



Cellular Operators Association of India

RSM/COAI/192
September 3, 2012

The Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Old Minto Road,
New Delhi 110002

Subject: COAI response to the TRAI Draft "The Telecom Commercial Communications Customer Preference (Tenth amendment) Regulations, 2012"

Dear Sirs/Madam,

This is with reference to the TRAI's Draft "The Telecom Commercial Communications Customer Preference (Tenth amendment) Regulations, 2012"

Our detailed response to the same is enclosed for your kind perusal.

We request TRAI to kindly hold a consultation process/meeting with the stakeholder's before finalizing/notifying the said Regulation.

We request TRAI to kindly finalize/notify the Regulation only after granting us an opportunity of a discussion with the Authority.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,

R. S Mathews
Director General

Encl: as above

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COAI response to the TRAI Draft “The Telecom Commercial Communications Customer Preference (Tenth amendment) Regulations, 2012”

- I) **TRAI Regulation (3) Sub-Regulation (4)** : “for the second proviso, the following proviso shall be substituted, namely:-

“Provided further that Access Providers shall, at the time of providing a telephone connection, whether Basic or Cellular Mobile Telephone, to a new subscriber, other than a telemarketer registered with the Authority, provide in the Customer Acquisition Form the details of Customer Preference Registration facility and obtain from such subscriber an undertaking that the SIM purchased by him shall not be used for telemarketing and in case such SIM is used for telemarketing, he shall be liable to pay such charges as may be decided by the Authority and the telecom resources used for the purpose of telemarketing shall also be liable to be disconnected.”

&

- II) **TRAI Regulation (19) Sub-Regulation (11)** “for sub-regulation (11), the following sub-regulation shall be substituted, namely:-

“(11) If the Originating Access Provider to whom a complaint has been forwarded under sub-regulation (6) finds that----

- (i) the unsolicited commercial communication has been sent through voice call and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-
- (a) direct the subscriber to forthwith discontinue the sending of unsolicited commercial communications, and if such subscriber sends a commercial communication through voice call to any subscriber on the second occasion, charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through voice call to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber;
 - (b) deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;
 - (c) not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and
 - (d) update the action taken by it in the National Telemarketer Register; or
- (ii) the unsolicited commercial communication has been sent through SMS and the subscriber sending such SMS is not registered with the Authority as a telemarketer, it shall-
- (a) charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through SMS to any subscriber on the second occasion, disconnect all the telecom resources of such subscriber;
 - (b) deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;

- (c) not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and
(d) update the action taken by it in the National Telemarketer Register.”*

COAI Response:

1. At the outset, we would like to submit that the above mentioned provisions are operationally, logistically and legally not tenable and hence the same should be dropped while finalizing the Tenth amendment to the Regulation.
2. We would like to highlight following points to support our views on the same:

a. Recovery of penalty from Customer for UCC (unregistered Telemarketer):

Following challenges makes this provision impossible to implement:

- i) Presently, the Average Revenue per User (ARPU) for both the prepaid and postpaid services are very low i.e. less than Rs 200 per month. For **the prepaid subscribers**, in most of the cases of violation of the regulation the service providers would not be able to levy Rs. 500 as stipulated in the regulations as the subscriber would not have sufficient balance in his account. Further, we are of the view that it would not be correct to deduct any amount depending upon customer's balance as that will be arbitrary and not as per the stipulation of the regulation.
- ii) Hence it is not possible to implement this Amendment for Pre-paid subscribers. There are several issues in case of postpaid subscribers as well.
- iii) A subscriber after doing multiple violations may discard the SIM and become untraceable; in such cases the service providers would not be able to recover the penalty from the subscriber. Further, the proposed regulation puts onus on service provider for the violation and deposit of Rs 500/- per such violation getting reported irrespective of whether the penalty has been recovered from the subscriber or not.
- iv) There will thus be various logistical issues regarding the mode and method of the recovery of the penalty from the subscriber, the same will be very tedious and onerous for the operators.
- v) In case the Authority expects operators to deposit the penal amount to TRAI, irrespective of the fact that operators may or may not have managed to collect the same from the telemarketer would be grossly unfair.

Thus in light of the above issues we would like to submit that putting onus on the service providers to recover the penalty from the subscriber for the said violation is not practical and justified.

b. Disconnection of all telecom resources (of unregistered Telemarketer)

- i) The regulations propose disconnection of **all** telecom resources given to that customer in case of repeated offence by such customer with regards to the TCCCPR regulation.

- ii) In this regard, we would like to submit that disconnecting all the resource of such customer may not be feasible in case of the unregistered telemarketer.
- iii) In the case of registered Telemarketer there is a unique Identification e.g. TAN which can be used for identifying other resources for that Telemarketer and thus all the other resources of such telemarketer could be disconnected, however in case of the unregistered telemarketer there is no such unique identity being kept by the operators, hence it will not be possible for the operators to disconnect the other resources of such unregistered telemarketer.

c. Restriction on repeat offenders from applying for phone connection for 1 year:

- i) It has been proposed vide the draft regulation that the telecom service providers should not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected due to the violation of the TCCCPR regulation.
- ii) In this regard, we would like to submit that the said embargo on the subscribers may not be pragmatic; as such a subscriber may take telecom resource from some other service provider.
- iii) Further, though the customer may be penalized and his resources could be disconnected by the service provider on the repeated offence, but we are of the view that it is not legally tenable to restrain a person from having another telephone connection for a year. This may give rise to multiple disputes and court cases.

d. Proof of the UCC in case of communication via Voice:

- i) There could be fictitious complaints regarding UCC (SMS / call) which will be difficult to prove.
- ii) The same will result in operator becoming party to the dispute and thereby multiplying the consumer cases in different consumer courts.

In light of the above highlighted issues we are of the view that the proposed Regulation is not practical /tenable and should be dropped from the said amendment to the said regulation.

III. TRAI Regulation (20) Sub-Regulation (2) “after clause (l), the following clauses shall be inserted, namely:-

(m) every Access Provider shall, within thirty days of coming into force of these regulations, send SMS to its subscribers advising them not to send any commercial communications if they are not registered with the Authority as telemarketer and in case he sends a commercial communication, he shall be liable to pay five hundred rupees for such commercial communication and his telecom resources shall also be liable to be disconnected:

Provided that a second such SMS shall be sent within seven days of sending the SMS and such SMS shall be sent to the customer every six months thereafter.”

COAI Response:

a) Sending SMS as advisory for customer education:

TRAI should have a holistic look as there are so many other regulations and directions equally or more important and still if Authority consider this is a special case, it should be limited to sending such advisory once when it is implemented and then once in a year otherwise this would in itself become a nuisance SMS for and customer specially for the DND customer, as such customer might complain that such SMS being received from telecom operators is a nuisance and is equivalent to UCC.

IV. TRAI TCCCPR Schedule VI para 4, the following para shall be substituted, namely:-

"4. A customer may register UCC related complaint by sending SMS to 1909 in the format given below-

"short description of UCC; XXXXXXXXXXXX; date in dd/mm/yy"

Where XXXXXXXXXXXX- is the telephone number or header of the SMS, as the case may be, from which the UCC has originated."

COAI Response:

- a. We are of the view that the starting characters in case of the SMS have to necessarily be an identifier. The same would be required to identify the complaint as an UCC complaint. In the absence of the key word, it will be difficult to identify the complaint; the same would impact the resolutions of such UCC complaint.
- b. In this regard, we suggest that Start key-word be 'COMP' and we can drop 'TEL NO' from the current nomenclature
- c. Hence the format should be - ***"COMP; short description of UCC; XXXXXXXXXXXX; date in dd/mm/yy; "***
