

## ISPAI Response to TRAI Consultation on AGR Definition

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### Background

1. Telecom Regulatory Authority of India issued its Consultation Paper No.: 19/2012 of 28th December, 2012 on Definition of Adjusted Gross Revenue (AGR) in Licence Agreements for provision of Internet Services and minimum presumptive AGR for seeking the comments / counter comments of the stakeholders.
2. **The consultation is an important opportunity for Internet Service Provider Association of India (ISPAI) to seek a review of TRAI's Unified Licence Regime proposals which go against ISPAI interests.** TRAI has opened this option by initiating consultation not simply on the definition of adjusted Gross Revenue for ISP license agreements on that ISPs must pay revenue share license fee but also whether presumptive revenue is desirable.
3. The consultation Paper seeks responses to 3 questions highlighted below for which preliminary comments/ inputs are offered below for subsequent review/ consideration of the Hon'ble Authority.

## **Analysis of Internet Industry**

4. ISP sector was opened to private operators in 1998 with a view to encouraging growth of Internet and increase Internet penetration. A supportive policy regime with light regulatory approach was adopted with no license fee, no entry fee, very liberal roll out obligations and no cap on number of Internet service providers in a license area, perhaps over the period of time, there were some amendments made in the terms & conditions of ISP licenses.
5. The liberal & supportive Government policy encouraged entry of large number of private players, which resulted not only in lower Internet tariffs but also led to the surge in the subscriber's growth in initial years of opening of Internet sector to private service providers. The subscriber base grew more than 200 percent per year, from 0.28 millions in March 1999 to 3.04 millions by March 2001.
6. Presently there are about 388 ISP licenses under different categories out of which around 150 are operational. At the end of September 2012, there were around 14.5 Million Broadband subscribers as per the Regulator, majority of which are urban based and from enterprise segment. There is a great need for encouragement to the niche ISPs which are endeavoring to take the broadband to rural and remote areas. The Government recognized this need and has taken the first step to create much needed backbone infrastructure through NOFN project. A lot more facilitation is required through conducive policies as well as

special incentives to attract the much needed investment in this segment.

7. In the recent past, there were certain policy changes in the ISP license agreements which have direct bearing on the affordability of ISP services and financial sustainability of ISP service providers. ISPAI has noted that most of the recent past policy decisions / proposals have been taken without carrying any Regulatory Impact Analysis of ISP segment.
8. ISPAI believe that Internet is an important mode to achieve the various Government / Social objectives. It is also significant because access to the Internet is clearly a major enabler of economic growth. Accessing information and education, facilitating the creation and reach of businesses, streamlining the costs of engaging with governments, and obtaining healthcare are all cited as benefits of access to the Internet.
9. ISPAI has noted that “recent studies published by ITU reveal that broadband penetration is directly related to its cost, relative to an average family income, as well as to the availability of products and services that accommodate the general population’s purchasing ability. For example, as the annual cost of broadband drops below 3 percent of a family’s annual income, its use begins to increase dramatically. For developed countries, this relative cost has already been achieved, but for at least 34 countries worldwide, the cost of broadband remains higher

than the average annual family income and thus it remains entirely out of reach<sup>1</sup>.

10. The recent report of World Economic Forum on “The Global Information Technology Report 2012” has indicated that India can not afford broadband at the 3 percent GNI PPP income threshold. ISPAI has further noted that as per recent report of ITU<sup>2</sup> , in India, the mobile broadband prices as a percentage of GNI per capita (2011)was 8.9%<sup>3</sup> and in the case of fixed broadband prices, it was 5.5% as percentage of GNI per capita (2011) .
11. ISPAI suggests that considering the present financial position of ISP segment, low level of penetration of internet services and affordability of Internet services, the revenue from pure internet /broadband services should not be considered as a part of adjusted gross revenue (AGR).

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<sup>1</sup> Source: The Global Information Technology Report 2012, World Economic Forum

<sup>2</sup> Source :ITU Measuring the Information Society,2012

<sup>3</sup> Source : Table No 3.16 on page no 120 of Measuring the Information Society,2012

## **Submission for consideration of the Hon'ble Authority**

12. In view of above analysis , ISPAI recommends that the following Principle may be adopted while framing the AGR definition for provision of internet services;
- 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). Issues for Consultation

## **ISPAI's Comments on issues for consultation**

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

#### **ISPAI's 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. All charges paid to other telecom service providers including to the international service providers and those on which license fee has already been paid by the licensee.”

**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?**

**ISPAI's 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.**

**ISPAI's 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 Para 12 of this response .

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