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Reference: Press Release No. 22/2010 dtd 11th May, 2010
Consultation Paper No. 80 / 2010 on Telecom Unsolicited Commercial Communications Regulation, 2007

Subject: Stakeholder Comments on the Above Mentioned Consultation Paper

Sir,

Telemarketing and Unsolicited Commercial Communication (UCC) is an area of concern not only from the end-user comfort perspective, but also from the perspective data privacy and security of recipients of UCC.

Fundamentals of TUCC Regulations, 2007

Right to Privacy and Doing Business

In the preface to the Consultation Paper, the Authority quotes the right to Privacy as upheld by the Apex Court of India.

This right to Privacy is important, but it is mentioned in the context to *hold a telephone conversation in the privacy....without interference*. The matter of interference refers to the being prohibited to hold a private conversation or tapping into a conversation. This in no way means restriction on approaching a person through his or her phone.

In fact, the TUCC Regulations should also be in context with another fundamental right, which is the Right to Business. No doubt, the receiver of a communication should have the right to withdraw from the business promotion communication and it should be the duty of the business owner to respect this right of the recipient. A complete embargo on TUCC directly through restrictions or indirect methods such as “opt-in” approach is effectively taking away this fundamental right to do and promote a business.

Eliciting a comparison, commercial advertisements on television channels are legal. Consumers pay an access fee to access cable television channels, watch it in the privacy of their house (public viewing restrictions) and yet the cable television operators use commercial advertisements as a significant revenue source. Even though for the sake of an example, advertisements during live telecasts for cricket matches or movie broadcasts intrude the privacy of an individual in a similar manner as UCC.

Telephonic Unsolicited Commercial Communication Might Not Be Always Bad

TUCC and the NDNC Registry have had about only about 10% of telephony subscribers in India registering on the database. This can be because of two possible reasons, viz:

- Inability of subscribers to register in the NDNC Registry. This topic I shall touch upon in the following section on my comments to effectiveness of the registry.
- Subscribers might find a greater benefit in receiving UCC than completing barring from them.

The latter needs careful whetting and understanding. This can only be achieved by detailed qualitative and quantitative surveys across the country rather than the judgments of a collective few.

For example, in a country like ours where we have abysmally low insurance coverage and literacy; and fast increasing per capita income, especially in the socio-economic category that uses telephones; curbs on outcalls from sales agencies for promoting these products will effectively prevent reach. There are high conversions that agencies get from these calls. Else, agencies would not invest in UCC channels for promoting their services.

Economically, there are inherent laws and filters of return on investment and profitability that would prevent businesses from using these channels if they were ineffective. That implies that there is a significant share (percentage unknown) of telephone subscribers, who might be aware of the NDNC Registry, and are ok receiving such communication. Even if they are not aware, they might be happy receiving such communication.

Formats Adopted by Other Countries / Regions

Except for a part of the European Union and China (which is a very controlled telecom environment), all other cases mentioned in the Consultation Paper itself, show a marked bend towards *responsible* telemarketing rather than a complete ban on telemarketing.

Effectiveness of TUCC Regulations, 2007

Data up to 10 March, 2010 on NDNC registration (as mentioned in the Consultation Paper), can also suggest:

1. 40% of users registered on NDNC Registry are from Delhi and Mumbai (the most informed locations). This forms about 43%¹ of subscribers in Delhi and Mumbai. This out-numbers the success of the similar NDNC Registry in Australia, which is cited as a case study in good implementation of the NDNC Registry. So, where properly implemented, NDNC Registry has worked well.
2. With 60% non-registration even in Metros, where NDNC Registry has been a success even by global standards, it will not be unsafe to assume that in these informed markets, a good portion of subscribers have not registered in NDNC out of their own choice. Implying that a significant portion of users *do-not* feel that TUCC messages are a nuisance and are *ok* receiving such communication.
3. Majority of the users registered in NDNC Registry are from the metros of Delhi, Mumbai and states such as Gujarat, Karnataka, Andhra Pradesh and Punjab. These regions have a larger urban and more informed market. So probably, enough has not been done by the telecom operators, the Authority and relevant stakeholders to inform users in the other regions (further away from urbanization) about the NDNC Registry.
4. 3,40,231 complaints relating to unsolicited messages were received from NDNC Registered users. This being a very small percentage of the NDNC registered base can also imply, that either:
 - a. Most registered telemarketers call on a NDNC sanitized base, or
 - b. Subscribers do not have a good channel to communicate their complaints.
5. Out of the complaints received between November '09 and January '10, a total of 55,167 complaints were received and 20,000 numbers were 'action-taken' by telecom operators. The possible reasoning and implication of this can be:
 - a. At an average of 613 complaints per day, the number of non-compliances is small. Especially, since telemarketers make thousands of calls per day and/or send out hundreds of thousands of SMS' per day.
 - b. Though small, it does make a case for stronger implementation of the TUCC Regulation.
 - c. A stronger follow-up on these complaints by the telecom operator would have increased the number of action taken by the operator.

¹ Refer TRAI Indian Telecom Services Performance Indicators for October – December 2009; and an extrapolated growth rate for the last quarter to reach numbers for March 2010. 60 million subscribers in Delhi and Mumbai combined and 26.34% subscribers registered in NDNC.

6. 27,292 telemarketers have registered with the Department of Telecommunication since TUCR Regulation, 2007 came into effect. Considering the relatively less number of complaints received, refer 3a above, the number of telemarketers registered under NDNC seem to cover most of the market, else the number of complaints received would have been much higher.

Summary and Suggestions

In summary:

- TUCR Regulation and NDNC Registry, with the opt-out approach is a step in the correct direction.
- *An opt-in registry is an easier and a restrictive way out of the problem of implementation of the existing regulation.* The existing TUCR Regulations, 2007 are still very recent. Each stakeholder needs to focus on the proper implementation of the current regulation, in word and in spirit. While the ways of achieving this are multitude, some suggestions that can be implemented by each stake holder include:
 - The Authority and Department of Telecommunication (DoT) need to increase the awareness levels amongst subscribers of the NDNC Registry through direct channels.
 - The Authority and the DoT also need to ensure stricter enforcement and closure of reported non-compliances by telecom operators and telemarketers. Focus on replicating what has happened in Delhi and Mumbai in the NDNC Registry across the country. Just because it's a gargantuan task should not mean that an in-place policy should be changed and restrictive rules be brought into place.
 - Telecom operators and telemarketers need to reach out, educate and empower subscribers for opting-out by giving greater channels for registration to NDNC.

An example of this is the United States² (and also New Zealand for e-messaging services, as mentioned in the Consultation Paper), where each communication has a mandatory response number or access point, that a subscriber can reach, respond in real-time while receiving the communication and convey to opt-out from all such messages.

Telephone operators and telemarketers should focus on providing easier access points to receivers of their communication, where users can opt-

² USA's Mobile Marketing Association Guidelines: www.mmaglobal.com/bestpractices.pdf

out. A process can further be put in place that such opt-outs are shared by the Telemarketers or Telecom Operators and updated in the central NDNC Registry with such received requests.

- An opt-in registry can have a potentially far reaching impact, especially in a growing economy such as India. A wider survey needs to be done on validation of the *perceived* nuisance value of TUCC rather than making a regulation out of assumptions.

It is liberal policies and a sense of ownership that will help responsible growth of the sector, economy and the nation. An opt-in policy will be binding and regressive because words such as quota and control negate the impact of free market, liberalization and maturity in any economy. But for that all stakeholders need to act in a very mature manner. As quoted by our Hon. Prime Minister, “*Capitalism with a human face.*”³

Yours truly,

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³ <http://www.ft.com/cms/s/0/7f6fea0e-1bcc-11de-978e-00144feabdc0.html>