



Telecom Regulatory Authority of India



Recommendations

on

Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges

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CHAPTER-I: INTRODUCTION

- 1.1 The Authority decided to initiate a consultation process *suo motu* on the definition of gross revenue (GR) and adjusted gross revenue (AGR) by issuing a Consultation Paper (CP) on 'Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges' on 31st July 2014. As indicated in the introduction to the Authority's Recommendations of 1st May 2014 on 'Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR', the Authority had suggested to the Department of Telecom (DoT) in August 2013 that a reference may be made at the earliest to enable a comprehensive review of the definition of AGR for all (other) licences. However, DoT had, in February 2014, communicated to the Authority that the recommendations on ISPs may be expedited without linking the same with the other issues. Thus, the Authority's Recommendations of 1st May 2014 were limited to only the definition of AGR for ISP licences.
- 1.2 Subsequently, the Department of Telecom (DoT) in a its reference no.800-23/2011-VAS of July 7, 2014 requested the Authority to submit recommendations for delinking of licensing of networks from delivery of services by way of virtual network operators etc. including associated issues such as AGR, terms of sharing of passive and active infrastructure etc. under the Unified Licence (UL) regime.
- 1.3 The context for the consultation was set out in Chapter I of the CP; specifically, the CP noted that the opportunity (and need) to review the framework of Licence Fee (LF) and Spectrum Usage Charges (SUC) arose from the National Telecom Policy 2012 (NTP 12), the changes made to the licensing regime, the transition from the administrative allocation regime towards market-determined prices for spectrum, and the conclusion of the tenure of many licences.
- 1.4 The questions posed for consultation broadly fall under the following heads: what ought to be the components of GR; what are the items

that could be excluded as pass through charges¹ (PTC) to arrive at AGR; how to ensure that any regime of exclusions or deductions renders the system transparent, simple to administer, and verifiable; whether, instead of such exclusions (to arrive at the AGR), it is feasible to levy LF and SUC as a percentage share of GR or whether the levy should continue to be imposed as a share of a redefined AGR; whether, instead of making changes to the definitions of GR and AGR, a reduction can be effected in the rates of LF and SUC; or whether a regime that combines changes to the definitions of GR and AGR and reductions in the rates of LF and SUC should be adopted; what ought to be the verification and audit processes; and what statements etc., should be prescribed for ensuring end-to-end integrity of the payment process.

- 1.5 The CP elicited widespread and voluminous responses from stakeholders. In the Authority's view, the content and nature of the responses bring out not only the importance of the issues raised but also point to the valuable opportunity to establish the regulatory framework for this important source of non-tax revenue for the foreseeable future, while minimizing the disputes that have marked the LF regime thus far. The current regime came into being at the time of the migration from the earlier fixed-fee arrangements to revenue sharing. The revenue sharing arrangement (i.e., LF and SUC) was based on the principle of 'pay LF and SUC from what you earn' and is not akin to a direct/ indirect tax levied by the Government under any statute. It proved successful in helping telecom service providers (TSPs) to roll out services over the past decade-and-a-half; at the same time, however, the disputes surrounding the interpretation of the revenue base that was subject to LF have resulted in avoidable transaction costs in working the system. The AGR definitions adopted by the DoT subsequent to the migration package probably suited the

¹ These are deductions allowed from Gross Revenue to arrive at Adjusted Gross Revenue for the purpose of computing licence fee as stipulated in the respective licence agreement.

needs of the time; however, as we look to the future, it has become imperative to factor in the experience gained in the working of the revenue-sharing regime so as to carry out any meaningful review and devise an alternative framework better tailored to current and future industry requirements. It should be noted that the secular decline in the *rate* of LF over the years (see **Table 1.1** below) has not proved sufficient in reducing litigation surrounding the definition of the *base*.

Table 1.1

Licence Fees as % of Adjusted Gross Revenue (For major telecom services)

Service	Category	w.e.f. August 1999	w.e.f. January 2001	w.e.f. April 2004	w.e.f. July 2012	w.e.f. April 2013
Access Service	‘Metro’ and ‘A’ LSAs	15%	12%	10%	9%	8%
	‘B’		10%	8%	8%	
	‘C’		8%	6%	7%	
NLD	All India	-	15%	6% w.e.f 1/1/06	7%	
ILD	All India	-	15%	6% w.e.f 1/1/06	7%	

- 1.6 There are significant differences between the licensor and the licencees in the perception of what constitutes revenue for the purpose of levy of LF (and SUC). This warrants closer examination of the components that constitute the revenue base. The need for a review is underscored by the NTP 12’s stated objective to rationalize taxes, duties, and levies affecting the telecom sector and work towards providing a stable fiscal and regulatory regime to stimulate investments and making services more affordable. A stable regulatory framework which promotes investment is a *sine qua non* if the anticipated investments for rolling out the ambitious Digital India mission are to materialize.
- 1.7 Some other aspects of the evolution of the financial regulatory regime governing licences are especially relevant. The first is the move away

from administrative allocation of spectrum to the market discovery of spectrum prices. This transition has opened up a new avenue of resource mobilisation for the Government; as **Table 1.2** shows, an amount of approximately Rs. 1,50,830 crore has been mopped up from spectrum auctions since 2010.

Table 1.2
Results of Spectrum Auction

Month / Year of auction	Spectrum/ Band	Final Bid Amount (Auction Money) (Rs. in crore)
May 2010*	2100 MHz (3G)	50968
May 2010*	2300 MHz (BWA)	25696
November 2012	1800 MHz	9365
March 2013	800 MHz	3640
February 2014	1800 MHz	37573
February 2014	900 MHz	23590
Total Auction Money		150830
SUC paid by wireless TSPs^ (2010-11 to 2013-14)		18075
* excludes allocation made to PSUs at auction determined prices		
^ excludes two PSUs		

- 1.8 If this amount is amortised over the typical 20-year licence tenure of access licences, it becomes clear that additional annual revenues accruing from spectrum auctions are higher than the latest annual SUC collections. The annual amortization of auction revenue comes to around Rs.7500 crore as against SUC collection of around Rs. 5578 crore in 2013-14. In short, the total effective rate of licence-related levy has gone up significantly in the recent past. It is ironical that the industry is expected to continue a low tariff regime even as it asked to pay out high auction-determined spectrum prices. And, these

spectrum prices are amongst the highest in the world. There are only two ways in which these additional upfront costs for spectrum can be financed by TSPs: either by dipping into internal accruals or by recourse to debt. The first option is constrained by the low margins – occasioned by hyper-competition – characteristic of the Indian telecom market and the large fixed cost outlays involved in asset creation. As such, a large chunk of the financing has to be by way of borrowings. The total indebtedness of the sector is estimated to be in the region of Rs. 2,56,918 crore² (**Table 1.3** presents the data on indebtedness gathered from TSPs for the year 2013-14).

Table 1.3
DEBT/ BORROWED FUNDS OF PRIVATE TSPs
(As on 31st March 2014)

Nature of Borrowings	Source of funds	Amount (Rs. in crore)
Short-Term Borrowings (availed for less than a year)	Indian	67,528
	Foreign	2,280
Long-Term Borrowings (availed for a year or more)	Indian	1,17,481
	Foreign	69,629
Total indebtedness of telecom sector		2,56,918
<p>Note: The above information is as submitted to TRAI by private telecom service providers and tower companies. It includes their short-term & long-term borrowings and current maturities (<1 year) of long term debt.</p>		

1.9 The statistics pertaining to the revenues accruing to the Government *directly* from the sector (i.e., these do not take into account indirect accruals in the form of sales and service tax, corporate tax, and other GDP-effects) reveal not only the increase in regulatory takings from the sector but also the need for a holistic reappraisal of the financial situation of the sector in order to provide an impetus to further

² Source: As submitted by private telecom service providers and tower companies (IP-I).

investments³. That the lack of public sector wherewithal warranted private sector investment in telecom infrastructure creation in the first place cannot be lost sight of in this context. The Government's policy shift of 1994 encouraged private sector investment; surely, that basic premise must continue to guide policy 20 years later viz., how to induce larger flows of private capital to the sector.

1.10 A quick comparison of the Indian regime of LF and SUC with that prevailing in other jurisdictions (see **Annexure 1.1**) clearly brings out that the levies in India are way higher than in all these jurisdictions. Most countries have either very low rate of levies or just recover the administrative cost from the TSPs. In striking contrast, the Indian dispensation is oriented to generating resources for the exchequer. Further, a significant portion of the levies accrue to the Universal Service Obligation Fund (USOF). The high USOF levy has also not achieved the stated purpose of filling the investment gap in the development of telecom services in underserved areas. The noble intention of the USOF was that it would drive resource flows (investment) to areas where the private sector would be reluctant to invest. Thus, two sources of investment were envisaged: private flows and USOF flows. If USOF flows have not served their purpose, their very *raison d'être* is debatable.

1.11 While Government revenue concerns are relevant in a developing country context, the Authority is of the view that the time is ripe for a regulatory reappraisal of the LF regime. It is time to realign the regime to stimulate further investments in the sector for its growth and the spillover effects on the rest of the economy. Hence, the present exercise intends to establish a framework to tackle three dimensions of the problem at hand: to be forward-looking (to meet industry needs,

³ It has been reported that the annual investment in telecom infrastructure in calendar 2013 in China is of the order of USD 62 billion (Source: <http://www.marbridgeconsulting.com>) while that in India for 2013-2014 is estimated to be about USD 8 billion in 2013-2014 (based on information submitted to TRAI by TSPs). The far larger outlays in China also occur in a regime where retail tariffs are higher than in India.

and consequently enhance the quality of consumer service and experience), to induce and attract investment, and to minimize disputes (to reduce transaction costs).

1.12 The consultation process has elicited many responses that urge a radical reengineering of the LF regime. The Authority has also carefully considered stakeholder responses to other issues raised in the CP, including minimum presumptive AGR, intra-circle roaming, deduction of LF at source, verification processes to be put in place, audit, and prescribing formats for filing returns by licencees. A detailed discussion of the substantive issues raised in the CP is contained in the following chapter. Some peripheral issues raised by stakeholders are also discussed in the same chapter. The Authority has, in dealing with all the issues at hand, adopted the four-fold principle of ease of interpretation, simplicity and verifiability, comprehensiveness, and minimal discretion. At the same time, the Authority is also conscious that arbitrage opportunities (and incentives for creative accounting) need to be minimized and different TSPs/ licencees are dealt with in a fair and equitable manner while levying LF (and SUC). It is the Authority's expectation that the following set of Recommendations will set the tone for the growth of the telecom sector in the medium to long term, and minimize disputes and contentions that have had the effect of dampening investor confidence in the past.

CHAPTER- II: ANALYSIS OF ISSUES AND RECOMMENDATIONS

Background

- 2.1 As brought out in the CP, the following principles should animate any discussion in the definition of GR/ AGR:
- (i) The definition should be amenable to easy interpretation so as to pose fewer problems in application, reduce disputes and litigation, and minimize incentives for reduction of liability through creative accounting practices;
 - (ii) It should be easy to verify - the definition of revenue base must enable a uniform, transparent and simple procedure for verification of revenue;
 - (iii) It should be comprehensive - to discourage design of tariff packages and schemes for the prime purpose of reducing LF liability to minimum; and
 - (iv) The scope for exercise of discretion is minimized at the level of assessing authority.
- 2.2 While examining stakeholder comments, it was noted that stakeholders had raised certain issues that were not directly connected with the questions raised in the CP, but nevertheless had a bearing on the determination of the overall LF regime. A brief discussion on these issues is in order before proceeding to address stakeholder comments on specific questions raised in the CP.

Unified Licence Vs. Service Specific Licence

- 2.3 The licensing framework has been an integral part of India's telecommunication law. DoT has been issuing licences for various telecom services eg. UASL, NLD, ILD, ISP, VSAT etc. In the National Telecom Policy, 2012, DoT introduced the Unified Licence (UL) i.e. single licence with authorizations for various telecom services. Thence onwards, no service specific licence was to be issued by the DoT. As per procedure prescribed in the applicable chapter of the UL, TSPs

would require authorisation for each telecom service separately for provision of various services, which earlier required a separate licence for operation. Under UL, the PTC *inter alia* includes payment to other eligible/entitled telecommunication service providers, which is understood to include ‘service specific licence’ and ‘service specific authorisation’ under UL.

- 2.4 Considering the shift to the UL regime, the Authority is of the view that, in the present Recommendations, ‘service specific licence’ and ‘service specific authorisation’ under UL need to be taken to be the same for all practical purposes.

Levy of Licence Fee and Spectrum Usage Charges: Is it Revenue Sharing or a Tax?

- 2.5 During the consultation process, many stakeholders suggested that LF should be collected on similar lines i.e. using principles followed in the Value Added Tax (VAT) system. At the same time, many stakeholders raised the issue of ‘double levy/ taxation’.
- 2.6 It has been submitted by many stakeholders that, in the present licensing regime, LF goes on increasing as input services pass from one stage to the next, as each subsequent user has to pay LF again on the revenue earned without getting any credit for the LF paid by the other TSP (providing input services). This has a cascading effect on the pricing of the final product/service.
- 2.7 The issue of ‘double taxation’ or ‘double levy’ had been raised by the TSPs in the past. Their argument proceeds as follows: many items of payment for availing input services by one TSP to another TSP (such as port charges, bandwidth charges, cable landing station charges, interconnection set up costs, roaming signaling charges, etc.) are at present not allowed as deductions from GR of the paying TSP even though they represent revenue in the hands of the input service provider that is already subject to LF (and SUC as applicable); hence, the non-deduction of the cost of these input services in the hands of

the availing service provider amounts to a ‘double levy/ taxation’. Stakeholders have argued that the charges payable by one TSP to another TSP for availing input services should be considered as PTC to avoid a double levy on the same income. The amount of revenue subjected to LF in the hands of one licensee should be available as a deduction to another licensee as PTC, independent of the nature of service provided.

- 2.8 The comments of the stakeholders have been examined. Before proceeding to address stakeholder’s comments on double taxation/VAT like system, it would be in order to have a quick relook at the background and nature of LF (and SUC). The relevant clause in the migration package of July 1999 (when LF was shifted to revenue share in place of fixed LF) is reproduced below:

“The Licence fee as a percentage of gross revenue under the licence shall be payable w.e.f.1.8.1999..... The gross revenue for this purpose would be the total revenue of the Licensee company excluding the PSTN related call charges paid to DOT/MTNL and service tax collected by the licensee on behalf of the Government from their subscribers.....”

Thus, it can be said that the LF regime instituted post-July-1999 was developed on the principle of ‘pay LF from what you earn’. In such a scheme, LF is a contractual obligation (revenue sharing) of the TSP arising from the applicable licence agreement. The LF paid to DoT is not a direct or indirect tax/ cess levied by Government under any statute. There is, therefore, an inherent conceptual difference in the nature of LF and VAT.

- 2.9 The Authority in its Recommendations of 10th October 2011⁴ and 16th April 2012⁵ had examined the issue of ‘double taxation’; the Authority

⁴ Recommendations dated 10th October 2011 on Spectrum Management and Licensing Framework.

was of the view that allowing all the deductions sought by TSPs was not justifiable. Since the issue has been raised once again, the matter has been re-examined.

- 2.10 The concerns of TSPs can be viewed along two dimensions: (a) what is double taxation; and (b) whether under the present definition of GR/AGR, income is subject to a double tax in the Indian telecom service sector context. Normally, issues of double taxation arise in situations involving the territory of more than one state i.e., cross-border situations. In India, as per the prevailing tax provisions, the payments made by TSP 'A' to the TSP 'B' (for availing telecom input services) are deductible expenditure from TSP A's income and such receipts are taxable at recipient TSP B's end. Therefore, there appears to be no issue of double taxation under the Indian income tax law, as TSP A gets the benefit of payments made to TSP B while computing its tax liability. Double taxation is purely a fiscal financial term and has no relation with the prevailing telecom licensing (based on revenue sharing) regime or deductions made from AGR to arrive at LF payable by the TSPs.
- 2.11 In the case of LF that is levied on (adjusted) GR of TSPs, amounts paid to other TSPs in lieu of input services provided by them are in the nature of expenses and cannot be construed as PTC except where defined (IUC, roaming charges, etc.). If amounts paid for input services are allowed as PTC, potentially all costs can be claimed as PTC; this could perversely affect creation of network infrastructure by TSPs. For example, a TSP may prefer to hire leased circuits from another TSP rather than building its own, solely for claiming the PTC benefit. The LF on (adjusted) GR is levied separately in the hands of the respective TSP; as such, *prima facie*, there is no element of double levy involved. In the light of the above discussion, the issue of double

⁵ Recommendations dated 16th April 2012 on Guidelines for Unified Licence/Class Licence and Migration of Existing Licences (see paragraphs 2.45 and 2.46).

taxation/double levy does not appear to have any bearing on the current exercise for the design of the telecom licensing fee regime.

Revenue Base for Licence Fee and Spectrum Usage Charges: Gross Revenue or Adjusted Gross Revenue

2.12 Under the present licensing system, LF is charged on the AGR as defined in the licence agreement. AGR represents the net revenue after allowing permissible deductions from GR⁶. This system has its own advantages and associated drawbacks in the form of lengthy verification and related complexities. To simplify the entire process of levy of LF, it is possible to consider levying LF as a percentage share of GR rather than as a percentage share of AGR (with a suitable adjustment in the LF rate). Therefore, with the objective of the simplifying the process of LF levy, the following question on charging LF on GR instead of AGR was raised in the CP:

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?

2.13 Most stakeholders have favoured the levy of LF on AGR (as is being done under the existing licensing system) instead of GR. Stakeholders argued that LF (and SUC) based on AGR factors in various underlying legitimate inter-operator payments (i.e., PTC). Further, it has been submitted that the system of charging LF (and SUC) based on GR will result in LF being levied twice on the same revenue since PTC (that is payable) is not taken into account.

2.14 A few stakeholders supported the concept of LF based on GR instead of AGR on the grounds that it would lead to simplicity and ease of enforcement and also ensures transparency in examining the books of accounts of TSPs. One stakeholder commented that the percentage of

⁶This represents gross revenue earned by the TSP before setting off any permissible deductions.

GR should be decided in a manner that to reasonable and in line with international best practices.

- 2.15 The comments of the stakeholders have been carefully considered. There is almost unanimous support from stakeholders for the continuation of the existing system of LF based on AGR. The Authority notes that charging LF based on GR does not take into account legitimate inter-TSPs payments (i.e., PTC) in computing LF. Any change of base (from AGR to GR) in computing LF (even with a reduced rate) may place an additional burden of LF on some service providers - mainly non-access standalone operators. At the same time, the present system of levying LF on AGR is in operation since 1999 (when the revenue sharing regime was introduced) and both licencees and licensor have considerable experience in working the system. **The Authority recommends that the LF and SUC should continue to be computed based on Adjusted Gross Revenue.**

Definition of Gross Revenue

- 2.16 Currently, GR is clearly defined separately for each licence. Under the existing licensing regime, there are considerable interpretation issues on whether non-telecom related activities should be excluded for calculation of AGR; what PTC would be eligible as permitted deductions, whether the definition of GR is to be restricted to only licenced activities, etc. That is, a licenced entity whose business portfolio extends beyond telecom services would pay LF on a much larger revenue base compared to another entity that undertakes the telecom business alone.
- 2.17 TSPs have also repeatedly articulated their concerns about the classification of items which may be 'other income' in nature but which are not revenue from licenced activities, such as interest on a company's lending /inter-corporate loan, dividends on investments, gains due to foreign exchange fluctuations, other income on account of management consultancy fee, etc.

2.18 In this context, the following questions were raised in the CP (in addition, three additional questions (Q4, Q7 and Q11) were also raised on the topic :

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?

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?

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

2.19 Stakeholders have responded that there is a need to review/ revise the definition of GR and AGR under different licences. The vast majority has suggested that GR should be defined to include revenue earned only from licenced telecom activities under the specific licences. Further, GR for SUC should be exclusively based on the revenue generated from the use of spectrum resources. Other revenues such as rental from properties, interest income, income from dividend, interest earned on investment of savings, capital gains made on account of sale of fixed assets etc., should not be included in the definition of GR. Internet service providers (ISPs) have suggested that revenue from pure internet services may be allowed as PTC to arrive at AGR, since LF levied on pure internet services makes the service less affordable and would affect the cost of the internet to the end user. It was also reiterated that non-licenced revenues of a TSP may be excluded from GR (hence AGR),

2.20 Further, most stakeholders suggested that there is a need to make the verification process simple and comprehensive. They suggested that

alignment with Accounting Standards (AS) should guide the definition and that the “double levy” of regulatory fees should be avoided and multistage regulatory levies eliminated. One stakeholder suggested that the list of documents required for settlement/ verification of revenue should be clearly specified by DoT and it should rely on the documents submitted by licencees and avoid a repeat audit by the CCA offices.

- 2.21 By and large, there is considerable support from the stakeholders for the idea of revisiting the present definitions of GR and AGR. In the context of the UL regime (with authorizations), the Authority is of the view that true unification of licensing can only be achieved when there are common terms and conditions under the UL for different authorizations. Therefore, the Authority is of the view that a common definition of GR should be recommended for all telecom services authorised under UL. The definition of GR would need to enable matching of the total revenues stated in the Annual Audited Financial Statements (AFSs) of the TSP so as to make first stage reconciliation/ verification robust and comprehensive. This definition shall also be applicable to all existing licences given for different telecom services (e.g., UASL, CMTS, NLD, ILD, ISP, VSAT etc.) to provide a level-playing field. Accordingly **the Authority recommends that Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/activities and inclusive of all other revenue/ income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income etc. without any set-off for related items of expense.**

Applicable Gross Revenue

- 2.22 In many jurisdictions, licence fees and other charges are derived not on the basis of GR but typically use a concept that can be termed ‘Applicable GR’ (ApGR). That is to say, not all revenues that go into GR are eligible or ought to be taken into account when determining

licence fees and other charges. And, this is altogether apart from the fact that certain charges are in any case to be passed through. This backdrop has guided the Authority in its review of the current LF and SUC regime.

2.23 Before proceeding to the delineation of ApGR and then to the definition of AGR, it is necessary to briefly discuss different components of GR. Annual Financial Statements (AFSs) as prepared under Companies Act, 2013 in accordance with the provisions of AS, give a fair idea of revenue classification. Since a licenced entity may have revenues from businesses other than telecom activities revenue as per AFSs cannot be taken as GR of the TSP as in the licence agreement, since it includes revenues accruing from different streams. The GR of licensee can be classified into the following categories:

(1) Revenue from Operations: The operating revenue represents the revenue generated by way of provision/ delivery of services and sale of goods for which a telecom licence is required and also includes operating revenue from activities other than telecom, such as transportation, power transmission, etc, as well as revenue from services operated under licence/ permission from the Ministry of Information & Broadcasting (MIB), such as cable TV or broadcasting services. Revenue from operations also includes 'other operating revenue' arising from telecom activities or ancillary to telecom activities but for which a telecom licence is not required (e.g., sale of handsets/ equipment, revenue from sharing of passive infrastructure/ providing OTT services etc.) and 'other operating revenue' from activities other than telecom.

(2) Other Income: It comprises all other revenues/incomes other than revenue from operations.

2.24 Under the present licensing regime, almost all TSPs are standalone telecom companies. This is an offshoot of the current licensing conditions which mandate levy of LF and SUC on the TSP's revenue

from all sources. Stakeholders have argued vigorously that only revenue earned from licenced activities should be subject to the levy of LF and SUC. There is considerable merit in the argument that the levy of licence-related fees and charges should not traverse beyond the revenues accruing to the licencees from telecom operations/ activities.

2.25 The Authority has also carefully examined stakeholders' comments on exclusion of certain items of 'other incomes' in the light of its earlier Recommendations of September 2006 on the subject. It has been the position of the Authority that telecom-related revenues should form the revenue base for levy of LF. This approach ought to be applicable not only in the case of operating revenue but for items of revenue that normally fall under the head 'other income' in the licencees' books. The Authority notes that 'other income' under many heads accrues to the licensee from activities ancillary to their core telecom business e.g., income from management or consultancy fee, interest earned on deposits from subscribers, commission earned etc. Equally, there are sound reasons to exclude certain other heads (of other income) such as dividend income, gain on foreign exchange, insurance claims etc., from the computation process of LF and SUC. There is no limitation by way of definition of 'other income' either in the Companies Act, 2013 or Accounting Standard-9. It is basically the nature of income that determines whether it is 'income from operations' or 'other income'. Thus it is very difficult, if not impossible, to list all likely heads of 'other income' and their treatment in computation of AGR. Therefore, the Authority is of the view that, to avoid any ambiguity in the future and to ensure a clear demarcation, a 'positive list' may be prescribed containing the list of other income items that will not form part of AGR for the purpose of LF and SUC. Items of other income recommended for inclusion in the 'positive list' and the reasons are given in **Annexure 2.1. Table 2.1** contains the list of items that will not form part of ApGR for the purpose of LF and SUC.

Table 2.1

Sl. No.	Item/head of 'Other Income'*
1.	Income from Dividend
2.	Income from Interest
3.	Capital gains on account of profit on sale of fixed assets and securities
4.	Gains from Foreign Exchange rates fluctuations
5.	Income from property rent
6.	Insurance claims
7.	Bad Debts recovered
8.	Excess Provisions written back
* subject to conditions given in Annexure 2.1	

Receipts from USOF

- 2.26 Subsidy from the USOF is provided to cover operating losses incurred by TSPs in providing access to telegraph services to underserved areas. USOF levy forms a substantial portion (5%) of the present rate of LF (8%) across services. Under the existing licensing regime, reimbursement/ subsidy given to TSPs from the USOF is exempted for reckoning of AGR for the purpose of computation of LF and SUC.
- 2.27 Receipts from USOF was one of the components posed for consultation through Q16 in the CP. Most stakeholders stated that receipts from the USOF should be allowed as deduction from GR to arrive at AGR as is being done at present. Further, receipts from USOF are in the nature of subsidy/reimbursement from the DoT for undertaking specified tasks; hence, these receipts should not be treated at par with other heads of revenue.
- 2.28 The Authority has examined the comments of the stakeholders. In view of the objectives for which USOF subsidy is given and managed by the DoT, the Authority is of the view that receipts from the USOF should be allowed as deduction from GR for the purpose of computation of LF and SUC.

- 2.29 In the light of the above discussion, it is better that issues pertaining to inclusion or non-inclusion of revenue from operations other than telecom activities and other income are dealt with, before going on to address the definition of AGR for the purpose of LF and SUC. The Authority is of the considered opinion that the applicable GR (for proceeding to the next step of arriving at AGR) needs to be defined before arriving at AGR for the purpose of levying of LF and SUC. **Therefore, the Authority recommends that Applicable Gross Revenue (ApGR) would be equal to total Gross Revenue of the licensee as reduced by:**
- (i) revenue from operations other than telecom activities/ operations as well as revenue from activities under a licence/ permission issued by Ministry of Information and Broadcasting;**
 - (ii) Receipts from the USO Fund; and**
 - (iii) items of ‘other income’ as listed in the ‘positive list’ (Table 2.1).**

Permissible deductions from ApGR and treatment of expenses/ costs

- 2.30 At present, deductions of the following nature are allowed as PTC from the GR to arrive at AGR: (i) call charges (access charges) actually paid to other telecom service providers for carriage of a call, (ii) roaming revenue actually passed on to other telecom operators and, (iii) service tax on provision of service and sales tax/ VAT actually paid to Government. The components of PTC, though defined separately under each service licence agreement, are broadly similar in scope across licenced services. Their treatment as deductibles reflects the understanding that the last mile provider, by virtue of being the ‘single point biller’, collects even those charges that form a part of an intermediate service provider’s revenues that need to be passed on to that service provider. In the context of the representations and demands from various sections for inclusion of other items as PTC, the following questions were raised in the CP:

Q15: How should the permissible deductions be designed keeping in view future requirements? Specifically, what treatment should be given to charges paid to IP-I providers in the context of the possibility of bringing them under the licensing regime in future?

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.

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

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

2.31 Many stakeholders have responded that all inter-TSP payments for availing input services (mentioned in Para 3.35 of CP) by one TSP from another TSP should be allowed for deduction from GR to arrive at AGR. It has been argued that all these charges are essentially incurred in providing services to customers and passed on to other TSPs (provider TSP) out of the revenue received from the customers. A number of stakeholders have stated that the present definition of PTC, where these inter-TSP payments are not allowed as deductions, results in the double levy of LF on the same amount. It has been argued that the GR of the recipient TSP includes the payment received from another TSP in lieu of providing input services and LF has to be paid on this revenue; where is the justification for levying LF on the TSP purchasing input services when the same revenue has been the subject of levy in the hands of the recipient? Therefore, the TSP making payment for input services should be permitted to deduct these as PTC from its GR. Similarly, a few stakeholders argued that in case IP-I service is brought under the licensing regime, deductions from GR should be allowed for payments made to the IP-I service provider as well. Some stakeholders argued for allowing the deduction of revenue from pure internet services while computing AGR for ISP services.

2.32 The Authority has carefully examined the comments of the stakeholders. As far as interconnection usage charge is concerned, it is revenue collected from the customer by one service provider for using the telecom network of another service provider for completion of a call. The interconnection usage charge and roaming revenue collected on behalf of other telecom operators is eventually passed on to other operators. It is in this background that exclusion of interconnection usage charge is specifically provided in the migration package and also in the respective service licences. Other items that fall into this category are access charges⁷ paid by TSPs providing international calling cards and toll-free charges⁸. Access charges and toll-free charges paid are similar to interconnection usage charges and roaming charges i.e., revenue collected from the subscriber/customer on a per call basis is passed on to another TSP for carriage and completion of calls. Therefore, the Authority is of the view that such access charges (for calling cards) and toll-free charges should be allowed as deductions from the ApGR of paying TSP to arrive at AGR.

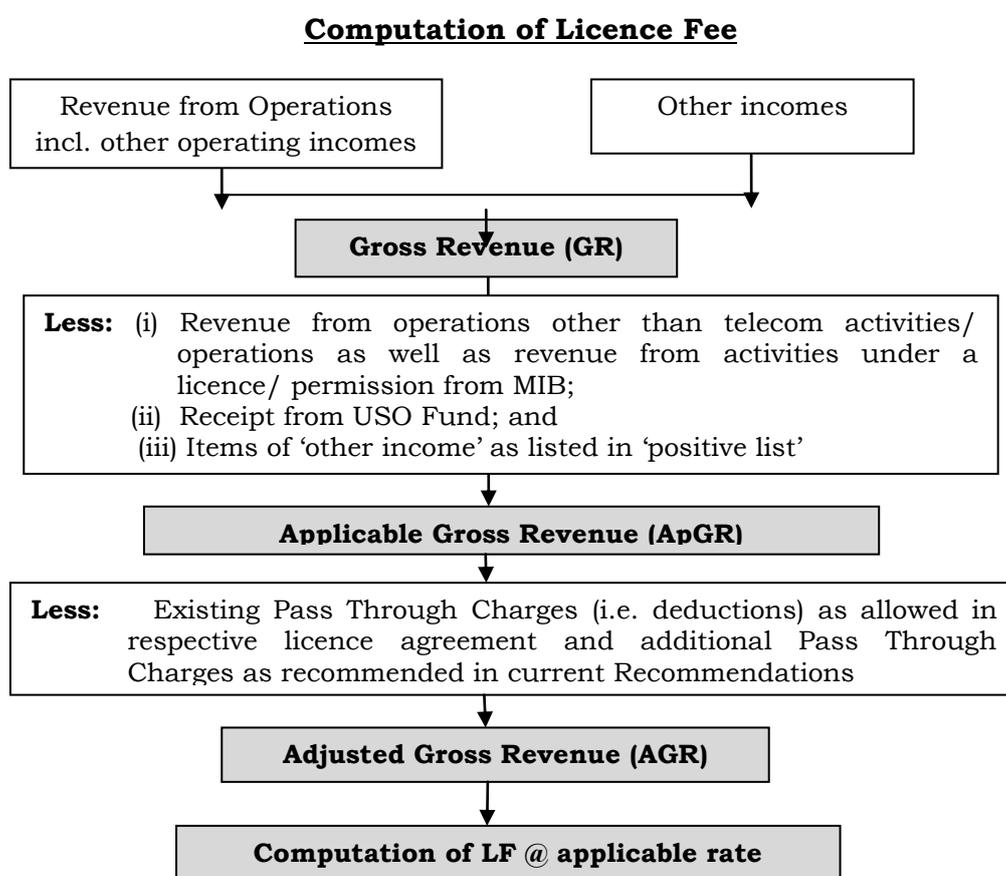
2.33 As regards items mentioned in Para 3.35 of CP (except receipts from USOF), the Authority is of the view that these are basically expenditure related to effective network operation and cannot be treated as similar to interconnection usage charges. These are items of costs that are paid on a fixed monthly/yearly/per connection charges and are not incidental to the carriage of calls on per call basis like interconnection usage charges/roaming charges. PTC by definition is that part of revenue collected from the customer and passed on to another TSP; however, the costs linked to effective network functioning are not linked to the revenue collected from the customer on behalf on another TSP. Hence, the Authority is of the considered view that items referred in Para 3.35 of CP (except receipts from

⁷ In accordance with provisions of 'The International Calling Card Services (Access Charges) Regulations, 2014 (No. 11 of 2014)' dated 19th August 2014 issued by the TRAI.

⁸ See TRAI decision no. 416-2/2007-FN of 5th December 2007.

USOF) should not qualify for recognition as items of PTC to arrive at AGR. As regards, exclusion of revenue from pure internet services from AGR of ISPs, the Authority adheres to its Recommendation of 1st May 2014 on 'Definition of Adjusted Gross Revenue (AGR) in licence Agreements for Provision of Internet Services And Minimum Presumptive AGR' in which the Authority had taken the view that in the era of UL, the definition of AGR and LF for ISP licences should be uniform and at par with other licences. Receipts from USOF have already been discussed separately earlier in these Recommendations.

2.34 **The Authority recommends no changes in the existing definition of pass through charges (i.e. deductions) under different licences to arrive at AGR for the computation of LF and SUC except the inclusion of access charges paid by TSPs providing international calling card services and toll-free charges.** The following diagram shows the block scheme of the relevant AGR for computation of LF:



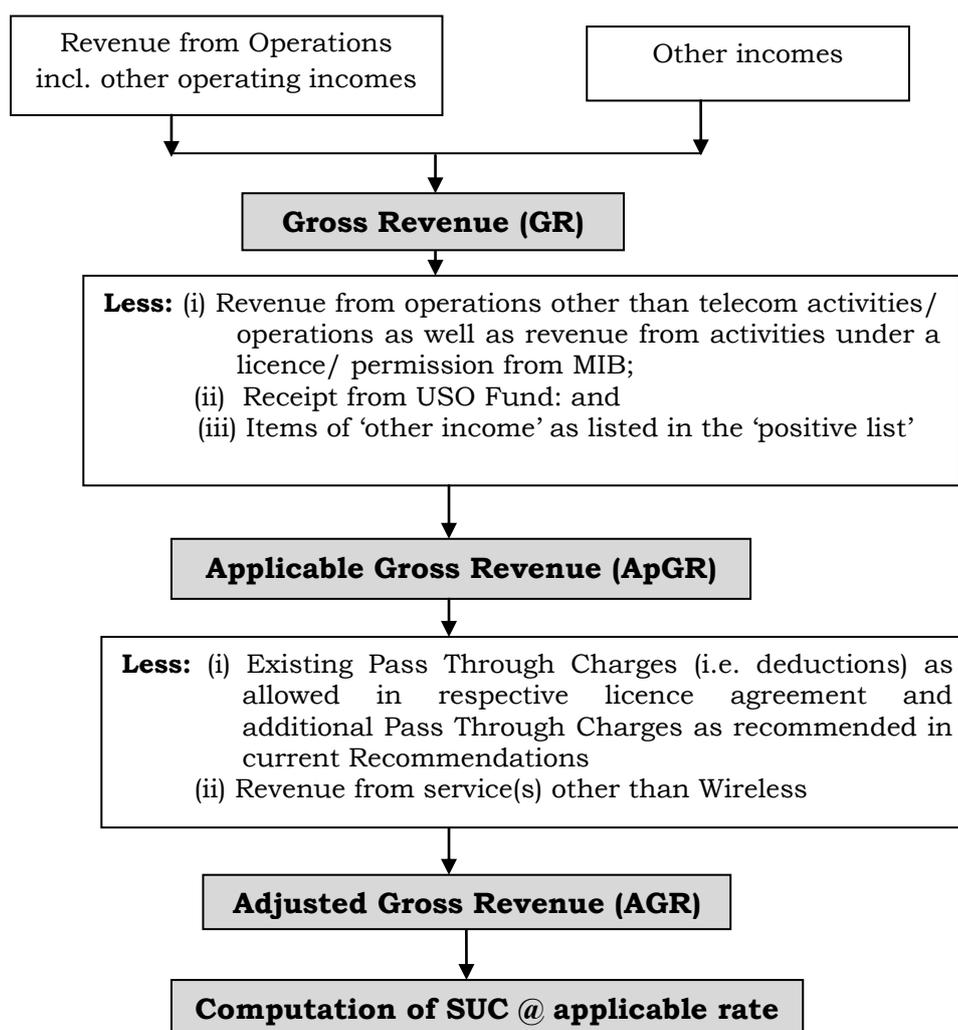
Relevant AGR for Spectrum Usage Charges

- 2.35 SUC are levied as a percentage of AGR earned by the spectrum holder. Under the existing licensing system, the applicable revenue for computation of SUC has been defined in the respective licences. In the era of UL where the licensee will be providing a bouquet of services which may or may not require spectrum for provision of services, it has to be ensured that SUC are levied only on revenue from services provided using the access spectrum⁹.
- 2.36 In its Recommendations of 16th April 2012 on ‘Guidelines for Unified Licence/Class Licence and Migration of Existing Licences’ and the Recommendations of 2nd January 2013 on ‘Terms and Conditions of Unified Licence (Access Services)’ the Authority recommended that only revenue from wireless services should count towards AGR for the limited purpose of calculation of SUC. The Authority also recommended that the revised definition of SUC should be applicable not only for new licensees, but for all existing UASL/ CMTS licensees also, so as to provide a level-playing field.
- 2.37 In the current consultation process, some stakeholders have suggested that SUC should be imposed only on revenue earned through actual usage of spectrum. One stakeholder suggested that SUC should be delinked from AGR and charged separately, ideally on a per MHz basis for both existing as well as future spectrum.
- 2.38 The comments of the stakeholders have been carefully examined. In the era of UL, a licensee will be providing a bouquet of services which may or may not require spectrum for provision of services. The Authority is of the view that it has to be ensured that SUC are levied only on revenue from respective services (for which spectrum has been assigned) and not on revenue accruing from other services e.g., if

⁹ Access spectrum means the Radio Frequency Spectrum allotted for use to carry voice or non-voice messages from subscriber terminal to the Base Station/designated point of aggregation and does not include backhaul and backbone spectrum.

spectrum has been assigned to a TSP for Access Service (wireless), SUC should be charged on AGR excluding revenue accruing from telecom services other than wireless. **The Authority recommends that the Spectrum Usage Charges should be levied on AGR of respective telecom services which use access spectrum in operations or providing services.** For example, AGR for the purpose of Spectrum Usage Charges, in case of wireless service, would be the ApGR *minus* not only PTC but also revenue accruing from telecom services other than wireless. The following diagram shows the block scheme of the relevant AGR (wireless services) for computation of SUC:

Computation of SUC for Access Service (Wireless)



Licence Fee Rate

2.39 LF and SUC are the two sources of annual recurring non-tax revenues to the Government from the telecom service sector. LF and SUC (where applicable) are charged on the basis of AGR of the respective service. In India, access services accounts for 79% of the AGR of the telecom service sector. Prior to April 2013, LF rates were different for different telecom services. However, from April 2013 onwards, the Government made the applicable LF uniform at the rate of 8% for all licenced telecom services. In its Recommendations of 11th May 2010, the Authority had recommended a reduced uniform rate of LF at 6% effective from 2013-14. Though the DoT made the applicable LF rate uniform for all telecom services w.e.f. April 2013, it pegged the rate at a higher level of 8%. Table 1.1 in Chapter-I indicates the changes that have been effected to the LF rate applicable to access services since 1999 when the revenue sharing regime was introduced.

2.40 In the three years ending March 2014, the Government had collected around Rs.35000 crore as LF. The present LF rate of 8% includes contribution towards USOF at the rate of 5%. Thus, 62.5% of LF collected goes to the USOF. There have been persistent demands in the past from various stakeholders to reduce the LF rate. Also, in the recent past, there has been a significant change in the nature of Government's non-tax collection from the telecom sector since the adoption of market-determined prices for spectrum. In this regard, the following question was raised in the CP:

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?

2.41 On the applicable rate of LF, many stakeholders are of the view that the LF rate should be revised downwards, to anywhere in the range of 0-6% of AGR. One stakeholder suggested that the LF rates should be reduced to 7.36 % (8 % x 100-8%) and SUC rates to 4.75 % (5 % x

(100-5%) to avoid LF on LF or SUC on SUC because in the present system LF and SUC are charged on AGR which includes LF and SUC collected from customers as part of revenue. A few stakeholders suggested fixing LF rate at a level just enough to cover administrative costs.

2.42 Regarding USOF, most stakeholders suggested that the levy which is presently 5% of AGR should be reduced to between 0% and 3%. Some stakeholders stated that at present in India taxes and levies (LF, SUC, service tax and other levies) are as high as 30% of revenue. Many stakeholders sought reduction of the USOF levy with immediate effect and some favoured reduction in a phased manner. One stakeholder commented that the USO levy should be stopped and capped at 75% utilization and the situation should be reviewed once disbursement reached that level. Another stakeholder commented that no USO levy should be charged for fixed line services, both for urban and rural areas, to contain its declining growth and to encourage more TSPs to provide fixed line services. A few stakeholders commented that since future growth of telecom would primarily be in rural and remote areas, the Government's support in form of incentives and concessions (read reduction in LF) for bringing down costs and rolling out network is imperative. One stakeholder submitted that any unutilized USO funds at the end of each fiscal year should be given back to the TSPs.

2.43 The Authority has examined the views and comments of the stakeholders. There is a general consensus among the stakeholders that LF rate should be reduced (with emphasis on reduction of USO levy). In addition, a number of stakeholders have also argued for review of the definition of revenue.

2.44 Of the Rs.58579 crores collected for the USOF between 2002-03 to 2013-14, Rs.33683 crore remained unutilized as on 31st March 2014, representing 57% of the USO levy collected. The Authority notes that

even after the elapse of more than 10 years, utilisation is well below 50%. In the last three years, USOF utilization ranges between 9% and 27% of the contribution. Thus, there is ample evidence that the flows of investment from the USOF have just not met expectations. Further, since USOF monies go to the Consolidated Fund of India (CFI), and releases are controlled by budgetary processes, unutilized USOF revenues essentially provide budgetary support to fill the fiscal gap. That is to say, the USOF levy is serving a function which rightly belongs in the domain of taxation. Thus, the USOF levy, instead of directing resource flows to underserved areas (as discussed in Chapter I), is perversely mopping up 'tax-like' revenues for the exchequer. It is also worth pointing out that since the USOF levy is *ad valorem*, there is an inbuilt elasticity of revenues for the USOF, viz., as GR and ApGR of the sector increase, USOF levies automatically grow because of the *ad valorem* rate. Hence, even if the rate of the levy is reduced, absolute revenues will continue to grow.

2.45 The Universal Service Obligation is a crucial component of telecom sector policy, especially in developing countries where many rural and remote areas still remain to be connected. However, the development of service provision in the years since the introduction of the migration package must be taken into account when evaluating how best to realise the goal of universal service provision. The Authority is of the view that stricter implementation of rollout obligations and providing non-subsidy-based incentives to TSPs to expand their networks in underserved areas would be preferable to burdening them with a large USO levy that continues to remain underutilized. In any case, the USOF has not been used effectively to fill the investment gaps arising in the spread of telecom network. The larger TSPs are already expanding in the 'B' and 'C' category LSAs and an increase in their accruals by way of reduction in USO levy may result in larger investible surplus at their end, given the rather high percentage of

total government levies and taxes amounting to almost 30% of TSP revenues as adverted to by stakeholders.

- 2.46 **The Authority recommends that the component of USO levy should be reduced from the present 5% to 3% of AGR for all licences with effect from 1st April 2015. With this reduction, the applicable uniform rate of licence fee would become 6% (from the present 8%) of AGR viz. the 3% of LF that directly accrues currently to the Government will not change.**

Licence Fee: Internet Service Providers

- 2.47 In its Recommendations of 1st May 2014 on 'Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for Provision of Internet Services and Minimum Presumptive AGR' the Authority had recommended that in all ISP and ISP-IT licences, deductions from GR to arrive at AGR ought to be the same as in the case of access services, without any set-off for expenses. Revenues from internet services would be included in the definition of AGR.
- 2.48 In their responses to the current CP, many stakeholders have opined that ISP service (including pure internet and broadband service) be exempted from LF. Stakeholders have suggested that revenue generated from pure internet services should continue to be exempted. Imposing LF on pure internet services makes internet services less affordable and runs against the objective of NTP 2012 which aims at 60 crore broadband subscribers by 2020. Some stakeholders submitted that in view of the low penetration and affordability of internet services, the revenue from pure internet/broadband services should not be considered part of AGR for the purpose of LF.
- 2.49 Stakeholders' comments have been examined. The Authority is acutely conscious of the role of ISPs in achieving the internet and broadband targets set by the Government. NTP 2012 recognizes the importance of

broadband and internet in the development and growth of citizens as well as business, both in rural and urban areas.

- 2.50 Available information indicates that, in terms of revenue, the top 10 ISPs (having revenue more than Rs. 100 crore) command about 90% of total ISP revenue. ISPs with revenue greater than Rs. 5 crore have approximately 99% of total ISP revenue. The ISPs, who earn revenue less than Rs. 5 crore, represent only about 1% of total ISP revenue. Smaller ISPs have operations in limited geographies. As a measure of incentive to these smaller ISPs playing an important role in niche segments, the Authority is of the view that a flat LF should be levied in their case, without linking it to revenue share. This would help them in reducing their compliance costs.
- 2.51 **The Authority recommends that ISPs having AGR less than Rs. 5 crore in a year shall pay licence fee of Rs. 10 lakh or actual LF based on the applicable rate, whichever is less.**

Minimum Presumptive AGR

- 2.52 The allocation of spectrum (through administrative process or auction) to TSPs comes with time-bound rollout obligations. Rollout obligations in the licence conditions are prescribed to ensure that services under the licence are made available to consumers within a reasonable period; at the same time it ensures that scarce resources such as spectrum do not remain idle. The non-commencement of licenced services within the stipulated time not only results in loss of revenue to the exchequer in the form of the LF and SUC, but also in inefficient utilization of spectrum. To overcome this, the concept of a minimum presumptive AGR¹⁰ was introduced by the DoT to ensure that licencees not only make sincere efforts to start services within the stipulated time but also make efforts for the efficient utilisation of spectrum.

¹⁰ This denotes the minimum AGR on which LF/SUC to be paid by the licencee.

2.53 The Authority in its Recommendations of 11th May 2010 on ‘Spectrum Management and Licensing Framework’ had recommended¹¹ minimum (presumptive) AGR for the GSM segment and the CDMA segment of Access Services. The prime objective behind this recommendation was to encourage faster rollout by the TSPs especially by licencees who got licences bundled with spectrum in 2008 through an administrative allocation process.

2.54 At that time, it was noticed that some TSPs (new licencees) had not commenced operations even after the lapse of sufficient time. The Authority sought to address this issue and ensure that the TSPs rollout their networks quickly and the Government also get its share of revenue in the form of LF and SUC. Apart from this, its Recommendations of 1st May 2014 on ‘Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for Provision of Internet Services and Minimum Presumptive AGR’ the Authority recommended¹² minimum presumptive AGR for existing internet service providers (ISPs) holding BWA spectrum as applicable to the licencees who obtained access spectrum through competitive bidding. This recommendation was driven primarily by the consideration of ensuring a level-playing field amongst TSPs for fair competition, without going into the merits of a presumptive AGR. The Authority noted that access spectrum acquired by TSPs through the auction process since November 2012 carries obligations of minimum AGR for the purpose of LF and SUC; however, there was no such clause for the BWA spectrum acquired in May 2010. This would create a non level-playing field amongst TSPs who acquired access spectrum through the auction process but at different points of time.

2.55 In this context, the following questions were raised in the CP:

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

¹¹ See paragraphs 2.131 to 2.133 of Recommendations of 11th May 2010.

¹² See paragraphs 1.23 to 1.40 of Recommendations of 1st May 2014.

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

2.56 In their responses, most stakeholders have argued against the concept of minimum presumptive AGR. Their argument runs on the following lines: Since, in the current licensing regime, the Government has decided to allot spectrum through auction alone, it is simply incorrect to assume that TSPs would pay huge upfront spectrum acquisition costs with the intention to hoard or underutilize it. One stakeholder pointed out that if the AGR of the licencee was lower than the presumptive AGR in any quarter, the TSP would be forced to pay the minimum LF which would only add to the losses of the financially weaker TSPs viz., presumptive AGR is loaded against the smaller and financially weaker TSPs. A few stakeholders supported the imposition of the minimum presumptive AGR, with one suggesting that it should be made applicable on new licencees holding spectrum. Another stakeholder suggested that the minimum presumptive AGR should be levied on all licencees for a level-playing field. Another stakeholder suggested that the minimum presumptive AGR should be based on entry fee (defined in the NIA for each LSA).

2.57 There was no presumptive AGR or minimum amount of LF on various service licences issued till August 2007. A minimum amount of LF was introduced in the ISP licences issued after August 2007. Further the Notice Inviting Application (NIA) dated 25th February 2010 for the auction of 3G/BWA spectrum did not contain any clause regarding minimum presumptive AGR. However, in the auctions conducted from November 2012 and subsequently, a clause regarding minimum presumptive AGR was introduced. The Authority feels that its Recommendations on minimum (presumptive) AGR of 11th May 2010 (for GSM and CDMA segment) and 1st May 2014 (for ISP licencees having BWA spectrum) should be seen in the context in which they were made. The motivation for a presumptive AGR is really more relevant in a scenario where spectrum was bundled with licence and

given at an administered price. However, in the new licensing regime, spectrum is allocated through an auction process and TSPs are required to pay market-determined prices. Therefore, the rationale for imposition of levies based on presumptive AGR simply does not hold good since the licensee has already paid a significant amount upfront and any idling of the spectrum resource would be to the licensee's detriment. The move towards market-based determination of spectrum prices can generally be expected to be sufficient motivation to licensees to rollout services in time.

2.58 Moreover, the Authority notes that the respective licence agreements include provisions on rollout obligations to be met by the licensee within a specified time frame, failing which, there are provisions for penalty (including prospects of cancellation of assigned spectrum). The Authority is, therefore, of the view that the objective of early rollout of services by the TSP can be achieved in a more meaningful and effective manner by monitoring rollout obligations more stringently.

2.59 In this background, the Authority is of the considered view that the concept of minimum AGR is not relevant under the present auction-based spectrum allocation regime. Therefore, **the Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services.**

Infrastructure Providers Category-I

2.60 The treatment of Infrastructure Providers (IP-I) category with regard to LF and PTC was another issue under consultation. As on date, standalone IP-I have not been included in the ambit of DoT's licensing regime. Service providers of IP-I category need only register with DoT. The Authority's Recommendations of 11th May 2010 to bring IP-I

under the licencing regime would entail that IP-I licencees are also subject to LF.

2.61 Many stakeholders, led by the IP-I category, have vociferously argued against subjecting them to LF, mainly on the basis of their perception of their legal status under the Indian Telegraph Act. A few stakeholders stated that the difference between licenced activities under section 4 of the Telegraph Act and activities carried out by IP-I under a registration certificate was recognized in the case of *OIL India Ltd vs. Union of India, Petition No.272/2011* where the TDSAT held that: "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". They have sought to buttress their case based on DoT's letter dated 29th October 2008 to suggest that the Authority's Recommendation in this regard has not found acceptance with the licensor. Therefore, IP-I should not be equated with telecom service providers, who are licencees under the Indian Telegraph Act, 1885. One stakeholder has argued that bringing IP-1 registrants under the Licencing Regime and imposing any LF on IP-1 companies would lead to an increase in their cost structure, which would then be passed on to licenced TSPs, thereby increasing their costs viz., there would be a cascading effect on costs with adverse implications for consumer tariffs.

2.62 The Authority, upon careful consideration of the DoT's position on the issue, is now inclined not to press its previous Recommendation for bringing IP-I under the licensing regime. In taking this view, the Authority is conscious of the particular trajectory of evolution of infrastructure service provision in the recent past wherein IP-I services have been hived off from TSPs. Globally, the new conventional wisdom is that infrastructure, both active and passive, need to be shared in the interests of better spectral efficiency, reduced capital

expenditures and better quality of service delivery. As demand for data has grown exponentially, the strains on a fixed quantum of spectrum as well as other passive infrastructure have become apparent. It is in this background that the old received wisdom has undergone change: it is better to save capital costs on passive infrastructure (as well as active infrastructure) through sharing. The policy orientation promoting sharing of infrastructure requires to be followed up with concrete incentives in this direction.

2.63 The revealed preference for encouraging infrastructure sharing is also obvious from DoT's own pilot scheme¹³ to promote sharing of towers. It is also pertinent to note in this context that non-licencees have invested into IP-I provision, and the present business model encourages sharing of infrastructure, leading to a reduction in the capital expenditure requirements of the sector. The Authority is also conscious of the need to boost incentives for encouraging sharing of all active and passive infrastructure to prevent avoidable duplication. The NTP 2012 mandate to move towards sharing passive and active infrastructure and to a regime of virtual network operators is also relevant in this context. In the changed circumstances, **the Authority is now of the view that IP-I services may not be brought under the licensing regime.**

Accounting of Revenue: Licence agreement Vs. Accounting Standards

2.64 The Indian telecom service sector companies prepare their AFSs in accordance with the accounting principles generally accepted in India as per the accounting standards. These AFSs are also accepted by other statutory authorities (Income Tax Department, Service Tax Department etc) for the levy of taxes. Under the existing licensing regime, revenue recognition on some aspects such as principal-agent

¹³ USOF scheme for subsidy support for provision of mobile services in rural and remote areas dated 20th August 2007. Source- <http://www.usof.gov.in/usof-cms/usofsub/MobilePhOrg.pdf>.

transactions, business done on commission basis, discounts, goodwill waivers etc., is different from the AS issued by ICAI. It could be argued that the AS must be the benchmark for determining the various heads/ components of revenue recognition.

2.65 In this regard, the following question was raised in the CP:

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.

2.66 Many stakeholders suggested that the definition and meaning of GRs be consistent with that recognized in the audited financial statements, to avoid any doubt as to the constituents of revenue and its determination. TSPs are of the view that matched treatment/ accounting with the AS will bring uniformity in the accounting of revenue and PTC under the licence agreements and will consequently render the reconciliation process easy and simple to administer.

2.67 After examining stakeholder comments, the Authority is of the view that the treatment of revenue earned by a TSP from its associate/ subsidiary companies depends on the nature of the principal-agent relationship. The nature of the relationship is determined by the specific agreements entered into by the TSPs with its agents/ principals. The Authority does not propose to delve into the details of possible agreements that could be entered into. It must be noted that under the current licensing/ contractual regime, for reckoning GR, the entire revenue of a TSP is considered without allowing any set-off for expenses. TSPs are not allowed to deduct the amount they pay to a third party as commission etc.

2.68 The Authority notes that if such revenue is allowed as a deduction from GR to arrive at AGR for the purpose of computing LF, it could give rise to perverse incentives for TSPs to start netting increased

amounts as commission etc., to keep revenues out of the LF net, and create scope for arbitrage by shifting revenue in the guise of commission etc., especially when the agent is other than a licensee. This could lead to complex verification issues, especially in transactions where the amount is booked on a net revenue basis or where some inter-company transactions take place.

- 2.69 Therefore, **the Authority is of the view that, for simplicity of administration, ease of verifiability and to avoid higher transaction and compliance costs, any netting of amounts paid to other entities should not be permitted for the computation of AGR so as to meet with the licence condition that does not permit setting off any related item of expense.**

Accounting of Deductions from GR: Accrual vs. Actual basis

- 2.70 Under the existing licensing regime, deductions from revenue (PTC) are allowed on actually paid basis/actually passed on to other TSPs. On the other hand, revenue is accounted for on an accrual basis. Thus, there is a different accounting treatment for revenue recognition and PTC. In this context, it is important to note that in India, business entities are required to follow Accounting Standards (AS) for recording/transactions and preparation of accounts. AS and GAAP prescribe accounting/ recording of any transactions to be based on three fundamental accounting principles i.e., going concern, consistency and accrual. However, these fundamental principles also permit some exceptions including recording of revenue on cash/actual basis in some cases instead of accrual basis. During the consultation process, a number of TSPs demanded that PTC should be reckoned on an accrual/ payable basis instead of actual/ paid basis. TSPs have also argued that accounting PTC on an actual basis in accordance with existing licence provisions creates differences between the deductions booked in the annual accounts and deductions actually claimed for levy of LF/ SUC. This requires reconciliation at the time of

assessment of revenue and LF/ SUC based on the audited annual accounts of the TSP for a particular financial year. It has been argued by TSPs that allowing PTC on an accrual basis will be in conformity with AS and will bring uniformity in the accounting of such charges.

2.71 Stakeholders' comments on the subject have been examined. The Authority is of the considered view that allowing PTC on an accrual basis will not only bring uniformity in the accounting treatment of revenue and PTC but will also aid in proper reconciliation of revenue and LF/ SUC (as prescribed in the licence agreement) with the audited annual accounts of the TSP. At present, any unclaimed/ outstanding PTC (due to non payment to another TSP) in a quarter, can be claimed in subsequent quarter(s) after making the actual payment. This will not have any effect on Government's revenue, though, in the initial stages, there will be time difference in reckoning of PTC, as can be seen from the example given in **Annexure 2.2**. The example presents a computation of LF received by the Government in case PTC is allowed on an actually paid basis (present system) and an accrual basis. In both scenarios, as explained in **Annexure 2.2**, the total LF collected by the Government is the same.

2.72 TSPs also collect taxes (i.e. Service Tax and Sales Tax/ VAT) on behalf of the Government. The Authority is of the view that PTC against taxes collected on behalf of Government should be allowed only on an actual payment basis so that there is no impediment to the amount of taxes payable to the Government. Allowing pass through for Government taxes on actual/ paid basis will not only ensure timely payment but will also encourage TSPs for early discharge of their liabilities.

2.73 **The Authority recommends that accounting of deductions of pass through charges from applicable gross revenue (ApGR) to arrive at the relevant revenue base (i.e. AGR) for the computation of LF and SUC should be allowed on an accrual basis. However, in the case of service tax and sales tax/ VAT collected on behalf of the**

Government, deductions from revenue should be allowed only for the amount actually paid to the Government.

Intra-circle Roaming

- 2.74 Since the migration to the revenue sharing regime in 1999, certain deductions are allowed from the revenue for the purpose of computation of LF and SUC. Roaming charges were allowed as a deduction from revenue since the very beginning, even though no specific categorization was made for inter-circle or intra-circle roaming. In June 2008, the DoT amended the UASL/CMTS licence and allowed licencees to enter into mutual commercial agreements for intra-service area roaming with other licenced UASL licencees/CMTS licencees. In response to TRAI's letter 28th January 2011, the DoT in its letter of 31st May 2011, clarified that intra-circle roaming charges qualified as roaming charges under the clause 19.2 of the UASL agreement and, therefore, can be allowed as deductions.
- 2.75 Prior to June 2008, only inter-service area roaming was permitted. Therefore, the roaming revenue mentioned in clause 19.2 of the UASL cited above possibly refers to the revenue pertaining to inter-service area roaming. In this context, the Authority, in its letter of 20th October 2011, had already requested the DoT to re-examine the issue. Further, the Authority had also taken a view in response to a back-reference dated 2nd January 2013 on its Recommendations on "Terms and Conditions of Unified Licence (Access Services)" that treating both inter- and intra-service area roaming in a similar fashion for the purpose of pass through may have revenue implications and recommended that intra-service area roaming revenues should not be excluded from GR for calculating the AGR of the service provider.
- 2.76 The following question was raised in the CP in this context:

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

2.77 Many stakeholders are of the view that there is no difference between intra- and inter-circle roaming as, in both situations, TSPs are using another TSP's network. They have further stated that the licence agreement also does not distinguish between inter-circle and intra-circle roaming for the purposes of deductions from GR, drawing strength from the DoT's letter of 31st May 2011. If intra-circle roaming charges are not allowed as a deduction, there would be a double levy of LF/SUC on such amount and this would have a cascading impact on consumer pricing. Some stakeholders stated that, in any case, intra-circle roaming (like inter-circle roaming) brings in additional revenue to Government since more customers can avail of services provided by the operator seeking roaming. Some stakeholders argued that it cannot be the case that intra-circle roaming is part of revenue of a TSP providing roaming facilities and is not part of deductions for a roaming seeking TSP. A few stakeholders have stated that intra-circle roaming has actually resulted in better utilisation of spectrum, telecom assets and more competition. Some stakeholders suggested that principally all inter-operator payments (including intra-circle roaming) should be allowed as PTC.

2.78 The comments of stakeholders have been examined. At the outset, it needs to be clearly stated that the Authority is not addressing the issue of the legality or otherwise of roaming arrangements between TSPs, even in the case of intra-circle roaming. What is relevant for the purpose of the present consultation exercise is the limited question of whether intra-circle roaming charges should be allowed as a deduction for reckoning the revenue base that is subject to LF and SUC. Intra-circle roaming arrangements can be taken as an *ad interim* arrangement on the part of the TSP seeking roaming arrangements (till it completes the rollout obligations). In such a scenario, entering into intra-circle roaming arrangements with other TSPs is a business decision; paying for sharing the network of the another TSP in the

same LSA cannot really be called 'roaming'; even now, according to the UL (Annexure I, 'Definition of Terms and expressions'), 'roaming means the facility to a customer to avail services subscribed in its home network, while travelling outside the geographical coverage of the home network, by means of using a visited network'. However, the scope of access service authorization under UL states that

Licensee may enter into mutual commercial agreements for roaming facilities (within same service area or other service areas) with other Cellular Mobile Telephone Service Licensees/ Unified Access Service LICENSEEs/Unified License (Access Services) LICENSEEs /Unified Licensees with Access Service authorization, unless otherwise directed by Licensor, irrespective of spectrum band held or technology deployed by such licensees. However, any Roaming arrangement shall not entitle the Licensee to acquire customer in the spectrum band not held or technology not deployed or for services/facilities not offered by the Licensee in its network.

2.79 A distinction may be drawn between inter-circle roaming and intra-circle roaming for the purpose of PTC. Inter-circle roaming is a facility provided by the TSP to its subscribers; the TSP opting for intra-circle roaming arrangements, on the other hand, is obligated to provide telecom services to its subscribers and is only using the intra-circle roaming arrangements to substitute for building its own network or to share the other TSP's network. Charges paid by one TSP to another for intra-circle roaming (in the same LSA) are thus a substitute for the cost of setting up its own network, or for sharing the network of the other service provider. The decision to pay intra-circle roaming charges is in the nature of a 'make or buy' decision, not amenable to treatment of these charges as deductions. Allowing intra-circle roaming charges as deduction may also entail revenue implications in the form of lesser LF and SUC to the Government. Therefore, the Authority sees no reason to review its Recommendations of 2nd

January 2013 regarding non admissibility of intra-circle roaming charges as deductions from the GR to arrive at AGR in this case.

- 2.80 **The Authority recommends that intra-circle roaming charges should not be allowed as deduction from ApGR for calculating AGR of the telecom service provider for the purpose of computation of LF and SUC.**

Licence Fee Deduction at Source

- 2.81 The Office of Controller of Communication Accounts (CCA) is responsible for collection of LF from commercial telecom licencees, wherever applicable. CCAs scrutinize the documents submitted by the licencees and affidavits and verify the deductions claimed by TSPs. TSPs have to submit details relating to net settlement which needs to be validated by the CCA offices. Currently, these assessments are done over 22 different locations. The settlement process whereby LF is levied in the hands of the receiving TSP does not allow for easy verification by the DoT of LF paid against deductions claimed across all licencees.

- 2.82 In this context, the following question was posed for consultation:

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?

- 2.83 Many stakeholders have suggested the introduction of the concept of LfDS (LF Deducted at Source). In that case, TSP1 will deduct LF at the applicable rate from all charges paid to TSP2 for services taken and these deductions are then paid by TSP1 to the Government/CCA field units. TSP2 at the time of its assessment will claim the benefit of LfDS made by TSP1. This system would eliminate the difficulty in verifications/ validations of credit adjustment. Some stakeholders have not favoured idea of LfDS since, in their opinion, it would

increase administrative hassles, require more efforts at the TSP end and the risk of inter-TSP reconciliation would still remain.

2.84 Stakeholders have also suggested that the operator deducting LfDS should file online returns. The facility to pay LfDS online may be provided, wherein the TSP can fill up and submit the Challan through internet, transfer the amount through the internet banking facility into the DoT account. This will facilitate an online LfDS accounting system for daily upload with certificates (evidence of payment) and LfDS credit available online. According to TSPs, this would be in line with the mechanism adopted for TDS for income-tax purposes where inter-unit transactions within the same legal entity are not subject to TDS.

2.85 Stakeholders stated that this system would help avoid the cumbersome task of verification for evidencing proof of payment for claiming deduction. It would also ensure timely collection of LF on inter-TSP transactions to DoT.

2.86 The comments of stakeholders have been examined. There is considerable merit in the suggestions to introduce LfDS and an e-portal for submission of LF and SUC. The Authority is of the opinion that LfDS would reduce, rather than increase, administrative hassles since maintaining verification trails for payments (by TSPs) would be considerably reduced. On the issue of the risk of inter-TSP reconciliation, the Authority notes that reconciliation is the *sine qua non* of any robust accounting process, and there is no additional risk that is introduced by the proposed LfDS system. **Therefore, the Authority is of the view that steps should be immediately taken by the DoT to introduce a system of LfDS w.e.f. 1st April 2015 and develop an e-portal for submission of LF and SUC by 1st April 2016. The Authority also recommends that the transition to the LfDS system may be initiated at the earliest, by putting in place a system for electronic/ online filing of licencees' returns.**

Formats of Statement of Revenue and Licence Fee

2.87 The formats of statement of revenue and LF are annexed as part of the licence agreements. Under the UL, the service provider can provide a number of telecom services and formats have been prescribed for each licenced activity in the UL/respective service licence agreement. Many changes have taken place in the telecom sector since the time the formats were originally designed. New revenue models have emerged with particular focus on revenue from data, content, VAS, sharing of infrastructure etc.

2.88 In this context, the following questions was posed for consultation:

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.

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

2.89 Many stakeholders suggested that the terms "miscellaneous revenue" and "other income" should be excluded and the existing formats of statement of revenue and LF should only include revenue earned from licence-specific activities i.e. from licenced services only and must exclude all other kinds of revenue/ income which should be considered as reconciliation items at the end of the financial year. A few stakeholders submitted new formats and some stakeholders suggested specific changes that can be made in existing formats. Most stakeholders are of the view that separate reporting for each telecom service as prevailing under the existing licensing system should continue. A few stakeholders suggested a single format for reporting revenue and LF.

2.90 The suggestions and comments of the stakeholders have been examined. Each telecom service has its own category/ products of revenue generation and it is difficult to compile a single statement covering all telecom services, keeping in view the number of heads of revenue and deductions under different telecom licences. Unification of different heads (in the present case, formats) should not make things messy/muddled and difficult for the licensor and the licensee. The Authority is also of the view that designing of a format is directly linked to the recommended changes in the definition of GR and AGR. A sample format for Unified Licence (Access Service authorization) has been prepared based on the Recommendations and is placed at **Annexure 2.3. The Authority recommends that the existing system of a separate Statement of Revenue and Licence Fee for each licenced telecom service should continue. The DoT may accordingly devise/ modify the formats of the Statement of Revenue and Licence Fee for all licenced telecom services, based on the sample format given in Annexure 2.3 of these Recommendations.**

Audit of Statement of Revenue and Licence Fee

2.91 Under the present licence agreement, quarterly LF is paid by TSPs on self-assessment basis and settlement occurs after the end of the financial year. The quarterly statement of revenue and LF is certified with an affidavit by a representative of the licensee who is authorized by the Board Resolution and a General Power of Attorney. At the year-end, the licensee submits annual audited AGR reports along with an Auditor's report and a reconciliation statement on the figures appearing in revenue and LF with figures appearing in the profit and loss account of the company for the year. The yearly audit of statement on revenue and LF are done by the same Auditor appointed by the licensee under section 139 of the Companies Act 2013

(previously section 227 of Companies Act, 1956) for audit of its financial statements.

2.92 The CP noted that, in a recent judgment delivered on April 17, 2014, the Hon'ble Supreme Court held, among others, that LF and radio spectrum charges received by DoT from licencees is a "revenue received by the Government". It also held that the Comptroller and Auditor General of India (C&AG) is entitled to seek the records maintained in terms of Rule 3 of the TRAI Service Providers (Maintenance of Books of Accounts and other documents) Rules, 2002 and the records maintained under clauses of the licence agreement. This ruling requires TSPs to satisfy CAG regarding the correctness of the revenue base used for the calculation of LF and SUC and the deductions claimed in this regard.

2.93 In this context, the following questions were raised in the CP:

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

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?

2.94 Most stakeholders are of the view that there is no need for a quarterly audit and the current system of yearly audit and reconciliation with the audited AFSs should continue. One stakeholder suggested that instead of quarterly audits, a half yearly certification of 'Statement of Revenue & Licence Fee' and an audited statement of 'Revenue & Licence Fee' on an annual basis should suffice. Some stakeholders opined that, as per the current practice, quarterly statements are being certified by the statutory auditor along with audited AFSs. Hence, audit of quarterly statement of revenue and LF will only be a

duplication of activity and impose additional efforts and burden on the licensee. One stakeholder supported the need for audit of quarterly statement of revenue and LF.

2.95 Many stakeholders favoured the annual audit of the statement of revenue and LF by the same auditor appointed under section 139 of the Companies Act 2013 (previous section 227 of Companies Act, 1956). However, some other stakeholders supported the view that the auditor (other than those appointed under section 139 of the Act) can also be made eligible for audit of the statement of revenue and LF. One stakeholder suggested audit by joint auditors: statutory auditor of the company and a qualified auditor (under section 139 of the companies Act) from the panel of C&AG of India or as nominated by DOT/TRAI as the case may be.

2.96 The comments of the stakeholders have been examined. The current system of payment of LF and SUC is on a self-certification basis by the licensee and their audit and reconciliation is conducted on an annual basis. The present system of audit is not by itself likely to engender delayed or suppressed payment of LF/ SUC particularly in the light of conditions in the licence agreement regarding payment of interest on delayed payment of LF and penalty for short payment of LF. In view of the Supreme Court judgment of April 2014, C&AG can also verify the correctness of the revenue base used for the calculation of LF and SUC and the deductions claimed in this regard. The Authority notes that any additional compliance carries associated costs that need to be weighed against likely benefits accruing from changing the system. Therefore, the Authority is of the view that there is no need for the quarterly audit of the statement of Revenue and LF submitted by the licensee to DoT.

2.97 Regarding the question of the auditor to be qualified for annual audit of the statement of revenue and LF, the Authority recognizes that there would be continuity and no repetition of work if the audit is

done by the same auditor who audits the AFSs of the company. Also, as per the licence agreement, the Licensor can order a special audit (for independent verification) of licensee accounts/records after forming an opinion that the statements or accounts submitted are inaccurate or misleading. Further after the Supreme Court judgment, C&AG is entitled to seek the records and verify the correctness of revenue and LF which would enable increased revenue assurance.

- 2.98 In view of above, **the Authority recommends no changes in the existing provisions in the licence agreement regarding audit of revenue and licence fee and the appointment of auditors.**

Verification of Revenue and Licence Fee

- 2.99 The stress on simplicity of the definition of revenue in the licence agreement was driven by the intent to minimize the verification requirement for the GR or the AGR that was to be declared by the various licenced telecom operators. The need for verification arises as LF and SUC receipts constitute a significant portion of the Government's non-tax revenue and their correctness needs certification. Since the audited financial statements of the licenced company were accepted as the basis of reconciliation and assessment of the AGR and the payable LF by the TSP, only the components of revenue and deductions are required to be verified by the field offices of DoT. In this regard, the following questions were raised in the CP:

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?

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

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.

2.100 On the issue of verification, many stakeholders submitted that the existing mechanism is adequate and there is no need for new verification mechanisms. Some stakeholders suggested that in case Government wants to verify revenue from non-telecom business, reliance can be placed on the audited AFSs. If required, further details on any particular item can be sought by the DoT. Some stakeholders submitted that sufficient mechanisms are available for proper verification from financial statements under the Companies Act, 2013 and the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules, 2002. Most stakeholders are of the view that there is no impact of new and innovative business practices adopted by the TSPs on the definition of GR and AGR. A few stakeholders suggested that guidelines may be issued to the offices of the Controllers of Communication Accounts (CCAs) regarding the documentation required for verification, since there is, at times, non-uniformity among CCAs (at 22 assessment locations) in the treatment of accounting items and documents.

2.101 The comments of the stakeholders have been examined. There is unanimous opinion among the stakeholders that the existing mechanism is adequate and there is no need for new verification mechanisms. The Authority has noted the features of the present process of verification defined in the licence agreement regarding definition of GR, deductions allowed from GR, annual audit and reconciliation of revenue and LF with AFSs and the Auditor's report on statement of revenue and LF and general verification process like submission of invoices, confirmation from second parties, payment

evidence, etc. At the same time, given the foregoing recommendations on Applicable GR and the positive list of items that will not form part of the revenue base for levy of LF and SUC, the Authority notes that it would be necessary for the licencees to submit unambiguous proof for each separate aggregate of deduction claimed, duly certified by their auditors. This will go a long way in ensuring uniformity in the treatment of deductions by the CCAs since much of the differential treatment arises from licencees not being able to produce confirmed, unqualified aggregates of deductions after the statutory audit. Thus, **while the Authority is of the view that the current verification mechanism of revenue and PTC is adequate and no new verification process needs to be introduced, it is recommended that the licencees must be mandated to produce statements certified by their auditors for each separate aggregate of deduction claimed.**

2.102 Further, in order to achieve comprehensiveness and maintain uniformity in accounting and verification of revenue and PTC across all assessing offices, standardization of the process is the key. This will bring uniform interpretation of directions at the assessing office level as well as at TSP end. The Authority notes that 'Norms for Preparation of Annual Financial Statements' are annexed to the licence agreements; the norms prescribed need to be complied with by licencees. This will go a long way in bringing in standardisation among licencees and CCAs. Standardized process of verification with a unique code assigned to each item of revenue and PTC will also help in accomplishing uniformity in verification across the CCAs. **The Authority recommends that DoT should introduce a standardized process of verification with a unique code assigned to each item of revenue and PTC, along with clear codal instructions to be uniformly followed by all licencees and CCAs.**

CHAPTER-III: SUMMARY OF RECOMMENDATIONS

- 3.1 The Authority recommends that the LF and SUC should continue to be computed based on Adjusted Gross Revenue. (Para 2.15)**
- 3.2 The Authority recommends that Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/activities and inclusive of all other revenue/ income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income etc. without any set-off for related items of expense. (Para 2.21)**
- 3.3 The Authority recommends that Applicable Gross Revenue (ApGR) would be equal to total Gross Revenue of the licensee as reduced by:**
- (i) revenue from operations other than telecom activities/ operations as well as revenue from activities under a licence/ permission issued by Ministry of Information and Broadcasting;**
 - (ii) Receipts from the USO Fund; and**
 - (iii) items of 'other income' as listed in the 'positive list' (Table 2.1).**
- (Para 2.29)**
- 3.4 The Authority recommends no changes in the existing definition of pass through charges (i.e. deductions) under different licences to arrive at AGR for the computation of LF and SUC except the inclusion of access charges paid by TSPs providing international calling card services and toll-free charges. (Para 2.34)**
- 3.5 The Authority recommends that the Spectrum Usage Charges should be levied on AGR of respective telecom services which use access spectrum in operations or providing services. (Para 2.38)**

- 3.6 The Authority recommends that the component of USO levy should be reduced from the present 5% to 3% of AGR for all licences with effect from 1st April 2015. With this reduction, the applicable uniform rate of licence fee would become 6% (from the present 8%) of AGR viz. the 3% of LF that directly accrues currently to the Government will not change. (Para 2.46)**
- 3.7 The Authority recommends that ISPs having AGR less than Rs. 5 crore in a year shall pay licence fee of Rs. 10 lakh or actual LF based on the applicable rate, whichever is less. (Page 2.51)**
- 3.8 The Authority recommends that the minimum presumptive AGR for the purpose of LF and SUC should not be made applicable to any licence(s) granted by Government for providing telecom services. (Para 2.59)**
- 3.9 The Authority is of the view that IP-I services may not be brought under the licensing regime. (Para 2.63)**
- 3.10 The Authority is of the view that, for simplicity of administration, ease of verifiability and to avoid higher transaction and compliance costs, any netting of amounts paid to other entities should not be permitted for the computation of AGR so as to meet with the licence condition that does not permit setting off any related item of expense. (Para 2.69)**
- 3.11 The Authority recommends that accounting of deductions of pass through charges from applicable gross revenue (ApGR) to arrive at the relevant revenue base (i.e. AGR) for the computation of LF and SUC should be allowed on an accrual basis. However, in the case of service tax and sales tax/ VAT collected on behalf of the Government, deductions from revenue should be allowed only for the amount actually paid to the Government. (Para 2.73)**
- 3.12 The Authority recommends that intra-circle roaming charges should not be allowed as deduction from ApGR for calculating**

AGR of the telecom service provider for the purpose of computation of LF and SUC. (Para 2.79)

3.13 The Authority is of the view that steps should be immediately taken by the DoT to introduce a system of LfDS w.e.f. 1st April 2015 and develop an e-portal for submission of LF and SUC by 1st April 2016. The Authority also recommends that the transition to the LfDS system may be initiated at the earliest, by putting in place a system for electronic/ online filing of licencees' returns. (Para 2.85)

3.14 The Authority recommends that the existing system of a separate Statement of Revenue and Licence Fee for each licenced telecom service should continue. The DoT may accordingly devise/ modify the formats of the Statement of Revenue and Licence Fee for all licenced telecom services, based on the sample format given in Annexure 2.3 of these Recommendations. (Para 2.89)

3.15 The Authority recommends no changes in the existing provisions in the licence agreement regarding audit of revenue and licence fee and the appointment of auditors. (Para 2.97)

3.16 While the Authority is of the view that the current verification mechanism of revenue and PTC is adequate and no new verification process needs to be introduced, it is recommended that the licencees must be mandated to produce statements certified by their auditors for each separate aggregate of deduction claimed. (Para 2.100)

3.17 The Authority recommends that DoT should introduce a standardized process of verification with a unique code assigned to each item of revenue and PTC, along with clear codal instructions to be uniformly followed by all licencees and CCAs. (Para 2.101)

ABBREVIATIONS

S. No.	Abbreviation	Expansion
1.	AFSs	Annual Financial Statements
2.	AGR	Adjusted Gross Revenue
3.	ApGR	Applicable Gross Revenue
4.	AS	Accounting Standard
5.	BWA	Broadband Wireless Access
6.	C&AG	Comptroller and Auditor General of India
7.	CCA	Controller of Communication Accounts
8.	CDMA	Code Division Multiple Access
9.	CMTS	Cellular Mobile Telephone Service
10.	CP	Consultation Paper
11.	DoT	Department of Telecommunications
12.	GAAP	Generally Accepted Accounting Principles
13.	GR	Gross Revenue
14.	GSM	Global System for Mobile Communication
15.	ICAI	Institute of Chartered Accountants of India
16.	ILD	International Long Distance
17.	IP-I	Infrastructure Provider Category-I
18.	ISP	Internet Service Provider
19.	ISP-IT	Internet Service Provider with Internet Telephony
20.	IUC	Interconnection Usage Charge
21.	LF	Licence Fee
22.	LfDS	Licence Fee Deducted at Source
23.	LSA	Licensed Service Area
24.	MIB	Ministry of Information and Broadcasting
25.	NIA	Notice Inviting Application
26.	NLD	National Long Distance
27.	NTP	National Telecom Policy
28.	OTT	Over The Top
29.	PTC	Pass Through Charges

S. No.	Abbreviation	Expansion
30.	SUC	Spectrum Usage Charges
31.	TDSAT	Telecom Disputes Settlement & Appellate Tribunal
32.	TRAI	Telecom Regulatory Authority of India
33.	TSP	Telecom Service Provider
34.	UASL	Unified Access Service Licence
35.	UL	Unified Licence
36.	USOF	Universal Service Obligation Fund
37.	VAT	Value Added Tax
38.	VSAT	Very Small Aperture Terminal

Annexure 1.1

International practices

Country	Rationale	Computation	Rates	Items excluded from Revenue / Deductions
Australia	Recovery of regulatory costs	Annual levy: licensee's share of eligible revenue in industry's total revenue.	Variable	<ol style="list-style-type: none"> 1. Revenue items e.g., revenue from non-telecom activities, customer equipment, content services etc. 2. Expense items e.g., inter licensee/service provider input payments etc.)
United States of America	Recovery of regulatory costs	<ul style="list-style-type: none"> • Annual regulatory fee: divided among different category of licenced services on the basis of full time employees (of FCC) assigned to each category. • Within each service category, licensee pays its proportionate share based on applicable selected parameter i.e. revenue, subscribers, licences etc. 	Variable	-
Canada	Recovery of regulatory costs	Annual fee: TSP's contribution eligible revenue (<i>total operating revenues excluding non-Canadian revenues and Canadian non-telecommunications revenues</i>) in the industry's contribution eligible revenue.	Variable	Inter-carrier payment, retail internet/paging service revenue, etc.
South Africa	As percent of revenue	Annual licence fee (different slab rates – 0.15% to 0.35%) as percentage of revenue from licenced services (i.e. revenue as disclosed in licensee's audited financial statemets)	0.15% to 0.35% of revenue	Resale of electronic communications services, service providers' discount, agency fees, interconnection and facilities leasing charges, and government grants and subsidies.
Singapore	As percent of revenue	<ul style="list-style-type: none"> • Facility Based Operators (FBOs) pay annual recurrent fee as percent (slab based - maximum 1%) of their Annual Gross Turnover (AGTO). Operators also pay frequency management fees based on spectrum holding. • AGTO: Annual fair value of the consideration received or receivable for licensable activities taking into account the amount of any trade discounts and volumes rebates allowed. 	Slab based- maximum 1%	-
Pakistan	As percent of revenue	<ul style="list-style-type: none"> • 0.5% of gross revenue less inter-operator payments. • Contribution for Universal Service Fund (USF) @ 1.5% of gross revenue 		Inter-operator payments.

		less inter-operator payments and related Authority/Frequency Allocation Board mandated payments, as determined by the Government.		
Malaysia	As percent of revenue	.5% of gross turnover from licenced activities (with no deductions) or RM 50,000 whichever is higher. After the eligible deductions, applicable annual licence fee shall not be lower than 0.15% of gross turnover or RM 50,000 whichever is higher.	Fixed	Research and development expenditure, skills and training etc.
Finland	Formula based	Based on availability, usability and number of frequencies included in the licence.	Variable	
Zimbabwe	As percent of revenue	2% of audited annual gross turnover towards contribution to Universal Service Funds.	2%	
Bangladesh	As percent of revenue	A sum equivalent of 5.5% of the annual audited revenue of the licensee and 1% of annual audited revenue of the licensee towards social obligation fund. The annual spectrum fee for access and microwave frequency is also paid based on formula.	6.5%	
Bhutan	Regulatory fees	1 % of Adjusted gross revenue (AGR) where, AGR is Licensee's annual gross revenue from Licenced Services minus payments made by the Licensee for interconnection and other inter-operator services that are acquired by the Licensee in connection with the provision of the Licenced Services determined for the most recently completed financial year of the Licensee. The annual installments of the National ICT Development Fund are also to be deducted from the gross revenue of the Licensee.	1 % of AGR	Payments made by the Licensee for interconnection and other inter-operator services
Norway	Recovery of regulatory cost	Administrative charge is levied either as one time charge or charge on an annual basis. This will cover the Norwegian Post and communications Authority's relevant costs. The cost and revenue of the Authority's budget is published annually.	Variable	-
Sweden	Recovery of regulatory cost	An annual charge that corresponds to the costs the Swedish telecom Authority has for its operations. The charge is allocated in reasonable proportions to the holder of the telecom licences.	Variable	-

Annexure 2.1

Items included in 'POSITIVE LIST'

Sl. No.	Item/head of 'Other Income'	Reasons and Recommendations
i.	Income from Dividend	<p>Income from dividend is return on investment made by the company. Such investment is made out of surplus funds available with the company. Companies Act, 2013 and Accounting Standard-9 classified dividend income as 'other income' i.e. distinct from the core operations of the entity.</p> <p>In the DoT's order number 7-4/2001-Tariff notified in gazette dated 8th January 2003, investment (in other company's equities, securities etc.) is not considered as part of capital employed i.e. funds invested for providing telecom services.</p> <p>Therefore, the Authority recommends that income from dividend should not be part of ApGR for the purpose of computation of LF and SUC.</p>
ii.	Income from Interest	<p>Income from interest is return on investment made by the company in bank deposits, corporate deposits, debentures etc. Such investment is made out of surplus funds available with the company. Also sometimes TSP receives interest from Tax Authorities on advance tax or refundable tax. Companies Act, 2013 and Accounting Standard-9 classified interest income as 'other income' i.e. distinct from the core operations of the entity.</p> <p>At the same time the Authority also notes that TSP accepts refundable deposits from customers, telecom vendors and other TSPs. These deposits essentially are part of telecom operations and needed to identify/kept separately. The Authority is of the view that to maintain separately identity of these deposits, TSP will open a separate bank account for refundable deposits from customers, telecom vendors and other TSPs. The interest income earned on such accounts will be recorded and kept separately.</p> <p>In view of above, the Authority recommends that</p>

		<p>income from interest should not be part of ApGR for the purpose of computation of LF and SUC. However, interest earned on refundable deposits from customers, telecom vendors and other TSPs should be considered in ApGR for the purpose of computation of LF and SUC. In case segregation of such interest income is not possible, entire interest income should be considered part of ApGR. The Authority also recommends that any refundable deposit received by the TSP on the strength of telecom service viz. linkage with tariff, advance rental etc. will also have similar treatment for inclusion in ApGR.</p>
iii.	<p>Capital gains on account of profit on sale of fixed assets and securities</p>	<p>Capital gain earned by the TSP on the account of profit on sale of assets and securities, are of from investing activities instead of from telecom operations. Therefore, the Authority recommends that revenue on account of sale of immovable property, securities, warrants or debt instruments, other items of fixed assets should not be part of ApGR for the purpose of computation of LF and SUC.</p>
iv.	<p>Gains from Foreign Exchange rates fluctuations</p>	<p>Foreign Exchange differences arise when actual rates at the time of settlement differs from those at which they were initially recorded in the books. The Authority also notes the provisions contained in the Accounting Standard-11 which requires a notional entry for exchange differences in respect of liabilities at the closing date of the AFSs. The foreign exchange gains reflected in the profit and loss statement of TSP could arise from reduction of payment liability or increase in the value of foreign exchange accounts receivables. In other words, foreign exchange fluctuation is a contingency which has impact on every business which may have something to do with foreign exchange and is not specific and unique to telecom business.</p> <p>In view of above, the Authority recommends that revenue/profit arising out of upward valuation or devaluation on account of fluctuation of foreign exchange should not be part of ApGR for the</p>

		purpose of computation of LF and SUC.
v.	Income from property rent	TSP may rent or lease part of their properties and earn revenue in the form of rent. Some TSPs as part of staff welfare measure provides staff quarters to their employees and receive rent from such staff. The Authority notes that revenue from rent cannot be distinctly treated as only from telecom business. Therefore, the Authority recommends that revenue/income from property rent should not be part of ApGR for the purpose of computation of LF and SUC. The Authority further recommends that in case property is let out for ‘establishing, maintaining and working of telecommunication’, then revenue/income from such rent should be considered in ApGR for the purpose of computation of LF and SUC.
vi.	Insurance claims	A receipt from Insurance company against loss of property/fixed assets is basically a reimbursement in nature for the loss occurred by the TSP. Therefore, the Authority recommends that receipt of insurance claim from insurance company should not be part of ApGR for the purpose of computation of LF and SUC.
vii.	Bad Debts recovered	Bad debt is an amount owed by a debtor that is unlikely to be received/realized and recognized as an expense in the books of accounts. Bad Debts recovered represents reversal of debits (i.e. bad debts) appearing in the profit and loss account of previous year(s). This basically represents an adjustment to the amount of an expense (i.e. bad debts) as estimated in an earlier year(s) in which it had already recorded as part of revenue from operations. Therefore, the Authority recommends that income on account of bad debts recovered should not be part of ApGR for the purpose of computation of LF and SUC.
viii.	Excess Provisions written back	Excess Provisions written back represent the reversal of excess provision made for any liability or expenses in any previous year. On settlement, this excess provision is written back into books of accounts as other income. This basically represents an adjustment

		<p>instead of actual revenue earned.</p> <p>Therefore, the Authority recommends that income on account of excess provisions written back should not be part of ApGR for the purpose of computation of LF and SUC.</p>
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Annexure 2.2

Computation of LF: Allowing PTC allowed on actual/ accrual basis

To show the impact, figures in the following example have been assumed with minimum number of transactions.

- (i) GR of TSP 'A' is Rs.1000 in first quarter (Q1). As a result of availing interconnection facilities from TSP 'B' (admissible as per licence agreement) TSP 'A' is liable to pay Rs.100 as interconnection usage charges to TSP 'B'. It is assumed that TSP 'B' does not have any other GR except the interconnection usage charges received from TSP 'A'.
- (ii) TSP 'A' pays Rs.90 to TSP 'B' in Q1 of Rs.100 (PTC due). Balance Rs.10 paid to TSP 'B' in Q2. Also in second quarter (Q2), Rs.500 revenue has been assumed for TSP 'A' (with no element of PTC) and Rs.300 revenue has been assumed for TSP 'B' (with no element of PTC). No interconnection transaction between 'A' and 'B' in Q2.

Scenario I: LF received by the Government under the existing licensing regime where PTC is allowed on actual paid basis.

(Figures in Rupees)

Particulars	TSP 'A'	TSP 'B'
Quarter I		
GR	1000	100
PTC actually paid to 'B' (due amount was Rs.100)	90	-
AGR	910	100
LF @ 8%	72.8	8
Total LF received by Government in Q1	80.8	
Quarter II		
GR	500	300
PTC paid to 'B' (balance payment of Q1)	10	-
AGR	490	300
LF @ 8%	39.2	24
Total LF received by Government in Q2	63.2	

Total LF received by Government in Q1 and Q2 is Rs.144 (80.8+63.2) under the existing

Scenario II: LF received by the Government in case PTC is allowed on accrual basis.

Figures in Rupees)

Particulars	TSP 'A'	TSP 'B'
Quarter I		
GR	1000	100
PTC payable/due to 'B'	100	-
AGR	900	100
LF @ 8%	72	8
Total LF received by Government in Q1		80
Quarter II		
GR	500	300
PTC payable	-	-
AGR	500	300
LF @ 8%	40	24
Total LF received by Government in Q2		64

Total LF received by Government in Q1 and Q2 is Rs.144 (80+64)

Annexure 2.3

Format of Statement of Revenue and Licence Fee
 _____(Name and address of operator)
UL (Access Service Authorization) in _____ (Service Area)
Statement of Revenue and Licence Fee for the Quarter

of the financial year.....

(AMOUNT IN RUPEES)

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.
1	Revenue from services			
A	Revenue from wire-line subscribers:			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from wireline subscribers.			
B	Revenue from WLL subscribers : (Fixed)			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services,			

	Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
C	Revenue from WLL subscribers : (handheld)			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
D	Revenue from Mobile Services:			
D (a)	Revenue from GSM and 3G spectrum based Mobile Services:			
D(a) 1.	Post paid options:			
i.	Rentals			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
D(a) 2.	Pre-paid options:			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Activation Charges			
iii	Airtime Revenue			
iv	Pass through charges (provide operator-wise details)			
v	Service Tax			

vi	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix	Any other income/ miscellaneous receipt from pre-paid options.			
D(a) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
D (b)	Revenue from CDMA based Mobile Services:			
D(b) 1.	Post paid options:			
i.	Rentals			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
D(b) 2.	Pre-paid options:			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Activation Charges			
iii	Airtime Revenue			
iv	Pass through charges (provide operator-wise details)			
v	Service Tax			
vi	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from pre-paid options.			

D(b) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
D (c)	Revenue from BWA Services:			
D(c) 1.	Post paid options:			
i.	Rentals			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
Vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
D(c) 2.	Pre-paid options:			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
Vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from pre-paid options.			
D(c) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			

E	Revenue from Voice Mail /any other value added service			
2	Income from trading activity			
(i)	Sale of handsets (<i>Excluding Sales Tax</i>)			
(ii)	Sale of accessories etc. (<i>Excluding Sales Tax</i>)			
(iii)	Any other income/ miscellaneous receipt from trading activity. (<i>Excluding Sales Tax</i>)			
(iv)	<i>Sales Tax</i>			
3	Revenue from roaming.			
i.	Roaming facility revenue from own subscribers.			
ii.	Roaming revenue from own subscriber visiting other networks including STD/ISD/pass thru charges for transmission of incoming call during roaming.			
iii.	Roaming Commission earned.			
iv.	Roaming revenue on account of visiting subscribers from other networks (provide operator-wise details).			
v.	Service Tax if not included above.			
vi.	Any other income/miscellaneous receipt from roaming.			
4	Income from investments			
(i)	Interest income			
(ii)	Dividend income			
(iii)	Any other miscellaneous receipt from investments.			
5	Non-refundable deposits from subscribers			
6	Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&IB			
7	Revenue from sharing/ leasing of infrastructure			
8	Revenue from sale/ lease of bandwidth, links, R&G cases, turnkey projects etc.			

9	Revenue from other Operators on account of pass through call charges (provide operator-wise details).			
10	Revenue from other Operators on account of provisioning of interconnection (provide operator-wise details)			
11	Revenue from Operations/Activities other than Telecom Operations/Activities as well as revenue from activities under a licence from Ministry of Information and Broadcasting			
12	Miscellaneous revenue			
AA	GROSS REVENUE OF THE Licencee COMPANY: (Add 1-12)			
BB	LESS:			
1	Revenue from operations other than telecom activities/ operations as well as revenue from activities under a licence from Ministry of Information and Broadcasting			
2	Receipt from USO Fund			
3	Items of 'Other Income' as listed in 'Positive List' (Annexure 2.1 of Recommendations)			
BB	Total (Add 1-3)			
CC	APPLICABLE GROSS REVENUE (ApGR) (AA-BB)			
DD	DEDUCT:			
1	PSTN/PLMN/GMPCS related call charges (Access Charges) payable to other eligible/entitled telecommunications service provider(s) within India (service provider wise)			
2	Roaming revenues payable to other eligible/entitled telecommunications service provider(s) (service provider wise)			
3	Toll Free Charges payable to other eligible/entitled telecommunications service provider(s) (service provider wise)			

4	Service Tax paid to the Government			
5	Sales Tax paid to the Government			
DD	TOTAL DEDUCTIBLE REVENUE (1+2+3+4+5)			
EE	ADJUSTED GROSS REVENUE (CC- DD)			
FF	REVENUE SHARE @ -----% OF ADJUSTED GROSS REVENUE			
GG	DEDUCT:			
	LfDS by other eligible/entitled telecommunications service provider(s) within India (service provider wise)			
HH	BALANCE REVNUUE SHARE PAYABLE/(RECEIVABLE) (FF-GG)			