

**TO BE PUBLISHED IN THE GAZETTE OF INDIA
EXTRAORDINARY PART III SECTION 4**

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 3rd June 2020

No. 301-03/2020-F&EA — In exercise of the powers conferred upon it under sub-section (2) of section 11, read with sub-clause (i) of clause (b) of sub-section (1) of the said section, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication Tariff Order, 1999, namely: -

**THE TELECOMMUNICATION TARIFF (SIXTY FIFTH AMENDMENT) ORDER, 2020
(No. 01 of 2020)**

1. (1) This Order may be called the Telecommunication Tariff (Sixty Fifth Amendment) Order, 2020.
(2) It shall come into force from the date of its publication in the Official Gazette.

2. In clause 3 of the Telecommunication Tariff Order, 1999 (hereinafter referred to as the principal tariff order), for the word and figures “Schedule I to XIII”, the word and figures “Schedule I to XII” shall be substituted.

3. In the principal tariff order, Schedule XIII and entries thereunder shall be deleted.

**(S. K Mishra)
Pr. Advisor (F&EA)**

Note.1. – The Telecommunication Tariff Order, 1999 was published in the Gazette of India, Extraordinary, Part III, Section 4 under notification No.99/3 dated 9th March, 1999, and subsequently amended as given below:-

Amendment No.	Notification No. and Date
1 st	301-4/99-TRAI (Econ) dated 30.3.1999
2 nd	301-4/99-TRAI(Econ) dated 31.5.1999
3 rd	301-4/99-TRAI(Econ) dated 31.5.1999
4 th	301-4/99-TRAI(Econ) dated 28.7.1999
5 th	301-4/99-TRAI(Econ) dated 17.9.1999
6 th	301-4/99-TRAI(Econ) dated 30.9.1999
7 th	301-8/2000-TRAI(Econ) dated 30.3.2000
8 th	301-8/2000-TRAI(Econ) dated 31.7.2000
9 th	301-8/2000-TRAI(Econ) dated 28.8.2000
10 th	306-1/99-TRAI(Econ) dated 9.11.2000
11 th	310-1(5)/TRAI-2000 dated 25.1.2001
12 th	301-9/2000-TRAI(Econ) dated 25.1.2001
13 th	303-4/TRAI-2001 dated 1.5.2001
14 th	306-2/TRAI-2001 dated 24.5.2001
15 th	310-1(5)/TRAI-2000 dated 20.7.2001
16 th	310-5(17)/2001-TRAI(Econ) dated 14.8.2001
17 th	301/2/2002-TRAI(Econ) dated 22.1.2002
18 th	303/3/2002-TRAI(Econ) dated 30.1.2002
19 th	303/3/2002-TRAI(Econ) dated 28.2.2002
20 th	312-7/2001-TRAI(Econ) 14.3.2002
21 st	301-6/2002-TRAI(Econ) dated 13.6.2002
22 nd	312-5/2002-TRAI(Eco) dated 4.7.2002
23 rd	303/8/2002-TRAI(Econ) dated 6.9.2002
24 th	306-2/2003-Econ dated 24.1.2003
25 th	306-2/2003-Econ dated 12.3.2003
26 th	306-2/2003-Econ dated 27.3.2003
27 th	303/6/2003-TRAI(Econ) dated 25.4.2003
28 th	301-51/2003-Econ dated 5.11.2003
29 th	301-56/2003-Econ dated 3.12.2003
30 th	301-4/2004(Econ) dated 16.1.2004
31 st	301-2/2004-Eco dated 7.7.2004
32 nd	301-37/2004-Eco dated 7.10.2004
33 rd	301-31/2004-Eco dated 8.12.2004
34 th	310-3(1)/2003-Eco dated 11.3.2005
35 th	310-3(1)/2003-Eco dated 31.3.2005
36 th	312-7/2003-Eco dated 21.4.2005
37 th	312-7/2003-Eco dated 2.5.2005
38 th	312-7/2003-Eco dated 2.6.2005

39 th	310-3(1)/2003-Eco dated 8.9.2005
40 th	310-3(1)/2003-Eco dated 16.9.2005
41 st	310-3(1)/2003-Eco dated 29.11.2005
42 nd	301-34/2005-Eco dated 7.3.2006
43 rd	301-2/2006-Eco dated 21.3.2006
44 th	301-34/2006-Eco dated 24.1.2007
45 th	301-18/2007-Eco dated 5.6.2007
46 th	301-36/2007-Eco dated 24.1.2008
47 th	301-14/2008-Eco dated 17.3.2008
48 th	301-31/2007-Eco dated 1.9.2008
49 th	301-25/2009-ER dated 20.11.2009
50 th	301-24/2012-ER dated 19.4.2012
51 st	301-26/2011-ER dated 19.4.2012
52 nd	301-41/2012-F&EA dated 19.09.2012
53 rd	301-39/2012-F&EA dated 1.10.2012
54 th	301-59/2012-F&EA dated 05.11.2012
55 th	301-10/2012-F&EA dated 17.06.2013
56 th	301-26/2012-ER dated 26.11.2013
57 th	312-2/2013-F&EA dated 14.07.2014
58 th	312-2/2013- F&EA dated 01.08.2014
59 th	310-5 (2)/2013-F&EA dated 21.11.2014
60 th	301-16/2014-F&EA dated 09.04.2015
61 st	301-30/2016-F&EA dated 22.11.2016
62 nd	301-30/2016-F&EA dated 27.12.2016
63 rd	312-1/2017-F&EA dated 16.02.2018
64 th	301-20/2018-F&EA dated 24.09.2018

Note 2. – The Explanatory Memorandum explains the reason for Telecommunication Tariff (Sixty Fifth Amendment) Order, 2020.

EXPLANATORY MEMORANDUM

A. Introduction and Background

1. The Telecom Regulatory Authority of India had issued the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) dated the 1st December, 2010 to provide an effective mechanism for curbing unsolicited commercial communications (UCC). All the provisions of regulations came into force from 27th September 2011.

2. Further, with the same objective of curbing UCC, the Telecom Regulatory Authority of India had issued the Telecommunication Tariff (54th Amendment) Order dated 5th November 2012 (54th Amendment Order). At the time of issuing the 54th Amendment Order, the Authority observed that subscribers undertaking telemarketing activities using normal mobile connections use discounted SMS packages available in the market, for sending bulk promotional SMSs. Based on the public consultative process, the principal tariff order was amended mandating the service providers not to allow sending of more than one hundred SMS per day per SIM at concessional rate. Further, it was provided that subscribers can send SMS beyond one hundred SMS per day per SIM, but all such SMSs will be charged at the rate of not less than fifty paisa per SMS. The Authority considered that notifying a tariff of minimum of fifty paisa per SMS for SMS exceeding 100 SMS per SIM per day as one of the several measures initiated to effectively protect the telecom subscribers from the menace of UCC.

3. In 2017, the Authority noted that despite various measures taken to curb UCC under the framework of the Telecom Commercial Communications Customer Preference Regulation, 2010 (TCCCPR 2010) and other Directions issued on the issue, UCC complaints were on a rise and the problem was not fully under control. To address various issues and concerns, Consultation Paper on UCC was issued on the 14th of September 2017. Pursuant to the consultative process, the Authority repealed the TCCCPR 2010 and introduced the Telecom Commercial Communications Customer Preference Regulations, 2018 (6 of 2018) dated the 19th July, 2018 (TCCCPR, 2018). The new regulatory framework prescribed under the TCCCPR 2018 is technology driven and prescribes technological solutions to detect the UCC such as advanced signature solutions, UCC detect system etc.

4. It is pertinent to keep in mind that the TRAI has moved over the years, from a stage of “fixation of tariff rates” to stage of “forbearance with prior Approval stage” and finally to a stage of “forbearance regime with post-facto reporting obligation” with regulatory oversight. Accordingly, extant policy stance of Tariff regulation gives the TSPs the requisite freedom to design tariff according to their best commercial interest in the prevailing market conditions. This has led to variety of innovative tariffs in the market furthering the objective of provision of telecom services at reasonable and affordable rates to Consumers.

5. Considering the comprehensiveness of the regulatory framework prescribed in the TCCCPR 2018, now there may not be any need of restricting the number of SMSs allowed to be offered on concessional rate or for regulating the tariff of SMSs for protecting the telecom subscribers from the menace of UCC. Further, the move would be consistent with the general TRAI regulatory approach of forbearance in relation to determination of tariffs.

6. Accordingly, a Draft Telecommunication Tariff (65th Amendment) Order, proposing to delete Schedule XIII to the principal tariff order, thereby implying the move from regulating tariffs for more than 100 SMSs per SIM per day to the state of forbearance in matters of determination of tariffs for SMSs, was issued on 18th February, 2020. The Draft Telecommunication Tariff (65th Amendment) Order was placed in public domain on TRAI’s website. Stakeholders were invited to submit written comments by 3rd March, 2020 and counter-comments by 17th March, 2020. The comments and the counter-comments received from the stakeholders were also placed on TRAI’s website.

7. Considering the developments arising from spread of Covid-19 pandemic and consequent preventive measures required by the Government of India, including, inter-alia, prohibition of gatherings and adherence to social distancing guidelines, the TRAI conducted an online Open House Discussion (OHD) for the stakeholders on 6th May, 2020 and gave them one more opportunity to not only present their views verbally but also permitted them to submit any supplementary information in writing. The contents of the Draft Telecommunication Tariff (65th Amendment) Order and the views of the stakeholders thereupon were deliberated by the Authority. A brief analysis of the key issues is noted in succeeding paragraphs.

B. Analysis of the key issues raised by the stakeholders against the Draft Telecommunication Tariff (65th Amendment) Order

8. The issues raised by some of the stakeholders against the proposal to repeal the provisions of the 54th Amendment Order can be classified under three broad categories, viz.:

- (i) Issues relating to efficacy of TCCCPR, 2018;
- (ii) Need for a complementary prevention measure in form of tariff regulation for number of SMSs per Sim per day to support the provisions of TCCCPR, 2018 to curb the practice of UCC; and
- (iii) Waiting for the review for some more period till the effectiveness of TCCCPR, 2018 becomes a little clearer.

9. Apart from the aforesaid concerns relating to the impact of the amendment on UCC, one stakeholder has pointed out that the extant provision allowed the service providers to cater to daily needs of a genuine individual customer by means of providing sufficient free/discounted SMS while at the same time recovering a higher price from a fraction of subscribers for higher number of SMSs to cover the implicit costs. Based on the same, TSP has submitted that any repeal of the 54th Amendment Order would disturb this fine balance. It has also been argued that the impact would be more pronounced in view of the fact that the Authority has not yet chosen to provide any forward path on the IUC for SMS services.

10. Each of the aforesaid comments have been further examined and analysis thereon is presented below.

Analysis of issues relating to UCC concerns

i. Issues relating to efficacy of TCCCPR, 2018

11. Some of the stakeholders pointed out that TCCCPR 2018 may not be able to control UCC SMS from 10-digit numbers. However, the apprehensions is not based on facts. In this regard, it may be noted that there are specific provisions in TCCCPR 2018 to control UCC SMS viz.

- a) Provisions to register the principal entities who undertake to get their products popularized using telemarketers which would make it easy to identify the principal entities using unauthorized telemarketers to popularize their products;
- b) Commercial incentives given to telemarketers to popularize their products including those who are using unregistered resources to do the telemarketing activities.
- c) Provisions to restrict outgoing services of the sender in case of a complaint against such numbers for sending UCC and if such complaints are found to be valid and sender continues to send spam despite notices served to him, provision exists in the regulations to disconnect as well.

12. Apart from the above, there is a well-defined procedure to provide SIM after verification of proof of identity (POI) and proof of address (POA). Hence, any such person/entity using telecom resources for sending unsolicited commercial communication SMS can be easily identified and all their telecom resources disconnected.

13. Based on the aforesaid, it may be said that the provisions contained in TCCCPR 2018 are a sufficient deterrent and must be strictly enforced by service providers. Still, if at all, any UCC violations are noticed or reported in respect of UCC from Registered or Unregistered Telemarketers (RTM/ UTM) then it would be appropriately dealt under these regulations. Therefore, the submission of TSPs that TCCPR 2018 may not be able to control UCC SMS from 10-digit numbers is not based on the facts and hence not tenable.

ii. Need for a complementary prevention measure in form of tariff regulation for number of SMSs per Sim per day to support the provisions of TCCCPR, 2018 to curb the practice of UCC

14. Some of the stakeholders had raised concerns that the safeguards in TCCCPR 2018 such as: (i) usage caps being a post facto measure; (ii) possibility of using multiple SIMs for sending UCC SMS; and (iii) possibility of UTMs shifting from A2P to P2P to send UCC SMS. Based on the same, it was argued that a complementary prevention

measure in form of tariff regulation as contained in TTO (54th Amendment) Order is needed.

15. It is correct that usage cap is post facto measure. However, it may be noted that there is no way to determine in a non-invasive manner whether a particular P2P SMS is a telemarketing message as content of communications are not examined by the TSPs. Any mechanism to restrict sending P2P messages in a proactive manner and applicable to all may cause more harm than intended benefits.

16. The submission of stakeholders that UTMs can change the SIM and continue sending SMS, is not possible as SIMs are provided after due verification of POI/POA. Even now possibility of using SIM bank with multiple SIMs cannot be ruled out which is difficult to be identified also. If such limits as fixed under 54th Amendment Order are removed and complaints are registered, the individual/entity can still be identified irrespective of the fact whether it is continuing with the same SIM or has changed his number.

17. In regard to both the above concerns/apprehension, what is required is a strict deterrent regime and there are adequate provisions in TCCCPR 2018 to control misuse of such telecom resources and initiating exemplary action against violators including disconnection of their telecom resources. Hence it is unlikely that anyone with ordinary prudence will even venture and put all their telecom resources on stake for sending such unsolicited commercial communication SMS. However, if someone indulges in such a misbehavior then TCCCPR,2018 has provisions to deal with it.

18. As regards possibility of UTMs shifting from A2P to P2P for sending UCC SMS, it may be noted that under new regulatory framework TCCCPR 2018, Principal entities have to get registered with the TSPs and then only they can use the services of Registered Telemarketers to send the commercial communications. New regulations have introduced number of measures which have been taken to plug the gaps such as not allowing to download preference data, intermediaries could have helped them in carrying out UTM related activities. The new framework encourages principal entities to use authorized resources and give them lot of advantages to conduct business legally and in a lawful manner. New measures would also help principal entities to protect their data, assert their identity, coordinate with TSPs to address the concerns of fraudulent use of their identity. On one side, Principal entity has lot of incentives to use authorized

path to send commercial communications and the other hand they have strong disincentives to adopt unauthorized P2P path. In case, a principal entity is found to be involved in violations of the regulations by using unauthorized P2P path for sending commercial communications then such activities can easily and quickly be discovered by the TSPs. And TSPs can take actions against such violators as per the regulations. Violators may have to face serious implications. Therefore, such possibilities are very remote and needs to be effectively addressed under provisions of TCCPR 2018

iii. Waiting for the review for some more period till the effectiveness of TCCPR, 2018 becomes a little more clear

19. TCCPR 2018 Regulation has been notified on 19th of July 2018 and has come in effect in its entirety on 28th of February 2019. Therefore, it is incorrect to say that Regulations have not been implemented or it is required to wait more for assessing the impact. As per the regulatory framework, TSPs are obliged to comply with the regulatory framework prescribed therein to control both unsolicited voice calls as well as SMS and it is expected that the service providers will follow the new regulations, both in letter and spirit. There is no merit in argument that the Authority should wait for some more period till the effectiveness of TCCPR,2018 becomes clearer.

Analysis of Other Issues

20. A stakeholder has commented linking the contents of Draft 65th Amendment Order with the separate consultation paper issued on tariff issues and also linking with the IUC framework. In this regard, it may be noted that some operational/technical linkages can always be drawn between various tariff issues, however, that does not imply that if a specific tariff issue is examined, all the other provisions need to be reviewed at the same time. The exercise of reviewing the regulatory framework must emphasize consistency of regulatory framework and undertake changes in related provisions which may make regulatory framework inconsistent. The 54th Amendment Order was not issued in context of IUC or to regulate tariff of SMS in general, instead the same was issued to supplement the provisions of the TCCPR 2010 with a view to curb UCC. Thus, there are no contextual linkages between the contents of Draft 65th Amendment Order and that of consultation paper on tariff issues and/or IUC. Accordingly, the submissions of the TSP in this regard are not agreeable.

21. A key issue pointed out by the stakeholders in favor of the proposed amendment relates to inadvertent effect of the provisions inserted by the Telecommunication Tariff (54th Amendment) Order dated 5th November 2012 on the bulk but non-commercial users of SMS service. Various individuals who are associated with Indian Railways in their personal or official capacity have submitted that the Indian Railways has to send bulk SMSs for operational, maintenance and safety of train operations and the forced minimum price of 50 paise per SMS for every SMS beyond 100 SMS per SIM per day is causing an undue financial drain on the resources of Indian Railways. It has been argued that while the purpose of the 54th Amendment Order was to curb UCC, it has failed to take into consideration the genuine requirements of organizations such as Indian Railways.

22. The TRAI, as regards regulation of tariffs, has primarily followed the policy of forbearance and has given the service providers the freedom to design the tariffs suited to the prevailing market conditions. The forbearance regime has led to introduction of new and innovative tariffs in the market designed to provide telecom services at reasonable and affordable rates to consumers. While on one side, TRAI, through its tariff regulation, has enlarged the scope of forbearance regime, on the other side, it has continuously endeavored, by providing adequate safeguards to protect and promote consumer interests while ensuring orderly growth of the telecom sector.

23. In the instant case, there appears to be a substantial merit in the argument of the consumers that extant TTD provision does have the potential of adversely affecting genuine non-commercial bulk users of SMSs who are compelled to pay significantly higher rates considering the SMS tariff offered by service providers for less than 100 SMSs per SIM per day. This disparity results not due to the market conditions and prevailing competition. It happens because of the regulatory intervention in form of 54th Amendment to TTD. A regulatory provision in current context can be considered as proportionate till its efficacy and requirement for curbing the menace of UCC is expected to balance the adverse effects of tariff regulation. With the introduction of TCCCPR 2018 which endeavors resorting to technological developments in this area and provides for a framework comprising of close cooperation with the service providers, it is observed that the tariff regulation which has the potential of adversely affecting the interests of genuine non-commercial bulk users of SMS is no longer required and therefore can be removed. Accordingly, the Authority has decided to withdraw the provisions of 54th Amendment Order.