CHAPTER – I
Introduction

1.1. Genesis of revenue sharing regime in the Indian Telecom Sector

National Telecom Policy-1994 (NTP-94) introduced competition in the telecom sector as private telecom service providers were permitted to set up communication networks. In the first phase of NTP-94, eight licences for Cellular Mobile Telephone Service (CMTS) were issued in the four Metro cities of Delhi, Mumbai, Kolkata and Chennai in November 1994. Subsequently (during 1995 to 1998), 34 licences were issued for 18 telecom circles to 14 private companies. These licensees were selected through a bidding process and were to pay to the Government a fixed amount as annual licence fee agreed during the bidding process.

1.2. New Telecom Policy-1999

Private sector participation in telecom sector did not take off as envisaged in NTP-94 as the private telecom service providers complained of financial constraints and defaulted on payment of the agreed licence fees. New Telecom Policy-1999 (NTP-99) introduced the revenue share regime in which telecom service providers were required to pay a percentage of their Adjusted Gross Revenue (AGR) as licence fee in place of the fixed licence fee.

The Government offered a migration package to existing licensee to migrate from fixed licence fee regime to revenue sharing regime with effect from 1 August 1999[1] and 21 licensee companies[2] migrated to the new regime **(Annexure - 1.01)**. As per the migration package, the licensees were to pay a one-time entry fee and licence fee (LF) at a percentage of the AGR which was to be determined later on. Pending the finalisation of quantum of revenue share and other terms and conditions, based on the recommendations of Telecom Regulatory Authority of India (TRAI), the licence fee was initially fixed at 15 *per cent* of the Gross Revenue (GR).

The country was divided into 23[3](presently 22) Licenced Service Areas (LSAs) categorised into 'A', 'B' and 'C' LSAs as shown below:

Table 1.1

Category of LSAs	Names
A	Delhi, Mumbai, Kolkata, Tamil Nadu (including Chennai), Andhra Pradesh, Gujarat, Karnataka, Maharashtra,
B	Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh (E), Uttar Pradesh (W), West Bengal,
C	Assam, Bihar, Himachal Pradesh, Jammu and Kashmir, North East, Odisha.

1 The benefits extended to the private service providers through the migration package was audited by CAG and findings were reported in Report No 6 of 2000

2 20 private companies and one PSU-Mahanagar Telephone Nigam Limited

3 The country was divided into 23 service areas consisting of 19 telecom circles and 4 metro circles. Subsequently, Chennai service area was merged with Tamil Nadu service area w.e.f 15 September 2005 and hence the number of service areas is 22 at present.

In 2001, the Government finalised the terms and conditions including the definition of GR and AGR and fresh licences were issued. Further, the rate of licence fee was also reduced from provisional rate of 15 *per cent* across all circles to 12 *per cent*, 10 *per cent* and 8 *per cent* for Category A, B and C LSAs respectively.

In addition, the National Long Distance (NLD) services and International Long Distance (ILD) services were also opened up for private sector from August 2000 and April 2002 respectively.

1.3. Unified Access Service Licence (UASL) and Unified Licences (UL)

Under NTP-94 and NTP-99, separate licences were issued for providing Basic and CMTS services in a LSA**.** In 2001, "Basic Service Operators" (BSOs) in India were permitted to offer "limited-mobility" services over Wireless in Local Loop (Mobile) (WLL(M)) using Code Division Multiple Access **(**CDMA**)** technology in their coverage areas.

As the popularity of WLL (M) services offered by BSOs grew, a dispute emerged involving the BSOs and Global System for Mobile communication (GSM) based CMTS operators. On 11 November 2003, the Government approved Unified Access Services Licensing (UASL) regime mooted by the TRAI that called for a single licence for Basic and Cellular services. A Unified Access Services licensee can provide wireline as well as wireless services in a service area using any technology.

Existing BSOs and CMTS operators were given option (November 2003) to continue with the existing licences or to migrate to UASL regime[4]. Henceforth only UAS Licences were issued for access services. From August 2013 onwards, Unified Licences regime was introduced under which a licensee could provide all telecom services (Access Services, Carrier Service and Data Services).

1.4. Provisions in the Licence agreements on definition of Gross Revenue (GR)/ Adjusted Gross Revenue (AGR)

Prior to introduction of Unified licences, separate licences were issued for different telecom services viz. Unified Access Services (UAS), National Long Distance (NLD) services, International Long Distance (ILD) services, Very Small Aperture Terminal (VSAT) services and Internet Services. Definition of Gross Revenue (GR), Deductions and Adjusted Gross Revenue (AGR) as provided in related licences are as follows:-

a) GR and permissible deductions to arrive at AGR were defined under clause 19 of the UASL Agreement. In terms of clause 19.1, 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,

4 All the CMTS licensees did not migrate to UASL regime. Further, the conditions for revenue sharing were identical for both UASL and CMTS licences.

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.

Further, to arrive at AGR, following shall be excluded from the GR as mentioned in clause 19.2 of the agreement-

i) PSTN[5] related call charges (Access Charges) actually paid to other eligible / entitled telecommunication service providers within India;

ii) Roaming revenues actually passed on to other eligible/entitled telecommunication service providers, and

iii) Service Tax on provision of service and Sales Tax actually paid to the Government, if GR had included Sales Tax and Service Tax.

b) The GR/AGR for NLD services was defined under clause 31 of Annexure-II of the NLD Agreement which provides that "Revenue for the purpose of levying Licence Fee as a percentage of revenue shall mean the Gross total revenue income accruing to the licensee by way of providing NLD service under the licence including the revenue on account of supplementary/value added services and leasing of infrastructure, interest, dividend, etc. as reduced by the component part of a pass through nature payable to other service providers to whose network licensee's NLD network is interconnected for carriage of calls".

c) The GR/AGR for ILD services was defined under clause 36 of definition and interpretation forming part of ILD Agreement which provides that "Gross Revenue shall include all revenue accruing to the licensee on account of goods supplied, services provided, leasing of infrastructure, use of its resources by others, application fee, installation charges, call charges, late fees, sale proceeds of instruments (or any terminal equipment including accessories), handsets, bandwidth, income from value added service, supplementary services, access or interconnection charges, any lease or rent charges for hiring of infrastructure etc, and any other miscellaneous items including interest, dividend, etc. without any set-off for related item of expense, etc".

AGR for the purpose of levying LF as a percentage of revenue shall mean the GR as reduced by:

i) Call charges (Access charges) actually paid to other telecom service providers for carriage of calls.

ii) Service tax for provision of service and sales tax actually paid to the Government, if Gross Revenue had included the component of service tax and sales tax.

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d) Definition of GR for Internet Services including Internet Telephony (ISP-IT) as per licence agreement provides that "GR shall be inclusive of Internet Access service, Internet Content service, Internet Telephony service, installation charges, late fees, sale proceeds of terminal equipment, revenue on account of interest, dividend, value added services, supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc".

For the purpose of arriving AGR, the following shall be excluded from the GR-

i) Charges from Internet access, Internet content and Internet access related installation charges.

ii) Service tax for provision of service and sales tax actually paid to the Government, if GR had included the component of service tax and sales tax.

e) In terms of the definition of GR specified in the VSAT Licence agreement, "The Gross Revenue shall include all revenues accruing to the LICENSEE on account of goods supplied, services provided, leasing/hiring of infrastructure, use of its resources by others, application fees, installation charges, call charges, late fees, sale proceeds of instruments (or any terminal equipment including accessories), VSAT hardware/ software, fees on account of Annual Maintenance Contract/Annual Comprehensive Maintenance Contract, income from value added services, supplementary services, access or interconnection charges, etc. and any other miscellaneous item including interest, dividend, etc. without any set-off of related item of expense, etc."

Revenue for the purpose of levying licence fee as a percentage of revenue shall include the gross total revenue accruing to the licensee by way of providing VSAT service under this licence but excluding:-

i) Charges of pass through nature actually paid to other Telecom service provider to whose network, the licensee's network is interconnected for carriage of data.

ii) Service tax paid to the Government, if gross revenue had included the component of service tax.

1.5. Stipulations in UASL Agreements on reporting revenue and payment of LF

The licence agreement between Department of Telecommunications (DoT) and the service providers contained distinct and specific clauses/norms for the preparation of the accounts of the licensee companies, their reporting and payment of licence fee to the Government. These clauses/norms underlined that while it was the prerogative of the licensee company to prepare their accounts complying with the provisions of the Companies Act, Accounting Standards etc., the provisions of licence agreement would be central for the purpose of computing the LF payable to Government. Appendix – II to Annexure – II of UAS Licence agreement prescribed the format of Statement of Revenue and Licence Fee while Annexure – III specified the norms for preparation of the Statement. The licence agreement also stipulated that reconciliation between the figures appearing in the quarterly statements with those appearing in annual accounts to be submitted along with a copy of the published annual accounts, audit report and duly audited quarterly statements. The licence conditions also envisaged that the Statement of Revenue and LF, also referred as AGR statements of the licensee, should disclose all the adjustments made in recording the revenues offered for revenue share.

Important clauses in the agreements in this regard are shown in the below tables:

Table 1.2

Preparation of accounts	
Stipulations	**Clause**
While calculating AGR for limited purpose of levying Spectrum Usage Charges based on revenue share, revenue from Wireline Subscribers shall not be taken into account.	18.3
Computation of revenue and Licence fee payable should be shown in a prescribed Statement (AGR Statement) and should be audited by the Auditors of the Licensee appointed under Section 224 of the Companies Act, 1956.	20.4
Final adjustment of the Licence fee for the year shall be made based on the GR figures duly certified by the Auditors in accordance with the provisions of the Companies Act, 1956.	20.6
A reconciliation between the figures appearing in the quarterly statements with those appearing in annual accounts to be submitted along with a copy of the published annual accounts, audit report and duly audited quarterly statements.	20.7
• Service revenue (amount billable) should be shown gross and details of discount/rebate indicated separately. • Service Tax and Sales Tax billed, collected and remitted to the Government shall be shown separately. • Sales to be shown gross and details of discount/rebate allowed and of sales returns be shown separately. • Income from interest and dividend to be shown separately without any related expenses being set-off against them. • Item-wise details of income that has been set-off against corresponding expenditure. • Roaming charges should indicate operator-wise receivables and payables, roaming commission received and paid and any other variable charges collected/passed on to other operators.	Annexure-III of UASL agreement (Norms for preparation of annual financial statements)
Accounts should be maintained separately for each telecom service operated by the licensee company.	22.1
The licensor may, on forming an opinion that the statements or accounts submitted are inaccurate or misleading, order audit of the accounts of the licensee by appointing auditor at the cost of the licensee and such auditor(s) shall have the same powers which the statutory auditors of the company enjoy under Section 227 of the Companies Act, 1956. The licensor may also get conducted a 'Special Audit' of the licensee company's accounts/records.	22.5 and 22.6

Table 1.3

Payment of licence fee	
Stipulations	**Clause**
LF shall be payable in four quarterly instalments during each financial year. This fee shall be paid on the basis of actual revenue (on accrual basis).	20.2
Any difference between the payment made and actual amount duly payable (on accrual basis) for the last quarter of financial year should be adjusted and difference paid within 15 days of the end of the quarter.	20.3
Any delay in payment of LF payable beyond the stipulated period will attract interest at a rate which will be two *per cent* above the Prime Lending Rate (PLR) of State Bank of India existing as on the beginning of the Financial Year. The interest would be compounded monthly and a part of the month would be reckoned as a full month for the purposes of calculation of interest. A month shall be reckoned as an English calendar month.	20.5
The Fee/royalty payable towards Wireless Planning and Co-ordination (WPC) Charges (SUC etc.) should be payable at such time(s) and in such manner as the WPC Wing of the DoT may prescribe from time to time.	20.9

1.6. Rates of licence fee

The rate of licence fee prevailing during the period from 2006-07 to 2009-10 for various kinds of services is detailed below:

Table 1.4

Access Services			NLD	ILD	VSAT	ISP -IT	ISP
Service Area							
Cat A	Cat B	Cat C					
(in *per cent*)							(in ₹ per annum)
10	8	6	6	6	6	6	1

Note: *The rates of LF for Access Services are inclusive of Universal Service Obligation (USO) levy of five per cent across the LSAs. Further, with effect from 01 April 2004, the first two cellular operators were granted rebate of two per cent in LF for four years in telecom circles subject to minimum rate of LF being equivalent to USO levy i.e. five per cent.*

However, no licence was required for Infrastructure Provider Category I (IP I) services and only registration with the DoT was sufficient.

1.7. Allocation of Spectrum and Spectrum Usage Charges

Initially, with the grant of UASL/CMTS Licence start up spectrum of 2x4.4 MHz to GSM operators and 2x2.5 MHz to CDMA operators was to be allotted by the DoT. Additional allotment of spectrum beyond this start up spectrum was linked to subscriber base. This process of allotment was termed as administrative allocation and continued till 2010.

In addition to the LF, licensees offering mobile (wireless) services are required to pay Spectrum Usage Charges (SUC) to the DoT. The rates of SUC payable are linked to the type and quantity of Spectrum allotted. Rates in force upto 31 March 2010 were as shown below:

Table 1.5

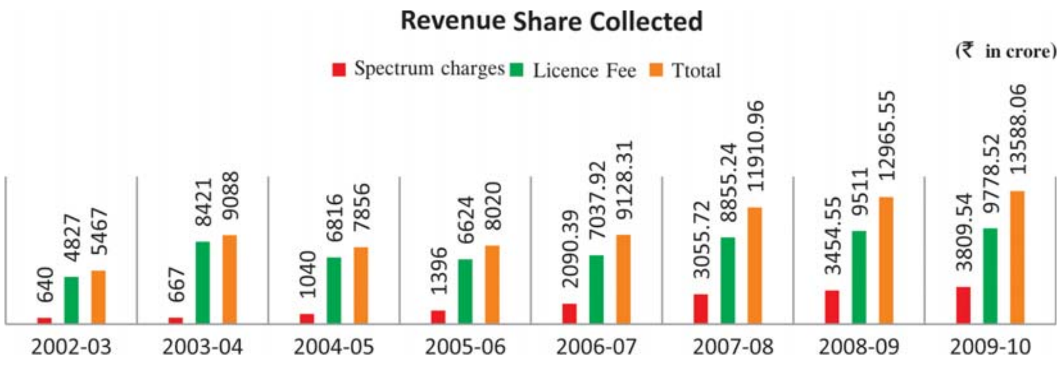
SUC as percentage of AGR (excluding Revenue from Wireline Subscriber)

GSM services		CDMA services	
From 1 August 1999 to 31 March 2010		**From 25 January 2001 to 31 March 2010**	
Spectrum	**Rate (in *per cent*)**	**Spectrum**	**Rate (in *per cent*)**
2x4.4 MHz	2	2x5.0 MHz	2
2x6.2 MHz	3	2x6.25 MHz	3
2x10.0 MHz	4	2x10.0 MHz	4

In addition to above main spectrum, Microwave Access and Microwave Backbone spectrum[6] was also allotted to Cellular operators. Rate of SUC for Microwave Access and Microwave Backbone spectrum were revised with effect from 3 November 2006, but the same was challenged by GSM operators whereas it was accepted by CDMA operators and the matter was *sub-judice*.

1.8. Revenue share collected by DoT

Year wise details of revenue share collected by DoT from 2002-03 to 2009-10 are given below:



(Source: DoT Annual Reports)

6 Microwave transmission refers to the technology of transmitting information using radio waves. Microwave technology is widely deployed in mobile communications to provide point-to-point (PTP) Radio Frequency (R.F.) links in mobile backhaul as well as in the backbone network. Mobile backhaul is that portion of the network infrastructure that provides interconnectivity between the access and core networks. The backbone network is used to interconnect different nodes situated at different geographical locations.

1.9. Arrangements in DoT for collection and accounting of licence fee and SUC

The process of revenue share realization from telecom service providers involves the following important activities:

- Collection of licence fee and spectrum charges - deposit at Controllers of Communication Accounts (CsCA) office.
- Verification of proof documents submitted by telecom service providers for claiming deductions from Gross Revenue by the CsCA.
- Assessment of Revenue Share (RS) and issue of demand notes by DoT based on the annual audited accounts of the operator and the verification reports submitted by CsCA.