

10/6/2010

Consultation Paper on review of Telecom Unsolicited Commercial Communications Regulations

RCOM's response to the TRAI's consultation

1. We welcome the opportunity to comment upon TRAI's consultation paper on "Review of Telecom Unsolicited Commercial Communications Regulations". We agree with the TRAI that unsolicited commercial calls may cause irritation and distress to the called party and therefore proportionate and appropriate consumer protection measures are necessary to ensure that the called party does not experience an unnecessary intrusion of privacy by unwanted and unsolicited commercial call. In this regard TRAI appears to have taken reasonable approach by promulgating UCC Regulation to curb unsolicited messages.
2. The TRAI has now proposed to convert National Do Not Call (NDNC) registry to National Do Call (NDC) Registry. We feel that **NDC registry environment would be excessively restrictive and against the basic right of free speech and trade**. Few customers are likely to be motivated to register to receive commercial calls and therefore the NDC would be a virtual ban on telemarketing calls. **The telemarketing is an acceptable trade practice** and the proposed restrictive policy would totally kill the this budding industry which has generated lakhs of jobs and still growing. We feel that any regulation that is applied to this situation must be proportionate and commensurate with it and not excessively restrictive.
3. Through NDNC, subscribers take an informed decision to receive or not to receive unsolicited commercial calls. However, TRAI's proposal for Do Call Register would put all commercial messages under unsolicited category. Had all calls from telemarketers been undesirable then telemarketing industry would not been there. India has large proportion of population living in remote and rural areas. There are number of calls which are educative and desirable especially for subscribers living in remote or rural areas who do not have access to TV or newspapers but come to know about number of new products and services through such calls. If Do Call Registry is implemented such subscribers would be completely

deprived. **We feel the proposal of Do Call registry is urban subscriber centric and would not be in the larger interest of public.**

4. The current NDNC registry is extraordinarily well-tailored to impose reasonable restrictions because by this way TRAI or DoT themselves do not ban any communication or speech but simply allow consumers to “Opt-in” to a list that shields them from unwanted telemarketing calls. That way consumer and not the Government or TRAI makes the choice to limit the calls that intrude their privacy. The existing approach of NDNC is less restrictive than the alternate proposal of barring commercial solicitation unless affirmatively assented by consumers.
5. The current NDNC registry does not ban telemarketing as would be a virtual situation with the proposed NDC Registry. The current NDNC registry creates a mechanism akin to a “No Trespassing” or “No Entry” or “ No Solicitation” sign whereby consumers indicate that they do not want unsolicited commercial telemarketing calls. Therefore, NDNC registry balances between privacy requirement of consumer and business requirement of telemarketers.
6. The Authority may recall that it had received number of requests to regulate advertisements on TV channels and carried out a consultation in 2004. The Authority must be applauded for taking a balanced decision between business and consumer interest and had decided against regulating advertisement time. Similarly we consider, NDNC is a balanced approach which meets business as well as subscribers requirement.
7. **In the existing approach of NDNC, consumer has absolute choice to decide to prevent any unsolicited commercial call. The present context of revisiting the UCC Regulation is that consumer still receives unsolicited commercial messages despite registration in the DNC registry. Therefore the issue is related to the effective enforcement of the existing regulation and not the expansion of the regulation and shift the NDNC to NDC. The proposal would not meet the objective as registry per se cannot stop willful default of the regulation to send UCC as that can be met through proper enforcement of existing regulation. In view of the above, we request the TRAI to not to implement the NDC Registry. Our comments on specific issues raised in the consultation paper are given below:**

4.1. What are the primary factors for poor effectiveness of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) in its present form? Give your suggestions with justifications. (Reference Para 2.3)

8. We do not agree that the Telecom Unsolicited Commercial Communications Regulations, 2007 is not effective. As at the end of March 2010, about 2792 telemarketers have got themselves registered with the Department of Telecommunications and around 65.82 million subscribers have registered in the NDNC Registry. This is about 10.59% of all telephone subscribers in the country and one of the largest in the world. The NDNC is being accessed daily by around 2000 telemarketers for scrubbing their calling list. After implementation of UCC regulation, a total of 3,40,231 complaints relating to unsolicited calls were received and against these complaints 9,158 warning letters issued. Already 31,905 times telemarketers have been charged penal tariff for first violation and 16,836 times for second violation. A total 14,735 lines of registered telemarketers and 37,348 lines of unregistered telemarketers were disconnected.
9. The UCC Regulation was desired when there was extreme menace of unsolicited voice commercial messages. The current regulation has curbed unsolicited voice commercial calls to a large extent and gave respite to consumers. However, recently, unsolicited commercial communication through SMS is becoming a nuisance. Many unsolicited commercial messages are sent even to those subscribers who have registered in the NDNC. The reason for such contraventions seems to be by unregistered direct seller or selling agents using telecom services to send commercial messages. The compliance level to the UCC Regulation by these direct sellers being low, there is need a to educate these small marketing companies about registration and compliance to the UCC Regulation. Proper awareness and education should be able to meet the objective. New Regulations, if needed, should be aimed at telemarketers and not to the service providers who are mere carrier of calls.
10. The existing UCC regulation has been introduced recently and may be given some more time for better compliance. The trend in number of complaints received and resolved, number of telemarketers scrubbing NDNC, development of complaint handling and complaint exchange systems between operators is encouraging and it is likely that the compliance level would improve with more awareness and education of subscribers and telemarketers. **The trend of compliance in UCC is far better if compared to the general trend in the country follow up of rules and regulations like traffic rules, payment of taxes, cleanliness and use of plastics etc.**

4.2. Do you feel that there is need to review the existing regulatory regime of Unsolicited Commercial Call (UCC) to make it more effective? What needs to be done to effectively restrict the menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3)

11. The problem of Unsolicited Commercial Communication is arising out of action of telemarketers and any regulatory action/response must be aimed at that. The problem does not arise from telecom service providers carrying those calls. The regulatory response to the direct marketing issue should not interfere with the operations of telecom companies. Regulating the telecom industry to find a solution to a problem created by telemarketers imposes an undue financial burden on them. Further, the current UCC regulation scheme is based on mutual cooperation of regulator and service providers and under this scheme imposing penalty or current proposal to enhance penalty level would not meet the objective of curbing UCC.
12. Internationally too, regulators regulate concerned telemarketing companies and not the telecom companies. The issue primarily concerns telemarketing and therefore an appropriate solution would be the telemarketer-oriented approach. In response to such concerns, many countries including the United States, the United Kingdom, Australia, Canada etc have introduced mandatory legislation for all businesses engaged in telemarketing which specify code of conduct for such companies. A similar legislation can also be considered to regulate telemarketers in the country.
13. **In view of the above we feel that there is no need to amend the present UCC Regulation. A separate legislation for telemarketers including direct selling agents aimed to regulate their conduct can make the existing regulation more affective.**

4.3. Do you perceive Do Call Registry to be more effective to control Unsolicited Commercial Communications as compared to present NDNC registry in view of discussions held in para 2.4 to 2.9? Give your suggestions with justification. (Reference Para 2.10)

14. We **do not** support the view that Do Call Registry would be more effective to control Unsolicited Commercial Communications. The registry is only a list of subscribers who wish to receive commercial messages. The Do Not Call registry creates a mechanism akin to a “No Trespassing” or “No Entry” or “No Solicitation” sign whereby consumers indicate that they do not want unsolicited commercial telemarketing calls and cannot control any willful violation by telemarketers to send UCC..

15. The Do Call Registry would put all consumers under the no solicitation list and make it excessively restrictive. Few customers are likely to be motivated to register to receive commercial calls. The telemarketing is an acceptable trade practice and the proposed restriction would totally kill the budding telemarketer industry in the country which has already generated lakhs of jobs. We feel that any regulation that is applied to this situation must be proportionate and commensurate with it and not excessively restrictive.
16. Further, a list of subscribers wishing for unsolicited commercial messages is merely the list of subscribers who are not wishing to receive these messages and cannot prevent willful violations of sending UCC. The menace of sending unsolicited commercial messages is not linked to the Do Call registry or Do Not call Registry and is likely to continue. In fact, after Do Call Registry, violations would increase as calls/messages which are valid today may become contraventions after shifting to no solicitation list. For effective control on telemarketers including direct marketing agents, a legislation prescribing code for conduct would help.

4.4. Do you perceive the need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DoT? What framework may be adopted to restrict telecom resources of defaulting telemarketers? (Reference Para 2.11.3)

17. At present only those telemarketers who register with the DoT are being regulated. To make the system more robust, it is suggested that campaigns may be initiated to educate telemarketers to register. The TRAI may also consider recommending promulgation of appropriate legislation to regulate telemarketer's conduct.

4.5. Do you agree that maximum number of calls as well as SMS per day from a telephone number (wireless as well as wireline) can be technically controlled to force telemarketers to register with DoT? What other options you see will help to effectively control telemarketers? (Reference Para 2.12.4)

18. **Restricting number of SMS or calls per day would not solve the problem. Telemarketers should be encouraged to register with the DoT and educated about UCC regulations. For a long term solution to the problem, proper legislation to regulate telemarketer's conduct should also be promulgated.**

4.6. Do you envisage that second screening at SMSC as proposed in para 2.12.3 will effectively control unsolicited SMSs? Give your comments with justification. (Reference Para 2.12.4)

19. Second screening of SMSs cannot be implemented on the following grounds:

- a. Commercial SMS to a subscriber registered in the NDNC is permitted if he has opted to receive such messages from concerned telemarketer. This kind of contract is common with banks which also register as telemarketer where subscriber opts to receive message after carrying out financial transactions.
- b. Many secure transaction codes for money transfer or payment are sent through SMSs
- c. Many service providers including DTH operators, cable operators send billing details, complaint details etc through SMS

20. The above mentioned messages cannot be screened and segregated. The proposal if implemented would result in blockage of commercial messages which are not unsolicited and therefore it is not in the public interest and may have number of legal implications.

4.7. What changes do you suggest in existing provisions to control the Unsolicited Commercial Communications effectively? Give your suggestion with justification. (Reference Para 2.13.6)

21. The existing regulation is sufficient to control UCC. It is the telemarketers who are responsible for all unsolicited commercial calls and the onus must lie on them and any regulatory action/response must be aimed at that. The problem does not arise from telecom service providers carrying those calls. The regulatory response to the direct marketing issue should not interfere with the operations of telecom companies. Regulating the telecom industry to find a solution to a problem created by telemarketers imposes an undue financial burden on them.

22. A new legislation if needed can be promulgated to regulate conduct of telemarketers.

4.8. Do you agree that present panel provisions to charge higher tariff from telemarketers are resulting in undue enrichment of service providers? What penalty framework do you propose to effectively control UCC without undue enrichment of service providers? (Reference Para 2.13.7)

23. The TRAI has allowed service providers to charge penal tariffs for unsolicited commercial charges. The tariff so charged is not even sufficient to meet the expenses for implementation of UCC Regulation. The TRAI has put following obligations on the service providers:

- (i) Provide toll free facility to subscribers to register or de-register in the Do Not Call Registry;
- (ii) Provide facility to subscriber to register in the NDNC during acquisition through CAF
- (iii) Maintain toll free facilities to receive complains for violation of UCC Regulations
- (iv) Maintain complaint exchange system for exchange of complaints between service providers
- (v) Carry out proper investigation for violation of TRAI's UCC Regulation and report to the concerned service provider where complaint has originated
- (vi) Impose penal tariffs, issue warning letters, disconnect telephone facilities etc in case caller is found violating.

24. We are of the view that the present provisions do not enrich the service providers

4.9. Do you feel that present UCC complaint booking mechanism is effective? What more can be done to enhance its effectiveness? (Reference Para 2.13.8)

25. As per the regulation, service providers have to create necessary framework to facilitate complaint booking if any subscriber receives UCC even after expiry of 45 days from the date of his registration for NDNC. The complaint booking is very easy and a short code 1909 for registration of telephone in the NDNC Registry as well as making complaint is available.

26. The subscriber makes a complaint mentioning the details of call originating number making unsolicited commercial calls, data and time of the call, company/ agency for which calls are made and product being marketed. Telecom Service Providers acknowledge such complaints, verify UCC registration of the complainant and forward the same (including call detailed record (CDR) and other relevant information) to the service provider from whose network such UCC was originated.

27. In view of the above, we feel that the present complaint booking mechanism is effective.

4.10. Do you feel that there is a need to enact legislation to control the Unsolicited Commercial Calls? Give your suggestion with justification. (Reference Para 2.13.9)

28. We feel that the existing UCC regulation is sufficient with regard to registration in NDNC, complaint handling, penal tariffs for sending UCC etc. However, the compliance level to the UCC Regulation by direct sellers who are generally not registered is comparatively low. **There is a need to educate these small marketing companies about registration and compliance to the UCC Regulation.**
29. New Regulations, if needed, should be aimed at telemarketers and not to the service providers who are mere carrier of calls. The international experience shows that regulators also have rules for telemarketing/ Code of Practice which the telemarketers have to follow. **These rules relate to introduction of the caller, organization on behalf of which the call is made, toll free number on which the calling agency could be contacted, and the timings during which calls should be made. The TRAI may consider recommending legislation for the telemarketers.**

4.11. Do you agree that definition in para 2.14.1 correctly define Unsolicited Commercial Communications in Do Call registry environment? Give your suggestions with justification. (Reference Para 2.14.2)

30. We do not support the proposal to change the UCC definition to adopt opt out approach for willingness to receive commercial messages as that would be very restrictive and may kill the telemarketing industry. The Do all registry would be a virtual ban on making any telemarketing call which is perhaps against the fundamental right of speech and free trade. The existing Do not call registry maintains the balance between privacy requirement of consumer and business requirement of telemarketers. By specifying Do Not call registry, TRAI or DoT themselves have not banned any communication or speech but simply allow consumers to “Opt-in” to a list that shields them from unwanted telemarketing calls. That way consumer and not the Government or TRAI makes the choice to limit the calls that intrude their privacy. However, in the proposal all communications would be banned without even taking consent from concerned subscribers. Therefore we do not support any change in the definition to change the current Do Not Call registry to the Do call registry.
31. We propose some amendments in the current UCC definition as we believe that UCC definition is very broad and covers even those organizations which have an existing business relationship with customers. It is crucial to conduct business to be able to contact existing and prospective customers. Customers can benefit from calls/SMSs as they receive information about current services or services that better suit

their needs. Various content and other premium services over telephone networks are hugely popular because customers are able to receive information on launch of new services. Reminder from an insurance agent for payment of premium, call from service centre to remind that car is due for service, call for payment of bill when bill payment date is nearing or is overdue, are not only common but most of the time welcomed by customers. Such calls make it easy for customers to receive important communication without requiring much effort on their part in gathering/remembering information.

32. Even with regard to prospective customers, if a person has made inquiries about a company's products, it is reasonable to expect that follow-up calls will be made so as to convert those enquiries into firm orders. It may be noted that in the USA, Canada, Australia etc if an organization has an existing business relationship with a customer for a period of 3 to 18 months preceding the date of a telemarketing call, such a call is treated as an exception and hence and not covered under UCC. In case a customer has made an enquiry or application for a product or service, then a telemarketing call in such a circumstance is not covered under UCC if it is made within 3 months of an enquiry/application. **Therefore, it is suggested that following proviso be added in the UC Regulation:**

“Provided that any commercial telecommunication message received by a person who has registered in the DNC register shall not be called UCC if he has an existing business relationship with that organization in 18 months prior to the receiving of such a call or has made inquires regarding a company's goods or services or participated in a company's promotional campaign in a period of three months prior to a telemarketing approach, or the call is from the person's telecom service provider, pertinent to the service and/o r being subscribed to by the receiving party and the service status thereof in a period of three months prior to a telemarketing approach”

4.12. Do you feel that proposed framework to register on NDCR will be user friendly and effective? What more can be done to make registration on NDCR more acceptable to customers as well as service providers? (Reference Para 3.7)

4.13. In your opinion what are the various options which may be adopted for setting up and operating the NDC registry in India? Among these suggested options which options do you feel is the most appropriate for implementation and why? Give your suggestion with justification. (Reference Para 3.8.3)

4.14. Do you agree that present NDNC registry can effectively be converted to NDC registry? What measures need to be taken to make it more effective? (Reference Para 3.8.4)

33. As submitted above, we do not support the proposal to change the UCC definition to adopt opt out approach for willingness to receive commercial messages. The proposal is excessively restrictive and may even kill the telemarketing industry. The Do Call registry would be a virtual ban on making any telemarketing call which is perhaps against the basic right of speech and free trade. Disallowing commercial calls to a subscriber without even taking his consent would not be correct. We have not come across any major international example where Opt Out has been successfully implemented. We suggest that NDC Registry should not be implemented.

34. **We believe TRAI should focus to educate people about their rights of privacy and not receive unsolicited commercial communications. Spreading of awareness would be more effective than shifting to a new Do Call registry.**

4.15. In view of the discussion held in para 3.9, which option of charging and funding model do you suggest for procuring the data from National Do Call Registry by telemarketers? What should be the various provisions you want to incorporate in suggested model? Give your suggestion with justification. (Reference Para 3.9.5)

35. We do not support NDC Registry.

36. However, **existing NDNC register should be made available for registered telemarketers, free of charge. To operationalize this model, regular funding will be required . The sources of these funding may be from the Government. Availability of subscriber data free of cost may encourage telemarketers to register with DoT. Reduction in telephone subscriber data acquisition cost will also support telemarketers business model and reduce the availability of illegally captured subscriber data. This may enhance the effectiveness of UCC regulatory framework.**

4.16. What measures do you suggest to protect data of NDC registry? Give your suggestions with justification. (Reference Para 3.10.2)

37. We do not support NDC but fully agree with the TRAI that personal information should be protected against any illegal trade. The TRAI and other agencies in DoT can take steps to raise awareness of the privacy issues to deter illegal conduct of trade of personal information.

38. Consumers care about their personal privacy and have a right to expect that their personal details are and should remain confidential. We are committed to protect their privacy. The clause 39.2 of the UASL also provides as under:

39.2 Subject to conditions contained in these terms and conditions, the LICENSEE shall take all necessary steps to safeguard the privacy and confidentiality of any information about a third party and its business to whom it provides the SERVICE and from whom it has acquired such information by virtue of the SERVICE provided and shall use its best endeavours to secure that :

a) No person acting on behalf of the LICENSEE or the LICENSEE divulges or uses any such information except as may be necessary in the course of providing such SERVICE to the Third Party; and

b) No such person seeks such information other than is necessary for the purpose of providing SERVICE to the Third Party.

39. **The license conditions are sufficient to ensure protection of data.**