

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan,
Jawaharlal Nehru Marg, Next to Zakir Hussain College,
New Delhi – 110 002

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Dated the 18th September, 2008

DRAFT DIRECTION

Subject: Direction under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and sub-regulations (6) (7) and (8) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), as amended by the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008(---- of 2008).

No. 104-15/2008-MN ----- Whereas the Telecom Regulatory Authority of India [hereinafter referred to as the Authority], established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as the TRAI Act, 1997), has been entrusted with discharge of certain functions, *inter alia*, to regulate the telecommunication services, protect the interests of consumers of the telecom sector, ensure technical compatibility and effective inter-connection between different service providers, lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect the interest of the consumers of telecommunications service;

2. And whereas the Authority had, in exercise of the powers conferred by section 36, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India made the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) (hereinafter referred to as the principal regulations), and subsequently amended the principal regulations by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 (1 of 2008) and the Telecom Unsolicited

Commercial Communications (Second Amendment) Regulations, 2008 (----of 2008);

3. And whereas sub- regulations (6), (7) and (8) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), as inserted by the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008 (----of 2008), require the service providers to take action as specified in the respective provisions of the said sub-regulations (6), (7) and (8) within such time and in such manner, as may be specified by a direction issued by the Authority under section 13 of the TRAI Act, 1997 and the said sub-regulations (6), (7) and (8) read as under:-

“(6) The Originating Access Provider to whom a complaint has been forwarded under clause (c) of sub-regulation (2), shall , within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act,-

(a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;

(b) intimate, the result of the investigation and the action taken by the Originating Access Provider on the basis of the complaint, to the service provider which forwarded the complaint;

(c) maintain records of the complaints and their redressal.

(7) The service provider who received the complaint of the subscriber under sub-regulation (1) shall, upon receipt of the intimation from the Originating Access Provider under clause (b) of sub-regulation (6), within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act , intimate, to the complainant, the result of the investigation and the action taken by the Originating Access Provider on the basis of the complaint.

(8) In case the service provider to whom a complaint has been made by a subscriber under sub-regulation (1), after carrying our the verification under clause (b) of sub-regulation (2), finds that the unsolicited commercial communication in respect of which complaint has been made by the subscriber under sub-regulation (1) originated from its own network, such service provider, being the Originating Access Provider, shall, within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act ,-

- (a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;
- (b) inform the complainant about the result of the investigation and the action taken by such service provider on the basis of the complaint;
- (c) maintain records of the complaints and their redressal.”.

4. Now, therefore, the Authority, in exercise of the powers conferred upon it under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997(24of1997) and sub-regulations (6), (7) and (8) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), [as inserted by the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations,2008(---- of 2008)], in order to protect the interest of telecom consumers and ensure strict compliance of the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) hereby specifies the time and the manner for the purposes of sub-regulations (6), (7) and (8) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), as inserted by the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008 (----of 2008) and directs that, ----

(a) the Originating Access Provider to whom a complaint has been forwarded under clause (c) of sub-regulation (2) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), shall, within twenty one days from the date of receipt of such complaint, -----

(i) complete the investigation referred to in sub-regulation (3) of regulation 16 of the said regulations and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4) or both, of regulation 16, as the case may be;

(ii) intimate, the result of the investigation and the action taken by the Originating Access Provider on the basis of the complaint, to the service provider who forwarded the complaint;

(b) the service provider who received the complaint of the subscriber under sub-regulation (1) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) and forwarded it to the Originating Access Provider under clause (c) of sub-regulation (2) of regulation 16 of the said regulations shall, upon receipt of the intimation from the Originating Access Provider under clause (b) of sub-regulation (6) of regulation 16 of the said regulations, within seven days from the date of receipt of such intimation, intimate to the complainant, in such manner which is verifiable, the result of the investigation and the action taken by the Originating Access Provider on the basis of the complaint;

(c) the service provider, who received the complaint of the subscriber under sub-regulation (1) of regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) who, after carrying out the verification under clause (b) of sub-regulation (2) of regulation 16 of the said regulations, finds that the unsolicited commercial communication in respect of which complaint has been made by the subscriber under sub-regulation (1), originated from its own network, shall within a period of twenty eight days from the date of receipt of the complaint,-----

(i) complete the investigation referred to in sub-regulation (3) of regulation 16 of the said regulations and, if after such investigation, it is found that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4) or both, as the case may be; and

(ii) intimate to the complainant, in such manner which is verifiable, the result of the investigation and the action taken by such service provider on the basis of the complaint.

(R.K. Arnold)
Secretary

To

All Access Service Providers,
Bharat Sanchar Nigam Ltd.,
Mahanagar Telephone Nigam Ltd.