



DG/COAI/2023/264
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Mahanagar Doorsanchar Bhawan
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New Delhi- 110002

Subject: COAI Counter comments to the TRAI CP on “Definition of International Traffic”

Dear Sir,

This is with reference to the TRAI Consultation Paper on “Definition of International Traffic” issued on 2nd May 2023.

In this regard, please find enclosed COAI’s counter comments to the Consultation Paper.

We hope that our submission will merit your kind consideration and support.

With Regards,

Yours Faithfully,

Digitally signed by Lt.
Gen Dr. SP Kochhar
Date: 2023.07.25
14:45:37 +05'30'

Copy to:

1. Shri V. Raghunandan, Secretary, TRAI, Mahanagar Door Sanchar Bhawan, Jawaharlal Nehru Marg, New Delhi – 110002.
2. Shri Rajiv Sinha, Pr. Advisor (NSL), TRAI, Mahanagar Door Sanchar Bhawan, Jawaharlal Nehru Marg, New Delhi – 110002.



COAI counter comments on Consultation Paper on Definition of International Traffic

We thank the Authority for providing us with the opportunity to share the counter comments to this consultation paper on Definition of International Traffic.

We reiterate some of the key submissions from our main response filed on July 11, 2023:

- a. The need is not to define international traffic, but the need is to clarify that SMS originated from international servers/entities and masqueraded as domestic SMS by introducing a proxy server in India (just like it was the case of grey voice calls), would classify as international message as per existing licensing norms. There is no ambiguity regarding the treatment of international traffic or what constitutes international traffic, and a robust licensing and regulatory framework exists in India for decades, and the basis on which grey voice calls have been dealt with legally for years now.
- b. Even otherwise, TSPs have already defined International SMSs, under the Code of Practices (COP). This definition already submitted with TRAI, is deemed acceptable and should be persisted with.
- c. Domestic traffic is also clearly defined, and TRAI in para 1.15 of the consultation paper rightly acknowledges the same. There are also no examples that we could understand wherein Regulators or licensors have explicitly defined, domestic and international SMS traffic, and/or where India's licensing and regulatory regime and TSP practices have deviated from internationally accepted ways of working.
- d. If the actual transmission of messages takes place between the SMS server/application located outside India to the user located in India, such SMSs continue to be international messages and cannot be considered as domestic SMSs.
- e. Such routing is illegitimate and bypasses the license route i.e. ILDO, to deliver an international SMS to an end-subscriber (PSTN break-out). It is also one among a few other illegitimate routes exploited by a handful of entities, and also poses serious security risks as such traffic bypasses any lawful monitoring mechanism.
- f. There is absolutely no need for an intervention that seeks to redefine an accepted telecom service/traffic type that is both well-functioning as well as efficient and relevant.
- g. Any SMS/traffic whose (source) point of origination (whether through server/ cloud/ aggregating point) is from outside India, and which ultimately breaks out on the Indian PSTN (subscriber), can only be delivered through the legitimate route i.e. via the ILDO route and the similar licensing condition that ILDO route is legitimate applies to any SMS to be sent outside India. The underlying principle is that the brain and intelligence (i.e. originating server/application etc.) sit out of India and hence it cannot be in any way considered as domestic traffic even if this traffic is said to be mirrored in India or delivered to Indian aggregators.

Now in the above context, and after going through the response of some of the other respondents, we submit the following counter points for Authority's consideration:



1. **Some entities have stated “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.”**

COAI Response

We reiterate our position as under:

- a. Due to advancements in technologies, economic activities being more and more digital and the proliferation of applications over mobile, consumer usage is becoming digital wherein SMS on an MSISDN becomes a prominent and trusted way of authentication and information/communication. Certain entities may not have any interest in bringing their platforms/servers to India and would attempt to bypass local licensing requirements of routing International SMS through ILDO by wrongly raising issues of ambiguities or consumer concerns, till such licensing requirements are clearly upheld and amply clarified leaving no chances of ambiguities.
- b. **With such advancement in technologies and further evolutions expected sooner than later, any attempt to hard code the definition of international SMS (or traffic) in license, will always be limited and generic in nature and will not serve the purpose. It will still give way to certain entities for using proxy servers to bypass the robust ILD route and claim International SMS as Domestic SMS.**
- c. **The principle is simple:** any traffic that comes into India from any source outside, irrespective of hops or technology before entering the Indian Telecom network (i.e. ingress into India licensed telecom network) and gets delivered in India to an Indian end-subscriber; using India TSP’s carrier network in one end (i.e. for purpose of getting terminated on a TSP subscriber), is an international traffic/SMS. Just having the presence of an entity in India, but actual traffic of that entity emanates /starts from a foreign application/server/location – cannot be considered as domestic SMS by any stretch of the imagination.
- d. **We submit that the license provisions unambiguously make it clear that any traffic originating from outside the country and intended for termination of PSTN networks should be brought to India through the ILD route. Therefore the only issue in front of the Authority is not to define what international traffic but, it is to clarify that SMS originated from/through any server/ cloud / aggregating point/ application outside India, and which ultimately breaks out on the Indian PSTN (subscriber) and masqueraded as domestic SMS by introducing a proxy server in India (just like it was the case of grey voice calls), would remain an International message as per existing licensing norms. We reiterate that there is no ambiguity regarding the treatment of international traffic or what constitutes international traffic and a robust licensing and regulatory framework exists in India for decades, and the basis on which grey voice calls have been dealt with legally for years now.**
- e. The SMS whose (source) point of origination (whether through server/cloud/aggregating point) is from outside India, and which ultimately breaks out



on the Indian PSTN (subscriber), cannot be treated differently and it should only be delivered through the legitimate route i.e. via the ILDO route and the similar licensing condition that ILDO route is legitimate applies to any SMS to be sent outside India.

- f. **The underlying principle is that the brain and intelligence (i.e. originating server/application etc.) sit out of India and hence it cannot be in any way considered as domestic traffic even if this traffic is said to be mirrored or delivered through mediation servers in India or delivered to Indian aggregators.**
- g. We submit that the above method (of certain entities treating international traffic as domestic one) is the same as the Grey calling route in which the calls originated by users outside India are routed to India through Public Internet and an illegal exchange (media gateway) in India is used to route these calls to PSTN users by using the SIM Boxes. This is exactly what happens in the SMS routing method used by the abovementioned entities.
- h. Since the grey route for voice was considered a threat to national security as well as leakage of TSPs and Government revenues, similarly, the grey route for SMS also deserves to be seen from the same prism, for both scenarios i.e. SMS originated from international servers and terminating on Indian customer as well as SMS originated from Indian server and terminating on International customers.
- i. Further, there is absolutely no consumer concern or harm, nor any competition concern w.r.t this market. The main issue is regarding such entities using a non-licensed route to access and deliver international SMSs to Indian end-users. Therefore, after taking all this into account, it would be fair to say that industry-accepted definitions be allowed to continue and even the commercial aspect for international SMSs should continue to be left to market forces as also adopted in international markets.
- j. **The stakeholder's contention that the cost will be eventually borne by the customers is also a fake concern, as in case they wanted to reduce the cost for Indian customers, then they could have very easily shifted their controlling servers to India and saved this alleged cost for their customers. The fact that they are seeking redressal outside of the licensing framework belies the intent of working solely for their own interests rather than Indian customers as alleged.**

For commercial discussions, they can always work directly with TSPs rather than using any intermediary.

- k. Thus, in conclusion, we reiterate that the **Authority should only provide clarification in terms of the treatment given to traffic generated by such international entities.**
- l. **However, if TRAI considers defining it to be important, in our view, the definition of International SMS as defined by TSPs in their Code of Practice (provided below) can be used to build a similar definition for International traffic.**

“International SMS is a short message service enabling text message to be transferred and/or originated by any data, application, system, servers, handset device or terminal device etc. which influences, generates, control, facilitate or enable the generation, dissemination, transmission or transition of messages through a communication network process, including partial process, from a location outside the territory of India or a text message originated by handset device or terminal device located in India to such application, system, servers etc. located outside India prompted in response to a



short message by such data, application, system, servers etc. Any mediation server solution in India shall not impact and/or change the nature of such International SMS to national/domestic SMS”.

- m. **These CoPs (along with the definitions of International SMS) stand valid and compliant to the TCCCPR 2018 and the definitions given therein are aligned with the licensing norms.** This definition is all-encompassing and compliant with the licensing and regulatory framework duly adopted by the industry. It addresses the issues of grey routes exploited by certain entities to route their international SMSs via the domestic route.
2. **Some entities have stated that “TRAI must reconsider the current scope of tariff regime for international SMS and should revisit its policy of forbearance vis-à-vis international SMS”.**

COAI Response

In this regard, our submission is as follows:

- a. We fail to understand the concern of such respondents. Is it about the international and domestic traffic are not properly defined OR is the issue about the pricing of international SMSs?
- b. In our view this statement by respondents clearly shows an intent to create an issue out of nothing and try to make it sound like a definitional issue. In either of the cases, the statement and arguments of such entities do not stand on their feet.
- c. As already stated in our main submission and the previous section, there is no issue in the definition of traffic type, which is well accepted, settled, over the years, and consistent with global practices.
- d. As regards the prices of international SMSs, it is consistent with global practices by TSPs worldwide wherein pricing of such international SMSs being towards a commercial activity i.e. purely commercial in nature – are set by TSPs in any market. TRAI too has rightly left it under forbearance and its practice is no different to other jurisdictions.
- e. We reiterate that there is absolutely no need to intervene in this issue and the current practice should be left to market forces as the concerns do not seem legitimate. None of the responding entities desiring such an intervention has provided any evidence towards their ask. Neither the DoT reference nor the TRAI consultation paper provides any evidence necessitating such an intervention. Furthermore, the Indian consumer is not at any loss or at risk of harm, and the Indian exchequer too is duly compensated for international traffic coming from a legitimate route.
- f. In fact, any intervention either in definition contrary to present practice OR on the commercial SMS prices would ultimately lead to bypassing of legitimate ILD route and/or loss of legitimate revenue to the Indian exchequer by converting the prices to domestic ones. The unintended consequence will be that Indian ILDOs / TSPs will be at a competitive loss compared to their global peers who have no such interventions and charge much higher rates for the same messages.



- g. In view of the above, we do not believe that it is an issue that relates to the international termination charge or its congruence to the domestic termination charge.
- h. In any case the Authority has always maintained that for determination of ITC, the international termination charges prevalent internationally should also be taken into account and it should be seen as to what is more advantageous to Indian consumers.
- i. Therefore, we submit that the present regime of forbearance in international SMS termination should be continued with. This will enable Indian TSPs to take steps to protect their and Indian consumers' interests.
- j. It is also worthwhile to mention here that as these stakeholders have as much as admitted that the messages carried by them are international in nature and are seeking change in ITC, they are also in violation of Regulation 37 of the Telecom Commercial Communications Customer Preference Regulations, 2018, which explicitly prohibits the service providers from carrying international SMS with alphanumeric or originating country code +91 on their networks. The regulation is extracted and reproduced herein below:

37. 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.
