

BIF Response to the TRAI Consultation Paper on "Rationalization of Entry Fee and Bank Guarantees"

PREAMBLE

At the outset, BIF wishes to laud TRAI on the issue of the Consultation Paper on the aforesaid subject, as the paper deals with issues pertaining to MVNO as to why the MVNO concept has not picked up in India in spite of the fact that TRAI recommendations were issued on 1st May 2015, and DOT issued UL-VNO Guidelines on 31st May 2016.

The responses to the below questions are with a view to enable increased competition through increased presence of VNOs, thereby ensuring better quality and competitive cost of service and overall consumer benefit.

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.

BIF RESPONSE: Yes.

The concept of entry fee is not relevant anymore as the industry has matured sufficiently and has come a long way over the past 28 years. However, it may be still pertinent to link it with those licenses which are accompanied by unique rights viz. Right to Precious Resources viz. scarce interference free spectrum, right to interconnection, right to numbering resources and right of way. Given the fact that spectrum is now delinked, and is assigned and allocated independently through either an auction or otherwise and has its own charges and fees, the need for higher values of Entry Fees and Bank Guarantees is not required. Rationalisation of levies across same service as well as across different services is therefore required.

It must be pointed out that the ISP Licence started off with an Entry Fee of Rupee One and this helped Commercial Internet take off in the country. It is a known fact that when the ISP license fees was Re. 1, many ISP licenses were taken, many of which did not start the services.

Accordingly, a small and reasonable entry fee should be there to deter non-serious and fly-by-night entities.

In view of the fact that Spectrum is now assigned/allocated through either an auction or through an independent mechanism, for any license which is accompanied by other rights, the Entry Fee could be charged appropriately or proportionately.

However, in view of the fact that UL-VNO licenses are not accompanied by any of the rights viz. spectrum, interconnection, right of way, etc., it is suggested that Entry Fee for UL-VNO licenses be kept as a small and reasonable fee to deter non-serious players. It is believed that such a move will provide a big boost for the growth of UL-VNO industry by liberalizing the entry barriers viz. Entry Fee and the Bank Guarantees.

Q2: 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.

BIF RESPONSE: Yes.

Since the UL-VNO license is not accompanied by unique rights viz. access to precious interference free spectrum, interconnection, numbering resources and right of way, the Entry Fee maybe kept at a bare minimum at a reasonable and a small number, to deter fly-by-night and non-serious entities. **Therefore, BIF humbly requests that Entry Fee Rationalisation happens across all the UL-VNO License authorizations and the Entry Fee be kept down to a bare minimum.**

Q3: 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.

BIF RESPONSE:

As explained in the answers in the preceding questions the Entry Fee Concept needs to undergo reforms for the UL-VNOs.

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.

BIF RESPONSE:

As mentioned in Response to Q1 above, since the UL-VNO license is not accompanied by any unique right viz. access to precious interference free spectrum, interconnection, numbering resources and right of way, the Entry Fee maybe kept at a bare minimum. This will enable service delivery to be done in a cost competitive and cost effective manner to the satisfaction of the end consumers.

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

BIF RESPONSE:

In view of the fact that UL-VNOs are not associated with any unique rights, it is requested that the Entry Fee be kept at a bare minimum.

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.

BIF RESPONSE:

Yes. The Entry Fees must be rationalized in accordance with the trend of reduction of statutory levies in line with the reforms being undertaken by the Government, so that the benefits of the reforms reach each and every citizen, and so that the Digital India vision of the Hon'ble PM is achieved across the entire country. In case of UL-VNOs, since they are not associated with any unique rights, the entry fee must be kept down to a bare minimum so as to deter non-serious and fly-by-night entities as well as incentivize the VNO model and increase competition in the area of service delivery, thereby enabling enhanced consumer benefits.

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

BIF RESPONSE:

7.1 The Bank Guarantees are part of the legacy concept which was found necessary at the time of privatization, when the sector was just being opened up to ensure performance standards were being adequately met and in order to safeguard its revenues. But over the past 28 years or so, the Telecom Sector has matured sufficiently and has moved ahead in leaps and bounds by keeping pace with the global march of technology, by making huge investments in digital infrastructure.

7.2 Sufficient provisions along with necessary checks and balances already exist, which take care of the revenues and dues of the Government.

7.3: Telecom Industry is forced to lock up large amounts of capital in the form of Bank Guarantees. While the bigger players can possibly afford to do so, the smaller VNOs can ill afford to block their hard earned capital for such purposes.

Therefore, in the case of UL-VNO licensees it is suggested that the concept of BG should be done away with. Also, it must be pointed out that globally, in the Telecom sector, the concept of Bank Guarantees does not exist.

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

BIF RESPONSE:

As already explained in Q7 above, the telecom industry has sufficiently matured in India. The annual and quarterly revenues from the licensees are duly assured to Government Exchequer by means of sufficient checks and balances and the penal provisions that already exist in the current laws. Therefore, no additional provisions are required to be made for the assurance of Government dues from all the Licensees.

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

BIF RESPONSE:

While there is merit in merging the Financial and the Performance Bank Guarantees into a single guarantee, there is no need of continuing with any type of Bank Guarantees for the assurance of Government's dues since all checks and balances for recoveries or penalties in case of default under the Law already exist.

Q10: 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?

BIF RESPONSE:

The value of the merged BG should be very nominal and should be proportional to the value of dues required to be paid. All existing provisions and checks and balances will suitably take care of financial parameters also.

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

BIF RESPONSE:

Bank Guarantee should be linked to financial aspects and should be proportional. No Bank Guarantees in any of the License is needed as explained in the previous questions' answers.

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?

BIF RESPONSE:

There is no need to prescribe anything to measure the performance of the Telecom Companies, as all the financials are duly shared by all the companies under the Companies Act, GST Act and Income Tax Act and Laws. Moreover, all the financial and performance parameters are duly reported to TRAI on a periodic basis.

Q13. 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.

BIF RESPONSE:

There is no need for any Bank Guarantees for UL-VNOs as duly explained in response to the previous question.

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.

BIF RESPONSE:

There is no need of any Bank Guarantees as duly explained in response to the previous question.

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

BIF RESPONSE:

UL-VNO MODEL IN INDIA

1. TRAI, while prescribing the Licensing and Financial conditions for UL-VNO licensee, decided to replicate all the terms and conditions and associated charges of a full-fledged UL license, albeit at 50% of the rates. It must be kept in mind that the UL Financial Conditions are that of a full-fledged TSP having unique rights associated with it, viz. spectrum, interconnection, numbering, etc. and provisioning the wireless services and selling to the end consumer. On the other hand, VNO concept was based upon the premise that it will be purely based on a reseller model which will be selling services innovatively to niche markets which are economically unviable for the telcos to reach. This is akin to the approach in other countries of the world.

2. It is a fact that there are hardly any MVNOs who have been able to take off in India. The high entry Fee and High Bank Guarantees, Presumptive 8% License Fee to be paid after one year of License as minimum License Fee, Spectrum Usage Charges of 4% - all of which are just mere replication of the UL License holder charges/fees. These charges to UL-VNO are prepaid by the parent NSO and it is the revenue of parent NSO which pays all the components of License Fee 3%, USO Fund 5% and spectrum fee applicable, and is part of sale to VNO and should ideally be permitted as a 'pass through' for the VNO.

3. VNO is buying the whole sale Bulk Capacity/Minutes from the parent MNO (UL Licensee) and repackaging and delivering to the end consumers. Besides that, UL-VNO is providing the marketing of the services, billing and customer care, and maintaining the relationship with all the niche customers to provide best after sale service support and delivering the services to end consumers. On the sale of Minutes or delivery of services to end consumers, suitable GST is charged and deposited as per GST rules.

4. The above are some of the financial barriers for the VNOs from providing services in India. Besides these financial barriers, there are licensing barriers also, all of which need to be collectively removed to enable VNOs to take off. One of the major challenges for a VNO is that there are no telcos who are ready to provide access to VNOs and that regulatory restrictions prevail that do not permit multi-TSP (telcos) parenting for VNOs. This is because VNOs are perceived as competition by telcos. This leads to market distortions and reduction of consumer choice and deters consumers to access innovative services at competitive costs.

5. TRAI, in its recommendations issued on 19th August 2021 on '**Enabling Unbundling of Different Layers Through Differential Licensing**', has examined all the issues pertaining to the VNOs and duly recommended that VNOs which are a part of the service delivery layer should be delinked from the network layer, which is predominantly served by the Telcos in conjunction with the IP1s. It has also suggested the need for several reforms to make the sector viable.

6. Some of the issues pertaining to the entry fee and Bank Guarantees reduction were partially addressed by the Government in the reforms done in 2021, in order to improve the health of the whole telecom sector and for ease of doing business for the telecom sector.

7. However, since VNOs are purely service resellers, all the prescribed hard Licensing & associated financial conditions needs to be withdrawn, and it should be treated on par with the OSPs and IP-1s to be enabled through simple online registration. To enable the VNOs to take off and to inculcate sufficient competition in the market which is characterized by the presence of 2 +2 players with the latter 2 having limited market muscle and presence, and to be able to provide sufficient consumer choice, it is absolutely essential for VNOs to take off. Imposing Entry Fee and Bank Guarantees for small village and town entrepreneurs and filing

