

Rationalisation of interest rate for delayed payment of license fee

In a major step towards initiating the telecommunications reforms announced by the Union Cabinet on September 15, 2021, the Department of Telecommunications (“**DoT**”) amended the Unified Access Service License (“**UASL**”) Agreement, the Unified License Agreement (Virtual Network Operator) (“**VNO**”) Agreement and the Unified License (“**UL**”) Agreement on October 1, 2021, to rationalise the interest rate for delayed payment of license fee. Subsequent to the amendment, the rate of interest attracted on the delay in payment of license fee, or any other dues 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. Further the interest rate is to be compounded annually as per the amended clause.

Additionally, the Clause 20.8 and Clause 20.10 that relates to the quarterly payment of total dues, in the UASL Agreement and the UL Agreement respectively, have been deleted as well. The DoT has also deleted the language in Clause 20.8 of the VNO Agreement pertaining to the financial penalty imposed on the licensee in the event of shortfall in the amount paid as quarterly license fee.

Foreign Direct Investment Reforms and Bank Guarantee Reforms by the DoT

On October 7, 2021, as part of effectuating the telecom reforms, the following reforms have been adopted.

Foreign Direct Investment Reforms

The Department of Promotion of Industry and Internal Trade (“**DPIT**”) reviewed the Consolidated FDI Policy Circular of 2020 (“**FDI Policy**”) on telecommunications sector and amended the FDI Policy by way of Press Note 4 dated October 6, 2021 to permit 100% FDI in the telecommunications sector under the automatic route, subject to the licensing, security and any other terms as specified by the DoT. Further, foreign investment in the telecommunications sector will also be subject to the condition of Press Note 3 dated April 17, 2020, wherein investments from countries sharing borders with India or where the beneficial owner of an investment into India is situated or is a citizen of any such country, can invest only under the government route i.e. with prior governmental approval. Subsequently, in furtherance of the above mentioned, the DoT notified amendments in various telecommunications license agreements including the following:

- Unified License;
- Unified License (Virtual Network Operator);
- Unified Access Services License;
- Commercial Very Small Aperture Terminal (VSAT) Closed User Group (CUG) services;
- INSAT- Mobile Satellite System (MSS) Reporting services;
- National Long Distance (“**NLD**”) License;

- International Long Distance (“**ILD**”) License; and
- ‘Sui generis’ category license granted to BSNL for provision and operation of satellite based services using gateway installed in India.

Bank Guarantee Reforms (BG Reforms)

The BG Reforms have been implemented by the DoT by amending the UASL Agreement, the VNO Agreement and the UL Agreement in the following manner:

1. **UL Agreement** - Reduction in the maximum limit of financial bank guarantees from INR 44 crores to INR 8.8 crores and the maximum limit of performance bank guarantees from INR 220 to INR 44 crores. Further, the financial bank guarantee is required to be 20% of the estimated sum payable (license fee for two quarters and other dues that are not securitized, and any other amount as deemed fit by the DoT).
2. **UL (VNO) Agreement & UASL Agreement** - Financial bank guarantee is required to be equivalent to 20% of the estimated sum payable (license fee for two quarters and other dues that are not securitized, and any other amount as deemed fit by the DoT). Further, the DoT has clarified that in case of multiple bank guarantees, the licensee will have an option to submit the bank guarantees centrally at one place instead of submitting separate bank guarantees basis the licensed service areas.

Additionally, the above-mentioned rationalization of bank guarantees is not applicable in the following cases:

- Bank guarantees furnished or required due to any court order or are subject matter of any litigation.
- Bank guarantees of licensees that are presently under Corporate Insolvency Resolution Process (CIPR) or related litigation, or those licensees that have closed operations (undergoing liquidation/liquidated).
- Bank guarantees, including performance bank guarantees, submitted in respect of past spectrum auctions for securitization of deferred spectrum instalments.

SACFA Clearance Simplification

The DoT, on October 6, 2021, incorporated the simplification of the procedure to obtain the clearances from the Standing Advisory Committee on Frequency Allocation (“**SACFA**”) for installing towers. The SACFA clearances process will be through self-declaration/automated time bound approvals on the Saral Sanchar portal (“**Portal**”) of the DoT, the procedure for which is as follows:

- Applicants are required to file SACFA cases indicating technical parameters like frequency, radiated power, emission, bandwidth, antenna parameters etc. on the Portal.
- Applicants will have to upload Frequency earmarking / assignment letter, challan copy and any other document (if required).
- A self-declaration / undertaking, indicating the above mentioned will be integral part of the application.
- The payment for the SACFA clearance form is to be made only through the Bharatkosh portal.
- Applications are cleared automatically, and the applications that do not meet the auto-settled criteria of the Airports Authority of India (AAI) and the office of the Joint Communications & Electronic Staff (JCES) in the defence ministry, will be processed by the members of SACFA through their integrated systems and will be cleared/rejected within 30 days.
- Upon clearance, applicants can download system generated SACFA clearance from the Portal.

Provision of Backhaul Connectivity

On October 8, 2021, the DoT amended all National Long Distance (“**NLD**”) Licenses (other than Unified License), permitting a licensee having licences/authorisations for both commercial Very Small Aperture Terminal (VSAT) Close User Group (CUG) service and NLD service to share VSAT Hub for providing authorised services.

Spectrum related Reforms

On October 11, 2021, in furtherance of the telecommunications reforms, the DoT notified spectrum related reforms to be implemented in the following manner:

- The requirement for the successful bidder to submit a Financial Bank Guarantee (“**FBG**”) of an amount equal to one annual instalment to securitize the instalment; and submit Performance Bank Guarantee (“**PBG**”) for roll out obligations etc., has been dispensed with by the DoT.
- Spectrum assignment pursuant to the auctions going forward will be for a period of 30 years as compared to the previous validity of 20 years.
- No Spectrum Usage Charges (“**SUC**”) will be levied and the conditions of minimum 3% weighted average SUC rate and SUC floor amount has been removed.
- Spectrum sharing will be encouraged, and the additional SUC of 0.5% for spectrum sharing will be removed.

Additionally, guidelines in supersession of the erstwhile guidelines for Sharing of Access Spectrum by Access Service Providers permitting spectrum sharing (subject to fulfilment of the relevant license conditions and DoT/Government specified conditions) between service providers holding Unified Access Service License / Unified License with authorization of Access Service in a Licensed Service Area, where both the licensees have spectrum in the same band, have been issued by the DoT. The licensees are also required to ensure that they fulfil the specified roll-out obligations and specified quality of service norms.

Digitization of Customer Application Form

The DoT, on October 11, 2021, issued guidelines for the Telecommunications Service Providers (“**TSPs**”) for digitization of paper Customer Application Forms (“**CAFs**”) including associated documents, wherein the requirement of storage of paper CAFs has been discontinued and all telecommunications licensees have been directed to replace the paper based CAFs with digitally signed scanned copies.

DoT amend the Calculation of Adjusted Gross Revenue

The DoT removed several non-telecommunication income items from the calculation of Adjusted Gross Revenue (“**AGR**”) including property rents, dividends and interests by introducing the concept of Applicable Gross Revenue (“**ApGR**”) by way of a notification dated October 25, 2021. The ApGR is arrived at by removing the following items from the Gross Revenue (which is inclusive of installation charges, late fees, sale proceeds of handsets, revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, etc.):

- (i) Revenue from operations other than telecommunication activities/operations.
- (ii) Revenue from activities under a license/permission issued by Ministry of Information and Broadcasting.
- (iii) Receipts from the Universal Service Obligation Fund.
- (iv) List of other income to be excluded from GR to arrive at ApGR.
 - a. Income from dividend;
 - b. Income from interest;
 - c. Capital Gains on account of profit of sale of fixed assets and securities;
 - d. Gains from Foreign Exchange rates fluctuations;
 - e. Income from property rent;
 - f. Insurance claims;
 - g. Bad Debts recovered;
 - h. Excess provisions written back.

DoT notifies the procedure for conversion of Dues

On October 25, 2021, the DoT, in furtherance to providing an opportunity to the TSPs to exercise the option for equity conversion of interest dues on the deferred AGR-related and Spectrum auction dues during moratorium period (“Dues”), notified the procedure for the conversion of such Dues. The TSPs may pay the Dues either by cash or by way of equity. The TSPs are required to communicate to DoT within the timeframe of 90 days, from date of notification by DoT, if they are exercising their option to convert the Dues to equity.

The DoT has clarified that the option of conversion of Dues to equity shares will apply only to those instalments covered by the moratorium and not to subsequent instalments. The procedure for approval of conversion of Dues will only be initiated after receipt of the written consent from the TSPs by the DoT. For the purpose of the aforementioned conversion, the Dues will be considered as a loan. The loan, at the sole discretion of the DoT, may be converted to preference shares instead of equity shares, and such preference shares may be optionally or compulsorily convertible and/or redeemable and/or participating in nature. The price of any preference shares for the purpose of conversion of the loan will be equivalent to equity shares.

TRAI releases draft Telecommunication Tariff (66th Amendment) Order, 2021 (“Order”)

TRAI on November 24, 2021, released an Order on ‘Regulatory framework for USSD-based tariff’. Pursuant to encouraging digitalization of payments and enhancing financial inclusion, the Reserve Bank of India constituted a High-Level Committee on Deepening of Digital Payments, which suggested rationalization of Unstructured Supplementary Service Data (“USSD”) charges to enable better adoption. The recommendations made by the High-Level Committee on CDDP are supported by the Department of Financial Services and further forwarded to the DoT. TRAI has also suggested rationalization of USSD charges on the pretext of protecting the interests of the USSD users and promoting digital financial inclusion. Subsequently, the TRAI has proposed to revise the framework for USSD based mobile banking and payment services by prescribing a “Nil” charge per USSD session for mobile banking and payment service, while keeping the remaining items of USSD unchanged. Additionally, the Authority might review the charge after a period of two years, based on experience gained.

Consultation Paper on Auction of spectrum in the frequencies identified for International Mobile Telecommunications (IMT) / 5G

The DoT, vide a letter dated September 23, 2021, requested the TRAI to furnish recommendations on the following issues in light of the telecommunications reforms announced by the union cabinet:

- Applicable reserve price, band plan, block size, quantum of spectrum to be auctioned and associated conditions for auction of spectrum in 526-698 MHz, 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2300 MHz, 2500 MHz, 3300-3670 MHz and 24.25-28.5 GHz bands for IMT/5G;
- Quantum of spectrum/band, if any, to be earmarked for private captive/isolated 5G networks, competitive/transparent method of allocation, and pricing, for meeting the spectrum requirements if captive 5G applications of industries for machine/plant automation purposes/M2M in premises;
- Associated conditions like upfront payments, applicable moratorium period after upfront payments, number of deferred payment instalments and other related modalities for auction of spectrum with validity for 30 years;
- Provisions for surrender of spectrum, conditions, and fee for such surrender of spectrum; and
- Any other recommendations deemed fit for the purpose of spectrum auction in these frequency bands, including the regulatory/technical requirements as enunciated in the relevant provisions of the latest Radio Regulations of the International Telecommunication Union.

Accordingly, TRAI issued a consultation paper dated November 30, 2021 on ‘Auction of spectrum in the frequencies identified for International Mobile Telecommunications (IMT) / 5G’, seeking inputs from the stakeholders. The comments on the issues raised in the consultation paper are invited from the stakeholders till December 28, 2021 and counter-comments by January 11, 2022.

Direction to TSPs for ensuring compliance with TRAI's Regulations/Directions

TRAI issued a direction dated December 7, 2021 to all access service providers to enable, with immediate effect, for all mobile subscribers (both prepaid and post-paid) requesting for a unique porting code, the facility to send SMS on short code 1900, to exercise their right to avail porting facility in accordance with the Telecommunication Mobile Number Portability Regulations, 2009, irrespective of the value of the tariff offers/vouchers.

Use of Low Power Equipment in the Frequency Band 865-868 MHz for Short Range Devices (Exemption from Licence) Rules, 2021 ("Rules")

The Ministry of Communications notified the Rules, on December 10, 2021, in supersession of erstwhile Use of Low Power Equipment in The Frequency Band 865-867 MHz for (RFID) Radio Frequency Identification Devices (Exemption from Licensing Requirement) Rules, 2005. The Rules clarify that it does not apply to the previously type approved wireless equipment.

The Rules have brought in several exemptions from licensing requirements to establish, maintain, work, possess or deal in any wireless telegraphy apparatus for the purpose of usage of low power short range radio frequency devices or wireless equipment, on non-interference, non-protection and shared and nonexclusive basis. These exemptions are subject to, complying with the technical specifications and working in the frequency band of 865-868 MHz. The Rules also lay down equipment construction standards and mandate that the wireless equipment is to be designed and constructed in such a manner that the bandwidth of emission and other parameters will conform to the limits of 865-868MHz. The Rules, while emphasising on safety standards and requirements, state that the safety related requirements will be as per the International or National standards such as International Telecommunication Union (ITU)/ European Telecommunications Standards Institute (ETSI) / American National Standards Institute (ANSI) / Bureau of Indian Standards (BIS) / International Commission on Non-ionizing Radiation Protection (ICNIRP) for the respective devices and frequency bands.

Compliance to Amendments in License Conditions

Pursuant to the amendments in telecommunication licenses issued by the DoT in March 2021 for procurement/use of telecommunication equipment from trusted sources, the DoT issued instructions in June to all licensees to submit an authorization letter for appointing a nodal officer for the Trusted Telecommunications portal which had been live with effect from June 15, 2021. Subsequently, in light of non-compliance with the aforementioned instructions, the DoT issued further instructions dated December 13, 2021, to those licensees that are yet to submit the authorisation letter to appoint a nodal officer for the Trusted Telecommunications portal to submit the same to the designated authority i.e., National Cyber Security Coordinator on an immediate basis.

Consultation Paper on Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India ("Regulatory Framework")

TRAI issued a consultation paper on the Regulatory Framework in line with the strategies stated in the National Digital Communications Policy (NDCP)-2018 to boost the digital infrastructure of the country which includes evolving the enabling regulatory frameworks and incentives for promoting the establishment of International Data Centres, Content Delivery Networks, and Independent Interconnect exchanges in India. Accordingly, this consultation paper has been initiated suo-moto by TRAI to seek the inputs of stakeholders on regulatory framework for promoting the establishment of (i) Data Centres, (ii) Content Delivery Networks, and (iii) Internet Exchange Points in the country. The stakeholders are requested to provide comments on adoption of new technologies for all the issues raised in this consultation paper by January 13, 2022, and counter comments, if any, may be submitted.

Amendment in the Time Period for storage of CDR/EDR/IPDR

On December 21, 2021, the DoT amended the UL, VNO and UASL agreements to change the time period of storage of Call Detail Record (CDR)/ Exchange Detail Record (EDR)/ IP Detail Record (IPDR) from one year to at least two years for scrutiny by the DoT for security reasons. Further, the time period stated in the security condition in Chapter IX of the UL agreement for the maintenance of: (i) CDR/IPDR for Internet including internet telephony service; and (ii) log- in/log-out details of all subscribers for services provided such as internet access, e-mail, internet telephony, by a licensee has amended by the DoT from one year to a minimum of two years.

Revised IP-I Registration Guidelines

The DoT, on December 22, 2021, revised the guidelines for Infrastructure Providers Category-I to permit 100% FDI under the automatic route subject to Press Note 4 dated October 6, 2021 and Press Note 3 dated April 17, 2020, wherein the cases requiring Government approval will continue to be on the approval route.

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