

RJIL/TRAI/2022-23/201

6th September 2022

To,

Shri Amit Sharma

Advisor (Finance & Economic Analysis)

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawaharlal Nehru Marg, New Delhi - 110002

Subject: RJIL's Comments on TRAI's Consultation Paper dated 26.07.2022 on "Rationalization of Entry Fee and Bank Guarantees"

Dear Sir,

Please find enclosed the comments of Reliance Jio Infocomm Limited on the consultation paper dated 26.07.2022 on "Rationalization of Entry Fee and Bank Guarantees".

Thanking you,

Yours Sincerely,

For **Reliance Jio Infocomm Limited**

Kapoor Singh Guliani

Authorized Signatory

Enclosure: As above

**Reliance Jio Infocomm Limited's comments on TRAI's Consultation Paper on
"Rationalization of Entry Fee and Bank Guarantees" dated 26th July 2022.**

Preface:

1. **Reliance Jio Infocomm Limited (RJIL)** thanks the Authority for issuing this consultation paper to deliberate on the **rationalization of Entry Fee and further rationalization of Bank Guarantees (BGs)**.
2. At the outset, we appreciate the **Department of Telecommunications (DoT)** intent of **ushering in further simplification and a sense of financial rationalization by proposing uniform reduced license fee and reduction in Bank Guarantees**.
3. However, we submit that with the present level of administrative Entry fee or Rs. 15 Crore for UL (All services) with service wise entry fee ranging from 0.002 Cr. for Machine to Machine 'C' (SSA) to Rs. 2.5 Cr for NLD/ILD (National Area) and substantially reduced Bank Guarantees (BGs) **post Cabinet Reforms of September 2021, these proposed changes in terms of uniform reduced license fee and reduction in Bank Guarantees will have miniscule financial impact**.
4. Modern day telecom networks are capital intensive, with spectrum costs running into thousands of crores with networks cost being in multiples of spectrum costs, **these numbers of Entry fee and BGs are insignificant for a serious telecom player. Neither do they create an entry barrier, nor are prohibitive, therefore their reduction or removal will not have a substantial impact**.
5. We submit that under Unified License regime the **sole purpose of Entry fee is to dissuade non-serious players from seeking a license and accordingly the Entry fee is already kept low and need not be disturbed**. Further, it is pertinent to note that such prospective reductions go against the existing players leading to a **quasi-non- level playing field scenario and should be avoided**. Nevertheless, from the perspective of simplification and rationalization and from the aspect of **removing unnecessary financial conditions for doing the telecom business, we support these intents indicated by the Government and the Authority**.
6. We further submit that more than from a fixed one-time Entry fee, the BGs are a recurring cost to the service providers and should be completely done away with. We submit that the **Government has sufficient controls under the license provisions to secure its dues and the BGs are just an additional leverage that should ideally never need to be invoked**.

7. Further the Cabinet Reforms of September 2021, have already recognized the industry maturity in waiving of the requirement of BGs to secure instalment payments. **The same principle can also be invoked and the residual 20% FBG/PBG should be completely abolished to reduce a recurring overhead for Telecom Service Providers (TSPs), which amount to 0.5% to 1% of BG value.**
8. It is worthwhile to mention it here, in the GST regime, all enterprises/businesses, big or small, including TSPs, **are required to discharge their GST obligations on their sales and services offered, however, the Government does not mandate these businesses to securitize such payments through BGs and instead the businesses are trusted to discharge the obligations. Similarly, basis experience of a few decades, the TSPs can be trusted to discharge their obligations without BGs.**
9. In addition to the issues discussed, we also take this opportunity to bring the **Government and Authority's kind attention to important and critical financial reforms that need to be part of telecom reforms 2.0, especially post a vastly successful auction, to infuse liquidity, encourage investment and reduce regulatory burden on TSPs going forward.**
10. The Government and the Authority have taken proactive measures to deliver on the Hon'ble Prime Minister's vision of a robust Telecom Sector and to boost the proliferation and penetration of broadband and telecom connectivity, increase 4G proliferation and create an enabling environment for investment in 5G networks. **However, the job is still not completed as the critical financial reforms are yet to be carried out.**
11. We submit that reducing the regulatory burden on TSPs and **reviewing the taxes and levies remains a constant theme in all policy documents starting with National Digital Communications Policy – 2018 (NDCP-2018).**
12. The NDCP-2018 records the need for ***"Reforming the licencing and regulatory regime to catalyse Investments and Innovation and promote Ease of Doing Business by: Reviewing of levies and fees including LF, SUC and the definition of AGR and rationalisation of Universal Service levy"***. This approach is echoed in September 2021, Cabinet Reforms seeking to reduce regulatory burden, however, sufficient action is yet to be taken.
13. **Therefore, in order to meet the aspirations to the TSPs on these policy pronouncements and to infuse substantial liquidity in telecom networks, we request that the long pending financial reforms in telecom sector are carried out on urgent basis.**

14. **The financial reforms to unburden the telecom sector from excessive regulatory levies should start with rationalizing the License Fee. The current levy of 8% is excessive and non-reflective of the auctioned license regime and should be reduced to an administrative levy of less than 1%. Further, with ubiquitous coverage and over 60% rural teledensity and over Rs. 60,000 Cr. lying idle in USOF reserves, the USO levy at 5% has lost its purpose and should be abolished at least till the reserves are consumed. The Government is already discussing to re-invent the USOF, therefore continuing with old levies has no meaning. Similarly, there is a need to re-cast the GST regime for telecom sector in view of international benchmarking. The Industry has already submitted many representations on these critical issues and these may be considered favourably at the earliest.**
15. In view of the above, while we are appreciative of the Government and Authority's efforts on simplifying Entry fee and BGs regime, **we reiterate that we cannot skirt the major financial reforms for much longer. It is imperative for the faster spread of 5G networks and meeting national aspirations on Broadband proliferation to further unburden the TSPs. We request these measures to be considered expeditiously.**
16. To summarise, we submit as under:

1. **The reforms on Entry fee are inconsequential and should be avoided**
2. **The reforms on BGs should be carried through and all BGs should be abolished**
3. **There is a need to get into other critical financial reforms as per NDCP-2018 by undertaking review of existing levies in terms of License Fee, USO, GST etc. to reinfuse liquidity in sector**

Issue wise response:

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

And

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.

And

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.

RJIL Response:

1. We submit that the concept of Entry Fee under the auctioned license regime is relevant only from the aspect of dissuading non-serious players to obtain License and disrupt telecom services market. **Further, any prospective reduction always goes against the interests of the existing TSPs as they have already paid these levies.**
2. Therefore, from the level playing field perspective it can be argued that, irrespective of the nature of license, the Entry Fee, should not be reduced, to ensure that healthy competition and regulatory predictability the sector that is critical to attract investments.
3. On the other hand, it is also pertinent to note that telecom is a capital-intensive sector and the miniscule level of the current Entry Fee, which as a percentage of Capital Investment for Access, ILD and NLD services is 0.02%, 0.2% and 0.03% only cannot be an entry barrier for any serious player to enter telecom market in India. **Therefore, its reduction will not prompt a sudden surge in interest.**
4. **Accordingly, we submit that there is no need to rationalize the present level of entry fee.**

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.

And

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

And

Q6. 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.

RJIL Response:

1. We submit that on a principle level the **uniformity of Entry fee for different services with different level of investments and skillsets does not seem appropriate.**
2. We submit that the principle of proportionality dictates that the level of Entry Fee for any service should be directly proportional to the capital investment required to provide that service, thus higher the capital requirements, higher the Entry fee. Nevertheless, we understand that current levels of Entry Fee have already been

derived basis this principle and hence **RJIL does not see any justification to alter the present structure of Entry Fee.**

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

RJIL Response:

1. RJIL is of the view that the current practice of **Bank Guarantees in various licenses/authorizations should be discontinued as these do not serve any purpose in securing Government Revenues.**
2. **The Bank Guarantees impose cost on TSPs and Controllers of Communication Accounts (CCAs) use these Bank Guarantees to settle demands without even giving opportunity to TSPs to dispute those demands, making these and coercive governance tool instead of being financial assurances.** We are detailing the justifications for discontinuation of Bank Guarantees in following paras.
3. **Bank Guarantees serve no Purpose in Securing Government Revenues**
 - a. A bank guarantee is a written contract given by a bank on behalf of its customer. By issuing this guarantee, a bank takes responsibility for payment of a sum of money in case, if it is not paid by the customer in performance of its contractual obligations. **Although Bank Guarantees seem to be easier method of settling breach in contract conditions but legitimacy of invocation of bank guarantees is always a bone of contention between the parties.** Even DoT has faced many challenges while invoking Bank Guarantees.
 - b. Invocation of bank guarantee cannot be justified merely because the party invoking the bank guarantee has some claim of damages against the party who furnished the bank guarantee. **It has been held by many courts including Supreme Court of India that unless a claim for damages is not a crystallised or ascertained amount or a sum due and payable.** Therefore, invocation of bank guarantee is not justifiable on the basis of such claim which are yet to be decided by the competent forum or court.
 - c. Thus invocation of **Bank Guarantees without following the legal proceedings and crystalizing the total demand is not valid in law.** In Telecom sector disputes including disputes related to demands on account of AGR, Penalty for KYC and Radiation emission etc. are settled through TDSAT/Supreme Court and by

invocation of Bank Guarantees. Thus proper legal proceedings and not invocation of Bank Guarantees can secure Government Revenues.

- d. **Therefore, we submit that Bank Guarantees serve no purpose in securitization of Government Revenues.**

4. **Bank Guarantees are used to Settle Demands**

- a. The traditional approach of invoking Bank Guarantees is to limit injunctions to situations where there is clear evidence of fraud or willful instance of non-payment of revenue share for License Fee and SUC. **However, it is a common practice in Offices of CCAs to threaten with invoking Bank Guarantees to settle demands. TSPs not only have to dispute demands but also have to seek interim relief to stay invocation of Bank Guarantees.**
- b. The TDSAT was set up under Section 14 of the TRAI (Amendment) Act, 2000, as an independent adjudicatory body, to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. This dispute mechanism was setup in the telecom sector to have specialized body to adjudicate disputes relating and encourage private investment environment in the sector.
- c. The TDSAT is a specialized body for settlement of disputes and ensure Government Revenues. The mechanism of Bank Guarantees appears to replace TDSAT which is not consistent with the TRAI Act. **Hence Bank Guarantees are not required to be continued.**

5. **Bank Guarantees add Cost to TSPs**

- a. The Authority may kindly note that securitization of License fee and SUC payments does not come free. The TSPs have to pay commissions to the tune of 0.5% to 1% of BG value, stamp duties and handling charges for BGs. Further, BGs are not easily issued for TSP with a poor Balance Sheet.
- b. Further, as per the current practice, the requirement of BGs is not waived even after license expiry and/or surrender by the licensee and the BGs are expected to be continued to be renewed for a long time leading to additional unnecessary cost for the TSPs.

- c. By its very nature, securitization of License Fee and SUC raise the cost of providing service. Since securitization of future revenues License Fee and SUC through instruments like Bank Guarantees adds cost for TSPs, it should not be used, especially when a dispute mechanism has been set up for Telecom Sector.
6. In addition to the above, we reiterate our submissions that the **TSPs license fee and other obligations should be treated at par with the GST obligations on all businesses.** As there is no requirement to securitize GST payment with BGs, there should not be a BG obligation for TSPs for their license related payment obligations. **We submit that the BG requirement can also be waived off, in good faith, basis the past payment records of TSPs.**

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

RJIL Response:

1. We submit that the Unified License and TRAI Act maintain sufficient provisions to secure Government Dues and ensure performance of service by TSPs. Some of these provisions are discussed below:
2. **Power to Impose Penalty for violation of License conditions**

*“10. Penalty, Suspension, Surrender, Termination/Revocation of License: 10.1 (i) **The Licensor may impose a financial penalty not exceeding the amount shown in Annexure-VI for each service as per applicable service area per occasion for violation of terms and conditions of license agreement.**”*

The above stated penalty provision is adequate to take action against defaulting TSP for any License Conditions. In addition, TRAI has also notified number of Regulations and Order to protect consumer interest in respect of tariffs, quality of service etc.

3. **License Condition to ensure accurate payment of License Fee**

*20.6 The quarterly payment shall be made with an affidavit as at Annexure-A of the respective Chapter of service authorization together with a STATEMENT OF REVENUE SHARE AND LICENSE FEE separately for each service and service area in the Proforma prescribed at Appendix-II to Annexure-A of the respective chapter of the service, showing the computation of revenue and License fee payable. **The aforesaid quarterly STATEMENTS of each year shall be required to be audited by the Auditors***

(hereinafter called Licensee's Auditors) appointed by the Licensee under Section 224 of the Companies' Act, 1956.

20.7 Any delay in payment of License Fee, or any other dues payable under the License beyond the stipulated period will attract interest at a rate which will be 2% above the one year Marginal Cost of Lending Rate (MCLR) of State Bank of India existing as on the beginning of the Financial Year (namely 1st April) in respect of the license fees pertaining to the said Financial Year. The interest shall be compounded annually. A part of the month shall be reckoned as a full month for the purposes of calculation of interest. A month shall be reckoned as an English calendar month.

22.6 The Licensor may also get conducted a 'Special Audit' of the Licensee company's accounts/records by "Special Auditors", the payment for which at a rate as fixed by the Licensor, shall be borne by the Licensee. This will be in the nature of auditing the audit described in para 22.5 above. The Special Auditors shall also be provided the same facility and have the same powers as of the companies' auditors as envisaged in the Companies Act, 1956.

4. It is evident from the above provisions that there are enough powers vested with the DoT under Unified License to secure the Government dues and performance of service providers obviating the need of BGs. In addition to this the TRAI also has robust process in place under various Orders and Regulations to protect consumer interests.
5. Hence, RJIL is of the view that Bank Guarantees are not required to secure Government Revenues and performance of Service Providers.

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

And

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?

And

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

And

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?

And

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.

RJIL Response:

1. We submit that the issues and concerns with the separate Performance BG and Financial BG will persist with the merged BG as well. The only difference being that instead of 2 BGs, we will be dealing with only one BG, with all the associated issues carried forward. **Therefore, we firmly believe that there is no need to maintain BGs, neither separate nor merged.**
2. **We further submit that in case, notwithstanding above submissions, the Authority still determines that Bank Guarantees are to be maintained then** Financial Bank Guarantee and Performance Bank Guarantees can be merged as these are permanent in nature.
3. Further, from the ease of doing business perspective, the DoT may continue with following practice with regard to maintenance of Bank Guarantees:
 - a. For Access Service providers BGs should be centrally maintained at O/o CGCA;
 - b. BGs can be reviewed every 6 months

Q14. 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.

RJIL Response:

We submit that the principle of securitization of Government dues should be applied uniformly across all licenses/ registrations/ authorizations/ permissions and there is no need of differentiating basis the type of license. **Nevertheless, our primary submission remains that BGs are an inefficient and costly mode of securitizing Government dues and should be done away with.**

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

RJIL Response:

As mentioned in the preface, we request the **Government and Authority to embark on the critical financial reforms as part of telecom reforms 2.0, which are imperative to infuse liquidity, encourage investment and reduce regulatory burden on TSPs going forward. We reiterate that it is critical to reduce the regulatory burden on TSPs**

and give due consideration to submissions made by Industry. The reforms sought are as below:

- a. **Rationalize the License Fee to less than 1% of AGR to reframe it as an administrative levy in auctioned spectrum era.**
- b. **The USOF component of license fee should be abolished at least till the reserves of Rs. 60,000 Crore are consumed. Anyway, USOF is being recast so this levy has no relevance.**
- c. **Consider recasting GST regime for telecom as per international benchmarking.**
- d. **The Industry representation on these issues should be considered favourably at the earliest.**