licence fee of One Rupee per annum will become payable from 01.11.2003 upto 31.12.2005.

(iii) With effect from 01.01.2006, annual licence fee annually @ 6% of Adjusted Gross Revenue (AGR), excluding spectrum charges will be applicable in addition to Rupee One per annum. The Licensor reserves the right to modify the above mentioned Licence Fee any time during the currency of this Agreement.

.....

*(v) **Definition of 'Adjusted Gross Revenue':***

*a) **Gross Revenue:***

The Gross Revenue shall be inclusive of Internet access service, internet content service, Internet Telephony service installation charges, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

b) 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:

(i) Charges from Internet access, Internet content and Internet access related installation charges.

(ii) 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."

1.4 The third category of ISP licences were issued under 2007 guidelines, wherein licence fee of 6% of AGR and a minimum license fee of Rs 50,000/- per annum for category 'A' ISPs and Rs 10,000/- per annum for category 'B' ISPs were specified. Definition of AGR was also revised and AGR excluded revenue from pure Internet service, activation charges from pure internet subscribers, Service & Sales tax and roaming revenue actually passed on to other eligible/entitled telecom service provider. The

clause related to licence fee and definition of AGR in the licence agreement under the 2007 guidelines are as follows:

“17.2 Licence Fees: An annual licence fee @6% of Adjusted Gross Revenue (AGR) as defined in Condition 18 , subject to minimum of Rs.50,000/- (Rupees Fifty Thousand Only) and Rs.10,000/- (Rupees Ten Thousand Only) shall be payable for category ‘A’ & ‘B’ service areas respectively per annum per licensed service area.”

“18. Definition of ‘Adjusted Gross Revenue’ :

18.1 Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, 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.

18.2 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:

- (i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-collocation which is available on internet without access restriction.*
- (ii) 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.*
- (iii) Roaming revenue actually passed on to other eligible/ entitled telecom service provider.”*

1.5. On 29.06.2012, the DoT amended the ISP licence and revised the licence fee to 4% and 7% respectively for the period from 1.7.12 to 31.3.13 for ISP and ISP (IT) licences respectively and a uniform licence fee of 8% of AGR w.e.f. 01.04.2013 for both the categories of licences. As per this amendment, revenue for the purpose of licence fee for ISP and ISP-IT category shall provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenue from Internet services would also be included in the definition of AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard.

1.6. The relevant para of the amendment is as follows:

“A uniform licence fee rate of 8% of “Adjusted Gross Revenue (AGR)” shall be adopted for all ISP and ISP-IT licences, in two steps starting from 01.07.2012 as follows:

Category of Licence	Details	Annual Licence fee rate as % of AGR	
		For the period from 01.07.2012 to 31.03.2013	For year 2013-14 and onwards
ISP	Licence for provisioning of Internet services issued under 1998 guidelines (without Internet Telephony)	4%	8%
ISP-IT	Licence for provisioning of Internet services (including Internet Telephony) issued under 2002 guidelines, Licence for provisioning of Internet services issued under 24.08.2007 guidelines	7%	8%

Revenue for the purpose of licence fee for ISP category shall provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services will also be included in the definition of applicable AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard.”

- 1.7. As noted earlier, the issue of definition of AGR for the ISPs was referred to the Authority along with the issue of applicability of presumptive AGR on them by the DoT in October 2012. However, in the meantime, some ISPs and their association, Internet Service Providers Association of India (ISPAI) filed a petition against the amendment in the ISP Licence notified by the DoT. The Hon’ble TDSAT set aside the above amendments in the ISP licence. In its judgement dated 12.10.2012, Hon’ble TDSAT inter-alia ruled that:

“If, moreover, before amending the terms and conditions of the contract relating to payment of license fee is to be taken, the same was required to be finally taken and not provisionally and that too subject to the recommendations of TRAI.

Presumably the Central Government was required to consider all aspects of the matter including the question as to whether the petitioners with regard to the ‘pure internet service’ vis-à-vis the services rendered by the UAS licensees have a level playing field. If they do not, appropriate measures may have to be taken in that behalf but the Petitioners could not have been asked provisionally to pay on the basis of the AGR, wherefor the final decision was to be taken at a later stage.”

Comments of the Stakeholders on the definition of AGR for ISP licence Agreements

- 1.8. In the consultation paper stakeholders were requested to give their comments on definition of AGR for all three categories of ISP licences.

- 1.9. In response, some of the stakeholders mentioned that all the categories of ISP licenses should adopt a uniform principle for calculating the AGR, which should only consider revenues accrued on the strength of the underlying telecom license and exclude revenue which is not accrued on the strength of the license. They mentioned that Section 4 of the Indian Telegraph Act, 1885 empowers DoT to grant a Licence to a private party to establish, maintain or work a Telegraph, on such conditions as it thinks fit and the right conferred under the said proviso is confined to “establishing”, “maintaining” and “working of a telecommunication”. They stated that the License Fee can and should only be levied on the revenue which has been accrued from the telecom activities and services licensed by the government to the telecom operators i.e. relating to establishment, maintenance and working of telegraph.
- 1.10. Most of the stakeholders were of the opinion that AGR should exclude revenues earned from pure internet services in order to enhance spread of affordable internet & broadband services in India and to achieve the targets as envisaged in National Telecom Policy 2012. They were of the view that at present, the payments made by ISPs for inputs like bandwidth are not allowed as deductions while calculating AGR, even when the bandwidth provider has already paid license fee on revenue received from the end service provider. According to them, this results in double assessment of license fee on the same revenue.
- 1.11. Some of the stakeholders suggested that Government taxes & levies and charges paid to other telecom service providers /NIXI should be deducted from GR while calculating AGR. They also pointed out that some State Governments have started levying

entertainment tax on the VAS components of telecom service across many Service Areas and therefore the scope of service/sales tax deduction allowed under license presently should be extended to include the entertainment tax as well.

- 1.12. Some of the stakeholders were of the view that the current definition of AGR in ISP licence is appropriate and should continue. One of the stakeholders mentioned that with the technological advancements various telephony and other services are also provided over Internet and it becomes difficult to know how much revenue is made from these services. It was also suggested that a reasonable amount of revenue sharing say 4%-5% of the revenue generated from all services should be levied.

Analysis of the comments/issues

- 1.13. The views of most of the service providers were largely similar. They are in favour of keeping certain revenue streams out of the purview of AGR, especially the revenue from the pure internet services. However, some of the stakeholders, who are mostly non-operators, opposed exclusion of Internet services revenues from the AGR. In their view, technological advancements have made it difficult to determine the quantum of revenue made from a particular service. They also underlined the need for level playing field in the telecom sector.
- 1.14. This is not first time the issue of definition of AGR or licence fee applicable on ISPs is being examined. The Authority had examined these issues in-depth and had given suitable recommendations in the past more than once. The Authority has always been of the view that for ensuring level playing field

amongst various service providers, preventing revenue leakage and to remove arbitrage opportunities, the definition of AGR and rate of licence fee etc should be uniform across all the licences including the ISP licence.

- 1.15. In its “Recommendations on Components of Adjusted Gross Revenue” dated 13th September 2006, the Authority had highlighted the need for a uniform rate of licence fee in view of the arbitrage opportunity associated with the ISP licence and observed that a uniform licence fee regime could obviate the practice of diverting revenue by the ISPs from one service to another service having lower incidence of licence fee. The Authority had pointed to the scope for creative accounting and booking of revenues in a manner to reduce the incidence of licence fee in a non-uniform licence fee regime. The Authority had recommended that internet revenue should be a part of the AGR for ISPs and inter-alia observed as follows:

“3.17.3.2 As far as inclusion of internet income in the AGR under Unified Access Licence the Authority noted that the scope of the Licence has been expanded and now unified access providers can provide internet service under that Licence. The Authority further noted that licence fee is payable on revenues from internet telephony.

3.17.3.3 The Authority observed that many service providers are now integrated operators and provide all telecom services. Since licence fee on number of services is charged at different rates, it is possible for the service providers to book revenues in such a manner that licence fee liabilities are minimized. The Authority noted that recently DoT has brought a few services at par for payment of licence fee. The Authority therefore observed perhaps a uniform rate licence fee regime could obviate the recourse of diverting revenue from one service and booking it to another where incidence of licence fee is lower.”

- 1.16. On a reference from the DoT, the Authority had undertaken a consultation process in 2007 with stakeholders, on issues exclusively relating to Internet Services. In this process, the Authority had examined in detail issues like existence of grey market operations, provision of various services under ISP license, steps to facilitate technological innovations and issues relating to level playing field vis-à-vis other telecom service providers and gave its recommendations to the DoT on “Review of Internet services” on 10.5.2007.
- 1.17. In the 2007 recommendations too, the Authority had given a considered opinion on the definition of AGR for ISPs taking a comprehensive view of the then existing licensing regime as below:

“4.5.1. The present licensing regime envisaged different license for provision of different services like UASL, CMTS, BSO and ISP. The regime also clearly defines services permitted under different licenses. However the technological advancement has blurred the boundaries between various services provided under different licenses. Now Internet is permitted under CMTS and UASL license, BSOs are permitted to provide Broadband and ISPs are permitted to provide Internet telephony services within limited scope of license. Financial regulatory levies under different licensing regime for providing similar services are different, which results in non-level playing field.

4.5.2 The Authority has noted that Internet Telephony Service Providers (ITSPs) pay 6% of AGR on the earnings from Internet telephony services only as License fee. Internet access charges have been exempted from AGR at present. Many integrated service providers who have been permitted to provide Internet access including Internet telephony in their CMTS and UASL licenses have also obtained separate licenses for ISP operations, and are providing Internet services under these licenses. Instances have come to the notice where segregation of revenues earned from various revenue streams of Internet becomes difficult which may give way to accounting jugglery resulting in reduced

license fee payments to the government. Therefore there is a need to stop revenue leakage and prescribe uniform formula for imposing license fee.

4.5.3 In view of the above analysis, the Authority recommends a uniform annual license fee equivalent to 6% of AGR on all ISPs including revenues earned from provision of Internet Access, Value Added Services and Broadband in ISP domain. This will ensure level playing field vis-a vis other telecom operators.”

1.18. The DoT did not accept the recommendations to include revenue from Internet access in the AGR for the purpose of licence fee while announcing the revised guidelines for grant of ISP licence in August 2007. The Authority wrote to the DoT seeking due consideration of this recommendations in December 2007. The DoT replied in February 2008 that the “matter has been reconsidered and it is felt that there is no need to review the decision..”.

1.19. The issue of licence fee and AGR for ISPs again came under the consideration of the Authority while providing recommendations to DoT on “Spectrum Management and Licensing Framework” in May 2010. In the recommendations dated 11th May 2010, the Authority yet again articulated its view for uniformity of licence fee and the need for preventing the scope for arbitrage as follows:

“2.106. The Authority in its recommendations on “Review of Internet services” sent to DoT on 10th May, 2007 observed that there was a need to stop revenue leakage and prescribe uniform formula for imposing licence fee and recommended a uniform annual licence fee equivalent to 6% of AGR on all ISPs including revenues earned from provision of Internet Access, Value Added Services and Broadband in ISP domain. It also recommended a single Internet service provider licence. In the letter dated 31st March, 2009 to the DoT as a follow-up to the recommendations dated 18th August, 2008 on “Issues relating to Internet

Telephony”, the Authority once again underlined the possibilities of arbitrage and pointed out that most of the UAS licensees, who can provide internet and broadband including triple play services under UASL, also take separate ISP licence and provide these services (Internet and broadband services) under ISP licence, thereby avoiding the incidence of licence fee.

2.107. The above position has not changed and the Authority feels that the recommendations given earlier should be given consideration. Some stakeholders have represented that levying licence fee on Internet service providers providing pure Internet access would come in the way of the spread of Internet and broadband in the country and jeopardize the growth of telecom sector. The Authority has duly considered this matter. The growth of Internet so far has been low and falls far short of the targets. There is no demonstrable correlation between the absence of licence fee and growth of Internet spread. On the other hand, the lack of licence fee enables scope for arbitrage as brought out by the Authority in the past.

- 1.20. Technology has blurred the differences between different conduit systems and today, the same services are capable of being delivered through different technologies/platforms. Going ahead, innovations in the areas of technologies and service provision will only make it further difficult to segregate the revenues service-wise. The Authority does not find any reason to deviate from its earlier consistent position that regulatory framework should ensure level playing field for all Licensees for fair competition and to prevent misuse of any terms & conditions of the licence. The developments in the telecom sector, since the Authority’s earlier recommendations that ISPs should be treated at par with other TSPs in the matter of definition of AGR and licence fee, have not thrown up any reasons for deviating from that position. On the other hand, they have only strengthened the consistent and reasoned

stand of the Authority for a move towards a uniform licence fee regime.

1.21. Keeping in pace with technological and market developments, the Indian telecom sector has moved to Unified Licensing Regime enabling the provision of various services, both existing and new, by the service providers without the need for separate additional licenses. Having taken the logical step of implementing a unified licence with the objective of providing a simple and clear licensing framework of all kinds of telecommunications services, the Authority is of the opinion that the definition of AGR and licence fee shall be uniformly applicable for ISP licences at par with licences for other telecom services. This view is consistent with the recommendations of the Authority on various earlier occasions in the matter.

1.22. **The Authority, therefore, recommends that a uniform licence fee of 8% of the AGR shall be applicable for all ISP and ISP-IT licences. Revenue for the purpose of licence fee for ISP and ISP-IT category shall include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services shall also be included in the definition of AGR.**

B: Applicability of minimum presumptive AGR and value, if applicable, for BWA Spectrum holders under Internet Service

- 1.23. In the consultation paper stakeholders were requested to give their comments whether 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.
- 1.24. In response a number of stakeholders were of the view that there should not be any presumptive AGR in the telecom sector, as the concept of presumptive AGR is contrary to the principles of revenue sharing regime adopted in 1999. They were of the opinion that the presumptive charge is a continuous levy and continues despite the operator having rolled out the services, thus, the logic of it being charged to drive operator to roll-out the service or only have serious players in the market, does not hold good. Some stakeholders suggested that the better way of ensuring the roll-out of service by the operators within the given timeframe is to either have punitive action on operators who have not rolled out the prescribed services within the stipulated timeframe or to have some other levy payable by them only till the time they start the services under the license as stipulated under the roll-out obligation.
- 1.25. Some of the stakeholders are of the opinion that 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.

- 1.26. Some of the stakeholders mentioned that the NIA under Para 3.4.2 imposed stringent roll-out obligation for BWA spectrum holders wherein it requires 50% of the rural SDCAs to be covered within a span of five years. They further stated that the operators have proceeded with planning and deployment of their networks with a view to achieve this mandatory coverage target in the due course of five years. According to them NIA provides for heavy penalties for non-compliance of these roll-out obligations in addition to the risk of revocation of the spectrum allotment. They were of the view that the BWA spectrum, obtained through auction was bid for by the participants on the basis of the Notice Inviting Application dated 25th Feb 2010, which did not mention any presumptive AGR to be imposed on the BWA spectrum holder. Therefore, any significant financial or non-financial change, directly or indirectly, to the conditions of NIA after the auction will significantly impact the business viability of the operators and is legally not tenable.
- 1.27. Some of the stakeholders were of the opinion that all existing spectrum holders (except BWA spectrum) are already using the allotted spectrum for commercial services and paying the license fee & spectrum usage charges on the basis of applicable AGR and hence minimum presumptive AGR is not relevant for any existing licensee. They also mentioned that in case any presumptive AGR is prescribed, it must be for new licensees only to ensure efficient utilization of scarce spectrum and faster roll-out of commercial services.
- 1.28. Some of the stakeholders suggested that a minimum license fee & spectrum usage charges based on minimum presumptive

AGR should be prescribed in order to ensure efficient utilization of scarce spectrum by its holders especially the BWA spectrum for which the roll-out obligations are five years from the date of its allotment.

- 1.29. One of the stakeholders suggested that there should be a minimum presumptive AGR applicable for all types of licenses, with or without spectrum. According to them this should be calculated as a percentage of minimum expected/estimated revenue and should be charged on a progressive basis.

Analysis of the Issues

- 1.30. Presently, presumptive AGR is applicable under the Unified Licence agreement. There is no presumptive AGR or minimum amount of licence fee in the licences like Basic Service Operator (BSO) licence, Cellular Mobile Telephone Service Provider (CMTS) licence, Unified Access Service (UAS) licence, National Long Distance (NLD) licence, International Long Distance (ILD) licence and Internet Service Providers (ISP) licences issued prior to August 2007. The ISP licences issued after August 2007 provides for a minimum amount of licence fee of Rs 50,000/- per annum for category 'A' ISPs and Rs 10,000/- per annum for category 'B' ISP as under:

“17.2 Licence Fees: An annual licence fee @6% of Adjusted Gross Revenue (AGR) as defined in Condition 18 , subject to minimum of Rs.50,000/- (Rupees Fifty Thousand Only) and Rs.10,000/- (Rupees Ten Thousand Only) shall be payable for category 'A' & 'B' service areas respectively per annum per licensed service area.”

- 1.31. The context in which DoT has referred this issue is evident from paras 5-6 of their reference dated 22/10/12:

“5. TRAI in Para 2.133 of its recommendations dated 11.05.2010 on “Spectrum Management and Licensing Framework ”has given recommendations with respect to Minimum presumptive AGR for licensees holding GSM and CDMA spectrum but no specific recommendation has been made with respect to minimum presumptive AGR for UAS/ISP licensees holding BWA Spectrum.

6. TRAI is therefore requested to give its recommendations with respect to minimum presumptive AGR for BWA spectrum holders under ISP/Unified Access Service Licence(s) keeping in view the provisions of NIA for 3G/BWA spectrum auction.

Further, TRAI is requested to examine the issue related to presumptive AGR in case of other licences with or without spectrum, including access service licenses, while giving their recommendations.”

- 1.32. The DoT reference has referred to the recommendations of TRAI of May 2010 regarding presumptive AGR. It is, therefore, extremely important to look into the recommendations referred to by the DoT and to understand its context, intent and relevance. The para 2.131 & 2.132 of the said recommendations spells out the views of the Authority and the rationale behind them:

2.131. Presently, the rollout obligations for new licensees are applicable from the date of allocation of start-up spectrum. However, it is noticed that some service providers do not commence their operations even after the lapse of sufficient time. Although the licence conditions contained provisions for levying liquidated damages, the amounts involved are low and are not deterrent enough to oblige the service provider to commence operations/conduct its operations such that the spectrum is efficiently utilized. A new licensee having received initial start-up spectrum and not commencing its services results in the Government not receiving its due share of annual licence fee and

spectrum charges as a percentage of the AGR. As such, inefficient usage of spectrum leads to loss of government revenues. The Authority is of the firm opinion that such possible loss of revenue needs to be plugged. And in this direction, the Authority proposes to levy the license fee and spectrum usage charges as a percentage of a presumptive adjusted gross revenue or the actual adjusted gross revenue, whichever is higher.

2.132. To this end, the Authority has examined the service area-wise market share of both the GSM operators and the CDMA operators, who hold the UAS licences and who have been allocated the start-up spectrum in the last 24 months....”[emphasis supplied]

- 1.33. Hence the Authority’s recommendations of 2010 relating to presumptive AGR, cited by the DoT in its reference, was with reference to a specific situation for reasons recorded in an unambiguous manner in the recommendations. Certain mobile operators who received the licence linked start-up spectrum at the administered price in the earlier licensing regime were occupying the limited competitive space without rolling-out the services. The Authority tried to address that situation to ensure that the TSPs roll out their networks speedily and to protect the legitimate revenues of the Government. The Authority did not recommend levy of presumptive AGR on spectrum assigned to a licensee at market determined prices through an auction process, as implemented by the DoT in the new licensing regime and introduced as part of Unified Licence.
- 1.34. The Unified Licence Agreement issued by the DoT provides for payment of minimum presumptive AGR as under:

“18.2 License Fee:

18.2.1 *In addition to the Entry Fee, an annual License fee as a percentage of Adjusted Gross Revenue (AGR) shall be paid by the Licensee service-area wise, for each authorized service from the effective date of the respective authorization. The License fee shall be 8% of the AGR, inclusive of USO Levy which is presently 5% of AGR.*

Provided that from Second Year of the effective date of respective authorization, the License fee shall be subject to a minimum of 10% of the Entry Fee of the respective authorized service and service area as in Annexure-II.

18.2.2 *In case the Licensee obtains access spectrum for operation of any authorized service in a service area, a 'presumptive AGR' for that authorized service and service area shall be arrived at in accordance with the relevant provisions of the Notice Inviting Application (NIA) document of the auction of spectrum or conditions of spectrum allotment/LoI as the case may be. The License Fee based on presumptive AGR shall be applicable from the date of issue of Letter of Intent earmarking such spectrum or the effective date of the license/authorization, whichever is later. The Licensee shall, in such cases, pay the license fee on the presumptive AGR or actual AGR or the minimum license fee referred in condition 18.2.1, whichever is higher.*

In case, the Licensee obtains spectrum for any service and service area in different bids, the total presumptive AGR shall be the sum of the presumptive AGRs calculated on the basis of the respective Bid amounts as prescribed in the respective NIA or conditions of spectrum allotment/LoI as the case may be.

Provided that, for the spectrum obtained in the auctions conducted in November 2012 and March 2013, the presumptive AGR, for Access services shall be equal to 5% of sum of the total bid amount by the Licensee for the respective Service Area."

- 1.35. Thus, under the new licensing regime, the DoT had made presumptive AGR applicable on access spectrum assigned at market prices. However for obvious reasons, there is no incentive for a licensee who bought the spectrum at market prices to hoard or under- utilize it. It is inconceivable to

imagine a commercial entity incurring a huge investment to acquire resources and then choosing to suffer monumental losses by deliberately not utilizing the resources. In addition, there are roll-out obligations to be met by the licensee within specified time frame, failing which, it faces the prospects of losing the assigned spectrum, which means losing the investment altogether. Therefore it is illogical to presume that DoT's decision to apply minimum presumptive AGR on spectrum assigned at market prices was based on Authority's reasoning while trying to address a situation analogous to spectrum hoarding.

- 1.36. However, the Licensor in its wisdom, has implemented the policy of presumptive AGR on access spectrum assigned at market prices. Therefore, now it is necessary that the policy is applicable uniformly to all licensees in a non-discriminatory manner to ensure level playing field. When rules of competition are changed or new rules are introduced, there has to be forward parity as well as backward parity to ensure that the same set of rules apply on all players operating at any given point of time. As per the licensing policy implemented by the DoT, presumptive AGR is applicable on the access spectrum auctioned from 2012 onwards whereas the BWA spectrum auctioned in 2010 does not attract presumptive AGR, though it is within the definition of access spectrum. Commercial use of Spectrum assigned through similar modes are to be governed by similar sets of terms and conditions. It will be against the rule of fair play if TSPs who have obtained spectrum through the mode of competitive bidding are subjected to different sets of conditions for its utilization.

- 1.37. It is undisputed that level playing field is the pre-requisite for a fair competition and it is the cardinal responsibility of the regulator to provide and ensure level playing field for all players. The Authority cannot precipitate a situation where one bunch of operators would be privy to favourable set of operating conditions vis-à-vis their competitors, even if it was resulted during the course of a policy change, as some stakeholders would prefer to put forth.
- 1.38 Few stake holders have submitted that the Notice Inviting Application for BWA spectrum did not mention any presumptive AGR and any significant change to the conditions of NIA after the auction will not be legally tenable. The NIA laid down the conditions of auction and assignment of the spectrum. But the licence fee payable by the licensee is governed by the terms and conditions of the licence and not that of NIA. The terms and conditions of the various licences for telecom services including UL confer the licensor with the right to modify the terms and conditions of the licence including the quantum of licence fee payable. As repeatedly stressed in these recommendations, the Authority believe that uniform licensing regime across all services and licences should be one of the guiding principles of any effective licensing framework.
- 1.39. The Authority is, therefore, of the opinion that minimum presumptive AGR should be applicable on BWA spectrum held by ISPs as well for the purpose of payment of Annual licence fee. While recommending this, the Authority would like to

make it clear that it shall not be construed as grounds for deferring or relaxing roll-out obligations cast upon the licensee as a part of the terms and conditions of the spectrum assignment. The licence fee based on spectrum fee linked presumptive AGR shall only be a transient arrangement valid upto the specified period by which the licensee is mandated to meet the roll-out obligations, which is 5 years in the case of BWA spectrum allotted to ISPs in 2010. There should not be any extension of time limit for meeting the roll-out obligations or any corresponding extension for holding spectrum beyond the specified 5 years period. The spectrum assigned shall be withdrawn immediately on expiry of the 5 year period in case the licensee fails to meet the roll-out obligations and request for extension of time shall not be admissible on any ground.

1.40. **The Authority accordingly, recommends as follows:**

a) Minimum presumptive AGR for the purpose of licence fee shall be applicable on the existing ISPs holding the BWA spectrum as applicable to the licensees who obtained access spectrum through competitive bidding.

b) For the existing ISPs who are holding BWA spectrum from the 2010 auction, the value of presumptive AGR, shall be equal to 5% of sum of the total bid amount by the Licensee for the respective Service Area, as applicable to the licensees who obtained spectrum in the auctions conducted in November 2012 and March 2013.

C:- Amendment in the “Format of Statement of Revenue and Licence Fee” to be reported by various categories of Internet Service Licensees.

- 1.41. This issue is directly related to the definition of AGR which has been discussed in Section A of these recommendations. The Authority has provided recommendations relating to the terms & conditions to be applicable on the Revenues and Licence fee for ISP licenses granted under the 1998, 2002 and 2007 guidelines in Para 1.22 above. **The DoT may accordingly devise/modify formats of Statement of Revenue and Licence Fee for all categories of ISP licences.**

CHAPTER-2
SUMMARY OF RECOMMENDATIONS

- 2.1. The Authority recommends that a uniform licence fee of 8% of the AGR shall be applicable for all ISP and ISP-IT licences. Revenue for the purpose of licence fee for ISP and ISP-IT category shall include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services shall also be included in the definition of AGR.
- 2.2. Minimum presumptive AGR for the purpose of licence fee shall be applicable on the existing ISPs holding the BWA spectrum as applicable to the licensees who obtained access spectrum through competitive bidding.
- 2.3. For the existing ISPs who are holding BWA spectrum from the 2010 auction, the value of presumptive AGR shall be equal to 5% of sum of the total bid amount by the Licensee for the respective Service Area, as applicable to the licensees who obtained spectrum in the auctions conducted in November 2012 and March 2013.
- 2.4. The Authority has provided recommendations relating to the terms & conditions to be applicable on the Revenues and Licence fees for ISP licenses granted under the 1998, 2002 and 2007 guidelines as above. The DoT may accordingly devise/modify formats of Statement of Revenue and Licence Fee for these 3 categories of existing ISP licences.

820-1/2006-LR Vol(II)Pt.
 Government of India
 Ministry of Communications & IT
 Department of Telecommunication
 Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001
 (DS Cell)

To,

Secretary,
 Telecom Regulatory Authority of India,
 Mahanagar Doorsanchar Bhawan,
 Jawaharlal Nehru Marg
 New Delhi.

Dated : 22/10/2012

Sub:- The definition of "Adjusted Gross Revenue (AGR)" in all categories of Licence Agreement for provision of Internet Services (ISP & ISP-IT) and minimum presumptive AGR.

Licence Agreements for the provision of Internet Service, have been classified into following two categories:-

Category of licence	Details
ISP	Licence for provisioning of Internet services issued under 1998 guidelines (without Internet Telephony)
ISP-IT	Licence for provisioning of Internet services (Including Internet Telephony) issued under 2002 guidelines, Licence for provisioning of Internet services issued under 24.08.2007 guidelines

2. The ISP licences issued under 1998 guidelines provide only for a token licence fee and AGR was not defined in these licences.

In the ISP-IT licences issued under 2002 guidelines, initially there was only a token licence fee. Subsequently with an amendment dated 3.3.2006, Licence Fee as 6% of AGR was imposed on these licensees and AGR was also defined in this amendment. No minimum licence fee was stipulated for these licensees. Definition of AGR, as per the said amendment, is reproduced below:-

"Definition of 'Adjusted Gross Revenue':

a) Gross Revenue:

The Gross Revenue shall be inclusive of Internet access service, internet content service, Internet Telephony service installation charges, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

b) 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:

(i) Charges from Internet access, Internet content and Internet access related installation charges.

(ii) 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 ISP-IT licences issued under 2007 guidelines, Licence Fee as 6% of AGR was imposed on these licensees and a minimum licence fee to be paid by the licensee was specified. Definition of AGR in these licences is reproduced below:-

"Definition of 'Adjusted Gross Revenue':

18.1 Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, 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.

18.2 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:

(i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-colocation which is available on internet without access restriction.

(ii) 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.

(iii) Roaming revenue actually passed on to other eligible/entitled telecom service provider."

3. While considering TRAI recommendations dated 11.05.2010 on "Spectrum Management and Licensing Framework", with respect to AGR under Licences for provision of Internet Service (with and without Internet Telephony), the government, inter-alia, decided the following:

"Revenue for the purpose of licence fee for ISP Category may provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services will also be included in the definition of applicable AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard."

This has been informed to the ISPs as a part of communication dated 29.06.2012, revising the licence fee. (copy enclosed). Therefore the definition of "Adjusted Gross Revenue" is to be included /amended in various categories of Licences for provisioning of Internet Services (with and without Internet Telephony), granted since 1998 and amendment in the licence(s) thereof.

4. TRAI is therefore requested to give its recommendations w.r.t. inclusion/amendment of the definition of AGR in all the categories of ISP Licence. These recommendations are being sought with respect to existing licensees only and do not take into account the impact of liberalization of spectrum and future licences under Unified Licensing regime. However this definition should also cater to ISP licensees with standalone BWA spectrum.

Further TRAI may indicate the various components of service provisioning by these Licensees which may be included/excluded from the AGR definition like revenue from web-hosting, web-colocation, cloud services, sale of IT Components, bundled/unbundled services with Internet/broadband bandwidth etc.

5. TRAI in Para 2.133 of its recommendations dated 11.05.2010 on "Spectrum Management and Licensing Framework" has given recommendations with respect to minimum presumptive AGR for licensees holding GSM and CDMA spectrum but no specific recommendation has been made with respect to minimum presumptive AGR for UAS/ISP licensees holding BWA Spectrum.

6. TRAI is therefore requested to give its recommendations with respect to minimum presumptive AGR for BWA Spectrum holders under ISP/Unified Access Service licence(s) keeping in view the provisions of NIA for 3G/BWA spectrum auction.

Further, TRAI is requested to examine the issue related to presumptive AGR in case of other licences with or without spectrum, including access service licences, while giving their recommendations.

In addition, TRAI is requested to give its recommendations with respect to requirement of separate stream wise AGR accounting for each type of spectrum.

7. In view of above, I have been hereby directed to seek the recommendations of Telecom Regulatory Authority of India, under Section 11(1)(a)(ii) of TRAI Act, on

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

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

(ii) **Applicability** of minimum presumptive AGR and value, if applicable, for BWA Spectrum holders under Internet Service /Access Service licence(s), keeping in view the provisions of NIA of 3G/BWA spectrum auction and in case of other licences with or without spectrum, including access service licences.

(iii) Amendment in the "Format of Statement of Revenue and Licence Fee" to be reported by various categories of Internet Service Licensees and UAS Licensees.

8. While considering the matter above, TRAI may keep in view the feasibility/desirability of maintaining stream-wise AGR in multi band scenario for various types of licences (unliberalised and future liberalised spectrum scenario in same band may also be considered).


22/10/12

(Ritu Pande)

Dir(DS-III)

Government of India
Ministry of Communications and IT
Department of Telecommunications
(Data Services Wing)
Sanchar Bhawan, 20, Ashoka Road, New Delhi-110117

No. 820-01/2006-LR (Vol-II)Pt.

To,

All Internet Service Providers (ISPs)

Dated : 29.06.2012

Subject: Amendment with respect to Licence Fee (LF)-regarding

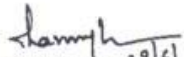
In pursuance of the right of Licensor to modify at any time the terms and conditions of the License Agreement for provision of Internet Services, in public interest or for the proper conduct of the service, the Licensor hereby intimates that:

A uniform licence fee rate of 8% of "Adjusted Gross Revenue (AGR)" shall be adopted for all ISP and ISP-IT licences, in two steps starting from 01.07.2012 as follows:

Category of licence	Details	Annual Licence Fee rate as % of AGR	
		For the period from 01.07.2012 to 31.03.2013	For year 2013-14 and onwards
ISP	Licence for provisioning of Internet services issued under 1998 guidelines (without Internet Telephony)	4%	8%
ISP-IT	Licence for provisioning of Internet services (including Internet Telephony) issued under 2002 guidelines, Licence for provisioning of Internet services issued under 24.08.2007 guidelines	7%	8%

Shamph
29/6/12

2. Revenue for the purpose of licence fee for ISP Category shall provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services will also be included in the definition of applicable AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard.
3. Necessary amendment(s) to the Licence Agreement(s) to above effect will be issued in due course of time.
4. Please acknowledge receipt.


(Sanjay Kumar) 29/6/16
ADG(ISP-I)

Copy to:

1. Secretary TRAI, New Delhi
2. Sr. DDG(AS)/DDG(CS)/DDG(Security-TERM)/ Sr. DDG WPF/ DDG (LF-I/II)/WA /DOT
- ✓ 3. Director (IT) for uploading on the DOT Site
4. ISPAI
5. DG P&T Audit
6. Secy..., MOF

Government of India
Ministry of Communications & Information Technology
Department of Telecom.
Sanchar Bhavan, 20-Ashoka road, New Delhi-110001
(DS Cell)

No. 820-1/2006-LR Vol (II)pt.

Date 10.02.2014

To
The Secretary (TRAI),
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi -110002

Sub: TRAI Recommendations on the definition of "Adjusted Gross Revenue (AGR)".

Ref.: (i) TRAI's D.O. No. 4-3/2012-NSL-I dt.27.08.2013(received through FAX on 16.12.2013)

(ii) TRAI's D.O.No.4-3/2012-NSL-I dt. 07.01.2014.

This has reference to your letters under reference on the above subject under which the suggestion of the Authority was conveyed to the effect that a reference be made by the Department on the subject of "AGR" pertaining to other services also (other than ISP) on the grounds of "level playing", based on a feed back by some stake holders to TRAI during consultation process. In this regard, the undersigned has been directed to intimate the following.

2. The matter of definition of "AGR" pertaining to ISPs was referred to the Authority in October 2012 seeking recommendations, so as to take a decision in the matter and implement uniform rate of licence fee in ISP services on par with other services. It is understood that TRAI has completed the consultation process and obtained comments and counter comments from stake holders on the consultation paper circulated on 28.12.2012 by TRAI. Non finalization of the definition of AGR/LF is leading to delay in migration of existing ISPs to UL and issue of new ISP licences under UL.

Accordingly, the recommendations of the Authority on ISPs may be expedited without linking the same with other issues.


Ritu Pande
Director(DS-III)