

CHAPTER – X

Assessment of Licence Fee and Spectrum Usage Charges

10.1 Introduction

The Licence Finance (LF) wing in DoT is responsible for the assessment of GR and final computation of the revenue share payable by the Licensees. Assessment of GR is done taking into account the Audited AGR and reports/reconciliation statements received from the PSPs. Final revenue share is to be calculated considering the collection details and verification reports received from the Offices of the CsCA. Additional demands, if any, based on the GR assessment and LF paid by PSPs are then to be raised by the LF Wing. Penalty for delayed/short/non-payment of LFs is also to be levied by the LF wing. For spectrum charges, the Wireless Planning Finance (WPF) Division of DoT was responsible.

Other duties in connection with revenue share realization for DoT included –

- Calculation and collection of penalty for delayed payment of LF
- Computation of interest/penalty for short/non- payment of LF
- Maintenance/forfeiture of financial/performance bank guarantees
- Suspension, termination of licenses
- Levy of liquidated damages in case of failure on the part of the licensee in meeting roll out obligation and target/commitment etc.

The process of assessment of LF and SUC undertaken by DoT in respect of the PSPs was test checked and the findings are as given below:

10.2 Audit Findings

10.2.1 Under assessment of GR due to omission of revenues disclosed in reconciliation statements

The UASL agreement conditions stipulated that every licensee should submit reconciliation between the figures appearing in the quarterly statements of revenue and LF payable with those appearing in annual accounts along with their audited annual accounts. Since the final adjustment of LF payable was based on the GR figures certified by the auditors of the licensee, the information presented in the reconciliation statement was an important document which explained the variations between the GR computed for payment of LF with the revenue appearing in the profit and loss account of the licensee company. The notes to the accounts/disclosures of the Auditors and schedules in the annual accounts were other documents which facilitated DoT in identifying those items of revenue which were not taken into account for arriving at the GR as envisaged in the Licence agreements.

A test check of the demands raised by DoT after assessment of the accounts of various LSAs of Vodafone Group for the years 2006-07 to 2009-10 revealed that various items of revenue which were disclosed by Auditors through reconciliation statements annexed to AGR statements as well as schedules annexed to Profit and Loss Account etc., were overlooked by DoT while assessing the GR of the company (**Annexure - 10.01**). Failure of DoT to add back such revenue items, disclosed by the Statutory Auditors, to GR/AGR resulted in short payment of LF/SUC.

DoT in reply (January 2016) agreed with the audit contention and informed that necessary demands would be raised after verification.

10.2.2 Lack of coordination between LF and WPF Wing

As per licence conditions for using radio frequency spectrum allotted by DoT, PSPs in addition to LF, shall also pay spectrum charges on revenue share basis. However, while calculating 'AGR' for limited purpose of levying spectrum charges based on revenue share, revenue from wire line subscribers shall not be taken into account.

It was seen from the assessments finalized by WPF wing of DoT towards SUC for the years 2006-07 to 2009-10, that they were carried out taking into account the AGR stated by the operator in the audited AGR statements.

However, consequent to the assessments carried out by the LF wing of DoT, taking into account the verification reports of CsCA and disclosures in the audited financial statements of the PSPs there were certain revenue items added back to the AGR. These additions to the AGR were not being considered by the WPF division for working out SUC as detailed below:

- i) Vodafone being a cellular mobile service provider, the revenue assessed for LF should be the revenue for assessing the spectrum charges also. Short assessment of SUC, on account of the failure to consider the revised assessment done by LF wing for raising additional SUC worked out to ₹ 267 crore for the period 2006-07 to 2009-10.
- ii) In respect of Aircel Group of companies for the years 2006-07 to 2009-10, while for assessment of LF, AGR was revised by adding PSTN disallowed, un-reconciled differences, rebates & discounts, dividend income, other income, foreign exchange gains, profit on sale of fixed assets, Interest income etc., AGR submitted by the

company was taken up by DoT for assessment of SUC. Thus the difference in AGRs for the years 2006-07 to 2009-10, considered for LF and SUC was ₹ 973.59 crore resulting in short recovery of SUC by DoT. To an audit query in this regard, it was replied by DoT (January 2016) that SUC is being revised as per AGR intimated by LF wing of DoT.

- iii) DWL (Aircel) submitted 'Nil' AGR for Haryana and Punjab service area for the year 2009-10 since their services did not commence. While DoT raised the demand of LF for Haryana and Punjab service area for the period by adding foreign exchange gains, SUC was not revised. On being pointed out by Audit (September 2015), it was replied by DoT (January 2016) that SUC is being revised as per AGR intimated by LF wing of DoT.
- iv) In respect TTSL and TTML, while the assessments carried out by the LF wing of DoT for the years 2006-07 to 2009-10, had taken into account the verification reports of CsCA and disclosures in the audited financial statements of the PSP the WPF division did not consider the above information for working out the SUC.
- v) Out of the total deductions of ₹ 228.62 crore claimed by RCL (Gujarat Circle), ₹ 167.46 crore was disallowed by CCA. While DoT had taken into account the inadmissible deductions disallowed by CCA Ahmedabad and added back to AGR for arriving at the short paid LF, assessment of SUC (CDMA and GSM) was finalized by accepting the total deductions claimed by RCL (₹ 133.48 crore for CDMA and ₹ 82.21 crore for GSM) as admissible deduction without considering inadmissible deductions disallowed by CCA (₹ 97.77 crore for CDMA and ₹ 60.22 crore for GSM). The finalisation of assessment of SUC without considering inadmissible deductions disallowed by CCA and considering total deductions claimed by RCL, resulted in short payment of Spectrum Usage charges. **(Annexure - 10.02)**

Response to audit query seeking the reasons for not considering the assessment done by LF wing for computing SUC was awaited from DOT, except for para (ii) and (iii) above.

10.2.3 Issue of demand notes based on special audit and provisional assessment without proper due diligence.

Based on special audit/provisional assessment for the years 2006-07 and 2007-08, DoT issued demand notes after adding back the respective amounts to AGR for computation of LF. Discrepancies noticed in the demand notes are detailed in Table 10.1 below:

Table 10.1

Year	Name of the TSP	Audit Observations
2006-07	BAL	In the demand note issued for the year 2006-07 based on special audit, interest income of ₹ 20.23 crore was included twice in the demand and supplementary show cause notice. Further, instead of apportioning the corporate income amongst all the licences held by the TSP, it was included only under Delhi LSA.
		₹ 87.38 Crore was added to AGR of Delhi LSA as income from IP1 services accounted in IP1 TBs. Inclusion of entire revenue of IP1 under Delhi LSA was not proper.
	Vodafone	As per the audited accounts of company the deduction claim was inclusive of ₹ 23.17 crore in respect of “Amounts paid/adjusted during the year ended 31 March 2007, against amounts claimed as deduction from GR for the financial year 2005-06 or earlier” which indicated that deduction on this account has already been claimed from GR through the respective CsCA. But, this disclosure was not considered in the final assessment which allowed the operator the benefit of claiming double deductions. DoT informed (January 2016) that service area wise demands were being issued on the above issue.
2007-08	BAL	In the demand note issued for the year 2007-08, based on special audit, interest income of ₹ 65.01 crore, was included twice in the demand notes issued on provisional assessment and Special audit including supplementary demands. Further, instead of apportioning the corporate income amongst the licences held by the PSP its inclusion in Delhi LSA only was not proper.
		₹ 38.75 crore being income from trading in VSAT equipment accounted in TB maintained for erstwhile Satcom Broadband Equipment Limited, a subsidiary of BAL was added to AGR of Delhi LSA. Inclusion of entire revenue under Delhi LSA was not proper as this should have been included in VSAT AGR.
		₹ 100.92 crore added to AGR of Delhi LSA as income from IP1 services and inclusion of entire revenue of IP1 under Delhi was not proper.

In respect of audit observations relating to BAL, the DoT replied (January 2016) that the audit observation was noted and the para was communicated to BAL for their comment. It also stated that items pointed out by Audit are pending in Kerala High Court and action would be taken after the judgement.

Thus, DoT did not exercise due diligence while issuing demand notes that may lead to further litigation.

10.2.4 Delay in submission of documents by service providers and absence of proper policy on time schedule leading to delay in verification of deductions by CsCA

DoT delegated (September 2006) verification of deductions to CsCA on quarterly basis. The above verification for each quarter was to be completed by the CCA within a stipulated

time frame, i.e. by 15 October, 15 January, 15 April and 30 June for quarters I, II, III and IV respectively of the financial year. Also DoT (April 2007) specified the documents to be submitted and the consequences of not submitting the documents within the specified time schedule.

On test check of the records at the offices of CsCA relating to verification of deductions, it was noticed that in seven¹ CCA offices, there was considerable delay in submission of documents by RCL and in verification of deductions claimed due to non-submission of documents by the operator. This delayed the verification of deductions by the CCA office by a period of one month to 59 months (**Annexure – 10.03**).

DoT issued (July 2008) instructions stating that operators should be given opportunity to submit the missing documents and instructed the CsCA to furnish the details of inadmissible deductions to the operator. Accordingly, RCL got extension for furnishing of the documents ranging from 15 days to five months. Further, it was also observed that RCL after the provisional assessment of LF again got extension of time for submission of documents which ranged from 15 days to 6 months.

Thus due to the inconsistent policies of the DoT, the Telecom operator submitted the documents on piece meal basis on various occasions resulting in delay in the process of verification which needs a further review and proper instructions from DoT. Reply is awaited from DoT on this observation.

10.2.5 Non assessment of LF of NLD, ILD and ISP for the year 2006-07 to 2009-10

DoT has not carried out assessment of licence fee for NLD, ILD and ISP for the year 2006-07 to 2009-10 in respect of DWL and Delhi Service area in respect of Aircel Ltd. for the year 2009-10 despite lapse of more than five years.

DoT replied that assessment could not be done due to non-receipt of verification reports from CCA as of September 2015.

Reply of the DoT is not acceptable as the CsCA are under administrative control of DoT and DoT should have obtained the verification reports.

10.2.6 Non recovery of LF and SUC on international roaming claimed by the Telecom Service Providers

Clause 2.2 (a) of the UASL agreement provides for the licensee to enter into an agreement with other service provider(s) in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised/directed by licensor otherwise. As per Clause 19.2 of the UASL/CMTS agreement, following shall be excluded from the GR to arrive at AGR-

¹ Odisha, Delhi, Patna, Bangalore, UP (West), UP (East) and Kerala

- PSTN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;
- Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;
- Service tax on provision of service and sales tax actually paid to the Government if GR had included as component of sales tax and service tax.

DoT issued (20 September 2006) instructions to all Telecom Service Providers intimating them about the decentralization of verification of deductions to office(s) of CsCA. They were directed to submit the proof of payment to CsCA on demand. In terms of the letter, deduction on account of “roaming revenues actually passed on to other eligible/entitled Telecommunication Service Providers (TSPs) within India” was permissible for the purpose of arriving at AGR. Therefore, roaming revenues actually passed on to Foreign Service Providers (International Roaming) was not eligible for deduction for the purpose of arriving at AGR.

DoT issued an internal letter to all CsCA on 21 September 2006 detailing the verification of deduction from the GR by the PSPs alongwith which letter dated 20 September 2006 addressed to all Telecom Service Providers was also enclosed.

It was seen that only in November 2014, DoT issued a specific clarification that the entire deduction claims on account of International Roaming to be inadmissible. The justification offered was that foreign operators were not eligible/entitled operators as licence to them was not issued by DoT. It was also mentioned that cases where deduction verification has been finalised/closed may not be opened by CsCA for the time being till further orders.

Audit observed during test check that international roaming charges actually passed on to the international operators were allowed as deduction by some CsCA² whereas it was disallowed by some other CsCA³. Inconsistencies in the clarifications issued by DoT regarding deduction claims on account of international roaming charges has resulted in non-uniformity among CsCA regarding allowance/disallowance of deduction claims on account of International Roaming charges and possible loss of revenue to the exchequer in terms of revenue share.

In reply to above audit observation issued to DoT (April 2015), it stated (January 2016) that the verification of deduction on account of International Roaming claimed by Telecom Service Providers was carried as per order dated 5 July 2007 up to 6 November 2014. These were superseded by order dated 7 November 2014. It further stated that the issue was presently under review.

The above reply of the DOT confirms that the issue is still under review and has not reached its finality which may lead to continuance of non-uniformity among CsCA regarding allowance/disallowance of deduction claims on account of International Roaming charges.

2 Karnataka, Madhya Pradesh and Kerala

3 Delhi, West Bengal

10.2.7 Lack of appellate mechanism resulting in high number of litigations

DoT has been contributing 13.76 to 20.17 *per cent* of total non-tax revenue in the form of LF and SUC for Government of India during the period from 2012-13 to 2014-15 as detailed in Table 10.2 below:

Table-10.2

(₹ in crore)

Revenue	Actual 2012-13	Actual 2013-14	Revised 2014-15	Budget 2015-16
Total Non-Tax revenue of Govt. of India	137354	198869	217831	221732
Non Tax Revenue from Communication service under head “Other Communication Services”	18902	40113	43161	42865
Percentage of Non-Tax Revenue contributed by Communication	13.76	20.17	19.81	19.33

(Source: Budget document)

As detailed in the earlier chapter, DoT, as the licensor, is required to assess the correctness of revenue share due from the PSPs as per provisions in the licence agreements. This assessment process includes verification of deductions claimed by the telecom service providers to arrive at AGR and assessment of GR to ensure the correct reporting of all revenues as per relevant licence agreements.

It has been observed that within few years of introduction of revenue share regime, service providers challenged the definition of AGR in different courts of law. The service providers, individually and through their associations, filed petitions during 2003 to 2005 before the TDSAT questioning the validity of the AGR defined in the licence agreement. One of the contentions of the service providers’ was that the definition of the AGR and certain components included in the AGR is contrary to the Indian Telegraph Act, 1885, National Telecom Policy of 1999, the recommendations made by the TRAI and the Migration Package offered to the licensees.

TDSAT in August 2007 concluded that AGR shall be the revenue earned through licensed activity and decided the items of revenue that would form part of AGR thereby curtailing the scope of GR as defined in the license agreement. The pronouncement of TDSAT was challenged by DoT in the Hon’ble Supreme Court of India which pronounced (October 2011) in its judgment that “TDSAT had no jurisdiction to decide on the validity of the definition of AGR in the licence agreement and to exclude certain items of revenue which otherwise formed part of AGR as defined in the licence agreement”. However, Hon’ble Supreme Court was of the opinion that in case of any disputes regarding demands raised by DoT, PSPs shall approach TDSAT and TDSAT shall also give opinion as to whether the demands are in line with agreement conditions.

During the course of audit at DoT, it was noticed that DoT raised demands on operators based on its annual assessments and on the findings of the special audit which were challenged in the TDSAT. While Vodafone, BAL/BHL and ICL have challenged/represented against all the demands raised, M/s Aircel Ltd. had represented against three out of five demands raised on them. The details of demands raised by DoT and paid by the PSPs are as under:

Table 10.3

(₹ in crore)

Name of the PSP	Total Demand raised by DoT (LF + SUC)	Amount paid	Balance due
BAL/BHL	2294.33	0.00	2294.33
Vodafone	1320.00	0.72	1319.28
RCL/RTL	2394.89	0.00	2394.89
Idea	1047.24	0.00	1047.24
TTSL/TTML	1066.33	0.00	1066.33
Aircel	195.45	0.03	195.42

Besides, the operators filed another petition again challenging the validity of definition of AGR in Kerala High Court and other High courts. In April 2015, TDSAT adjudicating on the demands raised by DoT gave its ruling which exempted certain items of revenue from the purview of AGR and set aside the demands raised by DoT. DoT has filed appeals in the Supreme Court against the TDSAT's order of April 2015 (July 2015).

Thus, even though the revenue share regime has been in force since 1999, even after lapse of sixteen years the basic question of the definition of AGR on which revenue share is computed has not reached finality with the result that Government of India has been left with no option but to accept only what the PSPs pay as LF and spectrum charges.


By challenging all demands raised by DoT, even on disallowances on account of clear deviations from the provisions of licence agreement, the efforts of the Government in securing its dues as revenue share have been effectively hindered by the operators. The increasing number of pending court cases indicate that the directions/procedures framed by DoT for verification of AGR, imposition of interest/penalty etc., were susceptible to different interpretations leaving room for numerous disputes.

Though DoT had revised the rates of LF and SUC from time to time, the definition of GR/AGR was not reviewed despite the increasing numbers of disputes/litigation. Thus, **it is recommended that there is a need for clear, cogent and specific description of the scope of GR/AGR.** This is essential as even after 16 years since the introduction of the revenue share regime, the correctness and completeness of revenue flowing into the Consolidated Fund of India could not be ensured by DoT.

The absence of an appellate/redressal mechanism within DoT to address disputes with operators contributes to the increasing number of litigations. To minimize the litigations on the demands raised by DoT, **it is recommended that an appellate mechanism within the department should be established to address the disputes between DoT and the PSPs on demands raised by DoT.**

In reply to above audit observation issued to DoT (April 2015), it stated (January 2016) that presently the appeals were dealt with through the administrative hierarchy of the Department and the process of setting up a formal appellate structure was in process.


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Dated : 8 February 2016



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