

USISPF Comments on TRAI Consultation Paper on Definition of International Traffic

The U.S. India Strategic Partnership Forum (**USISPF**) welcomes the opportunity to provide feedback on the Telecom Regulatory Authority of India (**TRAI**) Consultation Paper on Definition of International Traffic. On behalf of our members, we request for a clear and unambiguous definition of the terms “International Traffic”, “International SMS”, and “Domestic Traffic”. Please see comments to the following questions below.

Q1. Whether it would be appropriate to define the term 'international traffic' in the telecommunication service license agreements as 'the international long-distance traffic originating in one country and terminating in another country, where one of the countries is India'? Kindly provide your response with a detailed justification.

USISPF Response: As per the current definition of proposed by TRAI, "international traffic" is “international long-distance traffic originating in one country and terminating in another country, where one of the countries is India.” In effect, this would also include international SMS and is not feasible for the following reasons:

Charges leviable for international and domestic SMS: The initial representations before TRAI were in context of domestic and international SMS traffic. International termination charges are charges payable by an Indian international long-distance operator (**ILDO**) to the Access Service Provider (**ASP**) in India, and domestic termination charges are charges payable by one ASP to another for terminating the traffic in its network in India. The charges leviable for international and domestic SMS have been set out in the Short Message Services (**SMS**) Termination Charges Regulations, 2013 (**SMS Regulation**). While the SMS Regulation does not define 'international incoming SMS' it specifically provides that "termination charges for international incoming SMS shall be under forbearance".

The definition of "international traffic" assumes importance because of the difference in charges levied for the termination of an international SMS and a domestic SMS. For international SMSes, telecom service providers (**TSPs**) charge rates at their discretion on account of forbearance shown by the TRAI. As of 2023, we understand that TSPs charge businesses approximately INR 4.14 per international SMS (as opposed to roughly 12 paise charged per domestic SMS). There has also been a steep increase in the rates charged by leading TSPs in the country for international SMSes from 2018 to 2023, which has been as follows: Re. 0.25 (2018), Re. 0.61 (2019), Rs. 1.24 (2020), Rs. 2.48 (2021), Rs. 3.31 (2022) and, as noted above, Rs. 4.14 (2023). This indicates an approximately 1566% increase in pricing since 2018.

Interpretation Adopted by TSPs: The definition of "international SMS" adopted by the TSPs for levying termination charges creates difficulties for stakeholders. For instance, the definition of international SMS in the Code of Practice (**CoP**) of a TSP¹, as approved by TRAI, is as follows:

"Any data/application/system/servers etc. which influences, generates, control, facilitate or enable the generation, dissemination/ transmission of messages from a location outside the territory of India will constitute as International messages. Any mirroring solution in India shall not impact and/or change the nature of such International SMS to national SMS."

A similar definition exists in the CoP of another TSP². TSPs have relied on this extensive definition to charge higher prices for such messages, including transactional messages.

Geographic location: Typically, the location of data centres is decided after a comprehensive assessment of considerations. The geographic location of a data centre hosting a cloud server should not be the determining factor for charging international rates for messages circulated by businesses. There are several reasons why companies locate their cloud servers (hosted in data centres) outside India. Moreover, some Indian websites are currently charged domestic rates despite having servers located outside India.

¹ https://www.airtel.in/business/commercial-communication/assets/documents/Help_Modules/Cop_docs/CoP_Entities_08_11_2018.pdf

² https://jcp-asset.akamaized.net/jio/regulatory/RJIL_CoP_Entities_May2022.pdf

Expansive definition: Technological advancements have resulted in various solutions, which operate prior to the actual generation of a SMS. These upstream applications or systems do not interact with any telecom network, and do not result in the initiation of SMS, and therefore, it would be very expansive to include within the definition of international SMS “data, application, or systems which influences, generates, control, facilitate or enable”.

Given that termination charges for SMS are passed on to customers, the lack of clarity on "international SMS" and "domestic SMS" allows TSPs to adopt their own interpretation. TSPs categorise a message generated by a computer resource/ server located outside India as "international SMS" despite the fact that the origination and termination of the SMS being limited to the network of TSPs in India, to bring it under the scope of forbearance. This has led to arbitrary interpretation, which have resulted in difficulty in carrying out digital businesses.

Entities sending SMS to their customers, for better business practices and for regulatory compliance are often subject to higher tariff rates as determined by the TSPs. This is problematic because transactional, promotional, and service messages are vital to the growth and operation of all businesses, and especially digital businesses which access customers remotely. For instance, businesses communicate details of payments, delivery of goods and services, multi-factor authentication for logins, etc. through SMS. These messages are also crucial in the larger context of e-governance, payments and banking infrastructure, where messages sent via SMS communicate OTPs, transaction details, etc. Several regulatory bodies including TRAI, the Reserve Bank of India, and the Ministry of Electronics and Information Technology mandate SMS usage by various entities in the interest of cyber security, spreading awareness, customer education, customer support, and transparency.

Issues with the Proposed Definition: In light of the issues highlighted above, the effort to define "international traffic" is a welcome move. However, the scope of the word "originating" may still cause confusion as it does not clarify where origination happens. "Originating" should be clarified to mean originating over a network of the TSP. This clarification is required to prevent the adoption of ambiguous and arbitrary interpretations.

Moreover, the traffic carried by ILDOs include voice, SMS, and data. Data packets generated by the services in the application layer use the network layer provided by TSPs, for the purposes of application to application (**A2A**) messaging, emails, VoIP calls, etc. Such services are used by customers, businesses and other service providers (**OSPs**), etc.

The proposed definition of "international traffic" may be incorrectly interpreted to potentially include all traffic originating through computer servers and delivered to another computer server, where either of the computer servers are located in India. Further, there is a possibility of automated messages originating as data packets outside India to be misconstrued as international SMS, despite such messages originating and terminating as SMS on the network of an ASP in India.

Therefore, it is imperative to amend the telecommunication service license agreements to define "international traffic" and "domestic traffic", and provide a clear definition which is specific to telecom networks.

Q2. In case your response to the Q1 is in the negative, kindly provide an alternative definition along with a detailed justification.

USISPF Response: To remedy the issues highlighted in our response to (1), we request TRAI to consider the following alternative definition for “international traffic”:

"International traffic shall mean international long-distance traffic originating from the telecommunication networks of a telecommunication service provider of one country and terminating in the telecommunication networks of a telecommunication service provider in another country, where one country is India."

The proposed definition of "international traffic" clarifies that the traffic should originate from and terminate over the network of a telecom service provider. However, this would include any voice, SMS, and data packet carried by ILDOs. Therefore, it must be ensured that the termination charges are levied only on calls and SMS, in accordance with the regulatory framework as applicable.

Imposition of termination charges: As mentioned above, the stakeholders are primarily concerned by the wrongful categorisation of 'domestic SMS' as 'international SMS' and the levy of higher charges.

Termination charges are broadly regulated in India by the Telecommunication Interconnection Usage Charges Regulation 2003 (**IUC Regulation**) for calls, and the SMS Regulation and Telecom Commercial Communications Customer Preference Regulations, 2018 (**TCCCPR**) for SMS. While the IUC Regulations clarify when an international termination charge is payable for calls, the SMS Regulation does not mention the same. Therefore, it is important to ensure that a broad definition for international and domestic traffic should not give way to incorrect classification of A2A messages/A2P messages originating as a data prompt outside India, as an international SMS.

Accordingly, we recommend that the term “international SMS” should be defined as:

“The term international SMS shall mean international traffic delivered using SMS which originates on the PSTN/PLMN network of a telecom service provider of one country and terminates in the PSTN/PLMN networks of a telecommunication service provider in another country, where one country is India.”

This definition may either be added in the license agreements or issued as a direction under the SMS Regulation to further clarify the scope of the term international SMS. This is also part of the original reference from the DoT.

Introducing a price ceiling on the tariffs for international transactional SMSes charged by TSPs: In addition, we request TRAI to consider introducing a price ceiling on the tariffs for international SMSes charged by TSPs to a maximum of 2x (i.e., double) of existing domestic tariffs.³ This is necessitated largely by the exponential increase in prices implemented by TSPs for international SMSes, as highlighted above. International SMS rates remain high even where the licensed Indian carrier performs no additional transmission service, such as carrying the traffic via subsea cable to the landing point in India, indicating that the excesses of international SMS pricing have little to nothing to do with cost of providing service.

Imposing a price ceiling for international messages will alleviate existing regulatory uncertainty on the subject. A separate consultation can be held in this regard to understand the views of the stakeholders, including ILDOs, ASPs, and businesses that rely on SMS.

Q3. Since the terms 'Inter circle traffic' and 'Intra circle traffic' are already defined in the telecommunication service license agreements, whether there is still a need to define the term 'domestic traffic' in the telecommunication service license agreements? If yes, what should be the definition of the term 'domestic traffic'? Kindly provide your response with a detailed justification.

USISPF Response: The terms "inter-circle traffic" and "intra-circle traffic", which essentially make up domestic traffic, are well defined in the telecommunication service license agreements. However, we believe that defining “domestic traffic” is also imperative. A clear definition of “domestic traffic” will help in establishing a framework for differentiating domestic traffic from international traffic, enabling effective oversight and ensuring compliance with applicable regulations. It is also crucial for policy development and implementation, and will enable TRAI to protect consumers from unfair practices.

As per our proposed definition for international traffic, we suggest that “domestic traffic” should be defined as:

“inter-circle traffic' or 'intra-circle traffic' originating and terminating on the telecommunication networks of telecommunication service providers within the territorial boundary of India.”

The proposed definition will leave no room for interpretation within the framework, thereby ensuring that all traffic falls within the ambit of either domestic traffic or international traffic. Moreover, it will also ensure that messages which originate over the network of an ASP in India and terminate on the network of a terminating ASP in India are construed as a domestic SMS.

³In this regard, as per the Telecom Commercial Communications Customer Preference Regulations, 2018, TRAI has prescribed 5 paise as the termination charge for domestic transactional messages. Thus, the 2x price ceiling for international transactional messages may be calculated accordingly.

Q4. Whether there are any other issues/ suggestions relevant to the subject? If yes, the same may kindly be furnished with proper justification.

USISPF Response: To give full effect to the new definitions introduced in the telecommunication service license agreements, we recommend that ASPs should be directed to align their CoPs with the definitions under the telecommunication service license agreements.

Under Regulation 8 of TCCCPR, ASPs are required to 'develop Code(s) of Practice to establish system and make arrangements to govern the specified activities'. Regulation 16 provides that the ASPs must submit their CoP to TRAI. Regulation 17 allows TRAI to direct ASPs to make changes to the CoP, and Regulation 18 mandates that ASPs adhere to the CoPs.

In addition to including the definitions of “international traffic” and “domestic traffic” in the telecommunication service license agreements, and the definition of “international SMS”, TRAI must also direct ASPs under Regulation 17 of the TCCCPR to align their CoPs with such definitions.

Additionally, we request TRAI to reconsider the current scope of the tariff regime for international SMS. We also believe that the TRAI should revisit its policy of forbearance vis-à-vis international SMSes.⁴ As noted in our response to (1) above, in the absence of a regulatory definition for “international SMS”: (i) messages originating and terminating on networks of telecom operators in India are included within the scope of international SMS; and (ii) rates for such messages can be set by the TSPs under forbearance. This is compounded by the fact that there is an increasing reliance on the internet for improving last mile connectivity, thus blurring the line between ‘international’ and ‘domestic’ further.

Currently, TSPs charge significantly higher rates for such messages when compared to domestic SMS, even when they do not incur any additional expense. There has also been an upshot in the rates per international SMS over the years, which is contrary to the global market trends for the same. Such practices are not aligned with the Government’s goal to encourage digital businesses in India. Such businesses may increasingly opt-out of sending important communications to customers through SMSs.

Moreover, any disputes regarding points of difference/ any grievance faced by the subscriber in this regard must be included with the Telecom Consumer Complaints Monitoring System (**TCCMS**) grievance redressal framework under TCCCPR.

⁴ In the [Consultation Paper](#) on ‘Review of Policy of Forbearance in Telecom Tariffs’ dated 6 February, 2012, TRAI noted that “as and when substantial reversal in the (downward) trend of tariff takes place and/or there are evidences of inadequate competition in any segment leading to high prices, the authority would be fully justified to intervene and even to set the prices for various telecommunication services.”