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Subject: Comments from Unicel Technologies Pvt Ltd regarding “The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012” and consultation paper on “Review of the Telecom Commercial Communications Customer Preference Regulations, 2010”

Unicel Technologies is one of the market leaders in the Enterprise Messaging business in India, with SMS and Voice related services being pillars of our service offering to enterprises. Having been in this business for over 8 years, we are firmly committed to excellent work by TRAI in helping create a more sustainable and productive business for consumers, enterprises, and service providers alike. Unicel is also a signatory to the Code of Conduct initiated by the Internet and Mobile Association of India (IAMAI), and we applaud IAMAI’s excellent work in supporting both the industry and TRAI to ensure the effective enforcement of the TCCCP regulatory framework.

Unicel offers the following comments on the recently released draft 10th Amendment to the TCCCP regulations and the consultation paper on the TCCCP regulations as a whole:

Draft 10th Amendment:

As this amendment seeks to do, the menace of unregistered telemarketers using SIM-based messaging solutions must be stopped. We fully support the imposition of fines for any user found to be using SIM messages to send UCC. However, we feel two important additions are required to make this amendment effective:

- a) The mentioned fines must accrue to the operator regardless of whether the money is collected from the end user. We have encountered numerous instances in the market where users have been able to procure thousands of SIM cards using forged documents. In these cases where there is large scale abuse, and thus the source of most of the SIM-based UCC, the end user will simply forfeit the SIM cards and procure new SIMs with new forged documents rather than pay a fine. By forcing the operator to pay the fine even in this case, there will be a powerful deterrent to the operators from issuing such SIMs in the first place.
- b) In order to protect the average consumer, there must be a limited window within which the violations must occur to attract blacklisting. Probably a maximum 1 month time window is sufficient to ensure that the ‘innocent’ users are not penalized along with the ‘guilty’ ones

Consultation Paper:

Q1) Blocking of SMS bearing a similar signature will be highly effective in so far as the system can sufficiently distinguish between Application to Peer (A2P) messages and Peer to Peer (P2P) messages. The law abiding registered telemarketers purely use A2P messaging services, whereas the unregistered telemarketers purely use P2P services. It is important not to penalize the law abiding parties in an effort to stop those that do not follow the guidelines.

Q2) There are many use cases of enterprises that use P2P messages for machine to machine communications – examples include vehicle tracking and utility meter reading. These messages have the risk of being filtered out due to their similar signatures, though the frequency of such messages tends to be about 1 message every 15-30 seconds. Accordingly we suggest a minimum threshold of 250 messages per hour, below which the filters will not apply.

However, it is important to note that allowing any threshold of this nature will create a significant loophole for any party to use SIM cards to send promotional SMS (note that many parties achieved this with the 200 SMS *per day* limit; with a limit of 250 SMS per hour, the same can be achieved with *10x fewer* SIM cards). To close this loophole, it will only be possible by holding operators accountable for distribution of such SIM cards and by reducing the financial incentives for telemarketers to execute such activities.

Q3) We believe it would be impractical for Access Providers to sign agreements with all enterprises as suggested. By virtue of the fact that such enterprises are outsourcing their messaging requirements, the Access Providers would generally not have any relationship with these parties on which to base such an agreement. Furthermore, it would be impractical for each enterprise to sign the agreement across all 16 Access Providers in India.

Q4) We believe the disconnection of telecom resources would not achieve the objectives of TRAI. Generally, the enterprises have procured these resources from a registered telemarketer, however they are misusing the resource by mentioning it in a UCC sent through an unregistered telemarketer. Thus, disconnection of the resource would actually penalize the registered telemarketers who had no role whatsoever in the misuse of the resource or in the UCC violation. Furthermore, the registered telemarketer has no control on how and when the enterprise will use such a resource once it is provisioned.

Q5) Many enterprises are ignorant of the TCCCP regulations since they ultimately outsource such services to both registered and unregistered telemarketers. TRAI must do 2 things to prevent both innocent and deliberate abuse by the enterprises:

- a) Run extensive advertising campaigns in media and via the Access Providers to promote awareness and encourage enterprises to work only with registered telemarketers and use only registered telemarketing resources
- b) Publicize the violations using unregistered telecom resources to create direct awareness among the enterprises that their brand is being promoted using illegal means. By publicly releasing the message content of all UCC sent through unregistered telemarketers along with the operator through which the message were sent, both enterprises and operators will be forced to act to stop such abuses

Q6) We believe 30 days should be sufficient for launching of the websites for complaint lodging.

Q7) Rather than provide operator-specific websites, there can be a single website hosted by TRAI for lodging of complaints. This will also facilitate the publication of the complaints to the public.

Overall, we believe that the TCCCP regulations have been highly effective in achieving their goals, though the proliferation of unregistered telemarketers remains a serious area of concern. We appreciate TRAI's attempts in bringing this issue under control, and we believe that many of the current proposals are a step in the right direction. However, TRAI must go farther.

- 1) **Operators must be held accountable.** The ease with which unregistered telemarketers can procure literally thousands of SIMs is a major problem. If operators are not held accountable for such abuses, through both financial penalties and more stringent KYC requirements, this issue will never be addressed.
- 2) **The financial incentives must be eliminated.** Today, due to the imposition of a 5p termination charge on registered telemarketers, there is a huge costs savings from using unregistered telemarketers, and accordingly a huge money-making opportunity. Such incentives will always compel certain parties to seek loop-holes in the regulations, no matter what regulations TRAI releases. The only permanent solution is to eliminate or at least significantly reduce this cost arbitrage opportunity through the reduction in the 5p termination charge for promotional messages.
- 3) **There must be greater awareness by Enterprises.** Increased publicity efforts by TRAI and direct exposure of enterprises that are heavily using unregistered telemarketers are the only way to stop enterprises from working with these parties. Ultimately, the enterprise's brand is much more valuable to them than a minor savings in a marketing budget, and thus they will be compelled to stop through greater awareness and the threat of bad publicity.

We thank you for the opportunity to provide our feedback on the draft regulations and the consultation paper. We hope TRAI will consider some of our comments, and we look forward to the opportunity to discuss the matter with you again in the near future.

Regards,

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