

F.No. 303-1/2006-QOS
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan,
Jawaharlal Nehru Marg, Next to Zakir Hussain College,
New Delhi – 110 002

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Dated the 27th April, 2009

DIRECTION

Subject: Direction 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, on provision of value added services to customers.

F.No.303-1/2006-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 the TRAI Act, 1997), 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 telecommunications service;

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 the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), issued the Direction F.NO. 305-8/2004-QOS dated the 3rd May, 2005, 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 the TRAI Act, 1997, vide its Direction F.NO. 303-6/2006-QOS dated the 29th August, 2006, directed all the Cellular Mobile Service Providers, Basic Service Operators and Unified Access Service Providers, *inter alia*, to -----

(i) assign a unique docket number for all service request calls made to the customer care/ helpline numbers and also special numbers for registering complaints and convey the same to the customer at the time of such call and that this shall be implemented within three months from the date of the issue of the said direction;

(ii) acknowledge through short message service (hereinafter referred to as SMS) followed by entry in the next bill the requests made through telephone call, FAX, SMS, e-mail, etc. for value added services, the charges for which are of a recurring nature;

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 the TRAI Act, 1997 and clause (11) of the Telecom Tariff Order, 1999, also issued a Direction F.NO. 303-1/2006-QOS dated the 30th October, 2007, directing all the Access Service Providers, including Bharat Sanchar Nigam Ltd. and Mahanagar Telephone Nigam Ltd., *inter alia*, to -----

(a) provide, within one month from the date of issue of the said Direction, the facility to all their customers for registering their requests for unsubscribing any value added service by such customers ---

(i) through e-mail or FAX or any other means (other than telephone calls and SMS);

(ii) through telephone calls and SMS made to the customer care/helpline/toll-free number (other than e-mail or FAX) without incurring of any cost for such telephone calls and SMS made by their customers;

(b) continue to extend the facility referred to in the preceding sub-paragraph to their customers;

(c) give adequate publicity to the facility, as referred to in sub-paragraphs (a) and (b) above, by publishing complete information about such facility on their websites and by communicating the same through SMS and other means to the customers;

(d) ensure that-----

(i) in case of any offer for any value added service, made in writing or through SMS or FAX or e-mail, (other than tele-calling) to the customer, such offer shall contain all relevant details of the value added service offered to the customer including the charges for such value added service and seek and obtain the explicit consent of the customer, through telephone or SMS or FAX or e-mail or by other electronic means, for availing by such customers of such value added service, before activation of such value added service; and

(ii) in case of any offer for any value added service, made through tele-calling or by any other means [except means referred to in item (i) above] to the customer, such offer shall be subsequently made in writing or through SMS or FAX or e-mail, containing all relevant details of the value added service offered to the customer including the charges for such value added service and seek and obtain the explicit consent of the customer, through telephone or SMS or FAX or e-mail or by other electronic means for availing such value added service before activation of such value added service;

(iii) the consent referred to in item (i) or item (ii), as the case may be, shall be acknowledged through SMS before activation of such value added service, or immediately after such activation, and also reflect the same in the next bill, if issued to the customer, giving relevant details of the said explicit consent;

(e) keep complete records of such explicit consent obtained from the customer for subscription to the chargeable value added services and the records of the acknowledgements of such explicit consent by the service provider, for verification, for a period of one year from the date of such explicit consent;

5. And whereas, the Authority had, in exercise of the powers conferred upon it under section 36, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the TRAI Act, 1997, made the Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 (3 of 2007) dated the 4th May, 2007;

6. Whereas regulation 19 of the Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 (3 of 2007) dated the 4th May, 2007 reads as under:-

“19. Complaints referred to service providers by Authority.----(1) The Authority may, without prejudice to the provisions contained in the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), refer to the service providers, falling in clause (a) or clause (b) of sub-regulation (3) of regulation 1, for redressal of the complaints,---

(a) being the complaints alleging violation of the Act or regulations made thereunder or directions issued or orders made by it under the Act;

(b) being the complaints of the consumers which are generic in nature;

(c) being the complaints alleging the practices adopted by the service providers adversely affecting the interest of the consumers.

(2) The service provider, falling in clause (a) or clause (b) of sub-regulation (3) of regulation 1, shall investigate and find out root cause of all such complaints referred by the Authority under sub-regulation (1) and

resolve or redress such complaints within one month from the date of referring of the complaints by the Authority.

(3) The service provider, referred to in sub-regulation (2), shall inform the concerned consumers and the Authority regarding resolution or redressal of the complaint within one month from the date of referring of the complaints under sub-regulation (1).

(4) In case the investigation and root cause of the complaints found out under sub-regulation (2) reveal general deficiency or systemic inadequacy in the practice and procedure or operation adopted by, or, on the part of, the service provider, the service provider shall take remedial measure in respect of all such similarly placed consumers and intimate to the Authority along with the information required under sub-regulation (3), within two months of referring such complaint under sub regulation (1), such general deficiency or systemic inadequacy revealed and remedial measures taken by such service provider.”;

7. And whereas, the Authority received a number of complaints from consumers alleging accidental activation of caller ring back tunes through the facility of “Press Star to Copy Hello Tunes”, i.e., pressing “*” key to copy the caller tune of the called number before the called party answers, which is also known as “pre-call”, and charging by the service providers for this value added service without their consent;

8. And whereas, upon examination of these complaints of the consumers, the Authority found that there is a likelihood of consumers subscribing to such services accidentally by pressing the “*” key during the call and that seeking the consent of a subscriber for subscribing to a value added service by the pressing of a single “*” key is not in consonance with the direction of the Authority dated the 30th October, 2007 on value added services, referred to in paragraph 4 above and, therefore, the Authority, vide its letter No. 305-5/2008-QOS dated 3rd April, 2008, called upon all the service providers to furnish the details of measures taken by them to ensure compliance of directions/regulations of the Authority relating to provision of value added services to the customers, as mentioned in the preceding paragraphs, while providing the facility of “Press Star to Copy Hello Tunes” for subscribing to Hello Tunes by pressing the “*” key in the mobile handset and also the details of measures taken by the said service providers for preventing accidental activation of value added service;

9. And whereas, in response to the letter dated 3rd April, 2008, referred to in the preceding paragraph, the Authority received replies from some of the service providers, who, *inter alia*, informed the Authority as under:-

(i) that they have publicised their value added services and also the charges thereon through various mediums such as SMS, web site, mass media such as advertisements in TV etc.;

(ii) that they have provided easy way of subscription of the said service through the facility of “Press Star to Copy Hello Tunes” and that the act of pressing “*” key amounts to explicit consent and therefore the issue of taking consent again does not arise;

(iii) that the service is activated only by subscriber initiative and, therefore, they are in compliance with the directions of the Authority dated the 30th October, 2007 referred to in paragraph 4 above;

10. And whereas, M/s Bharti Airtel Ltd., vide their letter dated 22nd April, 2008 has informed the Authority that in case a customer complains about wrong activation of hello tunes through the facility of “Press Star to Copy Hello Tunes” within one hour of activation of the service, the service would be deactivated and the charges, if any, deducted will be reversed;

11. And whereas, M/s Vodafone Essar Ltd. has, in the context of their response to Authority’s letter No.303-1/2006(QOS) (Vodafone) dated 21st May, 2008, vide their letter dated 20th June, 2008, informed the Authority that there could be a possibility that a particular subscriber could potentially accidentally press the “*” key while listening to a caller tune and thereby unknowingly activate the service;

12. And whereas, M/s Aircel Cellular Ltd., vide their letter dated 11th April, 2008 has informed the Authority that they are providing similar service through the provision of pressing “565” before the call gets matured;

13. And whereas, on examination of the complaints received from the customers and the responses of the service providers, as referred to in the preceding paragraphs, the Authority is of the view that -----

- (i) the offer of value added services through the advertisements which are addressed to the public at large may not serve the purpose as it is possible that the customer may or may not have seen such advertisements and the pressing of the “*” key by him while operating his mobile handset may be unintentional or accidental;
- (ii) even in the case of promotional messages, in which the customer is induced by the service providers to press “*” key, it is possible that the customer may or may not have seen the advertisement but he might have pressed the “*” key unintentionally or accidentally, thereby activating the value added service;
- (iii) in most cases, the service providers induce the subscribers to press “*” key through recorded announcements while making a call and, therefore, there is a possibility that the subscriber may not have listened to the announcement fully or may not have understood the offer clearly for a number of reasons, such as lack of voice clarity, lack of understanding of the language of the announcement, etc., and thus may press the “*” key without intending to subscribe to the service offered and thus unintentionally activating the value added service;

- (iv) in cases mentioned under sub-paragraph (i), (ii) and (iii), the seeking and obtaining the consent of the customer by the pressing of a single button/key on the handset is not in accordance with the direction dated the 30th October, 2007 of the Authority referred to in paragraph 4 above, under which the service providers have to seek and obtain the explicit consent of the consumer and paragraph 12(d)(ii) of the said direction further provides that in case of any offer for any value added service, made through tele-calling or by any other means [except offer made in writing or through SMS or FAX or e-mail] to the customer, such offer shall be subsequently made in writing or through SMS or FAX or e-mail, containing all relevant details of the value added service offered to the customer including the charges for such value added service and seek and obtain the explicit consent of the customer, through telephone or SMS or FAX or e-mail or by other electronic means for availing such value added service before activation of such value added service;
- (v) the pressing of “*” key in the mobile handset by the consumer, whether intentional or unintentional/ accidental, while listening to a caller tune or hello tune cannot be taken as explicit consent to subscribe to such service;
- (vi) the provision of the facility of subscribing to value added services such as “Hello Tunes” by pressing a single key in the mobile handset such as “*” key, could lead to accidental subscription of value added service;

14. And whereas, the Authority also received a number of complaints from consumers, from time to time, alleging activation of value added services, such as caller ring back tunes, background music, etc., and charging for these value added services by the service providers without their explicit consent and the Authority had, from time to time, forwarded the above complaints to the concerned service providers under regulation 19 of the Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 (3 of 2007), referred to in paragraph 5, for investigation and finding out the root cause of these complaints, including redressal of such complaints and remedial action in respect of similarly placed customers;

15. And whereas, in response to the complaints, as referred to in the preceding paragraph, the service providers, in general, have informed the Authority that the value added services were provided only after the complainants had pressed a particular key during an Out Bound Dialer (OBD) call thereby indicating his consent/ preference for the value added service and the service providers have also submitted to the Authority the log of such consent given by the complainants and one of the service providers has further informed the Authority that the OBD call is initiated within a minimum gap of one hour and a maximum gap of forty eight hours after a promotional SMS is sent to the customer;

16. And whereas, the Authority is of the view that Out Bound Dialer (OBD) is an automated call during which different tunes are played and the customer is induced to subscribe to value added services such as caller ring back tune, background music, etc. by pressing a particular key as per his choice of the tune played and the consent obtained through such Out Bound Dialer (OBD) call does not meet the requirements laid down in the direction dated the 30th October, 2007, of the Authority referred to in paragraph 4 above, for the following reasons, namely:-

- (a) it may be possible that in many cases the customer might not have read the messages which preceded the Out Bound Dialer (OBD) call and there could also be cases where the customer might have seen the message, but ignored it or did not understand the offer and, therefore, in such cases merely drawing attention to the SMS may not serve any purpose and there could be chances of accidental activation of a value added service through this method;
- (b) The accidental activation of value added services through Out Bound Dialer (OBD) call could happen through accidental pressing of any relevant key in the mobile handset/ telephone set or pressing of a key without understanding the implications of such offer leading to subscription to chargeable value added service or due to pressing of such key by anybody else who was using the phone at that time, for example children at home, who could have unintentionally pressed such key;
- (c) there may also be possibilities that a customer may not have listened to the announcements fully or did not understand the offer and pressed such key in the mobile handset/ telephone set unintentionally, thereby activating the value added service;

17. And whereas, the Authority continues to receive complaints from consumers about activation of various value added services without explicit consent and charging thereon and in these complaints the consumers have disputed having given any consent for activation of value added services and in the light of these complaints being received in the Authority, the Authority had called upon the survey agencies, appointed by it to undertake survey about customer perception of service, also to undertake survey about the provision of value added services without explicit consent by all the service providers in the various licensed service areas;

18. And whereas, the reports of these survey agencies in respect of various licensed service areas reveal the following position (refer Table A) about provision of value added services without explicit consent of the consumers, namely:-

Table A

Question: Did the service provider have your explicit consent before providing the chargeable value added service such as ring tone, emails / GPRS, voice mail,etc. ?					
Service Area	Total customer surveyed, who have given specific response	Yes		No	
		Count	%age	Count	%age
AP	1281	871	66.80%	410	31.50%
Assam	198	162	81.40%	36	18.10%
Bihar	383	312	81.50%	71	18.50%
Chennai	860	735	85.47%	125	14.53%
Delhi	1517	1309	86.30%	208	13.70%
Gujarat	1824	1717	94.10%	107	5.90%
Haryana	566	364	64.30%	202	35.70%
HP	1122	571	50.90%	551	49.10%
J&K	176	85	48.30%	91	51.70%
Kolkata	622	489	78.62%	133	21.38%
Maharashtra	1825	1719	94.20%	106	5.80%
MP	1915	1482	77.40%	433	22.60%
Mumbai	2192	1738	79.30%	454	20.70%
North East	223	169	75.80%	54	24.20%
Orissa	233	178	75.40%	55	23.30%
Punjab	1061	819	77.20%	242	22.80%
Rajasthan	952	321	33.70%	631	66.30%
TN	876	708	80.80%	168	19.20%
UP-E	443	304	68.60%	139	31.40%
UP-W	475	378	79.60%	97	20.40%
WB	874	768	87.90%	106	12.10%
Karnataka	1063	610	57.40%	453	42.60%
Kerala	1328	943	71.01%	385	28.99%
Total	22009	16752	76.11%	5257	23.89%

19. And whereas, the Authority is seriously concerned regarding the fact that about 24% responses received during the survey, of 22,009 customers, revealed that value added services were provided without explicit consent of the consumers, i.e., one out of every four customers had been, according to survey figures, provided value added services was without explicit consent and, therefore, the Authority is of the view that the practices being followed by service providers in the provision of value added services lead to activation of value added services without explicit consent in quite a large number of cases and these practices need to be streamlined with proper opt-in approach for value added services by consumers to prevent activation of value added services without explicit consent;

20. And whereas, the Authority also received a complaint from a consumer of one Access Service Provider in the Delhi service area that the said Access

Service Provider had activated a ring tone on his mobile number, free of charge, but the ring tone activated by the company is very derogatory considering his status in the society as a religious person (“Maulavi”) and the tune is causing him a lot of embarrassment;

21. And whereas, the Authority had referred the said complaint referred to in the preceding paragraph to the concerned Access Service Provider for its comments and in its reply, the Access Service Provider has stated “there are no standards that specify that only a particular kind of caller tone is to be played when caller waits for recipient to reply”;

22. And whereas, the Authority considered the above complaint and the submissions made by the said Access Service Provider thereon, and is of the view that activation of a particular caller ring back tune or background music by the service provider, without the customer asking for it, could cause embarrassment to consumers, considering the age, sex, social status, etc. of the consumer;

23. 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, for the reasons mentioned in the paragraphs 2 to 22 above, and to ensure compliance of terms and conditions of licence and to protect the interest of consumers, hereby directs all the Access Service Providers (including M/s Bharat Sanchar Nigam Ltd. and M/s Mahanagar Telephone Nigam Ltd.) to ensure within forty five days of the issue of this direction that ---

- (i) in case a chargeable value added service is offered through pressing/dialing of certain keys in the mobile handset / telephone set, such as “Press Star to Copy Hello Tunes”, service provider initiated call or Out Bound Dialer (OBD) call, the service provider shall, subsequent to the pressing/ dialing of particular key(s) in the mobile handset/ telephone set by the customer, expressing his interest to subscribe to such service, convey to the customer in writing or through SMS or FAX or e-mail, all the details of the offer of value added service including the terms and conditions and charges for provision of the service and also about the fact of his having pressed/dialed the particular keys in his mobile handset for subscribing to such value added service, and seek and obtain the explicit consent of the customer, through telephone or SMS or FAX or e-mail or by other electronic means, for availing by such customer of such value added service, before activation of such value added service;
- (ii) in all cases of activation of value added services, including those covered under item (i) above, the explicit consent of the customer shall be obtained by means of -----

- (a) a customer originated call to a specified number;
- (b) a customer originated SMS to a specified number;
- (c) a customer originated interactive session to a specified number; or
- (d) a request made by the customer in writing or by fax or e-mail, -----

before activating any value added service; and

(iii) no chargeable value added service is activated -----

(a) as in the case of "Press "*" key to Copy Hello Tunes", referred to in paragraph 7 above; or

(b) through the pressing of "*" key or "#" key or any other key or any combination of keys/buttons in the mobile handset/telephone instrument by the subscriber,-----

either through outbound dialer or service provider initiated call or during pre-call ring-back announcements (both voice as well as automated) during a customer initiated call to a third party unless the explicit consent of the customer is obtained in accordance with item (i) and (ii) above;

(iv) music or video related value added services, such as caller ring back tune, background music, wall paper, etc., shall not be provided, even if it is provided free of charge, without taking the explicit consent of the consumer in the manner as indicated in item (ii) above;

(M.C. Chaube)
Advisor (QOS)

To

All Access Service Providers,
Bharat Sanchar Nigam Ltd.,
Mahanagar Telephone Nigam Ltd.