



June 7, 2010

Dr J S Sarma
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi 110 002

Subject: Comments on Consultation Paper on Review of Telecom Unsolicited Commercial Communications Regulations issued on 11th May 2010.

Dear Sir,

TLC[®] Relationship Management Private Limited and our group companies specialize in telemarketing of membership products for luxury hotels in India and hence we are a stakeholder impacted by the Unsolicited Commercial Communications Regulations. We employ almost 800 people, of which 500 are Telemarketing Agents who work in the domestic market representing some of the best hotel brands in the country. We have over 25 NDNC registered Centres.

Overview

- a) India is a developing economy on a high growth rate but we also suffer from high levels of unemployment.
- b) Telemarketing industry is a globally accepted marketing tool and an engine of economic growth, economic awareness and of employment. Any policy changes must keep the socio-economic impact in mind. Your consultation paper focuses on relevant regulations in developed economies. The data provides an excellent overview on global best practices and a path for the future. However we must remember that India is in a different socio – economic life cycle.
- c) Reference is made to 2.6 of the Consultation paper which analyses international best practices. There is only one country in the world, 'Italy' that adopts an Opt-In approach towards human voice calls. Rest of the countries mentioned (China, Japan, UK and EU) adopt an 'Opt In' approach for E-mail, automated (pre recorded) voice or text messages. Given the current economic crisis in Euro zone, Italy is not a good benchmark.
- d) For human voice calls, even developed economies like the United States of America, the European Union, Australia, UK and Canada adopt an 'Opt Out' approach. China, Japan and New Zealand do not even regulate voice calls whereas countries like South Africa and Egypt follow a User oriented approach towards Opting Out. Nobody has taken the direction being considered by the Consultation document.
- e) In India, we have a good system of NDNC and from the data provided in the Consultation Paper, there is a case for better adherence and tighter implementation of NDNC.



Sir, we give below our specific comments on the issues for Consultation.

4.1 What are the primary factors for poor effectiveness of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 or 2007) in its present form? Give your suggestions with justifications. (Reference Para 2.3)

- a) Not all Telemarketers are registered on NDNC and hence do not follow the NDNC scrubbing process
- b) Marginal fines / penalties for lack of compliance
- c) Ineffective monitoring and implementation mechanism
- d) Lack of Telemarketer guidelines
- e) No specific block on calling / SMS at odd hours, Sundays and Public Holidays
- f) Service Providers must implement the regulations.

4.2 Do you feel there is a need to review the existing regulatory regime of Unsolicited Commercial Call (UCC) to make it more effective? What needs to be done to effectively restrict the menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3)

- a) There is no need to amend the regulatory regime of NDNC already in place. It benchmarks to global standards and follows the practices followed by the Developed Economies. It is very good.
- b) What needs a review is the implementation and compliance mechanism of NDNC already in place with a focus on (i) registering all Telemarketers (ii) Stiffer penalties to Telemarketers and Service Providers for non compliance (iii) clearer definition of contractual relationship in definition of Unsolicited Commercial Communication (iv) Absence of detailed Telemarketer guidelines and (v) Blocking all communication at odd hours / Public Holidays.

4.3 Do you perceive Do Call Registry to be more effective to control Unsolicited Commercial Communications as compared to the present NDNC registry in view of discussions held in para 2.4 to 2.9? Give your suggestions with justification. (Reference Para 2.10)

- a) Telemarketing industry is a globally accepted marketing tool and is a driver of economic growth, economic awareness and of employment. Any policy changes must keep the socio-economic impact on our Country in mind. Your consultation paper focuses on relevant regulations in developed economies. India is in a different socio – economic life cycle.



- b) Reference is made to 2.6 of the Consultation paper which analyses international best practices. There is only one country in the world, 'Italy' that adopts an Opt-In approach towards human voice calls. Rest of the countries mentioned (China, Japan, UK and EU) adopt an 'Opt In' approach for E-mail, automated (pre recorded) voice or text messages. Given the current economic crisis in Euro zone, Italy is not a good benchmark.
- c) For human voice calls, even developed economies like the United States of America, the European Union, Australia, UK and Canada adopt an 'Opt Out' approach. China, Japan and New Zealand do not even regulate voice calls where as countries like South Africa and Egypt follow a User oriented approach towards Opting Out. Nobody has taken the direction being considered by the Consultation document.
- d) There is no merit in changing the NDNC already in place. The failure data is on account of execution and implementation of the existing regulations to ensure compliance. We should study best practices for compliance. Even if one were to move to Do Call Registry, it will suffer the same fate if compliance is not fixed.
- e) Further the entire process of segmentation of interest of participants of Do Call Registry is far too complicated and puts the consumer's personal details in the public domain, completely defying the objective of any Privacy Protection Policy. No country in the world does this.

4.4 Do you perceive the need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DOT? What framework may be adopted to restrict telecom resources to defaulting Telemarketers? (Reference Para 2.11.13)

- a) Yes telecom resources of Telemarketers can and should be controlled for better implementation of NDNC. A database of defaulting Telemarketers / Unregistered numbers with Subscriber Data should be created and centrally used by all Service Providers to restrict Telecom resources to such Telemarketers / subscribers. This can be also made public.

4.5 Do you agree that maximum number of calls or SMS per day from a telephone number (wireless as well as wire line) can be technically controlled to force telemarketers to register with DOT? What other options you see will help to effectively control telemarketers? (Reference 2.12.4)

- a) This is an excellent idea and relatively easy to implement.
- b) The other option of controlling Telemarketers is to cut off their funding lifeline by penalising the client / product they are selling in case of repeated violations / non registration.



4.6 Do you envisage that second screening at SMSC as proposed in para 2.12.3 will effectively control unsolicited SMS? Give your comments and justification. (Reference Para 2.12.4)

- a) In our opinion SMS and MMS should only be allowed if there is an explicit Opt – IN or existing contractual relationship. The onus of maintaining the Opt In should rest with the Telemarketer who must produce the evidence of Opt In or Existing relationship or face the penalties.
- c) There are global benchmarks which work on NDNC for voice but Opt Ins for Emails, pre-recorded Voice and SMS/MMS. We can follow the same policy. This includes the EU and the UK.

4.7 What changes do you suggest in existing provisions to control the Unsolicited Commercial Communications effectively? Give your suggestion with justification. (Reference Para 2.13.6)

- a) Better enforcement and compliance of existing regulations as explained above. Increase financial penalties for violations for both Telemarketers and Service Providers like in many other Countries.
- b) Opt-In for SMS/MMS like UK, EU and automated voice (pre recorded) with the responsibility of the Telemarketer for providing proof of Opt In in the case of a complaint.
- c) Identifying non registered Telemarketing Numbers by studying data of outgoing calls / SMS per number and making it mandatory for these numbers to be registered. This should be the responsibility of the Service Provider. Penal action for non registration including complaints to the companies of whose products and services they market.
- d) Introduce a code of conduct for Telemarketers like the developed markets most importantly the caller must introduce himself / herself and the Organization on behalf of who they are calling.
- e) Timings of calls can be restricted as in the United States of America or in Australia which also excludes Public Holidays (Gazetted Holidays in India).

4.8 Do you agree that present panel provisions to charge higher tariff from telemarketers are resulting in undue enrichment of service providers? What penalty framework do you propose to effectively control UCC without undue enrichment of service providers? (Reference Para 2.13.7)

- a) We do not have enough knowledge of what this framework can be and how Service Providers could be incentivized / forced to comply.



4.9 Do you feel that present UCC complaint booking mechanism is effective? What more can be done to enhance its effectiveness. (Reference Para 2.13.19)

- a) We think it is simple, thought through and it works. It provides multiple options of complaint registering to the Consumer.
- b) A better coordination system between Service Providers will help.

4.10 Do you feel there is a need to enact legislation to control the Unsolicited Commercial Calls? Give your suggestions with justification. (Reference Para 2.13.9)

- a) The whole NDNC process and telecom space is evolving in India. As one gathers the 'triggers' that lead to better compliance and implementation, a legislation can be built around them at that time, if required. Legislation would require non compliance evidence.

4.11 Do you agree that definition in para 2.14.1 correctly define Unsolicited Commercial Communication in Do Call Registry? Give your suggestions with justification. (Reference Para 2.14.2)

- a) We have data on complaints and this data should be used as trends to study the gaps. We believe 99% of the complaints received are for mobile phone numbers. If that is the case, then wired lines should not be a part of either NDNC / NDCR. There is clearly no case for business / office wired lines to be a part of either NDNC / NDCR as how would economic activity take place in a country.
- b) In Clause (i) should be better defined as to what constitutes a specific contract between the parties. It is too broad and easily subject to misinterpretation.
- c) It should clearly say that anybody who has shared personal contact details at the time of purchasing a product or a service can receive Unsolicited Commercial Communication for a similar product or service in the future on the basis of 'express consent' or 'inferred consent' as defined by Australia. Canada defines this as any Organization who has done business with the individual in the preceding 18 months can override the list.

4.12 Do you feel the proposed framework to register on NDCR will be user friendly and effective? What more can be done to make the registration on NDCR more acceptable to customers as well as Service Providers? (Reference Para 3.7)

- a) As explained above, we do not believe that setting up of NDCR is a solution to the challenges at hand.



- b) The whole process of segmentation is too complicated and difficult to manage. Even making groups is controversial.
- c) Public sharing of NDCR data with all registered Telemarketers with areas of interest will lead to an infringement of privacy and preferences of Consumers and goes against the very premise of setting up a good Privacy protection policy.
- d) All irritation happens on mobile phones and a general rule of telemarketing calling timings can be set for mobile phone lines, with voice recording to identify mobiles while on roaming.
- e) A Telemarketer driven Opt-In approach to be adopted for SMS and MMS messages as in the UK and EU.

4.13 In your opinion what are the various options which may be adopted for setting up and operating the NDC registry in India. Among these suggested options which option do you feel is the most appropriate and why? Give your suggestions with justification. (Reference Para 3.8.3)

- a) We don't believe there is a case of setting up of NDC Registry. We need better implementation and compliance of existing regulations of NDNC as well as clarity of what defines an existing contraction relationship with the Consumer.

4.14 Do you agree that present NDNC registry can effectively be converted to NDC registry? What measures need to be taken to make it more effective? (Reference Para 3.8.4)

- a) As above, there is no need to convert to NDC registry but make the current implementation and compliance process better.

4.15 In view of the discussion held in Para 3.9, which option of charging and funding model do you suggest for procuring data from National Do Call Registry by telemarketers? What should be the various provisions you want to incorporate in suggested model? Give your suggestion with justification. (Reference Para 3.9.5)

- a) The current NDNC system is good. Further the proposed availability of consumer data freely with capture of areas of interest is against the concept of Privacy and not done by any Country in the world.

4.16 What measures do you suggest to protect data of NDC registry? Give your suggestions with justification? Give your suggestions with justification. (Reference Para 3.10.2)



- a) There is no case to share personal data with areas of interest with Registered Telemarketers. It is against the concept of consumer privacy and those consumers will be bombarded with communication. Example of somebody shows interest in Insurance or Loans, the whole world would know that the person is looking for Insurance and Loans. Not a happy place to be in from a Privacy perspective.
- b) There is no way to control the free flow of this data from Registered Telemarketers to Unregistered ones. We will just compound the current problem exponentially.

Next Steps

We thank you for your consideration of our comments as an interested stakeholder in the proposed regulations. We would be happy to come and present our views in person.

Thanking You

Yours sincerely

A handwritten signature in blue ink that reads 'Sudhir Gupta'. Below the signature, the name 'Sudhir Gupta' is printed in a small, black, sans-serif font.

Sudhir Gupta

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