

1. 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)

AND

2. 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 menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3)

- a) It is well acknowledged fact that since the implementation of UCC Regulation, the quantum of telemarketing/unsolicited commercial calls has considerably come down. Till March 2010, around 27292 telemarketers have been registered with DoT, which shows that there is intent and commitment on the part of the Operators and also large telemarketing organizations. Of these telemarketers, over 9,700 applications telemarketers are from Airtel of which, 8,169 have been registered/verified (almost 30% of all Telemarketers registered with TRAI/DoT).
- b) Out of the 65 million customers that have registered with TRAI for NDNC, over 16.8 million Airtel customers are enrolled with the NDNC; hence over 25% of the NDNC is from Airtel.
- c) Further, of all NDNC complaints received at Airtel for April 2010, only about 20% were about promotional calls, as compared to almost 70% in April 2008.
- d) The NDNC implementation has also enabled the clear identification of the origin of text messages through the stamping of Operator- and Service Area codes in each commercial message.
- e) Efforts made by operators and the support of governing bodies like the TRAI, RBI and IRDA have induced most large organizations like Banks, Insurance companies, Airlines etc. to support the NDNC Regulations and ensure that their marketing agencies adhere to the Regulations. The proliferation of UCCs from such organizations has been seen to have reduced significantly since NDNC.
- f) However, we cannot deny the fact that some Regulatory and operational changes more in the nature of mid-course corrections are required to make the current regulation much more robust so as to ensure that unsolicited communication be reduced even more.
 - It is accepted that even after all efforts of the Authority and the Service Providers the menace of the UCC still exists and that is especially through unsolicited SMS being sent by users of **2-3 operators**, to customers across all Operators' networks.
 - Of the 14,704 SMS-related complaints received at Airtel in April 2010, 12,901 complaints i.e. 88% of the SMS complaints were about 'SMS' originating at other

operators' networks.

- Of these, 12,461 unsolicited SMS' were received from 5 operators, with one operator singlehandedly being responsible for 8,741 i.e. approximately 68% of all SMS-related complaints.

- We believe that the SMS based UCC have increased as there is **no termination charge** for SMS' and hence some operators are offering very low tariffs so as to encourage telemarketers to send SMS' indiscriminately. We would like to submit that the application of termination charge is an effective way to disincentives these operators from sponsoring/facilitating such unsolicited SMSs.

g) Further, we would like to suggest the following measures so as to make the current UCC Regulation/system more effective:

- The 45 days' **waiting-period** for DND registration could **be reduced**.
- **Lack of awareness** among the customers and telemarketers is one factor which has hampered the effectiveness of the UCC regulation. Hence, in order to create greater awareness regarding the registration process, guidelines and clauses and dependencies of the NDNC, the Regulator along with Service Providers could conduct public awareness campaigns. TRAI may also examine the possibility of using the existing Consumer Education Fund for educating and spreading awareness regarding NDNC.
- Another reason for the lack of effectiveness of the UCC Regulation is the inherent dependence of one operator on the conscience and commitment of other operators to the Regulations. Unsolicited communication being pushed by the network of another service provider is not controllable by the receiving service provider(s). Further, customers on recipient networks and the general public perceive this as a failure of the recipient Operator; This is further aggravating public sentiment due to visible, repeated violations by the same defaulters.
- It has been noticed that even after disconnection of one resource of a defaulting telemarketer, by one service provider the TM remains active and procures replacement and/or additional resources from other service providers. Hence it is suggested to initiate more decisive action by way of **Blacklisting**. The Authority could develop a systemic and structured guideline to determine such action.
 - ✓ The Blacklisting of repeatedly defaulting telemarketing agencies may be considered.
 - Hence such Agency should not be allowed to procure any additional or replacement resources from any Service Provider.
 - Registration applications for such Blacklisted telemarketers should be rejected at the application stage itself by the Operators, TRAI and DoT.
 - Such blacklisting can be enacted for a time frame specified by the Hon'ble Authority.
- It is humbly submitted that such sharing of information would be done basis a documented guideline by the Authority, and consequent to a written Agreement/Charter by all Service

Providers stating equal participation, commitment and documented forbearance, to guard against misuse or to gain undue benefit (telemarketer-customer acquisition) from such information being made public (within the Charter organizations), in good faith and confidence.

h) We would also like to put on record, some of the operational issues faced by the service providers which is adversely affecting the effectiveness of the UCC enforcement mechanism:

- The **Registration of telemarketers with DoT** is a very lengthy procedure and hence there is a need to simplify the process. To highlight, very often the IDs do not get verified within the period of 90 Days, hence they get deactivated and process needs to be started again. Better education of the TERM Cell and DoT supporting TM registration and an Overseeing Committee at TRAI to facilitate and drive seamless application processing by such TERM Cells /DoT is needed.
- In case the telemarketer application is rejected within 90 days then stronger mechanism of intimation to the stakeholder need to be formulated. Currently most of the telemarketers continue using expired IDs for base scrubbing.
- The current system for **scrubbing** of lists is very restrictive, cumbersome and time-consuming. Currently only 3,90,000 numbers can be scrubbed using a single login ID. Telemarketers today conduct much larger campaigns on a daily basis and are unable to use the NDNC system per their business needs.
- Further frequent outages (system downtimes) impact all telemarketers nationally, hence reducing their trust and confidence in the system, not to mention severe business impact to such organizations. There is a need to make scrubbing easier for the TMs. NIC should take steps to improve on frequent downtimes of the NDNC site. As Data scrubbing on NDNC site takes longer than expected as a result of which many TM's avoiding scrubbing

i) In light of the above, it is submitted that the entire issue of UCC can be resolved by effective enforcement and implementation of the Regulation.

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).

- a) **It is submitted that switching over to DCR is not the solution to non-compliance to the NDNC.** Even after DCR is implemented **a subscriber might still get UCC SMS/calls as there** is nothing that will prevent a TM from sending UCC SMS to all subscribers without bothering to check whether a particular subscriber has opted-in or not. Hence, we believe that DCR would not reduce the consumer complaints against the UCC, in fact it will increase the non-compliance by the telemarketers and customers' complaints regarding UCC may increase due to this.
- b) Implementing the DCR will reduce the Telemarketers' acceptance, support and buy-in to the Regulation. It is submitted that the Authority and the Service Providers have worked very hard to build confidence with telemarketers and to influence them to embrace the need and spirit of

self-governance.

- c) Further the DCR will require a complete makeover of all systems, IVRs, Short Codes. The change in telemarketer attitudes and the continued non-conformance by today's defaulters may not justify the effort, costs and resources involved.
- d) Even with the DCR (as has been with the NDNC), the current key challenges of enforcement, governance and customer awareness will still exist. In fact, due to the reasons listed above, the problems may manifest themselves.
- e) Communication of the DCR, and educating the masses especially in developing markets/regions will be very challenging. The default opt-in may impact the economics of mobile phone use by a large part of the consumers in such regions, as they will not receive timely, beneficial information and plans.
- f) It is accepted world over that "Opt-in" approach offers no greater privacy protection than the "opt-out" approach. There is little difference in the privacy protection provided by "opt-in" and "opt-out" systems: under either system, it is the customer alone who makes the final and binding determination about data use. **Shifting from an "opt-out" system to an "opt-in" system does not increase the privacy of the subscriber.**
- g) Opt-in requires that every subscriber be contacted to gain explicit permission. Opt-in is more costly precisely because it fails to harness the efficiency of having customers reveal their own preferences as opposed to having to explicitly ask them. **An "opt-in" system is always more expensive than an "opt-out" system.** Also a large database needs to be created that will put an additional burden on the operators.

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)

Yes, we believe that there is need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DoT. As suggested by TRAI, operators may seek information from the new subscribers seeking telecom resources whether his telecom resources were disconnected any time in past. However in the absence of a Blacklisting methodology, there may be no method available to Service Providers to assess the veracity of such credentials provided to them by the applicant telemarketers.

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 control telemarketers? (Reference Para 2.12.4).

AND

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 the above questions were unclear, Airtel's response is in two parts, so as to adequately address both possible connotations:

- a) **Telemarketers:** We believe that restriction on the maximum number of calls/SMS' per day **will not help in achieving the desired objective** as the **telemarketer could easily procure more resources and spread his daily calls/SMS over these resources** so as to ensure that the daily limit is not breached.
- b) **Customers:** **Placing a limit on the call/SMS' per day on all users across the entire network(s) would be extremely detrimental for all concerned.** This may also be perceived to be autocratic in today's times. Individuals today use their phones for many uses, including social networking, business communication (over voice and SMS channels), application interactions, and also for greetings (New Years, Diwali etc.)
- c) Given the extremely large volume of SMS-based communication currently prevalent by all telecom users, secondary screening would be extremely taxing on the SMSCs, possibly increasing the latency on such systems. Overall such screening seems infeasible given the current volumes and resources.

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).

There is a clear need for selective DND i.e. allowing the customers to opt for selective telemarketing basis their own needs and comfort. Customers could opt for receiving calls or SMS and also choose between the types of commercial communication they are amenable to receiving. It may be pointed out that this was envisaged and planned for in the original NDNC Regulations (released in 2007) itself.

Kindly refer to our response to Q 1 & 2.

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) Charging of higher tariffs is an important deterrent which exists as of now and should be continued with. There is no undue enrichment of service providers from charging this higher tariff. Charging higher tariff by the service provider will only hinder the telemarketer from using his access service.
- b) Charging any higher tariff rates if not considered to be any more of a detriment owing to the fact that errant telemarketers can churn their connection at will and such penalties would never

be realized. hence operators would be out of pocket even more, because of the higher cost of compliance with the UCC Regulation

9. Do you feel that present UCC complaint booking mechanism is effective? What more can be done to enhance its effectiveness? (Reference Para 2.13.8).

The current channels available to customers to log UCC complaints are very effective, easy, reliable and consumer-friendly and hence the same should be continued. Additional channels are not deemed necessary at the given time.

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).

- a) While we do not support Authority views to compensate subscribers for receiving UCCs as
- ✓ May lead to an increase in fake complaints
 - ✓ Increase the burden on the service providers
 - ✓ Penalties levied to Telemarketers are seldom realized, hence Service Providers would be forced to pay out-of-pocket
 - ✓ Customer's expectations of such "rewards" would lead to far more customer escalations, court cases and additional bad press.
- b) Further, we believe that a legislation which serves as a strong deterrence for defaulting telemarketers should be in place rather than just disconnection of resources since this is not resolving the root of the problem. We further suggest that this entire activity of complaint logging and suitable penalties against defaulters should be under a central independent body to make this regulation more effective. This will remove the present problems faced with respect to coordination amongst Operators & TRAI's Committee examining complaints.

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).

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).

AND

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 options do you feel is the most appropriate for implementation and why? Give your suggestion with justification. (Reference Para 3.8.3).

AND

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).

AND

15. 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).

AND

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

- a) In view of our response to questions 1 to 10, it reiterated that instead of putting in place a Do Call Registry (DCR) the enforcement mechanism for the existing regulations should be strengthened. This can be done through effective legislation which will serve as deterrence to defaulters.
- b) Since the compliance to the NDNC is the responsibility of the telemarketers, so there is a need to have a legal framework to penalize the telemarketers in case of non-compliance.

In summation, we would like to reiterate that the problem/constraints in the effectiveness of the current NDNC Regulations do not lie with the Regulation, rather the opportunity lies in the effective implementation and enforcement of the current Regulations, along with the active governance by the honorable Authority.