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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 22nd August, 2013

THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER

PREFERENCE (THIRTEENTH AMENDMENT) REGULATIONS, 2013

(10 OF 2013)

No.311-27/2013-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:-

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

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

(b) Sub-regulation (4) and clause (b) of sub-regulation (11) of regulation 19 of these regulations shall come into force after 15 days from the date of their publication in the official Gazette.

2. In regulation 19 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010) (hereinafter referred to as the principal regulations),---

(a) in sub-regulation (4), for the words "brief description of such unsolicited commercial communication" appearing after the words "the date and" and before the words "as specified in Schedule VI to these regulations", the words "brief description of such unsolicited commercial communication alongwith the details of the person on whose behalf and the telephone number on which the commercial transaction has been solicited" shall be substituted;

(b) 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 ----

(a) has originated from a subscriber who is not registered as a telemarketer with the Authority, it shall----

(i) disconnect all telecom resources allotted to such subscriber; and

(ii) enter the name of such subscriber into the black list maintained under regulation 18;

(b) has solicited commercial transaction on behalf of a person either on the same mobile number or a different telephone number, it shall,----

- (i) if the subscriber of the telephone number or the person or both, referred to in clause (b), belongs to his network, issue notice separately to such subscriber or person, other than the subscriber making unsolicited commercial communications referred under clause (a), directing them to discontinue sending such communication; and
- (ii) in case such telephone number and the person belongs to a different service provider, forward the details of such unsolicited commercial communication to that service provider who shall issue notice to the subscriber of such telephone number and to the person, referred to in clause (b), directing him to discontinue sending such communication:

Provided that more than one complaint, pertaining to similar unsolicited commercial communication, sent on a particular date, shall be treated as a single complaint:

Provided further that if, after the second notice to a subscriber under sub-clause (i) and (ii) of clause (b), a complaint is received against such subscriber, the service provider shall disconnect all telecom resources of that subscriber:

Provided also 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).”

3. In regulation 20 of the principal regulations, in sub-regulation(2), after clause (o), the following clause shall be inserted, namely:-

“(p) every Access Provider shall submit to the Authority, by the 15th day of every month, the details of all bulk connections provided by it to the subscriber during the previous calendar month.”

4. In regulation 22 of the principal regulations, after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(1A) -If the Authority finds that an unsolicited commercial communication has been sent by a subscriber who is not registered with the Authority as telemarketer, the originating Access Provider of such subscriber shall, without prejudice to the terms and conditions of its licence, or the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding five thousand rupees for every such complaint, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the Access Provider has been given a reasonable opportunity of representing against such order of the Authority.

(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 1stDecember, 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 28th 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 31st 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 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 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 05th 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 25th 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 1st 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 14th May, 2012.

Note 11: 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 5th November, 2012.

Note 12: 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 24th May, 2013.

Note 13: The principal regulations were further amended (Twelfth amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24th May, 2013.

Note 14: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Thirteenth Amendment) Regulations, 2013 (10 of 2013).

EXPLANATORY MEMORANDUM

1. Unsolicited Commercial Communications (UCCs) in the form of SMSs or voice calls to promote commercial activity are a widespread irritant experienced by telecom customers.
2. In 2009-10, TRAI reviewed the regulatory framework for controlling UCCs and, on 1st December 2010, issued “The Telecom Commercial Communications Customer Preference Regulations, 2010”. These regulations provided for :
 - a. Mandatory registration of telemarketers with TRAI after payment of a one-time fee of Rs 10,000/-;
 - b. Enabling consumers to block receiving of promotional messages by registering their number in the National Consumer Preference Register (NCPR);
 - c. Requiring telemarketers not to send messages to those customers who specifically elect not to receive such messages by registering in NCPR; and
 - d. Deduction from the security deposit of registered telemarketers who breach the provisions of the regulations by sending commercial messages to the customers registered in NCPR.
3. The aforesaid provisions were made in the regulations with the aim that if all telemarketers registered themselves with the Authority and the consumers electing not to receive promotional commercial messages register themselves in NCPR, the menace of UCCs would be controlled. However, subsequent events proved otherwise. Though some did register as telemarketers, many others chose to continue operating as telemarketers without registering themselves as such. That is, most of those sending UCCs, operated beyond the pale of TRAI’s regulations; they obtained multiple SIMs as “normal subscribers” and made calls or sent out messages (SMSs) in bulk as UCCs to other telecom subscribers.
4. The UCC menace persisted leading consumers to complain about the number of UCCs being received. At various points of time, the Authority has responded to consumers’ concerns by intervening through Regulations and Directions to curb the problem. The significant measures taken by the Authority are as under:
 - (i) *Stopping UCCs sent through international routes:* It was found that commercial messages without proper headers or telephone numbers were being sent through servers located outside the country. To address this problem, a direction dated 20th Jan. 2012 was issued by TRAI directing all Telecom Service Providers (TSPs) and ILD operators to block bulk international SMSs with similar signatures. On account of these measures, unsolicited SMSs sent through the international route were largely checked.
 - (ii) *Providing a ceiling on the number of SMSs per SIM per day:* Since unregistered telemarketers were sending messages in bulk through multiple SIMs the Authority, through an amendment to the regulations dated 5th Sept 2011, prohibited the sending of more than 100 SMS per day per SIM to prevent subscribers who were not registered as telemarketers with TRAI from misusing cheap SMS packs/plans for sending UCCs. This limit was raised to 200 SMS per day per SIM for prepaid customers and 6000 SMS per SIM per month for post-paid customers to accommodate the needs of certain category of subscribers. However, on being challenged, the Hon’ble High Court of Delhi through its decision dated 13th July 2012 quashed the limit imposed by the Authority.
 - (iii) *Economic deterrent to sending more than 100 SMSs per SIM per day:* The Authority decided that there should be a financial deterrent against using normal telephone connections for sending UCCs in the form of SMSs. Accordingly, the Regulation was revised and, through an amendment dated 5th Nov 2012, TSPs were mandated not to allow more than one hundred SMS per day per SIM at a concessional rate.

All SMSs beyond one hundred SMS per day per SIM were to be charged at a rate not lower than 50 paise per SMS.

- (iv) *Mandating signature verification of bulk SMSs:* The Authority found that the unregistered telemarketers were using ‘modem farming’ for sending unsolicited commercial messages. Modem farming refers to the practice of using multiple SIM cards in a single modem to send multiple SMSs. It is technically possible to identify bulk promotional SMSs having similar characters or strings or variants (called ‘signature’) and block them. The Authority through an amendment to the regulations dated 5th Nov 2012, mandated TSPs to put in place technical solutions that restrict the delivery of such SMSs from any source or number over their network.
 - (v) *Enhancing consumer awareness and obtaining an undertaking from subscribers against sending commercial SMSs:* To increase consumer awareness and also to warn subscribers against indulging in unauthorised telemarketing activities, through the amendment to the regulations dated 5th Nov 2012, TSPs have been mandated to send SMSs to their subscribers every six months advising them not to send any commercial communications if they are not registered with the Authority as a telemarketer and that sending of commercial communication shall result in disconnection of telecom resources. TSPs have also been mandated that, at the time of providing a telephone connection (or SIM), they shall obtain an undertaking from the subscriber that the SIM purchased shall not be used for telemarketing purposes.
 - (vi) *Making it easy for consumers to file a complaint:*
The amendment of 5th Nov 2012 has simplified the procedure for filing of a complaint. Consumers receiving UCCs (as SMSs) can register a complaint on 1909 which is common across all TSPs. They can either make a call or send an SMS to 1909. They can also forward the SMS received to 1909 by appending the date and the number from which the UCC was received.
 - (vii) *Disconnection and blacklisting of subscribers who do telemarketing without registering themselves with TRAI:* The latest amendments to the Regulations dated the 24th May 2013 mandated all TSPs on receipt of the first complaint, to disconnect telephone numbers from which an UCC has originated. The name and address of that telephone subscriber shall then be shared with all other service providers. No service provider will provide any telecom resource in that name and address for a period of two years.
5. While the Authority’s regulatory interventions have tempered the menace of UCCs, it has not altogether abated. The problem is that UCCs (SMSs or calls) from persons not registered as telemarketers continue to irritate and harass normal subscribers. Such individuals deliberately masquerade themselves as “normal subscribers” even though their primary purpose for obtaining telecom resources is for telemarketing activities. There are a number of reasons why the unregistered telemarketers mask themselves as “normal subscribers”:
- i. *Savings in cost of registration:* The unregistered telemarketer saves costs by not paying the one time registration fee. It is, therefore, cheaper to remain unregistered.
 - ii. *Higher promotional SMS charges:* There is an additional 5 paise per SMS for every promotional message sent by a registered telemarketer; this additional cost can be avoided by remaining unregistered and masquerading as a normal subscriber.

- iii. *Large outreach of potential customers including those registered under NCPR:* Registered telemarketers are obliged to abide by TRAI's regulatory discipline which proscribes outreach to customers registered with the NCPR; no such restriction hampers the unregistered telemarketer who, as an individual subscriber, can send SMSs or calls to any subscriber including those registered under NCPR. This is why the UCCs are a major irritant and inconvenience to subscribers registered with NCPR.
 - iv. *TSPs' eagerness to garner additional revenues:* The TSPs are constantly looking for ways to improve their topline and garner additional revenues. There are many TSPs whose networks are underutilized viz. they have excess capacity. To increase capacity use, TSPs have incentives to sell cheap special tariff vouchers for bulk SMS dispatch. This augments TSPs' revenues and network capacity use. The availability of cheap plans through which bulk SMSs can be sent is an added incentive for unregistered telemarketers.
 - v. *Engagement of agencies not registered as telemarketers by organizations for marketing:* Organizations such as financial institutions (banks, insurance agencies, NBFCs), builders and other entities, acting as principals engage agents to promote their (the principal's) business. The cost to the principal of engaging an unregistered telemarketer is lower than that of engaging a registered telemarketer. Hence, the preference is to engage unregistered telemarketers precisely because they offer cheaper delivery of promotional services.
6. For the aforesaid reasons there is a tendency to flout the regulations and directions issued by the Authority. Since the unregistered telemarketers are not complying with the directions and regulations issued by the Authority, it has become necessary to make the regulatory framework more stringent, so that not only the unregistered telemarketer, but the TSPs and entities engaging such telemarketers to promote their business are held accountable. All three parties are responsible for the problem of UCC. The TSPs are encouraging such activities by providing attractive SMS packages and allowing bulk/multiple connections fully aware that these will be used for telemarketing activities. In so doing, they are breaching the Customer Acquisition Form (CAF) directives issued by the Department of Telecommunication (the licensor). The proposed new Regulation brings within their ambit the TSPs who provide bulk connections for 'modem farming' for sending of bulk UCC messages as also the organizations(principals) which engage unregistered telemarketers (as agents) for promoting the businesses interests of their principals
7. The Authority is of the view that if the details of the name and address filled by consumer in the Customer Acquisition Form and the documents furnished by him are properly verified by the service provider, the misuse of the service provider's network for UCC by subscribers not registered as telemarketer can be controlled. TSPs license condition requires that they should ensure that their franchisees/ dealers/agents follow the directions issued by DoT while enrolling a new subscriber. Any failure and negligence on the part of their agents is the responsibility of the TSPs and thus, the Authority is of the view that TSPs are liable for acts and omission of their agents. For bulk mobile connections, physical verification of the subscriber has been made mandatory before activation of the connection. Further, bulk user premises have to be inspected by the TSPs at least once in six months and the TSPs should satisfy themselves about the bonafide use of such facilities as per the license condition. These instructions have been issued to ensure that the misuse of the SIM for unauthorised activities is avoided. It is the duty and responsibility of the TSP to ensure that such misuse does not happen in their network chain. The Authority is of the view that if such procedures are scrupulously followed the misuse of the TSP's network by the customers for UCC without registering with the Authority can be minimised.

8. Accordingly, the Authority has prescribed that if, on verification of a complaint, it is found that the UCC has been sent by a subscriber who is not registered as a telemarketer, the TSPs shall be liable to pay a financial disincentive for each such complaint.
9. To ensure that the TSPs implement systems for proper checks of the CAFs together with the Proof of Address and Proof of Identity, the Authority has mandated TSPs to submit to the Authority by the 15th day of every month the list of all bulk connections provided during the preceding month.
10. The Authority has also noticed with concern that a large number of complaints received from consumers pertain to calls or messages originated by or on behalf of banks, insurance companies, builders etc. who are promoting their business by engaging unregistered telemarketers in total disregard of the regulations made by the Authority. These organisations, being the principal are equally responsible for the non-compliance of the regulations and directions issued by the Authority to address the problem of UCC. It is the responsibility of these organisations (the principals) to ensure that the telemarketer engaged by them (the agent) for promoting their business either directly or through an intermediary follows all rules and regulations and if such organisation (the agent) fails in this responsibility, they (the principals) are to be held responsible for the acts and omissions of their agents. Hence, in order to make these entities accountable, the Authority has decided to amend the regulations to provide for disconnection of all telecom resources of such organisations if they are found to be engaged in telemarketing through unregistered telemarketers. The Authority is of the view that disconnection of the principal entity's telecom resources will act as a deterrent and inculcate a greater sense of responsibility in these organisations.
11. The issues sought to be addressed through these Regulations and the measures prescribed in these Regulations are a follow-up of the consultations undertaken by the Authority through the Consultation Paper "Review of The Telecom Commercial Communications Customer Preference Regulations, 2010" and draft "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012" issued on 3rd August, 2012. They are also in continuation of the 12th amendment to the TCCCPR 2010, which stipulates action against telemarketers who send UCC. This amendment brings within its ambit the organisations on whose behalf the telemarketing is being carried out as well as prescribes liability for TSPs who sell SIMs to subscribers without ostensibly verifying the credentials of the subscriber.