



ITU-APT Foundation of India

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ITU-APT Comments in relation to Draft Telecom Commercial Communication Consumer Preference Regulations, 2018 released by TRAI

Introduction

ITU-APT Foundation of India would like to take this opportunity to thank the TRAI for this opportunity to provide inputs in relation to the proposed framework to address unsolicited commercial communications. With the growing levels of dependence on mobile devices and communication technologies, the importance of addressing unsolicited commercial communications has assumed critical importance and cannot be understated.

While TRAI has been working to address this issue for several years now, it is acknowledged that emerging forms of commercial communications and their sheer scale have necessitated a rethink of the existing approach to regulation of commercial communications.

Within this context, the Draft TCCCPR Regulations, 2018 released for public consultation are both timely and critical. We would like to take this opportunity to offer certain specific comments on the provisions contained therein. While the Draft Regulations are well-intentioned and seek to leverage emerging technological paradigms to combat UCC, there are certain issues which need further clarity. In addition, certain proposed requirements –if unaddressed – may cause friction in relation to legitimate messaging activities such as transactional or service messaging.

The Draft Regulations, 2018 are a concern for stakeholders involved in originating as well as conveying Transactional Messages. Common to all concerns is the fact that they do not bifurcate liabilities with clarity, and impose obligations that may cause an unnecessary hindrance towards the experience of the customer, the efficiency of the service, as well as multiply the burdens of the Access Providers and Principal Message-sending entities. In this regard, please find our specific inputs as below.

Concerns in relation to Transactional Messaging

Specific concerns in relation to transactional messaging include the following points:

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- **Two Way Messaging:** At present, the draft Regulations do not contain any guidance in relation to two-way transactional messaging (interactive messaging). The previous regulations clearly permitted the same subject to execution of a standard-form agreement. Within this context, we request that TRAI clarify that two-way messaging be permitted so as to enable interactive communications which improve consumer interest.
 - **Retention of Headers:** While providing robust process for registration of new headers for transactional messaging, it remains unclear if existing headers (such as 5-level short codes) would be ported to the new system. TRAI should seek to provide clarity on this transaction – and also ease the transition by providing for a phased process of registration.
 - **Role of One Time Passwords in Authentication:** Under the current draft of the proposed Regulations, it is presently unclear what the role of OTPs is in relation to authentication of user consent to receive commercial communications. Their role is specifically unclear in relation to transactional messaging. In this regard, TRAI may clarify if there is any specific consent requirement in relation to transactional messaging.
 - **Consent for Transactional Messages:** Request TRAI to clarify that "consent" is not needed for "transactional messages". Given that transactional messages are triggered by the user (by definition), it already has the consent of the user. The industry is particularly concerned that making consent a pre-requisite for "transactional messages", will create additional friction in identity verifications. Presently, almost all websites, applications, WiFi hotspots etc require sending of an OTP to verify real world identity. This will not be possible if prior entry in the consent ledger is required for sending such transactional messages. Alternately, such verifications will require sending two OTPs. The first via the TSP to make an entry in the consent ledger. The second via the application/website/etc to send OTP to verify identity. Accordingly, TRAI may clarify that consent is not required for "transactional messages".
 - **Consent Templates:** The very nature of Transactional Messages entail the express consent of the user/recipient as having granted their express consent, and hence a template requirement for receiving consent for transactional messaging is counter-intuitive. We request that the TRAI include a clear requirement that consent is not mandatory in relation to transactional messaging.

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- **Content Templates:** The proposed regulations contain a requirement that requires registration of a transactional messaging template's format with Access Providers. Such a measure unnecessarily complicates transactional messaging – which is essentially messaging for the information of consumers in relation to services that they have expressly requested or availed of. The lack of guidance in relation to timelines for registration of templates and their verification may result in critical delays to user notification. Further, in moments of urgency, a registration requirement is detrimental towards consumer interest. The Draft should ensure that there is no promotional content in transactional messages, and any notice of contravention received through a complaint of such should initiate an investigation and punitive measures.
 - **Code of Practice (“CoP”):** Although the requirements to draft and register the CoP lie with the APs, there is no certainty in relation to timelines and procedures for each issue. Second, while the Draft has primarily increased the duties of the access providers, guidance in the form of a Model CoP to guide their path of action, as well as provide a timeline for fulfilling their compliance requirements. The Draft should rather prepare a chronology of the CoP, i.e. in order to finalise the same, it must be prepared, submitted and accepted accordingly. Additionally, public consultation must be mandated prior to any access provider finalising a CoP which departs from TRAI's model.
 - **General concerns in relation to Blockchain Technology:** Although the Draft contemplates an elaborate framework to receive consent, a fresh process of receiving consent will be disruptive for the business, and users will face the hassle of additionally reaffirming consent in relation to products and services where consent has already been granted. The TRAI should therefore clearly affirm that existing consents would be migrated to the new system subject to minimal registration requirements. The implementation should be preceded by a trial run by the access providers, and upon its satisfactory completion, this new methodology may be phased in gradually.
 - **Registering Entities sending Transactional Messages:** Entities sending transactional messages and registering headers will need to register in the entities ledger maintained by access providers. Depending on the Code of Practice that is evolved, it is presently unclear whether entities sending messages will be required to register or Telemarketers may register on their behalf (as is the current practice).

We hope that the above is taken into account by the Authority. We remain at your disposal should any further inputs on any subject be required. Thanking you.

Regards,

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