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PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

**NOTIFICATION**

New Delhi, the 03<sup>rd</sup> December, 2013

**No.311-28/2013-QoS-** 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:-

**THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER  
PREFERENCE (FOURTEENTH AMENDMENT) REGULATIONS, 2013  
(15 OF 2013)**

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Fourteenth Amendment) Regulations, 2013.
- (2) (a) Except as otherwise provided in clause (b), these regulations shall come into force from the date of their publication in the official Gazette.
- (b) Regulation 4, regulation 5 and regulation 6 of these regulations shall come into force after thirty days from the date of their publication in the official Gazette.

2. In regulation 14 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (hereinafter referred to as the principal regulations),

(a) in sub-regulation (3), for the word “three” the word “five” shall be substituted;

(b) after sub-regulation (3), the following sub-regulation shall be inserted namely : -

“(4) A telemarketer registered with the Authority may, sixty days before to the expiry of its registration, submit an application to the Authority, along with the specified fee, for renewal of its registration on the same terms and conditions.”

3. In regulation 20 of the principal regulations, in sub-regulation 2,---

(a) in clause (a), the following *proviso* shall be inserted namely : -

“*Provided that*, the Authority may, from time to time, amend the provisions of the agreement specified in Schedule-IV and every agreement entered into between the access provider and telemarketer shall be modified accordingly, within fifteen days of such amendment”;

(b) in clause (b), the following *proviso* shall be inserted namely : -

“*Provided that*, the Authority may, from time to time, amend the provisions of the agreement specified in Schedule-V and every agreement entered into between the access provider and transactional message sending entity shall be modified accordingly, within fifteen days of such amendment”;

4. In Schedule-III to the principal regulations,---

(a) for clause 6 the following clause shall be substituted, namely:-

“6. All new telemarketers shall pay Rupees Five Thousand only (Rs. 5000/- ) as Registration fee. Existing telemarketers, renewing their registration as per regulation 14, shall pay Rupees Five Thousand only (Rs. 5000/- ) as fee for renewal of their registration”;

(b) for clause 7 the following clause shall be substituted, namely:-

“7. Telemarketers registered with the TERM Cell of Department of Telecommunications shall apply afresh for new registration as per the procedure in the Schedule.”

(c) in clause 8, after the words “registration fee” and before the word “by”, the words “and customer education fee”, shall be deleted.

(d) for clause 9 the following clause shall be substituted, namely:-

“9. Full registration fee has to be deposited by the telemarketer and no part payment shall be accepted.”

(e) in sub-clause (a) of clause 10, after the bracket and words “(registration fee” and before the bracket and word “) by”, the words “and customer education fee”, shall be deleted.

(f) clause 18 shall be deleted.

(g) clause 19 shall be renumbered as clause 18.

(h) clause 20 shall be renumbered as clause 19.

(i) clause 21 shall be renumbered as clause 20.

(j) clause 22 shall be renumbered as clause 21.

(k) clause 23 shall be renumbered as clause 22.

(l) clause 24 shall be renumbered as clause 23.

5. In Schedule-IV to the principal regulations,----

(a) in clause 9, for the words, letters, figures and brackets “rupees one lakh only (Rs. 1,00,000/-)”, the words, letters, figures and brackets “rupees fifty thousand only (Rs. 50,000/-)” shall be substituted.

(b) for clause 11, the following clause shall be substituted, namely:-

“(11) The second party has agreed that on issue of first notice by the Access Provider to the second party for sending unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register, the second party shall deposit additional security amount of rupees one lakh only (Rs.1,00,000/-). The second party has also agreed that on issue of second notice by the Access Provider to the telemarketer for sending similar unsolicited commercial communication, the second party shall deposit additional security amount of rupees one lakh fifty thousand only (Rs. 1,50,000/-) and on issue of third notice by the Access Provider to the telemarketer for sending similar unsolicited commercial communication, the second party shall deposit an additional security of amount of rupees four lakh only (Rs. 4,00,000/-).”

6. In Schedule-V to the principal regulations,----

(a) in clause 8, for the words, letters, figures and brackets “rupees one lakh only (Rs. 1,00,000/-)”, the words, letters, figures and brackets “rupees fifty thousand only (Rs. 50,000/-)” shall be substituted.

(b) for clause 10, the following clause shall be substituted, namely:-

“(10) The second party has agreed that on issue of first notice by the Access Provider to the second party for sending unsolicited commercial communication to the subscriber whose telephone number appears in the

National Customer Preference Register, the second party shall deposit additional security amount of rupees one lakh only (Rs. 1,00,000/-). The second party has also agreed that on issue of second notice by the Access Provider to the second party for sending similar unsolicited commercial communication, the second party shall deposit additional security amount of rupees one lakh fifty thousand only (Rs. 1,50,000/-) and on issue of third notice by the Access Provider to the second party for sending similar unsolicited commercial communication, the second party shall deposit an additional security of amount of rupees four lakh only (Rs. 4,00,000/-).”

(Rajeev Agrawal)

**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 1<sup>st</sup> 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 14<sup>th</sup> 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 28<sup>th</sup>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 31<sup>st</sup>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 28<sup>th</sup> 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 18<sup>th</sup> 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 05<sup>th</sup>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 25<sup>th</sup>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 1<sup>st</sup> 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 14<sup>th</sup> May, 2012.

Note11: The principal regulations were further amended (Tenth amendment) vide notification No. 311-13/2012-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 5<sup>th</sup> November, 2012.

Note12: The principal regulations were further amended (Eleventh Amendment) vide notification No. 311-23/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24<sup>rd</sup> May, 2013.

Note13: The principal regulations were further amended (Twelfth amendment) vide notification No. 311-23/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24<sup>rd</sup> May, 2013.

Note14: The principal regulations were further amended (Thirteenth amendment) vide notification No. 311-27/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 22<sup>nd</sup> August, 2013.

Note 15: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Fourteenth Amendment) Regulations, 2013 (15 of 2013) .

## **EXPLANATORY MEMORANDUM**

1. Telecom customers are aggrieved with Unsolicited Commercial Communications (UCCs) in the form of SMSs or voice calls to promote commercial activity for quite a long time. In 2009-10, TRAI reviewed the regulatory framework for controlling UCCs and, on 1<sup>st</sup> December 2010, issued “The Telecom Commercial Communications Customer Preference Regulations, 2010”. These regulations have provision for mandatory registration of telemarketers with TRAI after payment of a one-time fee of Rs 10,000/-. These regulations also provided that before taking the telecom resources from service provider, a telemarketer has to deposit initially an amount Rs. 1,00,000/- with service provider as security deposit.
  
2. The aforesaid provisions were made in the regulations with the aim that if all telemarketers registered themselves with the Authority and the consumers electing not to receive promotional commercial messages register themselves in NCPR, the menace of UCCs would be controlled. However, subsequent events proved otherwise. Though some did register as telemarketers, many others chose to continue operating as telemarketers without registering themselves as such. That is, most of those sending UCCs, operated beyond the pale of TRAI’s regulations; they obtained multiple SIMs as “normal subscribers” and made calls or sent out messages (SMSs) in bulk as UCCs to other telecom subscribers.
  
3. The UCC menace persisted leading consumers to complain about the number of UCCs being received. At various points of time, the Authority has responded to consumers’ concerns by intervening through Regulations and Directions to curb the problem. The significant measures taken includes *Stopping UCCs sent through international routes, [Providing a ceiling on the number of SMSs per SIM per*

*day,]Economic deterrent to sending more than 100 SMSs per SIM per day, Mandating signature verification of bulk SMSs, Enhancing consumer awareness and obtaining an undertaking from subscribers against sending commercial SMSs, Making it easy for consumers to file a complaint, Disconnection and blacklisting of subscribers who do telemarketing without registering themselves with TRAI etc.*

4. While the Authority's regulatory interventions have tempered the menace of UCCs, it has not altogether abated. The problem is that UCCs (SMSs or calls) from persons not registered as telemarketers continue to irritate and harass normal subscribers. Such individuals deliberately masquerade themselves as "normal subscribers" even though their primary purpose for obtaining telecom resources is for telemarketing activities.
5. The Authority has noticed with concern that a large number of complaints received from consumers pertain to calls or messages originated by or on behalf of banks, insurance companies, builders etc. who are promoting their business by engaging unregistered telemarketers in total disregard of the regulations made by the Authority. These organisations, being the principal are equally responsible for the non-compliance of the regulations and directions issued by the Authority to address the problem of UCC. Hence, in order to make these entities accountable, the Authority has decided to amend the regulations (13<sup>th</sup> Amendment) to provide for disconnection of all telecom resources of such organisations if they are found to be engaged in telemarketing through unregistered telemarketers.
6. Authority has noticed that after implementation of The Telecom Commercial Communications Customer Preference (Thirteenth



Amendment) Regulations, 2013 majority of complaints pertaining to entities such as banks, insurance, builders etc. are against those subscribers who were not registered as telemarketers and were making the UCC through their normal 10 digit mobile numbers. Authority has asked all the major erring banks to submit their action taken report in respect of complaint. In response, some of the major banks have submitted that there are small dealers/ agents, in their business model, who do not have much incentive to afford the initial security deposit of Rs. 1,00,000/- with service providers for working as a telemarketer. Although, banks assured that they have mandated the condition of registration as telemarketer with TRAI is compulsory for becoming the dealers/ agents of bank, however, they also requested to reduce the registration charges and initial security deposit for becoming a telemarketer to motivate and provide the opportunity to these small agents/ dealers to do the business in a legitimate manner.

7. Authority has also observed that one of the primary reason for non registering as telemarketer by such agents/ agencies is saving in cost of registration and initial security deposit. Therefore, Authority considered the request and is of the view that unsolicited commercial communication may be significantly reduced if majority of these unregistered callers are registered as telemarketer with TRAI and use the prescribed telemarketing resources for making the commercial calls/ SMS. Accordingly, to facilitate and to motivate these agencies/ agents to register themselves with TRAI, the Authority reviewed the registration period, registration fee and initial security deposit amount through these regulations.