



COAI response to the TRAI Consultation Paper on Review of The Telecom Commercial Communications Customer Preference Regulations, 2010

Preamble

- 1) At the outset we believe that the regulator should give due consideration to the Cost-Benefit analysis before issuing any regulation or making a policy related decision. This practice is being followed by the regulators in many countries.
- 2) **We suggest that TRAI along with our member operators can embark on a study to assess the cost of implementation of the solution and benefit being accrued vide the same, before TRAI notifies the regulation.**
- 3) We would like to highlight that our member operators have incurred substantial cost in the implementation of the “The Telecom Commercial Communications Customer Preference Regulations, 2010 (TCCCPR)”. This is for implementing the filtering mechanism at the SMS and Voice channels, Separate Number Series ‘140’ for Telemarketers to facilitate easy identification of telemarketing voice calls by customers not registered on NCPR, logistics of revising the contracts with all the telemarketers etc.
- 4) The implementation of the above mechanism has not only minimized the unsolicited commercial communication (UCC) via voice but also reduced the UCC SMS’s considerably. TRAI has itself highlighted that average complaints have decreased from 47454 per month between March 2011 to March 2012 to 16907 complaints per month between 27th September, 2011 to 11th July 2012 i.e. after the launch of the TCCCPR.
- 5) As highlighted in the consultation paper the Authority still wants to further tighten the current regulatory framework especially with regard to the Unregistered Telemarketers and hence have suggested the measures to address the issue.
- 6) In this regard, we would like to submit that the menace of the unsolicited commercial communication will be **difficult to resolve fully** and cannot be tackled through the proposed Regulations.
- 7) **We are of the view that this issue could only be tackled effectively through a legislation enacted by Parliament, similar to the privacy laws in some of the countries.**
- 8) Further, as per the TCCCP Regulation, the terms and conditions prescribed by TRAI for registered Telemarketers are very strict. Due to this prohibitive regime, except for the big and organized Telemarketing entities, most small and medium telemarketers are unable to take registration and prefer to remain unregistered.
- 9) **We are of the view that TRAI should prescribe a regulation which is conducive, so that the bulk calling and SMS sending entities should find value in registering as a Telemarketer.**

Query wise response is as given below:

- 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?**
- 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).**

COAI Response:

- a) With respect to the proposal of the TRAI of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour, we would like to submit that the same requires setting up additional capabilities for which our member operators would have to incur extra cost in implementation of the same.
- b) It has been highlighted by TRAI in its consultation paper that international long distance (ILD) operators have already upgraded their systems to implement the said provision. In this regard, we would like to submit that this solution at the ILD gateway caters only 1% of the total Traffic. Replicating the solution at the local SMS aggregators/gateways will amount to cater the rest 99% of the traffic. The upgradation of the operator's network and setting up of additional capabilities at all the local gateways will be huge cost for our members.
- c) We suggest that TRAI along with our member operators can embark on a study to assess the cost of implementation of the solution and benefit being accrued vide the same, before TRAI notifies the regulation.
- d) We would like to submit that on implementation of such solution of the signature verification of domestic SMS traffic would certainly lead to blocking of SMS's from the genuine customer and may lead to huge customer complaints and inconvenience. We would request that an evaluation/study should be carried out on the effectiveness and uptake of such proposals in the market with all stakeholders, before a consultation paper is floated.
- e) Thus this proposal will be expensive for our members and will entail little benefits for the customers. This proposal will also cause considerable inconvenience to the customers.
- f) We are also of the view that TRAI should consider taking legal opinion on this provision as filtering and scrubbing basis signature of the message might encroach the right of privacy of consumers since it requires the telecom service providers to inspect, monitor and dip into the content of the message which is not allowed to TSPs under the license conditions.
- g) We therefore strongly urge the Authority not to notify this regulation at this stage before embarking on the cost-benefit analysis along with the operators on the same.**

- 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)?**

COAI Response:

- a) We would like to submit that our member operators provide the telecom resources to the Telemarketers and bulk SMS senders only after having entered into an agreement with them and taking undertaking that they would not violate the provisions of the TCCCPR Regulations.
 - b) We do not envisage a situation where a registered telemarketer would chose to ignore the resources that our member have allocated (for which the telemarketer is paying a considerable amount as rental) and rather opt for outsourcing his activity to another party.
 - c) Also, it is highly unlikely for a registered Telemarketer, who is aware of all the regulations related to unsolicited commercial communication (TCCCPR), to deliberately outsource the activity to a third party who happens to be unregistered.
 - d) Therefore in our view the proposal for taking an undertaking from registered Telemarketers serves no purpose.
 - e) **It may be noted that operators can exercise control over only registered telemarketers through the agreement. Operators would have no control over any other entity with which operators do not have a telemarketer agreement signed.**
 - f) **We therefore request the Authority not to notify this regulation as it will not serve any useful purpose.**
 - g) **Further, we would like to suggest that as per the extant Regulation, every Telemarketer has to register with the Authority and then only approach any of the operators for telecom resources. Therefore, for the sake of convenience and driving compliance, it is recommended that the proposed undertaking be made a part of process of registration. The Authority, while registering any Telemarketer, should take this undertaking from 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)?**

COAI Response:

- a) We would like to submit that the said proposal is highly complicated for implementation and management for our member operators. Further, it will also be highly inconvenient for the customers and will breed lots of disputes and litigation.

- b) The operator is not supposed to monitor the content transmitted through its network. This is as per the existing privacy laws. Any attempt to validate these complaints would also involve issue of privacy.
 - c) Thus only source of content is through the customer complaints but disconnection based on the customer complaint has possibility of misuse of the provision. Any unscrupulous person may send SMSs containing promotion for some entity without its consent, and to disconnect telecom resources basis any complaint received for such SMSs would be unjust and unfair.
 - d) Though one may infer that the real culprit is the person for whom such promotion is being done by way of these bulk SMSs, however, to act and disconnect basis only the reported, and not validated content of SMSs, would be acting in a blindfolded fashion.
 - e) **Thus, we strongly believe that this regulation is un-enforceable and open to legal disputes. We therefore request the Authority not to notify this regulation.**
- 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)?**

COAI Response:

As highlighted in the preamble we would like to reiterate that :

- a) TRAI should try to bring legislation through the parliament to enact suitable laws against unregistered telemarketers.
 - b) TRAI should usher a conducive Regulation for registered telemarketers so that unregistered entities find value in registering and hence abiding by the rules.
- 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).**
- 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)?**

COAI Response:

- a) We are the view that registering a complaint by the subscriber via the current mechanism i.e. through voice call or SMS to toll free number 1909 is working well and is best medium for registering the UCC complaints
- b) Some of our members are already facilitating registering of UCC complaints through their websites and also over email. However, since this will involve backend processing of the web-forms and emails, reasonable time should be allowed to the operators to revert to the complainants with the complaint/service request number. **For this we propose a response time of 48 hours from the time of submission of complaint on the website/receipt of email.**

- c) We believe that some reasonable time (90 days) may be given for operators to enable web-based registration of UCC complaints.
- d) Further, as some of our member operators are already accepting complaints through emails on their currently existing and advertised Customer Care email ID, we request that another email ID may not be mandated. In this regard, we would like to state that our members would never be able to generate the recall value/ awareness of this new ID.
