



Cellular Operators Association of India

RSM/COAI/036
June 11, 2010

The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
Next to Zakir Hussain College
New Delhi – 110 002

Re: TRAI Consultation Paper on “Review of Telecom Unsolicited Commercial Communications Regulations”

Dear Sirs,

This is with reference to the TRAI Consultation Paper on “Review of Telecom Unsolicited Commercial Communications Regulations”

In this regard please find enclosed our comments for your kind perusal.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,

Rajan S. Mathews
Director General

Encl: as above

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Response to the TRAI Consultation Paper on Review of Telecom UCC Regulations

Mobile has become integral part of our daily life. Technology developments in mobile communications have created new marketing communication channels or media. However, as telemarketing becomes more popular, some of the subscribers find telemarketing calls/short messages (SMSs) inconvenient.

We believe that the UCC Regulation as notified by TRAI in 2007 has considerably reduced the Unsolicited Commercial Calls (UCC), though there has been increase in UCC SMSs.

We agree with the Authority that there may be need to review the current UCC Regulation. However, we believe that **the problem lies NOT with the Regulation but with the enforcement and implementation of the Regulation. We believe that the key to restricting the menace of UCC lies in effective enforcement and implementation of the current guidelines themselves.**

We would like to suggest the following steps so as to make the existing Regulation more effective:

- a) Increase awareness among subscribers regarding registration with NDNC and the importance of logging complaints for unsolicited communication received by them after 45 days from registration.
- b) Allow for selective telemarketing; (i.e. freedom for the subscriber's to choose commercial communication through Voice or SMS; and to choose sector wise commercial communication)
- c) Enhance the existing NDNC scrubbing system so as to make scrubbing easier for the Telemarketers
- d) Better education of the TERM Cell and DoT bodies supporting TM registration and an oversight committee at TRAI to facilitate and drive seamless application processing by such TERM Cell / DoT.
- e) Audit by TRAI to identify operators and Telemarketers who consistently violate the UCC Regulation and take penal action against such violators
- f) Creation of a common database of blacklisted Telemarketers so as to restrict/discourage use of resources by defaulting Telemarketers and to amend current regulations to stipulate honoring this blacklist by all operators; supported by due punitive clauses to ensure compliance.

The above listed steps are detailed in our response below to the question 7.

In light of the above, we believe that the "National Do Not Call Registry" should be continued and the focus of the review should be on enforcement and implementation. Our comments based on the issues raised by the Authority are as below:

1. What are the primary factors for poor effectiveness of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) in its present form? Give your suggestions with justifications. (Reference Para 2.3)

- a) We believe that the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) in its present form has considerably reduced the Unsolicited Commercial Calls. However, we do accept the fact that the Unsolicited Commercial Communication via SMS has increased significantly.
- b) Lack of awareness among subscribers regarding registering with NDNC is one of the reasons for lack of effectiveness of UCC Regulation.

- c) Another reason is the difficulty in the data scrubbing of the NDNC list provided on the NDNC site. The volumes allowed by the site are restricted and the compartmentalized scrubbing capacity makes scrubbing very time-consuming. Further, frequent outages (system downtimes) impact all telemarketers nationally, hence reducing their trust and confidence in the system, not to mention severe business impact to such organizations. There is thus a need to make scrubbing easier for the TMs.
 - d) Further, it is accepted by the Authority that even though the service provider takes action against the telemarketer by disconnecting their telecom resources, telemarketers can easily get new resources from other service providers thereby defeating the very purpose of the Regulation. Hence there is a need to put in place a mechanism to address the issue of non- jurisdiction of the Authority to directly penalize the Telemarketers.
 - e) In view of the above, we believe that **the problem lies NOT with the Regulation but with the issues pertaining to the enforcement and implementation of the Regulation.**
 - f) There is no sharing of data regarding blacklisted Telemarketers between Telecom operators. When a service provider takes action against the unregistered/ registered telemarketer by disconnecting its telecom resources, the said telemarketers can get new telecom resources from other service providers immediately. This defeats the very purpose and spirit of the UCC Regulation.
2. **Do you feel that there is need to review the existing regulatory regime of Unsolicited Commercial Call (UCC) to make it more effective? What needs to be done to effectively restrict the menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3)**
- a) As stated in our response to question 1 above, we believe that while there may be a need to review the existing Regulation, the mechanism of "National Do Not Call Registry" should NOT be discontinued.
 - b) In this regard it is very pertinent to note that the Do Call Registry (DCR) is not a panacea for all problems. Even after DCR is implemented, a subscriber might still get UCC SMS even if his/her name does not figure in the DCR.
 - c) There is nothing that will prevent a TM from sending UCC SMS to all subscribers without bothering to check whether a particular subscriber has opted-in or not. Hence, we believe that DCR would not reduce the consumer grievance about UCC.
 - d) Therefore, the entire issue will again boil down to effective enforcement and implementation. Hence, **in order to restrict the menace of UCC, it is important to ensure effective enforcement and implementation.**
 - e) We thus believe that if the current UCC Regulation with a few amendments can be implemented & enforced in entirety, the menace of UCC can be curbed. There is definitely a strong reason for the current process to be made robust and meaningful to the present context. The need of the hour is to put into place and implement the learning's to make the current laws more effective rather than to start a new process from scratch.

3. Do you perceive Do Call Registry to be more effective to control Unsolicited Commercial Communications as compared to present NDNC registry in view of discussions held in para 2.4 to 2.9? Give your suggestions with justification. (Reference Para 2.10).

- a) As cited in our response to question 2 above, we believe that DCR ('opt-in') would NOT be more effective as compared to the present NDNC registry, in controlling the UCC calls and SMSs. Even under the DCR regime, the key challenges of enforcement and subscriber awareness will still exist.
- b) It is accepted world over that "Opt-in" approach offers no greater privacy protection than the "opt-out" approach. There is little difference in the privacy protection provided by "opt-in" and "opt-out" systems. Under the either system, it is the customer alone who makes the final and binding determination about data use. **Shifting from an "opt-out" system to an "opt-in" system does not increase the privacy of the subscriber.**
- c) Opt-in requires that every subscriber be contacted to gain explicit permission. Opt-in is more costly precisely because it fails to harness the efficiency of having customers reveal their own preferences as opposed to having to explicitly ask them. **An "opt-in" system is always more expensive than an "opt-out" system.**
- d) The Opt-in type has got serious issues and concerns such as how the system would be able to differentiate opt-in for a particular service (e.g. Banking) when it receives SMS for another non-opt-in similar type of service (e.g. credit cards). The permutations and combinations to manage such a system will be highly complex and detrimental to the whole exercise.
- e) It may also be pertinent to note that there is a large section of subscribers who are not at all averse to receiving UCC calls and SMSs. It has been observed that to most of these subscribers the UCC calls and SMSs are actually a source of information. Service providers will have to contact all the existing mobile subscribers to educate them about DCR and further sub-options available under DCR. Hence, **the same issue of the lack of customer awareness will again arise and will have to be adequately addressed.**

4. Do you perceive the need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DoT? What framework may be adopted to restrict telecom resources of defaulting telemarketers? (Reference Para 2.11.3)

- a) Yes, we believe that there is need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DoT. As suggested by TRAI, operators may seek information from the new subscribers seeking telecom resources whether his telecom resources were disconnected any time in past.
- b) The service providers could also share information regarding the name, location and other pertinent information pertaining to Telemarketers who are repeated defaulters. Further, we propose that the defaulting telemarketers should be blacklisted by each and every operator from using their resources.

- c) In, this regard, a **common industry database of the blacklisted Telemarketers could be created to minimize default telemarketers** from seeking resources from other operators.
5. **Do you agree that maximum number of calls as well as SMS per day from a telephone number (wireless as well as wireline) can be technically controlled to force telemarketers to register with DoT? What other options you see will help to effectively control telemarketers? (Reference Para 2.12.4).**
- AND**
6. **Do you envisage that second screening at SMSC as proposed in para 2.12.3 will effectively control unsolicited SMSs? Give your comments with justification. (Reference Para 2.12.4).**
- a) We believe that any restriction on maximum number of calls as well as SMS per day will not help in achieving the desired objective as the TM could take more resources and spread his daily calls/ SMS over these resources so as to ensure that the daily limit is not breached.
- b) On the other hand placing a limit on the call or SMS per day could be very detrimental for the subscribers. This is because at times of urgency/ emergency many of the normal subscribers could breach the limit of maximum number of calls/ SMS per day. A normal subscriber who is not a TM may be severely handicapped in the absence of a communication device at the time of need.
- c) TRAI may also examine the possibility of using the consumer education fund for educating and spreading awareness regarding NDNC Registry
- d) There are technical issues involved to enable second screening at SMSC. This may have to be examined by the vendors and software developers. Given the extremely large volume of SMS-based communication currently prevalent by all telecom users, secondary screening may be extremely taxing on the SMSCs, possibly increasing the latency on such systems. Operators may not have this facility in their networks as of now. There are also related costs involved in implementing this. A comprehensive view on this can be evolved only after studying these aspects.
7. **What changes do you suggest in existing provisions to control the Unsolicited Commercial Communications effectively? Give your suggestion with justification. (Reference Para 2.13.6).**
- a) We believe that the lack of awareness among the subscribers is one of the factors which have hampered the effectiveness of the UCC regulation.
- b) So as to increase awareness among subscribers, we propose that the each operator, once in two month could educate its subscriber by sending SMS, through IVR, etc, about the NDNC services and also seek their willingness to register with the NDNC list. Moreover, awareness among customers regarding NDNC Registry could be increased through regular advertising in dailies.
- c) There is need for provisioning of selective Telemarketing. There may be a large number of subscribers who may like to receive the commercial SMS but not the commercial voice calls. Choice may also be provided to the subscriber in case he desires to receive calls from a particular sector such as banking, insurance etc. Accordingly a provision for the same should be incorporated in the NDNC Registry.

- d) Another reason for the lack of effectiveness of the UCC Regulation is the non-resolution of the inter-operator complaints. Resolution of complaints received by a service provider because of unsolicited communication being pushed/ pumped by another network/ service provider is not in the hands of that particular service provider. The entire subscriber universe suffers incase even a few service providers are defaulters and do not abide by the Regulation.

So as to ensure effective enforcement, we suggest that **TRAI should Audit all the operators on a quarterly basis with regards to the resolution** of inter-operator UCC complaints and then take penal action against the defaulting operators.

Also, TRAI may set monthly benchmarks and then accordingly penalize the service providers in case they fail to meet the established benchmarks.

- e) The Data scrubbing on NDNC site takes longer than expected as a result of which many TM's avoid scrubbing. Hence there is **need to improve the existing system so as to make scrubbing easier**. Further, TRAI should allow online scrubbing of the NDNC database with all the operators at least four times in a month if secondary scrubbing is implemented.
- f) While registering with DoT, the TM should register the entire proposed sender IDs that the TM would be using to push SMS. This will ensure tracking of and taking action against the defaulting TM.
- g) Response times from operators for resolution of UCC complaints registered against them, should be tighter
- h) In instances where operator closes a complaint with the comment "*CDR does not match*" (which is quite frequent), when the CDR in receiving operator's network clearly shows the contrary, the complaint should not be treated as closed.
- i) In the proposed online grievance redressal mechanism of the TRAI, customers should have the facility to register the offending telephone number or telemarketer code in a fashion that automatically transfers the complaint to the concerned operator and hence streamlines the process for reporting such incidents.
- j) As per present process, DND registration process is simple; where a customer can apply for DND even thru an SMS. However the complaining process (where a DND customer receives UCC) is not possible through SMS. Registering DND complaints through SMS will help more number of customers highlight the issue and Operator can help in offering resolution for such complaints.
- k) Penalty for a proven complaint can be significantly higher to discourage telemarketers from reaching out to DND customers.
- l) In the existing regulation, there is penalty for the telemarketer (L1) in the form of a higher tariff or disconnection. However there is no penalty clause for the vendor or company (L2) on whose behalf the calls or SMSs are triggered. It will help to strengthen the complaint resolution effectiveness, if there is a penalty process for the L2 level also.
- m) Currently operators take action on the individual numbers post receiving complaint from customers. Even if the respective operator disconnects the number; it's very easy for a telemarketer to get another connection and continue making Unsolicited

customer calls even if 1 or 2 numbers are disconnected. There should be penalty for the agency which has failed to follow the regulation from any of his numbers; so that customer doesn't get call from any other number from the same agency again and telemarketers would be forced to follow the process.

- n) To further ensure compliance by the TMs, Bank Guarantees and undertakings can be obtained from Telemarketers by DoT/TRAI.
 - o) The industry should work towards creating a **common industry database of the blacklisted Telemarketers, so as to restrict defaulting telemarketers from seeking resources** from other operators. TRAI should mandate that this central database of blacklisted Telemarketers should be shared across all the service providers.
8. **Do you agree that present panel provisions to charge higher tariff from telemarketers are resulting in undue enrichment of service providers? What penalty framework do you propose to effectively control UCC without undue enrichment of service providers? (Reference Para 2.13.7).**
- a) Charging of higher tariffs is an important deterrent which exists as of now and should be continued with. There is no undue enrichment of service providers from charging this higher tariff because there are many instances when service providers do not receive the penalty charged from Telemarketer
 - b) Moreover, it is worth emphasizing that operators incur a much higher cost for every non-compliance than what can be retrieved through a higher tariff. The Regulatory cost of compliance to the UCC Regulation for operators is pretty high and operators are out of pocket because of the cost of compliance with the UCC Regulation.
9. **Do you feel that present UCC complaint booking mechanism is effective? What more can be done to enhance its effectiveness? (Reference Para 2.13.8).**
- a) We believe that complaint resolution is a bigger issue rather than complaint booking.
 - b) The UCC compliant booking mechanism which exists as of now is effective and hence the same should be continued.
10. **Do you feel that there is a need to enact legislation to control the Unsolicited Commercial Calls? Give your suggestion with justification. (Reference Para 2.13.9).**
- a) We agree with the suggestion of the Authority that specific agencies and departments could be established to enforce laws and regulations and frame the Code of Practice which the telemarketers must follow.
 - b) However, there may be a need to deliberate on the scope of work and the role of the operators under this mechanism, to further comment on the same.

11. Do you agree that definition in para 2.14.1 correctly define Unsolicited Commercial Communications in Do Call registry environment? Give your suggestions with justification. (Reference Para 2.14.2).

a) We believe that there is a need to change the definition Unsolicited Commercial Communication for NDNC (and not NDCR) and the same should be modified as:

“unsolicited commercial communication” means any message, through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investments or services which a subscriber opts not to receive, but does not include, ---

(i) any message (other than promotional message) relating to a service or financial transaction under a specific contract between the parties to such contract; or

(ii) any messages relating to charities, national campaigns or natural calamities transmitted on the directions of the Government or agencies authorized by it for the said purpose;

(iii) any message transmitted, on the directions of the Government or any authority or agency authorized by it, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(iv) any communication from the Operator to its OWN subscribers regarding new services or loyalty benefits or information regarding network expansion..”

Further, the calls and SMS sent for the purpose of surveys could also be excluded from the above definition. Also, there should be some mechanism where the TM are able declare if they have some consent from customer for special promos.

12. Do you feel that proposed framework to register on NDCR will be user friendly and effective? What more can be done to make registration on NDCR more acceptable to customers as well as service providers? (Reference Para 3.7).

AND

13. In your opinion what are the various options which may be adopted for setting up and operating the NDC registry in India? Among these suggested options which options do you feel is the most appropriate for implementation and why? Give your suggestion with justification. (Reference Para 3.8.3).

AND

14. Do you agree that present NDNC registry can effectively be converted to NDC registry? What measures need to be taken to make it more effective? (Reference Para 3.8.4).

AND

15. In view of the discussion held in para 3.9, which option of charging and funding model do you suggest for procuring the data from National Do Call Registry by telemarketers? What should be the various provisions you want to

incorporate in suggested model? Give your suggestion with justification. (Reference Para 3.9.5).

AND

- 16. What measures do you suggest to protect data of NDC registry? Give your suggestions with justification. (Reference Para 3.10.2)**

In light of our response to questions 1 to 11, we are of the view that instead of putting in place a Do Call Registry (DCR) the existing Regulation needs to be amended so as to ensure stricter enforcement and implementation.
