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TELECOM REGULATORY AUTHORITY OF INDIA

**THE TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS
(AMENDMENT) REGULATIONS, 2008.**

No. (1 OF 2008)

NOTIFICATION

New Delhi, the 17th March, 2008

No. 15-2/2008-RE.-----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 hereby makes the following regulations to amend the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), namely:-

1. (1) These regulations may be called the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In regulation 2 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007)(hereinafter referred to as the principal regulations), after clause (h), the following clause shall be inserted, namely:-

‘(ha) “inquiry committee” means inquiry committee referred to in regulation 17D;’.

3. In regulation 11 of the principal regulations, in sub-regulation (1),-----

(a) for the words “period of nine months”, the words “period of two years” shall be substituted;

(b) the following proviso shall be inserted, namely:-

“ Provided that a subscriber may make such request for inclusion or exclusion before the period of two years, in case the facility referred to in this sub-regulation has been developed before a period of two years.”.

4. In regulation 16 of the principal regulations,--

(a) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(1A) Every complaint under sub-regulation (1) shall be made by a subscriber within fifteen days of receipt of unsolicited commercial communication by him.”;

(b) in sub-regulation (3),-

(i) in clause (a), for the words “direct the sender”, the words, brackets and letters “direct, without prejudice to levy of charges under clause (b) of this sub-regulation, the sender” shall be substituted;

(ii) in clause (b),---

(A) the words brackets and letter “referred to in clause (a) after being so directed for discontinuance”, shall be omitted;

(B) for the words “each subsequent unsolicited commercial communication”, the words “each unsolicited commercial communication”, shall be substituted.

5. In regulation 17 of the principal regulations, the following proviso shall be inserted, namely:-

“Provided that nothing contained in this regulation shall authorise a service provider (hereafter referred to as the former service provider) to send unsolicited commercial communication to the subscriber of any other service provider, ---

(a) unless the former service provider has been registered as a telemarketer with the Government of India in the Ministry of Communications and Information Technology (Department of Telecommunications) and possesses a valid certificate of registration on the date of sending of such unsolicited commercial communication;

(b) unless such subscriber, to whom unsolicited commercial communication is sent, has not been registered in the National Do Not Call Register under these regulations or the period of forty -five days has not expired from the date of making a request under sub-regulation (1) of regulation 7;

(c) if such unsolicited commercial communication violates any provisions of the law for the time being in force or any judgment or decree, award or order or direction passed or made by any competent court or tribunal or authority or forum or commission, as the case may be.”.

6. After Chapter IV of the principal regulations, the following Chapter shall be inserted, namely:-

**“CHAPTER IVA
INQUIRY AND PROVISION FOR FINANCIAL DISINCENTIVE FOR SENDING
UNSOLICITED COMMERCIAL COMMUNICATIONS**

17A. Consequences for failure of service providers to stop unsolicited commercial communications.-----If any service provider contravenes the provisions of regulation 15 or regulation 16 or regulation 17, it shall, without prejudice to the terms and conditions of its licence or any penalty which may be imposed under its licence, or provisions contained in clause (b) of sub-regulation (3) of regulation 16 or the provisions of the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding five thousand rupees and in case of second or subsequent such contravention, to pay an amount not exceeding twenty thousand rupees for each such contravention, as the Authority may, by Order under regulation 17H, direct.

17B. Factors to be taken into account by the Authority for deciding the amount of financial disincentive.---While deciding the amount of financial disincentive under regulation 17A, the Authority shall have due regard to the extent of inconvenience caused to the consumer and the

repetitive nature of non-compliance of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, by the service provider.

17C. Power of Authority to order inquiry.-----Where the Authority or the Chairperson , (hereinafter referred to as "appointing authority") has reasonable ground to believe that any service provider has contravened the provisions of regulation 15 or regulation 16 or regulation 17, it may, by order in writing, direct the inquiry committee to inquire into the contravention of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be and as may be specified by the appointing authority, and, to report thereon to the Authority.

17D. Composition of inquiry committee.----- (1) The inquiry committee, for the purpose of holding inquiry as referred to in regulation 17C, shall consist of three officers not below the rank of Advisor in the Authority comprising of,---

- (a) one representative from the Regulatory Enforcement Division in the Authority ;
- (b) one representative from the Legal Division in the Authority;
- (c) one representative from any other Division in the Authority, as may be nominated by the appointing authority:

Provided that an Advisor in the Authority, dealing with the case being inquired into, or, directed to be inquired into, shall not be nominated by the appointing authority as member of the inquiry committee in that case.

(2) If, for reasons other than temporary absence, any vacancy occurs in the office of any member of the inquiry committee , then, the appointing authority shall nominate another officer not below the rank of Advisor in the Authority to fill the vacancy and the proceedings may be continued before the inquiry committee from the stage at which the vacancy is filled by such nomination.

17E. Procedure for holding inquiry for determining contravention of the provisions of regulation 15 or regulation 16 or regulation 17.----(1) In holding an inquiry for the purpose of determining contravention of the provisions of regulation 15 or regulation 16 or regulation 17, the inquiry committee shall, in the first instance, issue a notice to the concerned service provider requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof).

(2) Every notice, under sub-regulation (1) to any service provider referred to in that sub-regulation, shall indicate the details of contravention of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, alleged to have been made by it .

(3) If, after considering the cause, if any, shown by such service provider, the inquiry committee is of the opinion that the concerned service provider should be heard in person , it shall issue a notice fixing a date for the appearance of that service provider through his authorised representative.

(4) The inquiry committee shall give an opportunity to the concerned service provider referred to in sub-regulation (1) to produce such documents or other material as it may consider relevant to the inquiry.

(5) If an authorised representative of any service provider fails, neglects or refuses to appear as required by sub-regulation (3) before the inquiry committee, it may proceed with the inquiry in the absence of such authorised representative after recording the reasons for doing so.

17F. Report of inquiry committee.----(1) After the conclusion of the inquiry under regulation 17E, the inquiry committee shall prepare a report indicating whether the service provider referred to in regulation 17C has contravened the provisions of regulation 15 or regulation 16 or regulation 17,

as the case may be, and submit such report to the Authority.

(2) Every report made under sub-regulation (1) shall specify the provisions of regulation 15 or regulation 16 or regulation 17, which has been contravened and shall contain brief reasons for such conclusion and such report shall be dated and signed by all the members of the inquiry committee.

17G. Service of notices.---The notices referred to in sub-regulations (1) and (3) of regulation 17E shall be served on the concerned service provider in the following manner, that is to say,-

(a) by delivering or tendering it to that service provider or his duly authorised representative; or
(b) by sending it to the concerned service provider by registered post with acknowledgement due to the address of its place of business or at its registered office.

17H. Order for payment of amount by way of financial disincentive by Authority on report of inquiry committee.----- (1) The Authority may, after considering the report of the inquiry committee, by order, direct the service provider, which violated the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, to pay such amount, subject to the provisions of regulation 17A, by way of financial disincentive, as may be specified in the order:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the concerned service provider had been given a reasonable opportunity of representing against the findings in the report of the inquiry committee.

(2) The Authority shall be guided by the principles of natural justice for the purposes of making an order for payment of any amount, by way of financial disincentive, under these regulations.

17I. Deposit of amount payable by way of financial disincentive under these regulations.-- The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be mentioned in the order for payment of such amount under these regulations.”.

7. In the Form of undertaking annexed to the principal regulations, in item (c), for the words “This is a commercial message, if you do not want to receive further messages, please register with your service provider’s Do Not Call List”, the letters and words “Pls speak to your operator if U do not want commercial msgs” shall be substituted.

(R.K. Arnold)
Secretary

Note.1.— The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification number No. 101--- 60/2006-MN dated the 5th June, 2007.

Note.2 .--The Explanatory Memorandum explains the objects and reasons of the Telecom Unsolicited Commercial Communications(Amendment) Regulations, 2007.

EXPLANATORY MEMORANDUM

Background:

The Telecom Regulatory Authority of India (the Authority) had made the “Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007)” on the 5th June, 2007 for curbing the unwanted telemarketing calls and thereby reduce the nuisance and inconvenience to the subscribers of basic telephone or cellular mobile telephone services from the unsolicited tele-marketing calls/messages.

2. The Authority has set up the National Do Not Call (NDNC) Registry which is operational since October 2007. The NDNC is being operated and maintained by the National Informatics Centre (NIC), in the Ministry of Communications and Information Technology. The tele-marketers are required to verify their calling telephone numbers’ list with the NDNC Registry before making tele-marketing calls. The subscribers can get their telephone numbers listed in NDNC through their respective service providers. The respective service providers shall upload the telephone number to the NDNC within thirty days of receipt.

3. All tele-marketers are required to get themselves registered with the Ministry of Communications and Information Technology (Department of Telecommunication) On line registration facility is available in the NDNC Registry.

4. The Authority, Cellular Operators Association of India (COAI) and Association of Unified Telecom Services of India (AUSPI) have advertised in the leading National dailies, the procedure for registering in NDNC. The details of call center number/short message service (SMS) numbers on which the registration can be done are available on the websites of respective service provider. The same can also be accessed from the website www.ndncregistry.gov.in. The Department of Telecommunications has also allotted a special four digit code “1909” to enable easy access to the consumers to register their number in NDNC.

5. The Authority also held a series of meetings with the service providers to ensure effective implementation of the “Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007)”.

6. Till date, more than 8.3 million phone users have registered for ‘Do Not Call’ in NDNC Registry. About 13600 telemarketers have got themselves registered with the Ministry of Communications and Information Technology (Department of Telecommunication). The NDNC is being accessed daily by around 600 tele-marketers for scrubbing their calling list. Out of approximately 1522 million numbers uploaded by the telemarketers for scrubbing, 1411 million numbers were cleared by NDNC for calling.

Non-compliance of the Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007).

7. The Authority has received several complaints with regard to the harassment of the consumers even after the notification of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007). In the said context, although it has been mentioned in the Explanatory Memorandum of the Telecom Unsolicited Commercial Communications Regulation 2007 dated the 5th June 2007 that the Authority has neither any power to impose penalty nor power to adjudicate the complaints, the matter was reconsidered in depth by the Authority. The Authority has revisited the matter and as advised now, the Telecom Regulatory Authority of India has sufficient powers, under sub-clause (i) and sub-clause (v) of clause (b) of sub-section (1) of section 11, read with section 13 and 36, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), to ensure the quality of service provided by the service providers and protect the interests of the consumers. There have been judicial pronouncements also that regulation of a particular matter embraces within its fold the power to do all those things necessary and incidental for regulating that matter. [UP Cooperative CU Federations Vs. UP Sugar Mills Association – AIR (2004) SC 3697]. Hence, under the Telecom Regulatory Authority of India Act, 1997, the regulatory power includes all acts necessary to ensure quality of service and to protect the consumer interest. The ambit of the above mentioned provisions of the Telecom Regulatory Authority of India Act, 1997 is very wide and enables the Authority to take all possible steps to ensure quality of service in the interest of the consumers.

8. It has therefore been decided by the authority to make service provider liable to pay an amount, by way of financial disincentive, not exceeding five thousand rupees for contravention of the provisions of regulation 15 or regulation 16 or regulation 17 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) and in case of second or subsequent such contravention, to pay such amount not exceeding twenty thousand rupees for each such contravention. Unless such any amount by way of financial disincentive is introduced by the Authority for preventing the Unsolicited Commercial Communications against the service providers, it would not be possible to ensure the quality of service so as to protect the interests of the consumers of the telecom services.

9. It is an important function of the Authority to secure the interest of the consumers, for whom ultimately the telecommunication service is meant for. Accordingly, the Authority has decided to amend the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 to introduce financial disincentive in relation to the service providers for preventing sending of the Unsolicited Commercial Communications.

Object of the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008.

10. The object of the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 is to improve the effectiveness and compliance of the said regulations by imposing financial disincentive in case of non-compliance of the aforesaid regulations by the telecom service provider.

11. The tele-marketers who are non-compliant with this Regulation can be categorized into three types as specified below:-

- (i) Registered Tele-marketers.
- (ii) Un-registered Tele-marketers.
- (iii) Telecom service providers.

12. There was no provision in the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) for payment of any amount by way of financial disincentive by the service providers who do not comply with the provisions of the said regulations (before amendment by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008). However the said regulations, 2007, *inter alia*, provided that-----

(a) the Originating Access Provider, to whom the complaint has been forwarded shall investigate the nature of call so received and if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, it shall-

(i) direct the sender of such unsolicited commercial communication to forthwith discontinue the sending of such unsolicited commercial communication to the complainant under the said regulations;

(ii) in case the sender referred to in (i) above, after being so directed for discontinuance, sends the unsolicited commercial communication, the Originating Access Provider shall charge the tariff in respect of each subsequent unsolicited commercial communication at the rate specified in Schedule XI to the Telecommunication Tariff Order, 1999 which was rupees five hundred only; .

(iii) without prejudice to the provisions contained in (i) and (ii) above, if the Originating Access Provider found that the sender, has made an unsolicited commercial communication after having such communication been charged at the rate specified in (ii) above, the Originating Access Provider shall disconnect the telephone of such sender.

The above provisions applied to the registered tele-marketers. In the case of tele-marketers who failed to register themselves with the Government of India, in the Ministry of Communication and Information Technology, Department of Telecommunications, their telephone connection shall be disconnected or provision of telecom service be discontinued, as the case may be, by the Access Provider as provided

in regulation 15 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007).

13. As already stated in paragraph 7 of the Explanatory Memorandum to the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), the telemarketing calls have engaged the attention of our Parliament, the Hon'ble Supreme Court of India, the Hon' High Court of Delhi and the Reserve Bank of India. Besides there have also been a number of consumer complaints made to the Authority about telemarketing calls. The situation is still much below the desired level and non-compliance of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) continues as there has not been provision for effective financial sanctions.

14. In order to ensure strict compliance of the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), it has been provided by the Telecom Unsolicited Commercial Communications (Amendment) Regulations 2008, certain financial disincentive for the telecom service provider in cases of non-compliance of the provisions of the principal regulations.

15. In addition to the above provision mentioned in preceding paragraph, the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 amends the principal regulations, i.e., the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) so as to *inter alia* provide ---

(a) for the detailed procedure for conducting an inquiry by the inquiry committee (consisting of three officers not below the rank of Advisor in the Authority, as may be nominated by the Chairperson or the Authority) for violations of certain provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007);

(b) for payment by the telecom service providers [which violate certain provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007)] of certain amounts by way of financial disincentive, as may be directed by an order of the Authority after considering of the report of the inquiry committee referred to in sub-paragraph (a) above;

(c) payment of an amount, by way of financial disincentive, not exceeding rupees five thousand for first non-compliance of the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) and in case of second or any subsequent non-compliance of the said regulations, an amount not exceeding rupees twenty thousand for each non-compliance.

(e) that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the concerned service provider had been given a reasonable opportunity of representing against the findings in the report of the inquiry committee and the Authority to be guided by the principles of natural justice for the purposes of making an order for payment of any amount by way of financial disincentive under these regulations.

16. Existing provisions contained in regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) do not specify the time limit within which the aggrieved subscriber of Unsolicited Commercial Communications shall make a complaint to his telecom service provider. In the absence of the time limit for making a complaint to his telecom service provider, the service providers are required to preserve call data records permanently. Therefore, a time period of fifteen days has been provided to the subscriber for making a complaint to his telecom service provider in respect of unsolicited commercial communications.

17. As per the undertaking given in the Telecom Unsolicited Commercial Communications Regulations, 2007, as it stood before the amendment by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008, every telemarketer if he makes an unsolicited commercial communication to any subscriber whose telephone number does not appear on the National Do Not Call Register, such communication shall be prefixed with the following text -

“This is a commercial message, if you do not want to receive further messages, please register with your service provider’s Do Not Call List.”

Some stakeholders made a representation in this regard to Authority stating that the said text has a length of 160 characters whereas the prefixing the above said message before each unsolicited commercial communication / promotional message and therefore is very highly lengthy and ineffective. Therefore, they have suggested that this could be shortened or reduced in terms of number of characters. Therefore the said message to be prefixed with the following text is suggested as under-

‘Pls speak to your operator if U do not want commercial msgs’.

This suggestion has been broadly accepted and the relevant text of the undertaking has been modified suitably.

18. Under the provisions contained in sub-regulation (1) of regulation 11 of the Telecom Unsolicited Commercial Communications Regulations, 2007, any subscriber may, after expiry of period of nine months from the date on which the National Do Not Call Register has been established under sub-regulation (1) of regulation 6, make a request to the Access Provider for inclusion in, or, exclusion from the request made under regulation 7 or revocation under regulation 9, any class or classes or type or category or categories of unsolicited commercial communication in accordance with the facility developed by the agency establishing National Do Not Call Register. The National Do Not Call Registry has become operational with effect from 12th October 2007 and the provisions of said sub-regulation (1) of clause 11 would come into force by 12th July 2008. However, in view of number of complaints being received from the subscribers in the existing framework itself about violation of Unsolicited Commercial Communications Regulations, it may require some more time for the existing system to stabilize. Therefore, it is proposed to extend the said time limit up to two years. However

it has also been provided that a subscriber can make such request for inclusion or exclusion before the period of two years, in case the facility referred to in the said sub-regulation(1) of regulation 11 has been developed before a period of two years

19. Section 14A of the Telecom Regulatory Authority of India Act, 1997, *inter alia*, provides that any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Hon'ble Telecom Disputes Settlement and Appellate Tribunal. Therefore, any person aggrieved by any order made by the Authority for payment of any amount by way of financial disincentive for non compliance of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) as [amended by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008] can make an appeal to the Hon'ble Telecom Disputes Settlement and Appellate Tribunal.

20. Apart from the above financial disincentive on the service providers, and in order to discourage the registered telemarketers also from sending Unsolicited Commercial Communications, the Telecommunication Tariff Order, 1999 is also being amended by the Telecommunication Tariff (Forty- seventh Amendment) Order, 2008 so as to provide that five hundred rupees shall be payable as tariff for each unsolicited commercial communication [made from Basic Services (Other than ISDN) and Cellular Mobile Telecom Service (CMTS)] for every first unsolicited commercial communication and rupees one thousand shall be payable as tariff for every subsequent unsolicited commercial communication.