CHAPTER - III

Revenue Shared by M/s Telenor (India) Communication Ltd

3.1 Introduction

Unitech Wireless acquired GSM licenses for 22 Telecom Circles in the name of eight[1] different entities during the year 2008. National Long Distance (NLD) and International Long Distance (ILD) licenses were acquired by Unitech Long Distance Communication Service Private Limited (ULDCSPL) in April 2009. Telenor was the holding company of Unitech Wireless with 67.25 *per cent* shareholding as on 31 March 2010. Unitech Wireless (Tamil Nadu) Private Limited (the company) filed (April 2010) a scheme of arrangement and amalgamation of eight entities with effect from 1 April 2009 and the same was approved (September 2010) by Hon'ble Delhi High court. ULDCSPL merged with the company with effect from 01 April 2010.

Consequent on the Hon'ble Supreme Court of India judgement quashing the 2G Licenses allocated to the company along with others, Telenor group acquired (November 2012) spectrum in auction for six[2] Telecom circles through Telewing Communications Services Private Limited (TCSPL). In November 2013, Unified License (UL) was issued for aforesaid six Telecom circles in the name of TCSPL. Subsequently, in Feb 2014 auction, Telenor group acquired spectrum for Assam circle and in August 2014, UL was issued for Assam Telecom circle. In August 2015, name of the company was changed from Telewing Communication Service Pvt Ltd to M/s Telenor (India) Communications Private Limited with the approval of DoT.

3.1.1 Radio Frequency Spectrum held by Telenor group

LSA wise Main Radio spectrum in 1800 MHz band, MW Access and Backbone Spectrum held by Telenor group as of March 2015 are given as below:

Table 3.1

Sl. No.	LSA	Main Radio Spectrum (MHz)	MW Access Spectrum (MHz)[3]
1	Andhra Pradesh	6.4	56
2	Assam	6	56
3	Bihar	7.2	56

[1] Adonis Projects Private ltd, Aska Projects Private Ltd, Azare properties ltd, Hudson Properties ltd, Nahan properties private ltd, Unitech Builders & Estates private ltd, Unitech infrastructure private ltd and Volga properties private ltd.
[2] Andhra Pradesh, Bihar, Gujarat, Maharashtra, Uttar Pradesh-East and Uttar Pradesh - West.
[3] One carrier = 56 MHz

Sl. No.	LSA	Main Radio Spectrum (MHz)	MW Access Spectrum (MHz)[3]
4	Gujarat	5	56
5	Maharashtra	5	56
6	UP East	6.8	56
7	UP West	7	56

3.1.2 Revenue Reported and Revenue Share paid by Telenor group

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 the company during the period 2009-10 to 2014-15 are as follows:

Table 3.2

(₹ in crore)

Year	Subscriber base at year end (in crore)	GR	Deductions	AGR	Percentage of AGR to GR	Revenue Share paid (LF+SUC)
2009-10	0.42	36.81	19.24	17.57	48	8.89
2010-11	2.27	860.39	352.45	507.94	59	63.69
2011-12	4.24	3845.33	1459.77	2385.56	62	286.90
2012-13	4.01	2534.13	1025.50	1508.63	60	175.37
2013-14	3.56	3598.81	1444.53	2154.28	60	249.49
2014-15	4.56	4683.07	1804.27	2878.80	61	357.32
	Total	**15558.54**	**6105.76**	**9452.78**	**61**	**1141.66**

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

From the examination of data/records pertaining to prepaid services furnished by Unitech/Telenor group for the period from 2009-10 to 2014-15, it was observed that –

- The margin/commission given to distributors/agents was not included in revenue of prepaid services.
- Offers to the subscribers viz. Free Air Time (FAT) to customers, Promotional offers to customers, Full talk time offered to customers, waivers offered to customers, etc., were set-off from the revenue pertaining to prepaid services.

The item wise details are furnished below-

3.2.1 Under Reporting of Revenue due to Netting off of Margin / Commission paid to Distributors

Unitech/Telenor group markets various products in pre-paid segment through channel sales partners (Dealers/Distributors) for which they are paid margin/commission.

On a review of records/information furnished by Unitech/Telenor group for the FYs 2009-10 to 2014-15, it was observed that revenue booked in the accounts of the company was net of commission/margins given to the dealer/distributors. The aforesaid commission/margin given to the distributors were also not added back while arriving at GR/AGR. As the commission/margin paid to the distributor/dealers was in the nature of expenses, netting of such expenses with revenue was against the license conditions, which clearly stated that Gross Revenue shall be without any set-off for related item of expense. This resulted in reduction of actual revenue in the books of accounts of the company as well as in the AGR statements submitted by them to CCA/ DoT.

It was observed that during FYs 2009-10 to 2014-15, total commission/margin amounting to ₹ 944.38 crore was paid to the distributor/dealers and the same was not included in revenue for computation of GR/AGR.

Management replied that:

- The relationship between the company and distributors was on a Principal to Principal (P2P) basis.

- Further in terms of AS-9, issued by the Institute of Chartered Accountants of India, revenue is defined under para 4.1 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…"

- Further, TDSAT in its judgment dated 23 April 2015 held that "In our view the definition of "gross revenue" cannot be construed as to bar the licensee from fixing a wholesale price for the service which is lower than its MRP. The test is how the actual transaction takes place. If the sale and invoicing is on MRP and any discount is given separately, then in terms of clause 19.1, such discount is not deductible even if the revenue booked in the Profit and Loss account is after netting off the discount. On the other hand, if the sale is 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 the selling price cannot be added to "gross revenue".

- Appeals have been filed in the Hon'ble Supreme Court against the aforesaid TDSAT judgment.

Reply of the management is not convincing as -

- Unitech/Telenor group is rendering the services ultimately and hence, discount/commission accorded to distributors would be in the nature of Marketing Expenditure and thus, should not be deducted from Revenue. This is in accordance with stipulation in clause 19.1.
- Audit opines that this transaction is not covered under Principal to Principal since the ultimate responsibility of rendering the service to the customer rests with Unitech/Telenor group and not with the distributors.
- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is of the view 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, netting off of margin/commission etc. amounting to ₹ 944.38 crore **(Annexure-3.01)** from pre-paid services has resulted in understatement of GR/AGR during the period from 2009-10 to 2014-15. Resultantly, LF and SUC amounting to ₹ 79.19 crore and ₹ 34.28 crore respectively were not paid on the said revenue by the company.

3.2.2 Under Reporting of Revenue on account of Offers made to Subscribers/Dealers

Unitech/Telenor group offers Free Airtime (FAT), Promotional offers, Full talk time (FTT) etc. to its customers/dealers.

A review of GL extracts and further verification of Journal Vouchers (JVs) extracted from Oracle Financials for the period from 2009-10 to 2014-15 revealed that the value of promotional offers extended to customers/dealers amounting to ₹ 1330.97 crore was not recognised in the GR/AGR. Since offers to customers like free air time was part of overall commercial strategy to enhance business, the costs of such offers/discounts/rebate 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 value of FAT/FTT/Promo, etc. in prepaid revenue resulted in under reporting of revenue to the tune of ₹ 1330.97 crore for the purpose of LF/SUC during the period from 2009-10 to 2014-15.

Management stated that:-

- The company offered certain prepaid tariff schemes, in which free airtime was provided to subscribers on making recharge through specified recharge voucher denominations and the amounts which were actually paid by the subscribers were ultimately booked as revenue. In respect of tariff schemes which were within TRAI guidelines, it was not possible to treat free air time offer as an expense since it was not an expense incurred by the company. In order to be counted as "gross revenue", the item of inflow must not be notional but real.

- Irrespective, revenue in term of Accounting Standard-9 issued by Institute of Chartered Accounts of India is the gross inflow of cash, receivable 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.

Reply of the management is not convincing as

- Since FAT/FTT/Promo, etc. was a part of overall commercial strategy to enhance business, therefore, they were in the nature of expenses and set-off for related items of expenses were not allowed as per the licence agreement. Further, the details of FAT/FTT/Promo, etc. offered as per the tariff and that offered as promotion to customers were not furnished.

- Audit contends that Airtime is not a free commodity, had an intrinsic value and by giving FAT/FTT/Promo offers, etc., the licensees were foregoing the revenue instead of booking these as expenses resulting in avoidance in payment of LF and SUC.

Thus, non-inclusion of value of offers/FTT/FAT etc. amounting to ₹ 1330.97 crore (**Annexure-3.02**) in revenue from pre-paid services resulted in understatement of GR/AGR during the period from 2009-10 to 2014-15 to that extent and ultimately resulted in short payment of LF and SUC to DoT by ₹ 111.31 crore and ₹ 49.53 crore respectively.

3.2.3 Under Reporting of Revenue due to Netting off Waivers from Prepaid Revenue

From the examination of data/records pertaining to pre-paid services of Unitech/Telenor group for the period from 2009-10 to 2014-15, it was observed that Adjustments/Waivers were offered to pre-paid customers by the company. It was also noticed that the company debited the cost of waivers to pre-paid revenue heads

instead of expense heads as a result of which the revenue considered for AGR was understated by ₹ 159.55 crore .

As per the license agreement, GR includes all revenue earned from services without netting off any related expenditure. Hence, debiting the cost of waivers to revenue heads instead of treating it as expense was in deviation from license agreement.

Management replied that:

- Waivers offered to subscribers include reversal of erroneous charging which were rectified by credit adjustment to the subscribers and free/extra talk time given to subscribers along with promotional packs. In the normal course of the business, revenue is recognized net of such waivers. For erroneous charging, it is customary in business to refund the amount (if any) and these waivers to customers are in accordance with TRAI guidelines.

- In term of AS 9, revenue is defined under para 4.1 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…". Hence, as mentioned above, adjustments to errors due to erroneous charging and free/ extra talk time given to subscribers along with promotional packs were a normal part of business activity and does not result in gross inflow of cash, receivables or other consideration. Consequently, reversal needs to be adjusted/set-off against the revenue and cannot be separately treated as an expense.

Reply furnished by the Management is not convincing as:

- The details of waivers offered to subscribers relating to reversal of erroneous charging to the subscribers and promotional offers (FAT etc.) given to subscribers were not furnished. The sample data furnished to audit (for FY 2014-15) was not in reconciliation with the value booked in the respective GL code and the company could not reconcile the same. Further, the company has not furnished any document in support of their contention that these waivers were due to erroneous charging to the subscribers.

- Audit contends that as per Norms of preparation of Annual Financial Statements under the Licence agreement, Service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

However, the Management netted off the discounts/rebate while preparing the annual financial statements which was against the licence agreement. Since this was a part of overall commercial strategy to enhance business, therefore, they were in the nature of expenses and set-off for related items of expenses were not allowed as per the licence agreement. Hence these should be added back to GR.

Thus, netting off waivers from prepaid services amounting to ₹ 159.55 crore **(Annexure-3.03)** resulted in reduction of GR/AGR and short payment of LF and SUC to Government of India by ₹ 13.11 crore and ₹ 6.24 crore respectively..

3.3 Under Reporting of Roaming Revenue due to set-off of Inter Operator Traffic (IOT) Discounts paid/credited to other Operators

Unitech/Telenor group have arrangements with other International Operators for providing roaming services and roaming agreements provide for volume discounts for bulk usage of the company network. Review of records of the operator revealed that during the period from 2009-10 to 2014-15, Inter Operator Traffic (IOT) Discounts paid to these Operators' accounts was deducted from the revenue. Such roaming arrangement with other operators was a matter of mutual agreement between two operators and was part of commercial strategy to enhance business between the two operators. These discounts were in the nature of expenses and hence, in terms of licence agreement, should not be deduced from revenue.

Review of data/records of the company revealed that an amount of ₹ 3.27 crore was debited to roaming revenue during the period from 2009-10 to 2014-15 which was in deviation from the license agreement.

Management stated that:-

- International/National roaming revenue was being generated based on negotiation adopted by business. In terms of the agreement, on achieving the agreed target/volume, the party achieving the same was entitled to avail the benefit of lower rate. As a practice, revenue was recognized based on regular TAP INs, the revised TAP INs file could not be regenerated after achieving the target/volume. Therefore, the benefit of lower rates on achieving the agreed target/volume was given to other party through Credit Note. Resultant Credit Notes were issued due to system constrains; hence the same could not be treated as expense.
- Further revenue recognition as per AS-9, which define revenue under Para 4.1 as "Revenue is the gross inflow of cash, receivable or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from rendering of services, 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"

The reply of the Management is not convincing since-

- Discounts over and above the agreed charges were part of overall commercial strategy to enhance business and hence these discounts were in the nature of expenses.
- Audit contends that for the purpose of License fee, the revenue is to be recognized "Gross" without set-off of related expenses as mandated under license agreement.

Thus, netting off IOT discounts amounting to ₹ 3.27 crore **(Annexure-3.04)** in respect of international roaming operators resulted in reduction of GR/AGR. Resultantly, LF and SUC amounting to ₹ 0.32 crore and ₹ 0.11 crore respectively were not paid by the company.

3.4 Under Reporting of Revenue from Forex Gain for GR/AGR by UWL/TW/Telenor

In terms of licence agreement, GR shall be inclusive of any other miscellaneous revenue. Review of GL of Unitech/Telenor group for the period from 2009-10 to 2014-15 revealed that an amount of ₹ 22.58 crore was booked as realized gain on Forex transactions. However, on verification of reconciliation/mapping for AGR, it was noticed that the revenue earned on forex gain was not considered in the GR/AGR for the purpose of revenue share payable to DoT.

It is pertinent to mention here that the above realised gain calculated from the data extracted from the reports generated from Oracle Financial System did not represent the actual gain of that particular item since the company recasts the value of all the items included under the foreign exchange gains/losses head every year, the matured items are accounted under realised gains and the un-matured items remain under unrealised gains. Thus, the realised gain of a particular item in that year would not be the actual gain due to accounting of the gains /losses of that item during the intermediate period under unrealised gains. 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.

The company replied that

- Treatment of forex gain/loss was covered under Accounting Standard 11 (AS-11) issued by the Institute of Chartered Accountants of India. In term of AS-11, a foreign currency transaction should be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. Resultant forex gain/losses arise due to discharge of obligation of debtors/creditors and hence have no linkage with revenue.
- The income from fluctuations in foreign exchange(s) was notional in nature and not a realised revenue. It is reiterated that in respect of purchases or transactions like operating expense on account of consultancy, purchase of equipment or loan taken in foreign currency, the fluctuations due to foreign currency do not form part of revenue, as such fluctuations ultimately result in increase or reduction in cost or purchase price or liability and have no linkage with the revenue.
- Same has been re-iterated in TDSAT judgment of April 2015 that foreign exchange fluctuation should have no bearing on the license fee.The question of computation of "gross revenue" and "adjusted gross revenue" has been mired in controversy right from the beginning. The DoT and TSPs are in dispute for more than ten years over the elements that go into the computation of "gross revenue" and "adjusted gross revenue" and the whole matter has been in a flux for all this time. This is still pending before Hon'ble Supreme Court and yet to be finally settled. Hence, as mentioned above, Forex Gain cannot be part of gross revenue for the purpose of Licence fee.

The reply furnished by the Management is not convincing since-

- Audit contends that for the purpose of License fee, GR shall be inclusive of any other miscellaneous revenue and thus, forex gain (which is accounted as Income in P&L account) should be considered for GR.
- Audit has considered the realised gain only.
- TDSAT judgement dated 23 April 2015 referred in the reply was challenged in the Hon'ble Supreme court by DoT in July 2015. While the matter is sub-judice at Hon'ble Supreme court, Audit opines that non-consideration of forex gains in GR by the company was a deviation from the license condition.

Thus, non consideration of FOREX revenue amounting to ₹ 22.58 crore **(Annexure-3.05)** resulted in reduction of GR/AGR. Resultantly, LF and SUC amounting to ₹ 1.89 crore and ₹ 0.85 crore respectively was not paid.

3.5 Non consideration of Interest Income for GR/AGR

As per the license agreement, GR for the purpose of payment of Revenue Share to DoT shall be inclusive of revenue on account of interest**.** However review of data/records furnished by Unitech/Telenor group for the period from 2009-10 to 2014-15 revealed that interest income on FD and interest from loans and advances granted to Subsidiaries /Associate companies/ related parties of the company amounting to ₹ 285.16 crore and ₹ 2.16 crore respectively, accounted in the books of accounts of the company was not considered for the purpose of GR/AGR**.**

Management in its reply stated that

- Interest on FD was not related to telecom operations and cannot be included in AGR. Further, the interest income resulted from deployment of surplus fund/borrowed funds which cannot be termed as revenue. Funding in business results in mismatch of loans disbursed and final use of proceeds, thereby resulting in finance income as well as finance expense.

- The question of computation of "adjusted gross revenue" has been mired in controversy right from the beginning. DoT and TSPs are in dispute for more than ten years over the elements that go into the computation of "gross revenue" and "adjusted gross revenue" and the whole matter has been in a flux for all this time. This is pending before Hon'ble Supreme Court and yet to be finally settled.

Reply of the management is not convincing as -

- Definition of GR in licence agreement expressly provides for inclusion of interest income for GR/AGR for computation of revenue share.

- While the issue is *sub-judice* at the Hon'ble Supreme Court, non-inclusion of interest in GR was in violation of the licence conditions.

Thus, non-inclusion of Interest income pertaining to period from 2009-10 to 2014-15 resulted in understatement of GR/AGR by ₹ 287.32 crore as detailed in (**Annexure-3.06**). Resultantly, LF and SUC amounting to ₹ 24.84 crore and ₹ 9.35 crore respectively were not paid.

3.6 Non consideration of Miscellaneous Income for AGR for computation of LF/ SUC

In terms of conditions under licence 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. From the AGR statements and

data/records shared with audit, it was observed that during the FYs from 2009-10 to 2014-15, Miscellaneous Income such as income from Scrap Sale, Profit on sale of fixed asset, Other Income, etc. booked by the company amounting to ₹ 56.55 crore was not considered for payment of License fee and Spectrum Usage Charges.

Management replied that –

- Miscellaneous income was from non-licensed activity. These receipts were incidental to business such as scrap sale, sub lease and gain on sale of fixed assets etc. which did not have any connection with telecom operation under the license agreement.
- The company's accounting treatment and presentation of accounts were in accordance with Schedule VI of the Companies Act. Any loss/gain arising on account of sale of assets was in the nature of capital receipt. The investments made in assets were resulting in generation of revenue which was subject to licence fee. The sale proceeds from disposal of such assets resulting in either gain/loss were nothing but the recovery of the amount higher than the net value after depreciation and provision for diminution in the value of assets in the books. This gain was really not a gain since the benefit of depreciation and provision for diminution in the value of assets was not availed earlier. This would also tantamount to charging licence fee on revenue from operations as well as the capital expenditure portion earlier put for business.
- TDSAT also in their judgment of April 2015 held that as long as the sale value does not exceed the gross book value (actual or historical cost price), the sale proceeds though liable to income tax, cannot be taken into reckoning for computation of gross value.
- The question of computation of "adjusted gross revenue" has been mired in controversy right from the beginning. The DoT and the TSPs are in dispute for more than ten years over the elements that go into the computation of "gross revenue" and "adjusted gross revenue" and the whole matter has been in a flux for all this time. This is pending before Hon'ble Supreme Court and yet to be settled.

Audit view on the Management reply is as follows.

- Definition of GR expressly provided that miscellaneous revenue should be included in GR for computation of revenue share.
- While the issue is *sub-judice,* Audit view is that non-consideration of miscellaneous income in GR was in violation of the licence conditions.

As such, items of miscellaneous income as stated above amounting to ₹ 56.55 crore not considered in respective AGR **(Annexure- 3.07 & 3.08)** resulted in short payment of LF and SUC by ₹ 4.64 crore and ₹ 2.05 crore respectively.

3.7 Non Payment of License Fee on Profit on Sale of Business by UWL to TWL/Telenor as per Business Transfer Agreement (BTA)

Unitech Wireless (Tamil Nadu) Private Limited entered into a Business transfer Agreement (BTA) with M/s. Telewing Communications services private limited for transfer of its business as a going concern on a slump sale basis. Based on DoT approval (November 2013), Unitech Wireless (Tamil Nadu) Private Limited transferred its GSM business to M/s. Telewing Communications Services Private Limited during the financial year 2013-14 at a Profit of ₹ 251.50 Crore. This was not considered for calculation of License fee.

The non-recognition of profit on sale of GSM business for the calculation of License fee which comes within the ambit of Miscellaneous Income was a violation of the License agreement. Clause 19.1 of UAS License agreement defines Gross revenue which, inter alia states that, the revenue includes any other miscellaneous revenue without any set off for the related items of expenses.

Management replied that

- After cancellation of licenses of Unitech Wireless (Tamilnadu) Private Limited (Unitech Wireless), a new entity M/s Telewing Communications Services Pvt. Ltd (now Telenor (India) Communications Private Limited) (Telenor India) won spectrum in auction in six circles. Furthermore, for the continuity of services in the aforesaid circles, the transfer of business from Unitech Wireless to Telenor India was sought for and was approved by the DoT. It was during this process of transfer of business certain valuation of intangibles assets like customer relationship, work force, IPR, favorable leases, etc., which in fact not existed in the books of Unitech Wireless but was subsequently made and the said valuation amount was actually paid to Unitech Wireless by Telenor India. However, such a payment cannot be reckoned towards AGR for the reason that AGR is to be reckoned strictly in terms of clause 19.1 of UASL which does not take into account intangibles like customer relationship, work force, IPR, favourable leases, etc.

- The distinction between 'revenue' and 'capital' is never obliterated. It is nowhere suggested that revenue includes assets or the proceeds from the sale of assets. Revenue means income that an entity/organization receives from its normal business activities while the term 'income' is of much wider amplitude. Further, "any other miscellaneous revenue" does not mean "any

other miscellaneous income” and in order to form part of gross revenue, the miscellaneous inflow/entry must first qualify as “revenue”.

The reply furnished by the Management is not convincing since as per license agreement, 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. Audit contends that profit recognised in the P&L account was part of Miscellaneous Income and thus, should be considered for computation of GR/AGR in accordance with the licence agreement.

Non-inclusion of the profit on sale of business resulted in understatement of GR/AGR for the year 2013-14 by ₹ 251.50 crore. Resultantly, LF and SUC amounting to ₹ 22.02 crore and ₹ 8.40 crore respectively were not paid on the said revenue (**Annexure-3.09**).

3.8 Interest on Short/Non-payment of LF and SUC

On issues raised above, (from paras 3.2.1 to 3.7) short/non-payment of LF and SUC worked out to ₹ 257.32 crore and ₹ 110.81 crore respectively. The interest on this short / non-payment of LF and SUC is ₹ 235.62 crore **(Annexure 3.10).** The calculation of interest was based on the rate prescribed in the License agreement i.e. 2 *per cent* above the Prime Lending Rate of State Bank of India existing on the beginning of the financial year and period considered for the calculation of was from the end of the concerned financial year up to March 2016. The interest has been compounded monthly as prescribed in the license agreement.

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

Distinct and specific norms for recognition of revenue by the licensees, from the particular licenced activity are detailed in the Annexure –III of Licence agreement. The norms specified that the annual financial statements/Statement of Revenue and Licence fee (AGR statement) should show -

- Gross Revenue (amount billable/from service) with details of discount/rebates indicated separately and also
- Item-wise details of income that has been set-off against corresponding expenditure
- Any category of accrued revenue, the amount of which exceeds 5 *per cent* of the total accrued revenue, shall be shown separately and not combined with any other item

- Service Tax billed, collected and remitted to the Government shall be shown separately
- Sales Tax billed, collected and remitted to the Government shall be shown separately
- Income from interest and dividend shall be shown separately without any related expenses being set off against them on income side of P & L Account.
- Item-wise details of income that has been set off against corresponding expenditure

During the course of audit of UWL/TWL it was observed that some of the above norms have not been considered while preparation of annual financial statements. Instances of understatement of revenue as brought out in the report would confirm that the revenue recognised for payment of LF and SUC by by UWL/TWL were neither entirely in line with the licence conditions nor the preparation of accounts was fully in compliance with the norms prescribed by DoT. The annual accounts of the entities even though generally contained information mandated by DoT, critical data which impact the correctness of the revenue recognized by the Companies for payment of revenue share were found missing in the annual accounts submitted along with the AGR statement. For instance, the details of discount/rebate to be indicated separately along with Gross Revenue, information on total Airtime Units for home and visiting subscribers and unbilled numbers which were required to be presented separately and credits in expenditure which affect the correctness of AGR etc., were not disclosed in the Annual accounts. Yet the Statutory Auditors had always certified that the accounts were prepared in accordance with the guidelines/norms contained in the Licence Agreement.

On being pointed out, Management stated that the above requirement have been complied with as they are either available in the billing system , book of accounts or disclosed in their annual financial statement / balance sheet. While the Management replied that no items of income have been set off against any corresponding expenditure, it was observed that in cases such as Margin / Offers etc revenue share have been netted off against expenditure resulting in under reporting of GR / AGR.

It is also pertinent to mention that in-spite of non-compliance to above requirement, DoT never insisted on adherence to the above requirement. Audit feels that above disclosures as required by DoT shall facilitate agencies entrusted with the task of ascertaining the correctness of the GR reported by the licensee companies to ensure completeness in verification process.

3.10 Response of DoT/Telenor to the Audit Observations

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

The 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 had 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.