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Mahanagar Door Sanchar Bhawan,
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Ref: **ACTO's Response to TRAI's Consultation Paper dated July 26, 2022 on Rationalization of Entry Fee and Bank Guarantees**

Dear Sir,

With reference to the *Consultation Paper on Rationalization of Entry Fee and Bank Guarantees* issued by Hon'ble Authority, Association of Competitive Telecom Operators (ACTO), is pleased to provide our comments.

We hope that our comments (enclosed as Annexure - I) will merit consideration of the Hon'ble Authority.

Thanking you,
Respectfully submitted

Yours sincerely,
for **Association of Competitive Telecom Operators**



Tapan K. Patra
Director

Encl: As above

Annexure-I
ACTO's comments on TRAI's Consultation Paper on Rationalization of Entry Fee and Bank Guarantees

The Association of Competitive Telecom Operators (ACTO) appreciates TRAI for bringing out the comprehensive Consultation Paper on “**Rationalization of Entry Fee and Bank Guarantees**” as it was a pending issue for a long time. Since, last several years, ACTO has been raising this issue with DOT & TRAI, including the issue of co-terminus license validity period in spite of paying full entry fees.

In pursuance to the reforms in the telecom sector by the Cabinet last year, DoT had reduced the amount of Bank Guarantee requirements vide Government announcement on 15th September, 2021. Although it was a very good initiative, but definitely it requires further rationalization and a thorough review to reduce the entry fees and also for the removal of the requirement of Bank Guarantee to ensure true ease of doing business in this sector.

All of us have had experience from the past about the bold decisions like market liberalization, migration from fixed to revenue share model, relaxation on FDI, reduction of entry fees & bank guarantee, delinking of spectrum from license etc. taken by the government from time to time had yielded very good result in the telecom sector. Policy making should be based on data and the best practices available in telecom & other sectors both domestically as well as globally. Policy decisions are required to be free from the presumptive fear of failure.

A prompt and suitable recommendation from TRAI on this consultation paper will definitely help DoT towards the further reform in the existing telecom licensing framework with respect to rationalization of entry fee and the requirement of bank guarantee as referred by DoT.

ACTO's response to the specific questions raised in the consultation paper:

Q.1 Should the entry fee be rationalised from the present levels in the UL and UL (VNO) licenses? Please support your comments with detailed justification.

ACTO's response:

TRAI has rightly mentioned in this consultation paper by stating that entry fees are typically non-refundable and constitute startup costs for a firm. We believe that continuing with reasonable entry fees to an extent that it will act as deterrence to non-serious players from taking licenses will be a right approach as non-serious licensees may add up administrative burden to the government and will also distort market dynamics.

In view of the above, ACTO members suggest for continuing with the levy of entry fees on the new entrants and also for rationalizing the amount of the entry fees.

ACTO members suggest for reduction of entry fees by about 50% to the existing amount with the following key reasons thereof:

- a. The entry fees, while being rationalized corresponding to the authorization being granted, still constitute a significant cost of doing business. This makes it non

- attractive to the new entrants as well as to the existing licensees to explore new business opportunities by taking new service authorizations
- b. Past reduction of entry fees had worked as booster to the growth of telecom sector. We have seen good take up in VNO and class B segment of the licensees.
 - c. All service authorizations don't require natural resources, interconnection, numbering resources etc.
 - d. Need for long-term regulatory predictivity for the confidence of the investors.
 - e. Internationally, the entry fees are either not levied or are kept at a low level as rightly stated in this consultation paper.
 - f. Some authorizations like INSAT MSS License and In Flight & Maritime Connectivity (IFMC) already exist with no entry fees.
 - g. Continuing with Entry fee will deter non-serious players from taking licenses.

Further, as the entry fees may constitute a significant cost of business, we suggest that the equated proportional entry fees amount be knocked off with license fee payment (as and when it is due) on yearly basis till the end of the license validity period. This will not only reduce the financial burden on the operators by way of long-term adjustment over the license validity period. This will also address the concern of the cost to take new licenses/additional service authorizations and at the same time will continue to restrict the entry of non-serious players in this sector.

We, therefore, recommend as below:

1. Reduction of the entry fee by 50%.
2. Entry fee should be knocked off proportionally with the license fee amount (as and when it is due) on yearly basis till the end of license validity period. The same should be allowed even for existing licensees for the balance period of their license prospectively.

Q.2 If the answer to Q1 is yes, should the entry fee be rationalized across all authorizations or some specific authorizations, both within each license and across licenses? Please justify.

ACTO's response:

ACTO members are in view that the entry fee to be rationalized and reduced across all authorizations. The concept of entry fee is generally applicable for new entrants who plan to secure a particular authorization under the Unified license for the first time or those who plan to add on additional authorizations under the existing Unified License. Therefore, we recommend that there should be no entry fee for existing operators who wish to renew as Unified License post expiry of their current term of the licenses as they don't need to prove their seriousness or authenticity towards the telecom market. Also charging entry fee to the existing players as is actually a double payment/levy for the continuance of same business.

Further, we recommend that there should be no Entry fee for existing operators who wish to migrate to Unified License and maintain status quo. In case an existing migrated unified licensee wishes to enhance its current scope of service / geographical area of operation, the concept of "pay as you use" should be considered while imposing an entry fee of the prevailing amount at that point of time.

We suggest the entry fee to be rationalized across all authorizations and no entry fee should be levied on existing operators who wish to renew as Unified License post expiry of their current licenses.

Q.3 What should be the methodology for arriving at the rationalized entry fee and/ or other terms and conditions for each authorization? Please provide the detailed rationale for each authorization.

ACTO's response:

ACTO believes that the current proportion of entry fees under various authorizations of the Unified License is correctly defined. We recommend that the entry fee be rationalized and should be kept at an amount which can be enough to be detrimental to the non-serious players to apply for the license

Further, by making provision of proportionate entry fee to be knocked off with license fee payment and adjusted yearly basis over the entire license period will make it more acceptable and viable from business perspective as well as stimulate further growth of the telecom sector.

Q.4 Should a uniform Entry Fee be charged for each of the authorizations in the UL and UL (VNO) licenses, both within each license and across licenses? Please justify.

ACTO's response:

There are inherent basic differences between UL and UL -VNO licenses. The latter has a dependency on the UL licensee having network resources and core network of its own. UL-VNO works as reseller. There is no licensing mandate for UL to give resources /connectivity to UL-VNO. UL-VNO license does not allow interconnectivity of networks between multiple parents and many others.

Therefore, the amount of entry fee for UL and UL VNO should not be the same. We suggest that entry fee for UL VNO will be half of the corresponding UL authorization but need to have the same validity period of 20 years as in case of UL licenses.

Co-Terminus license condition for UL and UL-VNO

Both the UL and UL VNO license mandate different authorizations taken subsequent to the first authorization to be terminated along with the validity of the first authorization. In spite of paying full entry fees, the duration of license validity period gets shortened for the subsequent authorizations. No pro-rata rebate in the stipulated entry fee is provided even when the subsequent authorizations will have a reduced validity period. Moreover, UL VNO license is for 10 years where as other UL licenses for 20 years. A reduced overall term under the UL-VNO license coupled with the co-terminus condition further reduces the validity period of subsequent authorizations. This shortened duration of the subsequent authorizations is even after the licensee pays the full entry fees for all the subsequent authorizations under the License. No pro-rata rebate in the stipulated entry fee is provided even when the subsequent authorizations will have a reduced validity.

To explain - The UL VNO license is valid for 10 years. Any additional authorization applied and granted, for instance, after 3 years of being granted, the first authorization, will be valid for the remaining 7 years only, despite requiring the licensee to pay full entry fee.

ACTO suggests the following-

- **Validity of the subsequent authorization under the License should not be co-terminus with the validity of the first authorization. The validity of the subsequent authorizations should be for the full period as the full entry fee is required to be paid.**
- **If, however, this cannot be done, then the entry fee for subsequent authorizations under the License should be reduced on a pro-rata basis, considering the reduced term on the principle of natural justice.**
- **Entry fee for UL VNO should be half of the corresponding UL authorization and validity of UL VNO license should be for 20 years (not 10 years) to be at par in line with other licenses.**

Q.5 What should be the amount of the uniform Entry Fee for various authorizations? Please justify.

ACTO's response:

Entry fee cannot be made uniform across all authorizations due to differences in business model, market share, different nature of services under various authorizations and hence there is no right justification for uniform entry fee for various authorizations. As stated in our response to question no. 3, the current proportion of entry fees under various authorizations of the Unified License is correctly defined. We recommend that the present entry fee be rationalized by 50% reduction across all authorizations.

Q.6 Should the Entry Fee in licenses/ registrations/ authorisations/ permissions, other than UL and UL (VNO) be rationalized? If yes, please provide the reasons and appropriate levels of entry fee for each of these licenses/ registrations/ authorisations/ permissions.

ACTO's response:

ACTO suggests to maintain the status quo with respect to entry fee in the licenses/ registrations/ authorizations/ permissions for other than UL and UL -VNO.

Q.7 Is there a need to continue with the practice of the Bank Guarantee in various licenses/authorizations? Please Justify.

ACTO's response:

ACTO members suggest to do away with the requirement of Bank Guarantee in various licenses/authorizations. As rightly stated in this consultation paper, internationally there is no provision for the requirement of bank guarantee for many countries. Compliance is more important rather than putting more stringent conditions in the licenses. Legal provision/procedures are available in every country including India to recover legitimate government dues.

Requirement of Bank Guarantee was removed from OSP from last year and it is more than one year now. There has been no noticeable adverse impact since then. On the contrary, industry has taken it more positively and this step is acting as a booster towards further growth of the sector.

Further, there has been no requirement of PBG for UL-VNO, CMRTS license, PDOAs registration, IFMC authorization, Captive VSAT license for quite long time. We have NOT heard of any adverse impact due to the absence of PBG in these authorizations. There is no longer roll-out obligations associated with authorizations under UL/UL-VNO anymore. We therefore, suggest that there is no need for PBG for all the authorizations.

We would like to further submit that only in few cases FBGs were encashed/ acted upon over in the last 20 years, that's again went to courts for adjudication. Because of few cases spanning over 20 years, the requirement of FBG should not be imposed upon entire industry/ sector as this blocks the capital which could have been used for deployment of network and services. Policy should be data driven, free from presumptive fear of failure and in line with the best practices available in various sectors both domestic and globally.

We, therefore, recommend firmly that there should be no requirement of any Bank Guarantee – PBG/ FBG under any authorization under the Unified License/ Unified License – VNO and the requirement of BG should be done away with. The existing BGs are to be returned back to the TSPs/ISPs within the given time period as happened in case of Other Service Providers.

In case, TRAI/DOT decides to keep the FBG then it should be reduced further by 50% of the current value and it should be per authorizations and per license service areas. Further, in order to reduce the administrative work, the FBGs should be deposited and maintained at central location, wherein all related matter like audited report submission/ assessment is carried out by DOT for that particular licensee.

Q.8 If the answer to Q7 is no, then what practice should be followed to secure the Government dues and performance of service providers?

ACTO's response:

We suggest keeping the entry fees as a security which will be adjusted proportionately with the license fee as and when it is due on yearly basis till the license validity period. By this way, it will secure the government dues to some extent.

Moreover, the license conditions have legal provision to recover the dues from licensees. Even in case of Bank Guarantees, most of the time it leads to adjudication for encashment. The legal process is applicable to both licensees and licensors. Therefore, by just keeping Bank Guarantees, will not secure the dues but the adjudication does it by deciding whether the fine/penalty/dues is legitimate or not. In case, it is legitimate then the government have power to recover it in many ways post-adjudication even without the need for bank guarantee.

Bank Guarantees is now an old concept. Most of the countries don't have this provision. Compliance is more important than putting onerous conditions in the license agreement. It also

restricts the entry of new entrants as well as acts as a bottleneck for the existing licensees to decide/explore the new business opportunities in various service authorizations.

Q.9 Is there any justification for merging the two bank guarantees i.e., Financial Bank Guarantee and Performance Bank Guarantee? Please give detailed justification.

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Q.10 What should be the methodology to calculate the amount of merged Bank Guarantee? Please Justify. What should be associated terms and conditions with reference to financial and performance parameters?

ACTO's response:

ACTO suggests removing the requirement of bank guarantee and more precisely the PBG should not be there at all. There is no need to merge the PBG & FBG.

As we stated in response to previous questions (Q7) that in case of continuance of FBG, it should be reduced further by 50% of the current value and need simplification. Moreover, it should be per authorizations and per license service areas. In order to reduce the administrative work, the FBG should be deposited and maintained centrally, wherein all related matter like audited report submission/ assessment is carried out by DOT for that particular licensee.

Q.11 What should be the amount of merged bank guarantee that should be made applicable for new entrants during the first year? Please justify.

ACTO's response

ACTO suggests that the same rule should be applicable for new entrants as well as existing licensees. As suggested, DOT will have some amount of entry fees which may be knocked off with the license fee dues as and when it is due on yearly basis. This will address the concern about the new entrants during first year.

Q.12 What should be the methodology to review the merged Bank Guarantee and after how much time? Please justify. In case of failure to meet only performance parameters or only financial parameters what should be the methodology for partial encashment of BG?

ACTO's response:

ACTO suggests for removal of the requirement of Performance Bank Guarantee. Performance of network will have direct impact on their own customers and customers have full flexibility to change the operators at any point of time. Further, TRAI has already defined Quality of Service parameters for various services including penalties for not adhering to the mandated quality of service standards. The need for licensor to intervene on quality aspects is very minimal. Still in case it arises, license conditions permit to impose penalty/ fine on the licensees and there is no need for the requirement of PBG.

ACTO also recommends no FBG to be taken from the licensees. In case of continuance of FBG, it can be reviewed on yearly basis as is being done currently.

Q.13 Should the merged bank guarantees be applicable for new entrants as well as existing licensees other UL/UL(VNO)? Please give justification for your response.

ACTO's response:

ACTO believes that any change in bank guarantee requirement should be applicable for new entrants as well as existing licensees in order to keep uniformity and same rule to be applied for all.

Q.14 Is there any need to merge or review the bank guarantee for the licenses/ registrations/ authorisations/ permissions other than UL and UL (VNO)? Please justify.

ACTO's response:

ACTO suggests to maintain the current status with respect to the requirement of bank guarantee in the licenses/ registrations/ authorizations/ permissions for other than UL and UL -VNO.

Q.15 Any other relevant issue that you would like to highlight in relation to the above issues?

ACTO's response:

No comments.
