



Circular CA-274 – AGR etc.
Dated 11-01-2012.

No. 500-87/CA-I/LF/BSNL

To
PGM (F) / Sr.GM (F) / GM (F) / IFA,
All Circles, BSNL.

Sub: AGR and corresponding License Fee, USO Levy and Spectrum charges – calculation in view of the judgement of Hon'ble Supreme Court dated 11-10-2011 reg.

Ref: Instructions issued through Circular No. CA-214 & CA-234 by Corporate Accounts Section of Corporate Office.

1. Instructions issued through Circular No. CA-214 & CA-234 may be referred. In this regard it may be mentioned that as per approval given by the Board of Directors of BSNL, the AGR is calculated and corresponding License Fee, USO levy and spectrum charges are paid by BSNL as per terms and conditions of Judgement dated 30.08.2007 of Hon'ble TDSAT. However, such calculation of AGR as per Judgement dated 30.08.2007 was subject to the finalization of Civil Appeal No. 5059 of 2007 filed by the Union of India against the Judgement dated 30.08.2007 of TDSAT in the Apex Court.
2. The Hon'ble Supreme Court had decided the Civil Appeal No. 5059 of 2007 and through its order dated 11th October 2011 **has set aside the impugned order dated 30.08.2007 of the TDSAT.** The Hon'ble **Supreme Court** in its judgement has held that **"the TRAI and the Tribunal (TDSAT) 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. In view of the judgement dated 11.10.2011 of the Hon'ble Apex Court as mentioned in Para 2 above, the Management has decided to calculate the AGR as per terms and conditions of license agreement regarding Basic, GSM, NLD, ILD, VSAT & Internet Services. The decisions communicated through Circulars under reference regarding calculation of AGR of BSNL as per terms and conditions of the Judgement dated 30.08.2007 of TDSAT, are hereby withdrawn.
4. As per decision taken by the Management, the AGR of 3rd quarter of 2011-12 shall be calculated not as per terms and conditions of TDSAT judgement dated 30.08.2007, **but as per terms and conditions of license agreement** and payment of license fee, USO levy for the 3rd quarter of 2011-12 and spectrum charges for the 4th quarter of 2011-12 which is payable in advance, shall be paid according to such AGR, to concerned CCA.
5. Further, the AGR for 1st and 2nd quarter of 2011-12 which was calculated as per terms and conditions of Judgement of Hon'ble TDSAT, shall be recalculated / revised immediately as per terms and conditions of License and on the basis of such recalculation / revision as well as taking into account the payments which have already been made towards license fee etc for the 1st & 2nd quarters of 2011-12, if it is found that there is a shortfall in payment of LF, USO levy for the 1st two quarters of 2011-12 and spectrum charges up to 3rd quarter of 2011-12, the said amount of shortfall shall be paid immediately to CCA. The AGR of 1st and 2nd quarter of 2011-12 shall be prepared again as per revised calculation mentioned above.
6. Simultaneously, action shall be taken to recalculate / revise the AGR of all the four quarters of the financial year 2010-11 as per terms and conditions of the license agreement and on the basis of recalculation / revision as well as taking into account the payments which have already been made towards license fee etc for all the four quarters of 2010-11, if it is found that there is a shortfall in payment of LF, USO levy and spectrum charges for any of the quarters of 2010-11, the said amount of shortfall shall be paid immediately to CCA. Further, revised AGR for all the four quarters of 2010-11 shall be prepared and got the same audited by the present Branch Auditor of the Circle and such audited quarterly AGR of 2010-11 along with payment particulars (additional payment made if any on the basis of revised AGR) shall be submitted to concerned CCA immediately.

7. Incidentally it may be mentioned that as per terms and conditions of the License Agreement, the deduction from AGR on account of IUC paid to other operators can be taken only on actual basis i.e. payment basis and not on accrual basis. Hence the Circles must keep ready the complete data about quarter-wise (showing particulars of payment of each month of the quarter separately) payment already made / to be made to other operators on account of IUC for the financial year 2010-11 and 2011-12. In respect of inter-segment IUC the deductions from quarterly AGR shall be taken on the basis of calculation of inter-segment IUC and as if the same has been paid on proforma basis to other segment. In this regard the existing instructions shall be followed.

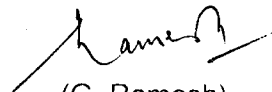
8. The details of quarter-wise (showing the payment of each month of the quarter separately) IUC actually paid to other operators for the financial year 2010-11 and 2011-12 (1st three quarters) shall be furnished immediately to CA Section of Corporate Office. The components of each payment i.e. gross amount of IUC (without netting off the amount of TDS deducted by other operators), Service Tax shall be shown separately along with total of two components as above and amount of TDS deducted. In addition, the details of operators to which the payment has been made, type of license and date of payment shall also be furnished in the statement. The soft copy (in Excel) of the quarter-wise of payment of IUC, shall be mailed to agmca3@rediffmail.com.

9. It may further be mentioned that in view of the clarifications given by DOT (refer Annexure to Circular 98 issued by CA Section of Corporate Office) and judgement dated 11.10.2011 of Hon'ble Apex Court, the LD & revenue on account of promotional activities will also be part of the AGR and accordingly the license fee, USO levy etc. are to be paid on such items. So the Circles must include above-mentioned items in the AGR, calculate the license fee etc and pay accordingly.

10. Incidentally it may be mentioned that the Circles will calculate the AGR as per instructions issued from time to time (except the instructions issued through Circulars under reference and any other instructions regarding implementation of TDSAT judgement dated 30.08.2007). However, a revised program in Excel for calculation of AGR of 2011-12 as per terms and conditions of License has been mailed to all circles for guidance. For calculation of revised AGR for the financial year 2010-11 another revised program will be sent shortly for guidance. The Circles may utilize the program for calculation of AGR and for reconciliation with the AGR and corresponding license fee, USO levy and spectrum charges calculated by them independently as per terms and conditions of license and orders issued in this regard from time to time with the exceptions mentioned above.

11. The e-mail addresses of the Circle to which excel program as mentioned in Para 8 above, has been mailed are furnished in Annexure 'A' enclosed. If any Circle does not receive the mail, they may contact to Corporate Accounts Section of Corporate Office over telephone No. 23734306 / 23037307 and communicate their correct e-mail address.

Encl: As above


(G. Ramesh)
AGM (CA)

Copy to:

1. ED (Finance) for kind information.
2. GM (BFC&I) Corporate Office for information and necessary action
3. DGM (CA-I) / AGM (R&P) Corporate Office for information and necessary action
4. CPAO (ITI Bills) Bangalore for information and necessary action
5. DGM (CA-I) / All AGMs of Corporate Accounts Section of Corporate Office.

Circle Code	Name of Circle	email address
2	ASSAM	mukhesh_0509@rediffmail.com, aoca2011bsnl@gmail.com
3	KOLKATA TELEPHONES	caltelca@yahoo.co.in
4	CHENNAI TELEPHONES	bsnlraoca@yahoo.co.in
5	ANDHRA	bparvathi@bsnl.co.in sujathav@bsnl.co.in
6	BIHAR	aocabr@gmail.com
7	GUJRAT	bsnlcaguj@gmail.com, caocmsahmd@yahoo.co.in
8	J&K	mumtaraina@yahoo.com
9	KARNATAKA	ktkcaoca@yahoo.com malathi_cv@yahoo.co.in
10	KERALA	sajuoommen@gmail.com, ciraota@yahoo.co.in
11	MADHYA PRADESH	aocampcircle@gmail.com
12	MAHARASHTRA	aocamh@rediffmail.com, cmtsmhtr@rediffmail.com
13	NE-I	jaoca_shg@yahoo.co.in
14	PUNJAB	harjitgarg@icai.org sureshgoyal1979@yahoo.co.in varunbhatia7862003@yahoo.co.in
15	ORISSA	caoca@rediffmail.com
16	RAJASTHAN	caocaraj@gmail.com
17	TAMIL NADU	rguruprasadr@gmail.com ggtact@gmail.com
18	UP EAST	caotaupe@gmail.com, sverma_200@yahoo.com
19	UP WEST	caocadn@rediffmail.com cmtsupw@gmail.com
20	WEST BENGAL	sraocawb@sancharika.com sraocawb@gmail.com
21	HARYANA	cau@rediffmail.com
22	HIMACHAL PRADESH	ajayaoca@yahoo.com
23	TELECOM STORES	dghosh_59@yahoo.co.in
24	TF MUMBAI	laddha_rr@yahoo.co.in, laddharr@gmail.com
25	TF KOLKATA	sibkumar@rediffmail.com
26	TF JABALPUR	tomy_ki@rediffmail.com
27	NTP	vipin.ntp@gmail.com, vipin_bsnl@rediffmail.com
28	WTP	aotawtp@yahoo.com rkadloor@gmail.com
29	STP	jayaraman160752@gmail.com, ssivajothi@bsnl.co.in
30	ETP	aocaetp@yahoo.co.in
31	NTR	casactionntr@gmail.com
32	WTR	corporatewtr@gmail.com
33	STR	madhu_varthy@yahoo.co.in
34	ETR	samarendra_das50@yahoo.co.in, subrata_das_gupta@yahoo.in
35	T&D JABALPUR	aocatd@gmail.com
38	BRBRAITT	roykrishna2006@rediffmail.com
39	ALTTC	kkrai7799@gmail.com
40	TASK FORCE GHY	debudaa@yahoo.co.in aoca_netf@bsnl.co.in
41	DATA NETWORK	mahenderpal_sharma@yahoo.com
42	NCES	ifa_nces@bsnl.co.in, aocash_nces@bsnl.co.in aoca_nces@bsnl.co.in
43	A&N	aocash_an@bsnl.co.in
44	PAO HQ	tcjain_1957@yahoo.co.in
45	CPAO BANGALORE	cpao_bangalore@yahoo.co.in
46	QA	rragavan123@gmail.com
47	DDG BBF	manojitsehrawat@gmail.com
49	NATFM	psvrao@bsnl.co.in, natfm@bsnl.co.in
50	CHATTISGARH	hiralalgupta1960@yahoo.co.in ttcgao@gmail.com cgaoca@gmail.com
51	JHARKHAND	bsnljtc.ca@gmail.com vrajesh.cwa@gmail.com bkprasad.prasad@gmail.com
52	UTTARANCHAL	caoual@rediffmail.com
53	NE-II	ifa_ne2@bsnl.co.in, aocane2@gmail.com