



**By email: [advmn@traigov.in](mailto:advmn@traigov.in)**

June 20, 2023

**Shri Akhilesh Kumar Trivedi,**  
Advisor (Networks, Spectrum and Licensing),  
Telecom Regulatory Authority of India

**RE: Comments on the Consultation Paper on Definition of International Traffic**

Amazon Seller Services Private Limited ("Amazon India") welcomes this opportunity to present comments on the Consultation Paper on Definition of International Traffic (the "Consultation Paper"). As Amazon India explains in its submissions, it is imperative that the relevant regulations provide a clear and unambiguous definition of the terms "International Traffic", "International SMS", and "Domestic Traffic" to ensure widespread adoption of SMS technologies for businesses to reach their customers in India, in line with the Digital India vision of the Government and to prevent ambiguity and arbitrary interpretation.

**Background**

Amazon India operates the Amazon India marketplace in India. Together with other subsidiaries of the Amazon Group in India, Amazon offers multiple services to various customers across the width and breadth of India. Being a responsible and compliant business organization, Amazon sends various messages to its customers ranging from identity verification, transaction confirmation, know-your-customer, and regulatorily mandated informational SMSs.

Apart from the ability to connect people, messages sent by SMS are one of the most effective ways for businesses to reach their customers. Transactional, promotional, and service messages are vital to the growth and operation of all businesses, and especially digital businesses which access customers remotely. Messages are important for businesses to communicate to customers, amongst other things, details of payments, delivery of goods and services, multi-factor authentication for logins, etc. They are also crucial in the larger context of e-governance, payments and banking infrastructure, where messages sent via SMS communicate OTPs, transaction details, etc. Various regulatory bodies including the TRAI, the Reserve Bank of India, and the Ministry of Electronics and Information Technology mandate usage of SMS by various entities, including in the interest of cyber security, spreading awareness, customer education, customer support, and transparency. SMS can be terminated even in areas without the internet, which makes it the most reliable mode of communication for responsible businesses including e-commerce companies, banks, insurance companies, payment gateways and telecom companies. *SMS play a very important role in helping achieve the vision of Digital India.*

At the outset, we are grateful to the Department of Telecommunication (“DoT”) and the Telecom Regulatory Authority of India (“TRAI”) for issuing the Consultation Paper, to understand the views of stakeholders on this subject.

### **Response to Questions:**

**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.**

We believe the current definition of "international traffic" as suggested by TRAI should be clarified further to prevent any ambiguity.

#### **(i) Charges leviable for international and domestic SMS**

We understand that the initial representations before TRAI which were forwarded to the DoT were in context of domestic and international SMS traffic. Briefly, 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”). Additionally, the Telecom Commercial Communications Customer Preference Regulations, 2018 (“TCCCPR”) also sets out the termination charges levied on domestic commercial communications (such as promotional and service SMS). While the SMS Regulation or the TCCCPR do not define "international incoming SMS", the SMS Regulation specifically provides that "*termination charges for international incoming Short Message Service (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.

#### **(ii) Interpretation adopted by telecommunications service providers**

Stakeholders face issues in relation to the definition of "international SMS" adopted by the telecommunications service providers (“TSPs”) for levying termination charges.

For instance, the definition of international SMS in the Code of Practice for Entities (“CoP”) of a telecom service provider (“TSP”) <sup>1</sup>, 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."*

---

<sup>1</sup> [https://www.airtel.in/business/commercial-communication/assets/documents/Help\\_Modules/Cop\\_docs/CoP\\_Entities\\_08\\_11\\_2018.pdf](https://www.airtel.in/business/commercial-communication/assets/documents/Help_Modules/Cop_docs/CoP_Entities_08_11_2018.pdf)

A similar definition exists in the CoP of another TSP.<sup>2</sup>

Advancement of technology has 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*”, as this definition would include systems which do not interact with the telecom networks, at all.

Given that termination charges for SMS are passed on to the customers, the lack of clarity on "international SMS" and "domestic SMS" allows TSPs to adopt their own interpretation and categorise a message generated by a computer resource/ server located outside India as "international SMS", in spite of 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 also led to expansive interpretation by the TSPs in India, which has 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.

Categorization of SMSs as "international SMS" means that such messages cannot be sent under domestic SMS headers. Regulation 37 of TCCCPR requires ASPs and ILDOs to ensure that no international incoming SMS containing alphanumeric header or originating country code +91 is delivered through its network. Therefore, an alphanumeric header is only assigned to domestic SMSs. While the intent of this provision is to ensure that the end subscriber can ensure the veracity of the SMS it receives, and distinctly identify international messages so as to prevent fraud and scams, it creates confusion and lack of trust for customers of Indian businesses whose messages are treated as international SMS.

### ***(iii) Issues with the proposed definition***

While the move to define ‘international SMS’ is very welcome in light of the issues mentioned above, it is submitted that:

- **The term ‘traffic’ is wider in import.** The term ‘traffic’ includes 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 at large, as well as 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 server is located in India. Further, there is scope of automated messages originating as data packets outside India to be misconstrued as international traffic, despite such message originating and terminating as SMS on the network of an ASP in India.

---

<sup>2</sup> [https://jep-asset.akamaized.net/jio/regulatory/RJIL\\_CoP\\_Entities\\_May2022.pdf](https://jep-asset.akamaized.net/jio/regulatory/RJIL_CoP_Entities_May2022.pdf)

- **The term 'originating' needs clarity.** The scope of the word "originating" may still cause confusion as it does not clarify where the origination happens. "Originating" should be clarified to mean originating over a network of the TSP. In the absence of this clarification, it could lead to ambiguity and arbitrary interpretation by TSPs.

Therefore, it is imperative to amend the telecommunication service license agreements to define "international SMS" and "domestic SMS", 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.**

To remedy the issues highlighted above, we suggest that the TRAI considers 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 above definition of "international traffic" clarifies that the traffic should originate from and terminate over the network of a TSP. 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 in our response to Q. 1, the stakeholder concerns are primarily with regard to 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 TCCPR 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 must be ensured that a broad definition for international and domestic traffic should not give leeway to TSPs to misclassify A2A messages/A2P messages originating as a data prompt outside India, as international SMS.

Hence, we recommend that the TRAI should define the term international SMS as:

*"The term international SMS shall mean international traffic delivered using SMS."*

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. Please note

that this is also part of the original reference from the DoT. Unless this definition is also brought out clearly, ambiguity and arbitrary interpretation may continue to exist.

**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.**

Yes. While the term "inter-circle traffic" and "intra-circle traffic", which essentially make up domestic traffic is well defined in the telecommunication service license agreements, defining domestic traffic is also imperative. This will help in establishing a framework for differentiating domestic traffic from international traffic, enabling effective oversight and ensuring compliance with applicable regulations. Further, a clear understanding of domestic traffic is crucial for policy development and implementation. By explicitly defining domestic traffic, TRAI can also protect consumers from unfair practices.

In line with our alternative definition for international traffic, we suggest that domestic traffic should be defined as:

*"Domestic traffic shall mean 'inter-circle traffic' or 'intra-circle traffic' originating and terminating on the telecommunication networks of telecommunication service providers within the territorial boundary of India."*

This will ensure ample clarity to the definitions, and leave no room for interpretation within the framework, thereby ensuring that all traffic falls within the ambits of either domestic traffic, or international traffic.

This 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.

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

Yes. To give full effect to the new definitions introduced in the telecommunication service license agreements, 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 the TRAI to direct ASPs to make changes to the CoP, and Regulation 18 mandates that ASPs adhere to the CoPs.

In light of the proposed definitions of international and domestic traffic being considered to be included in the telecommunication service license agreements, and the inclusion of a definition of international SMS, TRAI must also direct ASPs under Regulation 17 of the TCCCPR to align their CoPs with such definitions.

Separately, TRAI must reconsider the current scope of the tariff regime for international SMS. As noted above in our response to Q. 1, the absence of a regulatory definition for international SMS allows TSPs to give a very broad definition, such that even messages originating and terminating on networks of telecom operators in India are included within the scope of international SMS, and rates for such messages can be set by the TSPs under forbearance. This being the case, TSPs charge significantly higher rates for such messages when compared to domestic SMS, even when they do not incur any additional expense. The industry also saw 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 in line with the Government's push to encourage digital businesses in India, and for customers as businesses may increasingly opt-out of sending important communications to customers through SMSs. Businesses, including start-ups and small businesses may choose to house their servers overseas for multiple reasons, and we believe that alone is not sufficient factor for determining if SMSs sent by such organizations are international in nature.

Given this, TRAI must consider regulating the tariffs for international SMS and remove it from the scope of forbearance. A separate consultation can be held in this regard to understand the views of the stakeholders, including ILDOs, ASPs, and organizations and businesses that rely on SMS.