

F.No.305-15/2011-QoS
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan,
Jawaharlal Nehru Marg, Next to Zakir Hussain College,
New Delhi – 110 002.

Dated the 4th July, 2011

DIRECTION

Subject: Direction under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and clause 11 of the Telecom Tariff Order, 1999, on obtaining explicit consent of consumers for subscribing and renewing of Value Added Services.

F. No.305-15/2011-QOS---- Whereas the Telecom Regulatory Authority of India (hereinafter referred as the Authority), established under sub-section (1) of Section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as TRAI Act) has been entrusted with discharge of certain functions, *inter alia*, to regulate the telecommunication services, ensure technical compatibility and effective inter-connection between different service providers, lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect the interest of the consumers of telecommunications service;

2. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the TRAI Act, issued the Direction F.NO. 305-8/2004-QOS dated the 3rd May, 2005, directing all Cellular Mobile Service Providers and Unified Access Service Providers that no chargeable value added service shall be provided to a customer without his explicit consent and that

any value added service, which was earlier being provided free of charge, shall not be made chargeable without the explicit consent of the customer;

3. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the TRAI Act and clause 11 of the Telecom Tariff Order, 1999, issued a subsequent Direction F.No.303-1/2006-QOS dated the 30th October, 2007 directing all the Cellular Mobile Service Providers, Basic Service Providers and Unified Access Service Providers, inter alia, to provide toll free facility for registering requests of consumers for unsubscribing any value added service, the manner in which the offer for value added service is to be made and the explicit consent of the consumer is to be obtained for value added services offered through tele-calling etc., to keep complete records of the explicit consent for a period of one year;

4. And whereas the Authority had, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the TRAI Act and clause 11 of the Telecom Tariff Order, 1999, also issued a Direction No. 303-1/2006-QOS dated the 27th April, 2009 and an amendment dated 4th September, 2009, which, inter alia, contained a procedure for obtaining the explicit consent of subscribers in respect of Value Added Services provided through pressing/dialing of certain keys in the mobile handset/ telephone set, service provider initiated call or Out Bound Dialer (OBD) call and a procedure for unsubscribing the Value Added Services;

5. And whereas the Authority continued to receive complaints from consumers alleging activation of Value Added Services without their explicit consent and charging for the same and these complaints were taken up with the service providers by the Authority, from time to time;

6. And whereas complaints were also received from prepaid consumers alleging deduction of talk time value from subsequent recharges from their account towards the renewal charges for the Value Added Service subscribed by them, which was earlier not deducted on the due date of renewal of subscription as there was insufficient balance in their account;

7. And whereas upon examination of the complaints of the consumers and the replies received from the service providers, the Authority found that in most of the cases the service providers claimed that they have obtained the explicit consent of consumers through telecalling or Out Bound Dialer call or through other electronic means involving interactive sessions while the consumers have disputed such claims, thus giving rise to the need for a confirmation process to avoid such disputes in claims and counter claims in the matter of seeking and obtaining explicit consent;

8. And whereas the Authority is of the view that deduction of subscription charges from the talk value, either initially or from subsequent recharges without the specific consent of consumers, is against the interest of consumers;

9. Now, therefore, the Authority, in exercise of the powers conferred upon it under Section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and clause 11 of the Telecom Tariff Order, 1999 and for the reasons mentioned in paragraphs 5 to 8 above, and to ensure compliance of terms and conditions of license and to protect the interest of consumers, hereby directs all Access Service Providers (including M/s Bharat Sanchar Nigam Ltd. and M/s Mahanagar Telephone Nigam Ltd.) to ensure within thirty days of issue of this Direction that :

- (i) in all cases where the value added services are activated through Out Bound Dialer or service provider initiated call or during pre-call ring-back announcements (both voice as well as automated) and where a consumer dials a specified telephone number or short code or a telephone number providing interactive session for subscribing to a Value Added Service, the service provider shall obtain confirmation from the consumer through consumer originated SMS or e-mail or FAX or in writing within twenty four hours of activation of the value added service and charge the consumer only if the confirmation is received from him for such value added service and shall discontinue such value added service if no confirmation is received from the consumer;
- (ii) every service provider shall, at least three days before the due date of renewal of a value added service, inform the consumer through SMS, the due date for renewal of such service, the charges for renewal and toll free telephone number for unsubscribing the value added service; and
- (iii) if there is insufficient balance in the account of a consumer at the time of renewal of subscription to a value added service, the service provider shall send a request, through SMS, to the consumer to indicate his consent for continuing such service by sending an SMS as “Yes” or “No” to a toll free number and if, in response to such request, the consumer indicates his explicit consent by conveying “Yes”, such value added service shall be renewed and such consumer shall be informed by the service provider through SMS that the charges for renewal of subscription of value added service shall be deducted from subsequent recharge.

(A. Robert Jerard Ravi)
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To

All Access Service Providers