

To,

The Chairman,
Telecom Regulatory Authority,
TRAI House,
A-2/14, Safdarjung Enclave,
New Delhi- 110 029.

Ref: Written Submissions regarding telemarketing issue.

Dear Sir,

As directed by the Hon'ble High Court vide order dated 07.12.06 in C.W.P. No. 16332-34 my submissions are as follows:

1. I, Nivedita Sharma, in response to the consultation paper on unsolicited communication do here by submit the following facts and give my comments.

Facts

2. I am a valid subscriber of the GSM mobile services provided by Bharti Tele-Ventures under the brand name, Airtel. I subscribed to the post-paid services in the year 2000. About a year after subscribing to the post paid connection, I started getting calls from various banks/financial institutions and other companies for marketing their products & services. Initially such unwarranted calls were ignored, however, soon the frequency of calls started increasing and on certain days I used to receive around ten to fifteen calls causing tremendous disturbance. I lodged a complaint, in this regard, with the customer service of Airtel. There was however, no response of these complaints and as such the menace continued uninterrupted.
3. Thereafter a written complaint was lodged with the Airtel. In the said complaint, I clearly emphasized the fact that such unsolicited calls were not only severely disrupting my work but also posed a grave threat & jeopardized my safety & security, due to the sharing of my confidential information such as name, address and financial standing etc.

4. Thereafter I lodged another complaint with the Customer Service Department of Airtel, about such unsolicited calls & SMS. I clearly instructed the Opposite Party, that I should not receive any such calls or SMS in future. In response to such complaint, even though the SMS from Airtel were ceased, the calls and SMS from banks/financial institutions continued unabated.
5. The Airtel or any of its officials have made absolutely no effort at their end to respond to the said complaints. I continue to be harassed by such banks/financial institutions and the service provider etc
6. In accordance with the contractual obligations of Airtel, they were clearly bound to maintain the confidentiality of the personal & private information of the subscribers. The Privacy Statement clearly stipulates:

We however, assure you, that Airtel does not disclose your personal information to any other Cellular Service Providers, Banks, Credit Card companies etc. or their agents, affiliates which could lead to invasion of your privacy.

7. That, despite assurances I am still being harassed by such unsolicited calls from banks/financial institutions, like ICICI, UTI, HSBC, HDFC etc, for tele-marketing their products and services.
8. In fact, as recently as December 26, 2005, I, during the course of a meeting received a promotional call from an executive, named Shweta from American Express Bank Ltd., marketing its loan facilities. On being questioned as to the source of such information (mobile number etc.), she informed that they have been give information but refused to divulge the name and number of its senior executive, who had a list of people, who were to be approached for such promotion. Which is contrary to law and unfair trade practice .

9. It was also confirmed by an executive from ICICI Bank and city bank that the my personal details, like mobile number, address, and name etc. had been divulged by the service provider and such information was being constantly exchanged between service providers, on one hand and telemarketers such as banks/financial institutions, on the other hand for mutual benefits or financial gains. This fact was also highlighted in the article titled “Mobile Subscribers seek government intervention to check telemarketing” in Tribune dated October 02, 2005:

“Enquiries reveal that some of the private companies have illegally procured lists of mobile subscribers from the employees of the Spice, Airtel, BSNL and Reliance, and are using them to contact consumers as part of the marketing strategy. Though officials of the cellular companies deny these allegations, but the fact remains that even the Spice and Airtel are sending SMS to the customers of each other to woo towards their network.”

10. It is a matter of grave concern that such confidential information of the subscribers is being traded without their knowledge/consent. Such disclosures besides violating the terms of the contract are also an invasion of the fundamental right to privacy under Article 21 of the Constitution. That this issue recently came into highlight due to the PIL filed by Dr. Harsh Pathak, alleging that undesired calls for promotion of business by various companies not only harassed the citizens but also amounted to the violation of their right to privacy. The Court recognizing the menace created by such unsolicited calls, issued notices to private mobile service providers like Hutch, Reliance, Idea including Airtel. The Court also issued notices to banks like City bank, HSBC, Standard Chartered including Opposite Party No.3 barring them from making such unsolicited calls.

11. Despite the fact that this kind of large scale invasion of privacy, gross and blatant violation of the terms and conditions under the license agreement is going on for many years the TRAI has miserably failed to take any corrective action so far.
12. This exchange of data or selling of information is clearly contrary to the agreement and its terms and conditions and amounts to “unjust enrichment”. Despite the written assurances given to me, Airtel has divulged / caused to divulge confidential information without any due authority & without my consent/permission.
13. It is even more alarming that even the financial details of customers are also being divulged. I was, in fact, alarmed to learn that the callers from various banks were aware of my financial standing, without any such data being disclosed to them by me. Said exchange of information becomes even more ominous in the wake of the recent data theft by an employee of a BPO Company in India. The said incident clearly showed that confidential information can be easily sold out to anybody for money.
14. It is important to note here that the menace of unsolicited calls has started only after the mobile phones came into existence. There is sufficient evidence to establish the fact that the service providers are selling this information to get unjust benefit by compromising subscriber’s privacy. The para 1.18 of the consultation paper estimates the revenue generation from the telemarketing calls to be near 10 billion annually and this the basic reason for the service providers to sell this information so they make money by selling the info and y making money on ten billion calls annually. Earlier there was no private player in telephone service. There fore no such illegal money making was thought of. It is evident that to beguine with only the service provider had the information, which they sold to the banks etc. Now the data is widely available and is floating around for any one who wants to buy it. More the merrier every one stands to gain

except for the subscriber . For instance the following facts are important lead to establish the source of information

- (a) Complainant has not disclosed her mobile phone number to any of these agencies/banks club etc.

- (b) The complainant has always had phones no's bank accounts, cars, credit cards even before she got the present cell no but she never got any such calls, it has only started after she got an air tell connection.

- (c) The complainant's son, who is 15 years of age, has been given a mobile very recently and immediately he started getting calls for house loans and life insurance etc. He has no credit card or bank account or is not a member of any club does not buy cars or any such things. This fact amply proves that there is no connection between getting calls and the list of possible sources of information as stated by the association.

- (d) Complainants bother in law has got a Airtel connection in the name of the company and he has credit cards, he buys cars, has bank accounts, is member of clubs etc but he does not get calls as the connection is not in his name. But he uses all services which are alleged as the sources of information.

- (e) One learned colleague and senior advocate informed the complainant that his name as subscriber of cell phone is different than the one on credit

card and bank accounts etc and all tele marketing calls that he is getting for loans etc are by the name that is given to the service provider.

(f) The only common factor between all above is they have same service provider, “ Airtel ”

15. Considering the fact that the magnitude of the problem and serious harassment of the subscriber at the hands of unscrupulous marketers and service providers . It is necessary to come to bottom of the problem. In therefore it is incumbent upon TRAI to establish whether or not the service providers have caused subscriber of information to be leaked or sold. Once the primary source of such information sharing is established and violators are identified. Stringent action must be taken against them as per law for the past violations..
16. It is the legal duty of TRAI to conduct an enquiry to first identify the guilty and punish them Similarly the RBI can conduct similar enquiry also by seeking disclosure of the source of information from banks and financial institutions engaged in telemarketing activity and should take stringent action as per the law against those who have violated the privacy of phone users.

Comments

17. The mechanism suggested by TRAI completely over looks the current legal position .The fact that the privacy of individual is valuable and fundamental right Any attempt to make tele marketing legal would be ultra virus and liable to be struck down. Any responsibility placed on the phone user to register himself in DNC would also mean encroaching on his privacy and breach of confidentiality. As his number will be available strangers with out his consent and only if he

registers in DNC would he be relived of UCC. How ever the strangers will continue to have access to information and it is not acceptable to me as a individual.

18. Therefore it will be better to have an opt in or do call facility for those who want be called And a mechanism is to be set up where by companies interested for telemarketing must register them selves with the relevant authority and seek data which is legally available. This can also achieved by issuing some form by the service provider seeking written consent of the subscriber who do not mind or want be called by tele marketers. Any other method of tele marketing will be illegal and an invasion of the privacy of the subscriber. I oppose any move to legalize the telemarketing business in its present form.

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December 16, 2006

To,

The Chairman,
Telecom Regulatory Authority,
TRAI House,
A-2/14, Safdarjung Enclave,
New Delhi- 110 029.

Ref: Reply to the consultation questions.

Dear Sir,

The parawise reply to the questions raised in the consultation papres are submitted herein as under:

1. Yes I agree with the definition.
2. In my considered view no efforts have been made by any one as mentioned in your question ever made any effort at all on the contrary they have done every thing possible to promote this activity. As a result it has attained the present magnitude, because it was in the interest of all parties to let it continue and they could prosper. If at all any efforts were made then I am sorry to say that efforts by the RBI or other agencies, banks and service providers or any other organization have yielded no result at all. Partial relief came only after the **State Commission passed an order dated 27 -09-06 in complaint case filed by a**

subscriber. Even till today the banks, other financial institutions and various other organizations make multiple unsolicited calls daily to individuals even after requesting not to be called again

3. The solution / mechanism suggested by TRAI completely over looks the current legal position .The fact that the privacy of individual is valuable and a fundamental right included under Article 21 of the Constitution of India. Any attempt to make telemarketing legal would be ultra virus and liable to be struck down. Any responsibility placed on the customer to register himself in DNC would also mean encroaching on his privacy and breach of confidentiality. As his number will be available to strangers with out his consent and only if he registers in DNC he would be relived from UCC. How ever in the proposed mechanism the strangers will continue to have access to the information and numbers of the consumer with out their consent, which it is not acceptable, is illegal and breach of inherent right to privacy of every individual and against the interest of the consumer. I exert my right to treat my name and number as highly private and confidential and at no cost can any one can have accesses to it with out my explicit consent. **And if service provider thinks that he can take liberty with my privacy then he must provide me with the number of Sunil Mittal and I will also call him twenty times every day and same should also be available to all subscribers of Airtel .**

4. No central or otherwise DNC is acceptable but for the sake of discussion TRAI should consider a centralized do call register. This centralized do call register can be sold to the tele marketers for a good price and proceeds should reimbursed to the brave do call subscribers as reward for sharing their number with tele marketers. Whosoever interested in telemarketing or in promoting it should procure the list of consumers from the said do call registers maintained by the cellular service providers. . But the do call register should be with certain specified user guidelines, protection from misuse and definitely not free for all.

5. For tele marketing oriented approach the penalty should be in form of exemplary damages on the caller for each call made and if there is repetition of call by the same company then by way of imprisonment of the CEO.
6. If service provider approach is chosen then (and is better option of the two) very strict liability for misuse and unauthorized use should be imposed on the service provider ranging from damages to termination of the license.
7. With regard to problem envisaged in the 3.12 supporting legislation to impose the responsibility of tracing the call should be on the service provider. The legislation should be enacted to make it a criminal offence. The caller should face criminal prosecution and offence must be treated as non-bailable. The privacy of the called should be treated with utmost regard and as valuable fundamental right by the legislature.
8. Yes, a subscriber listed in DNC should be heavily compensated. I recommend that the once a person is called despite of being in the DNC then he must give a written complaint to the service provider along with the number and if name is available then name of the caller to the service provider. The service provider should trace the call and bring it to the notice of the regulator or the designated authority as may be prescribed and that authority must have the due authority of the law to proceed impose and implement its orders in a summary manner. The procedure prescribed must be such that it should not in any way inconvenience the complainant or put additional harassment and / impeach on its time and resources. Since the problem is national level the authority so envisaged may be combined or hooked up with the existing mechanism, such as the consumer forum. The compensation must be heavy enough to act as serious deterrent.

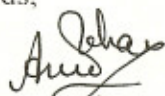
However the solutions envisaged and options given are long and dilatory, full of loopholes, technical and legal hassles for all concerned. Any mechanism will mean additional burden on valuable resources such as time money of the complainant, which

will act as deterrent to complaint. To cut the long story short the tele marketing deserves be banned as being illegal and there is adverse presumption against the service provider that he is the one who is illegally sharing the information of its subscriber and the regulator should conduct a inquiry and punish the service provider as per the law. Even one single action taken will completely stop the menace. Other wise the beneficiaries of the telemarketing business should be burdened with cost of it all. There is no gain in saying that the service provider is not sharing the information because now I am getting calls on my Airtel landline from ICICI bank. I also have BSNL landline but I do not get any calls on that line. What more proof is required against the service provider?. I very strongly believe that the Air tell is sharing subscriber information with banks etc with a rider to use their services in order to generate revenue of billions of rupees from these calls. That is why air tell has largest consumer base and revenue generation. All these facts can be verified /ascertained from the records available in an honest inquiry.

CONCLUSION

Tele marketing is illegal and infringement of fundamental right of the subscriber it has to be banned. Any and every solution will be double-edged sword and will harm the subscriber equally. Solutions as proposed are not subscriber friendly and will be at the cost of the subscriber time, money and privacy. Beneficiaries will continue to benefit and subscriber will continue to suffer.

Regards,


(ANUBHAV ANAND ARON)

for,

Ms. Nivedita Sharma.