

Without Prejudice

File No-1-7/2013/LF-II
GOVT OF INDIA
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONS
LICENSING FINANCE BRANCH- II
20-Ashoka Road, Sanchar Bhawan, New Delhi-110001

Dated: 01.10.2013

To

All Basic/CMTS and UAS Licensees

CIRCULAR

Subject: Revenue recognition for Telecom licensees for the purpose of computation of Gross Revenue/ AGR as per the License Agreement.

Hon'ble Supreme Court of India vide its judgment and orders dated 11.10.2011 in petition No. 5059 of 2007 has set aside the judgment and orders dated 30.08.2007 of the Hon'ble TDSAT in petition No. 7 of 2007 and other related petitions in the matter of definition of AGR. Hon'ble Supreme Court while upholding the definition of AGR as incorporated in the UAS Licence Agreement has in para 34 of the judgment observed that ".....The incorporation of the definition of Adjusted Gross Revenue in the license agreement was part of the terms regarding payment which had been decided upon by the Central Government as a consideration for parting with its rights of exclusive privilege in respect of telecommunication activities and having accepted the license and availed the exclusive privilege of the Central Government to carry on telecommunication activities, the licensees could not have approached the Tribunal for an alteration of the definition of Adjusted Gross Revenue in the license agreement".

2. And also in para 40 of the judgment Hon'ble Supreme Court held that "...that this Court has consistently taken a view that once a licensee has accepted the terms and conditions of a license, he cannot question the validity of the terms and conditions of the license before the Court. We, therefore, hold that the TRAI and the Tribunal had no jurisdiction to decide on the validity of the definition of Adjusted Gross Revenue in the license agreement and to exclude certain items of revenue which were included in the definition of Adjusted Gross Revenue in the license agreement between the licensor and the licensee.

3. Department of Telecommunications has raised demands with respect to Assessment of Licence Fee of various years based on Guiding Principle that there is no segregation between Telecom and Non-Telecom Revenue which is also supported by the above mentioned decision of the Hon'ble Supreme Court. As per Condition 19.1 of the UAS Licence Agreement Gross Revenue is clearly defined and duly agreed upon by the Licensee while signing the Licence Agreement which includes revenue from all streams accounted for in the Books of Accounts of the Licensee Company. The relevant provision of the Licence Agreement is reproduced for reference:

"The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or 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".

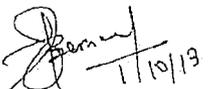
4. Department of telecom has observed that, there are certain items of revenue either being under reported or not reported by licensees in their Audited Statements of Revenue and Licence Fee (AGR statements). The treatment for following items to be given as per detail below-

- a. Gross revenue from Interest Income, such as interest from investment, Interest from loans and advances, and any other interest income arising due to any activity must be included in the GR/AGR for computation of license fee. No netting such as TDS, bank charges etc, from this income are admissible.
- b. Gross revenue from Sharing of Infrastructure (Cell site etc) , whether Opex or Capex, is to be included in GR/AGR for computation of License fee. It has been observed that, some licensees are netting some expenditure against this revenue, which is not admissible. Some of the items falling in this category are-lease line and port charges, cell site sharing, sharing of dark fiber, sharing of switches in NLD and ILD, any other infrastructure related transaction etc.
- c. There have been some instances wherein, Licensees are netting off distributor Commission, free air time offered to distributors etc. from gross revenue, which is not admissible. This type of cash outflow must be treated as expense and gross inflow is to be taken in GR/AGR. It is reiterated that the gross receipts/MRP of various telecom products/services is to be accounted as gross revenue.

- d. Gross revenue from free air time bundled with the sale of handsets by third parties, must also be included for computation of License fee. Some other instances also fall in this category such as- reversal on account of employees billing, penalties recovered from customers, stale cheque credits, waivers to customers, additional/free airtime offered to PCOs etc.
- e. Gross Foreign Exchange Gain must be taken for computation of License Fee. This includes both the Gross Realised and Unrealised gains. Further, no set off is allowed for any loss incurred, whether realised or unrealised.
- f. Gross profit on sale of any assets (fixed or movable) is to be taken into account for computation of License fee. There are certain instances, where licensees do not include these types of transactions in their GR/AGR, which is not correct.
- g. Any discount offered to any telecom operator for international roaming should also be included for AGR.
- h. Revenue from all value added services, supplementary, revenue from global operations and any other miscellaneous revenue are to be included in GR/AGR.

The Department may ask for details regarding other items of revenue, if found during the course of assessment of Licence Fee dues.

2. All Licensee Companies are directed to take appropriate action while computing GR/AGR Licence Fee and also pay the licence fee arrears accordingly by including the revenue on the aforesaid items in the GR/AGR for the Financial Years 2006-07 to 2012-13 within 30 days from the date of receipt of this letter, the same should be certified by the Statutory Auditor. From the Financial Year 2013-14 onwards Licensees are expected to include the above items in their Audited/unaudited Statements of Revenue and Licence Fee.


 (Shailesh Bansal)
 ACAO (LF-IV)

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- 1 All Pr.CsCA/CsCA
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