



## **IAMAI Submission on TRAI Consultation Paper on Review of the Telecom Commercial Communications Customer Preference Regulations, 2018**

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Established in 2004, the Internet and Mobile Association of India (IAMAI) is a not-for-profit industry body representing the digital services industry with over 600 Indian and multinational corporations as its members, which include established companies in diverse sectors of the digital ecosystem as well as start-ups. We firmly believe that India's digital industry is going to be a major driving force in the economic and social development of the country which includes job creation, innovation, contribution to the GDP, inclusion and empowerment of our citizens.

On 28 August 2024, the Telecom Regulatory Authority of India published the "Consultation Paper on Review of the Telecom Commercial Communications Customer Preference Regulations, 2018". At the outset, IAMAI would like to thank TRAI for the opportunity to send our comments on the consultation paper. On behalf of our members, we would like to put forth the following submission. We note that our member Airtel has divergent views from those expressed in this document.

### **IAMAI Submission**

#### **1. Stakeholders are requested to submit their comments in respect of definitions of messages and calls and their categorizations, as suggested in the paragraphs 2.14 to 2.19 along with necessary justifications.**

**a)** At times some customers may need assistance to understand the features, while completing the transaction on their device as a DIY journey. Service calls help to bridge the gap by educating the customer to understand the product and complete the transaction on his own.

**b)** Transactional messages provide confirmation of completion of transactions and are mandated by regulated entities to be sent to customers. These messages also serve to protect customers in the event of a fraud. In some cases, calls need to be made for recovery of dues by customers. Where a phone number is the only known contact point, an opt-out may prevent otherwise necessary or legally required communications between businesses and consumers. Having an opt-out functionality may not be required at all, as all customers have the option to opt for the promotional communication they wish to receive. It may also be worthwhile re-considering the opt-out mechanism for transactional messages. Allowing the customer to de-register from receiving the transactional messages while they continue to receive services from the sender, will be detrimental to the customer itself as they will not be able to receive relevant updates about their services, leading to customer disputes between the sender and the customer.

**Illustration:** A customer orders a product from an e-commerce website for whom he/she has revoked the consent for receiving 'Transactional Communication'. In such cases, the e-commerce platform will not be able to reach out to the customer for order fulfilment (delivery updates, cancellation intimation etc.) leading to deficiency in services to such customers.

**Illustration:** A user has opted for only sharing their mobile numbers for communications with a video streaming app. He often uses transactional messages to login through an OTP and the video streaming app has no other contact details for the user. In such a scenario, if the user (possibly even by mistake)

hits opt-out in the transactional message, he would get locked out of his account which possibly may contain his paid subscriptions/preferences/valuable data.

Further, opting out from a transactional message may result into customer missing on key messages which may have an impact on the transaction of the customer and consequently may put customer into a disadvantageous position. Additionally, OTP-based validation of delivery, returns and changes to transaction will be negatively affected.

**Illustration:** For healthcare transactions like a blood test at home, sometimes the customers need help in ordering the tests, they need a confirmation of time of collection, be able to track the delivery person, and report updates. Sometimes, calls are to be made (or messages sent) for clarification of customer's disease status, or additional information that will help in diagnosing results correctly. Without the ability to do transactional messaging or calling, it will significantly hinder customer experience. At times, customers book their blood tests way in advance due to their doctor's suggestion, and need a confirmation message or call from the service provider to confirm transaction, along with the tests, time & date.

**Illustration:** Customer not receiving reminder from the Insurer / broker regarding renewal due of the policy and misses on the renewal in due course, this may leave customer without coverage.

We also request you to consider "Debt - Loan collection calls / EMI reminder" as a separate category as Debt-Loan collection calls are quite different from the transactional messages or calls due to the following reasons:

- There is an existing relationship, and lenders have rights to reach out to consumers
- Digital consent, Validity period of 12 months for digital consent will not be practical considering default can happen beyond 12 months (even if taken at the time of lending)
- Consumers can block the numbers particularly and hence PE's need to employ rotation of numbers

c) Definition of promotional call should not cover existing customers or users who have provided their information to whom products or services are being sold/upsold or communication is being made for renewals A fundamental impossibility is involved in delineating a promotional call from a Transactional Call or a Service Call to an existing customer.

**Illustration:** During a regular maintenance call / service call, a customer asks the Principal Entity about similar or complimentary product / service / feature. In such cases, it would be impossible to categorise the call as either Transactional or Promotional.

End-customers that visit the PEs website to initiate their customer journey often request for a call back for further information about products and services, and provide explicit consent on the website, including submitting their phone number on the website to the PE for this purpose, and registering an online account with the PE. Asking such a customer for consent again before calling them would not only be redundant, but also unnecessarily disruptive to business and customer experience. We should treat submission of phone number as consent, especially if they provide it in the related context of 'call back' or 'need help'.

It is recommended that, wherever an end-customer has expressed their desire for a call-back from the PE, including for further information about products and services, such communications should be categorized under the Transactional category.

d) Several intermediaries make use of a common or a select few masked phone number(s), or virtual phone numbers that are in fact geared towards providing protection from spam calls to both entities on either ends of the call by way of preventing phone number leakage while also serving the purpose of establishing a mode of connection. This is achieved by way of bi-directional redirection for the calls such that the dual purpose of communication and spam prevention is achieved.

In such settings the flow of communication is in the following manner: Call Initiator – Virtual Number Provider Intermediary – Call Recipient. In this case, the present proposition seems to unintentionally bring into its fold the intermediary, who is not directly involved in initiating the call but who merely acts as a facilitator, with the purpose of preventing spam. Section 79 of the Information Technology Act, 2000 affords Intermediaries protection from liability for any third-party information, data, or communication link made available or hosted by them notwithstanding any other law that may be in force. The usage of a Virtual Phone Number ensures that the role of intermediary is restricted to providing access to a communication system over which third parties transmit information or communicate where the beneficiary is either the initiator or the recipient of such communication and never the intermediary. The transmission is initiated by one party, who independently selects the receiver of that transmission, and the intermediary does not select or modify the information contained therein.

### **IAMAI Recommendation**

- a) We suggest retaining consent-based service calls/messages as a category as not all commercial communications may fall in transactional or promotional communication.
- b) There should be no Opt-out option for transactional messages.
- c) Cooling period of 90 days for obtaining fresh consent for transactional communication to be removed as it would be onerous for businesses and can also cause ‘consent fatigue’
- d) We request ‘Debt-Loan calls/ EMI calls/Payment Collection’ to be provided at least 160 number series if introduced.
- e) “Promotional Calls” be limited to calls made to new customers only and to not cover existing customers
- f) DND scrubbing/ preference of the consumer should not disallow calls for debt collection purposes

**2.17 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.**

End-customer seeking a service often visits the PE’s (i.e. service provider) website, which is the first point of interaction. These end-customers would go through a Principal Entity’s (PE’s) onboarding process and accept their privacy policy/ terms. End-customers often request for a call back and provide explicit consent on the website, including submitting their phone number. However, the outbound call

by PE will be blocked by the Access Provider, since the consent is on the PE's website. The Access Provider is then responsible for obtaining the Digital Consent from the end-customer and updating it on DLT, and the PE can only call their end-customer after the Access Provider has completed this process.

This process results in a very poor customer interface and low response. It introduces several hand-offs in the process between PE and AP. The process requires users to upload phone number and redirects the customer away from PE, to first transact with the APs, before they can resume their journey with the PE. These multiple hand-offs break the customer journey at the critical point of first interaction and introduce significant friction for the customer and PE to move forward, resulting in PEs losing out on a large number of high-intention customers.

Crucially, the Digital Personal Data Protection Act ("DPDPA") 2023, requires the PEs (i.e. Data Fiduciaries) to obtain and maintain consent records, with the consent being valid till such time as withdrawal of consent or that the specified purpose is no longer being served. The DPDP Act provides comprehensive guidelines for obtaining consent, which include issuing notices, informing customers of the purpose, including telemarketing, and outlining customer rights. Any additional requirements for registering and maintaining consent under the DCA will be excessive and increase the number of platforms where the user will have to provide their consent. Hence, resulting in diminished ease of doing business and higher compliance burden on industry the requirement to use DLT and real-time consent management systems has necessitated substantial investments in technology and infrastructure, imposing a significant financial burden on PE's. PE's must implement technological solutions capable of tracking and updating consent in real-time across multiple channels and platforms. Additionally, this requires continuous monitoring and maintenance to ensure systems remain compliant. The process of reacquiring consent from existing customers, as required by the TCCCPR, can be onerous for businesses. This can also cause "consent fatigue" among customers, where repeated consent requests result in decreased customer engagement and responsiveness.

The DPDP Act's sector-agnostic framework for personal data processing and consent should thus serve as the primary regulatory standard, allowing the TCCCPR to defer to the DPDP Act for consent requirements. This approach would enable a unified consent management framework, empowering users with clarity and control over their choices without the need for multiple, overlapping consents.

As the DPDP Act designates the Telecom Disputes Settlement and Appellate Tribunal as its Appellate Tribunal, established under the Telecom Regulatory Authority of India Act, 1997, it would be prudent to revise the TCCCPR to align with the DPDP Act, creating a comprehensive, unified framework for consent management.

### **IAMAI Recommendation**

- Ease of Doing Business demands harmonization of regulations to avoid duplication and unnecessary compliance burden on businesses and users. As such, obtaining and managing consent, including validity, should be as per the DPDPA 2023.
- It is suggested that the PE be allowed to capture an authenticated digital consent from the end-customer on its website at the time of interaction initiated by the end-customer. This could be done using an OTP sent to the end-customer, which they could enter into the PE's website. Once this is captured, the PE would have obtained an authenticated digital consent from the end-

customer, and can go ahead and contact the customer, and this also satisfies the requirements under DPDPA.

**2. Whether explicit Consent be made mandatory for receiving Promotional Communications by Auto Dialer or Robo Calls? What can be other possible measures to curb the use of Auto Dialer or Robo Calls without the consent of the recipients? Stakeholders are requested to submit their suggestions quoting best practices being followed across the world.**

There is no need for a separate Consent for auto dialers or robo calling should be part of the existing consent mechanism. However, it may be mandated that all such calls are initiated from 140 series.

**4. Stakeholders are required to submit their comments in respect of Headers identifiers categories as suggested in paragraphs 2.31 of Chapter II or any other type of identifiers which may facilitate consumers to identify senders distinctly. Suggestions if any, should be suitably brought out with necessary justifications.**

End-customers that visit the PEs website to initiate their customer journey often request for a call back and provide explicit consent on the website, including submitting their phone number on the website to the PE for this purpose. These customers are expecting a call from the PE. However, if the customer receives a call from a generic 140 or 160 line, they often fail to make the association with the concerned PE, and may not answer the call, assuming it is a generic promotional call. This leads to poor pick-up rates for such calls, which otherwise exhibit high pick up rates. Current prefix for identification of Access Provider does not provide any value add to users of this data.

It is suggested that the name of the calling PE be displayed on the end-customer's mobile. This would significantly improve pick-up rates, especially in the above-mentioned cases where the customer is expecting a call from the PE.

Lastly, on the issue of "identifiers which may facilitate consumers to identify senders distinctly", it is pertinent to note that Clause 37 of the TCCCPR states as follows:

*Every Access Provider and International Long-Distance Operators shall ensure that no international incoming SMS containing alphanumeric header or originating country code +91 is delivered through its network. Provided that Authority may issue directions as it deems necessary to control bulk international messages from time to time.*

Such a requirement effectively prohibits global e-commerce, cloud, email, gaming, messaging and social media services from using alphanumeric headers which can lead to safety and security issues for users as they only reflect 8-digit numeric headers instead of an alphanumeric identifier.

**IAMAI Recommendation**

- It is suggested that international incoming messages be allowed to contain alphanumeric headers in the interest of user safety and security.

**Q10 Whether there is a need to review exemptions accorded to transactional messages and bring them at par with other commercial messages? If yes, please give your answer with necessary justifications? If no, what additional measures are required to discourage senders, telemarketers or service providers from using transactional message templates for sending promotional messages?**

Authority has proposed in the consultation paper that charges of five paisa currently applicable on commercial messages may also be levied on transactional messages to discourage senders from mixing promotional content with transactional messages. We humbly submit that transactional SMSs are being sent by Bank/NBFCs/Fintechs in huge volumes and are very crucial from customer's point of view which keep them updated on the status of transactions and are also used for sharing OTPs for different transactions. We recommend that there should be no removal of the exemption as transaction messages are essential to the customers.

**Q.11 Stakeholders are requested to offer their comments on the following issues:**

**a. Whether there is a need to strengthen the provisions of Common Code of Practice templates with Standard Operating Processes further to enable Access Providers to take actions including imposing financial disincentives and actions as per law, against entities registered and not following the regulations? If so, what could be additional provisions and essential processes which should be made part of CoPs?**

The current regulations are based on a co-regulatory approach and only broad level regulatory objectives are defined. Detailed procedures are part of the Codes of Practice (CoPs) and are described by the Telecom Operators. However, many times, different COPs are being adopted by telecom operators with varied interpretations of the mentioned procedures which create confusion among the senders. Hence, it is proposed that all applicable provisions are specified in the regulation itself.

**Complaint Mechanism is against principles of natural justice**

The mentioned complaint mechanism seems to have a rather unilateral approach of complaint resolution that are in violation of principles of natural justice, ergo in violation of Articles 14, 19, and 21 of the Indian Constitution. This is because of the following reasons:

- There is disparate treatment of violations by Unregistered Telemarketers (UTM) and Registered Telemarketers (RTM) whereby the UTM is at least afforded an opportunity to be heard, and the RTM is denied even that courtesy whereby through mere randomized call testing, a phone number or even a virtual phone number is banned. This is flawed because (i) it does not take into account unintentional errors in detection at both ends (ii) does not afford the Principal Entity or the holder of the virtual phone number the opportunity to be heard before such a final action is taken (iii) the requirement of a reasoned order, is also not met. Aside from a reasoned order, per recent industry experience, eliciting the relevant order itself has proved to be quite an impossible task in practice, thereby causing significant commercial harm to business requirements.