



ANNEXURE - 1

COAI response to the TRAI Consultation Paper on “Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR”

Preamble:

At the outset, we would like to submit that the Authority should kindly consider the following points while making its recommendations to DoT on the Definition of Adjusted Gross Revenue (AGR) in License Agreements for the provision of Internet Services and minimum presumptive AGR:

1. The proposed **consultation should focus only on the definition of AGR and not on other terms and conditions of the license agreement, such as the scope of the work, roll-out obligations etc.**
2. The **license terms and conditions should be in line with the terms and conditions of NIA dated February 25, 2010** issued at the time of 3G/BWA auction and **while TRAI can review the definition of AGR, the scope of licence of ISP should essentially stay unaltered.**
3. **Objective envisaged in the NTP 2012:**
 - i) One of the important objectives of the NTP 2012 is to *“Provide affordable and reliable broadband-on-demand by the year 2015 and to achieve 175 million broadband connections by the year 2017 and 600 million by the year 2020 ...”*
 - ii) Internet & Broadband services in India have witnessed a very slow growth. Most of the broadband targets set by the Regulator and by the Licensor in the past have not been achieved. Unlike growth of Voice and SMS the penetration of Broadband has been severely hampered.
 - iii) Any additional license fee cost arising due to the proposed inclusion of revenue from pure internet services in the AGR will adversely impact the growth of Internet and Broadband in the country.
 - iv) To enable the spread of affordable internet services in the country, revenue from pure internet service should continue to be allowed as a deduction from AGR from ISP license.
4. The definition of Gross Revenue under the ISP license should be limited to the revenues derived from offering services under the scope of the ISP license and not on entire revenues of the company holding the ISP license.
5. **Revenues which do not accrue from services should not form a part of AGR for ISPs:** The following has no bearing on the direct revenue of an individual ISP, hence should be allowed as deduction from AGR:
 - i) Dividend
 - ii) Interest on other than refundable security deposits received from the customer,

- iii) Capital Gains on sale of immovable property ,securities, warrants or debt instruments , other items of fixed assets
- iv) Gains from Foreign Exchange Fluctuations (Forex Gain)
- v) Exclusion of Recovery of Bad Debts , Waivers , Discounts & Reversal of Provision & Vendor Credits from AGR
- vi) Income from Property Rent
- vii) Income from Sale / lease of passive infrastructure like towers, dark fibers, etc. – is a reduction of cost, of that portion of assets which are not used by the licensee to provide the license services.
- viii) Other income including Miscellaneous Income.
- ix) Revenue from non- license fees licensed activities, like internet access to be excluded from the AGR of License fees payable license activities like Internet Telephony.
- x) Receipt of USO Funds Subsidy: This is an amount receivable to subsidize the cost.

6. **Deduction of Taxes:** Some State Governments have started levying entertainment tax on the VAS components of telecom service across many Service Areas and therefore the scope of service/sales tax deduction allowed under license presently should be extended to include the **entertainment tax as well.**
7. **All the deductions for ISP's should be on accrual basis:** All Inclusion of Direct Revenue in AGR & all exclusions should only be on Accrual Basis, which can be reconciled with the annual audited accounts.
8. **Deductions to ISP's should apply for resources taken from other telecom service providers to deliver services:** Presently, the payments made by ISP's for inputs like bandwidth are not allowed as deductions while calculating AGR on which license fee is payable by a ISP's This is even when the bandwidth provider has already paid license fee on revenue received from the end service provider. This would hamper the objectives of NTP 2012 which envisages growth of affordable internet & broadband in the country and lead to **double taxation.**

Issue Wise Response:

Q1: Stakeholders are requested to give their comments on definition of AGR for all three categories of ISP Licences.

COAI Response:

- 1) The proposed **consultation is on the definition of AGR and not on other terms and conditions of the license agreement, such as the scope of the work, roll-out obligations etc.**
- 2) The **license terms and conditions should be in line with the terms and conditions of NIA dated February 25, 2010** issued at the time of 3G/BWA auction and **while TRAI can review the definition of AGR, the scope of licence of ISP should essentially stay unaltered.**
- 3) Subject to the abovementioned comments we would like to submit that so as to enhance spread of affordable internet & broadband services in India, we would like to submit the Pure Internet Revenue should be allowed as a deduction in ISP licenses.

Q2: Should minimum presumptive AGR be applicable to BWA Spectrum holders under Internet Service/Access Service license(s) and other licenses with or without spectrum, including access service licenses? If yes, what should the value of minimum presumptive AGR?

COAI Response:

- 1) With regards to the minimum presumptive AGR, we would like to submit that there should not be any minimum presumptive AGR under a license which does not have any spectrum resources allocated to it.
- 2) We are of the view that any ISP that has acquired or has allocated spectrum for its license should have to bear a Revenue share to the Government on the basis of a Minimum Presumptive AGR until service revenues exceed such amount. Thus all spectrum holding underutilized or not utilized must have the dis-incentive for not having rolled-out a network for the purposes of revenue generation and meeting roll-out obligations.
- 3) **We therefore, suggest that a Minimum Presumptive AGR should only be applicable on ISPs that have acquired Access Spectrum resources.**

Q3: Please suggest the amendments required in the formats of statement of revenue and licence fee reported by various categories of Internet service licensees and UAS licensees.

COAI Response:

- a) We are of the view that the deductions on account of pure internet services, both Wireless and Wireline, should include the revenue from Internet Content services and charges paid to other eligible telecom service providers such as NIXI, Upstream ISPs, NLDOs, ILDOs for provisioning of internet bandwidth.
