

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

**NOTIFICATION**

New Delhi, the 24<sup>th</sup> May, 2013

No.311-23/2013-QoS- In exercise of powers conferred by section 36, read with sub-clause (v) of clause (b) and clause (c) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010), namely:-

**THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER**

**PREFERENCE (TWELFTH AMENDMENT) REGULATIONS, 2013**

**(6 OF 2013)**

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Twelfth Amendment) Regulations, 2013.

(2)(a) Except as otherwise provided in clause (b), these regulations will come into force from the date of their publication in the official Gazette.

(b) clause (b) of sub-regulation(11) of regulation 19 of these regulations shall come into force after 30 days from the date of their publication in the official Gazette.

2. In regulation 13 of the principal regulations, in sub-regulation (2), after clause (e), the following clause shall be inserted namely:-

“(ea) the date of blacklisting of the subscriber under sub-regulation (3) of regulation 18;”

3. For regulation 18 of the principal regulations, the following regulation shall be substituted, namely:-

**“18.Blacklisting of telemarketer.—**(1) The National Telemarketer Register shall, inter alia, include a blacklist of telemarketers and a blacklist of subscribers.

(2) The name and address of a telemarketer shall be entered into the black list upon, ---

(a) failure to furnish the additional security amount as agreed to by it in the agreement entered into with the Originating Access Provider; or

(b) upon service of the sixth notice, in a calendar year, by any Access Provider, on such telemarketer for sending unsolicited commercial communication.

*Explanation:* It is clarified that for the purpose of determining the sixth notice, notices served by any Access Provider on such telemarketer will be cumulatively reckoned.

(3) The name and address of a subscriber shall be entered into the blacklist of subscriber as specified under sub-regulation (11) of regulation 19.

(4) The name and address of a telemarketer entered into the blacklist under sub-regulation (2) and the name and address of subscriber entered into blacklist under sub-regulation (3) shall not be deleted before completion of two years from the date of entry in the respective registers.

(5) The agency maintaining the National Telemarketer Register shall, immediately on entering into the name and address of a telemarketer or subscriber under sub-regulation (2) or sub-regulation (3), communicate the name and address of such telemarketers or subscribers to all the Access Providers.

(6) Every Access Provider shall on receipt of intimation under sub-regulation (5) shall, within twenty four hours, disconnect all the telecom resources provided to the subscriber or the telemarketer as the case may be.

(7) No Access Provider shall provide any telecom resource to a telemarketer or subscriber, whose name appears in the blacklist.

4. In regulation 19 of the principal regulations, for sub-regulation (11), the following sub-regulation shall be substituted, namely:-

“(11) If after investigation under sub-regulation (8), the Originating Access Provider finds that the unsolicited commercial communication has originated from a subscriber who is not registered as a telemarketer with the Authority, it shall -----

(a) disconnect all the telecom resources allotted to subscriber; and

(b) enter the name and address of such subscriber into the blacklist maintained under regulation 18:

*Provided that* a subscriber whose telecom resources have been disconnected, may file a complaint with the Originating Access Provider under the provisions of “The Telecom Consumers Complaint Redressal regulations, 2012 (1 of 2012)”.”

5. After regulation 19 of the principal regulations, the following regulation shall be inserted, namely:-

**“19A. Examination of disconnection of telecom resources.-----**The Authority may, if it considers expedient so to do or on receipt of complaint, call for the details of the disconnection of the telecom resources made by the Access Provider under sub-regulation (11) of regulation 19 and upon examination, for reasons to be recorded, the Authority may direct the Access Provider to restore all the telecom resources of a subscriber and delete the name and address of such subscriber from the blacklist.”

(Rajeev Agrawal)

**SECRETARY**

Note1: The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification No. 305-17/2010-QoS dated 1<sup>st</sup> December, 2010.

Note 2:The principal regulations were amended vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14<sup>th</sup> December, 2010.

Note 3: The principal regulations were further amended (second amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28<sup>th</sup>December, 2010.

Note 4: The principal regulations were further amended (third amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 31<sup>st</sup>January, 2011.

Note 5: The principal regulations were further amended (fourth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28<sup>th</sup> February, 2011.

Note 6: The principal regulations were further amended (fifth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 18<sup>th</sup> March, 2011.

Note 7: The principal regulations were further amended (Sixth amendment) vide notification No. 352-4/2011-CA (QoS) Pt. and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 05<sup>th</sup>September, 2011.

Note 8: The principal regulations were further amended (Seventh amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 25<sup>th</sup>October, 2011.

Note 9: The principal regulations were further amended (Eighth amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 1<sup>st</sup> November, 2011.

Note 10: The principal regulations were further amended (Ninth amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14<sup>th</sup> May, 2012.

Note11: The principal regulations were further amended (Tenth amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 5<sup>th</sup> November, 2012.

Note12: The principal regulations were further amended (Eleventh amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24<sup>rd</sup> May, 2013.

Note 13: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Twelfth Amendment) Regulations, 2013 (6 of 2013).

## EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India issued the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) dated the 1st December, 2010 to provide an effective mechanism for curbing Unsolicited Commercial Communications (UCC). These regulations have been amended from time to time to tighten the regulatory framework and also for addressing implementation issues.

2. As per the provisions of these regulations, Access Providers are required to upload the UCC complaints and action taken on such complaints on the TCCCP portal [www.nccptrai.gov.in](http://www.nccptrai.gov.in), on a regular basis. From the data available on the TCCCP portal, it was seen that most of the complaints lodged by consumers are from subscribers who are not registered with the Authority as a telemarketer. Hence, to further tighten the current regulatory framework and to address the menace of UCC from unregistered telemarketers, TRAI issued a Consultation Paper on the "Review of The Telecom Commercial Communications Customer Preference Regulations, 2010" and a draft "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012" on 3<sup>rd</sup> August, 2012. Comments received from various stakeholders were uploaded on the TRAI website. Open House Discussion on the various issues and proposals was held at Delhi on 10<sup>th</sup> October, 2012. The comments received from stakeholders during consultation process were considered and TRAI had issued "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012" and Telecommunication Tariff (Fifty Fourth Amendment) Order, 2012 on 5<sup>th</sup> November 2012 prescribing certain measures to address the menace of unsolicited commercial SMS from normal subscribers.

3. It is observed now, through monitoring of complaints in the TCCCP portal that UCC by normal subscribers who have not registered with the Authority as a telemarketer, has increased considerably in recent times. The Authority has also observed that such unregistered Telemarketers deliberately masquerade themselves as normal subscribers for indulging in telemarketing activities by using cheap Special Tariff Vouchers. Such subscribers, without any such rights, avoid payment of promotional or any other tariff (or deposits) as may be payable by registered telemarketers. They also circumvent the process laid down by the Authority for registration of telemarketers and the procedures for telemarketing by registered telemarketers. Such unregistered Telemarketers acting in the guise of normal subscribers indulge in sending unsolicited commercial communications to even customers registered in NCPR, for not receiving unsolicited commercial communications. This has been a major irritant and inconvenience to such customers who have preferred not to receive unsolicited commercial communications. These regulations seek to address this menace.

4. The regulations prescribe that in case a valid complaint is received against a subscriber regarding sending of UCC, the originating service provider shall disconnect all the telecom resources allotted to him. However, before disconnecting the telecom resources of such subscribers, the service provider has to investigate and analyse the complaint in accordance with sub-regulation (8) of regulation 19.

5. It is also understood that presently even after disconnection of the telecom resources of such unregistered Telemarketers, they continue to take subsequent connections and tend to continue the telemarketing activities. For addressing the menace of UCC by such telemarketing subscribers who have not registered with the Authority as a telemarketer, the regulations have for the first time prescribed a separate blacklist for subscribers whose telecom resources were disconnected for sending UCC. Once the telecom resources are disconnected, the name and address of such subscriber shall be entered into the blacklist of subscribers and it shall not be deleted before completion of two years from the date of entry in the National Telecom Register. Further, the agency maintaining such register has to communicate the name and address of such blacklisted subscriber to all the access providers. On receipt of such intimation, all

Access Providers have to disconnect the telecom resources provided by it to such subscriber within twenty four hours. No Access Provider shall provide any telecom resource such subscriber, whose name appears in the blacklist. The subscriber whose resources have been disconnected may file a complaint to the Complaint Center of his Access Provider, and subsequently to the Appellate Authority of his Access Provider, if the subscriber is not satisfied with the complaint redressal. The Authority feels that the measures prescribed in these regulations will be effective in addressing the menace of UCC by unregistered Telemarketers who act in the guise of a normal subscriber. Provision exists in the regulation for complaining to the Authority, in case of a wrong blacklisting.