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PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 1st December, 2010

No.305-17/2010-QoS.- In exercise of powers conferred by section 36 read with sub-clause (v) of clause(b) of sub-section (1) and clause (c) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations, namely:-

THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER
PREFERENCE REGULATIONS, 2010

(6 OF 2010)

CHAPTER I

Preliminary

1. Short title and commencement. – (1) These regulations may be called the Telecom Commercial Communications Customer Preference Regulations, 2010.

(2) (a) Except as otherwise provided in clause (b) and clause (c), these regulations shall come into force from the date of their publication in the Official Gazette.

(b) Regulations 13, 14, 15, 16 and 17 of these regulations shall come into force on the 15th day of December, 2010.

(c) Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 21 and 22 of these regulations shall come into force on the 1st day of January, 2011.

2. Definitions.— In these regulations, unless the context otherwise requires-

(a) "Access Providers" includes the Basic Telephone Service Provider, Cellular Mobile Telephone Service Provider and Unified Access Service Provider;

(b) "Act" means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(c) "Area code" means any number earmarked or allotted to a specific short distance charging area in the National Numbering Plan for accessing the telephone in such area;
(d) "Authority" means the Telecom Regulatory Authority of India established under sub section (1) of section 3 of the Act;
(e) "Basic Telephone Service" covers collection, carriage, transmission and delivery of voice or non-voice messages over licensee's Public Switched Telephone Network in the licensed service area and includes provision of all types of services except for those requiring a separate licence;
(f) "Basic Telephone Service Provider" means a service provider who has been granted licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885) to establish, install, operate and maintain Basic Telephone Service in the specified service area;
(g) "Cellular Mobile Telephone Service",-- <ul style="list-style-type: none"> (i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wireless telegraphy where every message that is conveyed thereby has been, or is to be, conveyed by means of a telecommunication system which is designed or adapted to be capable of being used while in motion; (ii) refers to transmission of voice or non-voice messages over Licensee's Network in real time only but service does not cover broadcasting of any messages, voice or non-voice; however, Cell Broadcast is permitted only to the subscribers of the service; (iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable;
(h) "Cellular Mobile Telephone Service Provider" means a licensee authorized to provide Cellular Mobile Telephone Service under a licence granted under section 4 of the Indian Telegraph Act, 1885 (13 of 1885), in a specified service area;
(i) "commercial communication" means any message, voice or SMS, made through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investment or services;
(j) "customer" means subscriber;
(k) "Customer Preference Registration Facility" means the facility established by an Access Provider, under regulation 3 of these regulations, for the purpose of registration or de-registration of the preference of its subscribers in respect of receipt of commercial communications;

(l) “fully blocked” means stoppage of all types of commercial communication;
(m) “Header” means alpha numeric identifier of commercial and transactional SMS;
(n) “message” shall have the meaning assigned to it in clause (3) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);
(o) “National Customer Preference Register” means a national data base containing a list of the telephone numbers of all subscribers who have registered their preferences regarding receipt of commercial communications;
(p) “National Numbering Plan” means the National Numbering Plan 2003 made by the Central Government or any such plan, as may be made by the Central Government from time to time;
(q) “National Telemarketers Register” means a national data base containing details of telemarketers registered with the Authority;
(r) “Originating Access Provider” means the Access Provider who has provided the telecom resources to a telemarketer;
(s) “partially blocked” means stoppage of all commercial communications, except SMS in respect of category or categories of preference indicated by the subscriber;
(t) “promotional message” means message containing promotional material or advertisement of a product or service;
(u) “Provider Customer Preference Register” means a data base maintained by an Access Provider containing telephone numbers and other details of its subscribers who have registered their preference regarding commercial communications;
(v) “regulations” means the Telecom Commercial Communications Customer Preference Regulations, 2010;
(w) “SMS” means a message which is sent through short message service and includes a Multi Media message which is sent through Multi Media message service (MMS);
(x) “Subscriber” means a person or legal entity who subscribes to a telecom service provided by an Access Provider;
(y) “telecom resources” means any telegraph used to send voice call or messages;
(z) “telemarketer” means a person or legal entity engaged in the activity of transmission of commercial communications;
(aa) “Terminating Access Provider” means the Access Provider on whose network the subscriber receiving the commercial communication is registered;

<p>(ab) “Transactional message” means an SMS containing only—</p> <ul style="list-style-type: none"> (i) information sent to its customer(s) by the Bank or financial institution or insurance company or credit card company or Access Provider pertaining to the account of that customer(s); (ii) information given by Airlines or Indian Railways or its authorised agencies to its passengers regarding travel schedules, ticket booking and reservation; (iii) information from a registered educational institution to parents or guardians of its students; (iv) any other message as may be specified by the Authority, from time to time as “Transactional message”;
<p>(ac) “unsolicited commercial communication” means any commercial communication which a subscriber opts not to receive but does not include , ----</p> <ul style="list-style-type: none"> (i) any transactional message; or (ii) any message transmitted on the directions of central Government or State Government or agencies authorized by it;
<p>(ad) “Unified Access Services”, --</p> <ul style="list-style-type: none"> (i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wired or wireless telegraphy; (ii) refers to transmission of voice or non-voice messages over licensee’s network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service; (iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable;
<p>(ae) “Unified Access Service Provider” means a licensee authorised to provide Unified Access Services under a licence granted under section 4 of the Indian Telegraph Act, 1885(13 of 1885), in a specified service area;</p>
<p>(af) All other words and expressions used in these regulations but not defined, and defined in the Indian Telegraph Act, 1885 (13 of 1885) and the Telecom Regulatory Authority of India Act 1997 (24 of 1997) and the rules and other regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or such other regulations, as the case may be.</p>

CHAPTER II

CUSTOMER PREFERENCE REGISTRATION

3. Setting up of Customer Preference Registration Facility. – (1) Every Access Provider shall set up a Customer Preference Registration Facility, both for wireless and wireline, for registration or deregistration of their preference

regarding receipt of commercial communication, in the Provider Customer Preference Register.

Provided that any facility set up under sub regulation (1) of regulation 3 of Telecom Unsolicited Commercial Communications, 2007 (4 of 2007) shall continue for the purpose of this sub-regulation and deemed to have been set up under these regulations.

(2) The facility set up under sub-regulation(1) shall have short code 1909;

Provided that the Authority may specify any other short code, which is duly assigned, from time to time;

(3) The Customer Preference Registration Facility shall be toll free and shall have adequate telecom resources for receipt of customer preferences by way of a voice communication or SMS;

(4)The Access Provider shall, by appropriate means, give due publicity to this facility;

Provided that the Authority may, from time to time, issue such directions, as it may consider necessary, specifying the content, medium, frequency and the manner of such publicity.

Provided further that every Access Provider shall, at the time of providing a telephone connection, whether Basic or Cellular Mobile Telephone, to a new subscriber, provide in the Customer Acquisition Form the information regarding these regulations and Customer Preference Registration facility.

4. Provider Customer Preference Register.—(1) Every Access Provider shall maintain and operate a register to be called the Provider Customer Preference Register for registering the preference of the subscriber under -

- (a) fully blocked category; or
- (b) partially blocked category,-
in accordance with the procedure specified in Schedule-I to these regulations;

Provided that the request of the subscriber for not receiving unsolicited commercial communications registered in the Private Do Not Call List set up under regulation 4 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) shall continue to be valid, for the purpose of these regulations, under the 'fully blocked' category.

(2) Every Access Provider shall maintain in duplicate the Provider Customer Preference Register in at least two places having regard to the security of the database.

5. Contents of the Provider Customer Preference Register.— Every Provider Customer Preference Register shall, *inter alia*, include,----

- (a) the name of each subscriber who makes a request to the Access Provider indicating his preference;
- (b) telephone number of the subscriber including in case of wireline area code;
- (c) the date and time of the request by the subscriber;
- (d) the details of the preference made by the subscriber;
- (e) the unique registration number as referred to in sub-regulation (2) of regulation 7.

6. National Customer Preference Register.-(1) The National Customer Preference Register shall be established and maintained by an agency authorised in this behalf by the Authority:

Provided that the request of the subscribers for not receiving unsolicited commercial communications registered in National Do Not Call Register established under sub-regulation (1) of regulation 6 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) shall continue to be valid, for the purposes of these regulations, under 'fully blocked' category in the National Customer Preference Register.

(2) The National Customer Preference Register shall contain the following details of those subscribers who have indicated their preference to their respective Access providers regarding receipt of commercial communications,-

- (a) the telephone number including in respect of wireline telephones area code;
- (b) the details of preference; and
- (c) such other details as may be specified by the Authority from time to time.

7. Registration of preference. - (1) A subscriber may make a request to his Access Provider, through the Customer Preference Registration Facility, for registration of his telephone number in the Provider Customer Preference Register, in accordance with the procedure specified under Schedule-I to these regulations:

Provided that a subscriber who is already registered in the National Do Not Call Register established under sub-regulation (1) of regulation 6 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) is not required to re-register and his said registration shall be valid, for the purpose of these regulations, under the 'fully blocked' category:

Provided further a subscriber who is already registered in the National Do Not Call Register established under sub-regulation (1) of regulation 6 of the

Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007 may change his preference in accordance with the procedure specified under Schedule-I to these regulations.

(2) Every Access Provider shall, immediately on receipt of a request under sub-regulation (1), verify the correctness of the request so received and if the request is found to be correct, communicate, through SMS, within twenty four hours of the request, a unique registration number to the subscriber:

Provided that in case the subscriber particulars are not found to be correct, the details thereof shall be intimated to the subscriber within twenty four hours.

(3) Every Access Provider shall, in respect of request that have been found to be admissible after verification as per sub regulation (2), record details of such request in the Provider Customer Preference Register.

8. Change of Preference of Subscribers.-(1) Any subscriber may, at any time after expiry of three months from the date of registration or three months from the date of last change of his request, made under regulation 7, change his preference in accordance with the procedure specified under Schedule-I to these regulations.

(2) Every Access Provider shall, on receipt of a request under sub-regulation (1), verify the correctness of the request so received and if the request is found to be correct record details of such request in the Provider Customer Preference Register and confirm the same, within twenty four hours, to the subscriber through SMS:

Provided that if the request is not found to be correct, the Access Provider shall inform the subscriber, through SMS, within twenty four hours, the details of errors noted by the Access Provider and advise the subscriber to make a fresh request.

9. De-Registration.- (1) Any subscriber may, at any time, after expiry of three months from the date of registration request the Access Provider, through the Customer Preference Registration Facility, for withdrawal of his registration as specified in Schedule-I to these regulations.

(2) The Access Provider shall, within twenty four hours of the receipt of request, verify the correctness of the request so received and if the request is found to be correct, the Access Provider shall delete the telephone number of the subscriber from the Provider Customer Preference Register and confirm the same, within twenty four hours, to the subscriber through SMS:

Provided that if the request is not found to be correct, the Access Provider shall inform the subscriber, through SMS, within twenty four hours, the details of errors noted by the Access Provider and advise the subscriber to make a fresh request

10. Updation of content in National Customer Preference Register by Access Providers,- Every Access Provider shall, within twenty four hours of registration under regulation 7, or a change under regulation 8 or de-registration under regulation 9, update the contents in the National Customer Preference Register, in accordance with the procedure specified in Schedule-II to these regulations.

11. Charge.- No amount shall be charged from the subscriber for registration or change or de-registration of preference in the Provider Customer Preference Register.

CHAPTER III

REGISTRATION OF TELEMARKETERS

12. Commercial communications by subscribers.- No subscriber, who is not registered with the Authority as a telemarketer under these regulations, shall make any commercial communication.

13. National Telemarketer Register.-(1) There shall be a National Telemarketer Register established and maintained by an agency authorised in this behalf by the Authority.

(2) The National Telemarketer Register shall contain,-

- (a) the details of the telemarketer such as registration date, application number and registration number;
- (b) the details of the fees deposited by the telemarketer;
- (c) the details of the telecom resources allotted to a telemarketer;
- (d) the number of notices, along with the date of such notices, served upon the telemarketer by the Access Providers for sending unsolicited commercial communication;
- (e) the date of blacklisting of telemarketer as specified in regulation 18, if applicable;
- (f) such other details as may be specified by the Authority, from time to time.

14. Registration of Telemarketer.-(1) Every telemarketer shall register itself with the Authority in accordance with the procedure and conditions specified in Schedule -III to these regulations and obtain a registration number.

(2) A telemarketer who is already registered with the Department of Telecommunications shall also register with the Authority as a telemarketer under these regulations.

(3) The registration of telemarketer shall be valid for a period of three years unless revoked earlier.

15. Fee.- Every telemarketer shall, for registration with the Authority, pay fees as specified in Schedule III to these regulations.

16. Deregistration of the Telemarketers.- A telemarketer, registered under regulation 14, may deregister itself in accordance with the procedure

specified in the Schedule-III to these regulations.

17. Provision of telecom resources to the telemarketers.- (1) A telemarketer may, after registration with the Authority under regulation 14, apply for telecom resources from one or more Access Providers;

Provided that the application form shall contain all necessary details and shall be accompanied by Customer Acquisition Form.

(2) Every Access Provider shall, before providing any telecom resource to a telemarketer, verify the details furnished by the telemarketer in its application form, the registration number issued by the Authority and comply with the subscriber verification guidelines issued by the Department of Telecommunications, from time to time.

(3) Every Access Provider shall, before providing any telecom resource to a telemarketer, in addition to any other arrangements as may be required under any other law for the time being in force, enter into a standard agreement with the telemarketer, as specified in Schedule-IV to these regulations, for the purpose of promotional message.

(4) Every Access Provider shall, before providing any telecom resource to a telemarketer, in addition to any other arrangements, as may be required under any other law for the time being in force, enter into a standard agreement with the telemarketer as specified in Schedule-V to these regulations for the purpose of transactional message.

(5) Every Access Provider shall, within one month of entering into an agreement with the telemarketer under sub-regulation (3) or sub-regulation (4), as the case may be, submit to the Authority an authenticated copy of the agreement along with a softcopy of such agreement.

(6) Every Access Provider shall ensure that no telecom resource is provided to a telemarketer whose telecom resource has been disconnected under sub-regulation (5) of regulation 18.

(7) Every Access Provider shall, before activating any telecom resource provided to a telemarketer, ensure that details of all telecom resources provided to a telemarketer are entered into the National Telemarketer Register.

(8) No telecom resource shall be provided to a telemarketer whose name is entered into black list of telemarketers maintained under regulation 18.

(9) Every Access Provider shall ensure that telecom resources provided to a telemarketer for making voice calls do not have facility for receiving incoming call and sending of SMS.

(10) Every Access Provider shall ensure that telecom resources provided to a telemarketer for sending transactional message do not have facility for receiving incoming call or SMS.

(11) Every Access provider shall, within thirty days of coming into force of these regulations, withdraw the telecom resources already allotted to a telemarketer.

18. Blacklisting of telemarketer.-(1) The National Telemarketer Register shall, *inter alia*, include a black list of telemarketers.

(2) The name of a telemarketer shall be entered into the black list upon,-

- (a) failure to furnish the additional security amount as agreed to by it in the agreement entered into with the Originating Access Provider; or
- (b) upon service of the sixth notice in a calendar year by any Access Provider on such telemarketer for sending unsolicited commercial communication.

Explanation: It is clarified that for the purpose of determining the sixth notice, notices served by any Access Provider on such telemarketer will be cumulatively reckoned.

(3) The name and other details of telemarketer entered into the black list under sub-regulation (2) shall not be deleted before completion of two years from the date of blacklisting of the telemarketer.

(4) The agency maintaining the National Telemarketer Register shall communicate the names of the blacklisted telemarketers to all the Access Providers.

(5) Every Access Provider shall on receipt of intimation under sub-regulation (4) shall, within twenty four hours, disconnect the telecom resources provided by it under these regulations to such telemarketer.

(6) No Access Provider shall provide any telecom resource to a telemarketer whose name appears in the black list.

CHAPTER IV

CUSTOMER COMPLAINTS

19. Setting up of customer complaint registration facility.- (1) Every Access Provider shall set up a facility for registration of the complaint of the customer regarding receipt of unsolicited commercial communications.

(2) The facility set up under sub-regulation (1) shall have short code 1909;

Provided that the Authority may specify any other short code, which is assigned by the licensor, from time to time;

(3) The customer complaint registration facility shall be toll free and shall have adequate telecom resources for receipt of customer complaints by way of a voice call or SMS.

(4) In case any subscriber receives unsolicited commercial communication after expiry of seven days from the date of his registration in the Provider Customer Preference Register under sub-regulation (1) of regulation 7, he may make a complaint to his Access Provider, through voice call or SMS,

mentioning therein the particulars of telemarketer, the telephone number from which the unsolicited commercial communication originated, the date, time and brief description of such unsolicited commercial communication as specified in Schedule VI to these regulations:

Provided that every such complaint shall be made by a subscriber within three days of receipt of the unsolicited commercial communication.

(5) On receipt of a complaint under sub-regulation (4), the Terminating Access Provider shall,-

(a) immediately acknowledge the complaint by providing a unique complaint number;

(b) verify whether, at the time of complaint, a period of seven days has expired from the date of registration of the subscriber in the Provider Customer Preference Register;

(c) verify the correctness of the complaint as per the available Call Detail Record (CDR); and

(d) complete the steps at (b) and (c) within seventy two hours from receipt of the complaint.

(6) If, on verification, the complaint is found to be correct, the Terminating Access Provider shall, within seventy two hours of the receipt of the complaint, forward the complaint, under simultaneous transmission to the National Telemarketer Register, to the Originating Access Provider from whose network such unsolicited commercial communication has originated.

(7) In case, on verification, the Terminating Access Provider finds that no such unsolicited commercial communication has been made to the complainant, he shall inform the complainant accordingly.

(8) The Originating Access Provider, to whom the complaint has been forwarded, shall within seventy two hours of the receipt of the complaint by it, investigate the nature of call or SMS and if after such investigation, it finds that such call or SMS is an unsolicited commercial communication-

(a) issue a notice to the telemarketer, forwarding the detail of the unsolicited commercial communication made by him and informing him of the deduction from the security deposit of an amount as agreed upon in terms of Schedule IV or Schedule V to these regulations;

(b) intimate, the result of the investigation and the action taken by it on the basis of the complaint, to the Terminating Access Provider which forwarded the complaint;

(c) deposit the amount so deducted in an account specified by the Authority; and

(d) update the action taken by it in the National Telemarketer register.

(9) The Terminating Access Provider shall, upon receipt of the intimation from

the Originating Access Provider under sub-regulation (8), intimate to the complainant, within twenty four hours, the result of the investigation and the action taken by the Originating Access Provider on his complaint.

(10) Notwithstanding any delay on the part of the Terminating Access Provider to forward the complaint, as stipulated in the sub regulation (6), to the Originating Access Provider, it shall be incumbent upon the Originating Access Provider to take action on such complaint in accordance with the provisions of sub-regulation (8).

(11) In case the Originating Access Provider to whom a complaint has been forwarded under sub-regulation (6) finds that the unsolicited commercial communication originated from a subscriber who is not registered with the Authority as a telemarketer, it shall issue a notice to such subscriber to forthwith discontinue the sending of such unsolicited commercial communications and if such subscriber sends a commercial communication to any subscriber on a second occasion, disconnect the telecom resources of such subscriber.

CHAPTER V

OBLIGATIONS OF THE ACCESS PROVIDERS

20. OBLIGATIONS OF THE ACCESS PROVIDERS:- (1) Every Access Provider shall ensure that all commercial communications originating from its network are managed in accordance with these regulations.

(2) Without prejudice to the generality of the provisions of sub-regulation (1),-

(a) every Originating Access Provider shall ensure that no telecom resource is provided to a telemarketer unless has registered itself with the Authority and has entered into an agreement with Originating Access Provider, in accordance with the provisions in Schedule IV to these regulations;

(b) every Originating Access Provider shall, before allotting telecom resources to a telemarketer for sending Transactional Message, enter into agreement with such person in accordance with the procedure specified in Schedule V to these regulations and ensure that no telemarketing SMS is sent through the telecom resources allotted for sending Transactional Message;

(c) every Originating Access Provider shall provide separate telecom resources to telemarketers, for sending transactional message and promotional messages;

(d) every Originating Access Provider shall ensure that the telecom resources provided for sending transactional message are not used for sending promotional message;

(e) every Originating Access Provider shall ensure use of correct header for sending commercial or transactional message, as the case may be, in accordance with the agreement entered into by the Originating Access Provider with the sender of commercial or transactional message, as referred

to in clause (a);

(f) Every Access Provider shall ensure that a telemarketer shall, before sending any SMS to a telecom subscriber, scrub the telephone number of the subscriber with the database received from National Customer preference register;

(g) every Originating Access Provider shall ensure that no telemarketing SMS, other than SMS opted by the subscriber is sent to him;

(h) every Originating Access Provider shall filter all voice calls received through the telecom resources allocated to the telemarketers to ensure that no commercial voice call is made to any subscriber, registered with the National Customer Preference Register.

(i) every Originating Access Provider shall filter all promotional SMS received through the telecom resources allocated to the telemarketers to ensure that only promotional SMSs, preferred by a customer in his preference registered with the National Customer Preference Register, are sent to him;

(j) every Access Provider shall ensure that commercial communication including SMS is sent to a customer, in accordance with the provisions of these regulations, only between 0900 Hrs to 2100 Hrs;

(k) no Access Provider shall provide to any person, other than a telemarketer registered as per regulation 14, any tariff plan or SMS package in any form such as special recharge voucher, student pack, seasonal pack etc. permitting sending of more than one hundred SMS per day per SIM except on 'blackout days' and additional days as may be specified by the Authority by direction issued from time to time and all such SMS packages already provided to any such person shall not be renewed after their expiry:

Provided that all SMS packages already provided to a customer other than to a telemarketer shall be discontinued on coming into force of these regulations;

Explanation: For the purpose of this sub-clause, blackout days mean the days on which free or concessional calls or SMS are not applicable.

(l) no Access Provider shall send any commercial communication, either directly or by mixing such communication with service communication, through voice call or SMS or Unstructured Supplementary Service Device (USSD) unless specifically opted, to a subscriber whose name is registered in the National Customer Preference Register.

21. Power of Authority to order inquiry.-(1)Where the Authority has reason to believe that any Access Provider has contravened the provisions of these regulations, it may constitute an inquiry committee, consisting of three officers not below the rank of Advisor in the Authority, to inquire into the contravention of the regulations and to report thereon to the Authority.

Provided that if, for reasons other than temporary absence, any vacancy occurs in the office of any member of the inquiry committee, the Authority shall nominate another officer not below the rank of Advisor in the Authority to fill the vacancy and the proceedings may be continued before the inquiry committee from the stage at which the vacancy is filled by such nomination.

(2) The enquiry committee shall give an opportunity to the concerned Access Provider to explain its position, before submitting its findings to the Authority.

22. Consequences for failure of Access Providers to stop unsolicited commercial communications.- (1)If, on enquiry under regulation 21, an Access Provider is found to have contravened of the provisions of these regulations, it shall, without prejudice to any penalty which may be imposed under its licence, be liable to pay an amount, by way of financial disincentive, an amount of Rupees one lakh and in case of second such contravention, to pay an amount of rupees five lakh and rupees ten lakh in case of third or each subsequent such contravention.

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the concerned Access Provider had been given a reasonable opportunity of representing against the findings of the enquiry committee.

(2)The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.

CHAPTER VI

MISCELLANEOUS

23. Interpretation.- In case of any doubt regarding interpretation of any of the provisions of these regulations, the clarification issued by the Authority shall be final and binding.

24. Repeal.- Save as provided in regulation 25 of these regulations, the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) are hereby repealed.

25. Saving.- Notwithstanding the repeal of the Telecom Unsolicited

Commercial Communications Regulations, 2007 (4 of 2007),-

(a) anything done or any action taken or purported to have been done under the said regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the provisions contained in regulations 13 to 15 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) shall remain in effect till the 14th day of December, 2010;

(c) the provisions contained in regulations 3, 4, 5, 6, 7, 8, 9, 10, 11,12,16,17 and 18 of the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) shall remain in effect till the 31st day of December, 2010;

(R. K. Arnold)

Secretary

SCHEDULE -I

Procedure for registration of preference under regulation 7, or change of preference under regulation 8 or deregistration under regulation 9 from Provider Customer Preference Register

A. PROCEDURE FOR REGISTRATION OF PREFERENCE OR CHANGE OF PREFERENCE

a. Registration of preference or change of preference through voice call

1. A customer may make a call on toll free short code 1909 and talk to the customer care executive.
2. The customer care executive shall ask the customer whether he wants to register or deregister or change his preference.
3. If the customer wants to register or change his already registered preference, the executive shall inform the customer about the categories available for registration of his preference like fully blocked or partially blocked.
4. If the customer opts for fully blocked category, customer care executive shall confirm and register the customer request in Provider Customer Preference Register.
5. If the customer opts for partially blocked category like Banking/Insurance/Financial products/credit cards, Real Estate, Education, Health, Consumer goods and automobiles, Communication/Broadcasting/Entertainment/IT, Tourism and Leisure, the executive shall ask the customer to exercise his preference(s).
6. The customer care executive shall confirm and register the preference of customer in Provider Customer Preference Register.
7. The customer care executive shall inform the customer through SMS the preferences exercised by the customer and his unique registration number.

b. Registration or change of preference through Interactive Voice Response System (IVRS)

8. The customer may make a call on toll free short code 1909 and select his

- preference to register, de-register or change his preference through the IVRS.
9. If the customer chooses to register or change his preference, IVRS shall prompt him about the categories available for registration of his preference like fully blocked or partially blocked.
 10. If the customer opts for fully blocked category, IVRS shall confirm his preference.
 11. If the customer opts for partially blocked category, then system will prompt with options 1- Banking/Insurance/Financial products/credit cards, 2- Real Estate, 3- Education, 4- Health, 5- Consumer goods and automobiles, 6- Communication/Broadcasting/Entertainment/IT, 7-Tourism and Leisure.
 12. The customer may exercise the desired preference(s) which shall be confirmed by the IVRS.
 13. The customer shall be informed through SMS the preferences exercised by him and his unique registration number.

c. Registration of preference through SMS

14. A customer may also exercise his preference by sending SMS to 1909.
15. If the customer wants to exercise the option of fully blocked, he may send SMS “START 0”.
16. If the customer wants to exercise the option of partially blocked, he may send SMS “Start <option>” as given below:
 - “START 1” for receiving SMS relating to Banking/Insurance/Financial products/credit cards
 - “START 2” for receiving SMS relating to Real Estate
 - “START 3” for receiving SMS relating to Education
 - “START 4” for receiving SMS relating to Health
 - “START 5” for receiving SMS relating to Consumer goods and automobiles
 - “START 6” for receiving SMS relating to Communication/Broadcasting/Entertainment/IT
 - “START 7” for receiving SMS relating to Tourism and Leisure
17. A customer can also choose multiple preferences from categories of preference mentioned in para 16 above. For receiving commercial SMSs from

Banking/Insurance/Financial products/credit cards and Real Estate, the customer may send SMS in the format “START 1,2”.

18. On receipt of option exercised by the customer through SMS, the Access Provider shall send an SMS to confirm the options exercised.
19. After receipt of confirmation from the customer, the Access Provider shall register his preference and send a confirmation SMS indicating his unique registration number.
20. Preference ‘0’ shall always suppress other preferences. If ‘0’ is sent with any other customer preferences, it will be treated as fully blocked preference. For example, “START 0,2,3”, shall be considered fully blocked option.

d. Change of preference through SMS

21. A customer can change his option either by stopping the earlier options or by adding new options with the already exercised preferences.
22. For stopping the existing options, the Customer may send the SMS “STOP <OPTION>” which he wants to be stopped.
23. For adding a new option, Customer may send the SMS “START <OPTION>” which he wants to add to the already existing preferences.
24. Illustration:

A customer with an existing option of 2 (Real Estate) and 3 (Education) wants to opt out of 2 and add 4 (Health) will send SMS as under:
“STOP 2” for opting out from SMS relating to Real Estate and
“START 4” for opting to receive SMS relating to Health
25. After sending SMS to 1909 for changing preference(s), SMS indicating customers’ options shall be sent seeking confirmation of the customer.
26. After receipt of confirmation from the customer, his preferences shall be registered and a confirmation SMS shall be sent indicating unique registration number.

B. PROCEDURE FOR DE-REGISTRATION

a. De-Registration through voice call

27. Customer may make a call on toll free short code 1909.

28. The customer care executive shall ask the customer whether he wants to register, deregister or change his preference.
29. If customer wants to deregister, the customer care executive shall accept his request and deregister him.
30. Customer care executive shall inform the customer through SMS about his deregistration.

b. De-Registration through Interactive Voice Response System (IVRS)

31. A customer may make a call on toll free short code 1909 and select his preference to de-register through the IVRS.
32. The IVRS shall confirm the selected option by the customer and inform him through SMS about his deregistration.

c. De-Registration of preference through SMS

33. A customer can de-register by sending SMS “STOP” to 1909.
34. The customer shall be informed through SMS about his deregistration request seeking his confirmation.
35. On receipt of confirmation, the Access Provider shall deregister the customer and inform him through SMS.

Miscellaneous:

- I. The request for all registration/change/de-registration has to be done from the same telephone number for which registration/change/de-registration has been requested.
- II. A toll-free short code 1909 shall be available to customers for registration or change or de-registration in the National Customer Preference Register.

SCHEDULE-II

NATIONAL CUSTOMER PREFERENCE REGISTER - UPDATION AND USE BY ACCESS PROVIDERS AND TELEMARETERS

A. Updation of National Customer Preference Register (NCPR) by Access Providers

1. Every Access Provider shall maintain Provider Customer Preference Register in the format indicated by TRAI from time to time.
2. Every Access Provider shall update the National Customer Preference Register through Provider Customer Preference Register atleast once in twenty four hours.
3. Agency maintaining the NCPR, upon receiving the data from Provider Customer Preference Register shall send the copy of the data thus received to the concerned Access Provider for confirming the correctness of the data.
4. Every Access Provider shall confirm online, the correctness of the data to the Agency. In case of some discrepancies, the details shall also be indicated to the Agency.
5. The agency shall update the NCPR with the data received from the Access Providers (the Provider Customer Preference Register) twice a week on every Tuesday and Friday from 0000 Hrs to 0600 Hrs. During this period NCPR shall not be available for use by the telemarketers and Access Providers.
6. The delta data so updated (both additions and deletions in NCPR) shall be available for download by Access Providers and the telemarketers from 0700 Hrs to 1300 Hrs on every Tuesday and Friday respectively.
7. The Access Providers and telemarketers shall update their national customer preference data with this delta data every Tuesday and Friday. In order that there is synchronization between the telemarketers and Access Providers, the data updated and downloaded on Tuesday will be used from 0000 Hrs of Wednesday to 2359 Hrs of Friday and the data updated and downloaded on

Friday will be used from 0000 Hrs of Saturday to 2359 Hrs of Tuesday.

8. The agency shall also maintain an updated NCPR database. This data will be the only reference data for both telemarketers and Access providers.

B. Downloading and use of the data from National Customer Preference Register (NCPR)

1. Every Access Provider and registered telemarketer shall be allowed to download NCPR data from website www.nccprai.gov.in.
2. The agency maintaining NCPR shall provide unique user name and password to each Access Provider and registered telemarketer to download the data from NCPR.
3. Every Access Provider shall initially be provided dump of NCPR data.
4. Every registered telemarketer shall be provided dump of updated NCPR data by the respective Access Provider on execution of agreement as specified Schedule IV.
5. Telemarketers shall do subsequent updation of their data as per the procedure specified under heading **A** above.
6. Every Access Provider and registered telemarketer shall make necessary arrangements to download the updated delta data (both additions and deletions in National Customer Preference Register data) from NCPR and update their database.
7. The database updated on Tuesday shall be operational from 0000 Hrs of Wednesday to 2359 Hrs of Friday. Similarly the database updated on Friday shall be operational from 0000 Hrs of Saturday to 2359 Hrs of Tuesday.

SCHEDULE – III

PROCEDURE FOR REGISTRATION AND DEREGISTRATION OF TELEMARETERS

A. PROCEDURE FOR REGISTRATION

1. A person intending to provide telemarketing service shall register online with TRAI using URL www.nccptrai.gov.in.
2. The National Telemarketer Register (NTR) shall be the nodal point for online registration of telemarketers.
3. All telemarketers (both existing and new) have to fill-in online application form for registration as telemarketer in the format specified by TRAI from time to time.
4. On successful submission of application form, a unique application number shall be generated by NTR.
5. NTR shall facilitate creation of a user name and password for each of the successful telemarketers to access or modify his profile. NTR shall facilitate password change by telemarketers.
6. All new telemarketers shall pay Rs 1,000/- as Registration fee and Rs 9000/- as customer education fee.
7. Existing Telemarketers (already registered with the TERM Cell of Department of Telecommunications) shall apply a fresh for re-registration as per the procedure detailed above. However they shall only pay Rs 9000/- as customer education fee.
8. NTR shall facilitate payment of registration fee and customer education fee by the telemarketers through either of two modes of payment i.e. offline or online.
9. All fee i.e. registration fee and customer education fee has to be deposited simultaneously by the telemarketer and no part payment shall be accepted.

10. In case the telemarketer chooses the option for online payment -
 - (a) a unique registration number will be generated on successful payment (registration fee and customer education fee) by telemarketer; and
 - (b) a receipt will be generated giving details of the online financial transactions including date, time, clearance gateway etc. and the telemarketer may take a printout of filled-in form having application reference number, unique registration number along with online payment receipt.

11. In case the telemarketer chooses offline payment mode -
 - (a) on successful submission of application form, a unique application number will be generated, but no registration number will be allocated at this stage;
 - (b) the telemarketer shall download appropriate challan for payment, take a print out of challan and make payment in any of the branches of the designated bank;
 - (c) the designated bank on receipt of payment from telemarketer will update the information on NTR indicating confirmation of the payment by the telemarketer;
 - (d) once the payment has been made through the bank, a unique registration number will be generated and communicated to telemarketer through e-mail; and
 - (e) the telemarketer may take a printout of offline registration form indicating the unique registration number and details of payment.

12. A telemarketer shall enter into agreement with the Access Provider, as specified in Schedule IV or Schedule V to the Telecom Commercial Communications Customer Preference Regulations, 2010, as may be applicable, before being allotted any telecom resource by the Access Provider.

13. The telemarketer shall submit the filled-in the customer acquisition form (CAF) to the Access Provider from whom he wants telecom resources along with the copy of the online registration form.

14. The Access Provider, after receipt of prescribed documents, shall process the request for allocation of telecom resources as per the existing guidelines.
15. The Access Provider shall provide mobile number from allotted number series to telemarketers for making voice calls and identifiable telecom resources including SMS headers as specified by TRAI.
16. The Access Provider shall update the details of telecom resources allotted to a telemarketer on NTR, before activating such resources.
17. After the details of telecom resources allocated to a telemarketer are uploaded on NTR, agency maintaining the NTR shall create a link on telemarketers profile page to facilitate downloading of the data from NCPR.
18. Existing telemarketers may get the waiver for registration fee by following the procedure given below-
 - (a) indicate 'Existing' telemarketer in the payment option for registration;
 - (b) fill-in the details of the present registration number (as allotted by DoT/ Term cell);
 - (c) telemarketer shall choose appropriate payment option and make payment of Customer education fee;
 - (d) telemarketer shall submit the copy of the registration form of being registered telemarketer with Department of Telecommunications, to Access Provider for verification;
 - (e) all other steps shall be same as for the new registration for telemarketers.

B. PROCEDURE FOR DEREGISTRATION

19. The telemarketer intending to de-register shall surrender his entire telecom resources taken for telemarketing purpose, to the Access Providers from whom he has taken such resources and get them disconnected.

20. The telemarketer shall apply online to deregister using URL www.nccptrai.gov.in.
21. The telemarketer shall log on to NTR using username and password allotted for profile modification and select de-registration option.
22. On selection of de-registration option by the telemarketer, the NTR shall display a de-registration form, which shall be filled by the telemarketer and submitted online.
23. Access Providers shall confirm surrender of resources to NTR.
24. Based on the information of Access Providers and request of telemarketer, the agency maintaining NTR shall remove the name of such telemarketer from National Telemarketers Register.

Schedule-IV

Agreement between Access Provider and Telemarketer

This Agreement is executed on the _____ day of, 20..... between.....(Name of Originating Access Provider) having its office at(hereinafter referred to as the “Originating Access Provider” or the first party, which term shall include its successors and assignees), through(Name and designation) who is duly authorised to sign and execute the present agreement on behalf of the first party

AND

M/s(Name of Telemarketer) having its office at(hereinafter referred to as the “telemarketer or the second party, which expression shall include all its executors, administrators, successors, assignees and legal representatives), through Shri/Ms/Smt-----_(Give name and designation)_who has been duly authorized to sign and execute the present agreement on behalf of the second party.

Whereas the second party intending to obtain telecom resources for the purposes of carrying out telemarketing services has approached M/s.....(name of the Originating Access Provider);

Now the present agreement witnesses as follows: -

- (1) The second party hereby declare that it has registered as a telemarketer with the Telecom Regulatory Authority of India vide application No.....and the registration number granted by TRAI to it is _____.

(2) The telemarketer shall be responsible for any misuse of telecom resources allotted it for the purposes of telemarketing.

(3) The telemarketer shall maintain complete confidentiality of the data downloaded from the National Customer Preference Register for the purposes of telemarketing.

(4) The telemarketer has agreed to make all necessary arrangements to download the data from the National Customer Preference Register website and update its Customer Preference data base in accordance with the procedure specified in the Schedule-II to the Telecom Commercial Communication Customer Preference Regulations 2010.

(5) The telemarketer has agreed that before sending any SMS or making a telemarketing call to a telecom subscriber, he shall scrub the telephone number of such subscriber with the data base received from the National Customer Preference register in the manner as specified in the Schedule-II of these regulations. In case, the telemarketer fails to follow the scrubbing process, telecom resources allotted to him shall be disconnected by the Access Provider from whom the telemarketer has taken the telecom resource for the purpose of telemarketing and his name shall be entered into the black list maintained by the agency maintaining the National Telemarketer Register for a period of two years.

(6) The telemarketer shall use alpha-numeric identifier for sending commercial communication in the format having nine alpha numeric characters, first alpha numeric character being code of Access provider and the second alpha numeric character being code of service area, as

provided under the direction dated 10th December, 2008 issued by TRAI. The third alpha numeric character will be dash(-) and the fourth being any single digit (1-7) with each digit indicating a specific category of SMS as per schedule-I of the regulations and last five characters being five digit unique identification code provided by respective Access Provider to the telemarketer e.g XY-5ZZZZZ, where X stands for code allotted to Access provider, Y stands for service area, 5 indicates that this SMS belongs to consumer goods and automobiles category and ZZZZZ indicates five digit unique identification code allotted to telemarketer by the Access Provider.

(7) The telemarketer also agrees that the telemarketing calls to the subscriber whose telephone number does not appear in the National Customer Preference Register shall be sent only between 0900 Hrs to 2100 Hrs. The telemarketer also undertake not to send any commercial communication between 2100 Hrs to 900 hrs to any subscriber irrespective of the fact that such subscriber is registered on NCPR or not.

(8) The second party has agreed not to sent commercial communications to any subscriber whose telephone number appears on the National Customer Preference Register, except for sending SMS in respect of categories of preference opted by the customer.

(9) The second party has agreed to deposit with the Originating Access Provider an amount of rupees one lakh only (Rs. 1,00,000/-) as refundable security deposit. Telemarketer also undertakes to deposit additional security deposit as specified in this agreement. The Originating Access provider shall be entitled to deduct from such

security deposit, on issue of each notice for sending unsolicited commercial communication by the telemarketer, an amount as provided under this agreement.

(10) The second party makes any unsolicited commercial communication, through the telecom resources allotted to it by the first party, to any subscriber whose telephone number appears in the National Customer Preference Register, the second party agrees that -

(a) on the issue of first notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees twenty five thousand only (Rs. 25000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(b) on the issue of second notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees seventy five thousand only (Rs. 75000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(c) on the issue of third notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees eighty thousand only (Rs. 80000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(d) on the issue of fourth notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees one lakh twenty thousand only (Rs. 120,000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(e) on the issue of fifth notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees one lakh fifty thousand only (Rs. 150,000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(f) on the issue of sixth notice by the Originating Access Provider to the telemarketer for sending such unsolicited commercial communication, a sum of rupees two lakh fifty thousand only (Rs. 250,000/-) shall be deducted from the security deposit of the telemarketer and deposited in the account as may be specified by TRAI, from time to time;

(11) The second party has agreed that on issue of first notice by the Access Provider to the telemarketer for sending unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register, the telemarketer shall deposit additional security amount of rupees two lakh only (Rs. 2,00,000/-) and on issue of third notice by the Access Provider to the telemarketer for sending similar unsolicited commercial

communication, the telemarketer shall deposit an additional security of amount of rupees four lakh only (Rs. 4,00,000/-).

(12) The second party has agreed that in case the telemarketer fails to deposit the additional security deposit or no amount is available in the security deposit of the telemarketer due to deductions made under clauses (10) of this Agreement, the telecom resources allotted to the telemarketer for the purposes of telemarketing shall be disconnected and the name of telemarketer shall be intimated by the Access Provider to the agency maintaining the National Telemarketer Register for entering the name of such telemarketer in the black list and the name of such telemarketer shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the telemarketer shall be cancelled by TRAI under the provisions of the regulations.

(13) The second party has agreed that in case of issue of sixth notice by the Access Provider to the telemarketer for sending unsolicited commercial communication as provided under clause 10(f) of this Agreement, without prejudice to the amount which shall be deducted from the security deposit of the telemarketer under clause 10(f), the telecom resources allotted to the telemarketer shall be disconnected without any further notice. The Access Provider shall intimate the name of such telemarketer to the agency maintaining the National Telemarketer Register for entering the name of the telemarketer in the black list and the name of such telemarketer shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the telemarketer shall be cancelled by TRAI under the

provisions of the regulations.

(14) M/s.....(name of telemarketer) has agreed that the telecom resources allotted to the telemarketer shall be disconnected without any further notice on receipt of disconnection notice from NTR.

(15) The second party has agreed to abide by Regulations, Orders and directions issued by the Telecom Regulatory Authority of India, from time to time, regarding commercial communication including the header to be used for sending promotional SMS.

Signature of subscriber/ Authorized Signatory

(Name of subscriber/ Authorised Signatory)

Address

Seal, if any.

Date:

Signature of Access Provider Representative/ Authorized Signatory

(Name of Access Provider Representative / Authorised Signatory)

Address

Seal, if any.

Date:

Schedule-V

Agreement between Access Provider and Transactional message sending entity or its agency

This Agreement is executed on the _____ day of, 20..... between.....(Name of Access Provider) having its office at(hereinafter referred to as the “Originating Access Provider” or the first party, which term shall include its successors and assignees), through(Name and designation) who is duly authorised to sign and execute the present agreement on behalf of the first party

AND

M/s(Name of Transactional message sending entity or its agency) having its office at(hereinafter referred to as the Transactional Message sending entity or the second party, which expression shall include all its executors, administrators, successors, assignees and legal representatives), through Shri/Ms/Smt-- -----(Give name and designation) who has been duly authorized to sign and execute the present agreement on behalf of the second party.

Whereas the second party intending to obtain telecom resources for the purposes of sending Transactional Message has approached M/s.....(name of the Originating Access Provider);

And whereas the second party having represented to the first party that it intends to send Transactional Message to the person with whom it has certain transactions and such Transactional Message does not fall within the definition of promotional message as defined under the Telecom

Commercial Communications Customer Preference Regulations, 2010 (6 of 2010) (hereinafter referred to as the regulations) and has requested for allotment of telecom resources for the said purpose.

Now the present agreement witnesses as follows: -

(1) The second party) hereby declare that it has registered with the Telecom Regulatory Authority of India vide application No.....and the registration number granted by TRAI to it is _____.

(2) The second party has agreed to obtain separate telecom resources from the Access Provider for the purposes of sending transactional message and promotional communication from the Access Provider.

(3) The second party shall be responsible in case of any misuse of telecom resources allotted to it for sending Transactional Message.

(4) The second party shall maintain complete confidentiality of the customer information.

(5) The second party has agreed not to send any unsolicited commercial communication and not to mix any promotional communications with its Transactional Message sent to a subscriber through telecom resource allotted to it for the purposes of sending Transactional Message.

(6) The second party shall use alpha-numeric identifier for sending Transactional SMS in the format having nine alpha numeric characters, first alpha numeric character being code of Access provider and the second alpha numeric character being code of service area, as provided

under the direction dated 10th December, 2008 issued by TRAI. The third alpha numeric character will be dash(-) and the last six characters will be the identifier of the company or organization sending transactional SMS (example XY-ZZZZZZ, where X stands for code allotted to Access provider, Y stands for service area, and ZZZZZZ indicates six alphabets for company or organization sending transactional SMS).

(7) The second party has agreed not to make unsolicited commercial communications to any subscriber whose telephone number appears on the National Customer Preference Register, except for sending Transactional Message.

(8) The second party has agreed to deposit with the Originating Access Provider an amount of rupees one lakh only (Rs. 1,00,000/-) as refundable security deposit. The Transactional Message sending entity also undertakes to deposit additional security deposit as specified in this agreement. The Originating Access Provider shall be entitled to deduct from such security deposit, on issue of each notice for sending unsolicited commercial communication by the second party, an amount as provided under this agreement.

(9) If the second party makes any unsolicited commercial communication, through the telecom resources allotted to it by the first party for sending Transactional Message, to any subscriber whose telephone number appears in the National Customer Preference Register, the second party agrees that-

(a) on the issue of first notice by the Access Provider to the second

party for sending such unsolicited commercial communication, a sum of rupees twenty five thousand only (Rs. 25000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;

(b) on the issue of second notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees seventy five thousand only (Rs. 75000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;

(c) on the issue of third notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees eighty thousand only (Rs. 80000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;

(d) on the issue of fourth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees one lakh twenty thousand only (Rs. 120,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;

(e) on the issue of fifth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a

sum of rupees one lakh fifty thousand only (Rs. 150,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;

(f) On the issue of sixth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees two lakh fifty thousand only (Rs. 250,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time

(10) The second party has agreed that on issue of first notice by the Access Provider to the second party for sending unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register, the second party shall deposit additional security amount of rupees two lakhs only (Rs. 2,00,000/-) and on issue of third notice by the Access Provider to the second party for sending similar unsolicited commercial communication, the second party shall deposit an additional security of amount of rupees four lakhs only (Rs. 4,00,000/-).

(11) The second party has agreed that in case the second party fails to deposit the additional security deposit or no amount is available in the security deposit of the second party due to deductions made under clause (9) of this Agreement or for any other reason, the telecom resources allotted to the second party for the purposes of sending Transactional Message shall be disconnected and the name of second party shall be intimated by the Access Provider to the agency

maintaining the National Telemarketer Register for entering the name of the second party in the black list and the name of second party shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the second party shall be cancelled by TRAI under the provisions of the regulations.

(12) The second party has agreed that in case of issue of sixth notice by the Access Provider to the second party for sending unsolicited commercial communication as provided under clause 9(f) of this Agreement, without prejudice to the amount which shall be deducted from the security deposit of the second party under clause 9(f), the telecom resources allotted to the second party shall be disconnected without any further notice or on receipt of instructions for disconnection of telecom resources from NTR. The Access Provider shall intimate the name of the second party to the agency maintaining the National Telemarketer Register for entering the name of the second party in the black list and the name of the second party shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the second party shall be cancelled by TRAI under the provisions of the regulations.

(13) The second party has agreed that the telecom resources allotted to the second party shall be disconnected without any further notice on receipt of the instruction for disconnection of telecom resources from NTR.

(14) The second party has agreed to pay the charges as provided in the

regulations in case the second party sends telemarketing SMSs and/ or mixes telemarketing or promotional SMSs with the transactional SMS.

(15) The second party has agreed to abide by regulations, orders and directions issued by the Telecom Regulatory Authority of India regarding Transactional Message, from time to time, including the header to be used for sending transactional SMSs.

Signature of subscriber/ Authorised Signatory

(Name of subscriber/ Authorised Signatory)

Address

Seal, if any.

Date:

Signature of Access Provider Representative/ Authorized Signatory

(Name of Access Provider Representative / Authorized Signatory)

Address

Seal, if any.

Date:

SCHEDULE -VI

PROCEDURE FOR REGISTRATION OF COMPLAINT

a. Complaint registration through voice call

1. A customer may make a call to 1909 for registering his complaint.
2. The customer care executive shall ask the customer about the details like particulars of telemarketer, the telephone number from which the unsolicited commercial communication has originated the date, time and brief description of such unsolicited commercial communication.
3. The customer care executive shall register the customer complaint and acknowledge the complaint by providing a unique complaint number.

b. Complaint Registration through SMS

4. A customer may register unsolicited commercial communications related complaint by sending SMS to 1909 in the format given below-
“COMP TEL NO XXXXXXXXXXX, dd/mm/yy, Time hh:mm”
Where XXXXXXXXXXX – is the telephone number or header of the SMS, as the case may be, from which the unsolicited commercial communication has originated.
5. The customer complaint shall be registered and acknowledged by providing him a unique complaint number through SMS.

Miscellaneous: The complaint has to be registered from the telephone number on which unsolicited Commercial Communication has been received.

Explanatory Memorandum

1. Unsolicited Commercial Communications (UCC) are a major cause of disturbance and inconvenience for telecom users in recent times. These communications invade the privacy of individuals. With growth in telecom services in the country and fall in telecom tariffs, telecommunications is now increasingly being used as a tool to advertise and market various products. TRAI has been receiving for some time now, complaints from telecom customers on the subject of UCC. In order to curb Unsolicited Commercial Communications, the Telecom Regulatory Authority of India (TRAI) notified the Telecom Unsolicited Commercial Communications Regulations, 2007 dated 5th June, 2007, which put in place a framework for controlling unsolicited commercial communications. It envisaged establishment of a National Do Not Call (NDNC) Registry to facilitate registration of requests from customers who do not wish to receive UCC. To improve the effectiveness of the framework, the Authority had subsequently amended these regulations by issue of the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 (1 of 2008) dated 17th March, 2008 and had imposed financial disincentives for non-compliance of regulatory provisions by the telecom service providers. The principal regulations were further amended by the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008 dated 21st October, 2008, simplifying the customer enrolment process, smoothening the system for redressal of complaints related to UCC and imposing financial disincentives on Access Providers for non-compliance with regulatory provisions.

2. Despite various measures taken by the Authority for curbing Unsolicited Commercial Communications, dissatisfaction on this account among telecom customers continues. Although the number of unsolicited commercial voice calls has decreased to some extent, the number of unsolicited SMS has increased. Till March 2010, a total of 3,40,231 complaints regarding receipt of unsolicited calls and SMS have been received. About 65,000 complaints are received every month. This is just the tip of the iceberg as many customers do not lodge UCC complaints. Overall, there is every indication that the framework that has been put in place to curb UCC has been less than effective and needs revision.
3. With rapid growth in telemarketing activity in the country, the problem has also grown in dimension. As per a recent study by Ernst and Young, India's BPO market was about USD 1.6 billion in 2008, and with a CAGR of 38%, is expected to reach USD 6 billion in FY 2012, with a maximum addressable opportunity of USD 16-19 billion. Customer interactive services, including sales and marketing contribute about 70% to domestic BPO revenues. The sector employ about 7,00,000 persons.
4. The Authority initiated the consultation process and issued a Consultation Paper on "Review of Telecom Unsolicited Commercial Communications Regulations" on 11th May, 2010. Comments were received from 342 stakeholders and Open House Discussions was held in Delhi in August, 2010. The Authority also held further consultations with Access Providers, aggregators, and

telemarketers to explore various possible options to effectively control Unsolicited Commercial Communications.

5. The major issues impacting the effectiveness of existing regulations, as highlighted by stakeholders, during the consultation process, are summarized below:
 - (i) The registration process for telemarketers is complicated and unfriendly; as a result there are a large number of unregistered telemarketers. The present frame work envisages registration of telemarketers through the NDNC Registry, but payment of registration fee and issue of registration certificate is manual. The process is cumbersome and inconvenient and takes a lot of time, discouraging telemarketers from registering themselves.
 - (ii) The existing National Do Not Call Registry has prescribed a maximum limit on telephone numbers that can be scrubbed in a day which is too low. The amount of time taken to return the scrubbed list of numbers is also high. The limited scrubbing capabilities provided by the NDNC registry impact the business model of telemarketers and this encourages them to use unscrubbed lists of telephone numbers.
 - (iii) Identification of defaulters depends on the customer complaints. Customers are not coming forward to complain about violation of the regulations due to ineffective complaint redressal by their Access Providers. The analysis of the available data indicates that percentage of subscribers making complaints regarding unsolicited commercial communications is very low. This has adversely impacted the identification of those telemarketers who flout the norms.
 - (iv) Existing provisions to ensure compliance are not strong enough to create a deterrent against violation of the regulations. The

present framework prescribing higher tariff of Rs.500/- in first instance and Rs.1000/- in second instance for making unsolicited commercial communication is not a sufficient deterrent, especially due to very limited complaints registered by subscribers.

- (v) Disconnection of telecom resources is not an effective deterrent as the defaulting telemarketer can take telecom resources from other service providers. There is no provision for effectively blacklisting such telemarketers to restrict provision of telecom resources to them.
- (vi) The present framework largely depends on proper functioning and adherence to the prescribed procedure by telemarketers. Only minimal checks and balances have been prescribed. No framework has been prescribed to control telemarketing calls / SMSs by the Access Providers before delivery to customers registered on NDNC.
- (vii) There is a lack of awareness among customers about the facility for registering their telephone number in the National Do Not Call Register.

6. In view of above, stakeholders expressed the view that there is a need to replace the present regulatory framework with one which facilitates easy registration of telemarketers, builds in flexibility for scrubbing by telemarketers, ensures adequate defensive mechanisms to auto-stop delivery of UCC to customers who do not want such messages, and provides for effective enforcement of regulations.

7. The object of this regulation is to provide an effective mechanism for curbing Unsolicited Commercial Communications. The Telecom Commercial Communications Customer Preference Regulations, 2010 have been framed keeping in view the interest of the customers and telemarketers while ensuring effective implementation. The main features of the Telecom Commercial Communications Customer Preference Regulations, 2010 are as follows:
- (i) Options to customer to exercise his preference
 - (ii) A simple and easy procedure for exercising option by the customer
 - (iii) Easy registration of the telemarketer with effective identification
 - (iv) Sharing of National Customer Preference Register with service providers and telemarketers so that telephone databases can be effectively scrubbed before initiating telemarketing activities
 - (v) Filtering and auto-blocking of calls and SMS to customers according to their options, if any
 - (vi) Disconnection of telecom resources of defaulting telemarketers and blacklisting to ensure that they do not get any telecom resources from any other access provider
 - (vii) Adequate provision to effectively implement the provisions of the Regulations
8. The consultation paper deliberated the option of adopting a Do Call Registry to control UCC. While some consumer organizations and individuals advocated the adoption of a Do Call Registry, most of the telemarketers and service providers and even some individuals,

have opposed the concept of a Do Call Registry. While the former group felt that the responsibility to restrict unsolicited calls should not be placed on the customer (as is the case in the present system), the latter group pointed out that the implementation of a Do Call Registry would in the first instance, bring all telemarketing activity to a halt, thereby jeopardizing the business and employment of lakh of young workers and hundreds of small entrepreneurs. An important theme of the deliberations in the open house discussions was the need to provide options to customers to exercise their preference. Accordingly, the Authority with due regard to the rights of the customers to exercise preference, has decided to provide a mix of Do call and Do not call options to the customers within the new framework. Regulation 7 provides options to customers to register to receive SMS from specified category or categories or not to receive any commercial communication. The customer can opt to block all commercial communication or can selectively block SMS from specified categories or can continue to get all calls/ SMS. The regulations also lay down a separate number series for telemarketers for voice calls; this will facilitate easy identification of telemarketing voice calls by customers receiving such calls.

9. The consultation paper also highlighted the issue of low registration of customers on the NDNC registry. One of the major reasons is the long time taken for registration in the NDNC (45 days). Stakeholders have suggested further simplification of the registration mechanism. These regulations provide for registration of customers preferences using voice call or SMS on 1909. It has been mandated that all access providers shall intimate the registration number to customers by SMS within 24 hours. These

regulations provide that the time taken for effecting registration of the telecom customers on the National Customer Preference Register shall be reduced to 7 days instead of 45 days at present. A detailed procedure has been specified to ensure that customer's preference becomes effective within 7 days time. Efforts will be made to further reduce this time period in due course.

10. Unsolicited Commercial Communications are found to be originating from both registered and unregistered telemarketers. A large number of telemarketers including direct sales agents (DSAs) are not registered with Department of Telecommunications (DoT). Stakeholders pointed out that lengthy and complicated procedure for telemarketers to register with the DoT is one of the reasons for low registration of telemarketers. Difficulties faced by the telemarketers in registration were also highlighted during open house discussions. As per the telemarketers, the registration IDs often do not get verified within the prescribed period of 90 days resulting in deactivation of their IDs based on which they scrub telephone numbers on the NDNC. In such cases, the whole process has to be started again. It was also pointed out that if for any reason, the telemarketer's application is rejected within 90 days there is no mechanism for intimating the telemarketer regarding the same. This denies the telemarketers' access to the NDNC for scrubbing, forcing them to send UCC without scrubbing. The Regulations provide for a simplified registration process for telemarketers including online registration. Accordingly, provisions have been made in Regulation 14 that all the telemarketers will now be registered with TRAI through website www.nccptrai.gov.in In order to identify the telemarketer, unique identification information such as PAN and/or TAN is added in the online application form.

On successful submission of the application form online, a unique application number will be generated. Telemarketers will have the option of payment of fee either online or offline and will be given a unique registration number after payment is successfully made.

11. Stakeholders also pointed out the need to effectively control telemarketers. It emerged that the framework in the 2007 regulations to impose higher tariff for default by telemarketers, has not worked effectively. Stakeholders were of the view that existing penal provisions on telemarketers should be enhanced manifold. In order to ensure effective control, these regulations mandate all telemarketers to enter into an agreement with the Access Providers before any telecom resources are allocated to them. A security deposit will be collected from each telemarketer by Access Providers from which amount for default or contravention of regulations will be deducted. Telemarketers have to deposit additional security deposits as per the provisions in the regulations based on number of defaults or contraventions. The regulations also mandate that all telecom resources shall be disconnected at the sixth violation. These measures are expected to inculcate a greater sense of responsibility among the telemarketers.
12. Stakeholders were of the view that currently disconnection of telecom resources of telemarketers is not effective in controlling UCC, as the defaulting telemarketer can again take telecom resources from another access provider. In order to ensure that telemarketers follow the regulatory framework to control UCC, provisions have been made in the regulations to create a black list of telemarketers whose telephone connections or services have

been disconnected for violation of the regulations so that a disconnected telemarketer is not able to take connections or services or telecom resources from any other access provider. For this purpose the PAN and /or TAN number is being captured during the registration of Telemarketer. The blacklisted Telemarketers will be identified through their PAN and/or TAN number. Further, access providers shall ensure that no telecom resources are allotted to such blacklisted telemarketers. Blacklisting shall be valid for a period of two years counted from the date of the disconnection of telecom resource and blacklisted companies, individuals and entities will not be provided any telecom resources across the country during this period.

13. The issue related to limited scrubbing facility provided by NDNC in existing framework was discussed in detail during open house discussions and meetings with various stakeholders. Many stakeholders expressed the view that the list of customers registered on NDNC should be shared with them so that they could use their own scrubbing facility. They were of the view that effectiveness of the framework can be increased if the scrubbing process is decentralized and telemarketers are permitted to make their own arrangements to scrub. Accordingly, provisions have been made in the regulations to simplify the scrubbing process. All telemarketers and Access Providers will be permitted to download the complete National Customer Preference (NCP) data from the NCPR website for which a unique user name and password will be provided.

14. Stakeholders also pointed out exponential increase in unsolicited commercial communications through SMS and desired effective measures to control unsolicited SMS. In this regard, it is noted that telemarketers buy bulk SMS from Access Providers at nominal cost and send these SMS to customers. In many cases, telemarketers hire leased lines to push SMSs to customers. Customers who are registered with the NDNC Registry also receive such SMS. A need was therefore felt to explore possibilities to modify the existing regulatory framework or to bring in a new regulatory framework to effectively control Unsolicited Commercial Communications.

15. The question of blocking by the service provider an unsolicited commercial communication sent by the telemarketer to customer registered on NCPR was also discussed during the consultation process. Mixed views were expressed. While one set of service providers have opined that filtering of calls and SMS may increase the load on the system and may be difficult to implement, others feel that technical solutions can be worked out to effectively block unsolicited commercial SMS. They felt that the unsolicited commercial calls can also be blocked automatically if an identified number series is given to each service provider. During consultations, some stakeholders suggested that a separate series of numbers could be allotted for telemarketers so that customers could identify a call coming from a telemarketer. The matter was taken up with the Department of Telecommunications and a separate number series has been obtained for telemarketing purposes from mobile number series, out of which service providers can allot numbers to their telemarketers for making voice calls. Further analysis revealed that technical solutions are

available to effectively control unsolicited commercial SMSs. Accordingly, provisions have been made such that all telemarketers ensure scrubbing of numbers using their own arrangement and all Access Providers ensure filtering of unsolicited commercial calls and SMS so that no call or SMS is sent to any customer registered on NCPR unless he has opted for it.

16. Stakeholders have also highlighted the need to define UCC so that it is clear what messages will be considered as unsolicited. They have given certain examples in which indirect consent of the customer is implicit in what might otherwise be classed as UCC, and wanted clarity in the matter. The Authority has considered the issue raised and has separately defined the framework for transactional messages so that there is no ambiguity. The regulations provide a well-defined process for sending transactional messages through separate telecom resources dedicated for the purpose by Access Providers. The SMS header has also been standardized to clearly indicate the nature of the message.
17. In order to facilitate options for receiving SMS of predefined category or categories by customers, the regulations also define the structure of header. Customers can identify promotional SMS just by looking at the SMS header. This will reduce the inconvenience of even those customers who are not registered on the NCPR.
18. The Authority is also aware that unsolicited commercial communications can be/are being sent by unregistered

telemarketers. Such messages can be sent by any person and they are essentially in the category of P2P communications. However, in order to curb such messages, the Authority has decided that no Access Providers shall provide any SMS packages in any form (through voucher, student pack, seasonal pack etc) permitting sending of more than 100 SMS per day per SIM except on blackout days or days specially notified by TRAI. Any such package already in use shall be withdrawn w.e.f 31.12.2010. Provisions have also been made to disconnect the telecom resources after giving a notice if it is found that telemarketing activities are being done from the unregistered telemarketer.

19. During the consultation process, some stakeholders expressed the view that imposition of a termination charge on commercial SMSs could prove to be an effective deterrent to the indiscriminate use of SMS for commercial communications. The Authority has deliberated this point, but has felt that prescription of a termination charge basically falls within the purview of the interconnection regime and should be taken up as a separate exercise as and when the interconnection usage charge regulations are reviewed.
20. Stakeholders have also pointed out that complaint redressal mechanism is not effective and customers get no feedback on the complaints registered by them. They are of the view that customers may be informed about the action taken on their complaints. This will encourage customers to register complaints in case of violation of regulatory provisions. The Authority is concerned with effective redressal of customer complaints relating to UCC and has

prescribed a framework in which action is taken within seven days of lodging the complaint and the customer is informed about the action taken.
