

Bharti Airtel's response to TRAI Consultation paper (No. 13/2012) on Review of The Telecom Commercial Communications Customer Preference Regulation, 2010 and The draft Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulation, 2012

At the outset we would like to acknowledge and applaud the efforts made by TRAI in periodically formulating regulations to control the menace of unsolicited commercial communications (UCC). Since the very inception of TRAI's endeavors to curb unsolicited communications, Bharti Airtel has always provided the necessary support and co operation to enable a speedy and seamless implementation of this regulation. . In fact we were the first operator to take a voluntary decision to stop providing capacity to aggregators who control this promotional activity and who are largely responsible for organised unsolicited commercial communication. We assure the Authority that we will continue to provide our co operation to ensure that this continuing menace to customers is controlled.

However, we are concerned that in the process of regulating or controlling UCC, some of the recommendations in the consultation paper could be construed as fettering subscriber's right of freedom, speech and expression guaranteed in the Constitution. Further, some of the proposals are also highly impractical and unfeasible to implement. In fact, it **may not be technically possible to differentiate a commercial message from a non commercial message**. Any technical system designed on blocking a common message to many people will result in blocking the message even if it is personal and non-commercial in nature. For example, a person may send marriage invites, festival greetings, some other important information, emergency alerts to many people and all such messages will be blocked by such a system.

As we all are aware, the Hon'ble High Court of Delhi in the case of **Telecom Watchdog Vs Union of India & Another** vide its judgment dated 13th July, 2012, quashed the directions of the Authority fixing the ceiling of 200 SMSs per SIM per day on the premise of violating the freedom of speech and expression. We are surprised that the draft consultation paper intends to bring the very same provision in a different form, by asking the Service Providers to put a system in place whereby SMSs containing same signatures in more than a specified number of SMSs per SIM per hour will be screened, and such messages will be blocked by the system. It is an undisputed principle of law that what cannot be done directly, cannot be done indirectly. Such provisions if mandated may become contentious issues leading to unnecessary disputes and litigations.

Unlike other countries, India does not have Privacy laws. It is submitted that there is a dire need to amend the existing legislation as well as to introduce laws on Privacy as such a law will curb UCC effectively as a long term solution. **We sincerely urge the Authority to make the necessary representations on the behalf of the industry to the competent authority under the Constitution of India to introduce new laws or amend existing laws as a long lasting solution** to the problem of UCC.

It is submitted that applying the right economic tools is the most trusted and preferred method to achieve public policy objectives. TRAI rightly introduced an SMS termination

charge of 5 paisa for promotional messages and penalties for sending UCC but unfortunately these regulations were only partially successful in curbing the menace of UCC, as it was only applicable to “registered” telemarketers. The Authority will appreciate that the bulk of UCC’s are sent by “unregistered” telemarketers and promotional messages from “unregistered” telemarketers are unidentifiable in the terminating network.

In order to further control UCC, we humbly propose using the following economic tool for TRAI’s consideration:

Introducing a uniform SMS termination charge of 10 paisa for all types of SMSs instead of the existing 5 paise for promotional messages, will regulate the market towards responsible behavior and in turn curb UCC. This will ensure that there is no economic incentive for the telemarketers to do this activity through unregistered resources and the entire market will get regulated in the process.

Our detailed response to the question raised by the Authority in the Consultation Paper is as below:

Question -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?

Question -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?

Bharti Airtel’s Response:

The questions No. 1 & 2 are related, therefore, the same are being responded together.

As submitted in our preliminary response, **the proposal of blocking SMS beyond a limit (per SIM per hour) on any artificial intelligence criterion would amount to interfering with the cherished right of freedom of speech and expression.** The Hon’ble High Court of Delhi has already quashed the notification ceiling the limit of SMS per SIM per day. Therefore, any attempt to do the same or a similar thing in a different or indirect manner may be construed as an act of contempt of the Hon’ble High Court. This could be challenged in a court of law on the premise of violation of privacy of the customer. The network systems built to block basis artificial intelligence could be seen as monitoring or policing the content transmitted through the network. Blocking of spam traffic basis traffic analysis through signature matching requires an Anti-spam solution. **Implementing such kind of a solution on domestic SMS aggregators/gateways has both technical challenges as well as financial implications.** Passing of such traffic from SMSC to an external platform like anti-spam solution will require massive change in the functionality of traditional SMSC node. In older systems, this development is practically not feasible. It requires a huge, redundant investment in the new SMS infrastructure having content analysis capability and putting national originating traffic on the same.

Question-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?

Bharti Airtel's Response:

As per the existing Regulation, every Telemarketer has to register with the Authority as a pre requisite for approaching 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.**

Question-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.

Bharti Airtel's Response:

It is submitted that the proposal is highly complicated for implementation and continual management; it will be highly inconvenient for the customers and will result in lots of disputes and litigation. The proposal to disconnect the telecom resource of entities for which promotion is carried out after ten violation merits serious reconsideration by the Authority. 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. Such disconnections would always remain a bone of contention in the court of law.

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. This could be challenged in a court of law also.

Even operationally, the Service Provider will face the challenge of keeping track of two kinds of complaints 1. against the unregistered telemarketer and 2. against the entity for whom promotion is carried out. The Service Provider will be required to log two complaints, one for the telemarketer and the other for the beneficiary entity, both the complaints will have to be tracked separately, and two data-base will have to be maintained. In the case of the former, the telecom resource will be disconnected on second violation, and in the latter case, the telecom resource will be disconnected on the tenth violation. **This will bring operational nightmare for the Service Providers. Thus, it is suggested to the proposal to disconnect the telecom services of beneficiary may be dropped as it is operationally not feasible.**

Question-5: What additional framework may be adopted to restrict such subscribers or entities from sending UCC, other than the one proposed above?

Bharti Airtel's Response:

As mentioned earlier in our submissions, applying the appropriate economic tools will restrict and control UCC. We once again humbly propose using the following economic tools for TRAI's consideration:

It is submitted with great respect that empirical data of last few months demonstrates that it is only some Service Providers who are pushing the UCC SMSs to the other operator's networks in absence of any cost in term of the SMS termination charges. In order to remedy this situation, it would be **advisable to make mandatory SMS termination charges uniformly to discourage the service providers to misuse the interconnection with other operators for their benefits at the cost of other operators and inconvenience of UCC of the large public.**

It is recommended that TRAI should introduce a uniform SMS termination charge of 10 paisa for all types of SMSs instead of the existing 5 paisa for promotional messages. This will regulate the market towards responsible behavior and in turn curb UCC.

Question-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.

Question-7: Do you propose any other framework for registering UCC complaint for easy and effective lodging of complaints?

Questions No. 6 & 7 are related, therefore, the same are responded together. We agree with this proposal of the Authority. We are already facilitating registering of UCC complaints through Airtel website 'www.airtel.in' and also over email. However, since 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 48 hours from the time of submission of complaint on the website/receipt of email. We further believe that some reasonable time (2 months) may be given for Service Providers to enable web-based registration of UCC complaints.

Our comments regarding other points in the draft 10th amendment:

1. Regarding clause 2, we submit that we are already compliant insofar as it requires that the CAF should contain details of Customer Preference Registration facility. **Any suggested change based on the final regulation may be incorporated suitably at the time of next lot of form publishing by the service providers, after the direction, once the existing forms in circulation is exhausted.** Therefore, a minimum of 6 months' time may be given for exhausting the printed forms lying in the warehouse after the final regulation is released.
2. As the draft amendment includes within its scope basic telephone services also only for the limited purpose of taking a undertaking from the customer, therefore, it is suggested that the expression "SIM purchased" in clause 2 be replaced with "SIM/Basic telephone

subscribed” and the necessary amendment be carried out in the subsequent portions also to reflect this understanding.

3. In clause 3, the word ‘sent’ within Regulation 19 (11) (i) may be replaced with ‘made’.
4. The Clause 3 of the draft regulation embodies penalty for both voice and SMS UCC from unregistered telemarketers. But unlike a SMS, even under the extant regulations, **in case of voice UCC there is no proof of it being a UCC and it is always contentious to prove or establish it to be a UCC**, and the service provider has to go by the complaint of the aggrieved person. A singular instance of wrong call by an innocent customer could be construed as a UCC by the other person. The Service Provider has to assume the role of adjudicator to decide whether it is UCC or an innocent call and become party to the dispute facing litigation. While Service Providers have been playing this role ever since the Regulation has been in place, there is always an element of uncertainty involved, and **the service providers have no defense in the event of such a decision being challenged in a court of law.**
5. A transactional call could be complained as UCC by some customer and the service provider has to assume the role of an adjudicator in such cases. The service provider will become party to the dispute in case of disconnection of services on such complaints. **There have been instances in the past where complainants have actually received collection/payment reminder/service call for credit cards/loans etc. but such customers have allegedly reported it as UCC.** While we have disconnected connections basis such complaints, we have had to subsequently reconnect the services basis justification and proofs provided by the affected subscriber.
6. On many occasions in the past, service calls/lead fulfillment calls made by manufacturers/service providers have been reported as UCCs, and on inquiry such complaints it has been revealed that the complaint was unfounded. In fact, the complainants had themselves shown interest in some products or services and inquired about the same on the manufacturers’/service providers’ website by leaving their contact numbers there, or through other media-based promotions. To disconnect the services of customer basis such complaints may not be fair and just.
7. **The proposal of imposing penalty of Rs 500 to the customer found involved in sending unsolicited commercial communication is highly impractical, prone to large scale litigation and will be implementation nightmare for the service providers.** The recovery of penalty from the customer would be a big challenge, given the fact that predominant portion of our subscriber base is on prepaid category with an average balance of less than Rs.100/-. In case the service provider deducts the available balance from the customer account towards penalty, there would be large-scale consumer complaints from all sources relating to unauthorized balance depletion. It is pertinent to mention here that based on latest data **less than 0.5% of our total prepaid sub base has**

had a balance of Rs.500 or more so the recovery of Rs. 500/- penalty would not be possible for 99.5% cases. In such situation this proposal may prove to be a non-starter.

8. It is submitted that the Authority has no power to impose any charges or penalty on customer, either directly or through Service Provider, for committing UCC call or SMSs. The creation of an offence and stipulation of penalty thereof is in the exclusive domain of Parliament under the Constitution and no authority or public body without the authorization cannot impose such charges or penalty. In such situation the levy of charge or fine or penalty on customer runs counter the principal objective of TRAI to protect interest of the Customer.
9. It is for the same reason that we believe under the existing regulations have a provision of furnishing of Advance Security Deposit of Rs 1Lac by the Registered Telemarketers so as to avoid the hassles of recovery of penalty from them, however, there is no such provision in the case of general/ ordinary subscriber, hence recovery of penalty as envisaged in not possible uniformly. **There will be charge of imposing arbitrary penalty if the approach of taking away whatever balance amount found in the account up to Rs 500/- which may be challenged in the court by any affected party or others.**
10. Even in post paid scenario, the situation around recovery of penalty from such unregistered telemarketing customer is no better. **There may be instances of post-paid customer disputing such penalty and refusing to pay the other charges as well and forcing litigation, it will result in rising bad debts.**
11. The draft regulation proposes disconnection of all telecom resources of a repeat offender. **To disconnect all telecom resources of any customer, basis complaints against one of his connections may not be fair, just and reasonable. This could be a bone of contention in a court of law.** Assuming a person complains that he/she has received a UCC from a number repeatedly, but the number is actually being used by an Educational Institution, a Government Office, a Bank or Insurance company for transactional or service message. To disconnect all the telecom resource of such an institution or office may not be fair and just.
12. The draft regulation **lacks clarity whether voice and SMS-based UCC can be clubbed for the purpose of imposing penalty or they should be treated as separate categories of UCC.** For example, how to charge penalty if the first UCC was an SMS, and the second was through a voice call. What penalty should be charged for the voice UCC, since it is the first Voice UCC but the second UCC in all ?
13. The draft regulation puts an embargo, vide clause 3 sub clause (c), for a period of one year from providing telecom resources to a repeat offender whose resources have been disconnected for telemarketing. **There is a view that it is not legally tenable to restrain a person from having another telephone connection for a year. This embargo also may not be pragmatic as such a customer may take telecom resource from some other**

service provider. He may avail services in the name of some other person or family member. It is matter of common knowledge that in India there are multiple identity documents and all are not uniform in their construct and many a times the issuing authorities make errors as well. It's not like some other countries where one 'national identity number' can be used for identify the customers with absolute certainty. So this will not be deterrence for the determined offender but **may cause problem for the telecom service providers in terms of putting additional resources to monitor, manage and face litigation from the affected subscribers or others.**

14. Regarding sending of advisory 1st SMSs to customers within 30 days of regulation notification then 2nd SMS again within 7 days again and then again every six months. **TRAI should have a holistic look as there are so many other regulations and directions equally or more important and still if authority consider this is a special case, it should be limited to sending such advisory once when it is implemented and then once in a year otherwise this would in itself become a nuisance SMS for and customer specially for the DND customer.**
15. We agree with the amendment proposed in clause 5 regarding inclusion of the expression 'or by TRAI' in Schedule V para 13.
16. Regarding clause 6 of the draft amendment, it appears that the Amendment proposes to remove the use of keyword "COMP" (short term for 'Complaint') in the beginning of the SMS while registering a UCC complaint through SMS. In this regard, we wish to submit that 1909 short code is also used for registration, de-registration, and preference change on the NCPR, and each of these requests is identified by a unique keyword like 'START', 'STOP' etc. Therefore, **in the absence of a key word like "COMP", as is presently used, the system may not be able to recognize that this is an UCC complaint and may reject such SMSs as "no keyword found".**
17. Also, it appears that clause 6 proposes to remove "time of receipt of UCC" from the format of the SMS sent by the customers registering an UCC related complaint. In this regard, we wish to suggest that "time of UCC" be retained as a mandatory component of a UCC complaint. In case of UCC from Alpha-numeric headers, the CDRs show coded values for these headers, which are required to be decoded to match the header reported in the customer's complaint. For the purpose, we need to know the time to locate the exact header, customer is complaining about. In absence of this, the system will be required to generate CDRs for the entire day putting enormous load on the systems and the people to decode all the headers in the customer CDRs for the entire day. Also, there may be multiple SMSs from the same header some of which may be promotional and others non promotional, and thus, there is a need for "time of UCC". For example: a customer may have received 4 SMS during a day from a header "AD-SERVIC", which is supposed to be a transactional header. While 3 of these may be transactional messages, the fourth one may be a promotion from the same header and the customer may have complained about the same. Now we need to know which event out of the 4 to

investigate further and penalize. Also, in case of calls from a non-telemarketing number, the time is important since there may have been multiple service calls from the same number during the day, but one of them may also have been promotional. In addition to this, there are instances when we have to investigate complaints for calls from registered telemarketers (140-series) for call-forwarding scenarios, where there are multiple systems involved. In such a situation, it will be very difficult to investigate all the related systems for a 24-hour duration instead of a defined time-window. **We recommend that the time may be continued to be a mandatory component in the UCC complaint for proper investigation and necessary action by the service providers.**

We trust that the above submissions will be considered favorably by the Authority and enable all service providers to implement measures that will further strengthen curbing the long pending menace of UCC's.