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July 11, 2023

To,
Shri Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002

Sub: Response to TRAI Consultation Paper on "Definition of International Traffic"

Ref: TRAI Consultation Paper dated 02.05.2023.

Dear Sir,

In reference to the captioned consultation paper, we are pleased to enclose our response for your perusal.

We hope that our submissions will merit your kind consideration.

Thanking You
Yours Sincerely
For Bharti Airtel Limited



Rahul Vatts
Chief Regulatory Officer

Encl: As mentioned above.

Copy to:

1. Chairman, TRAI.
2. Member (FT), TRAI.
3. Secretary, TRAI.
4. Principal Advisor (NSL), TRAI.

Response to Consultation Paper on Definition of International Traffic

Preamble

Airtel thanks the Telecom Regulatory Authority of India (TRAI) for giving it the opportunity to submit comments on the consultation paper, "*Definition of International Traffic*", released on May 02, 2023.

Before we proceed to make its submissions on the subject, it needs to be noted that a consultation paper attempting to define Domestic and International Traffic is not really necessary as the position and approach are already clear and settled as well as aligned and followed within the industry by all Telecom Service Providers (TSPs); and, even at enforcement levels by TERM Cells where due assessments of types of traffic are carried out on a regular basis.

Indeed, it would be fair to say that the *Definition of International Traffic* has never been an issue over the last 30 years, ever since the opening of the sector. It thus seems that a non-existent issue is being made into a concern by some non-telecom entities to further their own commercial interests by adopting a disguised practice that bypasses the licensing framework to transmit their international SMS traffic which is nothing less than a grey route.

In this regard, it seems that numerous business entities have wrongly been trying to send international SMSs disguised as national SMSs. The Global Fortune companies including leading financial institutions, e-commerce companies, Enterprises, Cloud Platform providers, and OTTs use the A2P messaging channel inter-alia for sending texts promoting their latest products, authentication services, notification services, promoting sales, etc. Currently, such companies have built applications/servers that are hosted and managed in only one or a few countries. This is so that they not only cut down on cost of infrastructure but are also able to safeguard themselves from in-country compliances and send messages across the globe using these servers and directly connecting with aggregators (in the case of India, avoiding the ILDO route).

The diagrams below depict the licensed route as well as the disguised and illegitimate route adopted by the entities will elucidate the issue explicitly:

Response to Consultation Paper on Definition of International Traffic

Figure 1

International SMS flow – the legitimate and license compliant route

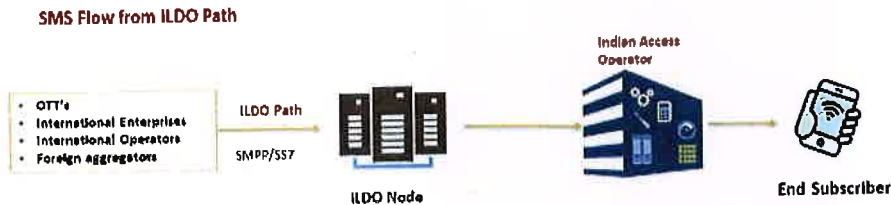
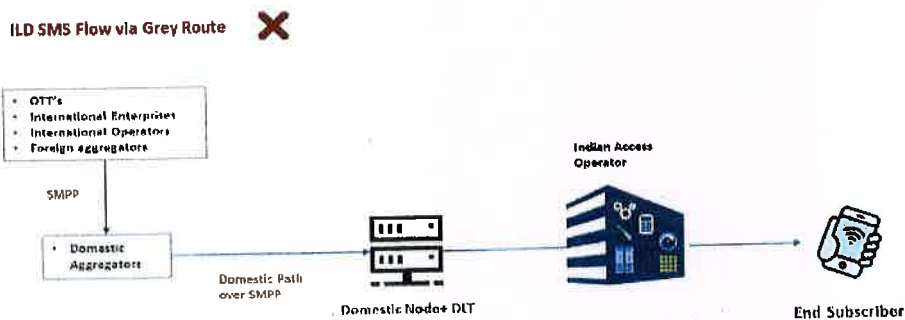


Figure 2

International SMS flow – bypass of normal licensing route



It must be noted that route shown in Fig.1 is the only legitimate, license compliant route to deliver international traffic / SMS to an Indian end-subscriber since it involves a PSTN break-out in the end. It is a better route as this is license and security compliant.

On the other hand, the route shown in Fig.2 is not only illegitimate and bypasses the license route i.e. ILDO, to deliver an international SMS to an end-subscriber (PSTN break-out); but also one among a few other illegitimate routes exploited by a handful of entities, the routes which also pose serious security risks as such traffic bypasses any lawful monitoring mechanism.

Customers of TSPs in India, for example, use the applications of such companies, which are hosted on global servers for various purposes such as social media, entertainment, messaging, ecommerce, gaming, etc. These entities send SMSes to customers including 2 factor authentication, service messages, etc., and also capture the analytics of telco consumers to push promotional and commercial messages from the server after data mining in their global facilities.

Response to Consultation Paper on Definition of International Traffic

Many such entities are routing international SMS traffic via the Telemarketers situated in India who in turn try to use DLT templates or sim farms or flash calls, etc. and sometimes the traffic is mixed with ILDO.

This practice in effect bypasses the legitimate licensing / ILD route by trying to disguise what are international SMSes as national and violates the License mandate to route all international traffic through ILDO.

Therefore, **Airtel is of the view that this issue is not about defining the type of traffic globally accepted in terms of the working of Telcos but more about the violation of India's licensing and security framework. Indian Telcos are not doing anything unique or radically different from Telcos globally in the ways in which they treat international (SMS) traffic.**

For example, if a customer of Indian TSP – for example a bank - sends an A2P SMS to a bank customer say sitting in the Middle East (ME), the SMS is delivered through Indian TSP to the ME TSP as an international SMS only, and the commensurate rate is applied by the ME carrier.

It is thus clear that there is absolutely no need for an intervention that seeks to re-define an accepted telecom service / traffic type that is both well-functioning as well as efficient and relevant. It must be clearly understood that any SMS / traffic whose (source) point of origination (whether through server/ cloud / aggregating point) is from outside India, and which ultimately breaks-out on the Indian PSTN (subscriber), can only be delivered through the legitimate route i.e. via the ILDO route and the similar licensing condition that ILDO route is legitimate applies to any SMS to be sent outside India. The underlying principle is **that the brain and intelligence (i.e. originating server / application etc.) sits out of India and hence it cannot be in any way considered as domestic traffic even if this traffic is said to be mirrored in India or delivered to Indian aggregators.**

Domestic traffic is also clearly defined, and TRAI at para 1.15 of the consultation paper rightly acknowledges the same. There are also no examples that we could understand wherein Telecom Regulators or licensors having explicitly defined, domestic and international SMS traffic, and/or where India's licensing and regulatory regime and TSP practices have deviated from internationally accepted ways of working.

Additionally, there is absolutely no consumer concern or harm, nor any competition concern w.r.t this market. If at all there is an issue, it is about such entities using a non-licensed route to access and deliver international SMSes to Indian end-users. Therefore, after taking all this into account, it would be fair to say that industry accepted definitions be allowed to continue and even the commercial aspect for international SMSes should continue to be left to market forces as also adopted in International markets.

Response to Consultation Paper on Definition of International Traffic

In Summary:

- i. *There is no need to introduce a definition for 'International SMS' or 'international traffic'. The practice is well agreed, settled and has been followed within the industry uniformly and without issue for several decades.*
- ii. *The industry definition of international SMS of all categories- A2P or P2P, given as part of TCCCPR 2018, Code of Practice (CoP), is self-explanatory and appropriate. The same should continue.*
- iii. *There is no need to define 'domestic SMS' traffic, as the same is well defined (intra-circle and inter-circle) and also rightly acknowledged by TRAI in para 1.15 of the consultation paper.*
- iv. *TRAI should emphasise compliance and penalise those entities falsely routing international SMSes including A2P as domestic SMSes. This will discourage such entities from trying to bypass the Indian licensing and regulatory regime and instead force them to route via an ILDO for termination in India as per TRAI regulations.*
- v. *Any SMS traffic whose (source) point of origination (whether through server/ cloud / aggregating point) is from outside India, and which ultimately breaks-out on the Indian PSTN (subscriber), can only be delivered through the legitimate route i.e. via the ILDO route.*
- vi. *TRAI must capture all such international messages terminating in India via Telemarketers / aggregators and not via ILDOs, declare them illegal and violating Indian regulations; and mandate all such SMS traffic as "International SMSes to be routed via a licensed ILDO".*
- vii. *The determination of prices of International SMSes should continue to be under the forbearance and prerogative of Indian TSPs as per the globally accepted practice.*

With the above background and submissions, please find next Airtel's detailed response to the questions raised in the consultation paper.

Response to Consultation Paper on Definition of International Traffic

Q1. Whether it would be appropriate to define the term 'international traffic' in the telecommunication service license agreements as 'the international long-distance traffic originating in one country and terminating in another country, where one of the countries is India'? Kindly provide your response with a detailed justification.

&

Q2. In case your response to the Q1 is in the negative, kindly provide an alternative definition along with a detailed justification.

Response:

1. As already mentioned in the Preamble, there is no need to introduce another definition for "International Traffic" at this late stage since all the TSPs in the industry are already following an agreed, logical, evolved, mature and license-compliant definition.
2. The definition has been part of Airtel's Code of Practice developed under the Telecom Commercial Communication Customer Preference Regulations dated 19th July 2018 (TCCPR).
3. The said CoPs are duly filed with TRAI and, thus, the definition is deemed to be accepted by TRAI and hence the same should continue.
4. The definition followed by the industry reads as under:

"International SMS: Any data/application/system/servers etc. which influences, generates, control, facilitate or enable the generation, dissemination/ transmission of messages from a location outside the territory of India will constitute as International messages. Any mirroring solution in India shall not impact and/or change the nature of such International SMS to national SMS."

5. All the TSP's are aligned on the definition of International SMS and a joint representation from COAI was made by the industry to TRAI on 31st May 2019 and the following definition was endorsed by the TSP's:

National and International Messages:

- a. *Further, we would like to highlight that the above categories of promotional, transactional and service messages shall be further bifurcated into national or international messages considering the origination/routing /termination/*

Response to Consultation Paper on Definition of International Traffic

transmission, national numbering plan, bypass issues, server locations and functionalities, for international messages and for the purpose of charging etc.

- b. *To meet these requirements and for abundant clarity, if any data/applications/system/servers etc. located outside India which influences, generates, control, facilitate or enable generation, dissemination/transmission of message, then such message is an International message. Any mirroring solution in India on cloud of otherwise will not change the said nature of the message.*
6. This definition is all encompassing and compliant with the licensing and regulatory framework duly adopted by the industry. It addresses the issues of grey routes exploited by certain entities to route their international SMSes via the domestic route.
7. The modus operandi followed by certain entities is explained as under:
- Many entities either have servers outside India and their servers in India have a direct/indirect connectivity or dependency with/on the controlling server located outside India, which hosts an application or triggers /activates/causes /influences these servers in India to act and thus, generate and disseminate content.
 - These controlling servers/apps are not located in India.
 - The servers referred to as situated in India are merely acting as proxy servers or mirroring servers/solutions as these servers are not acting independently and are controlled externally from a location outside India. Therefore, all such SMSes are being routed through grey routes disguised as national SMSes.
8. **Licensing & Regulatory mandates:**
- i. Mandates in the License Condition for routing of International Traffic:
- a. In terms of Unified License, any national and international traffic is to be routed via the licensed NLDOs/ILDs, respectively. In the case of national traffic, the NLDO acts as a carrier and for international traffic, ILD plays the pivotal role of carrying /bringing the SMSes.
- b. The relevant clause from the Unified License (Chapter 8) is reproduced below:

“6.3 International Long Distance traffic should be routed through network of NLD service providers, to the ILD service provider’s gateways for onward transmission to international networks subject to fulfilment of any Guidelines/ Orders/ Directions/ Regulation issued from time to time by LICENSOR/ TRAI.”

Response to Consultation Paper on Definition of International Traffic

- c. It is highlighted that even Indian outbound SMSes of a similar nature are routed through international routes and rates are charged accordingly as per the respective Telco rates of the destination country, e.g., banking SMSes delivered to numbers outside India. It is thus within the prerogative of Telcos to charge an appropriate rate for service delivery.
- ii. The Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR)
- a. Further, Regulation 37 of TCCCPR also endorses the license condition for routing of international SMSes and states as follows:
- "37. Every Access Provider and International Long Distance Operators shall ensure that no international incoming SMS containing alphanumeric header or originating country code +91 is delivered through its network. Provided that Authority may issue directions as it deems necessary to control bulk international messages from time to time."*
- b. It is evident from this that under the current regulations no such SMSs can come or go from/to outside India without the involvement of ILDO.
- iii. The following definitions as contained in The Indian Telegraph Act are also relevant:
- a. Definition of 'Telegraph' and 'Message' is as follows:
- "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.*
- "message" means any communication sent by telegraph, or given to telegraph officer to be sent by telegraph or to be delivered.*
- b. It is also important to refer to the definition of 'Telecommunication Service' as defined in the Telecom Regulatory Authority of India Act, 1997 and the same is reproduced below:
- "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging*

Response to Consultation Paper on Definition of International Traffic

and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic mean"

- c. Therefore, from the reading of above definitions, it is established that:
- The intelligence or the app or servers which trigger or activate these SMSes are located outside India.
 - Irrespective of location of data – even it sits locally , the location of intelligence where the decision logic is applied is the deciding criteria for treatment of SMS as national/international.
 - The intelligence or the app or servers which influence, control, prompt or influence SMSes through cloud servers belong to a telecommunication service.
 - Any such action/trigger/prompt, etc. being an inherent part of the service have a bearing on determining the nature of the SMS.
 - The servers installed in India act as proxy or mirror servers or, in other words, a conduit since the information is actually prompted/activated/ transmitted from application/intelligence servers located outside the country and the recipient of the SMS is within India, making it an international SMS originating in a foreign country and terminating in India.
- d. If such actions /flow of SMSes is held as domestic, then these entities will be prompted to trigger even more of their SMSes from outside the country and make them look like domestic SMSes. All of this will, in turn, encourage the grey market for SMSes in the country and could lead to security concerns, even a loss to the exchequer.
- e. It is important that such practices are prohibited for the following reasons:
- Unsolicited SMSes through international routes should remain under check so that all unsolicited and fraudulent messages can be prevented. In addition, they should be charged appropriately so that the higher costs can act as a deterrent to control spam.
 - Ensuring licensing compliance for routing of such SMSes via ILDO will ensure that a check is being maintained on all security aspects.
 - If Forex (as well as license fee) loss for the country is to be prevented, such SMSes need to be forced to follow the legitimate route; the country could lose an estimated revenue of 500-600 million USD on international messages.

Response to Consultation Paper on Definition of International Traffic

- f. These companies are generating revenue from analytics and promotions to our customers directly or through partnerships with local companies, bypassing international routes, and hence TSPs are well within their rights to settle commercials from such enterprises / companies.
- g. In conclusion, Airtel lays down the following as ideal conditions in keeping with Global norms to operate under when it comes to definitions for SMSes:

- There is no need to reinvent the wheel by reintroducing a definition for 'International SMS' when there is already a perfectly acceptable, all-encompassing one followed and agreed upon within the industry.
- The definition of "International SMSs" as agreed upon and followed by the TSPs should be the one that is endorsed.
- Compliance should be enforced, and all entities must be made to route their international messages including A2P via an ILDO -both for termination in India and outside India.
- Such messages that do not come via ILDO route should be declared illegal and violative of the License Condition and be mandated to be routed via an ILDO only.
- The determination of prices of international SMS should continue to be under forbearance within prerogative of the Telecom operator as per the global practice.

Q3 Since the terms 'Inter circle traffic' and 'Intra circle traffic' are already defined in the telecommunication service license agreements, whether there is still a need to define the term 'domestic traffic' in the telecommunication service license agreements? If yes, what should be the definition of the term 'domestic traffic'? Kindly provide your response with a detailed justification.

Response:

No. There is no need to define 'domestic traffic' either. It is already well settled in the telecom industry within India and licensing T&Cs are clear about it.

Airtel further agrees with the Authority's assertion in para 1.15 of the extant CP that the term 'Domestic SMS', which is a type of 'domestic traffic', requires no specific definition as both the components of domestic traffic (viz. 'inter-circle traffic', and 'intra-circle traffic') are already defined in the Unified License.

Response to Consultation Paper on Definition of International Traffic

Q4 Whether there are any other issues/ suggestions relevant to the subject? If yes, the same may kindly be furnished with proper justification.

Response:

No Comments.
