

TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY,
PART III, SECTION 4
TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the – 25th October, 2011

THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER
PREFERENCE (SEVENTH AMENDMENT) REGULATIONS, 2011
(6 OF 2011)

No.352-4/2011-CA (QoS)- In exercise of powers conferred by section 36 read with sub-clauses (v) of clause (b) of sub-section (1) of section 11 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:-

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Seventh Amendment) Regulations, 2011.

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

2. In regulation 2 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010) (hereinafter

referred to as the principal regulations) after the clause (t), the following clause shall be inserted, namely:-

“(ta) “promotional SMS charge” means the charge payable by an Originating Access Provider to the Terminating Access Provider for each promotional SMS sent by a registered telemarketer from the network of the Originating Access Provider to the network of the Terminating Access Provider.”

3. After regulation 16 of the principal regulations, the following regulation shall be inserted, namely:-

“16A. **Communication of Transactional Message.**-Every Transactional message originated by an entity shall be sent directly by such entity or through a registered telemarketer.”

4. In regulation 17 of the principal regulations, ----

(a) for sub-regulation (4), the following sub-regulation shall be substituted, namely:-

“(4) Before providing any telecom resource to an entity or a telemarketer for the purpose of sending Transactional message, every Access Provider shall, 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 as specified in Schedule-V to these regulations.

Provided that nothing contained in this sub-regulation shall apply to the Access Provider for the purpose of sending Transactional messages to its employees using its own network.”

5. In sub-regulation (2) of regulation 20 of the principal regulations, ----

(a) for clause (k), the following clause shall be substituted, namely:-

“(k) no Access Provider shall provide to any person, other than a telemarketer or an entity sending transactional message, 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’ means the days on which free or concessional calls or SMS are not applicable.”

- (b) After second proviso to clause (ka), the following proviso shall be inserted, namely:-

“Provided also that the limit of one hundred SMS per day per SIM shall not apply to a telemarketer or entity sending transactional messages;”

- 6.** After regulation 20 of the principal regulations, the following regulation shall be inserted, namely:----

“ 20A. Promotional SMS charge.- (1) The promotional SMS charge shall be Re. 0.05 (five paisa only).

(2) The Originating Access provider may collect the promotional SMS charge from the registered telemarketer.”

- 7.** In Schedule-V to the principal regulations ---

(a) in heading after the words “Access Provider and” and before the words “Transactional message”, the words “telemarketer or” shall be inserted;

(b) for the clause (1) of the agreement following clause shall be substituted, namely:-

“(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 _____(applicable in case of telemarketer).”

8. In Schedule-VI to the principal regulations ---

(a) 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-

“COMP TEL NO XXXXXXXXXXXX;dd/mm/yy;Time in hh:mm; short description of Unsolicited Commercial Communication.”

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

(R. K. Arnold)

SECRETARY

Note1: 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 Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Seventh Amendment) Regulations, 2011 (6 of 2011).

Explanatory Memorandum

1. The Telecom Regulatory Authority of India made the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) (hereinafter referred to as the principal regulations) dated the 1st December, 2010 to provide an effective mechanism for curbing unsolicited commercial communications.
2. The principal regulations provide a framework for sending of transactional messages, wherein an entity can only send a Transactional message through a telemarketer registered with TRAI. TRAI received several representations from customers and other organizations stating that Transactional messages are generally informative in nature and, therefore, the provisions of the principal regulations permitting the sending of Transactional messages only through registered telemarketers may be amended so as to allow such entities to send the Transactional messages directly without registering as a telemarketer. The Authority has considered these representations and has amended the principal regulations accordingly, by inserting regulation 16A in the principal regulations. However, to ensure that sending of Transactional messages by such entities is effectively regulated, the Authority has decided to amend sub-regulation (4) of regulation 17 of the principal regulations making it mandatory for the Transactional message sending entity to enter into an agreement with the Access Provider, as specified in Schedule -V of the principal

regulations, for obtaining the telecom resources for the said purpose.

3. The Authority has also made amendments in clause (k) of sub-regulation (2) of regulation 20 of the principal regulations by inserting the words, “ or an entity sending transactional message”, thus permitting the Access Provider to provide to such entity any SMS package or tariff plan permitting sending more than 100 SMS per day per SIM.
4. Clause (ka) of sub-regulation (2) of regulation 20 of the principal regulations provides that no Access Provider shall permit sending of more than one hundred SMS per day per SIM. As the requirement of telemarketer and the entity sending the Transactional message is more than the limit of one hundred SMS per day per SIM provided under said clause (ka), the Authority has decided to add a proviso to the said clause thereby exempting the telemarketer and the entity sending the Transactional message from the said limit.
5. Representations were also received from some service providers requesting the Authority to permit them to send Transactional messages directly to their employees through their own network and resources. Accordingly, a proviso has been added to sub-regulation (4) of regulation 17 of the principal regulations.
6. The principal regulation had prescribed a format for lodging a complaint of Unsolicited Commercial Communications (UCC) by sending an SMS. This format of SMS should

contain telephone number from which the UCC was received, date of the call or SMS and time of call or SMS. However, it has come to the notice of the Authority that to ascertain that the complaint is regarding a UCC, the Access Provider needs to know the content of the message. To resolve the issue and to streamline the lodging and redressal of the complaint, the Authority has decided to add a brief description of UCC into the SMS format specified in schedule VI.

7. During the consultation process, relating to the principal regulations, several stakeholders expressed a view that imposition of a termination charge on commercial SMSs would be an effective deterrent to the sending of promotional SMSs. The Authority, at the time of issuing the principal regulations, felt that imposition of a termination charge was in the realm of Interconnect Usage charge (IUC). During the consultation process on IUC, while there was wide support for imposing a charge to deal with the menace of unsolicited commercial communications, particularly SMSs, an alternative view was that imposition of termination charge has to be cost based. The Authority found that promotional SMSs are being sent largely by the telemarketers. In order to deter private persons from sending the promotional SMS, the Authority has already imposed the limit of 100 SMS per SIM per day. But in case of telemarketers, there is a tendency to dump the promotional SMSs, resulting in inconvenience to consumers as well as networks.

8. After careful consideration of the above factors, the Authority felt the need to impose a promotional SMS charge. Accordingly a provision has been made for promotional SMS charge of Re 0.05 sent by registered telemarketer.