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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the – 05th September, 2011

THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER
PREFERENCE (SIXTH AMENDMENT) REGULATIONS, 2011
(5 OF 2011)

No.352-4/2011-CA (QoS) pt.- In exercise of powers conferred by section 36, read with sub-clause (v) of clause (b) of sub-section (1) 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, namely:-

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Sixth Amendment) Regulations, 2011.
(2) They shall come into force from the date of their publication in the official Gazette.

2. In sub-regulation (2) of regulation 1 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (hereinafter referred to as the principal regulations),---
 - (a) for clause (d), the following clause shall be substituted, namely:-
“(d) Regulations 12, 18, 19, 20, 21 and 22 of these regulations shall come into force on the 27th day of September, 2011.”

3. In regulation 2 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (hereinafter referred to as the principal regulations),----
 - (a) after clause (m), the following clause shall be inserted, namely:----

“(ma) “licensee” means any person licensed under sub-section (1) of section 4 of Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;”

4. In clause (ab) of regulation 2 of the principal regulations,---
 - (a) for sub-clause (i), the following sub-clause shall be substituted, namely:-

“(i) information pertaining to the account of its customer sent to the customer by a licensee or Bank or financial institution or insurance company or credit card company or depositories registered with Securities and Exchange Board of India or Direct to Home Operators;”
 - (b) for sub-clause (iii), the following sub-clause shall be substituted, namely:-

“(iii) information from a registered educational institution to its students or their parents or guardians;”
5. In clause (ac) of regulation 2 of the principal regulations,---
 - (a) for sub-clause (ii), the following sub-clause shall be substituted, namely:-

“(ii) any message transmitted by or on the directions of the Central Government or State Government;”
 - (b) after sub-clause (ii), the following sub-clauses shall be inserted, namely:-

“(iii) any message transmitted by or on the directions of bodies established under the Constitution; or
(iv) any message transmitted by or on the directions of the Authority;
(v) any message transmitted by any agency authorized by the Authority from time to time;”
6. In regulation 8 of the principal regulations,-
 - (a) In sub-regulation (1), for the words, ‘three months’, the words ‘seven days’ shall be substituted.

7. In regulation 17 of the principal regulations, ----
- (a) for sub-regulation (11), the following sub-regulation shall be substituted, namely:-
- “(11) Every Access Provider shall withdraw before the 26th September, 2011 all telecom resources allocated to a telemarketer except those telecom resources which have been allocated in accordance with the provisions of the regulations.”
8. In sub-regulation (2) of regulation 20 of the principal regulations,---
- (a) in clause (a), after the word ‘unless’ and before the word ‘has’, the word ‘it’ shall be inserted.
- (b) for clause (j), the following clause shall be substituted, namely:-
- “(j) every Access Provider shall ensure that any commercial communication including SMS, other than transactional messages, is sent to a customer only between 0900 Hrs to 2100 Hrs;”
- (c) after clause (k), the following clauses shall be inserted, namely:-
- “(ka) no Access Provider shall permit sending of more than one hundred SMS per day per SIM:
- Provided that in case of post paid telephone number the Access Provider shall not permit more than three thousand SMS per SIM per month:
- Provided further that in case of post paid telephone number, the Access Provider shall not permit sending of more than one hundred SMS per day per SIM from a date to be notified by the Authority;
- (kb) the Authority may by direction, from time to time, specify the category of SMS which shall be excluded from the limit of one hundred SMS per day per SIM:
- Provided that before permitting a customer to send specified category of SMS beyond the limit of one hundred SMS per day per SIM, the Access Provider shall obtain an undertaking from

such customer that he shall not use such telephone number for sending any commercial communications:

Provided further that the Access Provider shall enter, in the list maintained in the National Telemarketer Register, the telephone number, name and address of the customer, category of exempted SMS and date of permitting sending of SMS beyond limit of one hundred SMS per day per SIM and the said list shall be updated every Monday.”

9. In regulation 25 of the principal regulations,---

(a) for clause (d), the following clause shall be substituted, namely:-

“(d) the provisions contained in regulations 12, 16, 17 and 18 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) shall remain in force till the 26th day of September, 2011.”

10. In Schedule-I to the principal regulations ---

(a) under the heading ‘Miscellaneous’, after serial number II, the following shall be inserted, namely:-

“III. A customer may exercise his option to receive messages for the following preferences: 1- Banking/Insurance/Financial products/credit cards, 2- Real Estate, 3- Education, 4- Health, 5- Consumer goods and automobiles, 6- Communication/Broadcasting/Entertainment/IT, 7-Tourism and Leisure.

IV. The Authority may by direction, from time to time, specify additional preferences in the partially blocked category.

V. For sending the promotional messages, the telemarketers shall use alphanumeric identifier in the format XY-RZZZZZ where X stands for code allotted to Access provider, Y stands for service area, as specified by the Authority from time to time and R being any digit from 0 to 7, where 0 indicate that the SMS is commercial communication but does not belong to any preference specified under serial number III, 1-7 indicates the preference specified

under serial number III and ZZZZZ indicates five digit unique identification code allotted to telemarketer by the Access Provider. As and when additional preferences are specified by the Authority, the same will be assigned number 8 onwards for 'R'."

11. In Schedule-III to the principal regulations ---

(a) for clause (15), the following clause shall be substituted, namely:-

“(15) The telecom resources allotted by an Access Provider to the telemarketer shall be from the number series ‘140’ allocated by Department of Telecommunications for voice calls and SMS header as specified by the Authority.”

(R. K. Arnold)
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 1st 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 14th 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 28thDecember, 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 31stJanuary, 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 28th 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 18th March, 2011.

Note 7: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Sixth Amendment) Regulations, 2011 (of 2011).

Explanatory Memorandum

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. Regulation 13, 14, 15, 16 and 17 of the regulations were implemented with effect from the 15th day of January, 2011, while regulation 3, 4, 5, 6, 7, 8, 9, 10 and 11 were implemented with effect from the 10th day of the February, 2011. Regulation 12, 18, 19, 20, 21 and 22 of these regulations were to be implemented, from a date to be notified by the Authority.

2. DoT vide letter No. 16-5/2009-AS.III/(Vol. IV) dated 31st January, 2011 had provided '140' number series to be allocated to telemarketers for mobile network. However, number series for fixed network was not allocated. Due to non-availability of numbering resources from fixed line network, date of implementation of relevant clauses of The Telecom Commercial Communications Customer Preference Regulations, 2010 was amended to be effective from a date to be specified by the Authority. Now, DoT vide letter no. 16-5/2009-AS.III/Vol. IV dated 16th August 2011 has provided '140' number series to be allocated to telemarketers for fixed line network. Access Providers have to make relevant provisions in their network before allocation of resources to telemarketers using '140' numbering series from fixed line network. Accordingly, relevant clauses of regulations has been amended and the regulations are being implemented from 27th September, 2011.
3. The Authority also considered the need to modify the definition of the transactional messages considering the practical aspect of business. Accordingly the Authority has made certain changes in definition of Transactional message.
4. The need to send SMSs in public interest by the Authorities established under the Constitution was also considered. Accordingly, any message

transmitted by or on the directions of the Authority established under the Constitution or Telecom Regulatory of India (TRAI) or agencies authorized by the Authority has been exempted from the definition of Unsolicited Commercial Communications.

5. As per the existing provisions of regulations, a customer after registering or changing his preference in NCPR cannot change it before a period of three months. In order to provide flexibility to a customer to change his preference, the existing restriction of three months has been reduced to seven days.
6. In order to ensure smooth flow of the transactional messages without any restrictions as specified for commercial communications, the relevant clauses of regulation have been amended.
7. The Authority also considered the operational requirements of certain categories for sending non-commercial SMS in excess of one hundred SMS per SIM per day. Accordingly necessary provision has been made.