



Final BIFResponse to TRAI draft Regulations ‘the Telecom Commercial Communications Customer Preference Regulations, 2018’

At the outset, we are thankful to the Authority for coming out with the draft Regulations on ‘the Telecom Commercial Communications Customer Preference Regulations, 2018’. We are given to understand that the Regulator is proposing ‘block chain technique’ to address the spamming issue in India.

We wish to laud the Authority for bringing out this new draft regulation as it is in logical consequence of the following provisions under the TRAI Act viz.

11 (v) Technological improvements in the services provided by the service providers

11 (vii) Measures for development of telecommunication technology and any other matter related to telecommunication industry in general

11 (iv) Measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in services

There are several aspects of the draft regulations that may ‘potentially’ impact how the companies use SMS for sending verification/ OTP codes and other transactional messages. At present, some of these financial companies, banks, etc sends transactional SMSs for OTP verification, password reset and some interactive features through aggregators. It has been

suggested in the new proposal, based on blockchain technology, the creation of various distributed ledgers for registering customer preferences, customer consent, content templates, entities etc. As a consequence of creating these ledgers, there will be additional obligations that will be created for populating these ledgers and also on how processes are automated using these ledgers.

We would like to make the following submission to bring more clarity in the regulation keeping in mind (i) smooth implementation, (ii) frictionless user experience and (iii) minimum business disruption.

In relation to the draft, please find our comments as below. We feel there are some issues on which additional clarity or modifications may be required to ensure a balanced framework for regulation of unsolicited commercial communications (UCC) in a manner which is balanced and facilitates other type of messaging including transactional and service messages which are a key part of consumer protection.

Specific Comments and Concerns

(i) Issue of Unregistered Telemarketers

There is need for additional discussion on how this regulation with address the 'unsolicited commercial communication' emanating from 'unregistered telemarketers'. The thrust of new proposal is on registering and regulating telemarketers. However, 'registered telemarketers' are not the ones who are creating spam today, it is unregistered ones. In absence of any law penalizing those sending such messages, perhaps it will not be possible to control the same effectively.

(ii) Clarity in Regulation

In order to promote clarity and frictionless continuity of services, there are a number of issues upon which TRAI may provide additional certainty/clarity. These include the following:

- (a) Two-Way Messaging: An issue which was permitted under the previous regulatory regime was two-way / interactive messaging. The current draft does not address these issues and there is no clarity on its treatment.
- (b) Consent Requirement: It is presently not clear is whether consent is required for transactional and service messages. While it is unlikely to be the case, TRAI may provide additional clarity on this issue. It is our understanding that "Consent" is not needed for "transactional messages" as by its nature transactional messages are solicited messages. One can imagine how complicated situation will become otherwise if even for getting a verification OTP for WiFi or any other subscription

would first require that an entry be made in the ledger for allowing sending such OTP message (implicitly requiring that two messages be sent). Although there are many hints that authority also holds the same view but express clarity would help all the stakeholders.

- (c) Role of One Time Passwords: The draft Regulations do not provide clarity on the role of OTPs in authenticating consent. Clarity is required in relation to whether they are mandatory and who bears responsibility to ensure that OTP authentication and consent is carried out.

(iii) Template Requirements for Transactional Messages

Within this context, the proposed draft Regulations have the potential to complicate the existing approach to transactional messages. The draft Regulations require that transactional messages be only sent in the format of a template that has been registered with the concerned telecom service provider (TSP). This requirement is onerous and may restrict the forms in which messages may be sent – especially in cases where an automatic system exists to screen transactional messages to check compliance with the registered formats. Within this context, we request that the draft Regulations be modified in either of the below forms:

- (1) The draft Regulations should be amended to require a template-form for transactional messages. Instead, the Regulations should include a robust requirement that transactional messages do not contain promotional content. In the event of any user complaints, TSPs/TRAI may be competent to investigate and take punitive measures in case of any violations. Such an approach would provide more flexibility for service providers and senders to notify users of important information relating to their products or accounts.
- (2) Significant uncertainty is caused in relation to this requirement as implementation has been delegated to TSPs who are required to create Codes of Practice in relation to each process contemplated under the draft Regulations. However, no timelines are provided in relation to registration of templates or the process for their registration. In urgent situations, it may be difficult to register users when it is time-critical to notify users. Therefore, TRAI may consider removing the template requirement for transactional and service messages – which are, in any case, not considered to be commercial communications. Alternatively, the draft Regulations may be amended to mandate that TSPs register and permit use of templates in real-time.

(iv) Template Requirements for Consent

Similar to the above is the requirement for consent to be obtained in a template-form. While consent is a valid requirement in relation to promotional messages and other types of commercial communications, it is not required in relation to transactional and service messages as the same are closely tied to a user's availing of service from a service provider and are often based on a user's express request. Therefore, TRAI may clarify within the draft Regulations that consent is not required for transactional or service messages.

(v) Business Continuity

Given the comprehensive changes sought to be brought by the new framework, transition from the existing framework must be handled in a manner that does not lead to any disruption or lack of continuity of services. Consents that have been obtained from existing customers must remain valid and headers that have already been allocated must remain valid. While the TCCCPR provides additional guidance in relation to new qualitative standards to ensure that headers are accurately allocated, these must be transitioned to in a gradual and phased manner and minimise any confusion or inconvenience for consumers.

Existing Consents: We hope that TRAI is mindful of the scale of the existing consents and won't force taking fresh consent for millions of users for hundred thousands of different services and will create huge business disruption and user inconvenience. It should be clearly stated in the regulation that no additional consent is required where valid consent has already been taken.

Further, this is the first time that a new technology like blockchain is being deployed under regulation by TRAI for controlling unsolicited commercial communication. We suggest to give enough time to the TSPs to deploy and run trial for considerable time before the regulation comes into play. The focus of the trial should be to ensure the business continuity and user experience.

Overall, these measures must be implemented in a manner that does not result in overall cost increases for ecosystem participants.

(vi) Model CoP, Public Consultation

A significant part of the framework that is proposed is dependent on the Codes of Practice to be issued by TSPs. In the absence of any public consultation or guidance from TRAI, it is unclear what these codes will contain and other information relating to timelines, procedures, and responsibilities is unclear. As a result, we recommend that TRAI include a requirement that Codes of Practice be subject to public consultation and vetting by TRAI prior to enactment.

Alternatively, TRAI may issue a model Code which TSPs may use for their reference and guidance.

Further, a model CoP drafted by TRAI would be important because TSPs would be controlling most of the activities related to the revised framework. For example, monitoring the abandoned calls and to ensure that all the devices registered on their network have to support all the permissions required for the functioning of Apps. This raises the questions of TSPs intercepting user calls 'unlawfully' and TRAI extending control over devices and applications indirectly through TSPs. We request the authority should review the same with due care for the user concerns and also on exceeding remit of the TRAI.

Additionally BIF wishes to submit its comments on Specific Regulations as hereunder:

1. Regulation 10:

The Regulation 10 of the draft states that the operators are required to ensure that no commercial communication takes place through their network except by using header(s) assigned to the registered sender(s) for the purpose of sending commercial communication.

BIF Submission:

The draft has defined commercial communication as any voice call or message using telecommunication services, where the primary purpose is to inform about or advertise or solicit business for goods/services, supplier/prospective supplier of offered goods/services, a business/investment opportunity or a provider/prospective provider of such an opportunity.

Going by the definition of commercial communication as above ,the said regulation needs to acknowledge that such communication can also happen through unregistered telemarketers who won't have any assigned headers. In such cases, Operators would have no control over such individuals/entities. The Regulation perhaps needs to identify and differentiate between the commercial communication thathappens through registered telemarketers having assigned headers and that through un-registered telemarketers.

In view the above, **we request TRAI to amend Regulation 10 accordingly.**

2. Regulation 13 and 14:

TRAI, vide these regulations, have mandated the adoption of new technology named Distributed Ledger Technology (DLT) and have introduced an entity in the value chain called private DLT Network Operators who will implement the DLT as per the prescribed Code of Practice (CoP).

BIF Submission:

Since this is a new addition to the regulation, it is felt that suitable time needs to be given to the operators to understand, adopt and implement the said technology. **Hence, we request that the regulations pertaining to adoption of DLT technology should be come into effect from January 01, 2019.**

3. Regulation 24:

In this draft, under regulation 24, TRAI has prescribed the Distributed Ledger mechanism for processing the complaints received by an operator.

BIF Submission

In this regard, it is submitted that certain clause of regulation 24 mandates the operators to keep the records of details of complainant and the senders against whom complaint has been lodged for three years.

We suggest that three years is a very long period to maintain the record of complainant and the sender against whom complaint has been lodged. It is felt that once the operator has acted upon against a defaulting sender as per the regulations, mandating the operator to keep the records of such senders for three years may perhaps be not necessary.

Hence, we suggest that TRAI should reduce these record keeping timelines to one year instead of the proposed three years.

4. Regulation 34:

The Regulation 34 of the draft Regulations states that it is the responsibility of the Access Service Providers to ensure that all the devices registered on their network shall support all the permissions required for the functioning of Apps as prescribed in regulations 6(2)(e) and 23(2)(d).

Also, Authority may order or direct the access service providers to derecognize from its telecom networks such devices that do not permit functioning of such apps as prescribed under these regulations.

BIF Submission:

The above mentioned regulation of TRAI puts the onus on the TSPs to ensure that the apps should function as per the requirement of TRAI regulations on all the devices registered on the network of the TSPs.

Since choice of device used and its capability to support a particular app or a number of them is not within the control of the TSP , this perhaps falls outside the scope of the TSP. A TSP can only

manage and/or control the services at network layer and application layer is totally independent from the TSP's network. A TSP has little or no control regarding the kind of app services a customer is using on its handset. Further, to execute the responsibility set forth vide Regulation 34, it would be required for the operator to access the application layer information from the handsets being used by its subscribers.

In view of the above, it would be helpful if the Authority could specify suitable guidelines for this aspect, keeping consumer security & privacy in mind

5. Schedule-IV:

TRAI has proposed a schedule-IV which mandates the operators to establish a detection mechanism for UCC while preparing the COP. This schedule has also outlined various activities required to curb the UCC by establishing an intelligence system which will detect UCC i.e. deploying honeypots.

BIF Submission:

We agree that honeypots, which are dummy numbers but have characteristics of actual working numbers, may be created by the Access Providers in their network.

There is likelihood that messages or calls from Unregistered Telemarketers (UTM's) may land on honeypots and data collected by honeypots can be used for identifying UTMs and taking appropriate actions.

Also, in case the TSPs use the honeypot solution than only new numbers should be used for the same i.e. no recycled number should be used in honeypot, as it may be possible to get solicited communication on such numbers.

It's heartening to note that the Authority has mandated to establish a detection mechanism of for UCC while preparing the COP. We suggest while doing so, we may also encourage operators to not only use the honeypot solution but also have provision for innovating other solutions.

We request the Authority to kindly modify the Regulation suitably, keeping the above suggestions in mind.