

CHAPTER-VI

Revenue shared by Aircel Group (Dishnet Wireless Limited, Aircel Limited and Aircel Cellular Limited)

6.1 Brief Profile of Aircel Group

Aircel group comprises of three licensee companies namely M/s Aircel Limited (AL), M/s Aircel Cellular Limited (ACL) and M/s Dishnet Wireless Limited (DWL). ACL, the erstwhile M/s RPG Cellular Ltd commenced its telecommunication services in Chennai in 1994. Subsequently AL promoted by Sterling group obtained CMTS License in Tamil Nadu (excluding Chennai) service area during 1998(erstwhile M/s Srinivasa Cellular Ltd. Coimbatore). Though the group obtained licenses by 2006 for pan India operation but it actually became pan India operator in 2010 only. Aircel group provides telecom services on GSM technology.

6.1.1 Licenses granted to Aircel Group

ACL obtained CMTS license in 1994 for Chennai service area. AL obtained CMTS license in Tamil Nadu service area during 1998. Subsequently, it also got UAS licenses in seven¹service areas during 2006. DWL got UAS licenses in 14² service areas during 2004 and 2006. DWL also got NLD, ILD and ISP (IT) licenses. License for erstwhile Chennai service area expired on 29 November 2014.

6.1.2 Spectrum allotted to Aircel Group

LSA wise subscriber access spectrum allotted to Aircel group of companies as on 01 April 2010 and 31 March 2015 is detailed below:

Table 6.1

LSA	Spectrum as on 31 March 2015 (in MHz)	MW Access spectrum	MW Backbone spectrum
		(in MHz) ³	
Bihar, Himachal Pradesh, Orissa, Haryana, Kerala, Madhya Pradesh, Punjab, Uttar Pradesh (W), Andhra Pradesh, Gujarat, Karnataka, Maharashtra	2x4.4	112	56
Kolkata	2x4.4	112	0

¹ Andhra Pradesh, Delhi, Gujarat, Karnataka, Maharashtra, Mumbai and Rajasthan.

² Assam, Bihar, Himachal Pradesh, Haryana, Jammu & Kashmir, Kerala, Kolkata, Madhya Pradesh, North East, Punjab, Orissa, Uttar Pradesh (E), Uttar Pradesh (W) and West Bengal.

³ One Carrier = 56 MHz.

Delhi, Mumbai	2x4.4	168	0
West Bengal	2x5.6	112	112
Rajasthan	2x6.0	112	112
Jammu and Kashmir, Uttar Pradesh (E)	2x6.2	112	112
North East	2x6.2	112	112
Assam	2x6.2	112	112
Tamil Nadu	2x9.8	112	56
Chennai ⁴		224	0

Additional allotment of spectrum was made w.e.f. 08 September 2014.

In addition to above, Aircel group also obtained right to use 3G spectrum in 13⁵ LSAs through the auction held by DoT during April – May 2010 and right to use BWA (4G) spectrum in eight⁶ LSAs through the auction held by DoT during May – June 2010.

6.1.3 Gross Revenue (GR), Adjusted Gross Revenue (AGR) and Revenue share paid by the Aircel Group

Telecom Service Providers are required to pay License Fee (LF) and SUC (Spectrum Usage Charges) at a percentage of AGR on quarterly basis on self-assessment basis. GR, deductions, AGR reported and revenue share (LF and SUC) paid by Aircel Group during the five years from 2010-11 to 2014-15 are as follows:

Table 6.2

(₹ in crore)

Year	Subscribers (in crore)	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share (LF+SUC)
2010-11	5.48	6,671.33	2,083.42	4,587.91	68.77	500.22
2011-12	6.26	8,092.62	3,050.76	5,041.86	62.30	681.33
2012-13	6.01	9,803.26	4,053.17	5,750.09	58.65	718.76
2013-14	7.02	11,299.56	4,159.79	7,139.77	63.19	858.17
2014-15	8.14	13,072.31	4,637.16	8,435.14	64.53	1,007.56
Total		48,939.08	17,984.30	30,954.77		3,766.04

6.2 Under reporting of revenue by Aircel Group

In terms of clause 19.1 of CMTS/UAS licenses, the GR 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 The migration process for merger of Chennai and Tamil Nadu LSAs was in progress as on 31 March 2015

⁵ Andhra Pradesh, Assam, Bihar, Jammu & Kashmir, Karnataka, Kerala, Kolkata, Punjab, Orissa, North east, Uttar Pradesh (E), Tamilnadu and West Bengal.

⁶ Andhra Pradesh, Assam, Bihar, Jammu & Kashmir, Orissa, North East, Tamilnadu and West Bengal

Further, Annexure III of the agreements provides that Service Revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts (General Ledger, Journal Vouchers, Trial Balance, Profit and Loss Accounts, Balance Sheet, AGR statements, etc.) of Aircel Group revealed that these companies had not adhered to the provisions of the license agreement as brought out in the succeeding paras:

6.2.1 Under reporting of prepaid revenue due to netting off of primary commission given to distributors/ dealers/franchisee

From the examination of data/records pertaining to prepaid services furnished by Aircel Group for the period from 2010-11 to 2014-15, it was found that prepaid revenue reported in AGR statements (as well as in financial statements) for the years was net of margin/commission (primary) paid to dealers/distributors/franchise on sale of prepaid products (SUK/RCV/E-recharge, etc.). The agreements between the Aircel companies and distributors provide that the Aircel companies shall offer a commission per sale to the distributor. Further, distributor agreements do not mention any rate or amount of commission payable to the distributor but only provided that margins would be as decided by the company from time to time.

Management did not furnish the amount of primary commission/margins paid to distributors on sale of prepaid products or any rate (*per cent*) of commission/margins to prepaid revenue. In view of this, data for the years 2010-11 to 2014-15 accessed from SAP system was examined on test check basis by audit rate of margin/commission paid during these years was arrived at 5.85 *per cent* of the prepaid revenue. Amount of prepaid revenue as per AGR statements and commission thereon netted of from revenue for the years 2010-11 to 2014-15 company-wise was as follows-

Table 6.3

(₹ in crore)

Year	Amount (in crore) of prepaid revenue reported in AGR statements				Amount of commission
	AL	ACL	DWL	Total	
2010-11	1,827.62	290.76	1,836.12	3,954.50	231.34
2011-12	2,080.16	239.68	2,034.04	4,353.87	254.70
2012-13	2,457.52	246.55	2,202.63	4,906.71	287.04
2013-14	2,952.23	291.29	2,651.18	5,894.70	344.84
2014-15	3,690.22	207.62	3,168.19	7,066.02	413.36
Total	13,007.75	1,275.90	11,892.15	26,175.80	1,531.28

Commission/margin paid to the distributors/franchisees/dealers was in the nature of marketing expenses and netting off of such expenses with revenue was against the license condition.

Management stated (September 2016) that though the pre-paid vouchers carry a Maximum Retail Price (MRP), these vouchers were sold to the distributors on a lower price as per agreement between the parties. It was contended that the sale of pre-paid vouchers was a

Principal to Principal transaction. The sale transaction was complete with the realisation of the consideration and from that moment the ownership of the cards, their custody as well as all the attending risks arising from their loss, destruction etc. passed on to the distributors, regardless of when the distributors sell the cards to the retailers or the end users. It was stated that the distributors are invoiced at this sale price and the revenue was booked in the profit and loss account without any netting off as no discount was given on the price. It was also stated that as accounting was done on sale price as the relationship was P2P and varied from location to location, hence distributor agreements didn't contain percentage of the same.

It further stated that the TDSAT in its judgment dated 23 April 2015 held that the definition of "gross revenue" cannot be construed as to bar the licensee from fixing a wholesale price for the service which was lower than its MRP. The test was how the actual transaction took place. If the sale and invoicing was on MRP and any discount was given separately, then in terms of clause 19.1 such discount was not deductible even if the revenue booked in the profit and loss account was after netting off the discount. On the other hand, if the sale was on a stated/agreed price, invoiced at that agreed price and booked under the revenue in the profit and loss account accordingly, without netting off any discount, the actual selling price would be the revenue and the difference between the MRP and this selling price cannot be added to "gross revenue".

The reply of the management is not tenable as Aircel companies rendered the services ultimately and had they sold the recharge vouchers/e-recharge/cards directly to the subscribers, revenue would have been accounted for full value of service rendered and selling expenses would have been accounted as expenditure. On the same analogy, discount/commission accorded to distributors would be in the nature of Marketing Expenditure and thus, should not be deducted from Revenue. Further, Audit opines that this transaction is not covered under Principal to Principal since the ultimate responsibility of rendering the service to the subscribers rests with the licensee companies and not with the distributors. The TDSAT judgement of April 2015 is challenged in the Hon'ble Supreme Court by DoT.

While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that commission/margin paid to the distributors/franchisees/dealers is in the nature of marketing expenses, therefore, set-off of such expenses with revenue was against the license condition.

Thus netting of Commission/margin paid to the distributors/franchisees/dealers resulted in understatement of GR/AGR of Aircel companies (AL, ACL, DWL) by ₹ 1531.28 crore for the years 2010-11 to 2014-15 and short payment of LF and SUC by ₹ 125.31 crore and ₹ 59.02 crore respectively (**Annexure-6.01**).

6.2.2 Under reporting of prepaid revenue on offers/discounts/rebates given to subscribers

A. Prepaid Service:

From the examination of data/records pertaining to prepaid services furnished by Aircel Group for the period from 2010-11 to 2014-15, it was observed that the Company offered various schemes/discounts viz. waiver, discount, Promo talk time, Free Air Time (FAT), Promotional offers, Full talk time, etc. to subscribers. It was noticed that to accommodate such offers, the value of the same was debited to service revenue heads. As and when the same was used by subscriber, the revenue was credited by the said amount. Resultantly, the revenue on account of these offers to subscribers was not recognised in the GR/AGR. Since offers made to customers were part of overall commercial strategy to enhance business, such offers/discounts amount to expenses. In terms of license agreement, service revenue shall be shown without any set-off for related item of expense, so they are not allowed to be deducted from GR. This was also in violation of the license agreement which clearly states that service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately. The item wise details are furnished below-

- **Waiver, Discount and Promo talk time to subscribers**

Review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that the prepaid revenue account codes had been debited by the following items.

- i) Processing Fee (PF) Waiver/Customers Waiver (₹ 146.82 crore)
- ii) Discount (₹ 0.08 crore)
- iii) Promo Talk Time (₹ 0.15 crore)

Above waivers/discount/promo talk time provided to prepaid customers were offers given to prepaid customers and hence were in the nature of expenses. Netting of such expenses from revenue has resulted in understatement of GR/AGR of Aircel companies by ₹ 147.05 crore.

- **Free Airtime offered to subscribers**

The revenue from prepaid services account codes had been debited by the following items.

- i. Extra Talktime; etc.
- ii. FAT-Bonus / Free talk value;
- iii. FTT given on SRC Customers;
- iv. Addl talktime;

By debiting revenue heads to accommodate extra/free/additional talk time given to pre-paid subscribers, the GR/AGR was understated by ₹ 44.46 crore.

- **Full Talk Time Scheme offered to Subscribers by DWL**

On a review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that in the books of Dishnet Wireless Limited, prepaid revenue (Processing charges/activation, etc.) was reduced by ₹ 45.18 crore by debiting these heads under description-Full Talk time transfer from Processing charges/activation, etc.

Debiting revenue heads to accommodate full talk time given to pre-paid subscribers was not in accordance with the provisions of license agreement. This resulted in understatement of GR/AGR by ₹ 45.18 crore.

- **Debit in revenue heads under description “Talk Time on PRE IN Recharges”**

Review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that the revenue had been debited by an item of under description “Talk time on PRE IN Recharges”. The total amount of revenue debited (reduced) on this account works out to ₹ 74.00 crore and GR/AGR has been understated by this amount.

- **Netting of Promo TT/Usage booked as expenses from Revenue**

Review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that some amount of Promo Talk time/Usage booked under the expense head in the Trial Balance had been netted from Service Revenue in the AGR statements.

The total amount of revenue netted off on this account was ₹ 3.89 crore.

Netting of promo talk time/usage booked as expenses from revenue has resulted in the understatement of GR/AGR by ₹ 3.89 crore. It may be noted here that debit balance under GL code 3330011-Promo TT/usage for the year 2010-11 in respect of Assam and North East LSAs amounting to ₹ 73.42 lakh were not netted off from revenue in the AGR statements.

B. Netting of revenue by waivers and discount allowed to postpaid subscribers

Review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that the postpaid revenue account codes had been debited by various items of “Waivers” and “Discount”. The total amount of “Waivers” and “Discount” debited to revenue heads works out to ₹ 16.87 crore.

Waivers and discounts given to post paid subscribers are in the nature of expenses. Netting of such expenses from revenue has resulted in understatement of GR/AGR by ₹ 16.87 crore.

On audit observations made above, the Management stated that-

- The Company accounts for the revenue in compliance with the Accounting Standard (AS) 9 issued by the Institute of Chartered Accountants of India. AS 9 dealing with Revenue Recognition, in clause 4.1 provides as “Revenue is the gross inflow of cash, receivables, or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by

others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them”.

- TDSAT also upheld the above definition and passed an order to this effect on 23 April 2015 stating “There is no conflict between the definition of ‘revenue’ as provided in AS-9 and clause 19.1 and 19.2 of the license agreement defining gross revenue and adjusted gross revenue. As is evident from section 211 (3A), (3B) and (3C) a telecom company, the licensee is legally mandated to maintain its profit and loss account and the balance sheet in compliance with the Accounting Standards. Accounting Standards are given due importance by the Supreme Court as those are the codified recommendations by the Institute of Chartered Accountants of India which is an expert body in a specialised field”.
- From the definition of Revenue in AS-9 it is evident that Revenue is to be recognized to the extent of consideration received/receivable. Since, no consideration is received for discounts, waivers, free talk time, extra talk time, full talk time, promo talk time; the same should not be subjected to License Fee.
- In light of above, the company is justified in not including notional revenue on account of discounts and waivers in computation of AGR since adding back of value of the same in computation of AGR will lead to payment of LF on notional revenue which was neither received nor is receivable. Further as the waivers includes waivers on account of refund granted to the subscribers as per the TRAI directions dated 10 July 2013, which cannot be subjected to License Fee. This has also been re-emphasized by TDSAT in their judgment of 23 April 2015 wherein it has been held “In Order to be counted as “gross revenue”, the item of inflow must not be notional but real”
- Discounts/waivers amounting to ₹ 17.02 crores (postpaid/prepaid) given by the company were in the nature of discounts offered as part of tariff plan duly filed with TRAI hence the same are rightfully adjusted from Revenue considered for payment of license fee. Also, the waivers amounting to ₹ 146.82 crores (prepaid) given to subscribers were on account of inter-alia, wrong charging/wrong billing in the normal course of the business and revenue is recognized net of such waivers/discounts in accordance with AS 9.
- On analyzing the details credits given to the customers, it was observed that the credits are primarily on account of reasons given below:
 - (i) Inter Subscriber Balance Transfer: It is the service provided to the subscriber, whereby the Subscriber can transfer his balance to another subscriber. The

same is reflected as credit to one subscriber and debit to other subscriber. Hence the net impact on revenue is NIL.

- (ii) Employee Waiver (Postpaid): The average usage of the employee's connection is approx. ₹ 2.5 crore annually. This works out to be ₹ 7.5 crore for the above period. Employee usage is in the normal course of his office duties, and hence the same need not to be included in the gross revenue/AGR, and is not subject to license fee.
 - (iii) Waivers given to subscribers as per TRAI directive: Waivers given to the subscribers are primarily on account of wrong billing/incorrect charging (i.e. debits to the customer first and reversal of that charge) for which service has never been provided to the subscribers, which constitute 88 % of the total waiver passed amounting to ₹ 94 crore for the above period. Balance of ₹ 22 crore approx. (postpaid + prepaid) can be attributed towards waivers in the nature of Goodwill gesture.
- Also it is pertinent to note that, as per the provisions of section 67 of Finance Act (Service tax), where any service is rendered without consideration in money, no Service tax is payable on such services. Similarly, Services which are not rendered to another person but used for self-use are also not subject to levy of service tax, as no consideration is received/receivable.

Reply of the Management is not acceptable since–

- Audit furnished the details of GL dumps to the management with the related audit queries for verification but the management did not revert with itemized details of GL entries in support of their contentions. Further the amount of debits in revenue on account of “Inter Subscriber Balance Transfer” is based on approximation considering the current period data. Similarly, waivers stated to have been given on account of employee's usage (post paid) is also based on approximation and without proper detail. In case of postpaid, debits to postpaid revenue on account of “adjustments” appearing in the General Ledger were not objected by audit.
- The details of FAT/FTT/Promo, etc. offered as per the tariff and that offered as promotion to customers/agents were not furnished.
- There was no description in the system that indicates that debits to GL code “Prepaid-RC Processing Income”, were due to wrong charging (wrong decrement from the Subscriber accounts) on account of VAS, Talk Time, rental, etc. In absence of any segregated details as required under Annexure III of the License Agreement, entire debit under description “PF waiver” cannot be treated as debit due to wrong charging.

- Analysis of the data extracted from general ledgers pertaining to these waivers clearly indicated that these were on account of prepaid processing income, VAS, Talk Time, rental, etc. and not on account of wrong charging of VAS.
- Management accepted the fact that Free Airtime Time (FAT)/Goodwill waivers were debited to revenue.
- Discounts/waivers/offers/FAT given to the subscribers were in the nature of promotional business expenses.

Thus by not recognizing the value of discounts/waivers/offers/FAT given to the prepaid subscribers and by netting of waivers/discounts given to postpaid subscribers, the GR/AGR of the Aircel companies was understated by ₹ 331.45 crore. Consequently, there was short payment of LF and SUC by ₹ 29.99 crore and ₹ 14.94 crore respectively (**Annexure 6.02**).

6.2.3 Non consideration of revenue from infrastructure sharing from other telecom operators for GR/AGR

In terms of clause 19.1 of the CMTS/UAS license agreements, the GR shall be inclusive of revenue from permissible sharing of infrastructure and any other miscellaneous revenue without any set-off for related item of expense, etc.

Telecom infrastructure (towers, network equipment, etc.) owned by Aircel Group were shared with other telecom companies. They have entered into agreements with other telecom companies for infrastructure (site) sharing. In terms of the agreements entered with the other operators, charges for sharing cell site was recovered from other operators which was based on a percentage of CAPEX cost of the sites and OPEX cost incurred by Aircel group.

Review of data as accessed by audit in SAP system for the period from 2010-11 to 2014-15, it was noticed that Infrastructure/site sharing charges recoverable/recovered from other operators were not taken to Infrastructure/site sharing revenue in full rather, some part of it were credited to expenses on account of Rent, Fuel (Diesel), Electricity, Network Expenses, Repairs and Maintenance and Security.

Total amount credited in the expenditure heads (netted off from the cost) on account of site sharing revenue received/receivable from other telecom operators during 2010-11 to 2014-15 was ₹ 58.58 crore.

Since set off of related expenses against the revenue was not permitted under the license agreement, netting off of aforesaid site sharing revenue received/receivable from other telecom operators from the cost has resulted in understatement of GR/AGR.

The Company replied (September 2016) that –

- There were two type of payments received for sharing of infrastructure i.e., charges levied for the usage of the facility and reimbursement of expenditure incurred such as that on repairs and maintenance, electricity, diesel etc. The charge for the usage of the

facility was booked as revenue whereas the reimbursement of costs was booked as a reduction in related expenditure. Further, keeping the above in mind, both the components i.e. charge for the usage of the facility and the reimbursement of expenditures incurred were billed/ shown separately as per the terms of infrastructure sharing agreements and were also booked separately.

- The Company accounts for reimbursement of expenses in compliance with the AS 29.
- TDSAT vide its judgment on 23 April 2015 has held “while any payment made towards the usage of the facility was to be taken as revenue in the hands of the recipient, a payment in the nature of reimbursement of an expense and which was clearly indicated separately in the invoice as such, may not be taken as revenue provided that it was not booked in the profit and loss account as revenue.”

Reply of the Management is not acceptable as in terms of licence agreement GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense and licence agreements do not distinguish between CAPEX and OPEX revenue on account of sharing of infrastructure. Hence set-off of revenue from Infrastructure sharing against the expenses is not allowed. Further, revenue received/receivable towards diesel expenses, security expenses, repair and maintenance expenses and electricity charges did not constitute reimbursement since they had to be incurred irrespective of whether the towers were shared or not. In fact, by sharing the expenditure the Company benefited through additional income.

Thus, netting of infrastructure sharing revenue received/receivable from other telecom operators from the cost resulted in understatement of GR/AGR by ₹ 58.58 crore and short payment of LF and SUC by ₹ 4.75 crore and ₹ 1.87 crore respectively (**Annexure 6.03**).

6.2.4 Non-consideration of forex gain in GR/AGR

In terms of license agreement, GR shall be inclusive of any other miscellaneous revenue. During 2010-11 to 2014-15, there was realized forex gain of ₹ 471.37 crore as validated by the Management. However, no amount of forex gain was included in GR/AGR for computation of revenue share.

As mentioned in para 2.2.5 of this report, Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. The operator should calculate the gain of each item with reference to its initial value of accounting and include the total forex gain in GR/AGR.

Management replied (September 2016) that –

- “The definition of revenue as per AS 9 clearly states that revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and

dividends. Foreign Exchange Gain does not fall into the definition of revenue, hence should be excluded in computation of AGR.”

- As per the TDSAT Judgment of 23 April 2015, “.....*any gain or loss due to foreign exchange fluctuation should have no bearing on the license fee.*” It was also stated that the matter was sub-judice at Madras High Court and as such the forex gain should not be added back to AGR for calculation of License Fees.
- Since license fee was paid on the revenue for the quarter as per the license agreement, the forex gain should also be computed for each quarter separately and thus forex gain should be ₹ 56.10 crore.
- Aircel Group had suffered the Net Cash loss of ₹357.85 crore for the period 2010-11 to 2014-15. Hence it would be incorrect to levy license fee only on the transactions where company has gained because of change in Forex rate.

The reply of the Management is not acceptable as:

- i) Forex gain/loss results from individual transactions
- ii) Individual transactions can't be clubbed
- iii) Further forex gain/losses can undergo changes depending on the mechanism of individual contracts. Therefore, losses can't be netted off
- iv) The judgement of TDSAT dated 23 April 2015 was challenged in Hon'ble Supreme Court by DoT.

As such while the matter is sub-judice, audit view is that in terms of license agreement, gain arising from foreign exchange fluctuations should be included in GR/AGR for computation of revenue share. Non-inclusion of it by Aircel companies resulted in understatement of GR/AGR by ₹ 471.37 crore. Consequently, there was short payment of LF and SUC by ₹ 38.12 crore and ₹ 9.82 crore respectively (**Annexure 6.04**).

6.2.5 Non consideration of revenue from VAS/advertisements accounted in corporate account

In terms of UAS/CMTS license agreements, revenue from VAS and other miscellaneous income should form part of GR/AGR for computation of revenue share (LF and SUC). Review of data/records furnished and as accessed by audit in SAP system for the period from 2010-11 to 2014-15 revealed that revenue on account of Value Added Service/advertisements amounting to ₹ 0.66 crore booked under Corporate account were not considered in GR/AGR for computation of revenue share

Management stated (September 2016) that advertisement Revenue did not accrue either from subscribers or from other telecom service providers for provisioning of telecom service and therefore, should not be part of AGR. These incomes do not require a Telecom License. Further, Separate divisional books of account were maintained for the corporate incomes

which had no nexus with the licensed activities of any telecom circles. It also stated that this matter was sub-judice in High Court of Madras.

The reply of Management is not acceptable as in terms of license agreement, any miscellaneous revenue accruing to the licensee company should be included in GR/AGR for computation of revenue share.

Thus non-inclusion of this for computation of revenue share resulted in understatement of GR/AGR by ₹ 0.66 crore and short payment of LF and SUC by ₹ 0.06 crore and ₹ 0.03 crore respectively (**Annexure 6.05**).

6.3 Under reporting of revenue in the Statements of Revenue and LF (AGR Statements) though reported in the books of accounts

6.3.1 Non consideration of Interest Income for GR/AGR

In terms of clause 19.1 of the UASL/CMTS agreements and relevant clauses defining GR in respect of other licenses, interest income should be included in GR for computation of revenue share payable to Government of India.

Review of data/records as submitted to audit and data accessed from SAP system for the period from 2010-11 to 2014-15 revealed that interest income booked in the accounts of Aircel companies were not included in GR in full. Total interest income depicted in schedule of "Other Income" of financial statements were under three categories viz. Interest from bank deposits, interest from Inter Corporate Deposits (ICD) and interest from customers on overdue amounts. While interest income from customers on overdue amounts (late payment surcharge) were included in GR/AGR, interest income from bank deposits and ICD were not included in GR/AGR for computation of revenue share. Amount of interest income not included in GR/AGR was ₹ 987.95 crore.

Management stated (September 2016) that-

- Interest earned on investment of any temporary surplus funds (arising out of borrowings made from the Banks, Equity infusion by the Shareholders) through fixed deposits, securities or mutual funds including Inter-Corporate Loans given by the Company cannot be termed as an income from telecom activity and hence should not be included in AGR for the purposes of computation of license fee. It is pertinent to note that the entity acts independent of its capacity of Licensee with respect to the Service Area while extending inter-corporate loan to a group company, which is akin to interest received by a bank (treasury function). Therefore, any interest there from does not fall under the meaning of interest or interest from investment under the license.
- Hon'ble Madras High Court by an order dated 22 June 2012 has directed as that "No coercive steps shall be taken, by the respondents (DoT), to recover the LF payable by

the petitioner, in respect of the non-telecom activities of the petitioner, until further orders.”

Audit view is that the definition of GR in license agreements expressly provides for inclusion of interest income for GR/AGR for computation of revenue share.

Thus non-inclusion of interest income pertaining to the years from 2010-11 to 2014-15 has resulted in understatement of GR/AGR by ₹ 987.95 crore and short payment of LF and SUC by ₹ 91.03 crore and ₹ 40.37 crore respectively (**Annexure-6.06**).

6.3.2 Non consideration of income from investment for GR/AGR

Format of Statement of Revenue and LF (AGR Statement) prescribed as Appendix II to Annexure -II as referred in Clause 20.4 of the UASL/CMTS agreement is an integral part of the License Agreement. In the Statement, item 4 has been prescribed to reflect the “Income from Investment”. Further, in terms of clause 19.1 of the agreements, dividend income should be included in GR for computation of revenue share payable to Government of India.

Review of data/records as submitted to audit and data accessed from SAP system for the period from 2010-11 to 2014-15 revealed that capital gain on redemption of investments in Mutual Fund and dividend received on Mutual Fund Investments amounting to ₹ 52.60 crore and ₹ 21.32 crore respectively booked in corporate accounts of AL and ACL were not included in GR/AGR for computation of revenue share.

Management stated (September 2016) that-

- The nature of the income, being dividend, was not attributable to any licensed activity. Hence, any dividend earned on account of investments of any nature whatsoever, was not part of income accrued from the licensed activity.
- The Hon’ble Madras High Court by an order dated 22 June 2012 has directed as follows:

“No coercive steps shall be taken, by the respondents, to recover the LF payable by the petitioner, in respect of the non-telecom activities of the petitioner, until further orders.”

Reply of the Management is not tenable as the definition of GR in license agreements expressly provides for inclusion of income from investment/dividend in GR/AGR for computation of revenue share.

Thus non-inclusion of Income on investment for the years from 2010-11 to 2014-15 has resulted in understatement of GR/AGR by ₹ 73.92 crore (₹ 52.60 crore and ₹ 21.32 crore) and short payment of LF and SUC by ₹ 7.30 crore and ₹ 3.25 crore respectively (**Annexure 6.07**).

6.3.3 Non consideration of other miscellaneous income for GR/AGR

Review of data/records as submitted to audit and data accessed from SAP system for the period from 2010-11 to 2014-15 revealed that other miscellaneous incomes booked under GL code 4900013 has been grouped under “miscellaneous income” of schedule of “Other

income” of Profit and Loss accounts. It was further noticed that part of this miscellaneous income was included in GR/AGR for computation of revenue share by different LSAs/licenses and part of it was not considered. Details of miscellaneous income as per accounts and amount included in GR/AGR were as follows–

Table 6.4

(₹ in crore)

Year	AL			ACL			DWL		
	Amount booked in accounts	Amount included in GR/AGR	Amount not included in GR/AGR	Amount booked in accounts	Amount included in GR/AGR	Amount not included in GR/AGR	Amount booked in accounts	Amount included in GR/AGR	Amount not included in GR/AGR
2010-11	2.57	0.36	2.21	0.76	0	0.76	6.59	4.55	2.04
2011-12	0.83	0.34	0.49	0.36	0.36	0	9.60	9.59	0.01
2012-13	3.24	0.08	3.16	0.40	0.40	0	8.34	3.21	5.40*
2013-14	1.05	0	1.05	0.54	0	0.54	1.55	0.20	1.39*
2014-15	0.57	0	0.57	0.25	0	0.25	0.24	0	0.25
Total	8.26	0.78	7.48	2.31	0.76	1.55	26.32	17.55	9.09

Note- *debit balances appearing under misc income head of some LSAs has been ignored for arriving at total amount of miscellaneous income not included in GR/AGR.

In terms of clause 19.1 of the UASL/CMTS agreements and relevant clauses in other agreements, miscellaneous income should be considered in GR/AGR and Aircel companies had done so in some cases. But miscellaneous income of ₹ 18.12 crore was not included in GR/AGR.

Management stated (September 2016) that “Miscellaneous income/other income” includes income from sale of scraps, insurance claim, reimbursement of cost, etc. which do not accrue either from subscribers or from other telecom service providers for provision of telecom service, and therefore, should not be part of AGR. Furthermore, these incomes do not require even a Telecom License. It also stated that this matter is sub-judice in High Court of Madras.

Audit view in this regard is that license agreements expressly provide that miscellaneous revenue/income should be included in GR/AGR for computation of revenue share.

Thus non-inclusion of miscellaneous income in GR/AGR in full has resulted in understatement of GR/AGR by ₹ 18.12 crore and short payment of LF and SUC by ₹ 1.46 crore and ₹ 0.60 crore respectively (Annexure 6.08).

6.3.4 Non-inclusion of profit on sale of assets in GR/AGR for computation of revenue share

In terms of conditions under license agreement, the Gross Revenue shall be inclusive of revenue on account of interest, dividend and any other miscellaneous revenue without any set-off for related item of expense, etc. Review of data/records as submitted to audit and data accessed from SAP system for the period from 2010-11 to 2014-15 revealed that profit on sale of assets/scraps of ₹ 37.65 crore as validated by the Management was not considered for computation of GR/AGR.

Management stated (September 2016) that –

- “The revenue generated from Sale of Fixed Assets is Capital in nature, which is not derived from licensed activity hence it should not be included in AGR.”
- TDSAT in its recent judgment dated 23 April 2015 had held that profit on sale of fixed assets were different from revenue receipts and should not form part of GR. Also the matter is sub-judice in Madras High Court and as such above profit should not be added back to AGR for calculation of license fee.

Audit view is that license agreements expressly provide that miscellaneous revenue/income should be included in GR/AGR for computation of revenue share and profit on sale of assets/scraps falls in the nature of miscellaneous income and has to be included as per the Licence Agreement.

Non-inclusion of profit on sale of assets/scraps resulted in understatement of GR/AGR by ₹ 37.65 crore and short payment of LF and SUC by ₹ 3.04 crore and ₹ 1.22 crore respectively (Annexure 6.09).

6.4 Other issues

6.4.1 Understatement of GR/AGR by the amount of “Bad debts written off”

In terms of clause 19.2 of the UAS/CMTS license agreements, bad debts written off are not an eligible deduction from Gross Revenue. Review of data/records as submitted to audit and data accessed from SAP system for the period from 2010-11 to 2014-15 revealed that “Bad debts written off” amounting to ₹ 50.34 crore was deducted from Gross Revenue by Aircel companies for the computation of License Fee (LF) and Spectrum Usage Charges (SUC) for the year 2014-15.

Management stated (September 2016) that the bad debts written-off in the year 2014-15 were reduced from the AGR pursuant to the TDSAT judgment dated 30 August 2007 which stated that that “Bad debts are actual monies lost by the service provider. Therefore, such losses have to be excluded from AGR. Allowing amounts on account of such losses to be included in AGR would mean that while the party incurs loss it has to pay license fee on the loss also”. The above judgment still holds good since the new judgment of TDSAT dated 23 April 2015 had yet not attained the finality as the same was challenged by DoT before Supreme Court. It also stated that if bad debts were not allowed as deduction in calculating AGR, it would amount to adding insult to injury. Amounts which were lost on account of bad debts reduce the revenue causing loss to the operator. Such amount cannot be treated as revenue and the licensees cannot be asked to pay license fee thereon.

Reply of the Management is not tenable as amount of bad debts written off is an item of loss/expense and in terms of license agreements, no such loss/expenses are to be set off from

revenue. Further the TDSAT judgement of August 2007 became null and void after Hon'ble Supreme Court judgement of October 2011.

Thus deduction of "Bad Debts Written Off" of ₹ 50.34 crore from GR has resulted in understatement of GR/AGR by this amount. Consequently, there was non-payment of LF and SUC by ₹ 4.03 crore and ₹ 0.15 crore respectively on this amount (**Annexure 6.10**).

6.4.2 Transfer of passive infrastructure business of Aircel companies to Chennai Network Infrastructure Limited (CNIL) by means of a slump sale

During the year 2010-11, a Scheme of Arrangement (SoA) under Sections 391 to 394 of the Companies Act, 1956 between the Aircel Companies (AL, ACL, DWL) and Chennai Network Infrastructure Limited (CNIL) was filed with the Hon'ble High Court of Judicature at Madras for transfer of their passive infrastructure business by means of a slump sale. The SoA has been effective from 19 July 2010 and the Passive Infrastructure undertaking of the companies has been vested in the Transferee Company (CNIL) from this date.

As per financial statements for the year 2010-11, the above passive infrastructure assets were transferred to CNIL and profit of ₹ 1799.97 crore on transfer of these assets were booked as other income. However, this profit of ₹ 1799.97 crore was not considered in GR/AGR for computation of revenue share.

Management stated (September 2016) that the Passive infrastructure sale was in the nature of slump sale, where by the entire PI business was hived off to CNIL on a going concern basis. Hence the same cannot be treated akin to sale of Fixed Assets. 'Slump-sale' is a transfer of an 'undertaking' i.e. a part or a unit or a division of a company, which constitutes a business activity when taken as a whole. In simpler words slump sale means transfer of entire business unit for a single consideration without assigning value to individual assets and liabilities. In our view profit on sale of Undertaking is not covered under Para 19.1 of license agreement and hence should not be considered for computation of GR/AGR.

Audit view is that the profit on transfer of passive infrastructure assets was accounted as other income and hence in terms of license agreement, the profit of ₹ 1799.97 crore should be included in GR/AGR. Non-inclusion of this resulted in understatement of GR/AGR for the year 2010-11 by ₹ 1799.97 crore and non-payment of LF and SUC by ₹ 164.89 crore and ₹ 69.60 crore respectively (**Annexure 6.11**).

6.5 Interest on short/non-payment of LF and SUC

On the issues raised above (para 6.2 to 6.4) short/non-payment of LF and SUC worked out to be ₹ 469.98 crore and ₹ 200.87 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 555.80 crore (**Annexure 6.12**). The calculation of interest was based on the rate prescribed in the License Agreement i.e. two *per cent* above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year upto March 2016. The interest has been compounded monthly as prescribed in the License Agreement.

6.6 Non submission of details as required under Annexure III of the UAS/CMTS license agreement

Clause 20.7 of the UAS/CMTS license agreements provide that the Annual Financial Account and the Statements of Revenue and License Fee (AGR Statement) shall be prepared following the norms as prescribed in Annexure. Annexure III of the UAS/CMTS license agreement provides norms for preparation of Annual Financial statements. Scrutiny of AGR statements, Annual Financial statements and related accounting records furnished to audit indicates that all these norms had not been complied in full. In particular, it appears that norms relating to Service Tax, Sales Tax, Discount/rebate, Sale of goods, Inventory, Set off of income against expenditures and unbilled numbers had not been complied.

On being pointed by audit the Management stated that it was pertinent to note that the statutory financial statements of the Company were governed by the Companies Act and hence these were prepared strictly in accordance with relevant provisions of the Companies Act. Accordingly, the company had been preparing the financial statements as per the disclosure requirements of Companies Act and applicable accounting standards. So far as the requirements contained in Clause 20.7 of the UAS/CMTS license agreements read with Annexure III are concerned, it was submitted that the statutory annual accounts of the Company included the disclosures strictly mandated by the Companies Act (Schedule VI) and other disclosures required by applicable Accounting Standards issued by the Institute of Chartered Accountants of India. Certain requirements contained in aforesaid Annexure III of the UAS/CMTS license agreement are either not required under Companies Act or are against the accounting principles laid down in the applicable Accounting Standards, particularly AS 9 and AS 29.

It was further submitted that the Company did maintain the requisite information contained in Annexure III of the License agreement, which can be furnished as and when directed by the Licensor.

Instances of understatement of revenue as brought out in the report would confirm that the revenue recognized for payment of license fee were not in line with the license conditions nor was the preparation of accounts fully compliant with the norms prescribed by DoT. Few such instances are given below:

As per the norms, revenue was to be shown as gross without any deductions. However, as detailed in the paragraphs of this report, it can be seen that Discounts/Commission/Waivers, Free Airtime etc. were netted off from the revenue and not disclosed to DoT.

The DoT was asked for its response on non-compliance of these conditions of the contract by the PSPs. DoT has not given any response till date.

In view of the above, DoT has over the years failed to issue and enforce instructions to the Service Providers to comply with the norms for preparation of Annual Financial Statement as required under Annexure-III of the License Agreement which were vital. Consequently,

during the years 2010-11 to 2014-15, the Company understated its GR/AGR and DoT could not detect the same.

Further, Audit observed that during the years 2010-11 to 2014-15, the GR of Aircel group was ₹ 48939.08 crore, the deductions claimed was ₹ 17984.30 crore and the average deduction percentage works out to 37 *per cent* of the GR. Though the deductions claimed by the Aircel group were subject to verification by Offices of Controllers of Communication Accounts, 67 *per cent* of the Gross Revenue is merely assessed based on self-declaration made by the Company at DoT level.

Also, the LF Wing of DoT has failed to obtain the information as required to be maintained by the TSP in accordance with Annexure-III of the License Agreement and absence of these data would render the process of verification and assessment ineffective.

Thus, the entire verification and assessment of Revenue Share of the Service Provider is focused on the verification of deductions claimed by the Service Providers instead of on their GR.

Also, the demand notes for license fee on verifications and assessment have been raised by DoT in respect of some licenses (LSAs) only till 2012-13. Delays in assessment and issue of demand letters will further delay the recovery of dues from the Service Provider.

6.7 Response of DoT/Aircel to the audit observations

Audit observations on the revenue share payable by Aircel Group companies were communicated to DoT and Aircel Group during August 2016 for their further comments. Aircel had furnished (September 2016) very similar arguments and response as was made by the company in reply to audit observations issued during the course of premises audit. DoT reply is as mentioned in the para 2.4.