

September 05, 2022

To,
Shri Amit Sharma,
Advisor (F&EA),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, New Delhi: 110 002

Subject: NASSCOM response to the Telecom Regulatory Authority of India (TRAI) Consultation Paper on Rationalisation of Entry Fee and Bank Guarantees

Dear Sir,

At the outset, we appreciate this opportunity afforded by the TRAI to offer our comments on this Consultation Paper (**CP**), which discusses the possibility to rationalise entry fees and bank guarantees currently levied on market participants in the telecom sector.¹

Response to Questions 1 to 6 on Entry Fees

The starting point for the discussion is set out in Questions 1 and 2, which discuss whether there is a need for entry fees to be rationalised. We submit that, going forward, entry fees should no longer be levied in the telecom sector across licenses and authorisations, as the reasons for imposing them are not adequately justified today.

As per the CP, there are two main reasons for imposing entry fees: (1) to reflect the extensive use of public resources (here, spectrum) and (2) to deter non-serious applicants.²

On the first reason i.e., to reflect the extensive use of public resources, we find that, under the extant regime, both accessing and using spectrum are already accompanied by other non-trivial obligations. For example:

- Holders of the Unified License (**UL**) pay a substantial price when buying spectrum during auctions and, thereafter, pay annual license fees and spectrum usage charges (**SUC**).
- Holders of the Unified License (Virtual Network Operators) (**UL-VNO**), who do not actually directly buy spectrum in auctions or build their own networks (as they do not need to) and instead rely on the networks made available to them by telecom service providers (rightly so), also, for some reason pay license fees and SUCs.

If the rationale for an entry fee is to reflect the extensive use of spectrum, then this is already dealt with through license fee and SUCs. Further, in the case of UL-VNO, who do not buy spectrum in auctions, the rationale of any kind of fees to reflect the use of spectrum is at best weak, as the use of spectrum is already reflected with the UL holders.

¹ Telecom Regulatory Authority of India, Consultation Paper No. 10/2022 on Rationalization of Entry Fee and Bank Guarantees, (2022), https://www.trai.gov.in/sites/default/files/CP_26072022_0.pdf (CP).

² See Sections 2.1, 2.15, Chapter 2 of the CP.

On the second reason i.e., to deter non-serious applicants, non-serious participants are already deterred through other regulatory requirements. For example, to buy spectrum, bidders must meet minimum net worth requirements set by the Department of Telecommunications (**DOT**).³ Similarly, to apply for the UL or the UL-VNO, applicants must meet equity capital and net worth requirements. Such requirements, along with the significant investments in setting up operations more generally, preclude non-serious players. Instead of deterring non-serious players, the entry fees have the unintended effect of imposing avoidable costs and market entry-barriers – especially since the fees are non-refundable.

Further, as already noted in Annexure IV of the CP,⁴ the entry fees are not levied in many jurisdictions, such as in France, the United Kingdom, or China.

Annexure IV of the CP cites the examples of Australia and the United States (**U.S.**), where some application fees are imposed. However, unlike entry fees, the fees imposed in Australia and the U.S. are processing fees which are nominal amounts designed only to recover administrative costs. Processing fees are already separately imposed under Indian licenses.⁵ We caution, therefore, against drawing a false equivalence between the entry fees being evaluated in the CP and nominal processing fees in other jurisdictions.

In response to Question 1 & 2, we suggest that, to bring the Indian licensing regime in line with other jurisdictions, entry fees should be removed across the board. Accordingly, we do not respond to Questions 3 to 6, as these presume the continuance of entry fees.

Response to Questions 7 to 14 on Bank Guarantees

The starting point for the discussion on bank guarantees is (similarly) set out in Questions 7 and 8, which discusses whether the practice of bank guarantees in various licenses & authorisations should continue or not.

We submit that, going forward, this practice should not be continued because the main reason for imposing them is not adequately justified today. As per the CP, the primary reason for imposing the bank guarantee is to ensure that licensees pay their dues on time and fulfil their license obligations. At a conceptual level, we find that bank guarantees appear to be based on a presumption of non-compliance, which sends a signal of lack of trust from the regulator to the market.

We note that bank guarantees force market participants to block valuable capital that could otherwise be used to meet other dues. This also acts as an unnecessary barrier to market entry on startups, forcing them to block valuable working capital. These also act as a unique barrier to market entry in different segments – such as when imposed on holders of UL-VNO licenses, who (as noted above) do not operate their own networks. These are either users or

³ See ET Bureau, *DoT sets eligibility criteria for spectrum auctions*, Economic Times, (2022), <https://economictimes.indiatimes.com/industry/telecom/telecom-news/dot-sets-eligibility-criteria-for-spectrum-auctions/articleshow/92223919.cms?from=mdr>

⁴ See Annexure IV, CP.

⁵ See Department of Telecommunications, the License Agreement for the Unified License, Annexure II, https://dot.gov.in/sites/default/files/Unified%20Licence_0.pdf ; Department of Telecommunications, the License Agreement for the Unified License for VNO, Annexure II, https://dot.gov.in/sites/default/files/2016_06_30%20VNO-%20AS-I.pdf

resellers of facilities being provided by telecom service providers. They are therefore dependent on how TSPs offer services and operate their networks and cannot themselves assure the performance of such services or networks. Thus, imposing bank guarantee requirements on UL-VNO licensees does not achieve any specific purpose.

In recent years, requirements for bank guarantees have either been phased out or significantly revised downwards. So, for example, in 2020, when the DOT simplified the guidelines for Other Service Providers, a key change was the removal of the requirement for a bank guarantee.⁶ In 2021, the DOT revised these requirements across the board downwards by 80%.⁷ We submit that this signals a shift away from the need for bank guarantees, and that this CP affords the TRAI an opportunity to recommend the removal of bank guarantees as a progressive telecom reform.

To respond to the concern raised on Question 8, we submit that: (1) the DOT should look to rationalise the dues owed under the licenses themselves, such as entry fees (see above), which would, therefore, reduce the burden of ensuring dues are paid up itself and thereby negate the need for bank guarantees (2) the DOT should look to spell out clear penalties for violations of license conditions (as is already the case) and enforce these penalties effectively.

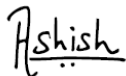
In response to Question 7 & 8, we argue for the removal of bank guarantees themselves, and therefore, we do not respond to Questions 9 to 15, as these presume the continuance of some form of bank guarantees.

Conclusion

We recommend that both entry fees and bank guarantees should be done away with. We also note that this CP, in questioning existing practices under the licensing scheme, does point towards larger design-level questions: how can we make the telecom sector more accessible to start-ups and new market entrants? Given the pace of digitisation, there is an opportunity for innovation and greater market participation in the telecom sector – but are the entry barriers today too high today? We submit that these questions merit consultation.

We appreciate the opportunity to provide our inputs to the TRAI on this CP. We remain available to address any queries in relation to the present response.

Thank you.



Sincerely,

Ashish Aggarwal

Vice President and Head of Public Policy

⁶ See Department of Telecommunications, Registration under Other Service Providers (OSPs) Category, (2021), <https://dot.gov.in/relatedlinks/registration-under-other-service-providers-osp-category>

⁷ See Podishetti Akash, *DOT slashes bank guarantee requirement for telcos by 80%*, (2021), <https://www.livemint.com/industry/telecom/dot-revises-bank-guarantee-requirement-for-telcos-by-80-11633524606308.html>