

TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS REGULATIONS, 2007

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TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS REGULATIONS, 2007

No. 101-60/2006-MN.-In exercise of the powers conferred by section 36, 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), the Telecom Regulatory Authority of India hereby makes the following regulations, namely:-

CHAPTER 1

Preliminary

1. Short title and commencement :-

(1) These regulations may be called the Telecom Unsolicited Commercial Communications Regulations, 2007.

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

2. Definitions :-

In these regulations, unless the context otherwise requires,-

(a)"Act" means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(b)"Access Providers" includes the Basic Telephone Service Provider, Cellular Mobile Telephone Service Provider and Unified Access Service Provider;

(c) "Area code" means any number earmarked or allotted to a specific short distance charging area in the National Numbering Plan for accessing the telephone in such area;

(d) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Act;

(e) "Basic Telephone Service" covers collection, carriage, transmission and delivery of voice or non-voice messages over licensee's Public Switched Telephone Network in licensed service area and includes provision of all types of services except for those requiring a separate licence;

(f) "Basic Telephone Service provider" means a service provider who has been granted licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885) to establish, install, operate and

maintain Basic Telephone Service in the specified service area;

(g) "Cellular Mobile Telephone Service",--

(i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wireless telegraphy where every message that is conveyed thereby has been, or is to be, conveyed by means of a telecommunication system which is designed or adapted to be capable of being used while in motion;

(ii) refers to transmission of voice or non-voice messages over Licensee's Network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service;

(iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable;

(h) "Cellular Mobile Telephone Service Provider" means a licensee authorized to provide Cellular Mobile Telephone Service under a licence granted under section 4 of the Indian Telegraph Act, 1885 (13 of 1885), in a specified service area;

(i) "message" shall have the meaning assigned to it in clause (3) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);

(j) "National Do Not Call Register" means a data base or register, containing list of the telephone numbers of all subscribers who have opted not to receive unsolicited commercial communication;

(k) "National Numbering Plan" means the National Numbering Plan 2003 made by the Government of India, Ministry of Communication and Information Technology, Department of Telecommunications or any such plan subsequently made by it;

(l) "Private Do Not Call List" means a data base or register,-

(i) maintained by an Access Provider for its exclusive use and such database or register is not in public domain;

(ii) containing details of the telephone numbers and other details of all of its subscribers who had opted not to receive unsolicited commercial communication;

(m) "regulations" means the Telecom Unsolicited Commercial Communications Regulations, 2007;

(n) "sender" means the Telemarketer who initiates an unsolicited commercial communication;

(o) "subscriber" means any person or legal entity, who or which, subscribes to any service from the Access Provider;

(p) "Telemarketer" means any person who transmits any message, through telecommunications service, for the purpose of soliciting or promoting any commercial transaction in relation to goods, investments or services;

(q) "unsolicited commercial communication" means any message, through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investments or services which a subscriber opts not to receive, but does not include, ----

(i) any message (other than promotional message) relating to a service or financial transaction under a specific contract between the parties to such contract; or

(ii) any messages relating to charities, national campaigns or natural calamities transmitted on the directions of the Government or agencies authorized by it for the said purpose;

(iii) any message transmitted, on the directions of the Government or any authority or agency authorized by it, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(r) "Unified Access Services", --

(i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wired or wireless telegraphy;

(ii) refers to transmission of voice or non-voice messages over licensee's network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service;

(iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network

point of registration and approved numbering plan shall be applicable;

(s) "Unified Access Service Provider" means a licensee authorised to provide Unified Access Services under a licence granted under section 4 of the Indian Telegraph Act, 1885(13 of 1885), in a specified service area;

(t) all other words and expressions used in these regulations but not defined, and defined in the Indian Telegraph Act, 1885(13 of 1885) and the Telecom Regulatory Authority of India Act 1997 (24 of 1997) and the rules and other regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or such other regulations, as the case may be.

CHAPTER 2

DO NOT CALL LIST

3. Setting up of mechanism for registering request of subscribers for not receiving unsolicited calls :-

(1) Every Access Provider shall, within fifteen days from the date of establishment of the National Do Not Call Register under sub-regulation (1) of regulation 6, set up a Call Center or any such office or mechanism for the purpose of receiving the request of its subscribers for registration of their telephone number in the National Do Not Call Register.

(2) Every call center or any such mechanism set up under sub-regulation (1) shall earmark or allot or establish a specific basic telephone or cellular mobile telephone number having sufficient lines or connections of toll free nature for "customer care number" or "help line number" at every such call center or such mechanism for the purpose of registering the requests of its subscribers for not receiving unsolicited commercial communication and all such calls shall be treated as free calls.

(3) The Access Provider shall by appropriate means give due publicity of this mechanism.

4. Setting up the Private Do Not Call List :-

Every Access Provider shall, within fifteen days from the date of establishment of the National Do Not Call Register under sub-regulation (1) of regulation 6, maintain and operate for the purposes of these regulations, a list to be called a Private Do Not Call List in which the preference of its subscribers for not receiving

unsolicited commercial communication shall be entered in accordance with the provisions of these regulations.

5. Contents of the Private Do Not Call List :-

(1) Every Private Do Not Call List shall include, inter alia,-

(a) the name of each subscriber who makes a request to the Access Provider for not receiving the unsolicited commercial communication;

(b) telephone number and Area code of the subscriber referred to in clause (a) above;

(c) the date and time of making of request by the subscriber referred to in clause (a) above;

(d) the name of each subscriber who makes a request to the Access Provider for revocation of his earlier request for not receiving the unsolicited commercial communication ;

(e) telephone number with Area code of the subscriber referred to in clause (d) above;

(f) the date and time of making of request by the subscriber referred to in clause (d) above;

(g) details of the option referred to in sub-regulation (1) of regulation 11

(2) Every Access Provider shall maintain in duplicate the Private Do Not Call list at least at such two places as may be considered appropriate by it having regard to the security of the database or register.

6. Contents of the National Do Not Call Register :-

(1) The National Do Not Call Register shall be established and maintained by a person on the basis of Memorandum of Understanding (MOU) executed with the Authority and shall contain the particulars relating to,

(a) the telephone number and Area code of each subscriber who makes a request to the Access Provider for not receiving the unsolicited commercial communication and whose name and other particulars have been entered in the Private Do Not Call List under regulation 5;

(b) details of option included in such request as indicated in clause (g) of sub-regulation (1) of regulation 5;

(c) such other particulars as may be specified by the Authority.

(2) No particulars other than those referred to in sub-regulation (1), shall be entered in the National Do Not Call Register.

(3) The establishment of the National Do Not Call Register shall be appropriately publicized by the Authority including posting on its website (www.trai.gov.in) and shall not be later than three months from the date of commencement of these regulations.

CHAPTER 3

PROCEDURE FOR REGISTRATION OF REQUEST FOR NOT RECEIVING UNSOLICITED COMMERCIAL COMMUNICATION

7. Registration for not receiving unsolicited commercial communication :-

(1) Every existing subscriber and new subscriber may, immediately after establishment of call center or office or mechanism under sub-regulation (1) of regulation 3, make a request, through telephone or electronic means or through a letter to his Access Provider, for registration of his telephone number in the National Do Not Call Register.

(2) Every Access Provider shall, at the time of providing the telephone service, whether Basic Telephone or Cellular Mobile Telephone Service, to a new subscriber, give him an option for registration of his telephone number in the National Do Not Call Register.

(3) No amount shall be charged from the subscriber for giving option under sub-regulation (2).

8. Procedure for registration of requests for not receiving unsolicited commercial communication :-

(1) Every Access Provider shall, immediately on receipt of a request under sub-regulations (1) and (2) of regulation 7 for not sending unsolicited commercial communication at a Call Center or any such office or mechanism referred to in sub-regulation (1) of regulation 3,-

(a) verify the correctness of the request so received;

(b) communicate, within ten days of such receipt, a unique

registration number to the subscriber who had made the request for registering his telephone number in the National Do Not Call Register.

(2) Every Access Provider shall, within fifteen days after receipt of request under regulation 7, record details in respect of each such request, as the case may be, in the Private Do Not Call List after verification of such request as per clause (a) of sub-regulation (1).

9. Withdrawal of request or option of subscribers relating to unsolicited commercial communication :-

(1) Any subscriber may, at any time after the expiry of three months from the date of registration of his request or giving the option under regulation 7, revoke such request or option, as the case may be, already made under these regulations to the Access Provider.

(2) Every Access Provider on the receipt of request for revocation under sub-regulation (1) shall,

(a) verify the correctness of such request;

(b) record details within fifteen days in respect of each such request in the Private Do Not Call List.

10. Updation of content in National Do Not Call Register :-

(1) Every Access Provider shall, within thirty days from the date of receipt of request under regulation 7 or request for revocation under regulation 9, update by incorporating, the content referred to in clause (b), clause (e) and clause (g) of sub-regulation (1) of regulation 5, in the National Do Not Call Register.

(2) Every Access Provider shall update the Private Do Not Call List and the National Do Not Call Register incorporating therein,---

(a) the changes, if any, in the National Numbering Plan and other changes on the request of its subscribers;

(b) omission of telephone number upon permanent disconnection of such number registered in Private Do Not Call List and National Do Not Call Register.

11. Inclusion or exclusion of class or classes or type or category or categories of unsolicited commercial communication in the Private Do Not Call List and National

Do Not Call Register :-

(1) Any subscriber may, after expiry of period of nine months from the date on which the National Do Not Call Register has been established under sub-regulation (1) of regulation 6, make a request to the Access Provider for inclusion in, or, exclusion from the request made under regulation 7 or revocation under regulation 9, any class or classes or type or category or categories of unsolicited commercial communication in accordance with the facility developed by the agency establishing National Do Not Call Register.

(2) Every Access Provider shall, within thirty days of receipt of request made under sub-regulation (1), update the data, referred to in clause (g) of sub-regulation (1) of regulation 5, in the Private Do Not Call List and the National Do Not Call Register.

CHAPTER 4

OBLIGATIONS OF THE ACCESS PROVIDERS AND TELEMARKETERS

12. Reporting requirements :-

Every Access Provider shall furnish to the Authority such information relating to the Private Do Not Call List as may be required by it to protect the interests of the consumers or discharge its functions under the Act.

13. Registration of Telemarketer :-

Every Telemarketer is required to be registered within three months of issue of the guidelines for Telemarketers by Department of Telecommunications, Ministry of Communication and Information Technology.

14. Undertaking from the Telemarketer :-

(1) Every Access Provider, after the commencement of these regulations, at the time of providing Basic Telephone or Cellular Mobile Telephone connections or service to Telemarketers, shall obtain an undertaking in the Form annexed to these regulations.

(2) Every Access Provider, in relation to its Basic Telephone or Cellular Mobile Telephone connection or service allotted, to a Telemarketer, before the commencement of these regulations, shall, within three months of the commencement of these regulations, obtain an undertaking from the Telemarketer in the Form annexed to these regulations.

15. Disconnection of Basic Telephone or Cellular Mobile Telephone connection or service in certain cases :-

(1) In case the Telemarketer fails to register with the Government of India, in the Ministry of Communication and Information Technology, Department of Telecommunications, as referred to in regulation 13, his telephone connection shall be disconnected or provision of telecom service be discontinued, as the case may be, by the Access Provider.

(2) In case the Telemarketer referred to in regulation 14, fails to give the undertaking, he or it shall not be provided telephone connection or telecom service OR his telephone connection or telecom service shall be disconnected, as the case may be by the Access Provider.

(3) The telephone connection of a Telemarketer shall not be disconnected or services to him discontinued under sub-regulation (2) by the Access Provider unless such Telemarketer had been given a notice of not less than seven days.

16. Complaint relating to unsolicited commercial communications and its consequences :-

(1) In case any subscriber receives unsolicited commercial communication after expiry of forty five days from the date of his request for registration in the National Do Not Call Register under regulation 7, he may make a complaint, mentioning the call originating telephone number, to his service provider.

(2) The service provider shall, within seven days of the receipt of the complaint under sub-regulation (1),---

(a) acknowledge every such complaint with a unique complaint number;

(b) verify the registration of the telephone number of the complainant in the National Do Not Call Register at the time of receiving unsolicited commercial communication;

(c) forward the complaint (including call detail record and other relevant information and documents in respect of the complaint) to the service provider from whose network such unsolicited commercial communication originated (hereafter referred to as the Originating Access Provider).

(3) The Originating Access Provider, to whom the complaint has been forwarded under clause (c) of sub-regulation (2), shall investigate the nature of call so received and if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, it shall-

(a) direct the sender of such unsolicited commercial communication to forthwith discontinue the sending of such unsolicited commercial communication to the complainant, being the subscriber referred to in sub-regulation (1);

(b) in case the sender referred to in clause (a) after being so directed for discontinuance, sends the unsolicited commercial communication, the Originating Access Provider shall charge the tariff in respect of each subsequent unsolicited commercial communication at the rate specified in Schedule XI to the Telecommunication Tariff Order, 1999.

(4) Without prejudice to the provisions contained in sub-regulation (3), if the Originating Access Provider finds that the sender, whose originating telephone number had been mentioned under sub-regulation (1), has made an unsolicited commercial communication after having such communication been charged at the rate specified in clause (b) of sub-regulation (3), the Originating Access Provider shall disconnect the telephone of such sender.

17. Service Provider not to send unsolicited commercial communications :-

No service provider shall, without prejudice to the terms and conditions of its licence or any penalty which may be imposed under its licence, send any unsolicited commercial communication to its subscriber after expiry of forty five days from the date on which such subscriber makes a request under regulation 7 for registration in the National Do Not Call register.

CHAPTER 5
MISCELLANEOUS

18. Confidentiality :-

Without prejudice to the provisions of any law for the time being in force, every Access Provider and the person authorized to maintain the National Do Not Call Register under sub-regulation (1) of regulation 6 shall, keep confidential all the information disclosed by the subscriber and entered in the Private Do Not Call List and the National Do Not Call Register maintained under these regulations,

and, not disclose the contents thereof to any person except as allowed under these regulations or any law for the time being in force.

UNDERTAKING

(See regulation 15)

I

(Name of the person responsible for managing the affairs of the telemarketer) son of/ daughter of/wife of _____ being the person responsible for managing the affairs of -----
----- (Name of telemarketer) having

principal/registered office
(mention address-----

-----) holding
registration number -----

(Mention registration
details with the Central
Government, in the
Ministry of
C o m m u n i c a t i o n and
Information Technology,
Department of
Telecommunication as
telemarketer) who has
been allotted basic /

cellular telephone
N u m b e r o r
Numbers. _____

do hereby give the
following undertaking,
namely:-

(a) that I/we hereby
agree not to make
unsolicited commercial
communications to any
subscriber whose
telephone number
appears on the National
Do Not Call Register;

(b) that in case I/we

make any unsolicited commercial communications through my /our such telephone allotted to me/us to any subscriber whose telephone number appears on the National Do Not Call Register, my telephone connection may be liable to be disconnected;

(c) that in case I/we am/are required to make an unsolicited commercial

communication to any subscriber whose telephone number does not appear on the National Do Not Call Register, such communication shall be prefixed with the following text in English or Hindi or regional language with which the recipient of the message is conversant:-

This is a commercial message, if you do not

want to receive further
messages, please
register with your
service providers Do Not
Call List.

Date:

Signature of subscriber/
Authorised Signatory
(Name of subscriber/
Authorised Signatory)

Address

Seal, if any.