

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan
Jawaharlal Nehru Marg, Next to Zakir Hussain College
New Delhi – 110 002

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Dated the 10th July, 2013

DIRECTION

Subject: Amendment to Direction F.No.305-15/2011-QoS dated the 4th July, 2011 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 to 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, 1997), 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, vide Direction F.NO. 305-15/2011-QOS dated the 4th July, 2011, directed 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 the said 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.

3. And whereas subsequent to the issue of the said Direction, the Authority received representations from the associations of service providers such as Cellular Operators Association of India (COAI), Association of Unified Telecom Service Providers of India (AUSPI) and from access service providers that the provisions of the said Direction, which make it obligatory for the service provider to 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 discontinue such value added service if no confirmation is received from the consumer, would significantly harm and slow down the growth of value added services;

4. And whereas the Authority received complaints from consumers alleging that value added services are being activated on their mobile phone without their explicit consent and on examination of such complaints, the Authority noted that-

(a) value added services were activated by the service provider, without the explicit consent of the consumer, when the consumer was browsing internet on his mobile and he did not get opportunity to know the terms and conditions of such value added services; and

(b) the service providers are sending messages through USSD, offering value added service to the consumer and in some cases “no response” from the consumer is being treated as consent of the consumer to subscribe to value added service and such offer and activation of value added service is against the interest of the consumers and contrary to the provisions of the direction dated the 4th July, 2011 of the Authority;

5. And whereas the Department of Telecommunications has allotted common short code 155223 for unsubscription of value added service and the Authority noted that some service providers have not implemented this code and are following different procedures for un-subscription of value added services;

6. And whereas the Authority is of the view that there should be a uniform process for un-subscription of value added services on toll free short code 155223 so as to protect the interest of consumers;

7. And whereas the Authority is further of the view that in order to protect the interest of the consumer it needs to be ensured that explicit consent of the consumer is obtained by the service provider for activating and renewing the value added services but at the same time, the growth of value added services in the telecom sector should not be hampered and therefore, in order to address the apprehensions expressed by the said service providers and their associations, as referred to in the preceding paragraph, the Authority has decided to specify, in addition to the

procedural requirements as specified in para 9(i) of its said Direction F.NO. 305-15/2011-QOS dated the 4th July, 2011, an alternative procedure which would obviate the need for subsequent confirmation through consumer originated SMS or e-mail or FAX or in writing within twenty four hours of activation of the value added service and also protect the interest of the consumers against unintended or accidental activation of value added services;

8. 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 the paragraphs 3 to 7 above, and to ensure compliance of terms and conditions of licence and to protect the interest of consumers, hereby makes the following amendment to its Direction F.No. 305-15/2011-QOS dated the 4th July, 2011, namely:-

(1). In para 9----

(a) in sub-para (i), at the end, the following proviso shall be inserted, namely:-----

“Provided that nothing contained in this clause (i) shall apply if, ----

(a) the value added service is activated after obtaining a confirmation through a consumer originated SMS as specified in Annexure-1; or

(b) the explicit consent for activation of value added service is obtained by following the double confirmation process as specified in Annexure-2 to this Direction and such double confirmation process shall also be applicable for value added services offered through SMS or any other electronic means including USSD, Flash message, IVR using telephone connection except through WAP or mobile internet”.

(b) the sub-para (ii) shall be deleted.

(c) after sub-para (iii), the following sub-paras shall be inserted, namely:-

“(iv) in case the value added service is offered by the service provider through WAP or mobile internet, the explicit consent of the consumer, before activation of such value added service, is obtained in the manner specified in Annexure-3;

(v) in case the value added service is offered through USSD or flash message, the time given to the consumer for responding to USSD or flash message, as the case may be, shall not be more than ten seconds and in case no response is received from the consumer within ten seconds, the same shall be treated as non-acceptance by the consumer the offer of value added service made by the service provider;

(vi) only the toll free common short code 155223, allotted by the Department of Telecommunications, is used for receiving the requests of consumers for deactivation of value added services activated on their telephone and such deactivation is done in the manner specified in Annexure-4;

(vii) the consumer is informed about the toll free short code 155223 for unsubscribing the value added service and also about the process of unsubscription specified in Annexure-4, through advertisements published in English and regional language newspapers covering all cities and towns of the service area of the service provider, and also through website and SMS, and the publication of such advertisements and sending of such SMS is repeated every six months;

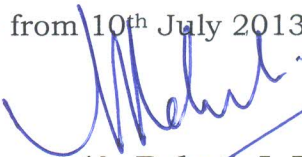
(viii) twenty four hours before the due date of renewal of a value added service, the consumer is informed, through SMS and Out Bound Dialer call or tele-calling, the due date of renewal of value added service, the charges for such renewal and toll free common short code 155223 for unsubscribing the value added service;

(ix) a report, for the preceding month, containing---

- (a) the number of mobile connections on which the value added services were activated;
- (b) the total number of complaints received, relating to value added services;
- (c) the total number of consumers from whom complaints, alleging activation of value added services without explicit consent, were received;
- (d) the number of consumers from whom complaints were received, within twenty four hours of activation of value added service, alleging that they have not requested for activation of the value added services; and
- (e) the number of consumers, out of the total number of complaints received alleging activation of the value added service without the explicit consent, to whom the refund was made, ---

is submitted to the Authority by the 15th day of every month.”

9. This amendment Direction shall come into force from 10th July 2013.


(A. Robert J. Ravi)
Advisor (CA&QOS)
10/7

To

All Access Service Providers,
Bharat Sanchar Nigam Ltd.
Mahanagar Telephone Nigam Ltd.

Process for activation of the value added service after confirmation through consumer originated SMS

For, -----

(a) service provider originated voice or non-voice message and USSD offering value added service; and

(b) consumer originated voice or non-voice message and USSD to a short code:

Step – 1. the offer of the service provider shall contain the details of value added service and the charges thereof and in case of call or SMS or USSD from the consumer for value added service, the service provider shall inform the consumer the details of the value added service and applicable charges;

Step – 2. if the consumer gives his consent to subscribe the value added service after step 1, the consumer is informed through SMS about the value added service requested, the charges thereof and he is asked to confirm the request within sixty minutes by sending 'yes' to the specified number;

Step – 3. if no confirmation is received from the consumer, the request of the consumer shall not be processed;

Step – 4. if the consumer confirms his request, the value added service platform/subscription engine of the service provider activates the value added service on the mobile number of the consumer and the consent logs are stored in the system in an uneditable format;

Step –5. the subscription of the value added service is again acknowledged through Short Message Service (SMS) immediately after activation of the service, indicating therein the charges and details of the value added

service such as name of the value added service, monthly fixed charge, content download charge and its recurring charge, validity period of the value added service activated, toll free short code 155223 for unsubscribing the value added service; and

Step – 6. if the consumer informs the service provider that he has not given his consent for the value added service and requests for its deactivation,

(a) in case of value added service which is charged on per day basis, if the request for deactivation is made by consumer within six hours of activation; and

(b) in case of value added service which is charged other than per day basis, the request for deactivation is made by the consumer within twenty four hours of activation,

the entire amount deducted by the service provider for the value added service shall be refunded.

Process for obtaining explicit consent of the consumer for activation of the value added service.

A. For service provider originated voice or non-voice messages offering value added services and consumer originated call or USSD to a short code for value added services:

Step – 1. the offer of the service provider shall contain the details of value added service and the charges thereof and in case of call or USSD from the consumer for value added service, the service provider shall inform the consumer the details of the value added service and applicable charges;

Step – 2. if the consumer gives his consent to subscribe the value added service after step 1, he shall be led to the platform hosted by the service provider and asked to select the content;

Step – 3. the consumer gives his first consent by pressing the relevant key on the platform of the service provider;

Step – 4. the consent of the consumer is forwarded to the “Consent Gateway” set up by the service provider and managed by a third party;

Step – 5. the “Consent Gateway” shall seek the second consent of the consumer;

Step – 6. the consumer gives his consent by pressing the relevant key, and the consent logs are stored in the system in an uneditable format;

Step – 7. the “Consent Gateway” shall forward the consent of the consumer to the value added service platform/subscription engine of the service provider;

Step – 8. the value added service platform/subscription engine of the service provider confirms the subscription of the value added service on the mobile number and activates the value added service;

Step -9. the subscription of the value added service is again acknowledged through Short Message Service (SMS) immediately after activation of the service, indicating therein the charges and details of the value added service such as name of the value added service, monthly fixed charge, content download charge and its recurring charge, validity period of the value added service activated, toll free short code 155223 for unsubscribing the value added service; and

Step - 10. if the consumer informs the service provider that he has not given his consent for the value added service and requests for its deactivation,

(a) in case of value added service which is charged on per day basis, if the request for deactivation is made by consumer within six hours of activation; and

(b) in case of value added service which is charged other than per day basis, the request for deactivation is made by the consumer within twenty four hours of activation,

the entire amount deducted by the service provider for the value added service shall be refunded.

B. Consumer originated SMS:

For Consumer originated SMS for value added service:

Step - 1. When SMS from the consumer for a value added service reaches the platform of the service provider, the consumer is informed through SMS the details of the value added service, the charges thereof and he is asked to confirm the request within sixty minutes by sending 'yes' to a specified number;

Step - 2. if no confirmation is received from the consumer, the request of the consumer shall not be processed;

Step - 3. if the consumer confirms his request, the "Consent Gateway" shall forward the consent of the consumer to the value added service

platform/subscription engine of the service provider and the consent logs are stored in the system in an uneditable format;

Step – 4. the value added service platform/subscription engine of the service provider activates the value added service on the mobile number of the consumer;

Step –5. the subscription of the value added service is again acknowledged through Short Message Service (SMS) immediately after activation of the service, indicating therein the charges and details of the value added service such as name of the value added service, monthly fixed charge, content download charge and its recurring charge, validity period of the value added service activated, toll free short code 155223 for unsubscribing the value added service; and

Step – 6. if the consumer informs the service provider that he has not given his consent for the value added service and requests for its deactivation,

(c) in case of value added service which is charged on per day basis, if the request for deactivation is made by consumer within six hours of activation; and

(d) in case of value added service which is charged other than per day basis, the request for deactivation is made by the consumer within twenty four hours of activation,

the entire amount deducted by the service provider for the value added service shall be refunded.



Procedure for obtaining the explicit consent of the consumer for activation of value added service offered through WAP or mobile Internet.

Step – 1. after the consumer has clicked the relevant web-link of the service provider offering the value added service, he shall be directed to a new page on the platform of the service provider where the details of the value added service including charges thereof shall be provided to him;

Step – 2. the consumer shall be given an option to accept or reject the offer and if the consumer accepts the offer he shall be directed to a new page at the “Consent Gateway”, set up by the service provider and managed by a third party, which shall record and reconfirm to the consumer his consent for subscribing to the value added service;

Step – 3. if no confirmation is received from the consumer, the request of the consumer shall not be processed;

Step – 4. the consent of the consumer is forwarded by the “Consent Gateway” to the value added service platform/subscription engine of the service provider and all consent logs are stored in the system in an uneditable format;

Step – 5. the value added service platform/subscription engine of the service provider confirms the subscription of the value added service on the mobile number and activates the value added service;

Step –6. the subscription of the value added service is again acknowledged through Short Message Service (SMS) immediately after activation of the service, indicating therein the charges and details of the value added service such as name of the value added service, monthly fixed charge, content download charge and its recurring charge, validity period of the



