

RJIL/TRAI/2023-24/128

25th July 2023

To,

**Shri Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing),**

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawaharlal Nehru Marg, New Delhi - 110002

**Subject: RJIL's counter comments on TRAI's Consultation Paper dated 02.05.2023 on
"Definition of International Traffic"**

Dear Sir,

Please find enclosed the counter comments of Reliance Jio Infocomm Limited (RJIL) on the consultation paper dated 02.05.2023 on **"Definition of International Traffic"**.

Thanking you,

Yours Sincerely,

For **Reliance Jio Infocomm Limited**

Kapoor Singh Guliani

Authorized Signatory

Enclosure: As above

**Reliance Jio Infocomm Limited's Counter Comments on
TRAI's Consultation Paper on "Definition of International Traffic" dated 2nd May 2023**

1. We had the opportunity to go through the comments of various stakeholders. We are hereby taking this opportunity to offer our counter comments on the submissions made by certain stakeholders.
2. However, in order to set the context, **we would like to reiterate that there is no need to include any definitions of International SMS/Traffic in the Unified License.** The matter under the consultation is already settled since the Indian telecommunication networks have been receiving international SMS for over 20 years and have been able to categorize these as International/Domestic SMSs, as per the prevailing Regulatory and Licensing framework.
3. In our response, we have provided a comprehensive explanation on the above and explained how the SMS originated from outside the country and delivered in India through mediation servers to mask or change the character of SMS should continue to be treated only as International SMS under prevailing regulatory framework.
4. It is pertinent to mention here that this is not a new development and since inception the license provisions have unambiguously made it clear that any traffic originated from outside the country and intended for termination on PSTN networks in India should be brought to India through ILD route. The key criterion for classifying SMSs as International or Domestic remains the **location of the users that use telecommunication services and not on whether the** users is humans or computers/machines and whether the cost of such messages will be passed onto Indian customers or not.
5. As the above principle in Regulatory framework provides a clear guidance for differentiating International SMSs and Domestic SMSs, the Authority should scuttle the attempts by certain entities to bypass the regulatory framework. These entities have been using the mediation/media gateways located in India to disguise the messages sent from their servers placed in other countries as Domestic SMSs and this attempt has been nipped in the bud by TSPs, as this is akin to using the grey route for ILD calls. Such actions not only signify non-compliance with the regulatory and licensing provisions but also pose significant security risks for both users and the country.
6. In the backdrop of above, we now proceed with our counter comments:

Stakeholder's Argument(s):

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.

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.

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.

*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.***

RJIL’s Comments:

Several arguments have been made in the above excerpts. Our counter comments to such arguments are as below:

A. Message originated by computer resources outside India and terminated as SMS to Indian Users:

1. It is worthwhile to mention here that stakeholders who previously hesitated to disclose their call flow are now acknowledging that their messages originate outside India. They are now attempting to justify their non-compliance with regulatory requirements by claiming it is due to technological advancements and consumer benefit. Needless to say, that the Authority should disregard such submissions.
2. The aforementioned acknowledgement by such entities regarding messages originated by servers out India, corroborate the facts outlined in our response to the Consultation. Our response has provided detailed description of how certain entities send SMSs to Indian users from servers or applications located outside the country. These messages originate from servers or applications outside India and then are routed as IP Packets to a mediation server or media gateway located within India using Internet/Private leased line and then pumped into the PSTN by utilizing the SMPP connectivity provided to the telemarketer/VAS providers etc. Such traffic is grey traffic and cannot be allowed to continue.

3. By employing the above mechanism, these entities attempt to evade the International SMS termination charge by masquerading the mediation server/ Media gateway as the originator of such messages. However, as explained above and as stated in our response to the consultation paper, such mechanism cannot be used to alter the nature of International SMS to domestic SMS since the communication occurs between the server located outside India and the PSTN user located within India.
4. Therefore, the above mechanism is nothing but an attempt to bypass licensing and regulatory framework. This mechanism not only evades the licensing and regulatory framework, but also raises potential security risks. We have highlighted in detail how such method of sending SMSs from other countries closely resembles the grey calling route used for voice services. The summary of the comparisons between the two is tabulated below:

Sr. No.	Grey Calling Route	SMS Route through Proxy/Mediation Server
1	Voice call is originated by person outside (i.e. user) India and routed in form of IP packet to India through Internet/Private leased line.	Message is originated by server/application (i.e. user) located outside India and is routed to India in form of IP packets through Internet/Private leased line
2	An illegal exchange in India aggregates all such voice calls in India	A mediation/proxy server aggregates the messages in India.
3	The illegal exchange converts these calls into PSTN calls and pump these calls in the PSTN network using the PSTN connectivity such as SIM Box/PRI/ Wireline.	The mediation/proxy server converts messages (in form of IP Packets) and routes these as SMSs, using the SMPP connectivity provided to telemarketers for domestic SMSs
4	This mechanism is used to save International Termination Charge on Voice calls	This mechanism is used to save International Termination Charge on SMSs

5. The grey calling route has become a significant challenge for security agencies and poses a threat for users, as it is preferred by entities who wish to push illegal traffic into India. The immediate tracing of the origin of these calls becomes difficult for security agencies, exacerbating the issue.
6. The implementation of similar mechanisms for ILD SMS should not be permitted and any attempts to create a grey SMS route should be scuttled. It is pertinent to mention here that such SMSs will raise significant security concerns and will lead to avoid LIM interception at ILD SMS Hub. We reiterate that this will severely undermine the efforts of security agencies and DoT field units who work extensively in arresting the Grey voice calling issues. If such grey SMS route is allowed, it will expose the nation and the users to the same security threat posed by voice calls routed through grey calling route.

7. **DoT has been filing numerous FIRs against the entities operating through Grey Voice calling route and strict action is taken against such entities as per the legal provisions. Same action needs to be taken any entity that is operating the grey SMS route as practically Grey SMS and Grey Voice calling routes are the same. Both are against the licensing framework and pose grave security threat for the country and the users.**
8. It would also not be out of place to mention here that while the proposed definition by these stakeholders to keep the upstream applications or systems outside the scope of SMS definition serves their purpose of evading ILD networks and save cost on termination charges. The same definition can very well enable them to bypass the DLT network as well in future.
9. Pertinently, when these same stakeholders, post admitting that the messages carried by them are international, 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.

B. Necessity of adopting such Modus Operandi:

10. The attempt to present the above mechanism as an advancement in technology and the necessity of conducting Digital Business is a feeble attempt at disguising their actual intention. As mentioned above, **these entities employ the above modus operandi (i.e. use of mediation/proxy server) not out of technical necessity, but to avoid paying International SMS termination charge by portraying that mediation/proxy server, located in India, is the originator of such SMSs.**
11. The PSTN is a worldwide network enabling user located outside India to send SMSs to users within India through International PSTN. Likewise, the servers of these entities located outside India can also send SMSs to users in India as International SMSs through PSTN. The sole difference between the two scenarios lies in the nature of the messages, with the former being Person to Person (P2P) SMSs, and the latter being Application to Person (A2P) SMSs.

12. These entities have the option to bring their servers to India and send these SMSs as domestic SMSs. However, it appears that due to their business interests and for saving costs, these entities have chosen to place their servers outside India.
13. Therefore, it appears that such entities neither wish to invest in establishing their infrastructure in India nor want to pay International Termination Charge applicable to International SMSs.

C. Cost to consumers:

14. These stakeholders have attempted to generalize that cost of termination of SMSs is invariably passed onto consumers, while choosing to omit the fact that the same is caused by actions taken at their end and not at Indian TSPs. If an entity chooses to transfer its financial obligations to its customers, it is its business decision.
15. Thus, such entities cannot try to become champions of Indian consumer's rights while simultaneously resorting to grey traffic route to bypass legitimate revenue of TSPs and Government, all the while reaping financial benefits by keeping their servers outside India. This becomes especially noteworthy when they are not willing to pass such financial benefits to Indian customers but rather plan to burden the customers with International SMS termination charges if they are not permitted to evade these costs by regulatory means.
16. **Instead of adopting malpractices of avoiding the International SMS termination charges, thereby causing the loss to National Exchequer and posing a threat to National Security and the citizens, entities should focus on investing in India and its economy by installing their servers within India that originate such messages. This will not only ensure that there is no bypass of licensing and security framework, but will also contribute to the Indian economy, help in growth of digitization and employment.**

Stakeholder's Argument(s):

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.

Hence, we recommend that the TRAI should define the term international SMS as: "The term international SMS shall mean international traffic delivered using SMS."

RJIL's Comments:

1. As stated above, we reiterate that the issues taken up under this consultation are already settled as telecom networks are capable of categorizing the SMSs as International or Domestic. Therefore, there is no need to define these terms. On the contrary, we believe that focus should be on discouraging the entities that attempt to bypass licensing and regulatory framework by employing mechanism of using the mediation servers /media gateways to disguise International SMSs as Domestic SMSs.
2. Notwithstanding above in case the Authority is keen to define the international SMS, then it should conduct a thorough examination in a comprehensive and holistic manner, considering various factors such as the cause, method, timing and responsible entity for the SMS, instead of solely considering the physical location of media gateways/mediation servers. Additionally, the Authority should also address the issue of SMS mediation that has triggered this consultation.
3. In the event Authority decides to define International SMS, we submit that International SMS needs to be defined as per TSP COPs or alternatively as below:

“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 solution in India shall not impact and/or change the nature of such International SMS to national/domestic SMS”

Stakeholder’s Argument(s):

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.

In addition, we also urge the TRAI to consider introducing a price ceiling on the tariffs for international SMSs charged by TSPs to a maximum of 2x (i.e., double) of existing domestic tariffs. This is necessitated largely by the exponential increase in prices implemented by TSPs for international SMSs, as highlighted above. International SMS rates remain high even where the licensed Indian carrier performs no additional transmission service, such as carrying the traffic via subsea cable to the landing point in India, indicating that the excesses of international SMS pricing have little to nothing to do with cost of providing service.

Separately, TRAI must reconsider the current scope of the tariff regime for international SMS. We believe that the TRAI ought to revisit its policy of forbearance vis-à-vis international SMSes.

RJIL's Comments:

1. As mentioned above, the primary reason for the entities to bypass the licensing and regulatory framework is to evade paying the International SMS termination charge. Moreover, their request to TRAI to regulate the International SMS termination charge, which also reflects this intent.
2. We vehemently object to any request made by such entities to review the forbearance on International SMS termination charge (transactional or otherwise). Furthermore, they have provided unsubstantial reasons (such as linking these to costs etc.) for regulating International SMS termination charges that reflects their lack of understanding on the issue.
3. The forbearance on International SMS termination charges is critical to providing affordable International SMS services to users as in the absence of forbearance, there will be loss of parity between the Indian TSPs and Foreign Carriers in providing such services.
4. If Indian TSPs are compelled to levy lower termination charge than the counterpart countries, it will lead to situation where Indian consumers would indirectly subsidize the cost incurred by foreign subscribers.

Stakeholder's Argument(s):

ILDOS and NLDOs should be allowed to have direct access to Enterprise Customers who require telecom resources for their A2P domestic and international traffic

RJIL's Comments:

1. We strongly oppose such suggestion to allow the NLDOs and ILDOs to access the enterprise subscribers directly, for providing the services such as SMS etc., as the same goes against the structure of the Unified Licensing framework. Mere technical capability of providing the services cannot become a ground for allowing the NLDOs/ILDOs to access the subscribers directly for providing services like bulk SMS. These are PSTN services that use E.164 numbering resources. NLD/ILD/ISPs cannot provide any such service to customers directly that uses E.164 numbering resources. NLD/ILD service providers can provide only leased line services directly to the customers and these services do not involve switching on the basis of E.164 numbering resources. Whereas ISPs can provide services to the customers that use IANA based numbering series/ resources. Only an

Access Service Provider can provide the services to customers that use E.164 numbering based switching. These services include voice/SMS/video/Instant Messaging.

2. Therefore, if any NLDO/ILDO wishes to provide such services to the Enterprise Customers then it needs to obtain the Access Service License in that service area. The Unified Licensing framework does not inhibit anyone from taking the relevant authorization to provide such services. However, privilege to provide the same service should come with same obligation (i.e. Entry Fee, Licensing Conditions etc.) for all service providers; otherwise, it will create a non-level playing field.