



Reining in UCC By Telemarketers

Increase in mobile density in India meant an inimitable opportunity for telemarketing but on the flip side, unsolicited commercial communications (“UCC”) had become a mounting problem for the subscribers. Therefore, with the aim to curb the increase in UCC from telemarketers (“Telemarketers”), the Telecom Commercial Communications Customer Preference Regulations, 2010 (“2010 Regulations”) promulgated by the Telecom Regulatory Authority of India (“TRAI”) was brought into force effective September 27, 2011 and has been amended numerous times since then to accommodate issues arising out of advancements in technology. Due to piece-meal introduction of the 2010 Regulations, there was ambiguity with respect to the applicability of the provisions till they were recently brought into force in toto.

A. Need for the Regulation

Before the 2010 Regulations were brought into force, the Telecom Unsolicited Commercial Communications Regulations, 2007 (“2007 Regulation”) also tried to address the issue of UCC and provided for the establishment of a National Do Not Call Registry (“NDNC”). This registry facilitated registration of requests from customers who did not wish to receive UCC. Failure to stop sending UCC by telemarketers to such subscribers could

A look at why the 2010 Regulations are falling short of controlling unsolicited commercial communications (UCC) by telemarketers

attract monetary penalties. However, despite these measures, TRAI observed that though the number of unsolicited commercial voice calls had decreased, the number of unsolicited SMS’s had increased. Thus there was a need to introduce a new comprehensive framework to curb all forms of UCC.

B. What is UCC?

The 2010 Regulations have defined commercial communication to mean “any message, voice or SMS, which is transmitted for the purpose of informing or soliciting or promoting any commercial transaction in relation to goods, investment or services”. In simple terms, UCC can be understood to mean any commercial communication which a subscriber opts not to receive. Any message containing any sort of promotional material or advertisement of a product or service which a subscriber has not signed up to receive would fall under the definition of UCC.

However the 2010 Regulations have specifically exempted the following categories from the purview of UCC:

- Transactional Messages (defined hereinafter);
- Message transmitted by or on the directions of the Central Government or State Government;



- Message transmitted by or on the directions of bodies established under the Constitution;
- Message transmitted by or on the directions of TRAI or by any agency authorized by TRAI from time to time.

C. What are Transactional Messages?

They are certain messages, in which indirect consent of the customer is implicit in what might otherwise be classified as UCC. The 2010 Regulations (read along with the amendments) have classified such messages as Transactional Messages and have defined it to inter alia include an SMS containing only:

- Information pertaining to the account of its customer by a Bank or financial institution or insurance company or credit card company or depositories registered with the Securities and Exchange Board of India ("SEBI") or Direct to Home Operators;
- Information given by Airlines or the Indian Railways or its authorised agencies to its passengers regarding travel schedules, ticket booking and reservation;
- Information from a registered educational institution to its students or their parents or guardians;
- Information sent by e-commerce agencies in response to e-commerce transactions made by their customers;
- Information sent by a company or a firm or depository participant, registered with SEBI or the Insurance Regulatory Development Authority ("IRDA") or Association of Mutual Funds in India ("AMFI") or National Commodity

& Derivative Exchange Ltd. ("NCDEX") or Multi Commodity Exchange of India Ltd. ("MCX") to its clients pertaining to the account of the client;

- Information sent by a registered company to its employees or agents or to its customers pertaining to services or goods to be delivered to such customers;
- Information sent by a registered company or charitable trust or society or telecom service provider, pertaining to its activities to a telecom subscriber in response to a verifiable request of such a subscriber.

D. Salient Features Of The Regulations:

To address the problem of UCC, the TRAI has taken a multi-pronged approach, whereby it imposes obligations not only on the Telemarketers but also the Access Providers to ensure that no UCC is sent to customers who specifically opt not to receive such UCC. In pursuance of the same, it has taken the following steps:

I. Creating a National Customer Preference Register (NCPR)

Under the 2010 Regulations, all Access Providers are mandatorily required to set up a Customer Preference Registration Facility. This can be accessed by the subscribers by dialing a toll free number (for both wireless and wireline) for registration or deregistration of their preferences pertaining to commercial communication under the following categories:

- Fully blocked category:** The customer will receive no UCC whether in the form of calls or messages if registered under this category. Subscribers who had registered in the

erstwhile NDNC have been automatically included in the National Customer Preference Register under this category.

- Partially blocked category:** The customer can opt for the partially blocked category wherein he can signify his willingness to receive only certain commercial communication in the form of messages pertaining to any or all of the following categories; Banking/ Insurance/Financial products/credit cards, Real Estate, Education, Health, Consumer goods and automobiles, Communication/ Broadcasting/ Entertainment/ IT and Tourism and Leisure.

II. Registration of Telemarketers under the National Telemarketer Register

The 2010 Regulations provide that no person/entity that is not registered as a Telemarketer shall make any Commercial Communication. TRAI has established the National Telemarketer's Register which contains comprehensive details with respect to Telemarketers, comprising registration details, fees deposited, telecom resources allotted, details of notices and date of blacklisting etc. This registration is important because only registered Telemarketers will be given telecom resources to make commercial communications and will not be bound by the cap of 200 SMS's per day per SIM.

III. Regulation of Commercial Communication

To give teeth to the 2010 Regulations and ensure effective implementation of the same, various obligations have been imposed

on Telemarketers as well as Access Providers. Some of the obligations are as follows:

- Access Provider must ensure that no telecom resource is provided to a Telemarketer unless registered under the 2010 Regulations;
- A telemarketer shall, before sending any SMS to a telecom subscriber, scrub the telephone number of the subscriber with the database received from the National Customer Preference Register;
- Telemarketer must make all necessary arrangements to download the data from the National Customer Preference Register website and update its Customer Preference data base regularly;
- Access Provider(s) must ensure that any Commercial Communication, other than transactional messages, is sent to a customer only between 0900 Hrs to 2100 Hrs;
- Limit of Two hundred SMS's per day per SIM except on 'blackout days'; Access Provider(s) must not provide to any person, other than a registered telemarketer any tariff plan or SMS package in any form such as special recharge voucher, student pack, seasonal pack etc. which permits sending of more than Two hundred SMS per day per SIM.

E. Customer Complaints & Penalties

The 2010 Regulations envisage mandatory establishment of customer complaint registry facilities which can be accessed by dialing a toll free number

or sending an SMS to 1909. In case any subscriber receives UCC after expiry of seven days from the date of his registration in the Customer Preference Register, he/she may make a complaint to his Access Provider, through voice call or SMS, mentioning therein the particulars of the Telemarketer, the telephone number from which the UCC originated, the date, time and brief description of such UCC.

On receipt of such a complaint and due verification, the Originating Access Provider shall deduct a specified amount from the security deposit which was paid under the agreement entered into between the Telemarketer and Access Provider and in case of unregistered Telemarketers, issue a notice for discontinuation of UCC and in case of a repeated offence, disconnect the telecom resources of such a subscriber.

For the breach of the above, the Telemarketer may be fined and then subsequently blacklisted. Telemarketers will be blacklisted on the basis of a six strike policy in one calendar year (or failure to furnish an additional security amount in case of unsolicited messaging/calls).

Notice	Penalty amount deducted from security deposit (INR)	Additional Security Deposit to be paid (INR)
1st	25,000	2,00,000
2nd	75,000	–
3rd	80,000	4,00,000
4th	1,20,000	–
5th	1,50,000	–
6th	2, 50,000	–

Let's Uphold



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F. ANALYSIS

While the 2010 Regulations is perhaps a better attempt at regulating UCC (both SMS and calls), the number of amendments in a short span of time and procedural delays gives an impression that the authorities have not considered a number of issues while formulating the regulations. For instance, it has provided for a very restricted and exhaustive definition of Transaction Messages. Earlier, this did not include non-promotional messages sent by corporates to their employees. This meant that corporates like call centers and BPOs were restricted from sending any messages to their employees between 21:00 hours to 9:00 hours, even if it was information sent regarding travel details etc. The authorities amended the Regulations to include a new category (albeit subject to restrictions) only after the industry brought this up as an issue. Further, until the authorities specifically brought in an exemption by way of an amendment, businesses based on SMS services like JustDial, Askme, etc. were also affected by the 2010 Regulations that restricted

these businesses from sending more than 200 SMSs per day per SIM.

Another example when the 2010 Regulations fell short was when the Telemarketers tried to surpass the obligations under the 2010 Regulations by routing promotional messages through servers located at international destinations such as Germany, Sweden, Nauru, Fiji, Cambodia etc. This would mean that they would fall outside the purview of the regulations. To combat the same, TRAI, after consultation with Telemarketers, Access Providers and International Long Distance (ILD) operators, recently introduced

measures for addressing the above practice of routing SMS through international locations.

In fact, it seems that the only way to address these issues is to approach the authorities to amend the regulations to include categories, take into account technology advancements or bring in exemptions for certain businesses. This is an extremely cumbersome process and has given a lot of heartache to the industry as a whole. Perhaps efforts towards introducing (i) a more inclusive definition of Transactional Messages stating the various genres of messages rather than an exhaustive one; and (ii) appropriate provisions to take into account technological advancements could lessen the multiplicity of amendments.



Disclaimer

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