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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 21st October, 2008

**THE TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS
(SECOND AMENDMENT) REGULATIONS, 2008.
(No. 3 OF 2008)**

No. 104-15/2008-MN.-----In exercise of the powers conferred by section 36, 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), the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), namely:-

1. (1) These regulations may be called the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In regulation 7 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), (hereinafter referred to as the principal regulations), in sub-regulation (2), after the words “the National Do Not Call Register”, the words “and such option shall form part of the application form or agreement form or enrolment form, or any other form, as the case may be, required for providing the telephone service connection” shall be inserted at the end.

3. In regulation 16 of the principal regulations, -----

(a) in sub-regulation (1), for the words “ make a complaint, mentioning the call originating telephone number,” the words “make a complaint, mentioning therein, the telephone number from which the unsolicited commercial communication was received by the complainant, the date, time and brief description of such unsolicited commercial communication” shall be substituted;

(b) in sub-regulation (2), in clause (c), for the brackets and words “(including call detail record and other relevant information and documents in respect of

the complaint)”, the brackets and words “[along with the date of lodging of the complaint with the service provider and the particulars of the unsolicited commercial communication as furnished by the complainant under sub-regulation (1)]”, shall be substituted;

(c) in sub-regulation (4), for the words “ disconnect the telephone”, the words “disconnect the telecom resources like telephone number, internet protocol (IP) or any other form of connectivity with SMS centre” shall be substituted;

(d) after sub-regulation (4), the following sub-regulations shall be inserted at the end, namely:-

“(5) In case any complaint has been forwarded by a service provider, after the expiry of seven days referred to in sub-regulation (2), to the Originating Access Provider, such Originating Access Provider shall, notwithstanding that such complaint had been forwarded to it after seven days referred to in said sub-regulation (2), take action on such complaint in accordance with the provisions of sub-regulation (3) or sub-regulation (4), as the case may be, and forwarding of such complaint after the expiry of seven days referred to in sub-regulation (2) shall continue to be in contravention of the provisions of the aforesaid sub-regulation (2) by such service provider who forwarded such complaint after the said period of seven days.

(6) The Originating Access Provider to whom a complaint has been forwarded under clause (c) of sub-regulation (2), shall, within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act,-

(a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;

(b) intimate, the result of the investigation and the action taken by it on the basis of the complaint, to the service provider which forwarded the complaint;

(c) maintain records of the complaints and their redressal, including relevant call detail records, for a period of atleast six months from the date of redressal of each complaint.

(7) The service provider who received the complaint of the subscriber under sub-regulation (1) shall, upon receipt of the intimation from the Originating Access Provider under clause (b) of sub-regulation (6), within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act, intimate, to the complainant, the result of the investigation and the action taken by the Originating Access Provider on his complaint.

(8) In case the service provider to whom a complaint has been made by a

subscriber under sub-regulation (1), finds after carrying out the verification under clause (b) of sub-regulation (2), that the unsolicited commercial communication in respect of which complaint had been made by the subscriber, originated from its own network, such service provider, being the Originating Access Provider, shall, within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act ,-
(a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;
(b) inform the complainant about the result of the investigation and the action taken by such service provider on the basis of his complaint;
(c) maintain records of the complaints and their redressal, including relevant call detail records, for a period of atleast six months from the date of redressal of each complaint”.
4. In regulations 17A, 17B and 17C of the principal regulations, for the words and figures “ regulation 15 or regulation 16 or regulation 17,” wherever they occur, the words and figures “regulation 7 or regulation 15 or regulation 16 or regulation 17” shall be substituted;
5. In regulation 17D of the principal regulations, in sub-regulation (1), -----
(a) clause (b) shall be omitted;
(b) clause (c) shall be numbered as clause (b) thereof and in clause (b) so numbered,-----
(i) for the words “one representative”, the words “two representatives” shall be substituted;
(ii) for the word “Division”, the word “Divisions” shall be substituted;
6. In regulation 17E, 17F and 17H of the principal regulations, for the words and figures “regulation 15 or regulation 16 or regulation 17” wherever they occur, the words and figures “regulation 7 or regulation 15 or regulation 16 or regulation 17” shall be substituted.

(R.K. Arnold)
Secretary

Note.1. — The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification number No. 101--- 60/2006-

MN dated the 5th June, 2007 and subsequently amended, vide notification number No. 15-2/2008-RE dated the 17th March, 2008 published in the Gazette of India, Extraordinary, Part III, Section 4 dated the 17th March, 2008.

Note.2. --The Explanatory Memorandum explains the objects and reasons of the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008.

Explanatory Memorandum

The Authority has made Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) (hereinafter referred to as the principal regulations) providing for setting up of mechanism for registering requests of subscribers for not receiving unsolicited commercial communications. The Authority has subsequently amended the principal regulations by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 (1 of 2008) to improve the effectiveness and compliance of the said regulations by imposing financial disincentives in case of non-compliance of certain provisions of the principal regulations by the telecom service providers.

2. As per regulation 7 of the principal regulations, Access Providers are required to provide option to every new subscriber at the time of providing telephone connection, for registration of his telephone number in the National Do Not Call Register (NDNC). In the absence of specific provision as to the manner in which the service provider is required to provide such options to the new subscribers, some of the access providers are merely informing such new subscribers about the option to register in the NDNC. Therefore, it is felt that there is necessity to provide for the manner in which such option is to be given to the new subscriber, i.e., as part of the customer agreement/enrollment form meant for providing a new telephone connection.

3. On the basis of the experience in handling the complaints, certain service providers have represented that some of the service providers are rejecting the forwarded complaints on the ground that the same were received by them beyond the period of seven days as specified in sub-regulation (2) of regulation 16. While the forwarding of the complaints by a service provider beyond the period of seven days as specified in the said regulation is a violation of the said sub-regulation, the same cannot be allowed to be taken as an excuse for not taking action on such complaints by the Originating Access Provider. Therefore, there is need to incorporate suitable provisions mandating that even in case of complaints forwarded after the expiry of the period of seven days as specified, the Originating Access Provider shall take action in terms of the provisions of sub-regulations (3) and (4) of regulation 16 so as to ensure that no complaint which has been made to a service provider is accordance with sub-regulation (1) goes unredressed.

4. During the course of monitoring of implementation of the principal regulations, it has been observed by the Authority that there is also a need to specify time limits for handling complaints by the Originating Access Provider

or the service provider (in case such service provider itself is the Originating Access Provider) and for communication of the result of investigation and the action taken on the basis of the complaint to the subscriber who made the complaint. Accordingly, suitable provisions have been incorporated in the present amendment to the principal regulations providing for time limits to be specified by the Authority under a direction under section 13 of the TRAI Act, 1997 for these purposes.

5. Further, it has been brought to the notice of the Authority that requirement of forwarding of call detail records (CDR) is acting as hindrance to the timely forwarding of complaints and that the insistence of some of the service providers on the forwarding of call detail records before accepting UCC complaints, results in a situation where timely redressal of the complaints becomes difficult. In view of this, clause (c) of sub-regulation (2) has been suitably modified removing the mandatory requirement of sending/forwarding CDRs with each and every forwarding complaint and mandating the forwarding of details of the complaint including the date of lodging of the complaint and the particulars of the unsolicited commercial communication as furnished by the complainant under sub-regulation (1) and other relevant information and documents in respect of the complaint to the Originating Access Provider along with the complaint. However, the present amendment mandates the service provider and the Originating Access Provider to maintain the records of the complaints and their redressal which would obviously include relevant call detail records.
