

## Comments on Consultation Paper No. 08 / 2010 for Review of UCC Regulations

It is indeed heartening to note that it is being considered to put horse and the cart at the right place. In my inputs in December 2006 on consultation paper no. 15/2006 on the subject of NDNC registry, I had suggested to take the approach of NDCR being proposed now.

My comments on issues raised are as follows:

4.1 Before going into factors for poor effectiveness, we need to visit and accept prevailing situation which also forms justification for many issues raised in the consultation paper.

In general, individual consumers are vulnerable vis-a-vis organizations, big or small, with power and resources which many of them manipulate to their advantage often with arrogance, muscle power and threats, in spite of consumer organizations providing support to individuals to fight their cause. The prevailing culture, ambiguity in and lax implementation of the laws is an added advantage to them. Consumers have to fight for getting their dues even from those who manipulate and flout the laws, knowingly and blatantly without fear of law. Although law provides a mechanism for redressal, getting justice is a long drawn, expensive, and agonizing experience which drains a consumer, be it a consumer court or any other forum. It's a fight against resourceful and manipulative entities who drag the cases indefinitely from smallest forum to the highest often with contradicting judgments from them, with onus on consumer to prove that One is right. Flouting is so brazen that many a time One has to go

back to the forum to plead for implementation of the order. This situation, with all kinds of manipulations to bend the law is fully exploited against consumers.

It, therefore, becomes very important to formulate policies and legislations which do not leave consumers in lurch, protect them and pin down mischief makers at the right time.

Major factors for poor effectiveness are ridiculously low penalties not stiff enough to hurt and work as deterrent and lax implementation by interested parties and authorities. There are many other factors like putting onus on consumers to come forward to register in NDNC, consumers having a feeling that the present policies will not achieve objectives as TRAI does not have full power to punish guilty and award compensation, lack of awareness and transparency of the complaint process, and archaic, bureaucratic systems, establishments and mind sets.

4.2 There is a dire need to have One authority which should be involved in policy making, enacting legislations, and later in handling all matters like implementation and monitoring etc. in all respect.

The punishment meted out is not enough to act as deterrent. The fine of a few hundred or even a few thousand Rupees is not even peanuts. Unless it is made stiff enough to pinch in bottom line, it would not work. For that it has to be in a few Lakhs for the Marketers and a few million for the service providers. A repeat offence should be awarded with much more stiff penalties and detention.

Compensation to consumer is a must. In Indian milieu, consumer is used as a pawn and heaped with intentional wrong doings and fleeced by anyone. Unfortunately, we do not value agony, hardship and sometime life shattering experience individuals have to go through to fight wrong doings for no

fault of theirs. This should change and should not be viewed only in light of monetary losses suffered and cost incurred in fighting. It should also be used as an effective tool to stop perpetuation of intentional wrong doings and therefore should be high.

Making law to enable consumer to go to courts and claim compensation is good on paper, but in Indian context it would be only delaying justice and making them fight from pillar to post. It will discourage them to pursue it. The power to compensate should rest with the single authority that should be formed to address issue in entirety. When it is possible to resolve a matter with Executive action, why pass it on to Judiciary.

4.3 Do call registry (NDCR) is the logical approach. Consumer never asked for UCC when One subscribed for the service. It has been imposed on them with onus on them to say NO! Default option, therefore, should be NDCR. Why should One be forced to say NO not to receive UCC, when One never said YES. Let those, for whom it is a business, wait for consumers to say YES.

It should prove to be more effective as it will be much smaller database that can be effectively managed and monitored.

4.4 Controlling resources should be considered to avoid telemarketers congesting the network. As it is, call drops, disconnections and delayed receipts of SMS etc. are issues. Service providers only seem to be interested in improving their revenue and not the quality. Controlling resources should improve the situation. In case of a repeat offence it should be reduced further along with other penalties.

a. The agency/company for whom marketer works do not have any accountability. Should they not be held liable with overall responsibility. If a manufacturing company outsources,

the overall responsibility lies with the company. DSA concept is like outsourcing. With no responsibility taken by companies it is already a big fraud on consumers. Why not consider a total solution here. Agencies / Companies should be made jointly responsible for the wrong doings and penalized too. The serious and effective option should also include imprisonment for a responsible person of marketer, agency / company along with one who actually does it at working level.

b. Registration with DOT should be compulsory. It should be with full details of agency / company for whom marketer is working. To take care of the previous history and issue of taking declaration from telemarketer for previous default, it should be possible to make a database which should be visible to all service providers, something like CIBIL data base for creditworthiness. This may still be defeated by the marketer coming with a new name. To minimize this, all in the chain i.e., the Company, the Agency and the Marketer should be made responsible and penalized.

4.5 Controlling calls can be an effective tool as already stated by you and should be possible technically.

4.6 Second screening at SMSC is an excellent preventive measure to nip the mischief in the bud.

4.8 Yes, it is resulting in enrichment of the service providers. Penal amount collected from all sources should go in a common account that should be created with the authority which should be formed to control UCC in all respect. Finally there should be a mechanism to compensate consumer from this account. This will encourage consumers to lodge complaints.

4.9 Complaint booking mechanism is not effective. There is not enough publicity and awareness. Vast majority does not know how to complaint. Most of the time efforts to register and get

complaint number are stonewalled. Then, what happens after complaint is made is never known to consumer.

Let me quote one incident. I was told that the number from where UCC (SMS) was sent is not a company and therefore complaint cannot be registered. On taking up matter further I was told to read SMS to evaluate whether it is promotional SMS or not. After 35 minutes of my struggle to register complaint, call got disconnected (or was disconnected!) without complaint being registered.

In another incident, I was told “*complaint le liya na ab complaint number kyon chahiye. Panch minute bad phone karo, abhi system slow hai*”.

All this only de-motivates the consumer not to make a complaint. Complaint booking, therefore, needs to be further simplified.

Service providers must register all complaints of UCC even if they are made by those individuals who have obtained number somehow, are not registered as marketer or are not a company etc. etc. and provide a complaint number.

In all types of UCC, sending the mobile no., date, time and name through SMS to number allotted for making complaint should be considered a complaint with auto response generating complaint number.

E-mail is another option that should be considered though it can be defeated by an overflowing mail box or putting the mail in spam etc.

To thwart efforts of service providers not to register a complaint, a possible solution could be a fully automated voice complaint system which should also generate a complaint number. This will be effective in preventing people of service providers from

stonewalling.

It should be specified who a person should approach if an effort to register a complaint fails.

It should also be considered to display all complaints and their status on the website of service providers with names of defaulters, Agencies, Companies etc.

4.10 Enacting, amending legislations or anything else for formation of One authority to control all aspects of UCC should be considered. TRAI should be the most preferred authority as they have vast experience in this field.

4.11 The scope of UCC should also include the following:

- a. A promotional voice message or tune or song or a combination before a call is connected. This highly irritating idea and clever way of circumventing the NDNC is being used by many companies as it may be impossible to prove that UCC was made.
- b. Everyone, including individuals, with or without registration also should be covered to prevent marketers from using them or individuals exploiting it for their personal gains.
- c. Any other form, over and above what is specified and which is possible on mobile phone to beat innovative minds.

4.12 By giving service providers option of seeking a nod from consumers through calls or SMS to register, a loophole and an opportunity will be created for them to exploit their vested interest. In the past they used to send SMS or make a call for a service. No reply to SMS and call made to explain the service was taken as YES to start the service and charges. This was very

dangerous esp. for pre-paid customer who could not realize in time that they were being cheated.

Control for registering, therefore, should be 100% in the hands of consumer. Service provider should not have any control which can be exercised by consumer or the regulator. We should not condemn ourselves to repeat the history by forgetting it.

India is a vast market. Bad publicity once in a while for Companies with meager penalties does not affect business. Besides, majority indulging in malpractices, there is hardly any choice left for the customer. Sales and Marketing pitch is so hyped as to create a false sense of customer focus. With no self discipline and consideration for others by many organisations, lack of quick hassle free justice for customers, absence of deterrent punishment and compensation, its only strict legislations, penalties, and implementation that can save consumers from unethical practices and blatant violations of laws.

Not that all this is not known to those who can make the difference, the moot question is who is interested in protecting consumers and who will bell the Cat. If it is done half heartedly again, we will be only going in circles fooling us into believing that the Horse is before the Cart.

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