



September 06, 2022

**Shri Amit Sharma**  
**Advisor (Financial & Economic Analysis)**  
**Telecom Regulatory Authority of India**  
**Mahanagar Doorsanchar Bhawan**  
**Jawahar Lal Nehru Marg**  
**New Delhi-110002**

**Subject: Tata Communications Limited's response to TRAI Consultation Paper on "Rationalization of Entry Fee and Bank Guarantees".**

Dear Sir,

This is in reference to the TRAI Consultation Paper No. 10/2022 dated 26.07.2022 on "Rationalization of Entry Fee and Bank Guarantees".

In this regard, please find enclosed herewith Tata Communications Limited's response to this Consultation Paper for your kind perusal.

We request you to kindly take on record our submissions and consider the same while finalizing the recommendations.

Thanking you,

Yours sincerely,  
For **Tata Communications Limited**

**Praveen Sharma**  
**(Authorized Signatory)**

Encl: As mentioned above

**TATA COMMUNICATIONS**

Tata Communications Limited

VSB Bangla Sahib Road New Delhi - 110 001 India. Tel +91 11 66505200 Fax +91 11 66501140  
Regd Office: VSB, Mahatma Gandhi Road, Fort, Mumbai 400 001 India. CIN No.: L64200MH1986PLC039266  
Website: [www.tatacommunications.com](http://www.tatacommunications.com)

## Tata Communications Limited's response to TRAI Consultation paper on 'Rationalization of Entry-Fee and Bank Guarantees'

---

### Preamble

At the outset, we thank TRAI for providing us an opportunity to share our comments/inputs on this important paper pertaining to rationalization of Entry Fee and Bank Guarantees having impact on financial and compliance cost to the Licensee. In recent past, there have been various steps in terms of telecom reforms taken by the Government to ensure Ease of Doing Business (EoDB) in the telecom sector and to attract investments. TRAI has also taken various steps and has issued its recommendations to DoT for further enhance the ease of doing business in the sector. This consultation paper which has raised issues pertaining to rationalisation of Entry Fee and Bank Guarantees would be a major step towards reduction of financial burden and cost of compliance on the licensees and facilitate entry of new players who would take license to do legitimate business in telecom domain thereby attracting more investments and competitiveness in the sector.

The non-refundable Entry Fee was earlier introduced in CMTS/UASL license regime and then when the UL regime prescribed by the DoT in the year 2012, the same was reduced substantially considering that the license and access spectrum allocation got delinked. The concept of Entry fee continued by the DoT when DoT prescribed the UL VNO regime. As a step to reduce entry barrier and attract small and medium Enterprises to obtain licenses to provide telecom services especially smaller service providers such as Category B & C ISPs, it is necessary that the Entry Fee prescribed should be removed so as to ensure that more players enter into the telecom sector to offer innovative products & services to various segments of customers at competitive price. This will boost the investment in the sector, create more job opportunities, strengthen the competition, increase choices amongst customers, propel innovations and bring more revenue for the Exchequer in terms of license fees. Internationally, as highlighted in the paper, Entry fee is not charged or a minimal amount to cover the administrative cost are getting charged, hence, the same global practice should be adopted in India as part of the telecom reforms.

Similar to the non-refundable Entry Fee, the concept of taking two separate Bank Guarantees (BGs) i.e., Performance Bank Guarantee (PBG) and Financial Bank Guarantee (FBG) need to be rationalised and either removed or reduced substantially and merged as single Bank Guarantee. DoT/TRAI should devise a mechanism to assess the credit worthiness of a licensee and based on the same decision should be taken on whether any BGs is required to be taken from a licensee or not. Also, it is worthwhile to mention that DoT/Government already has rights under various provisions of license where they are entitled to recover the dues from a licensee. The entities obtaining license under section 4 of Indian Telegraph Act, 1885 undertakes that *all dues to the DoT (including the WPC) would be paid and cleared in terms of such License Agreements for demands raised up to date and demands which would be assessed and raised for the period up to the termination/cancellation of such licenses"*

The dues to the DoT as licensee are similar to the taxes an Individual or Corporate entity pays to the Government for which Government has a mechanism in place to recover the dues if not paid. Similarly, license agreement provides mechanism to DoT for recovery of dues and hence, taking BGs to secure future pay-outs can be removed or reduced substantially. This would also help the Entities to reduce their financial burden and cost of compliance which they incur in maintaining the BGs. Hence, we suggest that DoT/TRAI should create a mechanism

to estimate the credit worthiness of a licensee and basis the same can decide the amount of BGs in case BGs has to be taken from the licensee.

Tata Communications' issue wise comments / inputs on the questions raised in the consultation paper are as follows:

**Q1. Should the entry fee be rationalized from the present levels in the UL and UL (VNO) licenses? Please support your comments with detailed justification.**

**Tata Communications' Response:**

Yes. There should not be any Entry-fee imposed under UL and UL (VNO) licenses for new entrants in the market. Following are the points to justify our response:

- Since beginning of introducing the concept of non-refundable Entry fee by the Government, the Entry fee was imposed with the reason such as Entry fee paid for migration to NTP 99 from the old fixed LF regime in 1999 in case of CMTS licenses. After the auction of Mobile licenses for third Entrant, entry fee for subsequent licenses was fixed basis auction prices. Entry Fee for NLD and ILD licenses was fixed at Rs100/25 Crores respectively which was reduced to Rs 2.5 Crores from 01-01-2006. The Entry fee amount was reduced significantly in 2012 at the time of introducing Unified License for Access License wherein spectrum allocation was delinked from the license. However, the Entry fee is still applicable if any new entrant wanted to enter into telecom market or any existing licensee migrate to UL after expiry of validity of their existing standalone licenses.
- Currently in UL & UL (VNO) licenses for various service authorizations, from second year onwards for, a minimum license-fee is payable, equal to 10% of Entry-fee under respective service authorizations, irrespective of the fact that whether licensee has rollout the network and launched the service commercially or not and /or even when the revenue income is zero, putting unreasonable financial burden on the licensees. There is no rationale to levy minimum presumptive license-fee from second year onwards basis 10 percent of Entry fee, when no revenue income is earned by the licensees of UL & UL (VNO). This can be better understood from income tax regime, when individual / corporate earn income, income tax is required to be paid and not otherwise.
- Further, in UL (VNO) license, the licensee is not permitted to set-up its own network but required to pay minimum license-fee equal to 10% of Entry-fee. This is being an entry-barrier for new and small investors and therefore restrict competition in the telecom sector.

The benefits of zero entry-fee in UL and UL (VNO) licenses are as follows: -

- (a) To attract more investments in the sector and enhanced competition resulting into better services for end customers.
- (b) To enhance the revenue for the government as well, when more investors come in telecom sector, means more licensees, resulting in growth of services and accordingly more License-fee revenue for the Exchequer.
- (c) More employment generation in the telecom sector, once entry barriers are removed, in terms of zero entry fee. This will be a win-win situation for all the stakeholders.

- (d) This will provide ease of doing business to the investors. In case, no revenue is earned by the licensee, no license-fee is payable, which will avoid unreasonable financial burden and cost of compliance on the licensee and provide ease of doing business, which is the ultimate aim of the Government as well.

The international practices specified in the Consultation paper also suggest that Entry fee is either not charged from the applicant or only a minimum amount is charged towards Entry fee to recover administrative costs.

**Q2. If the answer to Q1 is yes, should the entry fee be rationalized across all the authorizations or some specific authorizations, both within each license and across licenses? Please justify.**

**Tata Communications' Response:**

The Entry fee should be rationalized across all the service authorizations and across the licenses.

Justification: Currently, there is a huge variation/range-gap in the maximum and minimum entry-fee applicable in both the licenses i.e., UL & UL (VNO).

- (a) In UL, the maximum Entry-fee for is Rs.15 crores and minimum is Rs.0.30 crores, resulting a range-gap of Rs.14.70 crores. In UL (All Services), the Entry fee is Rs.15 crores, whereas in case of some individual authorization for example - Access Service authorization (within the UL), for all 22 circles/services areas, the entry fee is Rs.20.50 crores. And if the same licensee later-on applies for ILD & NLD service authorizations, an amount of Rs.5.00 crores (Rs.2.50 crores each for ILD & NLD authorization) is payable additionally, making it very irrational /unjustified payment of entry fee.
- (b) Similarly in case of UL (VNO) license (all Services). The maximum Entry-fee is Rs.7.5 crores and minimum is Rs.0.15 crores, resulting a range-gap of Rs.7.35 crores. In UL (VNO-All services), the Entry fee is Rs.7.5 crores, whereas in case of some individual authorization for example - Access Service authorization for all 22 circles/services areas, the same is Rs.10.25 crores. And if the same licensee later-on applies for ILD & NLD service authorizations, and amount of Rs. 2.50 crores (Rs.1.25 crores each for ILD & NLD authorization) is payable additionally, making it very irrational /unjustified payment of entry fee.
- (c) To avoid the above discrepancy in Entry fee in UL and UL (VNO) licenses, **there should be zero entry fee, for the reasons mentioned in our response to Q1 as above.**

**Q3. What should be the methodology for arriving at the rationalized entry fee and/ or the other terms and conditions for each authorization? Please provide the detailed rationale for each authorization.**

**Tata Communications' Response:**

At the outset, as responded above, there should be zero entry fee for UL and UL (VNO) licenses.

However, if at all Entry Fee is to be imposed, it should cover only the administering the regulation of telecom sector and should be very nominal.

**Q4. 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.**

**Tata Communications' Response:**

No. There should not be uniform entry-fee charged for each of the authorizations in the UL & UL (VNO) licenses, both within each license and across licenses.

Firstly, both licenses are totally different and cannot be treated at par for the purpose of determining entry fee. In UL, Licensee is eligible for acquiring spectrum, permitted to set up own core network along with numbering allocation & other resources and also permitted to have interconnection with other licensees, whereas a UL (VNO) Licensee cannot own the spectrum, no numbering allocation, not permitted to set-up own core network and interconnection with other operators (except parent NSO) is not permitted. UL-VNO Licensee is mandated to be parented to its NSO for using its telecom infrastructure to launch its services. So, in other words, it can be said that the scope of both the licenses are totally different.

Secondly, for each authorization within the UL and UL (VNO) licenses, the Entry fee should not be uniform reason being that each authorization has different scope and hence cannot be treated same, for the purpose of determining the entry fee. It is also requested to kindly consider our response to Q3.

**Q5. What should be the amount of the uniform Entry Fee for various authorizations? Please justify.**

**Tata Communications' Response:**

As responded above, there should be zero Entry-fee for both the UL and UL (VNO) licenses. In the alternate, a nominal entry fee, which covers the cost of administering telecom sector, should be prescribed.

While earlier the Entry fee was imposed in lieu of parting of sovereign right as well as scarce natural resources as well as to inhibit non-serious players, but it increases the entry costs for the prospective new entrants, resulting in an entry barriers for medium size enterprises (especially in case of UL-VNO) thereby depriving the exchequer from more revenue and the end customers from better services at a competitive pricing. In other words, this also result in restriction of level of competition and affect quality of services in the telecom sector and ultimately growth of services/sector.

It may please be noted that once a Licensee start commercial operations under UL or UL (VNO), the due License-fee is being paid to DoT as per the terms of its license, hence government start earning revenue from it immediately after the launch of services.

**Q6. Should the Entry Fee in licenses/registrations/authorizations/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/ authorizations/ permissions.**

**Tata Communications' Response:**

In line with our response to above questions, there should not be any Entry fee applicable in licenses/registrations/authorizations/permissions, other than UL and UL (VNO). Presently, Entry fee is applicable only on MNP License and Captive VSAT License and it is recommended the Entry Fee on these two Licenses should also be done away for ensuring level playing field with UL and UL(VNO) Licensees.

**Q7. Is there a need to continue with the practice of Bank Guarantee in various licenses/authorization? Please Justify.**

**Tata Communications' Response:**

No. There is no need to continue with the practice of the Bank Guarantees (BGs) in various licenses/authorizations.

Justification: At the time of signing the licenses/authorization, licensees are required to sign an **unconditional and unequivocal Undertaking**, the format of the same is as under-

*"We also undertake that in respect of all licenses granted under Section 4 of the Indian Telegraph Act, 1885 (including Indian Wireless Telephony Act, 1933) to us or any of our promoter(s)/partner(s) or associate(s)/sister concerns, we undertake that all dues to the DoT (including the WPC) would be paid and cleared in terms of the such License Agreements for demands raised up to date and demands which would be assessed and raised for the period up to the termination/cancellation of such licenses"*

From the above Undertaking, it is crystal clear that a new entrant not only Undertake to pay and clear its own dues, but also Undertake to pay and clear dues of its promoters/partners or associates/sister concerns.

Further, in case it is felt that BGs are still required, then following aspects should be considered while deciding the applicability of BGs-

- (a) Creditworthiness and credit rating of the Licensee,
- (b) Past payment record of the Licensee,
- (c) Parent/Promoter Group's financial strength.

So, keeping in view the above stated facts, we strongly believe that there is no need to continue with the practice of Bank Guarantees in various licenses/authorizations.

**Q8. If the answer to Q7 is no, then what practice should be followed to secure the Government dues and performance of service providers?**

**Tata Communications' Response:**

Licensor being Government of India, have unlimited powers to recover its dues from any organization/entity. Since the License-fee dues are credited to Consolidated fund of India, so Government has the same powers for recovery of its dues from licensees, as in the case of its other tax dues, in addition to the Undertaking mentioned at answer-7 above. In other words, a suitable standard mechanism may be put in place for recovery of dues from licensees, in case of failure to discharge its obligations under any license.

Moreover, Licensor has kept Set off Clause in all the licenses. This ensures recovery of DoT dues from any amount refundable to Licensee, if any. The Set Off Clause is reproduced as under-



*“In the event any sum of money or claim become recoverable from or payable by LICENSEE to the LICENSOR either against this LICENSE AGREEMENT or otherwise in any manner, such money or claim can be (without restricting any right of set off for counter claim given or employed by law) deducted or adjusted against any amount or sum of money then due or which at any time thereafter may become due to the LICENSEE under this LICENSE AGREEMENT or any other AGREEMENT or contract between the LICENSOR AND the LICENSEE”.*

Further, alternatively, in case Licensor feel that BGs are required, then it may be obtained from licensees who are financially unfit and wherein Licensor clearly see a risk of payment default.

So, keeping in view the above stated facts, the dues of DoT are very well protected, secure and can be recovered/realized from the licensee in accordance with the terms of its license.

**Q9. Is there any justification for merging of two bank guarantees i.e., Financial Bank Guarantee and Performance Bank Guarantee? Please give detailed justification.**

**Tata Communications’ Response:**

At the outset, we submit that there is no need to continue with the practice of Bank Guarantees, as mentioned above in response to Q 7 & 8.

In response to Q-9, yes, both Bank Guarantees i.e., Financial Bank Guarantee (FBG) and Performance Bank Guarantee (PBG) should be merged into a single Bank Guarantee with minimum amount.

Justification: Both Bank Guarantees are meant to secure financial dues payable by licensee to Licensor under respective licenses. In case of any deficiency in performance or failure to pay license-fee dues/any other dues, Licensor can encash the Bank Guarantee. The Bank Guarantee can be a single Bank guarantee and not necessary to have two separate Bank Guarantees i.e., Financial Bank Guarantee and Performance Bank Guarantee. A single Bank Guarantee will also serve the same purpose as two separate bank guarantees i.e., FBG and PBG.

**Q10. What should be 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?**

**Tata Communications’ Response:**

At the outset, we submit that the requirement of providing FBG and PBG should be done away with, as mentioned in the above answers. However, in case, if it is mandated to have single Bank Guarantee, the amount of merged bank guarantee should not be more than 1-2% of average quarterly LF payment, for companies which meet the credit worthiness criteria, which may be decided by the TRAI or DoT.

It may please be noted that given the capital intensity of the telecom business, which require a huge amount of CAPEX and OPEX, the requirement of Bank Guarantees (BGs) put an additional financial burden and compliance cost on Licensee.

So, for ease of doing business, the requirement of BGs should be done away.

**Q11. What should be the amount of merged Bank Guarantee that should be made applicable for new entrants during the first year? Please justify.**

**Tata Communications' Response:**

In line with the response given in Q 10 above, the requirement of BGs should be done away, due the reasons stated above.

In case of new entrant, if required, the creditworthiness, credit rating and parent/promoter group history & financial strength may be considered.

**Q12. 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?**

**Tata Communications' Response:**

Currently FBGs are reviewed six monthly. It is proposed to review the merged Bank Guarantee once in every two years.

Further, in case of failure to meet performance parameters or only financial parameters, encashment of merged Bank Guarantee should be partial, to the extent of quantum/value of such failure/ non-compliance.

**Q13. Should the merged bank guarantees be applicable to new entrants as well as existing licensees other UL/UL (VNO)? Please give justification for your response.**

**Tata Communications' Response:**

Yes, the merged Bank Guarantees should be applicable to new entrants as well as existing licensees, i.e., both UL and UL (VNO) for ensuring level playing field.

Justification: As a principle of natural justice, any amendment in the amount of Bank Guarantee having financial implications should be equally made applicable to new entrants as well as existing licensees, otherwise existing licensees will be put at competitive disadvantage and certainly issue of level playing field will arise.

**Q14. Is there any need to merge or review the bank guarantee for the licenses/registrations/authorizations/permissions other than UL and UL (VNO)? Please justify.**

**Tata Communications' Response:**

Yes. Possibilities should be explored for merging of Bank Guarantees under above said licenses/registrations/authorizations/permissions other than UL and UL (VNO) licenses.

**Q15. Any other relevant issue that you would like to highlight in relation to the above issues?**

**Tata Communications' Response:**

(a) Release of Bank Guarantees in respect of terminated/expired licenses.



Currently, there is no fixed timelines for DoT, for release of bank guarantees towards terminated/expired licenses. The Licensees are required to keep the FBG/PBGs live, by renewing the same from time to time, which result in unreasonable financial burden on licensees. Not only this, but licensees are also forced to set aside amount in bank for the said BGs and have to borrow additional funds for their working capital requirements.

We propose that PBGs/FBGs towards terminated/expired licenses must be returned within 90 days of such termination/expiry of licenses. This will certainly ease the financial pressure on licensees and provide ease of doing business, which is the motto of Government as well.

(b) UL (VNO)

There should be no minimum LF payable under UL (VNO) License based on the Entry-fee of respective service authorization of the UL (VNO) License, due to the following reasons: -

Licensee cannot own the spectrum, no numbering allocation, not permitted to set-up own network and interconnection with other operators (except parent NSO) is not permitted. So, in other words, it is totally different from UL and so the revenue potential is also not at par with the UL. Therefore, there should be no requirement of payment of minimum license-fee equal to 10% of entry-fee of respective service authorizations under UL (VNO).