

F.No.305-18/2014-QoS
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Next to Zakir Hussain College,
New Delhi – 110 002.

Dated: the 14th November, 2014

DIRECTION

Subject: Direction for obtaining explicit consent of consumers for provisioning non-subscription based Value Added Service products embedded in SIM Application Tool Kit (STK) of SIM card.

F.No.305-18/2014-QoS---- Whereas the Telecom Regulatory Authority of India (hereinafter referred to as the Authority), established under sub-section (1) of Section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997)(hereinafter referred to as TRAI Act) has been entrusted with discharge of certain functions, *inter alia*, to regulate the telecommunication services, ensure technical compatibility and effective inter-connection between different service providers, lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect the interest of the consumers of telecommunication services;

2. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of TRAI Act, issued the Direction NO. 305-8/2004-QOS dated the 3rd May, 2005, *inter alia*, directing all Cellular Mobile Service Providers and Unified Access Service Providers that no chargeable value added service shall be provided to a customer without his explicit consent and that any value added service, which was earlier being provided free of charge, shall not be made chargeable without the explicit consent of the customer;

3. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of TRAI Act and clause 11 of the Telecom Tariff Order, 1999, issued a subsequent Direction No.303-1/2006-QOS dated the 30th October, 2007 directing all the Access Service Providers (including M/s BSNL and M/s MTNL), *inter alia*, to provide toll free facility for registering requests of customers for unsubscribing any value added service, the manner in which the offer for value added service is to be made; to obtain explicit consent of the consumer for value added services offered through tele-calling etc. and to keep complete records of the explicit consent obtained from the customer for subscription to the chargeable value added services for a period of one year;


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4. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of TRAI Act and clause 11 of the Telecom Tariff Order, 1999, also issued Direction No. 303-1/2006-QOS dated the 27th April, 2009 and subsequent amendment dated 4th September, 2009, containing procedure for obtaining the explicit consent of customers in respect of Value Added Services provided through pressing/dialing of certain keys in the mobile handset/ telephone set, service provider initiated call or Out Bound Dialer (OBD) call and also specified a procedure for unsubscribing the Value Added Services;

5. And whereas the Authority had, in exercise of the powers conferred upon it under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and clause 11 of the Telecom Tariff Order, 1999 also issued Direction No. 305-15/2011-QOS dated the 4th July 2011 to all Access Service Providers (including M/s BSNL and M/s MTNL), *inter alia*, to ensure that:

(i) in all cases where the value added services are activated through Out Bound Dialer or service provider initiated call or during pre-call ring back announcements (both voice as well as automated) and where a consumer dials a specified telephone number or short code or a telephone number providing interactive session for subscribing to a Value Added Service, the service provider shall obtain confirmation from the consumer through consumer originated SMS or e-mail or FAX or in writing within twenty four hours of activation of the value added service and charge the consumer only if the confirmation is received from him for such value added service and shall discontinue such value added service if no confirmation is received from the consumer;

(ii) every service provider shall, at least three days before the due date of renewal of a value added service, inform the consumer through SMS, the due date for renewal of such service, the charges for renewal and toll free telephone number for unsubscribing the value added service; and

(iii) if there is insufficient balance in the account of a consumer at the time of renewal of subscription to a value added service, the service provider shall send a request, through SMS, to the consumer to indicate his consent for continuing such service by sending an SMS as "Yes" or "No" to a toll free number and if, in response to such request, the consumer indicates his explicit consent by conveying "Yes", such value added service shall be renewed and such consumer shall be informed by the service provider through SMS that the charges for renewal of subscription of value added service shall be deducted from subsequent recharge;

6. And whereas the Authority had, in exercise of powers conferred upon it under section 13, read with sub-clause (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Tariff Order, 1999 issued an amendment to

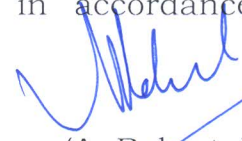

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Direction No. 305-15/2011-QoS dated the 4th July 2011, vide Direction No. 305-15/2011-QoS dated 10th July 2013 which, *inter alia*, prohibits activation of value added services without the explicit consent of the consumers and also prescribes the manner in which the explicit consent is required to be obtained. It also prescribed for a toll free Number 155223 for deactivation of value added services and the procedure of deactivation of value added services.

7. And whereas, the Authority monitors the compliance of the aforesaid directions pertaining to the activation and deactivation of value added services and while examining some of the complaints received by the Authority relating to activation of value added services without consent, it observed that the genesis of some of the complaints is that a number of value added service products are embedded in the SIM card and in many cases the consumer accidentally or unknowingly clicks these products and the customer is immediately charged for the service, without being provided with any information regarding the applicable charges and also without being offered any opportunity to give consent as to whether he wants to proceed or not;

8. And whereas the Authority noticed that the value added services provided in cases referred to in paragraph 7 above relate to pay per use value added services and are not subscription based value added services and the service providers have not implemented the Authority's Directions on value added services for such pay per use, activation of non-subscription based value added services on the plea that these are not subscription based value added services and the Authority's directions are applicable for only subscription based value added services;

9. Now, therefore, the Authority, in exercise of the powers conferred upon it under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and clause 11 of the Telecom Tariff Order, 1999 and for the reasons mentioned in paragraphs 7 and 8 above, to ensure compliance of terms and conditions of license and to protect the interest of consumers, hereby directs all Access Service Providers (including M/s Bharat Sanchar Nigam Ltd. and M/s Mahanagar Telephone Nigam Ltd.) to ensure within sixty days of issue of this Direction that the value added service for products embedded in the SIM Application Tool Kit (STK) of SIM card is provided to the consumer only after obtaining the explicit consent of the consumer in accordance with the procedure specified in Annexure-I.


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(A. Robert Jerard Ravi)
Advisor (CA & QoS)

To
All Access Service Providers

Process of providing value added service for products embedded in the SIM card

(a) For obtaining explicit consent through consumer originated SMS

Step – 1. The consumer explores the VAS link in the SIM Application Tool Kit (STK) of the SIM card and clicks the link.

Step – 2. The service provider after receiving the message/ information shall inform consumer through SMS regarding the value added service requested; its validity; the charges thereof and the consumer shall be asked to confirm the request within sixty minutes by sending 'yes' to the specified number;

Step – 3. If no confirmation is received from the consumer, the request of the consumer shall not be processed;

Step – 4. If the consumer confirms his request, the value added service platform of service provider shall deliver the product on the mobile number of the consumer and the consent logs shall be stored in the system of the service provider in an un-editable format;

Step – 5. The consumer shall receive an SMS immediately after delivery of the product to the consumer, informing the consumer about charges deducted and the balance remaining;

(b) For obtaining explicit consent through third party consent gateway

Step – 1. The consumer explores the VAS link in the SIM Application Tool Kit (STK) of the SIM card and clicks the link.

Step – 2. The service provider after receiving the message/ information shall inform the consumer through SMS regarding the value added service requested; its validity; the charges thereof and the consumer shall be forwarded to the "Consent Gateway" set up by the service provider and managed by a third party;

Step – 3. The "Consent Gateway" shall seek the second consent of the consumer;

Step – 4. The consumer shall give his consent by pressing the relevant key, and the consent logs shall be stored in the system of the service provider in an un-editable format;

Step – 5. The "Consent Gateway" shall forward the consent of the consumer to the value added service platform of the service provider;

Step – 6. The value added service platform of the service provider shall deliver the product on the mobile number of the consumer;

Step – 7. The consumer shall receive an SMS immediately after delivery of the product to the consumer, informing the consumer about the charges deducted and the balance remaining;

A handwritten signature in blue ink, followed by a diagonal line and the date '14/11' written below it.