



Date: 9 October 2024

To,
Telecom Regulatory Authority of India (TRAI), Government of India
F Block, NBCC World Trade Centre
New Delhi-110029
Email: advqos@traigov.in

Subject: Comments on the Consultation Paper on Review of the Telecom Commercial Communications Customer Preference Regulations, 2018 published by TRAI

Dear Sir/Ma'am,

We are writing to you with respect to the recently published Consultation Paper on Review of the Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR). At the outset, we would like to sincerely acknowledge and appreciate the efforts made by TRAI to seek inputs across stakeholder groups and harmonize all interests.

The special focus on tackling the issue of Unsolicited Commercial Communication is indeed the need of the hour. We would like to take this opportunity to submit our inputs/ recommendations on the key issues raised by the consultation paper. We would request you to consider our recommendations enclosed herein while reforming TCCCPR.

We are hopeful and look forward to your positive consideration.

Thank you

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COMMENTS ON THE CONSULTATION PAPER ON REVIEW OF THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER PREFERENCE REGULATIONS, 2018

Paragraph No. (Chapter No.) /Question No. (page and Chapter No.)	Paragraph	Recommendation/ Clarification Sought
Paragraph 2.15 read with 2.16 (Chapter II)	<p>2.15 Transactional communication may refer to any commercial communication sent by the Sender to its own customer/subscriber except promotional communications.....</p> <p>2.16 By the content templates of the Transactional messages, the relationship between the Sender and the recipient can be ascertained. Therefore, there should not be any requirement of taking explicit consent from the recipient for such messages. To prevent misuse of inferred consent and to give an option to block such communications from a specific Sender, there is a need to introduce a mandatory opt-out mechanism from the</p>	<p>The industry appreciates the regular efforts made by TRAI to tackle the menace of Unsolicited Commercial Communications (“UCC”). As per paragraph 2.15 of the consultation paper, transactional messages/calls and service messages/calls are sought to be clubbed as transactional messages/calls going forward. Such a clubbing would raise certain issues.</p> <p>Under the current framework, transactional messages/ calls include those relating to OTP, etc. and the recipients of these messages/calls are not permitted to opt out given the importance of these messages/ calls. For banks, OTPs are being sent for various security purposes including while making various net-banking transactions. Similarly, various companies (including e-commerce companies) allow creation of consumer accounts on their website. Authentication of consumer is often done by sending the consumer OTPs on their mobiles for logging into their accounts. Such verification measures are increasingly being put in place to curb fraudulent access of consumer’s accounts. However, by clubbing the definition of transactional and services messages/calls, a mandatory consent opt out mechanism is envisaged including in respect of the erstwhile transactional messages and calls. While this will provide consumers the choice to not receive such messages/ calls including OTPs, this could also backfire since such transactional messages/calls are important for the secured access of consumer accounts and for undertaking banking transactions. Further, if a consumer</p>



	<p>inferred consent that should be given to the recipient in the same message. Similarly, there should be a mandatory opt-out mechanism presented to the recipient after each Transactional call through an SMS or otherwise. The revoked consents should be recorded in the DL-consents appropriately. Access Providers may be required to scrub this list in the DL-consent before sending transactional Communications. If a customer who has opted out wants to opt-in, it should be possible at the will of the customer. If a customer has opted-out to receive commercial communications from a sender, consent seeking request for the same purpose can be made by the same Sender to that customer only after ninety (90) days from the date of opt-out.</p>	<p>inadvertently opts out of receiving such important transactional messages/calls (like OTPs), it could result in service deficiency as they will be unable to access their accounts online.</p> <p>Further, the timeline of 90 days after which an opt-out consumer can be opted in again in order to receive commercial communications from the same sender for the same purpose is quite long. For the abovementioned case where a consumer has inadvertently opted-out of receiving important transactional messages/calls like OTPs and now wants to receive such messages/calls in order to access accounts/making online transactions, such consumer will need to wait for 90 days for resumption of services leading to unnecessary service interruption. It is advisable to limit this to a more reasonable period in order to ensure that consumers are not at a loss.</p> <p>Separately, the Digital Personal Data Protection Act, 2023 regulates the consent given by a Data Principal to a Data Fiduciary and the withdrawal of such consent. This law does not restrict the mode of seeking consent. Further guidance is expected to be provided through subordinate legislation. In order to avoid confusion due to overlapping provisions in different regulatory frameworks, providing consent and withdrawing consent may either be harmonized between the two legal frameworks or be left to be provided only under the Digital Personal Data Protection Act, 2023.</p> <p>Currently, the headers of transactional messages are numeric while those of service messages include the name of a company's brand. However, when the erstwhile transactional and service messages are clubbed into the transactional messages category, there is no clarity on what the header would be for such messages. It is recommended that the header of such messages be allowed to include the name of the company's brand (alpha-numeric) in order to help the consumers identify the sender of the messages and also identify spam/fraudulent messages.</p>
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<p>Paragraph (Chapter II) 2.17</p>	<p>Promotional communications may refer to commercial communication containing promotional material or advertisement of a product or service. Promotional communications can be delivered to only those customers who have not barred such communications through registration of their preferences. If the Sender has obtained explicit digital consent through a Digital Consent Acquisition (DCA) system from the intended recipients, it can send the promotional communications to such recipients irrespective of their registered preferences.</p>	<p>Currently, there seems to be limited implementation of the DCA. Further, senders often take consumer's consent for sending promotional communication through various measures including on their own websites. Please note that this consent is not restricted only to SMS and calls and often includes consent for reaching out to consumers through other channels including email, WhatsApp, etc.</p> <p>By restricting consent only to the DCA, valid consent taken through other modes and for various other channels which are beyond the scope of TCCCPR may not be considered. This would restrict the choice of the consumers even when they have willingly provided their consent to receive promotional communication from a specific company by opting in on the latter's website. Such choice of the consumer should be respected and therefore, it is advisable to not restrict consent of the consumer only to that which is obtained through the DCA and other modes be permitted.</p>
<p>Paragraph 2.31 (Chapter II)</p>	<p>To make the header structure more useful, following may be the possible options -</p> <p>(iii) Option-III- To permit the Sender to have the same numeric header for message and transactional/service voice calls. It may help in easy identification of the Sender.</p>	<p>As mentioned in the recommendation with respect to paragraph 2.16, it is recommended that the header of the new category of transactional messages be allowed to include the name of the company's brand in order to help the consumers identify the sender of the messages.</p> <p>A numerical header may not be easily identifiable of the sender entity for the consumer. An alpha-numeric header with the name/acronym of entity allows easy identification for consumers to avoid spam/fraud calls. Consumers across the country would not be aware of the approved numeric headers for the entities they interact and identify them through their corporate/brand names.</p>
<p>Paragraph (Chapter II) 2.33</p>	<p>The TAP should record the complaint on DL-Complaints and, barring such cases where it is not possible to identify the</p>	<p>Closing a consumer complaint if the same is reported after 3 days of receipt of UCC may be ineffective in tackling the issue of UCC. The consumer may be given some more time to report</p>



	<p>OAP from the complaint registered, the TAP should notify the details in real time to OAP. The complaint can be closed by TAP only when (i) there is non-availability of the reported telephone number or header in the complaint registered or (ii) the complaint is reported by the customer after three days of receipt of UCC communications. In such cases, the TAP shall communicate to the customer about the closure of his complaint and change the status of the complaint in DL-Complaints.</p>	<p>the UCC since a delay in reporting such cases may not do any harm. Instead there may be chances that more consumers are able to report instances of UCC enabling such communication to be stopped. It is suggested that consumers be given at least 7 days to report UCC.</p>
<p>Question 8 (a) on page 47 (Chapter II)</p>	<p>Stakeholders are required to submit their comments on the following:</p> <p>a. Measures required for pro-active detection of spam messages and calls through honeypots and norms for the deployment of Honeypots in a LSA, and rules or logics required for effective use of AI-based UCC detection systems including training of AI models for identification, detection and prevention of spam.</p>	<p>While the industry appreciates the use of emerging technology, including AI, to resolve the issue of spam messages/calls, some safeguards should be built into the system while using such technologies. Globally, certain issues of incorrect identification have come to light when AI is used in different sectors. To prevent these issues from cropping up, it is strongly recommended that AI systems be subject to extensive testing before any deployment and guardrails be put in place to prevent any bias/discrimination emanating from the AI system among other appropriate measures. Such measures become important if AI systems are to identify, detect and prevent spam since any error in identification of spam would result in unnecessary restrictions being imposed on bonafide senders of commercial communication thereby impacting their freedom to send commercial communication under law without any discrimination.</p>



<p>Paragraph 2.113 VI (b) (Chapter II)</p>	<p>Ensuring traceability of messages from Sender to recipients-</p> <p>(b) There shall not be more than two TMs i.e. one Aggregator TM and one Delivery TM, or as directed by the Authority from time to time to allow sufficient flexibility in the eco system and at the same time to maintain proper tracing and accountability of each entity in chain.</p>	<p>We understand that the restriction on not having more than two TMs or as directed by the Authority from time to time is with respect to the number of TMs used in a single chain while sending a set of commercial communication. Further, we understand that this does not restrict the number of TMs used separately (not part of the same chain) to send messages to various consumers. It would be beneficial to have this clarity to avoid any confusion.</p>
<p>Para 2 (Chapter IV)</p>	<p>The regulation 2(au) and 2(av) regarding the definition of Promotional message and Promotional voice call shall be amended as below:</p> <p>Promotional Message Promotional message means the commercial communication containing promotional material or advertisement of a product or service; Provided that the Sender shall give the opt-out mechanism to the recipient in the same message.</p>	<p>Promotional messages can be sent to non DND consumer or with consent through DCA in the event of DND consumers. Therefore, it should be clarified the mechanism of opt-out to be provided in these different scenarios.</p> <p>We would recommend that opt-outs through DCA should not be mandated for non-DCA consented promotional messages and the senders should be at liberty to use other independent opt-out mechanism framework.</p>



Explanation: These messages shall be delivered to subscribers who have not registered any preference in the preference register or have not blocked the type of commercial message being offered. If the Sender has acquired explicit Digital Consent from the intended recipient, then such Promotional messages with Explicit Consent shall be delivered to the recipients irrespective of their preferences registered in the preference register.

Promotional Voice Call Promotional voice call means commercial communication containing promotional material or advertisement of a product or service;

Provided that the caller shall give the opt-out mechanism to the recipient after such calls through a SMS or otherwise.

Explanation: These calls shall be made to subscribers who have not registered any



	<p>preference in the preference register or have not blocked the type of commercial voice call being offered. If the Sender has acquired Explicit Digital Consent from the intended recipient, then such Promotional Voice Calls with explicit Consent shall be delivered to the recipients irrespective of their preferences registered in the preference register.</p>	
<p>Paragraph 21 (3) and (4) (Chapter IV) read with Paragraph 2.75 and 2.77 (Chapter II)</p>	<p>After sub-item (2) of Item 1, following shall be added – (3) System to automatically take feedback from the recipients of voice calls, prescribed as below. The OAP shall establish a system to detect Senders, in real time, making more than 50 calls in a day, or such number of calls as decided by the Authority from time to time and obtain feedback from some of the recipients of these calls whether the calls received by them were Unsolicited Commercial Calls. The feedback shall be</p>	<p>The objective of this proactive feedback exercise is to detect UCC which is in public interest. However, it is pertinent to note that UCCs under TCCCPR is not restricted to only promotional messages/call but any commercial communication either without consent or against registered preferences.</p> <p>Therefore, the feedback question should be crafted in a manner to identify UCC as opposed to identifying only promotional messages. We can therefore recraft the feedback question as below:</p> <p>“Unusually high calls from the <number> has been noticed. You are one of the recipients of calls from this number. Kindly respond by ‘Y’ if it was a spam/unauthorized call or by ‘N’ if not.”</p>



	<p>collected on the same day from at least 5% of the recipients, subject to minimum 10 recipients, chosen randomly, or such sample size as decided by the Authority from time to time. Feedback shall be collected in the form of either 'Y' or 'N' through SMS from 1909 or any other pre-defined short code. Based on the feedback, OAP shall register complaints on behalf of the recipients in the DLT system against the Senders. The feedback can be collected using a predefined message template either in CoP or by the Authority from time to time. A sample template is given below for reference –</p> <p>“Unusually high calls from the <number> has been noticed. You are one of the recipients of calls from this number. Kindly respond by ‘Y’ if it was a promotional call or by ‘N’ if not.”</p>	<p>“Unusually high calls from the <number> has been noticed. You are one of the recipients of calls from this number. Kindly respond by ‘Y’ if it was a spam/unauthorized message or by ‘N’ if not.”</p> <p>The Access Providers should also have additional mechanism after receiving feedback to validate if messages were sent to DND consumers or were sent without appropriate template or authorization as prescribed by TCCCPR, including opportunity to be heard, prior to taking any action.</p>
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	<p>(4) System to automatically take feedback from the recipients of SMS, prescribed as below. The OAP shall establish a system to detect Senders, in real time, sending more than 50 SMS in a day, or such number of SMS as decided by the Authority from time to time and obtain feedback from some of the recipients of these SMS whether the SMS received by them were Unsolicited Commercial SMS. The feedback shall be collected on the same day from at least 5% of the recipients, subject to minimum 10 recipients, chosen randomly, or such sample size as decided by the Authority from time to time. Feedback shall be collected in the form of either 'Y' or 'N' through SMS from 1909 or any other pre-defined short code. Based on the feedback, OAP shall register complaints on behalf of the recipients in the DLT system against the Senders. The feedback can be collected using a predefined message template either in CoP or by the Authority from time to</p>	
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	<p>time. A sample template is given below for reference –</p> <p>“Unusually high SMS from the <number> has been noticed. You are one of the recipients of SMS from this number. Kindly respond by ‘Y’ if it was a promotional SMS or by ‘N’ if not.”</p>	
<p>Paragraph 21 (7), Chapter IV</p>	<p>After sub-item (2) of Item 1, following shall be added –</p> <p>(7) The spam message or call received on honeypots shall be treated as definitive proof that the Sender was involved in sending the UCC. TAP shall report such cases to OAP through DLT in real time, and OAP shall suspend the outgoing services of the Sender and shall initiate investigation as provided for in regulation 25(6).</p>	<p>In order to follow the principles of natural justice, it is advisable to provide the sender the opportunity to be heard before suspending the outgoing services of the sender even if the honeypot is considered to be proof of UCC being sent by the sender.</p>