

VTL/Reg/TRAI/1006/1340

June 10, 2010

Shri S. K. Gupta
Advisor (Quality of Service)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi — 110 002

Subject: Consultation Paper on Review of Telecom Unsolicited Commercial Communications Regulations

Dear Sir

At the outset we appreciate and welcome the Authority's consultation paper on Review of Telecom Unsolicited Commercial Communications Regulations.

With reference to the aforesaid please find enclosed our point wise response to the consultation paper on Review of Telecom Unsolicited Commercial Communications Regulations dated 11th May 2010.

We hope that the Authority will consider our views and comments enclosed herewith, while reviewing the Telecom Unsolicited Commercial Communications Regulations.

Thanking You

Yours Sincerely

for **Videocon Telecommunications Limited**



Suresh Yadav
AGM - Regulatory
Mobile: +91 9717709482

VTL's Response to TRAI Consultation Paper on Review of Telecom Unsolicited Commercial Communications Regulations

It has been a constant endeavor of the Authority to usher in regulations / policy decisions which would facilitate better telecommunications facilities to the Telecom Consumers.

The issue on unsolicited commercial communications had engaged the attention of the Parliament, Hon'ble Supreme Court of India, Hon'ble High Court of Delhi, Reserve Bank of India (RBI), National Consumer Redressal Commission and State Commission (Consumer) of Delhi, pursuant to which the Unsolicited Commercial Communications Regulation was brought into force by the Authority and we believe that there has been a considerable drop in the Unsolicited Commercial Communications, ever since.

The practice of engaging agents / outsource business operations for the purpose of soliciting or promoting any commercial communications using telecommunication mode / resources and as part of best business practices, the need to protect the right to privacy of the Telecom Consumers and to minimize the complaints relating to unsolicited commercial communications being received by customers, we appreciate the Authority's decision of reviewing Telecom Unsolicited Commercial Communications (UCC) Regulations for curbing Unsolicited Commercial Communications.

In light of the aforesaid, we believe that the 'National Do Not Call Registry' should be persisted with and the focus of the review should be on enforcement and implementation instead of substituting it with 'Do Call Registry' since the problem lies not with the prevailing Regulation but with the enforcement and implementation of the same.

Our point wise submissions 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)

With the advent of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) the unsolicited commercial call being made to the customers were condensed and a positive effect could be felt. However, it is not in dispute that unlike the decline in such calls the Telemarketers have circumvented the regulations vis-à-vis unsolicited commercial SMS shot at the customers notwithstanding of they being registered in National Do Not Call Registry

Further, to sustain the argument it is also righteously accepted by the Authority that the telemarketers, despite the sanctions imposed by the Service Providers, can easily leap beyond the confines of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) by hitting upon alternate Telecom Service Providers thereby exposing the lacunas and eventually defeating the very purpose of the aforesaid Regulations.

Supplementing the aforesaid views it becomes pertinent to mention that, inter alia, the lack of effective sanctions on the Telemarketers coupled with the lack of awareness amongst the customers has led to the ineffective enforcement and implementation of an otherwise remarkable 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 review of the existing regulatory regime of Unsolicited Commercial Call with a vision/ likelihood to substitute the same with Do Call Registry will bear no nexus on confining/ precluding the unwarranted and unauthorized actions of the Telemarketers in making Unsolicited Commercial Calls to the customers.

Therefore, the question that arises is effective enforcement and implementation and not whether the regime should be overhauled by Do Call Registry to bring in effectiveness.

Further, to effectively restrict the menace of the Unsolicited Commercial Calls the Authority has to first identify the Arm Twisting Modus Operandi of the Telemarketers and thenceforth amend the existing Regulation accordingly. One of the suggestions would be Blacklisting the Telemarketers.

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).

It is reiterated that a shift in the regime is not a panacea of curbing or precluding the Telemarketers from abusing the mandates of the Authority in the form of UCC regulations since the fundamental principle should be effective implementation.

To further substantiate the notion of continuing the contemporary regime, we would like to elucidate that in Do Call Registry, the customers, by default, will be categorized under the head 'Do Not Call' and hence the customers will have to

opt in by giving their express consent towards the same. Further, the customers who want to receive Commercial Calls and SMS but fails to register themselves due to want of knowledge or inadvertence or even otherwise will be loosing out on the much desired information and opportunities which they otherwise would have availed.

- 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)**

The Authority should create a Database wherein comprehensive records of the Telemarketers are maintained. Further, if a Telemarketer is Blacklisted then this Database can be utilized in conforming that the same Telemarketer, under the veil or a colourable name, are not registered with any other Service Provider and hence circumventing the objectives set out by the Auhtority.

- 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 regulation putting a cap on maximum number of calls as well as on SMSs could be easily circumvented by a Telemarketer by spreading his calls through Telecom resources thus ensuring that the threshold set by the Authority is, at all times, honored. This therefore, cannot be perceived as a key to compel the Telemarketers to register with DoT.

Further, the notion of limiting the calls and SMSs can be a precarious and a dodgy proposition as the restriction imposed on all the customers would tantamount to be unreasonable and arbitrary since it bears no nexus whatsoever with the objective sought to be achieved by the Authority.

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).

The foremost suggestion would be to have mechanism with the Regulatory Bodies for regulating the affairs. For this Telemarketers can be brought under the Jurisdiction and ambit of the Authority.

Registration of the Telemarketer with DoT should be made mandatory.

Last but not the least we would like to reiterate and urge the Authority to create a Database wherein comprehensive records of the Telemarketers are maintained. Further, if a Telemarketer is Blacklisted then this Database can be utilized in conforming that the same Telemarketer, under the veil or a colourable name, are not registered with any other Service Provider thereby defeating the very purpose.

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).

Higher Tariffs charged from the Telemarketers do not result in undue enrichment of the Service Providers but it rather aids in putting a check in the absence of which the customers would have been flooded with Unsolicited Commercial Calls and SMSs.

Therefore, higher tariffs would definitely deter the Telemarketers from abusing the telecom services.

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).

We believe that the present mechanism for registering complaints does not need any overhauling which might bring in complexities in the system thereby making the already apprehensive customers reluctant towards registering complaints.

Moreover, what needs to be overhauled is the procedure for implementation to bring in effectiveness for achieving the very purpose set out by the Authority vis UCC Regulations.

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).

The Authority has righteously proposed the establishment of exclusive agencies and/ or departments within the Regulatory bodies for enforcing and implementing regulations and guidelines issued by the Authority to that effect.

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).

We are of the view that the definition of Unsolicited Commercial Communications is sustainable and does not require any change

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)

Since it has been clearly portrayed in our responses hereinabove, that the need of the hour is effective implementation of the prevailing regulation, we therefore, would like to reiterate that a new regime of Do Call Registry is not warranted.