



Association of Unified Telecom Service Providers of India

AUSPI/12/2012/141

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Shri Robert J. Ravi,
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Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
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Sub: AUSPI's Response to TRAI Consultation Paper No. 13/2012 on "Review of the Telecom Commercial Communications Customer Preference Regulations, 2010"

Dear Sir,

We are pleased to enclose herewith AUSPI's Response to TRAI Consultation Paper No. 13/2012 on Review of the Telecom Commercial Communications Customer Preference Regulations, 2010.

AUSPI requests the Authority to take its views into consideration while coming out with any recommendations / regulations on the subject.

Thanking you,

Yours faithfully,

**DILIP SAHAY
ADVISOR**

Encl: As above

Copy to : Shri Rajeev Agrawal, Secretary, TRAI



AUSPI'S RESPONSE TO TRAI CONSULTATION PAPER NO.13/2012 ON 'REVIEW OF THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER PREFERENCE REGULATIONS, 2010

GENERAL

Unsolicited commercial calls cause annoyance to the called and must be stopped. The problem of **Unsolicited Commercial Communication** arises out of action of telemarketers and any regulatory action/response must be aimed at that.

AUSPI believes that there should be legislation in form of a Central Act to make telemarketers accountable and enable law to take direct action on unregistered telemarketers. It would be better in case law enforcement agencies or TRAI is able to take direct action against telemarketers rather than making telecom operators responsible for punishing the errant telemarketers (TM).

Internationally regulators regulate concerned telemarketing companies and not the telecom companies. The issue primarily concerns telemarketing and therefore an appropriate solution would be the telemarketer-oriented approach. In response to such concerns, many countries including the United States, the United Kingdom, Australia, Canada etc have introduced mandatory legislation for all businesses engaged in telemarketing which specify code of conduct for such companies. A similar legislation can also be considered to regulate telemarketers in the country.

TRAI has brought out TCCCPR , 10 amendments to the principal TCCCPR and 7 directions o Unsolicited commercial calls in a short period of 20 months. However till date there is no legislation directly aimed at telemarketers. Therefore AUSPI requests the Authority to make recommendation for proper legislation to regulate Telemarketing Practices.

Further, it is necessary to clearly define and categorize the type of calls falling under UCC. Today there is lot of confusion in defining which call is UCC and which is not. For example a call related to renewal of Insurance premiums which is necessary else the user policy goes invalid. Such calls are currently being treated as UCC resulting in debates. Other examples are courier receipt/ dispatch information calls, welcome calls for any service, Service reminder calls, appointment fixing calls, AMC due reminder calls etc. Since these calls are necessary for an DNC registered subscriber also to receive, the companies are making calls using resources other than through registered telemarketers.

Telemarketers use telecom resources like voice and SMS to reach the consumers on behalf of the brands and companies. They use telecom resources as it helps brand reach instantly, conduct campaigns on large scale, and deploy technology based solutions. To help them use this medium responsibly, and in unhindered fashion should be the core principle of the regulation. TRAI should take note of A2P messaging and OBD call



revenues, and therefore create ambient regulations to encourage the use in responsible and regulated manner.

AUSPI's comments/views on the issues raised in this consultation paper are as follows:

- 1) *What are your views on the proposal of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour with similar signatures as proposed in the above para? &*
- 2) *What should be the limit on the number of SMS per hour to be specified in this regard? Please give your views along with reasons thereof (para 2.1.1 to 2.1.4).*

AUSPI'S View:

We would like to suggest that no limit should be specified in regard to the no. of SMS that can be sent per hour as it infringes the freedom of speech to the citizens. It is very difficult to differentiate between UCC and non-UCCs SMS. In the recent judgement of Delhi high court in W.P.(C) No. 8529 of 2011 & CM APPL. 19296 of 2011 , titled Telecom Watchdog Vs. Union of India & Another dated 13th July, 2012 and in TDSAT judgement Appeal No. 1 of 2012(with M.A. No. 20 of 2012) titled, Aditya Thackeray Vs. TRAI, dated 17th July, 2012 also says that no restriction should be imposed on sending SMSs as it also covers non-UCCs SMS and hence infringes the freedom of speech.

We would also like to state that there are numerous difficulties that Telecom Service Providers would face in the proposed regulation of blocking delivery of SMS and also the said solution cannot be fool-proof and purpose may not be achieved as the customer, by knowing the cap count, can use multiple SIMs to do promotions.

Although the Authority has mandated similar condition for the International SMS terminating in the country but the feasibility of such solution for domestic SMS is very difficult due to huge volume of domestic SMS compared to the International SMS. The TSPs will have to incur heavy Capex for implementing solution for such a huge SMS volumes so as to block the delivery of SMS after a certain threshold of SMS per hour is crossed. However, even after such heavy expenditure it will not be possible to curb unsolicited SMSs as telemarketers were commonly using pre-paid SIMs for sending SMS even when there was a cap of maximum 200 SMS per day.

In view of the above, AUSPI does not support the proposal of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour with similar signatures.



- 3) *Please give your comments on the proposal to mandate the telecom service providers to obtain an undertaking/agreement from registered telemarketers and other transactional entities that in case they want to outsource promotional activities to a third party, they will engage only a registered telemarketer for such promotional activities. What are the other options available to control such activities? Please give your views along with reasons thereof (para 2.2.1 to 2.2.3)?*

AUSPI'S views:

The proposal to mandate the telecom service providers to obtain an undertaking/agreement from registered telemarketers and other transactional entities that in case they want to outsource promotional activities to a third party is not possible as the contract is between the registered Telemarketer (TM) and third party where the Service Provider (SP) has no role to play. The TM might not have even subscribed services from the SP and hence he shall never sign such document with SP. Logically, the registered TM should give an undertaking to TRAI that he will not outsource their business to a non TM. TRAI should enter one more clause of undertaking in the future registration process, and as the existing telemarketers have registered themselves with TRAI, Authority may mandate all the telemarketers to provide a undertaking to TRAI that in case they want to outsource promotional activities to a third party, they will engage only a registered telemarketer.

- 4) *Please give your comments along with reasons thereof on the proposal to disconnect telecom resources after ten violations, of entities for whom the promotion is being carried out? Also indicate whether ten violations proposed is acceptable or needs a change. Justify the same. (para 2.3.1 to 2.3.3)?*

&

- 5) *What additional framework may be adopted to restrict such subscribers or entities from sending UCC, other than the one proposed above (para 2.3.1 to 2.3.3)?*

&

- 6) *What are your views on the time frame for implementation of the facility for lodging UCC related complaints on the website of service providers? Please give your comments with justification (para 2.4.1 to 2.4.3).*

&

- 7) *Do you propose any other framework for registering UCC complaint for easy and effective lodging of complaints (para 2.4.1 to 2.4.3))?*



AUSPI's view:

Telemarketing campaigns are carried out not by entities themselves but also their agents, brokers or other marketing companies. It is extremely difficult to ascertain who the real culprit for sending unsolicited messages is. Therefore, it will not be possible to identify the entity carrying out campaign and disconnect resources allocated to them.

Entities for which the promotion is being carried out may not be aware of the violation being done by the telemarketers. It is possible that the entity may have asked a registered telemarketer but that may be outsourced to an unregistered telemarketer.

The provision of **disconnect telecom resources after ten violations of entities for whom the promotion is being carried out** is likely to result in unnecessary disputes, litigations etc. Disconnecting telecom resources of the entities for which the promotion is being carried out may also prove to be a retrograde step and will impact the business of the entity and growth of the country to a large extent.

Also, for companies which are non TM registered companies (no TRAI ID to track), keeping track of 10 violations is not possible on IT systems. There is no way we can track the violations across all service provider network. Also, it is not possible to disconnect all normal lines (NON 140XX) for the company as these lines are being used for normal office communications also. These fall under essential services and disconnecting them all together, shall result in major impact on their operations.

In view of the above AUSPI does not support the proposed amendment to **disconnect telecom resources after ten violations, of entities for which the promotion is being carried out.**

45 days may be a short time for implementation of the facility for lodging UCC related complaints on the website of service providers, Authority should grant 180 days.

In the current framework, customer is already having Voice & Non Voice mode i.e Call centre / SMS for registering complaints and proposed option of web service should be sufficient to address the issue of UCC complaints, therefore, we feel no additional framework is required.
