

Annexure A

Idea Cellular response to TRAI Draft “The Telecom Commercial Communications Customer Preference Regulations, 2018”

For the purpose of ease of reading, we have divided our inputs into 2 categories:

- A. General to the Topic
- B. Specific to the sections from Draft Document

Accordingly, please find mentioned below our comments:

A. GENERAL INPUTS

I. Regulatory Impact Assessment of the proposed Regulation, a must:

- At the outset, we would like to draw the kind attention of the Authority to our earlier submission to the CP wherein we had requested that the Authority should before coming up with any new Regulation on Unsolicited Commercial Communications (UCC), commit itself to undertaking a cost benefit analysis. The reason for seeking such an analysis are three fold:
 - a. Globally, RIA is a process of systematically identifying and assessing the expected effects of regulatory proposals, using a consistent analytical method, such as benefit/cost analysis. The experience in various jurisdictions, such as the United States and European Union member states clearly shows that Regulatory Impact Assessment (RIA) is one of the best analytical instruments permitting to identify the results of the planned action and to give them a direction that ensures the best quality and efficiency of the law.
 - b. The TSPs have already made significant investments in the past on this subject matter. Considering that the Industry is going through a phase of extreme financial stress and reeling under heavy debt burdens thereby leading to all operators incurring losses on the investments made, it is critical that any new investments on top of the heavy investments already made, should only be made after careful consideration and deliberations, and a proper cost benefit analysis.

- c. Last but not the least, in the current eco system of DND we don't find any major issue while managing the preferences, TM registration, etc which is centralized managed by NIC & under authority supervision/instruction. Thus the incremental benefits from the proposed Regulation may not be substantial.
- However, the Authority seems to have completely ignored this particular aspect and has in turn set up the stage for some massive investments at the TSP end, that too on a technology that is hitherto unknown and unproven.
 - It is requested that the Authority should while issuing the final Regulations share the RIA as part of the Explanatory Memorandum.

II. Need for a holistic Solution:

- That said , it is also pertinent to mention that the issues of Unsolicited Commercial Communications and Privacy are inter-related, and the process of readying a Draft Data Protection Bill by an expert committee chaired by the Retired Supreme Court Judge Shri BN Srikrishna is already in its final stages (As per media reports the recommendations on the draft Data Protection Bill are already ready, and are due to be submitted to the concerned Government Department very shortly post which they might soon go to the Cabinet for approval).
- The Authority is also aware that the above-mentioned expert Committee was established to study and examine various issues relating to data protection in India and make specific suggestions on principles to be considered for data protection. The Committee was to thereafter suggest a draft Data Protection Bill with the specific objective to *“ensure growth of the digital economy while keeping personal data of citizens secure and protected”*.
- In view of the same, we feel that it would have been more worthwhile for the TRAI to have waited to study the final recommendations / Bill so that a holistic solution addressing all relevant issues concerning unsolicited commercial communications and stemming out of the Privacy Bill could have been implemented rather than following a piecemeal approach as would be the case now..

III. Distributed Ledger Technology (DLT) – Still unproven as a Technology

- Block Chain or DLT has not yet established as a successful technology on large scale in India or abroad. The success & viability of implementing DLT technology at a massive scale is yet to be factually proven or visible in Indian Context.
- As per the independent study of DLT and Block chain implementation, it was observed that 92% of the block chain projects started since 2016 by organizations or individuals are unsuccessful now. This study was made on largest software collaboration platform in world by a renowned consultation firm in the domain. **Considering this high failure rate and complexity in large scale implementation involving multiple entities and heterogeneous legacy systems of ASPs, it will be very difficult to predict success and sustenance of this implementation. ASP may incur losses in terms of CAPEX/OPEX, manpower investments, customer dissatisfaction and possible rework to reinstate old systems.**

Source: <https://www2.deloitte.com/insights/us/en/industry/financial-services/evolution-of-blockchain-github-platform.html>

- Studies and POC available on HyperLedger Fabric being tested in insurance and banking shows that it got limited success in small setup. **Hence it should be noted that this technology is still not ready for industry grade large scale production implementation.** It's worth bearing in mind that most DLT software is work in progress.

Refer sources:<https://www.ledgerinsights.com/scaling-issues-with-hyperledger-fabric/>

e.g. SWIFT recently completed a POC with 34 banks. While praising the progress made in HyperLedger Fabric, the press release stated: *“The PoC also showed that further progress is needed on the DLT technology itself before it will be ready to support production-grade applications in large-scale, mission-critical global infrastructures. For example, while 528 channels were required in the PoC to ensure Nostro accounts would only be stored on the nodes of their account servicers and owners, to productize the solution, more than 100,000 channels would need to be established and maintained, covering all existing Nostro relationships, presenting significant operational challenges.”*

IV. Distributed Ledger Technology – Other Challenges Galore

- As mentioned above, access providers have to incur significant CAPEX and OPEX cost for implementation and maintenance of DLT. Also to be noted is that the operational expenditure will be perpetual in nature.

- As on date, there is NO past Precedence of a “large scale” DLT implementation in Indian context. Hence there are many unknown factors which will impact implementation efforts, time and effectiveness.
- DLT, as a technology does not have any industry wide standard for implementation. Implementation practice/ methods varies as per DLT network providers. It is important for all access providers to adhere to common implementation practice. But this should not lead to technology binding or monopoly by single DLT network provider.
- DLT implementation requires high speed network infrastructure to function in near real time. This will require additional cost for implementing and maintaining high speed network across all access providers.
- Enormous set of data needs to be maintained for each and every customer and sender entity of all operators in Distributed ledger. This will need continuous up gradation in storage capacities.
- It will lead to additional burden on access provider networks for detecting unregistered sender entities and unsolicited communication transactions.
- Currently, there are only handful of Vendors in this space. In view of the same, the Authority should clearly define commercial model between ASPs and DLT providers so that any monopolistic DLT implementation can be avoided.
- There is a risk of DLT becoming bloated. Since DLT involves all participating nodes to Agree on the transaction, over a period of time with increased nodes, there is a chance of substantial time delays. Also if one or multiple nodes fail the transaction might not be ratified.
- Every node must be able to maintain the chain to stay on network to maintain immutability and Non repudiation. This will need a lot of compute resources. Also data storage will keep increasing perpetually. To maintain immutability and Non-repudiability, the Authority has not mentioned till what time the ASP need to maintain data (except in case of DL-Complaint)? The Authority may kindly note that any continuous need to increase Data storage will result in huge CAPEX.

- Since Data is going to be replicated or decentralized across access providers, all Nodes will have to imbibe strong information security practices, the weakest node or a rogue node in terms of information security can be a vulnerable point..
- Resilience of DLT network is an issue. There will be additional Cost which will be required to ensure availability of a single node against network outages, which would mean having a replicated node or Disaster Recovery Node resulting in increased cost.
- Draft regulation briefly mentions on the Migration of existing registered entities and records. But there is no current precedence of such migration activity for large data base in industry. Hence it needs to be discussed and decided with all ASPs, DLT provider(s) and Authority to formulate common migration process from legacy DB to DL DB and then entire data to be replicate in each of the nodes of ASPs.
- Also, of importance is to understand what the procedure will be to move from one DLT operator to another in near future. There is a significant risk of Vendor Lock-in when there is no precedence of Migration of Entities across multiple DLT service providers/ Platforms.

V. Implementation Timelines:

- **The Regulation requires the following developmental efforts:**
 1. Implementation of Distributed ledger technology for Customer consent registration, Sender registration, Customer- Sender association for consents.
 2. Building new interfaces between DL system and idea provisioning applications like CRM, Web portal, USSD, IVR, APP etc.
 3. Implementation of new business process for DND complaint resolution and maintenance.
 4. Additional efforts for capping or suspending violator senders (registered/ unregistered).
 5. Implementation of additional data scrubbing utility interface with DL for campaign management.
 6. DND interfaces from NCPR/ PCPR (DL Preferences) to idea provisioning systems
 7. Prepaid and Postpaid CRMs and other provisioning systems
 8. BI & CRM reporting
 9. Campaign management

10. Identification and Validation of every call/ sms communication against DL for identification of registered sender/ customer preferences. This will require new interface development of DL with network systems.
 11. Detect and identify non registered senders before/ after communication (SMS/ call)
 12. Stop/ Suspend violator senders as per regulation
 13. Identify abandoned calls and senders
 14. Maintain exception lists for abandoned calls/ auto dialers/ silent calls for registered senders for specified duration.
 15. Quality impact might be present, complete analysis to be done
- It is submitted that considering the complexity of this exercise and the fact that a new technology is being sought to be implemented, we anticipate the following tentative timelines for end to end implementation of integrated DLT in existing ecosystem:
 1. Framing Code of Practices ~ 3 Months
 2. POC & Vendor selection for DLT + Honeypot ~ 3 months
 3. System integration Plan for surrounding applications * ~ 3 months
 4. Development +SIT+UAT ~ 6 Months
 5. Go Live Readiness and Go live ~ 3 months

**System integration might involve Network Systems (MSC, SMSC, IN etc.) which might in turn involve coordinating with multiple vendors and getting changes done from each of them and in the IT provisioning systems.*

Thus implementation of this technology is expected to take anything between 15- 18 months from the date of notification of the final Regulations.

VI. No need for financial disincentives:

- We believe that the TSPs have consistently made their best efforts to reduce the incidence of UCC through various measures such as closely monitoring and analyzing call patterns, locations, etc. to identify Unregistered Telemarketer activities and have taken immediate corrective actions including disconnecting defaulting connections. For SMSs, the TSPs have installed spamming solutions and regularly update scripts in the same for best results. Such efforts have already brought down

incidences of UCC related complaints considerably. We feel that in view of the continued and ongoing support provided by ASPs towards mitigation of the problem of UCC, the Authority should consider doing away with the process of levying FDs on TSPs/ ASPs completely.

- We also feel that the quantum of disincentives proposed in the Draft Regulations is very high and could adversely affect the volume and value of the telemarketing business. Therefore, should the Authority still feel the need to have FDs, we feel that the quantum of disincentives proposed by the Authority in the Draft Regulations need to be reviewed and brought down from their currently high levels to a level where they do not start to adversely affect the telemarketing business.

Against the above background, we now proceed to making our submissions on the various specific sections in the Draft Regulation:

B. SPECIFIC INPUTS ON SECTIONS IN THE DRAFT DOCUMENT

Our specific Inputs on selective Regulations / Sub-Regulations are as follows:

- ***On the Regulations (1.2.a): “Except as otherwise provided in clause (b) and (c), these regulations shall come into force on 1st day of July 2018”.***

Idea Submission:

- There is no clause (c) given in the draft. Requesting authority to clarify the same.

- ***On the Regulations (1.2.b): “Regulations 2,3,4,7,8,9,13,14,15,16,25,26,28,29 of these regulations shall come into force from 1st day of October 2018”.***

Idea Submission:

- While authority has asked to implement following clauses 5, 6 , 17 ,18 ,19 ,20 ,21 ,22 ,23 ,24 ,30 ,31 ,32 ,33 ,34,35,36,37 & 38 on 1st Jul 2018, However many of these clauses are connected to implementation of other clauses for which the authority has mentioned 1st Oct 2018 as the implementation date. Mentioned below are a couple of clauses that seemingly contradict each other.

- a) Under clauses 5(3 & 4), the requirement is to provide the facility to record consents of the customer acquired by the sender and accordingly update records of consent for the customer; & revocation of consent by 1st July 2018.
- b) However as Per Schedule-I Clause 5(2), these consent is to be recorded and kept on the DLT whereas DLT implementation date mentioned is of 1st Oct 2018.
- c) Similar contradictions are noted against preferences registrations and records of complaints under Schedule-II Clause 5, Sub Clause 1 and 7.
- d) Under clause 6(1), seeking to provide ways and means to record/revocation of consent & preferences, the mentioned date of implementation is 1st Jul 2018, whereas as per schedule-II clause 5 & 6 & clause 23 & 24 all these records are to be updated on DLT for which the implementation date is 1st Oct 2018.
- e) "Complaint Mechanism": Under Clause 25 Sub-clause 5.(c).(i) & 5.(c).(ii).(A), it is mentioned that for UNTM also OAP has to initiate investigations provided for in regulation 25(4). However the regulation 25(4) talks about investigation in respect of RTM as to whether pre-checks for delivering the UCC were carried out. This contradicts both the clause.

We request the Authority to kindly review the draft Regulations & to clarify against each of the above-highlighted cases.

- ***On the Chapter-II titled "Commercial Communication through Access Provider Network" under Regulations (4): "Provided that the sender has notified in advance to the originating access provider about the use of the auto dialer and taken steps to maintain abandoned calls within limits provided for in these regulations or Code(s) of Practice" and Clause 3(a) of Schedule-IV regarding "Ratio of Abandon Calls to total attempted calls for a registered entity exceeding 3% over a period of 24 Hours by an entity using Auto Dialer for Commercial Communications calls;"***

Idea Submission:

- It is submitted that Identification of Abandoned call and silent calls via Auto dialer is not possible with existing network equipment at the time of origin or termination.
- Further, the licensing regime does not allow for monitoring of calls without which identification of abandoned calls would not be possible.

- Therefore, the reporting/monitoring of entities involved in Auto-dialer activities should not be the obligation of Access providers. Further, the ASPs also do not have any direct or indirect control over the call center SLA's of principal entities
- Therefore this clause / instruction about ensuring "maintenance of abandoned calls within limits" should not be included as part of the final regulations.
- ***On the Chapter-IV titled "Functions of Access Providers" under Regulations (8): "Every Access Provider shall undertake following activities in accordance with the provisions of these regulations;" and Regulations 8.(1):"Develop Code(s) of Practice to establish system and make arrangements to govern the specified activities."***

Idea Submission:

- As already submitted, developing a code of Practice will need at least 3 months of time. The Authority needs to kindly take note of this.
- Post sign off and acceptance of the Code of Practice, it will serve as the BRS (Business Requirement Specification) for system development, Hardware resources required and working out the overall timelines for implementation.
- ***On the Chapter-IV titled "Functions of Access Providers" under Regulations (9): "Every Access Provider shall ensure that no commercial communication is made to any recipient, except as per the preferences.....s." and Regulations 10: "Every Access Provider shall ensure that no commercial communication takes place through its network(s) except by using header(s) assigned to the....."***

Idea Submission:

- An ASP cannot control or validate purpose of communication between any unregistered telemarketer & subscriber in real time before initiation of voice call or sms. Also an ASP cannot validate each and every SMS template exchanged between unregistered Telemarketers and subscribers in view of the dramatically high volume of transactions. Thus an ASP has no control over the activities of UTMs.
- Thus clause 9 and 10 in their present form need to be amended to be able to factor in the realities.

- ***On the Chapter-V titled “Obligation of Access Providers” under Regulations (12): “Access Providers shall take appropriate measures to ensure that requisite functions are performed in a non-repudiable: - and immutable manner and to deploy, maintain and operate systems.....“***

Idea Submission:

- It is submitted that in order to maintain immutability and Non-repudiability, the Authority has not mentioned till what time the ASP need to maintain data (except DL-Complaint)? In the absence of a specific reasonable timeline, this would mean a consistent chunk of growing data will be immutable.
 - Thus the Authority needs to clarify if the data can be purged after a certain reasonable time period such as 12 months, in the absence of which the ASPs would have to incur significant cost commitments to ramp up their high quality enterprise Storage.
 - The Authority may kindly review and clarify this time aspect.
- ***On the Chapter-V titled “Obligation of Access Providers” under Regulations (13): “Access Providers shall adopt Distributed Ledger Technology (DLT) with permissioned and private DLT networks for implementation of system, functions and processes as prescribed in Code(s) of Practice: -“***

Idea Submission:

- As already submitted, Block Chain or DLT has not yet established itself as a successful technology on larger scale in India or abroad. The success & viability of implementing DLT technology at a massive scale is yet to become factually proven or visible in Indian Context.
- Considering the high failure rate and complexity in large scale implementation involving multiple entities and heterogeneous legacy systems of ASPs, it will be very difficult to predict success and sustenance of this implementation. ASP may incur losses in terms of CAPEX/ OPEX, manpower investments, customer dissatisfaction and possible rework to reinstate existing IT and Network systems.
- Further, even with such massive costs, there is the added risk of the benefits not matching up.

Additionally, we have already highlighted in the earlier section the various limitations concerning the implementation of DLT.

- ***On the Chapter-VI titled “Complaint Redressal” under Regulations (25.(1), 25.(4).(a) and 25.(5).(b): “TAP shall record the complaint on DL-Complaints in non-repudiable and immutable manner and shall notify, in real time, the details of”***

Idea Submission:

- Under these clauses 25 (1), 25(4.a) and 25 (5.b) it mentioned that TAP to notify real time to OAP & OAP to communicate to TAP on complaint actions. However there is no mode of communication prescribed in the draft.
- Clarification is required on whether DLT would be required to have the facility to notify & communicate back on action taken.
- ***On the Chapter-VII titled “Miscellaneous” under Regulations (34): “Every Access Provider shall ensure that all devices registered on its network shall support all permissions required for the functioning of such Apps as prescribed.....”***

Idea Submission:

- It is submitted that a TSP has no control over the application layer and can only control the network layer.
- The control for supporting the permissions for functioning of such an app would lie on the device side.
- This clause should therefore be removed from the final Regulations.
- ***On the Chapter-VII titled “Miscellaneous” under Regulations (38): “Notwithstanding the repeal of the TCCPR, 2010, the provisions contained in regulations 2 to 13, 16 to 20, 21 to 22 of the TCCPR, 2010 shall remain in effect”***

Idea Submission:

- As mentioned under clause number 38 of draft regulation, it has been advised to retain NCPR (as per TCCPR 2010 (6 of 2010). Clarity would be required on what would be the significance of NCPR in TCCPR 2018 & how would this be utilized as against the “DL-Preferences” which would now carry customers’ DND preferences across all Operators.

- Moreover, the same clause has a mention to retain Telemarketer registration process & Fee as per TCCCPR 2010 (14 & 15 of 2010). The Authority will need to provide clarity on modus operandi for “Fees/Deposit & dis-incentives structure chargeable for Telemarketers”.
- TCCCPR 2010 has a clear mention on the amount of registration & dis-incentives to be charged, however TCCCPR 2018 largely has left the framework to the liberty of Access Providers. The Authority will need to clarify on the model to be implemented towards the same.
- ***On the Schedule-I titled “Action items for preparing code of practice for entity(ies)”***

Idea Submission:

- As per clause 2.1 of schedule-I it is mentioned that promotional/Transactional/Service calls would be sent from 140xxxxxxxx. It is recommended that there be a separate series for transactional & service calls as currently many customer blocks/mark the calls as spam upon seeing them originating from the 140xxxxxx series. This could lead to their missing out on important transactional or service calls.
- As per clause 4(2.b) of schedule-I, before taking the consent, content of consent acquisition template is to be presented to customer. Here we understand that header & the content will not be part of the consent acquisition template. This is because as we refer schedule-II under clause 8(2.b) on DL-Consent, we have to record “Header of sender(s) or Consent Acquirer(s)”.
- If our above understanding is correct then as mentioned under clause 7(2.i) of schedule-II there is a short code allocation done to revoke the sender ID. Does this mean that it would only revoke consent for that particular sender Id and not any other Id registered by the acquirer? Please note, the sender or the principal entity might have many other sender ids. The Authority may please clarify.
- Also in 7(2.3) of schedule-II it is mentioned that basis the revocation request the consent should be removed from corresponding records except in case specific purpose(s) in indicated by the customer during revocation of consent. Here there is no capacity or provisioning mentioned in draft to cater to such specific conditions. We request the authority to review and clarify this point.
- ***On the Schedule-II titled “Code of Practice for Process of registration”***

Idea Submission:

- In schedule-II the Authority has incorporate many additional preferences such as, to block / unblock Voice, SMS, Auto dialer call (with pre-record), Auto dialer call (with connectivity to live agent), Time bases preferences & Day types. We however foresee multiple educational challenges emanating out of these provisions for the customers.
- Since there is no explanation memorandum given in the draft, we would need clarity on the following from Authority in order to understand the impact of multiple preferences opted by subscriber.
 1. If a subscriber has opted for “fully block” option & have also opted for any particular day or time preference, will that subscriber allowed to receive call & SMS from all category for that particular day or time.
 2. If a subscriber is under “fully block” preference & with a time band preference e.g. between 14 hrs to 16hrs. And has given opt-in (consent) to an acquirer, in this scenario can a sender be allowed to send the service SMS (promotional in nature) between 14hrs to 16hrs.
- We feel that there are multiple scenarios that can be created out of the exercising of various options & therefore for proper clarity & standardization across the industry, we would request the Authority to kindly provide detailed explanation against each of the various scenarios.
- ***On the Schedule-II titled “Code of Practice for Process of registration” : Clauses 2.(1) and 2.(2)***

Idea Submission:

- Under Clause 2.1 & 2.2. , it is required of an access provider to deploy functionality for customers to “Opt-out” of various UCC Mode of communications. The Regulation mandates an access provider to provide customers with individual options to block various modes such as Voice Call, SMS, Auto-Dialer (with pre-recorded announcement), Auto-Dialer (With connectivity to live agent) & Robo Calls.

- The challenge here is that while the regulation mandates a telemarketer to furnish his capacity for Auto-Dialer during registration process, this (auto-dialer) being an asset (dialers) owned by the Telemarketer & operated within the infrastructure of his/her premises, an access provider would not have visibility of whether he/she has reached out to customers through Auto-Dialer mode or through a Robo Call. Hence it is proposed that the options provided by the Authority be restricted to the broad categories of Voice & SMS only in the final Regulations..
- Also the Authority has prescribed time-based preferences. However we would like to draw the attention of authority on the probable challenges which would arise and could invite complaints and dissatisfaction in the market.
 - (i) Challenge at Access Provider's SMSC in terms of getting the delivery of SMS to happen within the preferred time band.
 - (ii) Challenge in terms of Coverage at Customer's end which might delay the delivery, despite scheduling at the origination end as per the preferred time band.

The Authority is requested to kindly take note of the above-mentioned concerns and make changes in the final Regulations accordingly.

- ***On the Schedule-II titled "Code of Practice for Process of registration". Clause 3 on "Procedure for registration or change of preference of time band(s) for commercial communications***

Idea Submission:

- As per the above clause, Time Bands (i), (ii), (iii) and (ix) shall be default OFF for all customers irrespective of the status of registration of customer i.e. for all customers including those who have not registered any type of preference(s), anytime unless customer has registered its preference(s) and switched ON.
- However, an adverse effect of this change is that this will effectively lead to reduction in the duration of customer communication time from the existing "9 am to 9 pm" to "10 am to 9 pm", i.e., a reduction of time window by 1 hr.

- As per the records available with us, currently there are no adverse customer reactions or associated dissatisfaction as regards the timings of the communications received by them. However, vide this change, there would be a needless loss of opportunity to connect with the subscribers.
- It is hence requested that the Authority kindly review and revise the time to the earlier prevailing slots. i.e. 9 am to 9 pm.
- ***On the Schedule-IV titled “Action items for preparing code of practice for UCC”. Clause 1 on “Every Access Provider shall establish, maintain and operate following system, functions and processes to detect sender(s) who are sending UCC in bulk and not complying.....” and Clause1.(b) on “deploying honeypots and using information collected by it”***

Idea Submission:

- It is submitted that deployment of honeypots would entail significant costs at operator’s end without commensurate benefits.
- However, should the Authority still insist on having honeypots, we request that the Authority clarify if the information for the same is to be crowd sourced from Customer complaints and used to develop signatures or it is to be entirely left to the ASP.
- ***On the Schedule-V titled “Action Items for preparing Code of Practice for periodic monthly reporting”.***

Idea Submission:

- In clause 1 of schedule –V “maintaining records of complaints on daily basis for each service area” we feel that creating & maintaining such a report on daily basis will consume avoidable man hours & the accuracy might also get impacted.
- Hence, it is recommended that since all the line items are part of DLT records, the report should be automated.

Others clarification & Recommendation to the draft Regulation:

- It was been informed during the open house session of this draft regulation that sender information can be Alphanumeric for voice call instead of just being a Number (CLI).

- In view of the same, it is submitted that this could be possibly seen as a breach to the license condition/ regulation through tampering of CLI.
 - Accordingly, it is requested that the Authority may kindly clarify.
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