

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

Comments by CITYCOM NETWORKS PRIVATE LIMITED

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

Comments-

We recommend the following definition of AGR for provision of Internet services:

“Adjusted Gross Revenue for the purpose of levying Licence Fee as a percentage of revenue share shall mean the “Gross Revenue” accruing to the licensee by way of operations of the internet service included under the Licence as reduced by the following items:

- a. Revenue from pure Internet/Broadband service;
- b. Government levies and taxes;
- c. Pass-through charges paid to other telecom service providers i.e. payment for port charges, lease lines charges, bandwidth charges on which license fee has already been paid by the license as an input cost.”

Q.2. 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?

Comments-

We recommend that **there shouldn't be any presumptive AGR**. As we believe that a presumptive fee cannot be justified when there is no opportunity or likelihood of hoarding resources, such as spectrum and numbering, which imposes an opportunity cost on others. More so, since the ISPs do not have an exclusive licence, they cannot prevent further market entry by virtue of being early entrants. The entry fee for the ISP licence is not a sufficient deterrent to new players. Therefore, *there is no reason to impose a presumptive Licence fee on any licences, which offer no exclusive rights, when there is no limit on number of market players and cost of entry is low.*

Presumptive AGR goes against the very principles of the move towards revenue sharing adopted in 1999 under NTP-99. The basis of that move was that operators must not be burdened with fees, a priori, but must share, with the government, a portion of actual revenues for services that they provide or accrued from these services.

Q.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.

Comments:

We recommend that the formats of statement of revenue and license fee should be modified in light of the submissions /points given in response to question number 1 and the following –

- a. Levy license fee on the revenues which have been accrued on the strength of the license granted under section 4 of the Indian Telegraph Act, 1885.
- b. Exclude revenue of Licensee Company which has not accrued on the strength of license granted under section 4 of the Indian Telegraph Act, 1885. To say that revenue from non-telecom activities should not be considered.
- c. Recognition to the concept of Value added Tax (VAT) in order to avoid multi-stage assessment of license fee thereby avoiding cascading impact of license fee on the end user i.e. double taxation. This is specifically in the context of data service providers who are providing telecom services by taking input bandwidth from other telecom service providers. (Presently, ISP operators are subject to the double-assessment of license fees because input costs (ie wholesale bandwidth costs which already reflect the 7-8% license fee), are not deductible from the adjusted gross revenue on which the license fee is calculated).