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July 25, 2023

To,
Shri Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002

Sub: Counter Comments to TRAI Consultation Paper on “Definition of International Traffic”

Ref: TRAI Consultation Paper dated 02.05.2023.

Dear Sir,

In reference to the captioned consultation paper, we are pleased to enclose our counter-comments for your perusal.

We hope that our submissions will merit your kind consideration.

Thanking You

Yours Sincerely

For Bharti Airtel Limited


Seema Jindal
Authorized Signatory

Encl: As mentioned above.

Copy to:

- 1. Chairman, TRAI.**
- 2. Member (FT), TRAI.**
- 3. Secretary, TRAI.**
- 4. Principal Advisor (NSL), TRAI.**

Counter Comments to CP on “Definition of International Traffic”

We thank the Telecom Regulatory Authority of India (TRAI) for giving us the opportunity to submit our counter-comments on the consultation paper on “Definition of International Traffic”.

At the outset we reiterate some of our summary positions on this issue:

- i. There is no need to introduce a definition for ‘International SMS’ or ‘international traffic’. The practice is well settled and been followed within the industry uniformly and without issue for several decades.*
- ii. The industry definition of international SMS of all categories- A2P or P2P, given as part of TCCCPR 2018, Code of Practice (CoP), is self-explanatory and appropriate. The same should continue.*
- iii. TRAI should emphasise compliance and penalise those entities falsely routing international SMSes including A2P as domestic SMSes. This will discourage such entities from trying to bypass the Indian licensing and regulatory regime and instead force them to route via an ILDO for termination in India as per TRAI regulations.*
- iv. Any SMS traffic whose (source) point of origination (whether through server/ cloud / aggregating point) is from outside India, and which ultimately breaks-out on the Indian PSTN (subscriber), can only be delivered through the legitimate route i.e., via the ILDO route.*
- v. TRAI must capture all such international messages terminating in India via Telemarketers / aggregators and not via ILDOs, declare them illegal and violating Indian regulations; and mandate all such SMS traffic as “International SMSes to be routed via a licensed ILDO”.*
- vi. The determination of prices of International SMSes should continue to be under the forbearance and prerogative of Indian TSPs as per the globally accepted practice.*

In the following sections, we submit our counter-comments on some of the responses submitted by a few of the stakeholders. Through our counters, we demonstrate that it is not TSPs whose understanding of their own licensed services and business that is ambiguous, rather, some of the respondents who do not operate under any licensing and regulatory regime, are trying to make an issue out of nothing due to lack of their own understanding as to how telecom licensing, regulation and market functions.

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We are concerned that if the logic given by some of the respondents are accepted, this would tantamount to legitimizing the illegal and grey traffic routes thereby opening the floodgates of opportunity for licensing and traffic bypass.

We now provide our counter points:

1. One of the comments consists of the statement that *“Advancement of technology has resulted in various solutions, which operate prior to the actual generation of a SMS. These upstream applications or systems do not interact with any telecom network, and do not result in the initiation of SMS, and therefore, it would be very expansive to include within the definition of international SMS “data, application, or systems which influences, generates, control, facilitate or enable”, as this definition would include systems which do not interact with the telecom networks, at all.”*

Airtel Response:

This statement has no relevance to the ongoing issue of what constitutes an International SMS and finding the origination point of the SMS. Advancement of technology and other solutions cannot be a ground to start treating an internationally generated SMS as a domestic SMS. The jurisdictions and their respective licensing regimes remain independent.

In-fact the definition adopted by the Indian TSPs appropriately captures the routes of international SMSs coming into India to accommodate and cater to various technological evolutions.

If telecom services like voice or SMS originate/initiate and pass through various solutions/servers/ applications etc. before entering the telecom network, the nature of the service does not alter merely because it is not originating from or interacting directly with a telecom network. The simple criteria is - if any such service ultimately breaks-out on the Indian PSTN (subscriber), it must follow Indian licensing rules for entry/exit into India.

Clearly, either the full (end-to-end) origination/initiation and termination of SMS traffic happens within India – in which case it is a domestic traffic, OR if at any leg/point/hop traffic relates to international point/border/server/application – it has to be treated as international SMS. In case any entity’s underlying capability or infrastructure or trigger/initiation

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servers/applications are outside India – that SMS has to be treated as international. Such an entity’s message getting initiated out of India, and then coming onto an Indian aggregator platform / domestic server and then coming into a TSP network cannot be treated as domestic traffic.

We see absolutely no ambiguity in understanding of international and/or domestic SMS type. Neither the definition proposed is expansive. It is simply end-to-end point of an SMS that matters, not merely entry point in an Indian Telco network and ultimate termination in India. With this simplistic logic, tomorrow every legitimate ILDO traffic from outside India can be brought into India using Indian aggregators, who in turn can handover the same to Indian TSPs for terminating onto PSTN/ subscriber. Will this licensing bypass approach be acceptable to be treated as domestic one?

We reiterate that any SMS / traffic whose (source) point of origination (whether through server/ cloud / application/ aggregating point) is from outside India, and which ultimately breaks-out on the Indian PSTN (subscriber), can only be delivered through the legitimate route i.e. via the ILDO route and the similar licensing condition that ILDO route is legitimate applies to any SMS to be sent outside India.

The underlying principle is **that the brain and intelligence (i.e. originating server / application etc.) sits out of India and hence it cannot be in any way considered as domestic traffic even if this traffic is said to be mirrored in India or delivered to Indian aggregators.**

Therefore, it will be in the interest of the existing regulatory framework to consider the definition of International SMS, which has been agreed upon, accepted industry-wide, and shared by us in our Response to the CP.

2. One of the respondents has stated that *“Given that termination charges for SMS are passed on to the customers, the lack of clarity on “international SMS” and “domestic SMS” allows TSPs to adopt their own interpretation and categorise a message generated by a computer resource/ server located outside India as “international SMS”, in spite of the origination and termination of the SMS being limited to the network of TSPs in India, to bring it under the scope of forbearance.”*

Airtel Response:

It is completely fallacious that termination charges are passed on to the customers (recipient of SMS in this case). Being an international incoming SMS, in this case there are no charges

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applicable for the customer. Thus, this is a misleading statement. There is absolutely no consumer concern much less the pricing impact. The International SMS treated so are the ones whose (source) point of origination (whether through server/ cloud / aggregating point/apps) is from outside India, and which ultimately breaks-out on the Indian PSTN (subscriber).

There is absolutely no “*own interpretation*” of the TSPs in India who are in this business of global / international SMS termination competing with global TSPs. This statement of ‘*own interpretation*’ is blatantly incorrect and seems to suggest that TSPs are not clear about their own licensed services. But reality is this is how the same SMS is treated the world over by TSPs. In-fact this statement shows that the respondent itself has no understanding or clarity about the telecom service and licensing.

As regards the part of statement “...*origination and termination of the SMS being limited to the network of TSPs in India...*”, clearly, this too is incorrect.

If the full origination and termination of an SMS traffic happens within India – in which case it is a domestic traffic, BUT, if at any leg/point/hop traffic relates to international point/border/server/application – it has to be treated as international SMS. An entity’s message (actually) getting originated out of India (by whatever trigger or technology or solution), and then coming into Indian aggregator platform or a domestic server and then coming into a TSP network does not simply make it domestic traffic. If accepted such, then it is akin to accepting grey and illegal route.

With such a simplistic logic, tomorrow every legitimate ILD traffic from outside India can be brought into India using Indian aggregators, who in turn can handover the same to Indian TSPs for terminating onto PSTN/ subscriber. **Will this licensing bypass approach be acceptable?**

Lastly, we emphatically state that there is absolutely no consumer concern or harm. The simple (and a major) issue faced by the TSPs is that such entities are using a non-licensed route to access and deliver international SMSs to Indian end-users.

3. One of the comments consists of the statement that “*Categorization of SMSs as “international SMS” means that such messages cannot be sent under domestic SMS headers. Regulation 37 of TCCPR requires ASPs and ILDOs to ensure that no international incoming SMS containing alphanumeric header or originating country code +91 is delivered through its network. Therefore, an alphanumeric header is only assigned to domestic SMSs. While the*

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intent of this provision is to ensure that the end subscriber can ensure the veracity of the SMS it receives, and distinctly identify international messages so as to prevent fraud and scams, it creates confusion and lack of trust for customers of Indian businesses whose messages are treated as international SMS.”

Airtel Response:

By virtue of clause 37 of the TCCCPR, the international incoming SMS has been disallowed only from the headers containing the following:

- Alphanumeric Header
- Header containing + 91

In other words, the TCCCPR allows an international incoming SMS into India be sent either by using a numeric header or an alpha header. **However, the combination of alpha and numeric is not allowed.** The use of numeric headers is done by the entities requiring a reply path for an SMS since this reply path is only possible on a numeric header. Thus, the entities are allowed to use alpha headers for their incoming SMS to India and alpha headers provide clear distinction to the end customers/recipient about the entity sending the SMS. Thus, by use of alpha headers, the entities have the choice to create distinction and veracity. **In light of this, the statement that the absence of headers causes lack of trust and confusion amongst customers is completely erroneous and incorrect.**

4. Another stakeholder comments that *“**The term ‘traffic’ is wider in import. The term ‘traffic’ includes voice, SMS, and data. Data packets generated by the services in the application layer use the network layer provided by TSPs, for the purposes of application to application (“A2A”) messaging, emails, VoIP calls, etc. Such services are used by customers at large, as well as businesses and other service providers (OSPs), etc. The proposed definition of “international traffic” may be incorrectly interpreted to potentially include all traffic originating through computer servers and delivered to another computer server, where either of the computer server is located in India. Further, there is scope of automated messages originating as data packets outside India to be misconstrued as international traffic, despite such message originating and terminating as SMS on the network of an ASP in India.**”*

Airtel Response:

World over, and Indian TSP networks, systems, and India’s licensing and regulatory regime are no different – the Telcos understand what an SMS is, a voice traffic is and what data traffic is. If this was not the case, then by the logic given in above statement by the respondent(s), any and everything would be open to disputes and TSPs could simply (mis) treat any service traffic type for any other.

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By changing the form/delivery method of a service type i.e. an SMS delivered as data packets using a telecom resource of a telco network, and ultimately terminating as an SMS on a PSTN subscriber – does not change the nature of the service – it is still an SMS.

We reemphasize that if the SMS originates as data packets outside India and is brought in India as data packets but is meant for delivery to a PSTN customer, the transmission of such SMS as data packets is in clear violation of licensing condition as the licensing route for such SMS is via ILDO as soon as it enters the geographical boundaries of India. In any case, SMS as data packet does not change the nature of service and its route i.e. an SMS and from an international route.

Thus, **there is absolutely no ambiguity**, and the licensing rule is that if any traffic has to terminate on the telecom customer numbers in India, the origination and termination points determine the nature of traffic -as domestic or international. If one leg of the traffic touches the PSTN, irrespective whether the rest of the leg- be it ingress into or egress outside the boundaries of India is the data packets – will construe as a telecom traffic in India – and as an international traffic only. The treatment of traffic by telcos has been strictly within the defined licensing conditions and no messages originating and terminating as SMS on the network of an ASP in India has been treated as international SMS.

The automated messages originating as data packets outside India but entering India for termination on the PSTN network shall strictly qualify as international traffic as per the extant license conditions.

We believe that the Authority must emphatically clarify and state that the modes of delivery, technology, solution type do not change the legal and logical boundaries of a licensing jurisdiction.

5. One of the comments stated is *“The term ‘originating’ needs clarity. The scope of the word “originating” may still cause confusion, as it does not clarify where the origination happens. “Originating” should be clarified to mean originating over a network of the TSP. In the absence of this clarification, it could lead to ambiguity and arbitrary interpretation by TSPs”*

Airtel Response:

This is a very naïve and unsound understanding in the realm of licensing.

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The term “Originating” has been clearly defined by the TSPs in the industry agreed definition. Point of origination in such cases of international SMS is from outside India either through server/ cloud / aggregating point / an application located outside India, and which ultimately breaks-out on the Indian PSTN (subscriber). Hence, this needs no more clarity.

We see absolutely no ambiguity or confusion in understanding of international and/or domestic SMS type. It is simply end-to-end point of an SMS that matters, not merely entry point in an Indian Telco network and ultimate termination in India. There is no arbitrary interpretation by TSPs either.

OR is the argument (of such respondents) being that an SMS should be treated as domestic in any terminating market (we assume the ask is not limited to India alone), when it touches / enters a Telco network, while before that the traffic from source may have traversed the world over anywhere?

If the full origination and termination of an SMS traffic happens within India – in which case it is a domestic traffic, BUT, if at any leg/point/hop traffic relates to international point/border/server/application – it must be treated as international SMS. An entity’s message (actually) getting originated out of India (by whatever trigger or technology or solution), then coming onto an Indian aggregator platform /domestic server and then coming into a TSP network does not make it domestic basis the argument that origination and termination is within Indian TSP network. **In such a case, treating this as domestic traffic will be tantamount to accepting the grey and illegal routes, and** with such a simplistic logic, tomorrow every legitimate ILD traffic from outside India could potentially be brought into India using such routes who in turn can handover the same to Indian TSPs for terminating onto PSTN/ subscriber claim it as domestic traffic.

6. One of the comments consists of the statement that *“TSPs charge significantly higher rates for such messages when compared to domestic SMS, even when they do not incur any additional expense. The industry also saw an upshot in the rates per international SMS over the years, which is contrary to the global market trends for the same.”*

Airtel Response:

Before countering this point with data, we first ask the following question to ourselves:

Is this issue about defining the international SMS OR is it about pricing of international SMSs? This is important since both are totally different issues and the responses and

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regulatory approach to both have to be totally different and this consultation paper’s objective is not at all about the latter.

In our view this statement by the respondent clearly shows an intent to create an issue out of nothing and try to get intervention into a commercial issue using cloak of unclear definition. In either of the cases, the statement and arguments of such entities do not stand on their feet.

In previous sections we have shown that there is no ambiguity or issue in definition of traffic type - which is well accepted, settled, over the years, and consistent with global practices.

Now as regards the prices of international SMSs, Indian TSPs are not doing anything different than what is practice worldwide wherein pricing of such international SMSs being towards a commercial activity– are set by TSPs in any market. TRAI too has rightly left it under forbearance and its practice too is no different to other jurisdictions.

In-fact this statement proves what we are concerned about – that under the garb of definition of international issue, these entities want to pay a domestic SMS rate for their international SMSs sent to India.

There is absolutely no need to intervene in this issue and the current practice should be left to market forces. **None of the responding entities desiring such an intervention has provided any evidence towards their ask.** Furthermore, the Indian consumer is not at any loss or at risk of harm, and Indian exchequer too is duly compensated for, for international traffic coming from a legitimate route.

In-fact, any intervention either in definition contrary to present practice OR on the commercial SMS prices would ultimately lead to bypassing of legitimate ILD route and/or loss of legitimate revenue to Indian exchequer by converting the prices to domestic ones. **Unintended consequence will be that Indian ILDOs / TSPs will be at competitive loss compared to its global peers who have no such interventions and charge much higher rates for same messages.**

Now, we start providing the evidence and rationale that shows why some of these entities’ ask of intervention is totally out of global practice.

The global Fortune companies including leading financial institutions, e-commerce companies, Enterprises, Cloud Platform providers, government agencies, and OTTs use A2P messaging channel inter-alia for sending texts promoting latest products, authentication services, notification services, capturing customer behaviours and promoting their sales etc.

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- i. These companies not only generate revenues for themselves but also capture customer preferences and behaviour to use it for additional revenue generation through advertising etc.
- ii. Currently, such companies have built their application which are hosted and managed in few countries not only to cut down their cost of infrastructure but safeguard themselves from in-country compliances and sends messages across globe and pay a cost to terminate messages to either aggregators or telcos.
- iii. Customer of telcos in India, for example use the application of such companies which are hosted on the global servers for 2 factor Authentication, service messages and others. These OTTs also capture the analytics of telcos consumers to push promotional and commercial messages from the server after data mining in their global facilities.

Reasons for such practice:

- i. India rates on the international messages is amongst the lowest in Top Countries as is evident from the comparative pricing of the International SMS charged by Telcos globally.
- ii. Many such entities are paying higher rates in other markets like Indonesia, Pakistan, Bangladesh etc but are raising frivolous issues of their SMS being national/domestic in India for cost advantage but flouting licensing rules.

Globally, the A2P SMS rates are under forbearance and can be different for each TSP in a country. List of operator-wise rates in other countries are provided below for reference:

Country	Operator	Rs/sms
Indonesia	Operator 1	21.13
Indonesia	Operator 2	18.14
Indonesia	Operator 3	22.02
Indonesia	Operator 4	19.80
Bangladesh	Operator 1	13.68
Bangladesh	Operator 2	18.71
Bangladesh	Operator 3	12.60

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Bangladesh	Operator 4	14.11
Kuwait	Operator 1	13.94
Kuwait	Operator 2	8.57
Kuwait	Operator 3	9.80
Myanmar	Operator 1	9.90
Myanmar	Operator 2	13.91
Myanmar	Operator 3	16.03
Myanmar	Operator 4	11.94
Pakistan	Operator 1	12.91
Pakistan	Operator 2	22.25
Pakistan	Operator 3	13.61
Pakistan	Operator 4	9.90
Russia	All	21.60
Sri Lanka	Operator 1	14.52
Sri Lanka	Operator 2	11.08
Sri Lanka	Operator 3	21.07
Sri Lanka	Operator 4	10.80
Nigeria	Operator 1	7.85
Nigeria	Operator 2	14.72
Nigeria	Operator 3	12.15
Nigeria	Operator 4	12.56
Egypt	Operator 1	6.55
Egypt	Operator 2	16.63
Egypt	Operator 3	8.32

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Egypt	Operator 4	6.15
Saudi Arabia	Operator 1	6.86
Saudi Arabia	Operator 2	6.25
Saudi Arabia	Operator 3	10.80
UAE	Operator 1	6.45
UAE	Operator 2	6.45
Belgium	Operator 1	5.49
Belgium	Operator 2	5.49
Belgium	Operator 3	6.05
Netherlands	Operator 1	4.55
Netherlands	Operator 2	6.46
Netherlands	Operator 3	4.91
Nepal	Operator 1	8.16
Nepal	Operator 2	6.57
Nepal	Operator 3	10.16
U.K	All	2.21
India	All	4.20

As evidenced from this table, Indian TSP rates are already among the lowest. This does not justify any regulatory intervention on pricing either.
