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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 03 August, 2012

THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER
PREFERENCE (TENTH AMENDMENT) REGULATIONS, 2012
(-- OF 2012)

No. 311-13/2012-QoS(SP)- In exercise of powers conferred by section 36, read with sub-clause (v) of clause (b) 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 to further amend the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010), namely:-

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012.

(2) They shall come into force from the date of their publication in the official Gazette.

2. In regulation 3 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010), (hereinafter referred to as the principal regulations), in sub-regulation (4), for the second proviso, the following proviso shall be substituted, namely:-

“Provided further that Access Providers shall, at the time of providing a telephone connection, whether Basic or Cellular Mobile Telephone, to a new subscriber, other than a telemarketer registered with the Authority, provide in the Customer Acquisition Form the details of Customer Preference Registration facility and obtain from such subscriber an undertaking that the SIM purchased by him shall not be used for telemarketing and in case such SIM is used for telemarketing, he shall be liable to pay such charges as may be decided by the Authority and the telecom

resources used for the purpose of telemarketing shall also be liable to be disconnected.”

3. In regulation 19 of the principal regulations, for sub-regulation (11), the following sub-regulation shall be substituted, namely:-

“(11) If the Originating Access Provider to whom a complaint has been forwarded under sub-regulation (6) finds that----

(i) the unsolicited commercial communication has been sent through voice call and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-

(a) direct the subscriber to forthwith discontinue the sending of unsolicited commercial communications, and if such subscriber sends a commercial communication through voice call to any subscriber on the second occasion, charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through voice call to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber;

(b) deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;

(c) not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and

(d) update the action taken by it in the National Telemarketer Register; or

(ii) the unsolicited commercial communication has been sent through SMS and the subscriber sending such SMS is not registered with the Authority as a telemarketer, it shall-

(a) charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through SMS to any subscriber on the second occasion, disconnect all the telecom resources of such subscriber;

(b) deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;

(c) not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and

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

4. In sub-regulation (2) of regulation 20 of the principal regulations, after clause (l), the following clauses shall be inserted, namely:-

“(m) every Access Provider shall, within thirty days of coming into force of these regulations, send SMS to its subscribers advising them not to send any commercial communications if they are not registered with the Authority as telemarketer and in case he sends a commercial communication, he shall be liable to pay five hundred rupees for such commercial communication and his telecom resources shall also be liable to be disconnected:

Provided that a second such SMS shall be sent within seven days of sending the SMS and such SMS shall be sent to the customer every six months thereafter.”

5. In Schedule-V to the principal regulations, in para (13) of the agreement, after the words “from NTR”, the words “or by TRAI” shall be inserted.

6. In Schedule-VI to the principal regulations, for para 4, the following para shall be substituted, namely:-

“4. A customer may register unsolicited commercial

communications related complaint by sending SMS to 1909 in the format given below-

“short description of Unsolicited Commercial Communication; XXXXXXXXXXXX; date in dd/mm/yy.”

Where XXXXXXXXXXXX- is the telephone number or header of the SMS, as the case may be, from which the unsolicited commercial communication has originated.”

Explanation: For the purpose of lodging a complaint regarding receipt of Unsolicited Commercial SMS, ‘short description of Unsolicited Commercial Communication’ means forwarding of such SMS by appending the telephone number or header of the SMS, as the case may be, from which the unsolicited commercial communication has originated and date of receipt of such SMS to 1909.”

(Rajeev Agrawal)
SECRETARY

Note 1: The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification No. 305-17/2010-QoS dated 1st December, 2010.

Note 2: The principal regulations were amended vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14th December, 2010.

Note 3: The principal regulations were further amended (second amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28th December, 2010.

Note 4: The principal regulations were further amended (third amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 31st January, 2011.

Note 5: The principal regulations were further amended (fourth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28th February, 2011.

Note 6: The principal regulations were further amended (fifth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 18th March, 2011.

Note 7: The principal regulations were further amended (Sixth amendment) vide notification No. 352-4/2011-CA (QoS) Pt. and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 05th September, 2011.

Note 8: The principal regulations were further amended (Seventh amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 25th October, 2011.

Note 9: The principal regulations were further amended (Eighth amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 1st November, 2011.

Note 10: The principal regulations were further amended (Ninth amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14th May, 2012.

Note11: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012 (of 2012).

EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India made the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) dated the 1st December, 2010 to provide an effective mechanism for curbing unsolicited commercial communications. All the provisions of regulations came into force from 27th September 2011.
2. As per the provisions of current regulations, Access Providers are required to upload the UCC complaints and action taken on such complaints on TCCCP portal www.nccptrai.gov.in, on regular basis. From the data available on TCCCP portal it is seen that most of the complaints lodged by consumers were against numbers originated from subscribers who have not registered themselves with the Authority as a telemarketer. Hence, in order to further strengthen the prevailing regulatory framework to address the problem of subscribers doing telemarketing activities using normal telephone connections, the Authority felt it necessary to create a deterrent for such subscribers. Accordingly, regulation 3 and regulations 19 of the principal regulations have been amended to provide for a charge of rupees five hundred from such subscriber and disconnection of telecom connection of such subscriber. Further, the service provider will not provide any telephone connection to such subscriber for a period of one year.
3. The principal regulations provide that no subscriber, who is not registered with TRAI as a telemarketer shall make any commercial communications. After the implementation of regulations, representations were received from consumers that they are not aware of such provision of regulation till they receive notice from the service provider. Accordingly, to increase consumer awareness and also to warn subscribers

against such activities, Access Providers have been mandated to send SMS to their subscribers on periodic basis advising them not to send any commercial communications if they are not registered with the Authority as a telemarketer and that sending of commercial communication shall result in levy of penal charges and disconnection of telecom resources. The first such SMS blast shall be made within 30 days of coming into force of these regulations. Such SMS blast should be repeated after one week. Also the service providers have to undertake such periodic SMS blast after every six months.

4. As per the current provisions of regulations, customers registered on NCPR may lodge a complaint regarding receipt of unsolicited commercial communications though call or SMS on 1909. For complaint through SMS, customer has to send SMS "COMP TEL NO XXXXXXXXXXXX; dd/mm/yy; Time in hh:mm; short description of Unsolicited Commercial Communication" to 1909, where XXXXXXXXXXXX - is the telephone number or header of the SMS, from which the UCC has originated. However, representations were received from consumers that the process of complaint lodging is time consuming and needs to be simplified. The Authority considered the representations and accordingly amended the regulation. For easy lodging of a complaint regarding receipt of Unsolicited Commercial SMS, provision has been made for forwarding of such SMS by appending the telephone number or header of the SMS, as the case may be, from which the unsolicited commercial communication has originated and date of receipt of such SMS to 1909.