

CHAPTER - IV

Revenue Shared by M/s Videocon Telecommunication Limited

4.1 Introduction

Videocon Telecommunications Limited (VTL), formerly known as Datacom Solutions Private Limited, obtained Unified Access Services License (UASL) in 2008 for 21¹ licensed service areas (LSA) from Department of Telecommunications (DoT). VTL was allotted spectrum in 20 LSAs and started operations as a Global System of Mobile (GSM) service provider in 17 LSAs during the period from 2010-11 to 2011-12.

Besides the license mentioned above, VTL holds National Long Distance (NLD) and International Long Distance (ILD) license acquired since 2009. VTL launched NLD and ILD services in 2010 and 2012 respectively. Consequent to the judgement dated 12 February 2012 of the Hon'ble Supreme Court, all the 21 licences granted to VTL were declared illegal and quashed. However, as per order of Hon'ble Supreme Court, VTL continued their services under UASL till January 2013. Subsequently, VTL participated in the auction held by DoT in September 2012 and was a successful bidder in six service areas namely Bihar, Gujarat, Haryana, Madhya Pradesh, Uttar Pradesh (East) and Uttar Pradesh (West).

4.1.1 Radio Frequency Spectrum held by VTL

VTL was allotted GSM spectrum in 20 LSAs in 1800 MHz frequency band during 2008-09 and retained till 2012-13. Details of the Spectrum held by the Company are as shown in Table 4.1 below:

Table 4.1

Sl. No.	Technology	Spectrum	No. of MW Access Carriers*	No. of MW Backbone Carriers*#	LSA
1	GSM (UASL)	2 x 4.4 MHz	2	1	Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh Jammu & Kashmir, Karnataka, Kerala, Kolkata, Madhya Pradesh, Maharashtra, Mumbai, North East, Orissa, Rajasthan, Tamilnadu, UP(E) , UP(W) and West Bengal

* Each carrier is of 56 MHz

Backbone Carriers not allotted in Mumbai & Kolkata

¹ AP, Assam, Bihar, Delhi, Gujarat, Haryana, HP, J&K, Karnataka, Kerala, Kolkata, MP, MH, Mumbai, NE, Orissa, Rajasthan, TN & Chennai, UPE, UPW and WB

After cancellation of licences by Honourable Supreme Court of India for above mentioned service areas, VTL participated in the auction held by DoT in September 2012 and was a successful bidder in six service areas as shown in Table 4.2 below:

Table 4.2

Technology	Date of signing Unified Licence Agreement/Date of allotment of spectrum	Spectrum	No. of MW Access Carriers	No. of MW backbone Carriers	LSA
GSM (UL) Access services	04 March 2013/02 April 2013	2 x 5 MHz	2	1	Bihar, Madhya Pradesh, Gujarat, Haryana, UP(E) and UP(W)

4.1.2 Revenue Reported and Revenue Share paid by VTL

Telecom Service Providers are required to pay Licence Fee (LF) and Spectrum Usage Charges (SUC) at a percentage of AGR on quarterly basis on self-assessment basis. Gross Revenue (GR), Deductions, Adjusted Gross Revenue (AGR) reported and revenue shared (LF and SUC) by VTL during the period 2009-10 to 2014-15 are as follows:

Table 4.3

(₹ in crore)

Year	Subscribers' base at year end (in crore)	GR	Deduction	AGR*	Percentage of AGR to GR	Revenue Share (LF + SUC)
2009-10	0	0	0	0	0	0
2010-11	0.71	376.68	334.34	101.56	26.96	12.11
2011-12	0.60	730.16	454.46	278.26	38.10	30.76
2012-13	0.20	459.18	302.94	173.97	37.88	18.93
2013-14	0.50	872.14	503.93	368.33	42.23	40.50
2014-15	0.71	1447.30	966.77	480.83	33.22	51.17
Total		3885.46	2562.44	1402.95	36.10	153.47

*AGR figures are exclusive of negative AGR of LSAs

4.2 Under Reporting of Revenue from Prepaid Services due to Netting off of Commission/Discounts/Offers to Distributors/Subscribers

From the scrutiny of data/records pertaining to prepaid services furnished by VTL for the period from 2010-11 to 2014-15, it was observed that –

- The commission offered to distributors/agents as upfront discount was netted off from revenue pertaining to prepaid services.
- Offers to subscribers viz. Free Air Time (FAT) to customers, Free of Cost (FOC) SIMs to distributors etc, were set-off from the revenue pertaining to prepaid services.

The item wise details are furnished below:-

4.2.1 Under Reporting of Prepaid Revenue due to Netting off of Commission/Discount offered to Distributors

VTL markets various products/services in pre-paid segment through channel sales partners/agents/franchisees/dealers/distributors, etc. for which they are paid margin/commission. Such margin/commission etc. are in the nature of expense for the licensee.

On a review of accounts of VTL, it was observed that the commission/margin amounting to ₹ 66.91 crore paid to the distributor/franchises/agents/dealers during the FYs 2010-11 to 2014-15 was not considered in the revenue since actually billed amount was accounted. This resulted in understatement of pre-paid revenue and consequently, reduction of actual revenue considered in the AGR statements submitted by them to Controller of Communication Accounts (CCA)/Department of Telecommunications (DoT). As the commission/margin paid to the distributor/franchises/agents/dealers were in the nature of expenses, non-inclusion of the same in revenue was against the licence condition resulting in under reporting of GR to the extent of ₹ 66.91 crore.

Management replied as follows: –

- Company has always considered the revenue share on the basis of adjusted gross revenue arising from the telecom licensed activities only;
- Primary margin is offered to the distributors at the time of Primary Billing i.e. primary billing for Recharge voucher only and the assessable value has been furnished in all the invoices;
- The amount which is debited in the GL revenue ledger of Processing is of Trade discount offered to the Distributors at the time of primary billing. As per

the accounting policy followed, the actual inflow to the company i.e. amount paid by the distributor only is carried to the P&L account and not the MRP of the product sold through the distributor;

- It is further submitted that in term of Accounting Standard 9 (AS-9) “*Revenue is the Gross inflow of cash, receivable or consideration arising in the course of the ordinary activities of the enterprise from the sale of goods, from the rendering of services and...*” therefore keeping the same into consideration of the above points, the LF has been paid on the realized revenue. TDSAT vide its Judgment Dated 23 April 2015 also referred that in order to be counted “GR”, the meaning of inflow must not be notional and but realized;
- TDSAT vide its Judgment dated 23 April 2015 also referred that if the sale is on a 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 revenue and the difference between the MRP and selling price cannot be added to “Gross Revenue”;
- Keeping in view of the above cited facts/details, VTL is not in a position to accept or consider the Audit point against the understatement of GR of VTL due to set off of commission paid as upfront discount to the distributors to the tune of ₹ 66.91 crore.

The above responses are not convincing to audit due to reasons given below:

- VTL is rendering the services ultimately and had VTL sold the cards directly to the customers, 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.
- While the matter is sub-judice at Hon’ble Supreme Court, Audit view is that commission/margin paid to the distributors/franchises/dealers is in the nature of marketing expenses, therefore, set-off of such expenses with revenue was against the licence condition.

Thus, non-consideration of discount/ commission of ₹ 66.91 crore given to pre-paid distributors for computation of GR/GR resulted in understatement of GR/AGR, and consequent short payment of LF and SUC by ₹ 5.82 crore and ₹ 2.63 crore respectively (**Annexure-4.01**).

4.2.2 Under reporting of Revenue on account of Free Airtime to Prepaid Subscribers

VTL offered Free Airtime (FAT) to its prepaid subscribers. Audit observed that the value of FAT extended to customers amounting to ₹ 92.10 crore during the period from 2010-11 to 2014-15 was not recognised in the GR/AGR for computation of revenue share. Since offers to customers like free airtime was part of overall commercial strategy to enhance business, the costs of such offers were in the nature of expenses. Further as per licence agreement, service revenue should be shown gross without any set-off. Thus, non-inclusion of FAT for computation of revenue share resulted in under reporting of revenue to the tune of ₹ 92.10 crore .

VTL stated that:-

- In certain prepaid tariff scheme and such scheme offered based on market demand/management decision, if free airtime was provided to subscribers on making recharge through specified recharge vouchers denominations, the tariff amount which were actually paid by the subscribers were ultimately booked as revenue. These tariff schemes were within the TRAI Guidelines;
- The FAT was offered to VTL GSM prepaid customers only and the offer was over and above of the talk time. The FAT offered is a promotional activity with the motive of retaining the customer and decrease the churn;
- The company has recognized the revenue against the Free Airtime and there is no corresponding cash flow/receipt;
- FAT is in the nature of planned business strategy and part of tariff plan filed with TRAI. It is given upfront to the customers and such notional amount cannot be subject to LF;
- In terms of AS-9, “Revenue is the Gross inflow of cash, receivable or consideration arising in the course of the ordinary activities of the enterprise from the sale of goods, from the rendering of services and therefore keeping the same into consideration of the above points, the LF has been paid on the realised revenue;
- Keeping in view of the above facts and details, the amount of ₹ 92.10 crore towards FAT is already considered in revenue and accordingly LF has been calculated on the realised revenue. Hence VTL is not in a position to accept the point as the FAT has negative impact on Revenue.

Audit views on the reply of the Management are given below:-

- Audit contends that Airtime is not a free commodity, had an intrinsic value and by giving FAT, the licensee is foregoing the revenue instead of booking this as expenses resulting in avoidance of LF and SUC.
- The details of FAT offered as per the tariff and that offered as promotion to customers were not furnished.

Thus, netting off FAT amounting to ₹ 92.10 crore given to pre-paid customers resulted in understatement of GR/AGR and consequently short payment of LF and SUC by ₹ 7.88 crore and ₹ 3.69 crore respectively (**Annexure-4.02**).

4.2.3 Non-consideration of Revenue from Sale of Prepaid SIM cards

The company operated 1+1 scheme during 2013-14 and 2014-15. Under the scheme, two SIMs were delivered to distributor against price of one SIM. Audit observed from the General Ledger (GL) of VTL that revenue of one SIM was accounted while the cost of SIM given free amounting to ₹ 5.25 crore was not considered for computation of GR/AGR. As the scheme was promotional in nature, non-inclusion of the value of the SIM was in deviation of clause 19.1 of UASL/UL agreement.

VTL replied that:-

- The Company offers 1+1 SIM to its Distributors based on market demand /management decision as an 1+1 SIM against the order placed by distributors towards the SIM purchases;
- In the scheme of 1+1 SIM cards, the quantity of two SIMs has been delivered to distributors against the 1 SIM price and 1+1 SIM has been accounted as revenue by oversight and accordingly the revenue has been overstated and by passing the corrected entries, the revenue has been corrected and the diminished amount is purely of 1+1 SIM only and which do not carry any value;
- The 1+1 SIM is applicable for the period of 2013-14 to 2014-15 only as the UASL licenses were cancelled by the Hon'ble Supreme Court of India vide its judgment dated 2nd February 2012 and in order to retain existing customers and to get new customers, such marketing schemes were required by the company;
- It is further submitted that in term of AS-9 revenue is gross inflow of cash, receivable or consideration arising in the course of the ordinary activities of the enterprise from the sale of goods, from the rendering of services and therefore keeping the same into consideration of the above points the LF has been paid on the realized revenue;
- TDSAT vide its judgment dated 23 April 2015 also referred that in order to be counted "GR", the meaning of inflow must not be notional but realized;

- Keeping in view of the above cited facts/details, VTL is not in a position to accept or consider the audit point against the FOC of ₹ 5.25 crore.

Audit views on the comments of the VTL management are as follow:-

- Audit contends that 1+1 scheme was in nature of promotion and hence, sale value of SIM should have been accounted as revenue and the value of SIM given for free booked as expenditure. By non-accounting of free value of SIM, QTL had understated revenue by ₹ 1.90 crore.
- The reply that free SIM did not carry any value is not convincing since they could be sold separately by the dealers. Further, these SIM required to be activated separately by the company also;
- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that 1+1 scheme is in the nature of marketing expenses and therefore, non-inclusion of the same in revenue was against the licence condition.

Thus, the action of the Management in non-considering the revenue of ₹ 5.25 crore was against the licence agreement and resulted in understatement of GR/AGR to that extent with consequent short payment of corresponding LF and SUC by ₹ 0.42 crore and ₹ 0.24 crore respectively (**Annexure-4.03**).

4.3 Incomes not offered for Revenue Share

The licence agreement while prescribing certification of the accounts of the licensee companies by their Auditors in accordance with the provisions of the Companies' Act 1956, also specified that reconciliation should be done between the revenue appearing in the revenue share statements and the annual accounts of the Company as certified by their Auditors.

Review of the reconciliation statements with the Trial Balances, Audited AGR statements prepared by the Statutory Auditors submitted along with Auditors Report and comparing them with primary accounting records of VTL for the years 2009-10 to 2014-15 showed that income/revenue under certain categories, appearing in the Company's accounts, were not considered for computation of GR/AGR and payment of revenue share. These revenues which should have been a part of AGR were not included in the AGR statements. Incomes which were excluded from GR/AGR are discussed below:

4.3.1 Interest Income not offered for Revenue Share

As per the licence agreement, GR for the purpose of payment of Revenue Share shall be inclusive of revenue on account of interest. Review of data/records furnished by VTL for the period from 2009-10 to 2014-15 revealed that interest income of ₹ 59.85 crore accounted in the books of accounts during the years from 2009-10 to 2014-15 was not considered for the purpose of payment of LF and SUC.

VTL Management stated that:

- Interest had not been earned as a part of the revenue from telecom services and hence was not being considered in the calculation of AGR.
- The issue was challenged before Hon'ble TDSAT and TDSAT vide its judgement dated 23 April 2015 decided against the operators. TDSAT judgement had been challenged by the company as well as by DoT in Hon'ble Supreme Court.
- Company ensure that once the issue will be finally decided by the Hon'ble Supreme Court, Company shall abide the same including the payment of LF and SUC on the revenue earned from interest income.

Response of the Management is not convincing on account of the following:-

- Definition of GR in licence agreement expressly provides for inclusion of interest income for GR/AGR for computation of revenue share; and
- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that in terms of license agreement, interest income should be included in GR/AGR for computation of revenue share.

Non-inclusion of interest income for computation of GR/AGR resulted in understatement of GR/AGR by ₹ 59.85 crore and consequent short payment of LF and SUC by ₹ 4.80 crore and ₹ 1.91 crore respectively (**Annexure-4.04**).

4.3.2 Forex Gain not included in GR/AGR

In terms of licence agreement, GR shall be inclusive of any other miscellaneous revenue. Audit observed that an amount of ₹ 15.34 crore booked as realized gain on Forex transactions was not considered for GR/AGR for the purpose of revenue share payable to DoT.

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 that-

- Foreign Exchange fluctuation was a contingency which had impact on every business and such gain had not accrued from primary or supplementary services of the company i.e., providing Telecom services to its customers/subscribers. Forex gains result when liabilities for payment in foreign exchange decrease on account of appreciation of domestic currency vis-à-vis foreign currency and such exchange differences arise when rates differ from those at which they were initially recorded in the books.

- Audit has considered only notional gain ignoring the loss recorded in the head of accounts. The forex gain loss, unlike telecom expenditure, was not something where the notional gain was to be viewed in isolation of the loss, as these were not recorded on the same principles adopted to account for the exchange rate differences at the end of each books closing period. This gets actualized only at the time of payment to the vendor.
- TDSAT judgement dated 23 April 2015 passed that any gain or loss due to foreign exchange fluctuation should have no bearing on the License fee.

Contention of the Management is not convincing due to following reasons:-

- In terms of the licence agreement GR shall be inclusive of any other miscellaneous revenue and audit is of the view that any gain incidental to PSPs should be considered for GR.
- The company has been following mercantile method of accounting and as per commercial principle of accounting, “the profit/loss” is to be arrived after taking into account all accrued receipts and expenses and comparing of trading assets between two different dates. Under the mercantile system of accounting a forex gain (revenue)/loss (expenditure) incurred as a result of exchange differences are rational and cannot be considered as contingent/notional in nature. Further, audit has considered the realised gain only.
- While the matter is sub-judice at Hon’ble Supreme Court, Audit view is that in terms of license agreement gain arising from foreign exchange should be included in GR/AGR for computation of revenue share.

Non-inclusion of realised forex gain by QTL resulted in understatement of GR/AGR by ₹ 15.34 crore and consequent short payment of LF and SUC by ₹ 1.38 crore and ₹ 0.43 crore respectively (**Annexure-4.05**).

4.4 Interest on Short/Non payment of LF and SUC

On issues raised above (from para 4.2.1 to 4.3.2) short/non payment of LF and SUC worked out to ₹ 20.30 crore and ₹ 8.90 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 18.88 crore (**Annexure-4.06**). The calculation of interest was based on the rate prescribed in the Licence agreement i.e., *2 per cent* above the Prime Lending Rate of State Bank of India existing as on beginning of the financial year and the period considered for calculation was from the end of the concerned financial year to March 2016. The interest has been compounded monthly as prescribed in the Licence Agreement.

4.5 Disclosures in the Statement of Revenue and Licence fee (AGR statements)

The UASL Agreement stipulated that the accounts of the operator Company should be certified by its Statutory Auditor. Concurrently the Agreement also provided distinct and specific norms/guidelines for recognition and reporting of revenue by the licensees from the licenced activity. These norms, detailed in the Annexure–III of UAS Licence agreement, stipulated disclosure of important information like amount billable for the period, details of discounts/rebates, Total Airtime Units (Metered Units) for home and visiting subscribers and unbilled numbers (e.g. service connections) etc. The norms/guidelines read along with Clauses 20.2 and 20.6 of licence agreement would clearly indicate that while it was the prerogative of the licensee company to prepare their accounts complying with the provisions of the Companies Act, acceptable Accounting Standards etc., the AGR of the licensee company, for the purpose of payment of revenue share, would be computed as per the definition of revenue adopted in the UAS Licence.

- The Agreement also stipulated that the *Licensee shall be obliged to send to the Licensor a certified statement sworn on an affidavit, by authorised representative of the company, containing full account of Revenue as defined in Condition 19 for each quarter separately along with the payment for the quarter.* The Statutory Auditor of the licensee, preparing the accounts in accordance with the provisions in the Company’s Act/ relevant Accounting standards etc., should also give a confirmation to the effect that the Statement of Revenue and Licence Fee has been *prepared in accordance with the norms/guidelines contained in the Licence agreement (Appendix -1 to Annexure –II).*
- Instances of understatement of revenue as brought out in the report would confirm that the revenue recognised for payment of licence fee and SUC by VTL were not in line with the licence conditions nor the preparation of accounts was fully in compliance with the norms prescribed by DoT. Though it was stated by the Management that revenue was booked net of discounts its details were never seen indicated in the Annual Accounts of VTL as required by the licence agreement. The Management also informed that that billable revenue was shown as Gross in line with AS-9 and no discount was offered on the billable amount. The stand of the Management was not tenable because as per the guidelines for preparation of accounts the service income of the licensee had to be shown gross and details of discount/rebate indicated separately. Reluctance of the licensee to share/disclose all the requisite information with the licensor was not seen addressed by DoT. Even though computation of the GR was not in compliance with the licence agreement the

Statutory Auditors had always certified that the accounts were prepared in accordance with the guidelines/norms contained in the Licence Agreement. Moreover, the licence agreement stipulated that the licensee companies had to send to the DoT a certified statement sworn on an affidavit, by authorized representative of the company, containing full account of Revenue as defined in condition 19 for each quarter separately along with the payment which the company failed to comply with and DoT on its part did not take any proactive steps to ensure that the licensees disclose their revenue as stipulated in the licence agreements. Even though the Offices of Controllers of Communications Accounts have been established for confirming the correctness of deductions claimed by the Operators to arrive at their AGR, the systems put in place to ensure that the GR was reported in accordance with the license conditions needed strengthening.

4.6 Response of DoT/VTL to the Audit Observations

Audit observations on the revenue share payable by M/s VTL were communicated to DoT and VTL during December 2016 for their further comments. VTL had reiterated once again (January 2017) most of their submissions made in reply to audit observations issued during the course of premises audit.

DoT stated (February 2017) that

- The basic definition of GR and AGR was challenged by the TSP's in 2002-03. Since then, there has been protracted litigation and is continuing till date.
- DoT is presently in appeal against the TSPs in the Supreme Court and as per the orders of the SC the department had been permitted to issue demands to the TSPs based on its understanding of the Licence Agreement.
- Demands would be raised based on the final figures reported by CAG, as per the Licence agreement and Policy decisions of DoT.

The response of DoT proves that though the revenue share regime was introduced as part of NTP-1999, the Department has not been able to realise its due revenue share as envisaged in the Licence agreement even after more than 17 years of its implementation.

It would be pertinent to mention here that when the Government decided to reduce the LF for all operators by two per cent effective from April 2004, DoT expected that the reduction would prompt operators to withdraw the challenges against the Government. However, the reduction in LF did not have the expected impact and the operators continue to institute litigations against the Government challenging the definition of GR/AGR and demand notes. Thus, the PSP got the benefit of reduction in rate of LF but the Government didn't get the reciprocal benefit of reduction in litigations.

