

भारतीय लोक  
प्रशासन संस्थान  
इन्द्रप्रस्थ एस्टेट, रिंग रोड, नई दिल्ली-110 002



INDIAN INSTITUTE OF  
PUBLIC ADMINISTRATION  
I.P. ESTATE, RING ROAD, NEW DELHI-110 002 (INDIA)

State Consumer Helpline Knowledge Resource Management Portal  
(SCHKRMP)  
(A National Nodal Agency)

S.K. Virmani  
Project Manager

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Advisor (CI & QoS)  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan,  
J.L.N. Marg, Old Minto Road  
New Delhi-110 002

**Sub: Submission of comments against proposed 10<sup>th</sup> Amendment to TRAI Regulation “The Telecommunication Commercial Communications Customer Preference Regulation (TCCCP), 2010”**

Dear Sir,

Thanks for inviting comments on the proposed amendment to TRAI regulations on “**The Telecommunication Commercial Communications Customer Preference Regulation (TCCCP), 2010**”. We request you to kindly consider the following comments which we feel relevant.

#### COMMENTS

The focus for the issue of 10<sup>th</sup> Amendment to the Telecom Commercial Communications Customer Preference Regulations, 2010 is to address the problem faced by the subscribers on a/c of receiving telemarketing calls from the unregistered telemarketers using normal telephone connections. In other words, **the objectivity of the 10<sup>th</sup> Amendment to the regulations is to curb unregistered telemarketing.**

**The comments to the above proposed amendment to the Regulations are brought out in the following paras keeping in view as to whether the proposed amendment are sufficient to achieve the objectivity at the same time to ensure that none of the provision is having any scope of its abuse.**

- I. To achieve the main objectivity of the Amendment is to look into as to who are the audiences of the telemarketing business. The telemarketing calls are being made to two categories of the customers viz.
  1. The subscribers who are registered with NCPR and
  2. The subscribers who are not registered with NCPR.

Similarly there are two categories of the telemarketers namely:

1. The telemarketers who are registered with TRAI in short Registered Telemarketers
2. The telemarketers who are not registered with TRAI i.e. Un-registered Telemarketers

While the telemarketing calls to the NCPR registered subscribers by the telemarketers in the category of Registered Telemarketers are more or less have been addressed with necessary penal provisions, it is the category of telemarketing calls from Un-registered telemarketers which has not been addressed and is definitely out of control with the present regulations and hence necessitated the process of Amendment to the Regulation.

The proposed amendment to the Regulations in the form of 10<sup>th</sup> Amendment still does not address the menace of telemarketing calls from Unregistered Telemarketers. In case the objective is to temporarily curb the telemarketing calls to the registered NCPR subscribers, it may well achieve the objectivity for a short while as there is no mechanism to check whether the Unregistered Telemarketers has ceased to exist or not. It is a well known fact that the calls to the NCPR registered subscribers reduced to a considerable extent in the initial stage. However, the problem pertaining to telemarketing calls reverted back. The cause of menace created by telemarketing calls is attributable to 1) Most of the calls and messages of telemarketing business was reported by the unregistered telemarketers, 2) Business interest of telecom service providers, 3) The registered NCPR subscribers attitude of non-complaining to the service providers and 4) No mechanism for registration of complaint by the non-registered NCPR subscribers which ensured that the unregistered telemarketing continued to flourish without any check. In fact the reason No. 3 and 4 could have further increased the number of unregistered telemarketers. The unorganised telemarketing industry as such may not cease to exist as even after these unregistered telemarketers getting registered with TRAI, they would still not be able to address their telemarketing business to the NCPR registered subscribers. Most of the unregistered telemarketers being in unorganised businesses like real estate or DSAs etc. might be operating through their prepaid mobile connections where they have access to use of multiple connections. The telecom service providers avoid taking any action against such operators because of their own business interest.

Hence such unorganised telemarketers would still continue to carry on their business without getting registered with TRAI. At best they would initially stop calling NCPR registered subscribers and would resume such activities after giving some break. They will continue to do telemarketing business without getting themselves registered with TRAI. This would defeat the basic objectivity of the proposed amendment. We are of the opinion that the subscribers who are not registered with NCPR should also be able to complain to the respective service provider about the calls and messages originating from the normal telephone connections. Most of the recipient of such calls and SMS are those subscribers who are not registered with NCPR. If these subscribers are not able to complain, the industry as such would continue to flourish without getting them registered with TRAI as registered telemarketer.

The proposed 10<sup>th</sup> Amendment to the Regulations in the present form do not enable Non-NCPR subscribers to lodge their complaint despite a fact that telemarketing business being carried out is in violation of a basic and mandatory TRAI regulations i.e **“All the telemarketers are required to carry on business after registration with TRAI”** as per **clause 14 of TCCCP Regulation, 2010**. We therefore recommend incorporating the category of **Non-NCPR registered subscribers for the purpose of complaining against: 1) Calls/SMS of telemarketing originated from a normal telephone connection, 2) If the telemarketing calls/SMS being received from 9.00PM to 9.00AM.**

**Amendment No. 1: Penalty as proposed shall be chargeable from the unregistered telemarketers for any telemarketing call/SMS to any category of subscribers.**

**Amendment Regulation 3: “Provided further that ..... for the purpose of telemarketing shall also be disconnected.” The telecom resources shall not be activated if the subscriber ID is blocked for issue of new telecom resources due to disconnection as per clause 19 (11) (i) (a) as per database of National Telemarketer Register.**

The above amendment would ensure to treat any telemarketing call or the promotional SMS from any normal connection as violation of the Regulation irrespective of the category of the subscribers.

- II. Whether the existing proposed amendment is sufficient enough to prevent the possibilities of the Abuse:
  1. The system is not transparent enough to prove that the complaint lodged by the customer is the first time or the second time. The subscribers are not encouraged enough to report back the violations and hence the un-registered trade keeps on going without any check. The system does not provide any check to ensure that the complaints lodged by the subscribers have been uploaded by the terminating service provider. So flexibility lie with the Access Providers to take advantage of opaqueness in the system.
  2. Abuse by the telecom subscriber: The amendment does not take care of the possibility of the abuse in a situation where a complainant due to oblique motives manipulates three complaints so as to block the number and get person blacklisted.

- (i) The unsolicited commercial communication has been sent through voice call and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-
- a) Direct the subscriber within 24 hrs. to forthwith discontinue the sending of unsolicited commercial communications and if such subscriber sends a commercial communication through voice call to any subscriber on the second occasion, charge **Rs. One thousand** from such subscriber, and if such subscriber sends a commercial communication through voice call to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber; **Provided further that no notice shall be issued in case there are multiple complaints from subscribers of receiving commercial communications through voice call simultaneously, the telecom resources shall be disconnected without issue of any notice. The definition of multiple complaints shall be construed if there are three or more complaints from different subscribers in a calendar day.**
  - b) Deposit the **60% of the** amount charged from the subscriber under clause (a) in an account specified by the Authority.
  - c) Not provide for a period of one year any telecom resources to the subscriber whose telecom resources have been disconnected under clause (a); and
  - d) Update the action taken by it in the National Telemarketer Register **and upload the complete details of subscribers ID. No telecom resources shall be issued by any of the telecom licensee to such subscriber whose telecom resources have been disconnected under clause (a) above.**
  - e) **The Originating Access Provider would also disconnect any other telecom resource if it is found that subscriber whose telecom resources have been disconnected as per clause (a) has got any other connection with the same subscriber ID.**
  - f) **Pay an amount of Rs. 20/- to each of the subscriber complaining of receiving unsolicited commercial communication through voice call/ SMS through respective terminating access provider. The terminating access provider shall ensure that the necessary credit to complainant subscriber is passed on to the subscriber within 24 hrs.**
- (ii) The unsolicited commercial communication has been sent through SMS and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-
- a) direct the subscriber within 24 hrs. to forthwith discontinue the sending of unsolicited commercial communications and if such subscriber sends a commercial communication through SMS to any subscriber on the second occasion, charge **Rs. One thousand** from such subscriber, and if such subscriber sends a commercial communication through SMS to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber; ; **Provided further that no notice shall be issued in case there are multiple complaints from subscribers of receiving commercial communications through voice call simultaneously, the telecom resources shall be disconnected without issue of any notice. The definition of multiple complaint shall be construed if there are three or more complaints from different subscribers in a calendar day.**
  - b) Deposit the **60% of the** amount charged from the subscriber under clause (a) in an account specified by the Authority.
  - c) Not provide for a period of one year any telecom resources to the subscriber whose telecom resources have been disconnected under clause (a); and
  - d) Update the action taken by it in the National Telemarketer Register **and upload the complete details of subscribers ID. No telecom resources shall be issued above by any of the telecom licensee to such subscriber whose telecom resources have been disconnected under clause (a).**
  - e) **The Originating Access Provider would also disconnect any other telecom resource if it is found that subscriber whose telecom resources have been disconnected as per clause (a) has got any other connection with the same subscriber ID.**
  - f) **Pay an amount of Rs. 20/- to each of the subscriber complaining of receiving unsolicited commercial communication through voice call/ SMS through respective terminating access provider. The terminating access provider shall ensure that the**

**necessary credit to complainant subscriber is passed on to the subscriber within 24 hrs.**

**3. In sub-regulation (2) of regulation 20....**

**(m) every Access Provider shall, within thirty days of coming into force of these regulations, send SMS to its subscribers advising them not to send any commercial communications if they are not registered with the Authority as telemarketer and in case he sends a commercial communication, he shall be liable to pay one thousand rupees for such commercial communication and his telecom resources shall also be liable to be disconnected. No further telecom resources would be provided to such subscribers by any of the telecom service provider for a period of one year: Provided that a second such SMS shall be sent within seven days of sending the SMS and such SMS shall be sent to the customer every six months thereafter."**

**Explanation:**

1. While we concur in principle with the penalty to be charged on a 2<sup>nd</sup> complaint from any unregistered telemarketer, it seems to be non- implementable in the cases where the telemarketing business is being carried through prepaid connection and the telemarketers keep on changing their SIM cards. There could be several instances wherein the first reporting itself could have many complaints from different subscribers within a span of few minutes, hours etc. the definition of complaint as first complaint and 2<sup>nd</sup> complaint is not possible and the condition of issue of first notice to the unregistered telemarketer would not be implementable. The condition of issue of notice to the unregistered telemarketer needs to be dispensed with in case of multiple complaints within 24 hrs. There would be many instances where there would be a considerable time gap between the first reporting and the 2<sup>nd</sup> reporting and also there may be subjectivity of the access provider to treat the call as telemarketing or even the normal call has been reported as telemarketing due to oblique motives. The system is not transparent enough for checks and balances to ensure that all stakeholders are adhering to the implementation of the regulations. The possibility of abuse by the complainant is also not ruled out and an innocent caller may get black listed due to abuse of the process by such complainant. Any enactment of the regulation should ensure that the provisions are not abused. The proposed amendment in the present form is lacking such principles. In case of genuine complaints, it should be the prime responsibility of the Access Provider to black list the unregistered telemarketers for issue of any subsequent connections and upload the data on the web-site from the first complaint itself so that the unregistered telemarketer is prevented from further issue of new connection from any of the telecom service provider across the board. At the same time the genuine prospect is also not denied of issue of the connection or pass through a difficult procedure of buying a connection. The present proposal for the 10<sup>th</sup> Amendment to the regulation is not adequate enough to achieve the objectivity as laid down in the proposed Amendment. **We suggest a committee may be formed by TRAI to look into all aspects of such unregistered trade. The committee may submit its recommendation within 4 weeks for an Open House Discussion.**
2. The recovery of penalty of Rs. 500/- may not be practicable especially in the category of prepaid unregistered telemarketers. The penalty of Rs. 500/- is also too low as compared to the business of telemarketing that would have been carried out by the unregistered telemarketer till the time of deciding on 2<sup>nd</sup> complaint and by that time he would have changed his SIM card. The new SIM card is almost free and hence recovery of Rs. 500/- as penalty is almost NIL unless and until the system of issue of new SIM card is robust enough to ensure that such people are debarred from issue of new SIM card. In absence of any proper transparent system, the possibility of the manipulation in considering the complaint as first or the second cannot be ruled out. Since the onus of curbing unregistered telemarketing business lies on the shoulder of the telecom service provider, they need to be more accountable and take the responsibility of such unethical trade practice.
3. While we do not have any specific comments to the charge of Rs. 500/- by the Access Provider from the unregistered telemarketers and deposit the same in the account specified by TRAI, it is also recommended that the complainant of the unregistered telemarketing calls should also be suitably compensated as the sufferings of such menace is by the recipient subscribers and unless they are suitable compensated such cases would remain unreported as they would not like to go through further sufferings of complaining. This would defeat the basic objectivity of the 10<sup>th</sup> Amendment to the regulations. It has been noticed that even the NCPR registered

subscribers are not coming forward in complaining against such violations and prefer to keep quiet on receiving the call or delete all the messages received in their inbox. In view of the foregoing, we suggest a penalty at the rate of Rs. 20/- to be paid by the Access Provider to all subscribers complaining of receipt of telemarketing calls. In case the complaint is found genuine, each of the complainant may be paid Rs. 20/- by the Originating Access Provider.

4. In view of our recommendation at point No. 3 above, the penalty of Rs. 500/- to be charged from the unregistered telemarketers may be considered to be enhanced to Rs. 1,000/- to be shared between the Originating Access provider and the Exchequer in the ratio of 40:60
5. In case the number of complaint against a connection exceeds 10, the Access Provider should also get penalised with Rs. 1000/- per complaint after ten complaints (out of which Rs. 100/- shall be paid to the complainant and Rs. 900/- shall be deposited with the account.
6. To ensure transparency, the subscriber should be provided with a tool to access MIS reporting system in a limited way to check as to how many complaints have been received against a particular number, penalty recovered etc.

Thanking you,  
Yours sincerely

(S.K.Virmani)  
Project Manager  
State Consumer Helpline Knowledge Resource Management Portal  
Mob No. 9868170286  
Email: [skvirmani@gmail.com](mailto:skvirmani@gmail.com) / [schkrmp.iipa@gmail.com](mailto:schkrmp.iipa@gmail.com)  
[www.consumereducation.in](http://www.consumereducation.in) / [www.consumeradvice.in](http://www.consumeradvice.in)  
<http://www.facebook.com/grahakjago> / <http://jagograhak.blogspot.in/>

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S.K. Virmani  
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## Proposed Tenth Amendments to Telecom Commercial Communications Customer Preference Regulation 2010.

2. "Provided further that .....that the SIM purchased by him shall not be used for telemarketing to any of the subscriber and in case such SIM is used ..... for the purpose of telemarketing shall also be disconnected." Penalty as may be decided by the Authority shall be chargeable for any telemarketing call / SMS to any of the subscriber irrespective of whether the called subscriber is registered with NCPR or not. Any other telecom resources found in the possession of such subscribers would also be liable for disconnection if the subscriber ID has been blocked for issue of new telecom resources due to disconnection as per clause 19 (11) (i) (a) and 19 (11) (ii) (a) as included in database of National Telemarketer Register.
3. (i) The unsolicited commercial communication has been sent through voice call and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-
  - a) Direct the subscriber within 24 hrs. to forthwith discontinue the sending of unsolicited commercial communications, and if such subscriber sends a commercial communication through voice call to any subscriber on the second occasion, charge Rs. One thousand from such subscriber, and if such subscriber sends a commercial communication through voice call to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber; Provided further that no notice shall be issued in case there are multiple complaints from subscribers of receiving commercial communications through voice call, the telecom resources shall be disconnected without issue of any notice. The definition of multiple complaints shall be construed if there are three or more complaints from different subscribers pertaining to telemarketing calls of a single calendar day.
  - b) Deposit the 60% of the amount charged from the subscriber under clause (a) in an account specified by the Authority.
  - c) Not provide for a period of one year any telecom resources to the subscriber whose telecom resources have been disconnected under clause (a); and
  - d) Update the action taken by it in the National Telemarketer Register and upload the complete details of subscribers ID on National Telemarketer Register. No telecom resources shall be issued by any of the telecom licensee to such subscriber whose telecom resources have been disconnected under clause (a) above.
  - e) The Originating Access Provider would also disconnect any other telecom resource if it is found that subscriber whose telecom resources have been disconnected as per clause (a) has got any other connection with the same subscriber ID.
  - f) Pay an amount of Rs. 20/- to each of the subscriber complaining of receiving unsolicited commercial communication through voice call through respective terminating access provider. The terminating access provider shall ensure that the necessary credit to complainant subscriber is passed on to the subscriber within 24 hrs.
- (ii) The unsolicited commercial communication has been sent through SMS and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-
  - a) Direct the subscriber within 24 hrs. to forthwith discontinue the sending of unsolicited commercial communications, and if such subscriber sends a

commercial communication through SMS to any subscriber on the second occasion, charge Rs. One thousand from such subscriber, and if such subscriber sends a commercial communication through SMS to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber; ; **Provided further that no notice shall be issued in case there are multiple complaints from subscribers of receiving commercial communications through voice call simultaneously, the telecom resources shall be disconnected without issue of any notice. The definition of multiple complaint shall be construed if there are three or more complaints from different subscribers pertaining to telemarketing SMS for a single calendar day.**

- (b) Deposit the **60% of the** amount charged from the subscriber under clause (a) in an account specified by the Authority.
- (c) Not provide for a period of one year any telecom resources to the subscriber whose telecom resources have been disconnected under clause (a); and
- (d) Update the action taken by it in the National Telemarketer Register **and upload the complete details of subscribers ID on National Telemarketer Register. No telecom resources shall be issued by any of the telecom licensee to such subscriber whose telecom resources have been disconnected under clause (a) above.**
- (e) **The Originating Access Provider would also disconnect any other telecom resource if it is found that subscriber whose telecom resources have been disconnected as per clause (a) has got any other connection with the same subscriber ID.**
- (f) **Pay an amount of Rs. 20/- to each of the subscriber complaining of receiving unsolicited commercial communication through SMS through respective terminating access provider. The terminating access provider shall ensure that the necessary credit to complainant subscriber is passed on to the subscriber within 24 hrs.**

4. In sub-regulation (2) of regulation 20....

**“(m) every Access Provider shall, within thirty days of coming into force of these regulations, send SMS to its subscribers advising them not to send any commercial communications if they are not registered with the Authority as telemarketer and in case he/she sends a commercial communication to any of the subscriber, he shall be liable to pay one thousand rupees for such commercial communication and his telecom resources shall also be liable to be disconnected. All other telecom resources found with the same subscriber ID shall also be liable to be deactivated. No further telecom resources would be provided to such subscribers by any of the telecom service provider for a period of one year:**

**Provided that a second such SMS shall be sent within seven days of sending the SMS and such SMS shall be sent to the customer every six months thereafter.”**

5. No comment

6. In addition to the proposed complaint procedure through SMS to 1909, the subscriber shall also be extended the facility of complaint through an online complaint system. The online complaint system shall be linked with central database on a web-site being maintained by TRAI or any of its authorised agencies.