

Aircel Group Response to
The TRAI Consultation Paper on Review of
The Telecom Commercial Communications
Customer Preference Regulations, 2010

- 1) At the outset we believe that the regulator should give due consideration to the Cost-Benefit analysis before issuing any regulation or making the policy related decision. This practice is being followed by the regulators in many countries.
- 2) We would also like to highlight that we have incurred substantial cost in the implementation of the “The Telecom Commercial Communications Customer Preference Regulations, 2010 (TCCCPR)”. This is for implementing the filtering mechanism at the SMS and Voice channels, Separate Number Series ‘140’ for Telemarketers to facilitate easy identification of telemarketing voice calls by customers not registered on NCPR, logistics of revising the contracts with all the telemarketers etc.
- 3) The implementation of the above mechanism has not only minimized the unsolicited commercial communication (UCC) via voice but all reduced the UCC SMS’s considerably. TRAI has itself highlighted that average complaints have decreased from 47454 per month between March 2012 to March 2011 to 16907 complaints per month between 27th September, 2011 to 11th July 2012 i.e. after the launch of the TCCCPR.
- 4) As the complaints pertaining to the UCC has decreased substantially we believe that there is no need to put any further regulation in order to put check on the same.
- 5) Further, we would like to submit that the menace of the unsolicited commercial communication will be difficult to resolve **fully** and cannot be tackled through the proposed Regulations.
- 6) In addition, it may not be possible technically to differentiate one message which may not be unsolicited commercial message from the other which may be unsolicited commercial message. For example a person may send marriage invite, festival greeting, some important information, emergency alert to all his contacts, which could be in any number. It’s not possible to decipher technically if this is not unsolicited communication and allow this to go and to block other messages those are unsolicited commercial messages.
- 7) We are of the view that this issue could only be tackled effectively through a legislation enacted by Parliament i.e. similar to the privacy laws in some of the countries.

Query wise response is as given below:

- 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).**

[Response:](#)

- a) With respect to the proposal of the TRAI of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour, we would like to submit that the same requires setting up additional capabilities for which our member operators would have to incur huge cost in implementation of the same.
 - b) It has been highlighted by TRAI in its consultation paper that international long distance (ILD) operators have already upgraded their systems to implement the said provision. In this regard, we would like to submit that this solution at the ILD gateway caters only 1% of the total Traffic. Replicating the solution at the local SMS aggregators/gateways will amount to cater the rest 99% of the traffic. The upgradation of the operator's network and setting up of additional capabilities at all the local gateways will be huge cost for our members.
 - c) We would like to submit that on implementation of such solution of the signature verification of domestic SMS traffic would certainly lead to blocking of SMS's from the genuine customer and may to lead huge customer complaints and inconvenience. We would request that an evaluation/study should be carried out on the effectiveness and uptake of such proposals in the market with all stakeholders, before a consultation paper is floated.
 - d) Thus this proposal will not only be expensive for our members and will entail little benefits for the customers. This proposal will also would cause considerable inconvenience to the customers.
 - e) Further, we would like to state that the proposed draft Regulation is against a settled principle in law i.e. what has been disallowed directly cannot be allowed indirectly. Delhi High Court in its judgment dated July 13, 2012 and TDSAT in its judgment dated July 17, 2012 has set aside the TRAI's Regulation imposing a limit of 200 SMS / day per SIM as it restricts fundamental right to freedom of speech and expression. We are of the view that TRAI through this draft regulation is intending to re-introduce the earlier provision in different form by asking the Service Provider to put a system in place whereby SMSs containing same signatures in more than 200 SMSs per SIM per hour will be filtered and scrubbed by the system and such messages will be blocked by the system., thus trying to undo what High Court and TDSAT has set aside.
 - f) We are also of the view that TRAI should consider taking legal opinion on this provision as filtering and scrubbing basis signature of the message might encroach the right of privacy of consumers since it requires the telecom service providers to inspect, monitor and dipping into the content of the message which is not allowed to TSPs under the license conditions.
- 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)?**

Response:

As per the extant Regulation, every Telemarketer has to register with the Authority and then only approach any of the Service Providers for telecom resources. Therefore, for the sake of convenience and driving compliance, it is recommended that the proposed undertaking be made a part of process of registration. The Authority, while registering any Telemarketer, should take this undertaking from the 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)?**

The proposal is highly complicated for implementation and management; it will be highly inconvenient for the customers and will breed lots of disputes and litigation. Disconnection of Telecom resource of such entity basis tenth violation would only tantamount to acting without proper validation and without any proof. Though one may infer that the real culprit is the person for whom such promotion is being done by way of these bulk SMSs, however, to act and disconnect basis only the reported, and not validated content of SMSs, would be acting in a blindfolded fashion.

Any attempt to validate these complaints would also involve issue of privacy as a carrier or the Service Provider is not supposed to monitor the content transmitted through its network. Further, disconnection based on the customer complaint has possibility of misuse of the provision. Any unscrupulous person may send SMSs containing promotion for some entity without its consent, and to disconnect telecom resources basis any complaint received for such SMSs would be unjust and unfair.

- 5) **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).**
- 6) **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)?**

Response:

- a) We are the view that registering a compliant by the subscriber via the current mechanism i.e. through voice call or SMS to toll free number 1909 is working well and is best medium for registering the UCC complaints
- b) This will involve backend processing of the web-forms and emails, reasonable time should be allowed to the service providers to revert to the complainants with the complaint/service request number. For this we propose a response time of 72 hours from the time of submission of complaint on the website/receipt of email. We further believe that some reasonable time (3 months) may be given for Service Providers to enable web-based registration of UCC complaints.