



RSM/COAI/2018/118
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Mahanagar Doorsanchar Bhawan
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New Delhi – 110002

Subject: COAI Response to the draft Telecom Commercial Communications Customer Preference Regulations, 2018

Dear Sir,

This is with reference to the TRAI draft Telecom Commercial Communications Customer Preference Regulations, 2018, released on May 29, 2018.

In this regard, please find enclosed COAI response to the draft Regulation.

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

With Regards,

Yours faithfully,

Rajan S. Mathews
Director General



COAI draft response to TRAI draft Regulations 'the Telecom Commercial Communications Customer Preference Regulations, 2018'

At the outset, we are thankful to the Authority for giving us opportunity to provide comments to draft Regulations on 'the Telecom Commercial Communications Customer Preference Regulations, 2018'.

A. Preamble:

1. **Financial Position of Telecom Sector:** The Telecom Industry has invested over **INR 10.4 lakh crores** in setting up world class mobile networks over the last 20 years and is presently going through one its most disruptive phases. The sector is reeling under a heavy debt burden of **INR 7.6 Lakh Cr.** In the third quarter of FY 2017, India's wireless industry gross revenue registered its first ever year-on-year decline. Further, from Third quarter FY17 to the Third quarter of FY18, the industry AGR witnessed a decline of 19%, from INR 34,566 Cr in 3QFY17 to INR 28,162 crore in 3QFY18. Currently the Indian telecom sector is under extreme financial stress with several operators making a negative return on their investments. **A number of obligations contained in the draft Regulations require operators to incur additional CAPEX and OPEX in the new systems and technology which proposes to completely change the existing system. Hence we would like to submit that the Authority should undertake and provide Cost Benefit analysis in consultation with all the stakeholders before finalising the draft Regulation on the Unsolicited Commercial Communications (UCC).**
2. **Draft Regulation does not address existing problems:** In our view, the draft regulation does not address following existing problems faced by consumers:
 - a. **Voice UCC from unregistered telemarketer:** The draft regulation does not address the issue of voice UCC from unregistered telemarketer effectively.
 - b. **Promotional content mixed with transactional:** We understand that there was a concern about mixing of promotional content/ pipe with transactional content/pipe, this concern has not been addressed in the Draft Regulation. The draft Regulation provides for subjective definitions and provisions, related to relationship between the subscriber and content provider/principal entity. This will continue to be a concern in spite of huge investment and process heavy ecosystem which TRAI is envisaging.

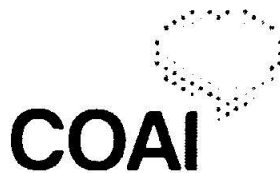


The draft regulations do not address the present issues in the existing framework and hence, the investments and huge processes would be an over-head, without benefitting the consumers or the TSPs.

- c. The intent of the Authority has always been that **Transactional messages** are important for the subscribers. While the same approach should be continued with and there should not be a need to re-obtain consent for transactional messages; it must be ensured that the Regulation is watertight so as to put in place a mechanism to ensure that there is NO MIXING of promotional content with transactional pipe in any form.
3. **Migration of telemarketing calls/UCC to OTT players:** The draft regulation will lead to complex processes and huge costs for TSPs, without any substantial benefits. In our view, this will encourage migration of traffic to OTT players. **Already there is a migration of UCC from SMS and Voice to OTT such as WhatsApp; and large scale migration to OTT caused by the complexity of this Regulation will render this solution redundant.**
4. **Complexity in customer preference:** In the consultation paper, TRAI has acknowledged that the existing consumer preference registration is not user friendly. There is also issue of consumer awareness. This will further get accentuated by the complex sub-categories, mode, day, time-band etc. In our view, this will become more complex for the consumers and would lead to more complaints and dissatisfaction for the consumers.
5. **No Financial disincentive on the TSPs:** We believe that the intention of TRAI is to reduce the menace of UCC and not to earn revenue from the financial disincentive. We are of the view that operators have made all the efforts that have considerably reduced their UCC complaints to a very low level and hence should not be penalized for unwarranted actions of some subscribers. Further, in our view, the new regulation has missed addressing voice UCC from unregistered TM hence, no financial disincentive should be imposed on the TSPs due to UCC made by customers not registered as Telemarketers.

Even the License Clause No. 39.17 (i) of UL which is presented below clearly puts the onus of use / misuse of the connection on the customer and the same too forms a part of our members CAF's Terms and Conditions.

"The Licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber; instructions issued by the Licensor in this regard from time to time shall be scrupulously followed. The Licensee shall make it clear to the subscriber that the subscriber will be responsible for proper and bonafide use of the service."



From the above, it may be inferred that holding TSPs accountable for the actions done by the subscribers is unjust and the Authority should consider the fact that any deviation from the above mentioned usage guidelines, on part of the customer, should be attributed to him and him alone.

6. Implementation and Timelines :

- a. **Finalization of Code of Practice (CoP):** In our view, the draft Regulations does not address the concerns in the present framework and would continue to provide possible leakage areas. Further, it would lead to huge costs for TSPs, process heavy and cumbersome approach, without any corresponding benefits. In case, the Authority does not consider our above comments, we would like to submit that most of the Regulations/Sub Regulations including but, not limited to such as Regulation 17, 18, 19, 21, actual requirements of which will be part of the Code of Practice (CoP) to be prepared by TSPs and approved by TRAI and would also have linkages with the CoPs of different TSPs.

The necessary solution architecture and development in the systems of the operators with respect to all the Regulations can only take place after the finalization of the CoP by an individual TSP as well as CoPs by other TSPs, **for which at least 3 months are required.**

- b. **System architecture designing and solutioning:** After the finalization of CoPs, the solution designing and IT & other system upgradation would need to be examined. Considering the complete overhaul of all the processes and their linkages to multiple systems of TSPs, coupled with adoption of Distributed Ledger Technology (or blockchain) which is a completely new Technology being adopted for the first time in this sector, our members will require **at least 9 months' time for system design and solutioning .**
- c. **Migration:** Further, since System Migration has a dependency on CoP and System development, **at least 6 months' time** would be required for the same.

7. **Clarity on some Provisions:** We would like to request to TRAI to provide clarifications on some of the provisions highlighted in Annexure -1. **We request TRAI to provide written clarifications and 3 weeks post such clarifications, for TSPs to provide comments to the draft regulation.**



B. Our submission on Specific Regulations is as under:

1. Regulation 3:

The Regulation 3 of the draft states that the operators are required to ensure that the commercial communication through their network takes place only using registered headers assigned to the senders.

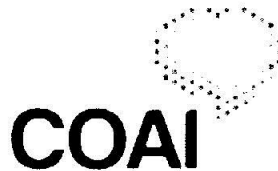
COAI Submission:

- a. As highlighted in the preamble, we would like to submit that the first step to ensure the compliance of the said regulation 3 is to frame the rules regarding assignment of headers. These rules will be part of the Code of Practice (CoP) as outlined in the schedule I of the draft regulation for which the timeline of three months has already been prescribed in the draft.
- b. The necessary development in the systems of the operators would take place only after the finalization of the CoP.
- c. We also request the TRAI to kindly provide clarity in relation to existing allocated headers (such as 5-level short codes) and whether the same will be retained under the new system proposed under the draft Regulations.
- d. **Thus, the proposed timeline of October 01, 2018 for implementation of Regulation 3 should be revised accordingly.**

2. Regulation 9, 13 & 14:

The regulation 9 requires the operators to ensure no commercial communications should happen except as per the preferences/consents registered digitally as per the regulations. Para 5 of schedule II prescribes adoption of Distributed Ledger technology (DLT) for recording of customer preferences.

Also, as per the draft Regulation 13 & 14, have mandated the adoption of new technology named Distributed Ledger Technology (DLT) and introducing an entity in the value chain as private DLT Network Operators who will implement the DLT as per the prescribed Code of Practice (CoP). The operators can authorize one or more DLT network operators to provide the technology solution to carry out various functions provided in the regulations and such solutions are required to be implemented by October 01, 2018.



COAI Submission:

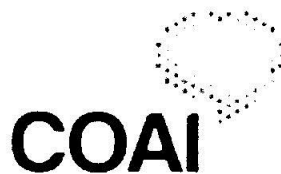
- a. In this regard, it is submitted that regulations e.g. regulation 9 which requires adoption of DLT and finalization of vendor to implement the same requires adequate time as these are commercial negotiations. Further, the scope of work which is required to select appropriate vendor requires the finalization of the CoP which in itself will take minimum three months (as envisaged in the draft regulation).
- b. After the finalization of the vendor, the implementation of the DLT solution will further take time as this solution is totally a new one and the operators need to do extensive evaluation of the same. **Hence as highlighted in the preamble, we request that at least 9 months post CoP finalization by all TSPs , should be provided to the operators for implementation of the provisions of draft Regulations (excluding CoP)**

3. Regulation 10:

The Regulation 10 of the draft states that the operators are required to ensure that no commercial communication takes place through their network except by using header(s) assigned to the registered sender(s) for the purpose of sending commercial communication.

COAI Submission:

- a. The draft has defined commercial communication as any voice call or message using telecommunication services, where the primary purpose is to inform about or advertise or solicit business for goods/services, supplier/prospective supplier of offered goods/services, a business/investment opportunity or a provider/prospective provider of such an opportunity.
- b. Thus, by going with the definition of commercial communication, the Regulation 10 has failed to acknowledge that such communication can happen through unregistered telemarketers who won't have any assigned headers. Operators have no control over such individuals/entities and the Regulation should not enforce the provision outlined in Regulation 10 at its present form as the regulation is not differentiating between the commercial communication happens through a registered telemarketers having assigned headers and un-registered telemarketers.



- c. In view the above, we request TRAI to amend the Regulation 10 as the operators can, at best, ensure that no unsolicited commercial communication take place through their network by the registered senders whom the header has been assigned by the operators.

4. Regulation 24:

In this draft, under regulation 24, TRAI has prescribed the Distributed Ledger mechanism for processing the complaints received by an operator.

COAI Submission:

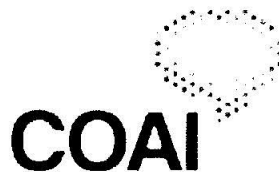
- a. In this regard, it is submitted that certain clause of regulation 24 mandates the operators to keep the records of details of complainant and the senders against whom complaint has been lodged for three years.
- b. We suggest that three years is a very long period to maintain the record of complainant and the sender against whom complaint has been lodged. There is no logical reason to maintain the complainant records for three years if that complainant has disconnected or ported out of the network of that operator. Also, once the operator has acted upon against a sender as per the regulations, mandating that operator to keep record of such sender for three years seems unnecessary.
- c. **Hence, we suggest that TRAI should reduce these record keeping timelines to one year instead of the proposed three years.**

5. Regulation 25:

Under the draft regulation 25, the operators are required to establish a complaint redressal mechanism to resolve the complaints made by the customers to take remedial action(s) against the sender(s) under various provisions of this regulation

COAI Submission:

- a. The said regulation 25 is prescribing a whole new complaint management system which will capture various parameters related to investigation, action required, action taken, history etc. In order to effectively comply with these requirements, the CRMs (both wireless & wireline), PACs and complaints received from other operators are required to be integrated with the prescribed DLT. This would require integration and framing of new IT architecture with specific set of rules and need major IT development.



- b. **Considering the substantial development and integration of various systems required in order to comply with the provisions of regulation 25, we request that adequate timeline should be given to the operators after they establish the DLT mechanism.**

6. Regulation 26:

The regulation 26 mandates the operators to maintain record keeping of the complaints on daily basis for each circle and also submit the PMR to TRAI as and when required.

COAI Submission:

- a. Implementation of the record keeping mechanism which will also generate the PMR as per TRAI requirement can be done once the requirements like CoP, IT readiness for DLT, registration of the senders, implementation of preference mechanism and complaint redressal mechanism gets implemented.
- b. **Thus, we request the Authority to prescribe the format for reporting and seek the PMR under this regulation after three months from the date the TSPs implement all the functions as required under various regulations.**

7. Regulation 34:

The Regulation 34 of the draft Regulations states that it is the responsibility of the Access Service Providers to ensure that all the devices registered on their network shall support all the permissions required for the functioning of Apps as prescribed in regulations 6(2)(e) and 23(2)(d).

Also, Authority may order or direct the access service providers to derecognize from its telecom networks such devices that do not permit functioning of such apps as prescribed under these regulations.

COAI Submission:

- a. The above mentioned regulation of TRAI is putting onus on the TSPs to ensure that the apps should function as per the requirement of TRAI regulations on all the devices registered on the network of the TSPs.



- b. In this regard, we would like to submit that the role of a TSP is to provide telecom services (Voice, SMS and Data) to a subscriber through a SIM after following the verification norms. Operators are the network providers which any subscriber can use through a SIM whereas the devices (handsets) depend on the customer's preferences.
- c. The draft Regulation assumes that TSPs will not only have access to the application layer on the devices, but in fact, be able to do so device-by-device basis for nearly a billion consumers using multiple types of devices on multiple platforms using hundreds of applications. Clearly, neither are the TSPs in a position to make such determination, nor do they have resources to start selecting individual consumers and devices for derecognizing the same, in case they are in violation of the said draft Regulation. A TSP can only manage and/or control the services at network layer and application layer is totally independent from the TSP's network. A TSP has no control on the Apps (mostly OTT) which a customer is using on its handset. Hence the TSPs cannot take the responsibility of ensuring that all the devices registered on their network shall support the permissions required for the functioning of Apps as prescribed in regulations.
- d. TSPs can only take responsibility of something which lies on their network and cannot take responsibility of elements outside their network. Thus the implementation of such a draft Regulation by TSPs is void ab initio, purely from its practical enforceability itself. TRAI should find an alternate means to meet its policy objectives than the one that it is pursuing in the said draft Regulation.
- e. Also, some of our members who are device manufacturers are of the view that TRAI cannot prescribe such provisions in its regulations wherein they try to regulate device manufacturers by way of imposing provisions on the TSPs, as it is a settled law that what cannot be done directly, cannot also be done indirectly.
- f. A Standards Based approach should be adopted in this matter and standards body like TEC or BIS should prescribe the required standards for devices.
- g. **In view of the above, we request the Authority to kindly remove/modify the Regulation 34 in a manner which doesn't mandate the TSPs to ensure the functionality of the Apps on the devices registered in their networks.**

8. Schedule-IV:

TRAI has proposed a schedule-IV which mandates the operators to establish a detection mechanism for UCC while preparing the COP. This schedule has also outlined various



activities required to curb the UCC by establishing an intelligence system which will detect UCC i.e. deploying honeypots.

COAI Submission:

- a. We understand that honeypots, which are dummy numbers but have characteristics of actual working numbers, have to be created by the Access Providers in their network.
- b. There is likelihood that messages or calls from Unregistered Telemarketers (UTM's) may land on honeypots and data collected by honeypots can be used for identifying UTMs and taking appropriate actions. Being a huge manual activity, it will be cumbersome and time taking to go through the recording of such calls and would not be effective in addressing unregistered telemarketing activity.
- c. However, we are of the view that it should be left to the TSPs to adopt any functions and processes to detect sender(s) who are sending UCC in bulk and not complying with the Regulations. Thus, it should not be mandatory for the TSP's to adopt the honeypot solution.
- d. Also, in case the TSPs use the honeypot solution than only new numbers should be used for the same i.e. no recycled number should be used in honeypot, as it may be possible to get solicited communication on such numbers.



Annexure - 1

Clarity required on various provisions

The draft regulation is complex and there are many provisions which need ample clarity, for us to give clear comments to the same. Many of such areas requiring clarifications are given as follows:

- a) **Inferred consent**: We require clarity as to in which scenarios it is applicable & how it is to be defined which can get practically implementable. It is critical to have a clear definition along with samples. The present definition provided is subjective and is liable to exploitation by TMs, as is the case with consent today.
- b) **Content Templates**: It is not practical to build content templates for all messages, even for promotional messages for non-DND. Content templates should only be applicable for transactional messages in certain defined industries/use cases. Need to know clearly as to in which cases content template is needed.
- c) Also approval of consent templates by end recipient at the time of registering consent is not possible [Schedule-I, 4.(2)(b)], because under each header there could be several forms of transactional messages – e.g. For an Airline company, flight details, delay information, list of prohibited items on board, information to reach airport at designated time etc. → Today ALL these items go as different service/transactional sms to any customer for a single flight. If we assume ticket booking as inferred consent, as per current draft we will have to inform the customer of each of these! (this 'informing' process may be viewed as more spam!)
- d) How will migration work?
- e) If prefix & suffix is required in each SMS [Schedule-I,6.(1)], we see minimum 65-100 characters of available 140 characters being used in this itself. Unviable for:
 - Senders as it will leave no space for actual message content
 - Senders as it will automatically double their cost if it is sent as 2 or more messages
 - Receivers of basic handsets where long messages / more than 140 characters appears broken/incomplete.
- f) The regulation does not specify any basis to identify the usage of Telephone number harvesting software. Request clarity.
- g) Clarity on provisions related to Silent/Missed calls



- h) There are lakhs of SMS headers allotted/registered with TSPs systems. How is consent and migration being planned without disruption and inconvenience to consumers.
- i) How the Header registration for these lakhs of headers and huge number of entities, proposed to be carried out? It will be a mammoth task considering documents pre-check sought, which are clearly manual steps. Clear on-boarding steps not prescribed in the draft regulation.
- j) Further, check of well-known brands etc. has been sought during header registration. It is unclear as to how this is to be done considering there is no list of well-known brands and their holding entities, available with TSPs.
- k) Various regulations in the draft regulation have ambiguity in timelines and are contrary like regulation 11 and 12, regulation 10 and 8 etc.
- l) The draft Regulation proposes that TSPs to submit Code of Practice to TRAI. Also, TRAI can provide changes if required in a TSPs CoP as well as can prescribe standard CoP in case a TSP does not submit a CoP. Further, TRAI proposes provisions for imposition of financial disincentive in case CoP is not followed. After having ensured a CoP from TSPs as per TRAI's regulation and compliance to its provisions, it is improper and not tenable, to have provisions of financial disincentive on TSPs for UCC. It clearly shows that even TRAI is not sure that the proposed regulation and CoPs formed under it, would be able to stop UCC.
- m) The complaint handling mechanism stipulates that the complaints should be shared by TAP with OAPs on a real time basis. It is not clear as to how this will be possible considering the check of OAP can be done only after availability of CDRs, which happens after a considerable time lag.
- n) **Two-way / Interactive Messaging** – This feature is enabled under the existing TCCCPR framework based on execution of a standard form agreement (Schedule VII). The Draft Regulations should provide clarity on this issue by permitting two-way messaging for transactional message sending entities. We also request that the TRAI provide clarity in relation to existing allocated headers under Schedule VII (such as 5-level short codes) and whether the same will be retained under the new system proposed under the draft Regulations. Two-way messaging is critical requirement to enable interactive messaging based services and an enabling provision must be retained for the business continuity.