Responses to TRAI Consultation Paper on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges

Joint Representation by COAI and AUSPI

Executive summary

We welcome the Consultation paper on "Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges" issued by the Telecom Regulatory Authority of India, dated 31 July 2014. The Authority has enumerated many factors leading to this consultation including significant changes in licencing framework and new practices, which all require a detailed consideration.

The need to revisit the definition of AGR in the current telecom landscape

The National Telecom Policy 2012 highlights the need to move towards convergence between telecom, broadcast and IT services, networks, platforms, technologies and overcome the existing segregation of licencing, registration and regulatory mechanisms in these areas to enhance affordability, increase access, delivery of multiple services and reduce cost.

It emphasizes on the key objectives to aid digital convergence by simplifying the licencing framework to further extend converged high quality services across the nation including rural and remote areas. At the same time it aims to deliver high quality seamless voice, data, multimedia and broadcasting services on converged networks for enhanced service delivery to provide superior experience to users.

Additionally, the government has recently announced its "Digital India" plan, an ambitious programme which aims to transform India into a digital empowered society and a knowledge economy. This, along with its other initiatives such as the National Optical Fibre Network (plan to connect all 250,000 *gram panchayats* in the country at the cost of INR200 billion), the National Digital Literacy Mission (plan to make 1 million people digitally literate by 2015), etc, are expected to lay down the foundation to achieve the country's vision of digital convergence growth.

Within this backdrop of communications related steadfast development, the definition of Gross Revenue (GR) and Adjusted Gross Revenues (AGR) for the computation of LF has been an issue for telecom operators since a long time. The varied interpretations of GR and AGR have led to dispute to constituent of revenue and also its determination mechanism. There are also issues with respect to what all pass through charges are eligible, or should be permitted as deductions from GR to arrive at AGR. This has resulted in anomalies and interpretation-related challenges and is ultimately leading to litigation.

In the world of digital convergence, consumer offerings like DTH and Cable are blurring boundaries with Telecommunication services like IPTV and Internet over-the-top (OTT) viewing. In order to give consumers a seamless interface including a single consumer billing, telecom service providers (TSPs) may wish to add a bouquet of non-telecommunication services to their existing telecommunication services where the operator is only providing the telecommunication connectivity as a service and has no role to play in the development or delivery of the content to the end customer.

Further , TSPs / Licensees collect revenue, under concept of one Shop Solution, on leased circuits terminated outside India by Foreign Telecom Operators ,which do not fall under the jurisdiction / perview of the Indian Telegraph Act,1885 and amendments thereto. Such revenue collected on behalf of the Foreign Telecom Operators should be excluded from the Gross Revenue to arrive at AGR for the calculation of License Fees.

These transactions are covered by Foreign Laws and corresponding regulatory charges are paid by the Foreign Telecom Operator to their respective Governments.

Under the existing Licence regime either such non telecommunication services would become subject to regulatory levies (which would not be the intent of the government); or with the current principle of deductions for only "call based charges" as pass through, certain essential telecommunication input costs would not be eligible for deductionFurther, the concept of Deduction from Gross Revenue Computed for calculation of License fees envisaged by the Government to avoid double charging of LF on the same revenue in the hands of two or more TSPs / Licensees. In line with the intention of the Government and for natural justice deduction should be allowed on payments of all telecommunication services which are revenue in the hands of the other TSPs/ Licensee and on which LF are borne and paid by the other TSPs/ Licensee.

Digital convergence is an arena where the operators are bound to offer multi play services thereby increasing the complexity and if the regime is not simplified it shall increase the litigation matters. Accordingly, a revision in the basis for Licence fee is necessary to impose regulatory payouts. It should cover only those revenues which derive from services under the Licence while providing the adjustment for attributable input costs on which license fee is already paid by the provider of services.

Key issues that require deliberation a synopsis of discussion points

In our response, we have deliberated on the issues brought out by the Authority for consultation. The key issues that need immediate deliberation and addressal from the Authority have been included in our response below.

In section 1.2, we have deliberated on the definition of gross revenue for the computation of LF from only 'Licenced activities', which includes the need to clarify and include revenues only from telecom licenced activities in the definition of GR/AGR. It also deliberates upon the definition of gross revenue to be in conformity with the applicable generally accepted accounting principles (GAAP) and the related accounting standards, interpretation guidelines only; wherein the established principles of net vs. gross, adjustment for discounts, waivers, etc are considered in detail; further the gross revenue only from licenced activities may be directly reconciled with the segment reporting disclosures directly.

In section 1.3, the current issue of double levy that exists on certain payments is discussed in detail. Given this, the section aims to distil the challenges related to providing credit for transactions with other licenced telecom service providers (TSP))/licensee and foreign telecom operator to avoid any incidence of double and / or multiple levy of regulatory fees.

Furthermore, the section 1.4 stresses on the urgent need to make the compliance process simple and comprehensive. The regulatory levies should now be simplified and be brought in parity with other revenue related taxation laws viz. Income Tax, Service Tax, VAT, GST etc. in terms of established governance and compliance processes.

Moving on from the above issues, section 1.5 emphasizes on the critical need for the Authority to re-evaluate the existing principles of the Licence Fee . In the current scenario, spectrum is de-linked from the licence fees and operators pay market determined spectrum fee to acquire spectrum. In this case, the revenue share licence fee percentage need to be revisited.

Additionally in section 2.1 we highlight the revenue defined as per GAAP. It looks into its definition as defined by which is on the lines of International Financial Reporting Standards (IFRS) and Ind-AS.

Further section 2.2 deliberates segment reporting in the financial statements and also gives guidance for reporting telephony/ (regulatory or licenced activities) as distinct segment as compared to the others.

With telecom services moving towards the Unified licencing regime, section 3.2 looks into how the erstwhile challenges of different rates, need for complicated pass-through reconciliation, verification would all get eliminate with uniform licence fee percentage for all services and the principle of 'no double levy' can be easily implemented.

Section 3.3 emphasizes on the infrastructure sharing, which can help in optimizing costs. It highlights that such sharing/renting should be promoted and not taxed by way of Licence Fee. Subsequently, certain transactions should be allowed as pass through deduction in order to avoid double levy and to promote sharing/renting between Licencees.

Other than this, while we have answered the specific questions raised by the authority below are our detailed response to the issues that has been raised by the Authority under this for consultation.

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Summary of our responses to the consultation paper

Definition of gross revenue from only 'Licenced activities'

At the outset we submit that on reading various clauses of existing license agreements it can be interpreted and inferred that the Gross Revenue (GR) for the computation of LF , under the License only relates to the Revenues from respective Licensed Activity (i.e. SERVICE, as defined in the respective License) in respect of the corresponding Service Area for which License has been issued.

On reading of the terms of individual License Agreements and also on comparing different definitions under different types of License Agreements, GR, in each type of Licence, cannot be given a meaning that it pertains to revenues of the Company or revenues from all activities of the Company.

If it was the intention to charge revenue on even non licenced activities and on every receipt, or surplus, or gain that is irrespective of it being real or notional, despite the fact that any and every receipt can't be of revenue nature then in such circumstances, there should have been specific clause in the Licence Agreement of each LSA Category to charge licence fee on 'non service area/corporate related incomes gains which are non-SERVICE Revenues or which are items of capital nature'. In addition there should have been a clause in the Licence Agreement specifying the basis of apportioning of these items amongst different Licences for different LSAs for the purpose of Licence Fee. There is no such mention of any such apportioning in the Licence Agreements. On the contrary the requirement of the licence has been maintenance of separate books / records form each service area and service separately. If it were the intention of the Licensor to charge Licence Fee on such non-Service Revenues which are not specific to a Licence or to a Service Area, then logically it should have clearly mentioned the basis of such apportionment in the Licence Agreement for e.g. if it were to be on GR or AGR or or number of subscribers or some weighted average considering licence fee rates etc.

Revenues only from telecom licenced activities in GR/AGR

The revenue share can be considered on the basis of gross revenue arising from the telecom Licenced activities ***only.*** The principle should ***exclude*** any income that is generated which would ordinarily ***not*** require the licence to operate to provide such service, or earn such income or gain. For the sake of simplicity and to avoid any further interpretation issues, we recommend that the list of such revenue/income/gain that should not be included for the purposes of revenue share computation, being non-telecom licensed revenue or not in nature of revenue, be explicitly listed down as "Negative List" [Exhibit I].

Definition of gross revenue in line with applicable accounting standards

Like other regulatory bodies, the authorities should consider the audited financial statements to validate the revenue from Licenced activities. The definition and meaning of gross revenues as considered for preparing its audited financial statements should be considered in line with other laws and increase transparency apart from procedural simplicity with increased level of governance and avoidance of individual interpretations during audits and assessments.

Gross revenue only from licenced activities from segment reporting

To further avoid any reference to accounting records underlying the audited financial statements, and identify the licenced and non-licenced activities, the segment reporting standards in GAAP also provides guidance to consider the nature of regulatory environment as a factor to be considered for determining segments. Alternatively a revenue statement disclosing the GR from licenced activities and resultant AGR duly certified by the Statutory Auditors may be relied upon.

- For the purposes of revenue share, the gross revenue should only include the revenue from the licensed activities/services for which the licence has been granted by the DoT..
- Further, for the purposes of removing all ambiguity; the definition should explicitly exclude the list of revenues, incomes, gains which should not be considered for the purpose of the above GR.
- The definition of gross revenues should be consistent with that recognized in the audited financial statements (as prepared in line with mandatory accounting standards/applicable GAAP etc.) and should be used in parity with other laws and increase transparency apart from procedural simplicity with increased level of governance.
- Additionally, mandate to have telecom licenced activities separately factored for segment disclosure purposes so that it can be considered as reference for determining gross revenues. This can be in addition to the segment disclosures as decided based on the specific business/investor presentation requirements.

Provide credit for transactions with other licenced TSP's to avoid any incidence of double levy of regulatory fees

Currently, double levy exists as certain payment made for inputs, like bandwidth, port etc., are not allowed as deductions while calculating the AGR on which LF is payable by a TSP and only the pass through charges for interconnection and roaming is a permissible deduction. This is even when the bandwidth provider is already paying LF on the revenue received from other TSP and thereby leading to double levy.

- The concept of the current regime of pass through charges being only "*call based charges*" deduction needs to be revised in the era of digital convergence and extended to all kinds of converged services viz voice, data etc offered under the different licences.
- It may be worth noting that the call based charges principle of determining pass through charges were established on the premise that where TSPs were rolling out their network, building infrastructure; for operations lease-lines, bandwidth were taken for operations in lieu of their network built, hence, such expenses were not permissible pass through charges. However, this scenario is very different when for provision of data to retail, bandwidths are acquired.
- Further, with the entire network expansion, increase subscriber reach and to provide affordable costs to customers, TSPs are encouraged to increase infrastructure sharing, hence one needs to move from a call-based charges to pass through mechanism avoiding double levy.
- Currently, only interconnect and roaming charges are eligible for deduction for computation of AGR. With the concept of avoidance of double levy to arrive at the AGR,

it is proposed that the revenue share adjustment should be for all the charges paid to the other licencee TSPs for all kinds of services (whose income is also subjected to licence fees) and only for the purposes of ILDO operators (whose income is not subjected to licence fees in India) the current pass-through adjustment for interconnection with respect to international operators should be continued not only for International Voice Services provided under the ILDO License but pass through should also be provided for cross border data services in respect of the pay out made to the international carriers by the ILDO for provision of end to end cross border data services to the customers in India

Urgent need to make the compliance process simple and comprehensive

The regulatory levies should now be simplified and be brought in parity with other revenue related taxation laws viz. Income tax, Service Tax etc. in terms of established governance and compliance processes. There is an urgent need to standardize the process of assessment and also bring in clarity and rules with respect to assessment proceedings etc.

- Regulatory bodies also need to be conscious of the fact of technological evolution of the telecom landscape and with digital convergence on the anvil for the licencing regime to keep pace with these changes the procedure has to be simple.
- It is pertinent to note here that the telecom activities is not just limited to call base service but also various other kinds of service. Hence, the incidence of levy, timing and manner of computation has to be simple and all charges paid to other licenced TSPs and international telecom operator should be eligible for deduction/credit from the GR to arrive at the AGR.

Gross revenue and LF percentage basis

The existing 8% Licence fee percentage includes component of USO Levy of 5%, however, collections from USO levy are largely unutilized and accumulating under the USO Fund (thereby not flowing into the Government pool). As the rural infrastructure has already been developed by mobile operators on their own and without much of financial support from the USO fund, the USO levy should be reduced based on average utilisation trend over the years and should be phased out by 2nd year based on the utilisation of existing fund for completing the desired level of rural coverage; almost 57% of the USOF is currently undistributed (Refer para 3.6 of TRAI Consultation Paper ('CP')). Given the above, there should be a gradual glide path to progressive reduction in the LF percentage in a phased manner over the next 2-3 years.

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Revenue only from licenced activities - segment reporting

From the perspective of above convergence, it will be appropriate for authority to consider the revenues based on audited financial statements as it would bring every Licencee on the same platform of mandatory application of Ind-AS rather than requiring reinvention of definition of revenue by the authority due to various interpretation issues which may arise on convergence.

- There should be a gradual glide path for reducing the LF percentage.
- The USO levy should be reduced based on average utilisation trend over the years and should be phased out by Year 2 based on the utilisation of existing fund for completing the desired level of rural coverage.

Unified licencing regime

Until recently, telecom services in India were classified under various heads, with individual Licences required for each service. In addition, there were separate policies, , and rollout obligations for every “service provider per service.”

Though, the UL Agreement does not “unify" the licensing regime such that a single licence now covers the provision of all telecom services. Instead, it is a collation under one cover of terms and conditions of all telecom services that were previously governed by different sets of agreements.

With the uniform licencing fee the root cause of all the complexities and the problem of **different rates**, which is the major reasons of complicated pass-through reconciliation, between different services/Licences and rates are all going to be eliminated, with same Rates of Levies across all Licencees and the principle of no double levy can be easily implemented.

With the implementation of Unified Licence all the licences shall be collated under one cover of terms and conditions of all telecom services that were previously governed by different sets of agreements and the UL Regime also envisages a uniform rate of LF for all licenced services, and this will also help in a simple system being followed

Infrastructure sharing

With a significant focus on modernizing the country’s broadband infrastructure and to bridge the urban rural tele-density divide, operators are increasingly looking at optimizing cost structures by way of infrastructure sharing. Since sharing and renting of infrastructure between Licencees is critical for cost optimisation and better efficiency, any such sharing/renting should be promoted and not taxed by way of Licence Fee.

Consequently, all the transactions for licenced operations between the TSP should be allowed as deductions in order to avoid double levy and to promote sharing/renting between Licencees including the following:

- Renting/Sharing of bandwidth and/or passive infrastructure between Licencees for Licenced Activity.

- Sharing of active infrastructure/spectrum sharing between Licencees for Licenced Activity.
- Port Charges, interconnection setup charges, leased line, roaming signaling charges, cable landing stations access charges and content charges.
- Any periodic rentals for space for ensuring interconnection.

Our Recommendations

We recommend the following:

a. Gross Revenue should be only from licenced activities.
b. GR should be explicitly defined to exclude the "Negative list" of revenue/income/gain listed specifically in Exhibit I.
c. For avoidance of double levy, the above GR (after considering a. and b. above) should be adjusted by all pass through charges payable by one TSP to another and pass through charges for inter operator termination costs and roaming charges paid to international operators.
d. Subsequently credit shall be allowed for LfDS paid by the TSP for its expenses payable to other TSPs [This would be GR for the other TSP].
e. For administrative convenience, and to avoid the arduous mechanism of verification/validation of the credit adjustment, use the principle of Licence fee Deduction at Source (LfDS) and with payment details to be posted in a central repository portal like the NSDL (similar to TDS as adopted by the Income-tax department).
f. Adjustment for credit as discussed in d above, would only be eligible on payment of LfDS and to international telecom operators; as discussed in e. above.
g. The above administration (filing of returns, payment of licence fees and the submission of proof of payments) done centrally shall bring in uniformity of the proceedings across the service area.
h. Setting up rules for assessment proceedings in line with other financial Acts and define the governance process.

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1.1 Introduction

The Authority has enumerated many factors leading to this consultation including significant changes in licencing framework and new practices, which all require a detailed consideration. Whilst the basic rationale adopted for formulating the definition of AGR was to ensure that it is;

- Easy to interpret to obviate any litigative concerns;
- Easy to verify and ensure a transparent and easy procedure for verification;
- To be comprehensive to ensure that all potential new pricing/products are covered;
- Simple, yet comprehensive so that interpretation and discretion at the level of assessing authority is minimized.

However, the definition of Gross Revenue (GR) and adjusted gross revenues (AGR) has been a contentious issue for the telecom operators. Under the current regime, there are significant interpretation issues on whether non-telecom related activities be excluded for calculation of AGR; what all pass through charge be eligible for permitted deductions, etc. resulting in following anomalies and interpretation issues within the definition leading to significant litigations:

- Includes several revenues unrelated to Licenced activities and services that strictly do not require any licences to provision of these services.
- Significant interpretative issues on what would constitute eligible component of pass through charges leading in some cases of dual levy.
- Includes notional income that is unrealized/remains uncollected by the Licencee (e.g. gains on foreign exchange fluctuations, etc.).
- Includes item on accrual/billed basis but allows deduction on paid basis (for interconnect pass through charges).

Consequently, in line with the objectives of the consultation paper seeking view on issues of policy intent animating the design of the revenue sharing regime; consultation on inclusion and exclusion of specific items on revenue; and issues of verification and audit of the revenue base and permissible deductions, we have discussed the arguments on the following principles in this document for the determination of **adjusted gross revenue**:

- **Definition of gross revenue to be only from the "licenced activities";**
- **Provide deduction for transactions with other licenced TSPs** (who are already paying LF on that Revenue) **to obviate any incidence of double levy of regulatory fees; and**
- **Make the compliance process simple and comprehensive with respect to the ease of verification and structure process of assessment proceedings.**
- In case of ILDOs provide deduction for transaction with international carriers which are required to be done for the delivery of ILDO services both in respect of Voice and Data services.

The submissions are without prejudice to contentions of any member operators before TDSAT/courts.

1.2 Definition of gross revenue[1] from only 'Licenced activities'

On reading of the terms of individual Licence Agreements and also on comparing different definitions under different types of Licence Agreements [*Refer Annexure 1 and 3 of the CP*], GR cannot be given a meaning that it pertains to Revenues of the Company or Revenues from all Activities of the Company.

The interpretation of current definition of GR under the Licence Agreement is presently sub-judice in TDSAT. However, for sake of transparency and completeness, some basic reasons for above stated interpretation have to be given, which are summarized as follows:

a) The definitions of GR in different Licences only lists items of revenues and these items of revenues are mostly different in each type of Licences. The items in GR definition have a co-relation to type of service under the Licence. If an interpretation like GR pertains to Revenues of Companies or pertains to all non-licenced/Non-telecom Activities, then there was no need to have different definitions in different types of Licences. A simple definition like 'GR will mean all revenues of the Company' would have sufficed in all Licences. We believe that even the Licensor was not taking such an incongruous view at the time of framing the licence agreement.

b) Apart from definitions in each Licence Agreement being different, it is pertinent to note that the LF has evolved historically as follows:

<table>
<tr><th>LSA Category</th><th>w.e.f. August 1999</th><th>w.e.f. January 2001</th><th>w.e.f. April 2004</th><th>w.e.f. July 2012</th><th>w.e.f. April 2013</th></tr>
<tr><td>Metro / A</td><td rowspan="3">15%</td><td>12%</td><td>10%</td><td>9%</td><td rowspan="4">8%</td></tr>
<tr><td>B</td><td>10%</td><td>8%</td><td>8%</td></tr>
<tr><td>C</td><td>8%</td><td>6%</td><td>7%</td></tr>
<tr><td>NLD, ILD, ISP & VSAT</td><td></td><td>15%</td><td>6% wef 1/1/06</td><td>7%</td></tr>
</table>

In such circumstances, there should have been specific clause in the Licence Agreement to charge Licence fee on 'non service area/corporate related incomes/gains which are non-service Revenues or which are items of capital nature'. In addition there should have been a clause in the Licence Agreement specifying the basis of apportionment of these items amongst different Licences for different LSAs for the purpose of Licence Fee. There is no such mention of any such apportionment in the Licence Agreements. If it was the intention of the Licensor to charge Licence Fee on such non-Service Revenues which are not specific to a Licence or to a Service Area, then logically it should have clearly mentioned the basis of such apportionment in the Licence Agreement i.e. if it was to be on GR or AGR or number of subscribers or some weighted average considering Licence fee rates etc.

c) The Licence Agreement has to read as a whole and all clauses are to be read harmoniously. It is submitted that various clauses use words like "under the licence", "LICENCEE's business under the LICENCE", "furnish independent accounts for the

[1] For the purposes of this document; wherever definition and meaning of Gross Revenues is discussed, its in conjunction as a first step for the purposes of computing the Adjusted Gross Revenue.

SERVICE", "books of accounts … in respect of the business carried on to provide the service(s) under this Licence" etc.. These are not redundant and need to be interpreted / given a meaning. There can be no "Gross Revenue" outside the scope of these terms of the Licence Agreement.

d) The UAS/CMTS Licence Agreement states that while calculating 'AGR' for limited purpose of levying spectrum charges based on revenue share, revenue from wireline subscribers shall not be taken into account. Without Prejudice to the fact that non-SERVICE Revenues do not form part of GR, there is no reason that for SUC purpose the principle which applies to revenues from 'Wireline Subscribers' should have been applied by DoT. Therefore, it should be fully clarified that whilst calculating AGR for the limited purposes of levying spectrum charges based on revenue share, revenue from services **not utilizing** spectrum such as wireline services shall not be taken into account.

e) The corresponding items are mentioned in Annexure II of CP ; e.g. (i) Items which are not Revenue as such – e.g. profit on sale of any assets; Insurance Claims; (ii) Items which may be other income in nature but which are NOT Gross Revenues from Licence activities -- e.g. interest on Company's lending /Inter-corporate loan, Dividends on Investments, gain on foreign exchange fluctuations including notional gain as on date of Balance Sheet.

Include revenues only from telecom licenced activities in the definition of GR/AGR

The varying definition of gross revenues in different licence agreements is for its respective services, with different Licence fee rates for different service, now currently moved to an uniform rate and also with the Unified Licencing regime *[Refer para 3.2]*, there is no scope of even any presumption of arbitrage on inter-se Licence transaction and consequently one should once in all for remove all ambiguity and interpretation issues on what should constitute gross revenue for the purposes of revenue share.

It is suggested that to simplify the whole process, remove interpretation issues, it should be clarified that the revenue share be considered on the basis of Adjusted gross revenue arising from the telecom Licenced activities ***only***. The principle should ***exclude*** any income that is generated that would ordinarily ***not*** require the licence to operate to provide such service, or earn such income and gain. For the sake of simplicity and to avoid any further interpretation issues, we recommend that the list of such revenue/income/gain that should not be included for the purposes of revenue share computation be explicitly listed down. We have included such proposed Negative List as **Exhibit I** in this document. From the above gross revenue, for the purposes of arriving at the adjusted gross revenue, p**rovide deduction** for transactions with other licenced TSPs (who are already paying LF on that Revenue)to obviate any incidence of double levy of regulatory fees.

Definition of gross revenue in line with applicable accounting standards

All companies incorporated in India prepare their financial statements in accordance with the accounting principles generally accepted in India as per the accounting standards notified under the Companies Act, 2013, issued by the Institute of Chartered Accountants of India ('ICAI') ['the GAAP']. These financial statements are accepted by all other regulatory bodies for levying their taxes and charges (including the Income Tax, service tax, etc.). Revenues are accrued as per the generally accepted accounting principles (GAAP) defined in the Accounting Standards and other like Accounting Standard Interpretation; Guidance Note and

Exposure Drafts on Revenue recognition are issued by ICAI from time to time *[Refer para **Error! Reference source not found.**]*.

Like other regulatory bodies, the authorities should consider the audited financial statements to validate the revenue from licenced activities. The definition and meaning of gross revenues as considered for preparing its audited financial statements should be considered in line with other laws and increase transparency apart from procedural simplicity with increased level of governance.

The current interpretational issues encountered including discounts, goodwill waivers, and principal -agency relationship would all be governed with the revenue recognition standards as per GAAP and that recognized in the statutory financial statements and leave no interpretation issues exclusively for the purposes of revenue share computation. Further, GAAP also provides guidance for disclosure and what would constitute gross revenue, income from other non-operating activities and other income.

Gross revenue only from licenced activities from segment reporting

To further avoid any reference to accounting records underlying the audited financial statements, and identify the licenced and non-licenced activities, the segment reporting standards in GAAP also provides guidance to consider the nature of regulatory environment as a factor to be considered for determining segments *[Refer para 2.2].*

This would help in validating the gross revenues from licenced activities directly from the segment reporting disclosure of the financial statements. The regulation can additionally mandate that the segment disclosure (GAAP) evaluation should also consider the licenced activities to be disclosed separately, though, currently there exists the TRAI service providers (Maintenance of Books of Accounts and Other Documents) Rules 2002 and its order dated 21 October 2003 notified by the DoT and TRAI's Accounting Separation Regulation, 2012.

Alternatively a revenue statement disclosing the GR and resultant AGR duly certified by the Statutory Auditors may also be recommended

- For the purposes of revenue share, consider for the purposes of gross revenue only revenue earned from licenced activities. Further, for the purposes of removing all ambiguity; in the definition explicitly exclude the list of revenues, incomes, gains which should not be considered for the purpose of the above revenue share.
- The definition and meaning of gross revenues should be consistent with that recognized in the audited financial statements (as per GAAP) and should be used in parity with other laws and increase transparency apart from procedural simplicity with increased level of governance.
- Additionally, mandate to have telecom licenced activities separately factored for segment disclosure purposes so that it can be considered as reference for determining gross revenues.

1.3 Provide credit for transactions with other licenced TSP's to avoid any incidence of double levy of regulatory fees

Currently, double levy exists as certain payment made for critical inputs, like bandwidth, port etc., are not allowed as deductions while calculating the AGR on which LF is payable by a TSP and only the pass through charges for interconnection is a permissible deduction. Such *inter se* Licencee transactions are logically purchase of necessary **telecom input** resources to provide SERVICE under the Licence, this is even when the bandwidth provider is subject to LF on the revenue received from other TSP and thereby leading to double levy. In simple terms, a revenue earned by a licensee which has already been subjected to License Fee should necessarily be allowed as a deduction to another licensee who also pays LF on its Revenues under the license.

Further, there are significant issues at the time of assessment (paid vs payable), and numerous instances wherein the entire interconnect/roaming amount is disallowed due to lack of any uniform procedure applied at the DoT circle assessment levels and different DoT circles requiring varying unnecessary information to support the deductions (e.g. invoices, bank statements, TDS certificates to support payment proofs). These are administrative hurdles and pose issues in completing the assessment.

The National Telecom Policy 2012 (NTP 2012) highlights the need to move towards convergence between telecom, broadcast and IT services, networks, platforms, technologies and overcome the existing segregation of licencing, registration and regulatory mechanisms in these areas to enhance affordability, increased access, and delivery of multiple services and reduced cost. *[Refer **Error! Reference source not found.**].*

Consequently, the concept of the current regime of pass through charges being only "call based charges" deduction needs to be certainly re-visited in the era of digital convergence. With digital convergence growing steadily, and in the current regime of levy of licence fee, operators are bound to offer multi play services. This would thereby increase the complexity and litigation. If the current regime is not simplified; establishing what would constitute an input cost for the service would be highly complex and difficult to assess. For e.g., currently bandwidth charges are not allowed as deduction as input/pass through for data services; such deduction is not permitted carrying the old principle of disallowing leased line expenses taken in lieu of network roll-out.

With the impetus on significant growth and increased coverage of broadband/data, Telcos would be forced to have optimum utilization of their network infrastructure, share fiber etc.; for efficiency and financial viability thereby excluding the input bandwidth charges as deductible, for eg, this for the purpose of revenue share adjustment would be a double levy. Consequently, continuing with the current regime of only having limited component eligible for pass through charges casts a cascading tax effect and leads to double levy of licence fees on the revenue of the licencee.

At present regulatory levies are charged on gross receipt which is inclusive of regulatory levies. As such there is a cascading impact of levy. The effective rate of levy is more than the desired rate of 8%. Accordingly the LF rates should be rationalized to 8% x (100-8%)=7.36 % of Gross Revenues (and similarly for SUC).

It is recommended that revenue share adjustment should be on all the charges paid by one licenced TSP to the other licenced TSPs, so that there is an avoidance of double levy and there is no further interpretation issue in the era of digital convergence and increased infrastructure share between the TSPs.

In case of ILDOs it is recommended that the current pass-through adjustment for interconnection with respect to international operators should be continued not only for International Voice Services provided under the ILDO License but pass through should also be provided for cross border data services in respect of the pay out made to the international carriers by the ILDO for provision of end to end cross border data services to the customers in India

In addition for changing to this model, the current mechanism of permitting pass-through charges for all interconnect charges paid to other international telecom operators (in particular for certain ILDO services like hubbing and other bilateral); the current pass-through adjustment for interconnection with respect to international operators should be continued since such revenue has not been subjected to licence fee payments in India.

- The concept of the current regime of pass through charges being only "*call based charges*" deduction needs to be revised in the era of digital convergence.
- Currently, only interconnect and roaming charges are eligible for deduction for computation of AGR. With the concept of avoidance of double levy and also to ease the significant administrative hurdle in terms of monitoring the appropriate deduction from GR to arrive at the AGR, it is proposed that the entire transaction costs paid to the other licenced TSP should be eligible for adjustment in determining the AGR. .
- It is recommended that revenue share adjustment should be on all the charges paid to the other licenced TSPs and the current pass-through adjustment for interconnection with respect to international operators should be continued.
  In respect of ILDOs revenue share adjustment should be on all the charges paid to the other international carriers.

1.4 Urgent need to make the compliance process simple and comprehensive

The regulatory levies should now be simplified and be brought in parity with other taxation laws with respect to collection viz. Service Tax, Income tax, ,VAT, GST etc. in terms of governance and compliance process. There is an urgent need to standardize the process of assessment and also bring in clarity and rules with respect to assessment proceedings etc. The concept should be based on "less government and more governance".

There is an urgent need to simplify the validation process of the pass through charges; To make the current assessment of claiming adjustment for pass through charges simpler and uniform, it is recommended that one adopt some of the established governance principles and processes followed by some of the other financial taxation process of claiming deduction (for e.g. TDS details are - compiled in a common portal where each assesse e files its relevant details assesse thereby eliminating the need for the Government for reconciling the payee and payer evidence).

Simplification of existing regime has also been propagated as one of the main objectives of NTP 2012.

Challenges faced by operators in existing regime

- Access charges deduction is available on payment basis only-- Office of Controllers of Communication Accounts (CCAs) insist on certification from Banks for the payments made through the demand drafts to verify the deductions claimed. No reconciliation is available for access charges paid by one TSP and received by another TSP.

- TSPs have to provide details relating to net settlement which needs to be validated by authorities

- Decentralized assessment and varied requirement from the CCA office without a recourse mechanism with operators. Currently, assessments are done over 22 different locations with each adopting different interpretations, a centralized and a combined filling will ease this situation.

- Depositing LF at 22 decentralised locations is resulting in administrative inconvenience, further, the process of depositing demand draft and belated credit to the government just provides additional floats to the bank

- Assessment for licence fees remains open for years causing inconvenience to TSPs and authority.

Proposed changes and its benefits

- Licence fees administration should be simplified in line other tax law such as TDS in income tax. Under this the every operator making payment to other operator for services covered under licence agreement should do Licence fee deduction at source (LfDS) at specified % of gross payments (say 1%) and deposit in the specified account of DoT through an online centralized payment system portal within 10 days of end of the respective quarter. While the objective of cross verification of inter se Invoicing between licencees can be achieved only by a mere filing of the Invoicing data, we have suggested a deduction of LfDS only because a filing associated with a deposition of money based on filing adds authenticity .

- Operator deducting LfDS should file online return using platform provided by authority. **This could be in line with NSDL e-Governance Infrastructure Limited (NSDL) in case of TDS for the purposes of Income-tax -- a readily available existing platform**. NSDL has achieved and delivered path breaking success in the area of e-Governance solutions through automation of large government processes and works closely with various Government agencies and provides e-tax Payment solutions.

- Similar mechanism could be designed for the purposes of LfDS providing facility to pay LfDS online, wherein the TSP can fill up and submit the Challan through internet, transfer the amount through the net banking facility into the DoT account; thereby having an online LfDS accounting system for daily upload with certificates (evidence of payment) available and LfDS credit online available.

- Thereby, totally avoiding the enormous task of verification for evidencing the proof of payment for claiming deduction. Deductions for access charges for operator making payment will be available after filing of monthly returns and timely credit will be available for operator earning revenue. This will further ensure timely collection of Licence fees on inter-TSP transactions to DoT.

- Based on the details included in the portal, the TSP can take credit in its GR for the computation of LF.

- The above mechanism would increase transparency with respect to inter-TSP transactions; the DoT would effectively get the LF on these upfront and improve cash flows (in effect being self-funding taking care of administrative cost of maintaining the e-Portal with NSDL).

- The above is only with respect to transactions with respect to licenced activities between two different legal entities. For avoidance of any doubt, the LfDS and the above mechanism is only with respect to inter-TSP transactions only with respect to Licenced activities; and shall not to include:

    - Settlement for inter-circle transactions within the same legal entity, as revenues of one license shall be expenses of the other within the same entity and which would not have any payouts and hence would not come under the purview for LFTDS; Further, this is in line with the mechanism adopted for TDS for income-tax purposes where inter-unit transactions within the same legal entity is not subject to TDS (eg between a tax holiday unit with other);.
    - For inter-unit transactions within the same legal entity, deductions at the license level can be supported by the statutory auditor's certification confirming the corresponding effect in the other license's revenue figure and for overall effect at the entity level to be zero on the total revenues due to inter-unit eliminations.
    - LfDS would not be required to be paid for any non-licenced transactions between the TSPs (for eg payment of interest on inter-corporate loans given between two TSPs, etc) as these are not subject to licence transactions and in such cases the regular TDS mechanism as per the Income-tax Act would continue to apply.

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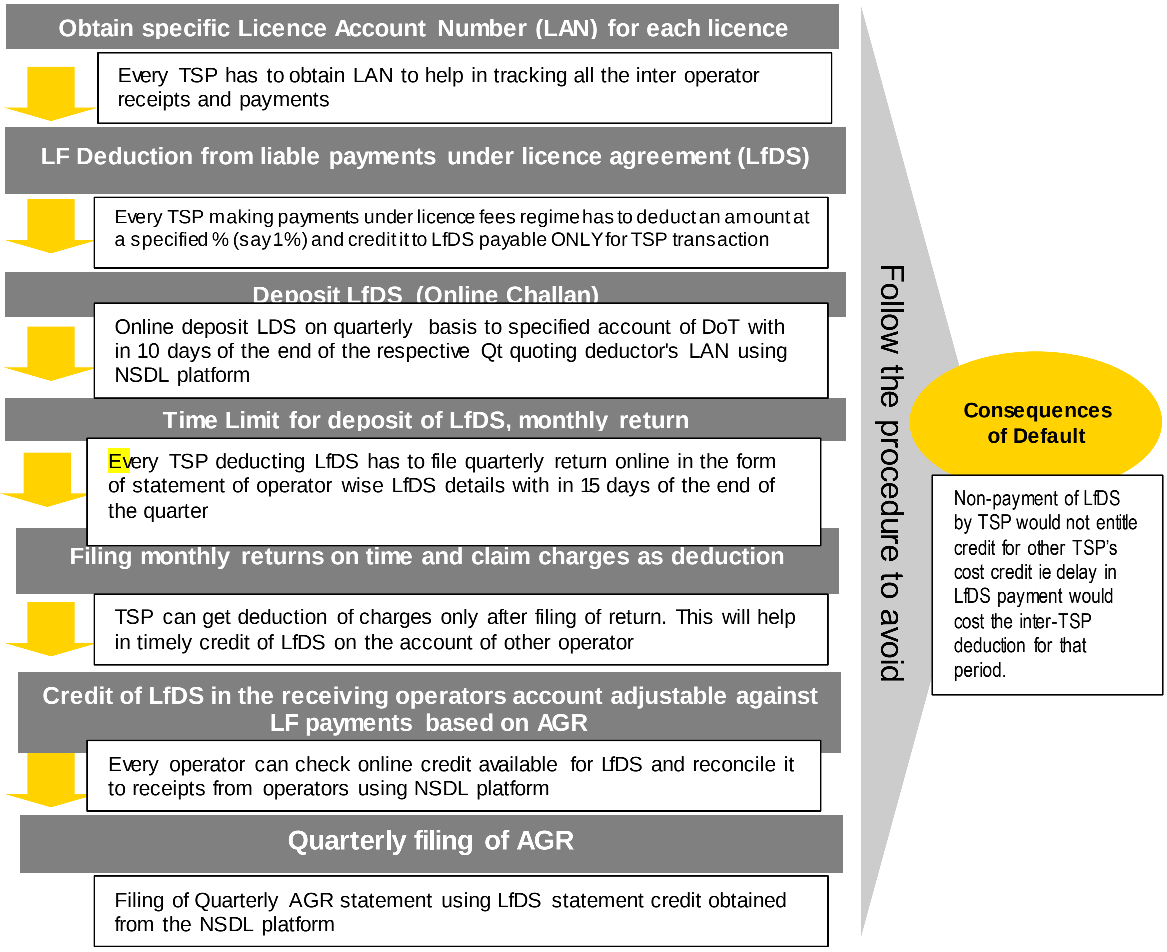
An illustrative process of the proposed LfDS mechanism is illustrated below, and an illustrative example included in Exhibit II to this document.



The above mechanism has been working efficiently with a larger income-tax assesse base, hence, more reason to work within the "small group of the licenced TSPs. For the purposes of LfDS for inter-TSP transactions essentially would be (i) deducting LfDS and depositing at the time of accrual of the cost; (ii) claiming deduction on AGR based on the invoiced amounts on which LfDS is deducted; and (iii) for the other TSP to take credit on the LfDS paid on its behalf by the TSP for making his quarterly LF payment (for cash flow purposes).

Assessment proceedings

At present there is no formalized assessment regime followed by DOT consequent to which provisional demands / notices, etc are issued by DOT without any recourse mechanism. There should be a formal and time bound annual assessment process (in line with other Financial Acts which have time barring provision). The same should be followed by DOT as well as TSP on the basis of which Show causes etc may be issued. This is after an appropriate Appeal mechanism can translate into Demands. Refer Exhibit III for an illustrative comparison of assessment process under the Income-tax Act.

Also, as discussed above, with a uniform licence fee across the circles, the entire filing and assessment process should be centralized instead of filing/making payments for each circle at the local circle level, with the e-payment mechanism discussed above, float enjoyed by banks on demand draft payment and delayed credit to the Government will all be eliminated.

- Regulatory bodies also need to be conscious of the fact of technological evolution of the telecom landscape and with more and more of digital convergence on the anvil for the licencing regime to be in pace to keep up with these changes, the procedure has to be simple without any complex permissible deductions/adjustments, etc.
- It is pertinent to note here that the telecom activities is not just limited to call base service but also various other kinds of service. Hence, the incidence of levy, timing and manner of computation has to be simple.
- Propose a model of Licence fee deduction (LfDS) akin to the existing TDS model used by the Income-tax department. Use the existing technology platform as provided by independent agencies like NSDL to the Government, who can administer the LfDS process, and eliminate the arduous task of verification/validation conducted by various different CCA's across the country in each of the service areas.

Once a system of LfDS gets introduced the collections of levies on transactions between TSPs becomes much more simple and transparent. In that case the current decentralized assessment process which at present is very subjective would not be required. However in order to put in place a better control and governance mechanism it is suggested that the assessment exercise should be done centrally. Such an approach will remove the difficulties of mapping of various transactions and shall also remove the possibility of subjectivity and other administrative hassles

1.5 Gross revenue and LF percentage basis

Having set the above principles w.r.t. determining the amount which should be subjected to Licence fee and its source of validation, it is critical for the authority to re-evaluate the existing principles of the Licence Fee.

The concept of revenue sharing licence fee originated from NTP 1999. The revenue share licence fee percentage and the manner of computation need to be revisited and revised.

Licence fees

The existing 8% Licence fee percentage includes component of USO Levy of 5%, however, collections from USO levy is largely unutilized (i.e. approx. 57% still remaining unutilized) and accumulating under the USO Fund (thereby not flowing into the government pool). We draw reference to the discussion in para 3.6 of the TRAI CP, wherein the balance in USOF as on 31 March 2014 is Rs 33,682 crs, the total funds disbursed from the Fund constitute only about 30.64% of the amount collected over the years as universal service levy, about 11.86% of the levy was disbursed to BSNL as reimbursement of LF, still leaving more than 57% of the total levy undisbursed. As the rural infrastructure has already been developed by mobile operators on their own and without much of financial support from the USO fund, the USO Levy should be reduced based on average utilisation trend over the years and should be phased out by 2nd year based on the utilisation of existing fund for completing the desired level of rural coverage.

We note that the Authority has also made following recommendations in past on reduction of levy, which was never implemented:

- In May 2010, TRAI recommended reducing the USO levy by 5% to 2% subject to the extent of rural coverage achieved by TSP.
- In 2008, TRAI recommendations to reduce the levy by 2% were approved by DoT for TSPs, who cover more than 95% development blocks, however it was never implemented.

Given the above, there should be a gradual glide path to progressive reduction in the LF percentage.

1.6 Recommended conclusion

Based on the discussion above and with a uniform single rate of Revenue share, we recommend the following for the purpose of Revenue share

a. Gross Revenue should be only from licenced activities.
b. GR should be explicitly defined to exclude the "Negative list" of revenue/income/gain listed specifically in Exhibit I.
c. For avoidance of double levy, the above GR (after considering a. and b. above) should be adjusted by all pass through charges payable by one TSP to another and pass through charges for inter operator termination costs and roaming charges paid to international operators. subject to recommendations for ILDO licensees mentioned above
d. Subsequently credit shall be allowed for LfDS paid by the TSP for its expenses payable to other TSPs [This would be GR for the other TSP].
e. For administrative convenience, and to avoid the arduous mechanism of verification/validation of the credit adjustment, use the principle of Licence fee Deduction at Source (LfDS) and with payment details to be posted in a central repository portal like the NSDL (similar to TDS as adopted by the Income-tax department).
f. Adjustment for credit as discussed in d above, would only be eligible on payment of LfDS as discussed in e. above.
g. The above administration (filing of returns, payment of licence fees and the submission of proof of payments) done centrally shall bring in uniformity of the proceedings across the service area.
h. Setting up rules for assessment proceedings in line with other financial Acts and define the governance process.

2 Demystifying the definitions of Gross Revenue and Adjusted Gross Revenue

2.1 Revenue defined as per GAAP

As per para 4.1 of Accounting Standard 9:

Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.

As per the notified Ind AS in February 2011 on the lines of International Financial Reporting Standards (IFRS). Ind AS -18 on "Revenue" defines revenue in the following manner:

"Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants. Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission."

Further, as per IAS 18 issued by the International Accounting Standards Board has (responsible for giving guidance on International Accounting Standards (IAS)/IFRS) defines revenue.

"Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission."

The ICAI proposed a new roadmap for implementation of Ind-AS in India and submitted it to the MCA for its consideration [Press Release dated 24 March 2014]. The Finance Minister, during the budget speech, stated the urgent need to converge accounting standards with

IFRS and proposed for adoption of Ind-AS by Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis.

2.2 Revenue only from licenced activities - segment reporting

GAAP clearly formulates the definition of revenue. Also, the segment reporting in the financial statements also gives guidance for reporting telephony/ (regulatory or licenced activities) as distinct segment as compared to the others.

In accordance with Para 5.1 of Accounting Standard ('AS') 17, segment reporting

A business segment is a distinguishable component of an enterprise that is engaged in providing an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business segments. Factors that should be considered in determining whether products or services are related include:

a. the nature of the products or services;
b. the nature of the production processes;
c. the type or class of customers for the products or services;
d. the methods used to distribute the products or provide the services; and
e. if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

As per para 5.3 of AS-17, a reportable segment is a business segment or a geographical segment identified on the basis of foregoing definitions for which segment information is required to be disclosed by this Standard.

As per para 5.5 of AS-17, segment revenue is the aggregate of;

a. the portion of enterprise revenue that is directly attributable to a segment;
b. the relevant portion of enterprise revenue that can be allocated on a reasonable basis to a segment, and;
c. revenue from transactions with other segments of the enterprise.

Based on above guidance on segment reporting to be mandated to also consider in its identification the TRAI service providers (Maintenance of Books of Accounts and Other Documents) Rules 2002 and its order dated 21 October 2003 notified by the DoT and TRAI's Accounting Separation Regulation, 2012.

It is possible for authority to mandate the disclosure for Licenced segment separately and Licencees to follow the accounting and disclosure in accordance with the guidance above.

Further, The ICAI proposed a new roadmap for implementation of Ind-AS in India and submitted it to the MCA for its consideration [press release dated 24 March 2014]. The Finance Minister, during the budget speech, stated the urgent need to converge accounting standards with IFRS and proposed for adoption of Ind-AS by Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis.

From the perspective of above convergence, it will be - appropriate for authority to consider the revenues based on audited financial statements as it would bring every Licencee on the same platform from the date of mandatory application of Ind-AS rather than requiring reinvention of definition of revenue by the authority due to various interpretation issues which may arise on convergence.
However, the approach of considering gross revenue from Licenced activities from the segment reporting would not address the issue of double levy as discussed in detail in para 1.3 above.

- Given that there is a roadmap for convergence and adopting IFRS (or Ind-AS) the definition of GR should be consistent to stand the test of revenue recognition principles promulgated in the GAAP.
- Hence, to avoid any further reconciliation, interpretation issues for measurement of revenue, one should define revenue to be as considered in the audited financial statements of the company (or as the case maybe from the segment reporting for licenced telephony services).

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3 Industry overview and regulatory environment

3.1 Growth of Digital Convergence

Policies and plans to foster digital convergence

The National Telecom Policy 2012 (NTP 2012) highlights the need to move towards convergence between telecom, broadcast and IT services, networks, platforms, technologies and overcome the existing segregation of licencing, registration and regulatory mechanisms in these areas to enhance affordability, increase access, delivery of multiple services and reduce cost. It emphasizes on the following key objectives to aid in digital convergence:

- Simplify the licencing framework to further extend converged high quality services across the nation including rural and remote areas. This will not cover content regulation.
- Deliver high quality seamless voice, data, multimedia and broadcasting services on converged networks for enhanced service delivery to provide superior experience to users.

The NTP 2012 focuses on the predominant role of telecom technologies as a platform for providing converged Information Communication and Technology ('ICT') services. Aiming for affordable and reliable broadband connectivity across the country, the policy envisages 600 million broadband subscribers in the country by 2020 at minimum 2Mbps download speed and making available higher speeds of at least 100 Mbps on demand.

Additionally, the government has recently announced its "Digital India" plan, an ambitious programme which aims to transform India into a digital empowered society and knowledge economy. This, along with its other initiatives such as the National Optical Fibre Network (plan to connect all 250,000 *gram panchayats* in the country at the cost of INR200 billion), the National Digital Literacy Mission (plan to make 1 million people digitally literate by 2015), etc., are expected to lay down the foundation to achieve the country's vision of digital convergence growth.

Digital convergence

Digitalization is an emerging business model that includes the extension and support of electronic channels, content and transactions. Life and P&C insurers are embracing this strategy to transform their businesses, while balancing electronic capabilities with traditional business practices (hard-copy documents and correspondence, face-to-face interactions, and call center volume). [2] Digitalization is a buzzword today, and it is leading to convergence of technology, media and telecoms industries. With convergence, voice, video and data services are integrated into a single seamless offering.

[2] Gartner

Bundled service options					
					Quad play
				Triple play	Mobile
Dual play				Broadband	Broadband
Broadband	TV	Mobile	Broadband	TV	TV
Fixed	Fixed	Broadband	TV	Fixed	Fixed

Digital convergence is categorized into four basic types: industry, service, device and network. Improved coverage and availability of high speed data services have aided the development of next generation ICT services. cloud, mobility, machine-to-machine (M2M), big data and mobile value added services are promising growth opportunities for ICT players.

With a strong foundation of network infrastructure and core competency in delivery of network connectivity, telecom operators hold a significant position in the provisioning of these services. Across the globe, operators are transforming from a provider of traditional data services to these newer services. Operators are partnering with ICT players or are developing their enterprise divisions to foray into these services. With over-the-top (OTT) and MVAS players offering new services, consumer preferences are shifting toward non-voice services. Telecom service providers are looking for partnerships with content and application providers.

Market opportunity in new services segments in India

- **M2M market:** expected to reach US$98.4 million by 2016, as against US$22.9 million in 2011.
- **Big data industry:** expected to reach US$1 billion by 2015, as against US$200 million in 2012.
- **Public cloud services market:** expected to reach US$556.8 million in 2014, growing by 32.2% y-o-y (from US$421 million in 2013).

Source: 6wresearch, NASSCOM, Gartner, news articles

Need to provide an enabling framework for future of telecom

Both International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) are jointly working on converged standards for revisions in revenue recognition to enable growth of new services

a. Converged standard on revenue recognition; and
b. Customer's Accounting for Fees in a Cloud Computing Arrangement. For the telecoms industry, amongst various other implications, this new standard would impact the revenue recognition methods for businesses providing offerings including customer's fees paid in cloud services arrangement, machine-to-machine services, home security services etc. overall intending to reduce the costs and complexity of financial statement preparation.

In a convergent regime the traditional telecom companies show the characteristics of more than one sector, thus it becomes imperative that the regulatory regime in such cases should adapt to the changing regulatory landscape. The same would be driven primarily by deciding what path the communication industry would take.

- Thus the current regime of levy of licence fee needs to be revisited since with growing areas on digital convergence operators are bound to offer multi play services thereby increasing the complexity and litigation matters of the current regime is not simplified.
- Accordingly, a revision in the basis for Licence fee is necessary to impose regulatory payouts 'only' for those adjusted revenues which are derived from services under Licence.
- Deductions on all transaction costs with other Licenced TSP would provide adjustment for the related telecom input costs.

3.2 Unified licencing regime

Until recently, telecom services in India were classified under various heads, with individual Licences required for each service. In addition, there were separate policies, entry and Licence fees, and rollout obligations for every "service provider per service."

Significant advances in technology and the large number of services being offered in the country has resulted in the government replacing its licencing scheme with a unified Licence. This has given service providers the discretion to select a customized technology for a particular service.

The Government unveiled the unified Licence regime in August 2013, the major highlights of unified Licence include:

- Under unified Licence, spectrum has been delinked from Licences. While one company can only hold one Licence, it can get permits for multiple services including access, internet, national long distance, international long distance etc.
- Unified Licence abolishes cross holdings in the same telecom circle; now no telecom operator holding spectrum can hold any stake in a rival operator in the same circle.
- Licencees are allowed to migrate to the unified Licence if they want to expand their service to include any additional service or service area.
- In case a Licencee obtains any other service Licence by way of acquisition or merger, the Licence so obtained shall have to be migrated to unified Licence.
- New unified Licence will be valid for 20 years, irrespective of the validity period of the existing Licence operators already held. But the operators can renew unified Licence for another 10 years.

- With the uniform licencing fee the root cause of all the complexities ie different rates for different circles/licences, which is the major reason of complicated pass-through reconciliation, between different services/Licences is going to be eliminated. With same Rates of Levies across all Licencees, the principle of no double levy can be easily implemented.
- With the implementation of Unified Licence all the licences shall be collated under one cover of terms and conditions of all telecom services that were previously governed by different sets of agreements and the UL Regime also envisages a uniform rate of LF for all licenced services and
- This will also help in a simple system being followed with no need to have different definitions for different authorizations.

3.3 Infrastructure sharing

With a significant focus on modernizing the country's broadband infrastructure and to bridge the urban rural tele-density divide, operators are increasingly looking at optimizing cost structures by way of infrastructure sharing. In July 2014, TRAI issued its recommendations on guidelines on spectrum sharing providing an opportunity to telecom service providers to pool their spectrum holdings and gain better spectral efficiency.

In a view of above there is a large scale opinion that by not allowing deductions on port charges, bandwidth charges and other sharing of active/ passive infrastructure will discourage the view of creating more efficient and cost optimised infrastructure to promote bridging the digital divide in India. It addition it would also be contrary not only to Governments proposed steps but also to the very objectives of achieving cost optimization for which renting/sharing is carried out.

- Therefore, since sharing and renting of infrastructure between Licencees is critical for cost optimisation and better efficiency, any such sharing/renting should be promoted and not taxed by way of Licence Fee.
- Consequently, in line with the principle that all charges paid to other licenced TSPs should be permitted, the following transactions should not be brought in purview of GR in order to avoid double levy and to promote sharing/renting between Licencees:
  - Renting/Sharing of bandwidth and/or passive infrastructure between Licencees for Licenced Activity.
  - Sharing of active infrastructure/spectrum sharing between Licencees for Licenced Activity.
  - Port Charges, interconnection setup charges, leased line, roaming signaling charges, cable landing stations and content charges.
  - Any periodic rentals for space for ensuring interconnection.
- This deduction in the AGR will also help to pass the cost effectiveness / cost optimization benefit to the mass consumer resulted this will give the positive impact on current tariff.

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4 Issues for Consultation

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

Yes. There is an urgent need to review/ revise the definition of GR/ AGR in different licences, due to the following reasons:

- Current definition of GR leads to dual charging of the same revenue in the hands of operators
- GR/AGR definition in the Unified Licence also remains the same as per the old licences.
- GR/AGR definition is different under different licences

Following detailed analysis of the components of GR as discussed in sections 1.2 defines the basis of GR from Licence activities it may be defined as:

"Revenues' for the purpose of 'Revenue Share' shall mean GROSS REVENUES from SERVICES only from the Licenced Activities for the respective Service Area(s)) and shall not in particular include 'Revenues included in the Negative List (eg Exhibit I). GROSS REVENUES shall be adjusted to arrive at the ADJUSTED GROSS REVENUE for all expenses incurred based on billings from other Licenced TSPs and pass through charges for interconnection cost and roaming charges paid to international operators".

The above definition would bring uniformity across the different Licences and related operations. This would eliminate the various -administrative related issues which exist under the current definition regarding inclusion of income from activities which do not require the license.

It is important to mention that all the companies incorporated in India prepare their financial statements in accordance with the accounting principles generally accepted in India as per the GAAP. These financial statements are accepted by all other regulatory bodies for levying their taxes and charges (including the Income-Tax, service-tax, etc). The auditors are required to qualify the financial statements of the Company in case of any material deviation from the accounting standard and the revenue statement of the operators in case of wrong reporting of gross revenue. Accordingly, the Authority should make it mandatory for the DoT/Assessing authorities to place reliance on the audit opinion issued by the auditors on the computation of the Licence fee which is issued based on their audit of the statutory financial statements. This would address the current administrative issues encountered of discounts, goodwill waivers, and principal-agency relationship; which would be governed by the GAAP.

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[3] Chapter IV of CP

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?

The basic rationale adopted by the Government as mentioned in the consultation paper, included below is appropriate:

- easy to interpret to obviate any litigative concerns
- easy to verify and ensure a transparent and easy procedure for verification
- to be comprehensive to ensure that there all potential new pricing/products are covered
- simple and yet comprehensive so that interpretation and discretion at the level of assessing authority is minimized.

However, the areas where the current system violates these principles are:

- CCAs insist on certification from Banks for the payments made through the demand drafts to verify the deductions claimed which reflect the kind of varying interpretations that are being made by individual assessing authorities in 22 different locations

- CCAs ask for operator's confirmation for payment and bank entries to show name of the operator as proof for payment to allow deduction.

- In cases where net settlement with an operator results in inflow, confirmation from other operator has been sought.

- Circle-wise Statutory Auditor certification is being demanded for tax deduction on payments to operators.

- Circle-wise Statutory Auditor certification for settlement to NLD licence books within the Company.

- Service Tax is discharged by the company based on the central registration obtained as per the regulations of Finance Act. Remittance for service tax follows such registration and is not made circle-wise. Service Tax payment is after considering CENVAT credit allowed under the Act. Proof is sought for payment circle-wise.

- Sales Tax is paid after considering VAT credit for purchases allowed as per Sales Tax Rules prevalent in States. Payment Proof will reflect payment net of such VAT credit.

- While the revenue is to be recognized following accrual accounting, deferral of revenue (Processing Fees, Activation Fees etc) per acceptable standard accounting practices under the GAAP have been challenged by the authorities.

- Reimbursement of expense has been treated like revenue (e.g. site sharing etc)

- Revenue reversals arising for cessation of revenue are not allowed (e.g. bad debts, Goodwill Waivers etc)

- All receipts (irrespective of whether it's a Capital or Revenue receipt) are being incorrectly subjected to LF by DoT.
- The present regime is not comprehensive and there is scope of exercise of discretion by CCAs.

- There is no standard process for assessment of verification of deduction claims.

- Some circles have disallowed pass through charges without assigning details and reasons thereof even though for the similar submission, a few circles have allowed 100 % pass through deductions.

We, therefore, suggest the following guiding principles, as detailed out in para 1.2 and Q1, above:

a. **Defining Gross Revenue as revenue from only licenced activities -**In reference to the arguments detailed out in Sections 1.2 Gross Revenue for the purposes of arriving at the Adjusted Gross Revenue should be gross revenue from services provided to subscribers from licenced activities only. Gross revenue under UASL should be interpreted to mean as revenue earned from SERVICES provided by telecom service providers ('TSP') telecom operations which can only be carried out by a Licencee for which a licence is required (ie only encompass revenue that can be generated from permissible services requiring a Licence).

   In the wake of digital convergence as discussed in para 3.1 above, it would be critical for the Authority to acknowledge that the non-Licenced activities would co-exist with the Licenced activities of an entity in the interest of the emergence and growth of industry. This foresight is to be greatly appreciated and seen as support of the new regulatory framework in the emerging digital India.

b. **Principles of Gross revenue to be in line with applicable Accounting Standards -** All companies incorporated in India prepare their financial statements in accordance with the accounting principles generally accepted in India as per the accounting standards notified under the GAAP. These financial statements are accepted by all other regulatory bodies for levying their taxes and charges (including the Income-Tax, service-tax, etc). Revenues are accrued as per the principles defined in the Accounting Standards and other like Accounting Standard Interpretation, Guidance Note and Exposure Drafts on Revenue recognition issued by ICAI from time to time.

   The Principles of gross revenues as considered for preparing its audited financial statements should be considered to bring in parity with other laws and increase transparency apart from procedural simplicity with increased level of Governance.

c. **Avoidance of double levy of regulatory fees –** As detailed out in para 1.3, the double levy currently exists for all payments made by licenced TSPs to other TSPs for inputs like bandwidth charges, port and infrastructure sharing charges etc As such these charges are not allowed a deductions while calculating AGR of the Licencee/payee, whilst the same is again subject to AGR in the hands of the receiving licenced entity.

In addition the current state of pass through reconciliation poses significant issues at the time of assessments.

Thus the levy of double licence fee and disallowance on payments made to other TSPs will discourage the creation of more efficient and cost optimized infrastructure required to bridge the digital divide in India.

Thus all payments to TSPs including the following transactions should be allowed as deduction to avoid double levy-

- Renting/Sharing of bandwidth and/or passive infrastructure between Licencees for Licenced Activity
- Sharing of active infrastructure/spectrum sharing between Licencees for Licenced Activity
- Port Charges, interconnection setup charges, leased line, roaming signaling charges, cable landing stations and content charges.
- Any periodic rentals for space for ensuring interconnection
- Payments made by ILDOs to international carriers for delivery of Voice and Data services.

d. **Making the compliance process simple and comprehensive –** As discussed in section 1.4, the regime should be simplified and brought in parity with other revenue related taxes like tax deducted at Source. Simplification of existing regime has also been propagated as one of the main objectives of NTP 2012. The recommended process to make it simple is discussed in paragraph 1.4 above.

e. **Uniformly applying the percentage of licence fees and reducing the percentage of USO levy –** As discussed in para 1.5 above, in the current scenario where spectrum is delinked from LF and is driven more by market determined fees, the existing LF percentage should be thoroughly revisited. The authority should consider the following-

- Uniform reduced levy on LF
- The existing 5% levy of LF for USO funds should be reduced based on average utilisation trend over the years and should be phased out by 2nd year based out on basis that the collections from USO levy are largely unutilized.

Other considerations -- Digital convergence:

In the world of digital convergence, consumer offerings like DTH and Cable are blurring boundaries with Telecommunication services like IPTV and Internet OTT viewing. In order to give consumers a seamless interface including single consumer billing, TSPs may wish to add a bouquet of non-telecommunication services to their existing telecommunication services. Under the existing Licence regime such non telecommunication services would be charged levies pertaining to telecommunication which would not be the intent of the government. Therefore the inclusion of revenue from non-licensed activities of licensees could also lead to distortions in the implementation of policy priorities of the Government.

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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?

There is a need to re-look at the rate of licence fee as well as change in the current definition of GR /AGR as detailed in Q1 and Q2, above; to ensure that there is no incidence of levying LF on non-Licenced activities and double levy over the same revenue. The percentage of licence fee and USO levy needs to be drastically reduced.

Need to review the regulatory levies:

The Indian telecom sector is an especially burdened collective, and suffers from the imposition of multiple levies and charges such as licence fee, spectrum usage charges, service tax, entry fee, octroi, stamp duty, customs duty, and regular corporate income tax. The Indian telecom sector is highly taxed and over 30% of operator revenues go towards various taxes and levies. The situation is further aggravated by the fact that licence fee, USO levy and spectrum usage charges are levied on non-Licenced revenues and there are enough incidence of double levy.

India is a price sensitive market and yet offers amongst the lowest tariffs in the world in a highly taxed regime. It is becoming increasingly difficult for operators to maintain the level, let alone enhance the affordability of telecom services. They are in dire need of long term investments to meet national objectives such as creation of ‘broadband highways’. Therefore, there is a need to review the regulatory levies (including the cost of compliances for TSP) across the board as enunciated in the National Telecom Policy 2012 and in line with global best practices. In fact, TRAI’s consultation paper itself shows the regulatory charges levied in other countries wherein rates being levied for LF/Spectrum are only nominal charges (especially in a regime of market determined spectrum pricing). Revenue share of 8% Adjusted Gross Revenue (AGR) per annum is the highest licence fee regime when compared to other Asian countries. Our suggestions on the same are as follows:

a. Licence fees

The country has been able to achieve the growth as the telecommunication services in India is offered to the customers at one of the lowest tariff in the world. In addition to the overall growth, mobile and fixed wireless phones are spreading towards the areas where no telecom facility existed and helping to bridge the digital divide. The present spread of the telecom facility is reflected more towards population with low purchasing power. Since the future expansion would in rural and remote areas, the government's support in form of incentives and concessions for bringing down costs and rolling out networks is imperative. Reduction in licence fee burden is a long pending demand of the industry and is essential for facilitating affordability of the common man and relief to access service providers. There is no requirement of USO to act as a catalyst and to have contribution towards the USOF funds @ 5% and it is therefore suggested that USOF contribution may be reduced from the present 5 % to 0.5 % or be based on average utilisation trend over the years and should be phased out by 2nd year based on the utilisation of existing fund for completing the desired level of rural coverage. We draw reference to the discussion in para 3.6 of the TRAI CP, wherein the balance in USOF as on 31 March 2014 is Rs 33,682 crs, the total funds disbursed from the Fund constitute only about 30.64% of the amount collected over the years as universal service levy, about 11.86% of the levy was disbursed to BSNL as reimbursement of LF and SUC, still leaving more than 57% of the total levy undisbursed.

Though the Authority has also made following recommendations in past on reduction of levy, it was never implemented:

- in May 2010, TRAI recommended reducing the USO levy by 5% to 2% subject to the extent of rural coverage achieved by TSP
- In 2008, TRAI recommended to reduce the levy by 2% were approved by DoT for TSP, who covers more than 95% development blocks

Given the above, the percentage of LF should be re-calibrated and further reduced for the purposes of AGR.

b. Review the definition of Gross Revenue

As explained in our response to Q1 and Q2, linking the LF rate review instead of GR definition would not be correct. This is so as LF is an “ad valorem” levy. If the definition of revenue, as is existing with various Licences, remains unchanged the inconsistency with the Licence would continue defeating the very sprit of the consultation and TRAI’s own recommendations in past which has been consistent over the years.
Thus rationalization of LF Rate should not be used as a substitute to cure the variances of the definition of GR and AGR. Instead, both the rates of LF and USO along with the rationalization of the definition of gross revenue should be reviewed positively.

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

Placing reliance on the explanation provided under response to Q1 and Q2 and sub sections 1.2 and 1.3 of section 1 above, the definition of revenue for levy of LF should only include revenue from Licenced activities and not the revenue of the company as a whole. As a general rule, in a revenue sharing regime, the consideration should flow from its related source but not beyond.

Almost 15 years have elapsed since the introduction of the revenue sharing regime and the licensor and TSPs have acquired a level of expertise in operating under the present dispensation, court cases notwithstanding. At the same time, levy of licence fee on activities undertaken by TSPs that do not strictly fall under the ambit of the licence such as income accruing from interest or dividend, gains from foreign exchange fluctuations, or other income on account of management consultancy fee, and other similar matters have been the bone of contention in the long and tortuous litigation resorted to by the TSPs regarding the definition of GR.

Going by the basic rationale mentioned in the consultation paper is that the framework should be - easy to interpret, easy to verify, to be simple yet comprehensive, we propose the following:

a) The revenue base for levy of licence fee and spectrum usage charges should only include income from licenced activities
b) The DoT should move to a levy on the reported revenues as in the segment disclosures in the audited financial statements. and placed before the respective Boards. There have been recent changes in the regulatory environment including the Companies Act 2013, Clause 41 of the listing agreement as specified by SEBI, lay significant emphasis on Corporate Governance and internal controls over financial reporting. Audit Committees are responsible for financial statements.
c) It is also recommended that a uniform and consistent accounting policy as adopted under the Companies Act for preparation of accounts should also be adopted under the Licence and accordingly the Indian GAAP (i.e. Generally Accepted Accounting Practices) as issued by the Institute of Chartered Accountants of India shall be accepted and should be made a part of the licence. This shall remove the scope for any ambiguity.
d) The generally accepted accounting principles does not prescribe whether it should be included or excluded as income from Licenced or non-Licenced activities, however, it prescribes the accounting guidance w.r.t. the accounting of separate components of bundled transactions and there by enables the separate recognition of revenue from Licenced and non-Licenced activities.
e) Revenues included in the Negative List (Exhibit I) should be excluded from the 'revenue from operations' as per the audited financial statements. Further all payments made on billing by other licenced TSPs should be deductible in arriving at the AGR for the purpose of LF, which should also include International Roaming services since these are in the nature of telecommunication services and the international roaming revenue charged to subscriber also forms part of the revenue for the purpose of LF. The exception wouldbe the ILDOs in which case all payments made on billing by the international carriers which enable the ILDOs for provision of services should be deductible.

f) Levy as % of AGR should be low and USO component of 5% should be eliminated considering the fact that the amounts so far collected have remained unutilized. If not feasible, the authority should possibly phase out the levy over a reasonable period.

Reference our response to Q7 under consultation, Accounting concepts and conventions dealing with each of the specific items for inclusion / exclusion in revenue has been dealt in detail in Exhibit I.

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

As discussed on para 1.5 and Q1, Q3, Q4 above, It is recommended that LF may please be continued to levied on AGR and accordingly it is recommend:
a) The revenue base for levy of licence fee and spectrum usage charges should only include income from licenced activities, to encourage level playing field
b) This shall not in particular include items under the negative list to be specified (as suggested in Exhibit I.
c) Gross revenues shall be adjusted for all expenses incurred based on billings from other Licenced TSPs, to avoid double levy

d) The USO levy of 5% currently included in the licence fee of 8% should be reduced to 0.5 % or be based on average utilisation trend over the years and should be phased out by 2nd year based on the utilisation of existing fund for completing the desired level of rural coverage
e) It is submitted that only changing the level at which LF is to be applied or reducing the rate of LF should not be looked at as substitutes to eliminate the issues in the definition of GR / AGR.

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

Reference our response to Q1 and Q2 and as stated in sub sections 1.2of section 1 above, the revenue for the purpose of calculating the LF should be in relation to the service permitted under the Telecom Licence. Revenue that has got no nexus with Licenced services shall not be considered for the purpose of LF.

Gross revenue under UASL should also be interpreted to mean as revenue earned from SERVICES provided by telecom service providers ('TSP') telecom operations which can only be carried out by a Licencee for which a licence is required (ie only encompass revenue that can be generated from permissible services requiring a Licence).

Further, as stated in response to Q3 and 1.2 above, with the spectrum de-linked from the licence, and the telecom operators pay market determined spectrum fee by way of acquiring in auction and making the payment upfront, there should be no requirement for further annual payments beyond specific (and relatively minor) administrative fees because the intrinsic value of spectrum has already been paid in the auction in full.

In the event the percentage levy is continued, SUC should be payable as a percentage of revenue from wireless subscribers only with credit to the expenses relating to the wireless operations paid to other licenced TSPs ie SUC to be not paid on revenues which do not require any use of spectrum. The exclusions mentioned in the negative list (Exhibit I) should be considered in deriving at revenue from wireless subscribers. Wireline subscribers also include lease-line and bandwidth subscribers hence revenue from such subscribers should be excluded.

Q7 Specifically, how should the income earned by TSPs from the following heads be treated? Please give reasons in support of your views.

1. **Income from dividend;**
2. **Income from interest;**
3. **Gains on account of profit on assets and securities;**
4. **Income from property rent;**
5. **Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);**
6. **Income from sale of equipment including handsets;**
7. **Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.;**

As discussed in sections 1.2 and 1.3 and in Q1 & Q2 above the revenue for the purposes of levy of LF should be AGR from only licenced activities *excluding* the negative list of revenue/income/gain with adjustment for payments made to other fellow Licenced TSP and pass through charges for international operators

In the matter of specific heads of revenue / income under the consultation please find our submissions as below:

a. Income from dividend; and Income from interest

The mention of these terms in present definition in Licenses means that any income from interest/dividend which is arising from licensed activity and not from non-licensed activity.

Generally, interest and dividend could be a revenue stream for any business entity. To earn interest / dividend, it does not require a telecom licence. Interest and dividend are earned on account of a non-telecom activity viz. investment of idle cash in deposits and securities. The treasury function of every company undertakes fund requirement and fund management activities. These are the cash management team which not only manages the Capital requirements but is also entrusted with the duty of not keeping the money idle.

As the money has time value, any surplus is either invested back in the business or is kept at a place which keeps it optimizing. To avoid keep idle cash balances (as money has time value), this gets invested into financial instruments. Most (if not all) TSPs have significant debt on the balance sheets for which they make thousands of crores of interest payments each year – such activity infact earns negative returns. Also, cash margins maintained by the licencees with banks who issue bank guarantee in favor of the DOT and other agencies/ parties pursuant to the licence agreement and / or other contracts, also earn interest. Simultaneously the company pays commission on bank guarantees. Due to timing issues of fund flows/outflows it is very natural for TSPs to have temporary investment/deposits which consequently earn interest/dividend. It is perverse that the interest cost in disallowed as deduction but the interest income is chargeable to tax.

Sometimes these surplus funds are generated from the profits made from sale of telecom services and are therefore generated after paying all legitimate taxes and telecom levies. Since the revenues have already suffered regulatory taxation it will be perverse to double tax the gains on the revenues again in the form of LF on interest/dividend income. This is akin to levying both a Sales Tax and Income Tax at the same time (with the rider that that the Income is only interest income and not any offset for interest costs).

These items of gains should not be considered as revenue for the purpose of levy of Licence fees for the reasons:

- These are not revenues from rendering services but are gains recognized under the head “Other Income”
- These are part of shareholders equity which has been generated after payment of all applicable taxes and levies
- The Income has got no nexus with rendering of Licenced services.

The authority itself vide its recommendation dated 21 September 2006 has recommended that as such revenues / gains; a) does not arise from the rendering of services b) are accounted for separately and c) can be verified separately hence it should not form part of the GR.

b. Gains on account of profit on assets and securities;

The above gain is in the nature of income from investment much in the nature of interest income, which is discussed in (a) above.

c. Income from property rent;

Income from rent of property cannot be construed as revenue from telecom services. Such use by third parties does not require any authorization under a telecom licence and can be done by the licencee companies even in the absence of a telecom licence. Such leasing has absolutely no connection with the business of provision of a telecom service. These are some of the miscellaneous revenue that a Company gets for best utilization of its assets. For example, a portion of building has been let out to others thereby generating some income. Such type of activities has got no correlation to with Licence and hence should be kept outside the scope of revenue for the purpose of LF.

d. Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);

Sharing of infrastructure by the TSP is for cost optimization, and passing on the benefit to the consumers. As detailed in paragraph Q15 below, income from lease of passive infrastructure should be excluded as being beyond the purview of licenced services

e. Income from sale of equipment including handsets;

Sale of equipment (more popularly referred to as devices) including handset is an independent activity which does not require a Licence. Devices industry is not a regulated industry, either in mobile or DTH businesses. The activity of sale is nowhere related to service unless otherwise TSP's themselves bundle the equipment and service and leverage on that bundle to earn revenue, in which case the accounting guidance under GAAP takes care of such account for revenue purpose in the audited financial statements of the Company.

The independent sale of equipment/ handset should not be brought under the definition of revenue as these are revenue from sale and not rendering of services. Thus inclusion of these items under the revenue from services for the purpose of levy of LF is neither correct (in terms of Accounting Standard) nor prudent.

f. Other income on account of insurance claims, consultancy fees, foreign exchange gains etc.:

As a basic rule, incomes / revenue which have got no nexus with Licence should not come under the definition of revenue. Accordingly the reasons for the specific items as below:

I. Insurance Claim: Taking insurance is a normal business practice in any industry, whether regulated or not. The cost of the asset / depreciation is not claimed as a deduction from the AGR hence there should be no justification for including the claim against loss suffered in the AGR for LF levy. Money received from Insurance claim is an amount to replenish the loss due to damage/destruction of property. Also, Taking insurance is not an activity to earn revenue. It is rather done to safeguard maintain the continuous and uninterrupted flow of revenue. Taking insurance is one of the method of a disaster recovery plan which helps in getting back to normalcy in case of loss / damage to the property / asset of the entity.

Thus when an entity receives money from Insurance Claim, it is not a revenue or gain in its hand. It is rather an indemnification of loss or more appropriately replenishment of lost capital.

II. Consultancy or Management Fees: Any company or person can undertake a management support/ consultancy services. These consultancies may be in varied field basis the experience and expertise gained by the Company or person.

There may be situations wherein individuals provide consultancy (business or legal or manpower support etc) and generate revenue. Such revenue arises from the personal efforts of the provider basis the experience and expertise gained and does not require Licence for the purpose. Thus consultancy is rendered by a company having telecom Licence does not mean that consultancy itself becomes a licenced activity so as to be included in the scope of revenue.

III. Foreign exchange Gains: Foreign Exchange Gains result when liabilities for payment in foreign exchange decrease on account of appreciation of domestic currency vis-à-vis foreign currency. The Foreign **Exchange Gains** are notional in nature and generally result on account of revaluation of foreign exchange reserves lying in bank accounts, revaluation of provisions made for overseas vendors etc. Further, the Forex Gain/Loss cannot be termed as Revenue due to the following reasons:

1. **Forex Gain is not Revenue as stated in AS 9 on Revenue Recognition of the Institute of Chartered Accountants of India (ICAI) and has been specifically excluded from definition of revenue**
2. **Forex Gains and losses is dynamic and indeterminable. In addition forex gains arising on account of telecom services cannot be considered as Revenue, since at any point of time, while the value of Rupee may appreciate against one set of currencies, it may also depreciate in value vis-à-vis another set of currencies. Over a period of time this would change in a dynamic way such that gains may offset losses**
3. **Different Accounting Treatment for Forex Gain as per acceptable accounting standards and practices in India, which allow capitalization of the exchange difference as per the circulars issued from time to time**
4. **Dealing in foreign exchange assets / liabilities do not require a telecommunication licence from the DOT.**

Further our submissions on some additional heads are also detailed below:

g. Profit on Sale of Assets

An asset is an item of economic value owned by an entity / corporation with a view to generate / derive income by utilizing it in the ordinary course of its business. Thus revenue being an economic benefit derived by the entity by utilizing these assets in its ordinary course of business. The cost of the asset / depreciation is not claimed as a deduction from the AGR hence there should be no justification for including the profit on sale of such assets in the AGR for LF levy. Any profit / gain on sale of such asset is a capital receipt and does not come under the scope of revenue.

h. Trade discount

Trade discount is a normal practice in any industry and the accounting guidance under GAAP recognizes it specifying that it should be netted off from Revenue. As per AS 9 of the Institute of Chartered Accountants of India (Revenue Recognition),
"…..4.1 Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them……"

It may please be noted that the "Gross inflow of cash" is the amount which needs to be considered as revenue. Thus the trade discount which is being offered at the time of sale is to be excluded while recognizing the revenue. Revenue should only be the Gross Amount which is receivable by the service provider and not beyond.

Further, Bad Debts should be allowed as a deduction in line with other tax legislations where the bad debt is either given as a deduction while computing taxes or allowed to be adjusted from the revenue while calculating the tax. This treatment is justified by the fact that the revenue was never ultimately realized by the operator.

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

In the matter of inclusion / exclusion of items in the revenue scheme it is submitted that the notified accounting standards under the Companies Act 2013 for recognition of revenue/income should be followed.

This would also ensure that impact of any development i.e. transition to Ind-AS etc. would also be not subject to any further interpretation as revenue would be considered as per the audited financial statements prepared in accordance with the relevant accounting standards i.e. Indian GAAP or Ind-AS applied by all in uniformity.

As discussed in detail in para 1.2 above, the current interpretational issues encountered of discounts, goodwill waivers, principal-agency relationship would all be governed with the revenue recognition standards as discussed above and leave no interpretation issues exclusively for the purposes of revenue share computation. Consequently, the principles as specified and acceptable in GAAP should also be followed for the perspective of GR and Licence fee perspectives.

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

As discussed in para 1.2 and 1.3 above, Licence fee should be considered on Gross Revenue from licenced activities after considering the negative list mentioned in the Exhibit 1 and adjustment should be allowed w.r.t. the double levy for payments to other licenced TSPs. The Items of double levy can be verified from the invoices of other Licencees to be maintained on the portal proposed similar to the Tax Deducted at Source in the Income Tax Act, 1961, as discussed in detail in paragraph 1.4.

It is submitted that in the present mechanisms, licencees are required to submit licence-wise annual audited AGR statements to the Licensor. The said statements are duly audited by Statutory Auditors of the licencee and the details of revenue are provided on quarterly basis, which are duly reconciled with the annual audited accounts of the licencee.

We believe that presently there are sufficient mechanisms available for proper verification from financial statement under the new companies Act, 2013 and the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules 2002.

As per new Companies Act, 2013, there has been a specific provision for preparation of financial statements under the schedule III of the Act and the General instructions for preparation of Balance Sheet and statement of Profit and Loss has already been issued, where it is very clearly mention that total revenue of the company shall be shown separately in terms of “Revenue from operation” and “other revenue”. The general instructions have indicated that in respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from-

(a)	Sale of products
(b)	Sale of services;
(c)	Other operating revenues;
Less	
Excise duty	

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.
Furthermore, other income shall be classified as:

Interest income (in case of a company other than finance company);
Dividend Income;
Net gain/loss sale of investments;
Other non-operating income (net of expenses directly attributable to such income).

In view of said provisions/ instructions of companies Act, **"No"** new mechanism is required.

In case the Government wants to verify the same, they can rely on the audited accounts / AGR of the TSPs in all such cases. In case it is suspected for lower reporting of revenues, they can ask for the Special Audit by Auditors appointed by them for revenue nature only.

Q10 What is the impact of new and innovative business practices adopted by telecom service providers and Licencees on the definition of GR? What impact will exempting other income from the revenue base have on the verification mechanism to be adopted by the licensor?

We believe that there is no impact of the new and innovative business practices adopted by telecom service providers and licencees on the definition of GR if the definition of GR is clear and easy to interpret.

The new and innovative business are largely in the area of converged product and increase sharing (eg asset sharing). These practices are resulting in significantly increase in the level of transactions between licensees over and above the earlier envisaged scenarios of only termination and roaming charges.

Hence to avoid double levy, the current concept of pass through needs to be changed from specific items to be based on deduction of any payment made to another licensee on which the other licensee is subject to pay a LF. This broad principle will ensure that any future type of transactions not foreseen today get automatically covered.

Q11 Do the potential benefits accruing to TSPs by moving from a simpler to a more complex definition of the revenue base (providing for additional exclusions) justify the additional costs of strengthening the assessment, accounting and monitoring system? Should the definition of AGR remain unchanged once the revenue base is reduced by providing for additional exclusions from the top line?

Along with the existing disputes on interpretation of GR/ AGR the governance mechanism and its' implementation got further complicated. Once the definition of GR is re-drafted, considering all factors, the issue of complexity goes away.

Further aligning the processes in line with other Acts / Rules e.g. accepting the GAAP, applicability of accounting standard etc, shall bring in uniformity and consistency as to reporting. This would further support implementation of a layered process of verification as explained in response to Q9. This would in-turn raise Government confidence on TSP in the matter.

In the current regime paper base system of verification of individual transaction in not only creating unnecessary confusion but is also against the nature of the industry which is highly technology driven and paperless. This also adds to the cost of compliance which can be avoided.

Clear guidelines to be issued by DOT to both TSPs & also CCAs on documentation required to prove/verify the deduction claimed to arrive at AGR. As suggested above, ideally centralize the entire process to avoid different interpretations at the various circles.

In case of ILDOs all payments made on billing by the international carriers which enable the ILDOs for provision of services should be deductible.

Once the definition is prescribed with the negative list of exclusions and credit for ALL payments to licenced TSPs, it would make the assessment process simpler and less disputed. The costs of administration will significantly reduce and not increase.

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

The concept of minimum presumptive AGR should not be applied for Licence fees. Given the current state of the industry and to improve viability of the operators and consumer affordability any kind of "assumed revenue model" should not be implemented.

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

Reference our reply to Q12 above, the concept of presumptive AGR and consequent levy shall not be applied for Licences.

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

Intra or Inter, roaming charges are and shall be allowed as allowed as deduction. It is primarily for the following reasons:

- It is first a Roaming which benefits the consumers and brings in competition in the market
- If not allowed as deduction, there would be a double levy of LF
- It brings in additional revenue to Government since more customers can enjoy services provided by the Roaming seeker operator.
- It results in better utilization of spectrum and other telecom assets, which is one of the prime objectives of the telecom policy

. Therefore, Roaming will have same meaning for the purpose of revenues as well as deductions. It cannot be the case that ICR is part of Roaming for Revenues and is not part of Roaming for deductions. Further, it is not correct to state that ICR was allowed only in 2008. In fact, there was no bar on any roaming, including ICR, at any point of time starting from beginning of Licences.

Besides, the revenue earned by the provider operator from seeker operator is any case subject to LF and therefore it is immaterial whether it is inter circle or intra circle roaming as long as the concept of not having a dual levy is followed.

As discussed in para 1.3 above, the credit should be allowed with respect to the double levy.

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 licencing regime in future?

While deciding on the permissible deductions the following should be the guiding principle:

i. Any amount paid to another registered licensee on which LfDS has been deducted should be entitled to deduction from GR to arrive at AGR;
ii. Any amount paid to international telecom operators should be allowed as deduction from GR to arrive at AGR.

Primarily the IP-1 providers should not be brought under the licencing regime as the services carried out by IP-I operators does not come under the purview of Indian Telegraph Act. In fact, in its letter no. 10-51/2008-CS-III dated 29th October 2008, the DoT made it clear to the Authority that as per the statutory provisions, the activity pertaining to installation of towers does not qualify for grant of licence and higher valuation cannot be a reason to bring IP-I under licencing regime. Therefore, we do not see any reason to abandon this position by the government and the Authority now as detailed below:

- "IP-I was created in the year 2000 to facilitate infrastructure development. IP-I companies are required to register with DoT without any financial burden such as entry fee and licence fee to build telecom resources such as towers, ducts etc. It was expected that these concessions would help in creating infrastructure facilities"
- The tower industry has an IP-I registration with the status of an infrastructure provider. Therefore IP-I providers should not be equated with telecom service providers, who are licencees under the Indian Telegraph Act, 1885. Further, the IP-I registration certificate clearly mentions in Clause 2 "In no case the company shall work and operate or provide telegraph service including end to end bandwidth as defined in India Telegraph Act, 1885 either to any service provider or any other customer".
- As there is a fundamental difference between a telecom operator/licencee who is granted a licence under Section 4 of the Indian Telegraph Act and IP-1s who are granted registration certificates and have no means of establishing and working of telegraphs under the present registration and do not fall under the ambit of the Section 4 of the Indian Telegraph Act 1885 (please refer Clause 2 of the IP registration).
- Activities in terms of a registration certificate ex facie are not the Activities of a licencee; the same being distinct and separate ones. The Activities of a certificate holder of IP-I Registration being not the Activities carried out by a licencee, the

same would not be subject to payment of any licence fee while assessing an NLD licencee".

- The basic feature of the tower industry is the sharing of infrastructure – the tower industry is an input sector which provides readymade infrastructure to telecom service providers. Thus the DNA of an IP-1 provider is entirely different from a telecom service provider.
- The, IP-1 and IP-II Registrations are issued by the DoT keeping in view the difference between passive infrastructure and active infrastructure providers. The DoT had in the past consistently taken the position that IP-I providers (offering passive infrastructure) cannot be brought under the licencing regime [which was also incorporated in the Registration certificate granted by the DoT]. This coupled by fact that, the Tower Industry in most of the countries is not treated as part of the telecommunication sector and is not licenced.
- Keeping this distinction in mind, the Department of Economic Affairs, Ministry of Finance, Government of India issued the notification dated 27.03.2012 conferring the infrastructure status to the tower industry which is an input provider to telecom service providers.
- **However, despite whatever is stated above if IP-I operators are to be charged licence fee, TSPs need to be given deduction for payments made to IP-I as pass through charges to avoid double charging.**

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

All the items listed in paragraph 3.35, except the sharing of infrastructure, falls under the Licenced activities as none of these could be performed without having a valid telecom Licence. Irrespective of charging mechanism the fact remains that each of these are essentially input services availed by one TSP from another. These are in the nature of interconnection or access charges which are essentially incurred for carriage and termination of calls. While that other TSP pays a Licence Fees on the same no pass through is allowed to the other TSP leading to a double levy. . Thus a pass through should essentially be allowed for the following items:

a. Leased Line / Bandwidth Charges paid by one TSP to another
b. Port charges
c. Charges for Cable Landing Stations
d. Interconnection Set-up cost
e. Roaming Signaling Charges
f. Charges for resources used by ILDOs from international carriers for provision of its services

In the matter of sharing of passive infra, as explained in our response to Q15 under the consultation, we are primarily against levy of LF on such services. However incase the same is brought under the licencing network, a pass-through shall be allowed for the same.

Additionally pass through should also be allowed for the following:

i) Revenue from Pure internet services should be allowed as PTC: NTP 2012 has an objective to increase internet penetration as below:

"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"

It is therefore important that the revenue earned from the pure internet should be allowed as pass through charges as earlier. This will support the penetration of broadband and establishment of infrastructure by TSPs.

ii) **Pass through for ISP/UASI/UL/CMTS**: It is further recommended that since the provision for Internet Services has also now been subjected to LF levy, a Pass through should also be allowed for charges paid by a licensee to an (another licensee) as well.

iii) International Roaming charges paid to operators outside India should be allowed as deduction since these are in the nature of telecommunication services and the revenue for international roaming is already billed to the subscribers which is offered for revenue share.

iv) IPLC charges are collected by an operator who is selling the bandwidth to the customer and acting as a one stop arrangement for the end to end circuit. To exemplify: Indian operator selling the bandwidth is acting as an agent to collect the charges not only for this half circuit/constituency but also for the half circuit being governed by the other foreign entity that is getting its revenue share from the total bandwidth charges as collected by the selling operator. We therefore request that revenue collected on behalf of the foreign partner should not be the part of the revenue for the reckoning of LF and SUC.

With respect to the Item (g) in para 3.35, Receipts from USO fund are in the nature of subsidy from DoT for losses incurred by services providers hence these should not be included for the purpose of AGR. A subsidy payment by an Authority should not be taxed again by the same Authority. The same is included in the negative list included in Exhibit I.

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

As discussed in paragraph 1.4 above, the DOT should maintain a portal similar to Tax Deducted at Source under the Income Tax Act, 1961, wherein, the LF is deducted at source on payments to other operators and uploaded on the portal on a monthly basis. This would facilitate auto-reconciliation of revenue in one TSP with the cost considered as deduction in the other TSP.

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

Please refer our response to Q16

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

The format should be amended to include the negative list and the deductions from the AGR should be expanded to include all items mentioned in Q16.

We propose that the current format should be simplify in lines that the details included in terms of our response to CP and the recommendations included in paragraph 1.6 above. Some of the details, currently included may not be required (other than for distinguishing for the purposes of SUC payments) for eg

(i) revenue details for each of WLL, Mobile, CDMA, 3G, BWA, etc;
(ii) split between postpaid and prepaid; and
(iii) sub-revenue details with respect to activations, rental, airtime, pass through etc

With the concept of GR (as per GAAP) with specified exclusion (Negative List) to come to AGR, adjustments for all TSP transaction (deduction only if LfDS paid) the formats concept can be made very simple.

Further, the entire assessment process, filing of return, LfDS (refer para 1.4 above) should all be done on a centralized basis to bring in ease and uniformity of the process.

Q20 Is there a need to develop one format under unified Licence for combined reporting of revenue and Licence fee of all the telecom services or separate reporting for each telecom service as in present Licence system (as per respective Licence) should continue? If yes, please provide a template.

The format should be made simpler to include:

- 'Revenue from Operations' as per financial statements of the Company
- Less: exclusion for negative list items which are non-telecom related receipts
- Less: deduction for billings by other licenced TSPs on accrual basis duly reconciled for LfDS on payments made.

Q21 In case any new items, over and above the existing deductions, are allowed as deduction for the purpose of computation of AGR, please state what should be the verification trail for that and what supporting documents can be accepted as a valid evidence to allow the item as deduction.

Refer our response to Q17 above

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

No. The present practice of accepting quarterly payments based on self-certification of AGR statements may be continued with the requirement of annual audit of quarterly statements by the statutory auditors and reconciliation to the audited financial statements.

Q23 If response to Q22 is in the affirmative, should the audit of quarterly statement of Revenue and Licence 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?

We recommend for an auditor under Section 139 of the Companies Acts i.e. Statutory Auditors of the Company.

As discussed in paragraph 01.4 above, there should be a formal and time bound annual assessment process (in line with other Financial Acts). The should be followed by DoT as well as TSPs on the basis of which Show causes etc may be issued. This after appropriate Appeal mechanisms can translate into Demands.

At present there is no formalized assessment regime followed by DOT consequent to which Demands are issued by DOT without any recourse mechanism. As discussed in para 1.4 above, there should be a defined time-based mechanism of timely completion of assessments, time barring provisions, etc on the lines followed under Income Tax Act, Service Tax, etc

Q24 Is it desirable to introduce deduction of LF at source as far as PTC payable by one TSP/ licencee to another are concerned, in the interest of easy verification of deductions?

Yes. Please refer to discussion in 1.4 and our response to Q17.

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

There are certain items which require Authorities evaluation and a consequent decision form business prospective. For example the discount given to distributors, Bad Debts or Goodwill Waivers etc. These are items which are incidental to business are also integral part of business. The approach of government so far has been to tax anything and everything irrespective whether that amount actually needs to be taxed or has the TSP actually earned so as to pay the Levies.

Similarly, reversal of accruals and vendor credits should not be included for the purpose of the licence fees. Such a transaction is a mere adjustment in the accounting heads. The income given in the statement of profit and loss account for such transactions is only notional income and there is no actual inflow of cash, provided there was a deduction claimed in the AGR on an accrual basis, in which case should be included in computation of AGR.

As discussed in paragraph 1.2 above, the definition of gross revenue should be in line with the applicable accounting standards.

Similarly the issue of Bad Debts and Goodwill Waivers which are nothing but revenue which has been realized previously on the probability of its recovery which now required to be written off. In all fairness since the Company has paid the LF on which they have actually not realized they should be allowed a credit for the same.

Besides these issues which have a direct bearing on GR and AGR, there are big procedural challenges in the current regime which also needs re-addressal. For example in the matter of assessment of LF dues and related verification of Access Charges (allowed as deduction form revenue to arrive at AGR for the purpose of levy of LF) both the Government as well as TSP are facing huge challenges. This is getting further complicated as:

- The size of verification covers 100% transactions with related documents and records
- There is lack of a standard process or rule as to how the entire process needs to be carried out.
- There has been not been a proper grievance re-addressal mechanism existing with the Government wherein the aggrieved party can reach

Further, during the process of verification, the standard accounting rules are getting challenged creating further disputes between the Government and operators. At times the scope of verification reaches the investigation mode wherein records are getting challenged. Further, varied and differential requirement as to certification of individual transaction from Statutory / Tax Auditors are being asked for by the Government. These issues have led to increased cost of compliance along with delay and unresolved disputes as to the final assessment of LF & SUC.

The main reason for all these issues are:

- Non acceptability of accounting concepts and conventions
- Non / lesser acceptability of systems and process

All these issues can be avoided if parity with Governance Model as existing under various other Financial Acts / Laws is brought. While a control mechanism is definitely warranted and recommended however the time has come to move to a self-assessment regime.

On control measures, it is suggested that there should be a multi layered check or governance mechanism available with the Government as is there under many other laws e.g. Income Tax, Excise etc. The process should start from placing reliance on the Audited Accounts / Statement and verifying the transactions on sample basis. The second step should be Calling of Records for specific / exceptional transactions for a reason recorded in writing for doing so. If still not satisfied Government may order for an audit by an auditor appointed by the Government or CAG.

In order to place reliance on the audited records of the Company, the current system followed by SEBI for listed companies, may also be introduced. Essentially, only auditors who are subject to peer review are eligible to be appointed as statutory auditors for the TSP.

The submissions are without prejudice to contentions of any member operators before TDSAT/Courts.

Glossary

AS: Accounting Standards
AGR: Adjusted Gross Revenue
CP: Consultation Paper
DoT: Department of Telecommunications
GAAP: Generally Accepted Accounting Principles
GR: Gross Revenue
IAS: International Accounting Standards
ICAI: Institute of Chartered Accountants of India
ICT: Information Communication and Technology
IFRS: International Financial Reporting Standards (IFRS)
ILDO: International Long Distance Operator
Ind AS: Indian Accounting Standards
ISP: Internet Service Provider
IT: Information Technology
LF: Licence Fee
MCA: Ministry of Corporate Affairs
MVAS: Mobile Value Added Service
M2M; Machine to Machine
NTP: National Telecom Policy
OTT: Over-the-top
SUC: Spectrum Usage Charge
TDS: Tax Deducted at Source
TDSAT: Telecom Disputes Settlement and Appellate Tribunal
TRAI: Telecom Regulatory Authority of India
TSP: Telecom Service Provider/ Operator
TV: Television
UASL: Unified Access Service Licence
USO: Universal Service Obligation
VSAT: Very Small Aperture Terminal