



At the outset, it is submitted that at many earlier occasions BSNL had been submitting before Authority to implement “Do Call” registry instead of present arrangements of “Do Not Call” registry wherein onus is on the subscribers to get their number registered for not receiving the calls, which is contrary to all other aspect of day to day life in which consumers are required to act for acquiring something desirable and not for not getting something undesirable. This request was specifically made by BSNL to TRAI vide its letter No. 4-10/2007-RegIn dated 31.01.2008. However, without paying any heed to the submission of BSNL, the “Do Not Call” regime has been continuing by Authority which is admittedly causing great inconvenience to the public at large without any fault on their part. Further, it is causing wastage of resources of operators for handling huge databases for registering the numbers of subscribers and call centers for communicating with subscribers for recording their grievances on “Unsolicited Commercial Communications (hereinafter UCC)”, which are ultimately to be recovered from subscribers.

Unsolicited Commercial Communication (UCC) is nothing but the illegal or improper use of telephone connection. As per rule 427 of Indian Telegraph Rules, subscriber is personally responsible for the use of his telephone and use of the telephone for, inter-alia, disturbing or irritating any person is prohibited. The relevant rule 427 of Indian Telegraph Rules is reproduced hereinunder for ready reference:

Sec. 427: Illegal or improper use of telephone - A subscriber shall be personally responsible for the use of his telephone. No telephone shall be used to disturb or irritate any persons or for the transmission of any message or communication which is of an indecent or obscene nature or is calculated to annoy any person or to disrupt the maintenance of public order or in any other manner contrary to any provision of law.

In our humble submission, the present UCC Regulations which permit the telemarketers to make a call to every person who has not registered his number in the “Do Not Call” Register for not receiving the UCC is contrary to the provision of Indian Telegraph Rules reproduced above, which states that no UCC call shall be made to any person without any onus on the subscriber to register his number in any list of not receiving the UCC. **The “opt-in” approach, wherein the commercial communications are made to only such persons who opt for the same, is in tune with the provisions of Indian Telegraph Rules.** Therefore, it is submitted that “opt-in” approach should be adopted for UCC to make it more effective and the same is also in compliance with the license conditions which states that telecom services are to be provided in accordance with the Indian Telegraph Rules.

2. It is submitted that though the Indian Telegraph Rules prohibit the use of telephone for disturbing or irritating any person, there does not exist any provision either in the Indian Telegraph Rules or in the Indian Telegraph Act for taking legal

Deleted: No.:1-31/2010-RegIn
Dated: 18th June' 2010

To,
The Secretary,
Telecom Regulatory Authority of
India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg (Old Minto
Road),
Near Zakir Hussain College,
New Delhi-110002

{Kind attention: Shri S K Gupta,
Advisor (QoS)}

Subject: Consultation paper on
“Review of Telecom Unsolicited
Commercial Communications
Regulations”.

Sir,

Kindly refer to consultation paper
No. 08/2010 issued by TRAI on 11th
May, 2010 regarding “Review of
Telecom Unsolicited Commercial
Communications Regulations”.
Comments of BSNL in this regard are
submitted in the subsequent
paragraphs for kind consideration of
Authority.

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action against such persons/entities that make such call in case of contravention of such Rule. Therefore, in our submission, a suitable stringent legal framework should be put in place to penalize such persons/entities that violates the rule 427 of Indian Telegraph Rules. The Indian Telegraph Act should be suitably amended for making provisions for enabling the harassed customers to directly lodge an FIR against such persons/entities who violate the relevant provisions of Indian Telegraph Rules (ITR) and infringe upon his/her privacy.

3. In addition, specific provisions should be made in the Indian Telegraph Rules for authorising the telecom operators to mandatorily disconnect/withdraw the telecom resources of a subscriber who makes the unsolicited communication to any person by giving an advance notice of say seven days as provided in the Telegraph Rules for disconnection of telephone due to some other reasons,. Further, the concern operators not only be obliged to disconnect / withdraw that telephone/telecom resource that has been misused for such illegal activity but also it should be mandated to disconnect /withdraw all the telecom resources of the concerned person. Further, even the other telecom operators who have provided the telecom resources to such defaulting person should be mandated to withdraw the telecom resources of that defaulting person on intimation.

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4. Further, it is submitted that a common central database should be established, which will contain the records/details/past history of the subscribers whose telecom resources has ever been disconnected by any of the private either under misuse for making unsolicited communication /any other similar illegal activity or due to non payment of dues of any telecom operator. **This database should contain very personal/unique information of such defaulting subscribers like date of birth of self and spouse in addition to his/her name, father's/husband's or wife's name, address, employer etc and this database should be equally accessible by all the telecom operators under password.** Whenever, a person approaches a telecom operator for any telecom facility like landline connection, mobile connection, internet, broadband, leased line etc, first of all record of such person should be checked with the 'common database' of defaulters and connection to such person should be provided only when name of such person does not exist in that list. This database should be maintained by a neutral third party preferably by TERM cells of DOT.

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5. Similarly, the register of numbers who make request for receiving commercial communications by using "opt-in" approach should also be directly sent to the administrator of "DO CALL REGISTER", which may also be maintained by the TERM cell. The request of choice like insurance, finance etc. as proposed in the consultation paper should also be sent by the subscriber to the database administrator. Further, the complaints of UCC should also be sent directly to the neutral third party. Thus, the job of maintenance and administration of central database containing the records of defaulting subscribers, register of "Do Call"

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BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"

Annexure

subscriber and complaints of subscribers who receive the UCC should be entrusted to a neutral third party preferably TERM cell of DoT, who are present in every circle. The same third party should also be made responsible to direct the concerned telecom operators to disconnect all the telecom resources of defaulting persons in case of receipt of UCC. After disconnection of all the telecom resources allotted to that defaulting subscriber, concern telecom operators should report compliance to such central agency.

6. In addition, an amendment in the license of all the Telecom Operators should be made regarding **imposition of huge financial penalties including cancellation of license by the Licensor** in case any operator does not disconnect/withdraw the telecom resources of defaulting subscribers or allots the resources to any person whose name falls in the list of defaulting persons.

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7. The above-said defaulter database can also be very useful to deal with the bill payment related defaults by the subscribers. Further, every telecom operators should be mandated to not to allot any telecom resource to a person who has defaulted with regard to bill payment etc. with any other operator or with the same operator at some other premises or in different service areas.

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8. **In our humble submission, by following the above-detailed procedure, the problem of unsolicited communications can be fully sorted out.** In addition to above, our comments to the specific questions raised in the consultation paper dated 11th May'2010 are submitted in the **Annexure**.

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(P C Sharma)
DGM (Regulation - I),

Enclosure: As above.



BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"

Annexure

| Sr. No. | Issues | BSNL's Comments |
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Regd. & Corporate Office: Bharat Sanchar Bhawan, Janpath , HC Mathur Lane, New Delhi –
110001

Website: www.bsnl.co.in

**BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"**

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| 1 | <p>What are the primary factors for poor effectiveness of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) in its present form? Give your suggestions with justifications. (Reference Para 2.3)</p> | <p>The primary factors for poor effectiveness of the present UCC regulations is non-existence of adequate arrangements required for dealing with UCC. BSNL has been repeatedly requesting the TRAI to make the changes in the UCC Regulation for enhancing their effectiveness; during the consultation process as well as during subsequent meetings and letters no. 4-10/2007-RegIn/2170 dated 26.10.2007, dated 31.01.2008 & dated 25.09.2008. However, so far no amendments have been made in these regulations to achieve the same.</p> <p>In our submissions, the following factors are mainly responsible for poor effectiveness of the present UCC Regulations:</p> <ul style="list-style-type: none">(i) Non availability of any provision for disconnection of all the telecom resources of the defaulting telemarketers/subscribers by all the telecom operators.(ii) No prohibition against getting the telecom resources by the defaulting subscribers from any other telecom service provider.(iii) Lack of legal framework for penalizing the defaulting persons/agencies.(iv) Adoption of "Do Not Call" approach instead of "Do Call" approach in tune with Indian Telegraph Rules and which is more acceptable to the subscribers.(v) Putting the overall responsibility of stopping the UCC on telecom operators only while this problem belongs to the overall society and an collective effort is required by all the sectors. |
| 2 | <p>Do you feel that there is 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</p> | <p>BSNL is of the view that there is an emergent need to review the existing regulatory framework of UCC in order to make it effective. We have submitted the various actions required to be taken for getting rid of the menace of UUC in the matter. These are not getting re-iterated here for the sake of brevity and the same may kindly be</p> |

**BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"**

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| | menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3) | referred to in this regard. |
| 3 | Do you perceive do call registry to be more effective to control Unsolicited Commercial Communications as compared to present NDNC registry in view of discussions held in para 2.4 to 2.9? Give your suggestions with justification. (Reference Para 2.10) | <p>As submitted in the main letter, BSNL is of the firm view that "Do Call Registry" is a better and more effective option as compared to "Do Not Call Registry" to control/curb the UCC and hence had always advocated for the "Do Call Registry". "Do Call Registry" is pro-consumer approach and have several benefits as described by TRAI in the consultation paper at para 2.9.</p> <p>In addition, this approach will also require very less resources of IT, man-power etc.. Further, such data base will add much more value and cost effectiveness for the Telemarketers as compared to "Do Not Call Registry" approach. This approach would also save lots of inconvenience to majority of the customers.</p> |
| 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 of defaulting telemarketers? (Reference Para 2.11.3) | <p>BSNL is of the view that telemarketing activity should strictly be conducted after getting registered with DoT. Telecom resources should be provided to ONLY such telemarketers who are registered with DoT.</p> <p>Any telemarketing activity, without registration with DoT, must be treated as an offence and should be legally punishable under the law.</p> <p>Further, we have submitted the detailed comments in the main letter in this regard and the same may kindly be referred.</p> |
| 5 | Do you agree that maximum number of calls as well as SMS per day from a telephone number (wireless as well as wireline) can be technically controlled to force telemarketers to register with DoT? What other options you see will help to effectively | <p>In our humble submission, there does not appear to be any requirement for putting limits etc. on the calls/SMSs. Such restrictions will only put additional burden on the resources of the operators and will not help in any manner to restrict the menace of UCC.</p> <p>We have already submitted a detailed scheme in the main letter, which, in our submission, is</p> |

**BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"**

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| | control telemarketers? (Reference Para 2.12.4) | sufficient to control the UCC. The same may kindly be referred in this regard. In any case, putting limit on the maximum number of calls/ SMS per day for the subscribers in BSNL network is not technically feasible. |
| 6 | Do you envisage that second screening at SMSC as proposed in para 2.12.3 will effectively control unsolicited SMSs? Give your comments with justification. (Reference Para 2.12.4) | As submitted above, all these arrangements will burden the resources of telecom operators without substantial gain in this regard. The second screening at SMSCs is not feasible in view of the MNP implementation. It would increase the load on the SMSCs of telecom operators without any remarkable gain in the matter, even if it is feasible in some networks. Further, as the problem has been created by telemarketers, the responsibility of screening should lie with them only. |
| 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) | Substantial changes are required in the present UCC regulations in order to effectively control the unsolicited communications and infringement in the privacy of the consumers. In this regard, the detailed comments submitted in the main letter may kindly be referred to, as the same are not being reproduced herein for the sake of brevity. |
| 8 | Do you agree that present penal 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) | We don't agree with this view of undue enrichment provided in the consultation paper. On the contrary, BSNL is spending huge amounts on implementation of the present UCC regulations. Further, in our submissions, operators are not legally competent to recover such huge amounts, which are nothing but penalty, from the subscribers in the name of tariff. With regard to framework for effectively controlling the UCC, the comments submitted in the main letter may kindly be considered. |
| 9 | Do you feel that present UCC complaint booking mechanism | Although, the present complaint booking mechanism is effective, however, it would be |

**BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"**

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| | is effective? What more can be done to enhance its effectiveness? (Reference Para 2.13.8) | more appropriate and effective if the subscriber complaints are centrally booked by the neutral third party who is maintaining/ administering the central database "Do Call" register. In this regard, our detailed comments submitted in the main letter may kindly be referred to. |
| 10 | Do you feel that there is a need to enact legislation to control the Unsolicited Commercial Calls? Give your suggestion with justification. (Reference Para 2.13.9) | <p>In our submission, there is an emergent need to enact legislation to control the unsolicited commercial calls by way of making stringent provisions for penalizing the defaulting persons/entities.</p> <p>In this regard, our detailed comments submitted in the main letter may kindly be referred to.</p> |
| 11 | Do you agree that definition in para 2.14.1 correctly define Unsolicited Commercial Communications in Do Call registry environment? Give your suggestions with justification. (Reference Para 2.14.2) | <p>The proposed definition appears to be correctly defining the UCC in Do Call Registry approach except the following amendment:</p> <p><i>—any message, through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction/<u>activity</u> in relation to goods, investments or services -----</i></p> |
| 12 | Do you feel that proposed framework to register on NDCR will be user friendly and effective? What more can be done to make registration on NDCR more acceptable to customers as well as service providers? (Reference Para 3.7) | <p>In all the options of proposed framework entire burden has been put on the telecom service providers, which is not justifiable, as the problem of UCC has not been created by telecom operators but it is problem of society. It is submitted that all the expenditure on the implementation of measures of controlling the UCC should be born by the Government.</p> <p>As submitted in our main letter, the options of "opt-in" and complaints of UCC both should be collected by the neutral third party preferable TERM cells of DOT. Further, decisions of penalizing the persons originating the UCC should also be taken by third party.</p> <p>The telecom operators should not be made responsible for all these activities, as the same will burden them for none of their fault.</p> |



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| | | <p>The option of registering in Do Call Registry through a web-site or e-mail may not be very useful as the internet penetration in the India is too low and the very few subscribers are having internet facility. This may be used as one of the option for registering on Do Call Registry.</p> <p>Further, asking the choice from subscribers regarding their area of interest will make the process too complicated.</p> |
| 13 | <p>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 options do you feel is the most appropriate for implementation and why? Give your suggestion with justification. (Reference Para 3.8.3)</p> | <p>As submitted in the main letter, the work of maintaining /administering the data base may be awarded to TERM cell of DOT. They may take the help of NIC for the required IT infrastructure. The cost of maintaining database etc. should be born by Government.</p> <p>The funding by telecom service providers for setting up the National Do Call registry is not justified at all, as the UCC is not created by them. Further, in such case the subscribers shall be unnecessary burdened without getting any facility/service, as the charges will ultimately be required from them only.</p> <p>Alternatively, the charges for establishment and running of UCC mechanism may be recovered by the Government from telemarketers, who are the only beneficiary of selling their products.</p> <p>The charges for establishment of UCC may be recovered through levying a suitable registration fee on the telemarketer. Further, charges for running the UCC may be recovered by levying the regulated price on the telemarketers for procuring the database from National Do Call registry.</p> |
| 14 | <p>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</p> | <p>The present NDNC registry can very easily be converted into NDC registry. As the nature of work in both the cases is to record the choice of subscribers only. In fact, there will be substantial saving in the infrastructure, as number of records in case of NDC shall be much lower than NDNC.</p> |



BSNL's Comments on Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations"

Annexure

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| | 3.8.4) | |
| 15 | <p>In view of the discussion held in para 3.9, which option of charging and funding model do you suggest for procuring the 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)</p> | <p>As submitted above, the charges for establishment of UCC should be born by the Government.</p> <p>Alternatively, the charges for establishment of UCC may be recovered through levying a suitable registration fee on the telemarketer. Further, charges for running the UCC may be recovered by levying the regulated price on the telemarketers for procuring the database from National Do Call registry.</p> |
| 16 | <p>What measures do you suggest to protect data of NDC registry? Give your suggestions with justification. (Reference Para 3.10.2)</p> | <p>BSNL is also of the opinion that the secrecy and confidentiality of the data should be given utmost priority. However, the possibility of the sharing/leaking of the data from telemarketer's end cannot be ignored. Therefore, stringent provision in the legislation should be made to avoid such sharing etc. by the telemarketers. Also, Telemarketers must be mandated to disclose the source of the subscriber data used by them for telemarketing activity.</p> |