Vodafone's Response to TRAI's Consultation Paper No.19/2012 on "Definition of Adjusted Gross Revenue (AGR) in License Agreement for Provision of Internet Services and Minimum Presumptive AGR

Vodafone Spacetel Limited holds All India Category 'A' ISP –IT License and welcomes the Consultation Paper issued by TRAI. We also hold UASLs for 7 service areas.

At the outset we would like to submit that worldwide experience has shown that access to Internet and data services requires a supportive regulatory & policy environment. We, in India need to replicate what majority of the world economies have done to that front. A liberal regulatory regime that permits complete freedom to provide any or all internet services has been the hallmark of almost all major countries including US, Canada, Australia and Member countries of European Union. The Government of India has also put in place the vision to provide easy access of Internet to all the people across geographies including Rural areas. Easy and affordable access to Internet is the catalyst to achieve the high penetration of internet services in the Country.

Needless to mention, Government of India has firmly recognized at various forums that availability of internet services at affordable price levels contribute to higher GDP growth rates, provide for a larger and more qualified labour force, and make that labour pool more efficient.

The potential consumer benefits and public benefits from internet are enormous as we can see the inroads made by launch of e-Health, e-Education, e-Commerce services which are immensely benefiting to poorest of the poor in the country.

On the contrary, regulatory policy change by way of applying License Fee on the Internet Revenues is completely in contradiction with the Government's vision to make available Internet access to all the citizens of the Country. Levy of license fee on Internet and Internet based miscellaneous services revenue will bring higher tariffs to the internet customers and thus disconnect with the Government's objective of making internet services available at affordable rates.

An ISP Licensee having ISP-IT License typically can provide three types of services which form scope for the definition of Gross Revenue under ISP License viz;

1. Pure Internet services including Internet Leased Lines (internet bandwidth),
2. IP Based Internet Telephony and other VAS e.g. webhosting, video conferencing services, and
3. Miscellaneous services (MS)

Therefore the AGR under ISP License will be = Gross Revenue Minus revenues generated from Pure Internet /ILL, MS and IP Based telephony, web conferencing and Video conferencing services.

Considering the overall objective of providing affordable internet services and to meet the economic and social objectives of the Government of India, we are of the firm view that none of the above services provided by an ISP-IT Licensee should be subject to payment of any license fee.

Besides, above we categorically oppose any direct or indirect steps to allow the ISPs to offer Voice Over IP (VoIP) as the same has the issues of non-level playing field and the revenue loss to the Government irrespective of some ISPs having BWA Spectrum. It will not only result in a serious non-level playing field to the disadvantage of operators already providing voice services but it also causes a significant revenue loss to the Government. The present scope of service in respective categories of licenses is sacrosanct and the level playing field is to be maintained only between same category and similarly positioned licensees and not otherwise. This issue is also not in the scope of the current Consultation Paper hence not being responded in its entirety.

Issue wise response:

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

At the outset, we submit that TRAI should review only the "definition" of AGR for ISP Licensees.

The scope of ISP License including the terms and conditions enumerated in the NIA dated 25th February 2010 issued at the time of 3G/BWA Spectrum should stand unaltered.

We propose the following amended definition of AGR for ISP-IT Licensee as highlighted:

"18. Definition of 'Adjusted Gross Revenue':

18.1 Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc.

18.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)"the following shall be excluded from the Gross Revenue to arrive at the AGR:

(i) Charges from pure Internet service activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device /

technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-colocation which is available on internet without access restriction.

(ii)   Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.

(iii)   *Any pass through revenue actually passed on to other eligible/entitled telecom service provider.*

*(iv)   **Revenue generated from all miscellaneous non-telecommunication services***

(The above suggestions are Without Prejudice to our submissions before the various Courts /Tribunals in the AGR definition related cases presently pending which, inter-alia, includes as below:

<u>**Revenues which do not accrue from telecom services should not form a part of AGR:**</u> The following has no bearing on the direct revenue or the apportioned revenue share of an individual service provider, hence should not be considered for 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) Revenue from Sale of equipment including Handsets to be excluded – in case of Bundled Handset offer.
    xi) Receipt of USO Funds Subsidy: This is an amount receivable to subsidize the cost.

2. <u>**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?**</u>

Vodafone is of the view that TRAI minimum presumptive AGR should not be made applicable for ISPs because there is no reason of hoarding of spectrum resource by them.

However, ISPs holding BWA Spectrum should be made subject to minimum presumptive AGR of the value as is applicable for Access Licensees.

3. **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.**

We submit that the formats of statement of revenue and license fee of ISP Licensees should be amended basis the changes proposed by us in the definition of AGR in response to Issue 2 above.

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