

Suggestions of Consumer Guidance Society of India (CGSI) to the amendments proposed by TRAI vide Consultation Paper No. 13/2012.

Having gone through the entire proposal to amend the Regulations the suggestions by CGSI to the amendments to UCC Regulations are as follows:

At the outset, CGSI feels that having regulations in place which cannot be enforced make the entire regulations toothless and untenable. The violators often know this and hence merrily continue to violate the law and get away scot-free because of lack of enforcement.

CGSI feels that economic sanctions in the form of penalties is essential to bring the UCC nuisance-mongers to heel. There must be stiff penalties to deter the persons indulging in this mischief, so that UCC should be a 'not worthwhile proposition' to the offender.

The suggestions given hereafter are based on the above philosophy. Tele-marketers should be asked to deposit a hefty sum with TRAI, and if found guilty of offences, a graded system of penalties levied on them. The problem, however, is more often than not with the 'Unregistered Telemarketer' who is very often the offender and cannot be booked because he has nothing to lose but his Cell Number. Unfortunately, there are several methodologies by which one can use another Cell-phone, including one's own (by getting a new SIM Card) or use one someone else's name. This makes implementation of the UCC Regulations difficult, if not impossible.

It is hence recommended that TRAI should levy fines/penalties on even the non-registered UCC offenders. The fines so levied, if not paid within 30 days, should be shown as default and transmitted/forwarded to the Credit-rating agencies used by Financial organizations, banks and credit card companies to hurt the offender's credit-rating, which will then stop him from availing loans or indulge in big-ticket spending/ventures in the financial sector.

In answer to the specific queries as stated in the Consultation Paper, CGSI has the following responses:

1. What are your views on the proposal of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour with similar signatures as proposed in the above para?

1. Blocking of SMS blasts at the source is a good idea and we endorse the same.

2. What should be the limit on the number of SMS per hour to be specified in this regard? Please give your views along with reasons thereof (para 2.1.1 to 2.1.4).

2. SMS limits should not be on hour but on per day basis. It should not exceed 200 per day. However, special groups like the handicapped and specific organizations like banks, government bodies and other bodies performing the duty of informing consumers about the individual's own activity like bank balance, use of a credit card or weather warnings, tax payments, Pulse Polio Immunization Programs etc can be given permission, on application, for unlimited SMSes. These may not be classified as Telemarketers but be classified under a new category, say, 'Consumer's Own Service Providers' or 'TRAI approved Service Provider'.

3. Please give your comments on the proposal to mandate the telecom service providers to obtain an undertaking/agreement from registered telemarketers and other transactional entities that in case they want to outsource promotional activities to a third party, they will engage only a registered telemarketer for such promotional activities. What are the other options available to control such activities? Please give your views along with reasons thereof (para 2.2.1 to 2.2.3)?

3. Yes, it would be necessary for the service provider making use of Telemarketers to give an undertaking that they are responsible for the activities of the Telemarketer and give a Bank Guarantee to TRAI for the maximum sum which can be levied as penalty on the Telemarketer.

4. Please give your comments along with reasons thereof on the proposal to disconnect telecom resources after ten violations, of entities for whom the promotion is being carried out? Also indicate whether ten violations proposed is acceptable or needs a change. Justify the same. (para 2.3.1 to 2.3.3)?

4. CGSI believes that 10 violations for suspension of telecom services is too lenient. We would like it to be five violations, with a scaled and graded fines for the first violation onwards. Ten violations would give a rogue telemarketer the option of using the system to repeatedly use the system with impunity and pass on the 'cost of fines' to the advertiser, thus making a mockery of the Regulations. A violator may, however, be given the chance to Appeal to TRAI to justify whether the call/SMS was UCC or a genuine call/SMS.

5. What additional framework may be adopted to restrict such subscribers or entities from sending UCC, other than the one proposed above (para 2.3.1 to 2.3.3)?

5. CGSI has suggested a form of graded fines and other penal action in the preamble to the suggestions immediately hereinabove and this may be implemented after due deliberation and with amendments, if necessary.

6. What are your views on the time frame for implementation of the facility for lodging UCC related complaints on the website of service providers? Please give your comments with justification (para 2.4.1 to 2.4.3).

6. It is experienced by most consumers that sending a complaint to TRAI or any other regulatory body for UCC is both tedious, time consuming and expensive. It is suggested that whenever a person receives a UCC, if the same is in the form of SMS – the same may be forwarded to a Toll-Free Number preceded by the number from which it was sent (e.g. 98XXXXXXXXX “_____”). This number may be reserved exclusively for SMS Complaints, so that the number and the message itself is enough to trigger off action as deemed fit. Another Toll-free number may also be similarly set up for Voice Calls. With the number of the receiver and the caller both on record, it should be easy for the industry to trace the rogue telemarketer (if

unregistered) by using technology. The present requirement of date, time and summary of the call/SMS is too tedious and impractical as a consequence of which, most consumers do not bother to report violations of the rules by telemarketers.

7. Do you propose any other framework for registering UCC complaint for easy and effective lodging of complaints (para 2.4.1 to 2.4.3))?

7. CGSI feels that if the above is implemented, there would be better discipline for telemarketers and enough deterrence to make UCC a difficult proposition.

For and on behalf of Consumer Guidance Society of India

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