

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

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

NEW DELHI, January, 2008

THE TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS
(AMENDMENT) REGULATIONS, 2008.

No. (-----OF 2008)

No. 15-2/2008-RE.-----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 to amend the Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007), namely:-

1. (1) These regulations may be called the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008.
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In regulation 2 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), (hereinafter referred to as the principal regulations), after clause (h), the following clause shall be inserted, namely:-

‘(ha) “inquiry committee” means inquiry committee referred to in regulation 17D:”.

3. In regulation 16 of the principal regulations, in sub-regulation (3),-

(i) in clause (a), for the words “direct the sender”, the words “direct, without prejudice to levy of charges under clause (b) of this sub- regulation, the sender” shall be substituted;

(ii) in clause (b),---

(A) the words, brackets and letters “referred to in clause (a) after being so directed for discontinuance”, shall be omitted;

(B) for the words “each subsequent unsolicited commercial communication”, the words “each unsolicited commercial communication”, shall be substituted;.

4. In regulation 17 of the principal regulations, the following proviso shall be inserted, namely:-

“Provided that nothing contained in this regulation shall authorize a service provider (hereafter referred to as the former service provider) to send unsolicited commercial communication to the subscriber of any other service provider, ----

(a) unless the former service provider has been registered as a telemarketer with the Department of Telecommunication, Ministry of Communications and Information Technology, Government of India and possesses a valid certificate of registration on the date of sending of such unsolicited commercial communication;

(b) unless such subscriber to whom unsolicited commercial communication is sent has not been registered in the National Do Not Call Register under these regulations or the period of forty -five days has not expired from the date of making a request under sub-regulation (1) of regulation 7;

(c) if such communication violates any provisions of the law for the time being in force or any judgment or decree, award or order or direction passed or made by any competent court or tribunal or authority or forum or commission, as the case may be.”.

5. After Chapter IV of the principal regulations, the following Chapter shall be inserted, namely:-

“CHAPTER IVA INQUIRY AND IMPOSITION OF PENALTIES

17A. Consequences for failure of service providers to stop unsolicited commercial communications. ---If any service provider contravenes the provisions of regulation 15 or regulation 16 or regulation 17, it shall, without prejudice to the terms and conditions of its licence or any penalty which may be imposed under its licence, or provisions contained in clause (b) of sub-regulation (3) of regulation 16 or

the provisions of the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay by way of penalty an amount not exceeding five thousand rupees and in case of second or subsequent such contravention, to pay such amount not exceeding twenty thousand rupees for each such contravention,.

17-B. Factors to be taken into account by the Authority.---While deciding the quantum of penalty under regulation 17A, the Authority shall have due regard to the extent of inconvenience caused to the consumer and the repetitive nature of non-compliance of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, by the service provider.

17C. Power of Authority to order inquiry.-----Where the Authority or the Chairperson, (hereinafter referred to as "appointing authority") has reasonable ground to believe that any service provider has contravened the provisions of regulation 15 or regulation 16 or regulation 17, it may, by order in writing, direct the inquiry committee to inquire the contravention of the provisions of regulation 15 or regulation 16 or regulation 17, as may be specified by the appointing authority, and, to report thereon to the Authority.

17D. Composition of inquiry committee.----- (1) The inquiry committee shall consist of three officers not below the rank of Advisor in the Authority consisting of,-

- - (a) one representative from its Regulatory Enforcement Division;
 - (b) one representative from its Legal Division;
 - (c) one representative from its other Division,
- as may be nominated by the appointing authority:

Provided that an Advisor in the Authority, dealing with the case being, or proposed to be, inquired into by the Enquiry Committee, shall not be nominated as member of the inquiry committee in that case.

(2) If, for reasons other than temporary absence, any vacancy occurs in the office of any member of the inquiry committee, then, the appointing authority shall appoint another officer not below the rank of Advisor in the Authority to fill the vacancy and the proceedings may be continued before the inquiry committee from the stage at which the vacancy is filled by such nomination.

17E. Procedure for holding inquiry for determining contravention of the provisions of regulation 15 or regulation 16 or regulation 17.----- (1) In holding an inquiry for the purpose of determining contravention of the provisions of regulation 15 or regulation 16 or regulation 17, the inquiry committee shall, in the first instance, issue a notice to the concerned service provider requiring him to show cause within such period as may be specified in the notice (being not less than

fourteen days from the date of service thereof).

(2) Every notice under sub-regulation (1) to any such service provider referred to in that sub-regulation shall indicate the details of contravention of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, alleged to have been made by it .

(3) If, after considering the cause, if any, shown by such service provider, the inquiry committee is of the opinion that the concerned service provider should be heard in person , it shall issue a notice fixing a date for the appearance of that service provider.

(4) The inquiry committee shall give an opportunity to the service provider referred to in sub-regulation (1) to produce such documents or other material as it may consider relevant to the inquiry.

(5) If any service provider fails, neglects or refuses to appear as required by sub-regulation (3) before the inquiry committee, it may proceed with the inquiry in the absence of such service provider or its authorised representative after recording the reasons for doing so.

17F. Report of inquiry committee.----(1) After the conclusion of the inquiry under regulation 17E, the inquiry committee shall prepare a report indicating whether the service provider referred to in regulation 17C has contravened the provisions of regulation 15 or regulation 16 or regulation 17, and submit such report to the Authority.

(2) Every report made under sub-regulation (1) shall specify the details of the provisions of regulation 15 or regulation 16 or regulation 17, which has been contravened and shall contain brief reasons for such conclusion and such report shall be dated and signed by the inquiry committee.

17-G. Service of notices.---A notice referred to in sub-regulations (1) and (3) of regulation 17E and any other correspondence in this regard, shall be served on the concerned service provider in the following manner, that is to say,-

- (a) by delivering or tendering it to that service provider or his duly authorized agent;
- (b) by sending it to the concerned service provider by registered post to the address of its place of business; or at its registered office.

17H. Imposition of penalty by Authority on report of the inquiry committee.-----

(1)The Authority may, after considering the report of the inquiry committee, by order, impose penalties under these regulations:

Provided that no order imposing penalty shall be made by the Authority unless the concerned service provider had been given a reasonable opportunity of representing against the findings in the report of the inquiry committee.

(2) The Authority shall be guided by the principles of natural justice for the

purposes of imposing penalty under these regulations.

17-I. Deposit of amount by way of penalties under these regulations.----- The amount payable by way of penalty under these regulations shall be remitted to such head of account as may be mentioned in the order imposing the penalty.”.

(R.K. Arnold)
Secretary

Note.1.— The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification number No. 101 60/2006-MN dated the 5th June, 2007.

Note.2 .--The Explanatory Memorandum explains the objects and reasons of the Telecom Unsolicited Commercial Communications(Amendment) Regulations, 2007.

TO BE PUBLISHED IN THE GAZETTE OF INDIA
EXTRAORDINARY PART III SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

THE TELECOMMUNICATION TARIFF (FORTY- SEVENTH
AMENDMENT) ORDER, 2008

No. ----- of 2008

NOTIFICATION

New Delhi, the-----, 2008

No. 301-18/2007- Eco. — In exercise of the powers conferred upon it under sub-section (2) of section 11, read with sub-clause (i) of clause (b) of sub-section (1) of the said section, of the Telecom Regulatory Authority of India Act, 1997(24 of 1997), the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication Tariff Order, 1999, namely: -

1. (1) This Order may be called the Telecommunication Tariff (Forty-seventh Amendment) Order, 2008.

(2) It shall come into force on the ----- day of January, 2008.

2. In, Schedule XI to the Telecommunication Tariff Order, 1999,--

(a) for the tariff specified against item 1, the following tariff shall be substituted against that item, namely:-

TARIFF
“Rs.500 for every first unsolicited commercial communication and Rs.1000 for every subsequent unsolicited commercial communication, referred against item 1”;

(b) for the tariff specified against item 2, the following tariff shall be substituted against that item, namely:-

TARIFF
Rs.500 for every first unsolicited commercial communication and Rs.1000 for every subsequent unsolicited commercial communication, referred against item 2.”.

[M. Kannan]
Advisor (Eco)

Note.1. – The Telecommunication Tariff Order, 1999 was published in the Gazette of India, Extraordinary, Part III, Section 4 under notification no.99/3 dated 9th March, 1999, and subsequently amended as given below:-

Amendment No.	Notification No. and Date
1 st	301-4/99-TRAI (Econ) dated 30.3.1999
2nd	301-4/99-TRAI(Econ) dated 31.5.1999
3rd	301-4/99-TRAI(Econ) dated 31.5.1999
4th	301-4/99-TRAI(Econ) dated 28.7.1999
5th	301-4/99-TRAI(Econ) dated 17.9.1999
6th	301-4/99-TRAI(Econ) dated 30.9.1999
7th	301-8/2000-TRAI(Econ) dated 30.3.2000
8th	301-8/2000-TRAI(Econ) dated 31.7.2000
9th	301-8/2000-TRAI(Econ) dated 28.8.2000
10th	306-1/99-TRAI(Econ) dated 9.11.2000
11th	310-1(5)/TRAI-2000 dated 25.1.2001
12th	301-9/2000-TRAI(Econ) dated 25.1.2001
13th	303-4/TRAI-2001 dated 1.5.2001
14th	306-2/TRAI-2001 dated 24.5.2001
15th	310-1(5)/TRAI-2000 dated 20.7.2001

16th	310-5(17)/2001-TRAI(Econ) dated 14.8.2001
17th	301/2/2002-TRAI(Econ) dated 22.1.2002
18th	303/3/2002-TRAI(Econ) dated 30.1.2002
19th	303/3/2002-TRAI(Econ) dated 28.2.2002
20th	312-7/2001-TRAI(Econ) 14.3.2002
21st	301-6/2002-TRAI(Econ) dated 13.6.2002
22nd	312-5/2002-TRAI(Eco) dated 4.7.2002
23rd	303/8/2002-TRAI(Econ) dated 6.9.2002
24th	306-2/2003-Econ dated 24.1.2003
25th	306-2/2003-Econ dated 12.3.2003
26th	306-2/2003-Econ dated 27.3.2003
27th	303/6/2003-TRAI(Econ) dated 25.4.2003
28th	301-51/2003-Econ dated 5.11.2003
29th	301-56/2003-Econ dated 3.12.2003
30th	301-4/2004(Econ) dated 16.1.2004
31st	301-2/2004-Eco dated 7.7.2004
32nd	301-37/2004-Eco dated 7.10.2004
33rd	301-31/2004-Eco dated 8.12.2004
34th	310-3(1)/2003-Eco dated 11.3.2005
35th	310-3(1)/2003-Eco dated 31.3.2005
36th	312-7/2003-Eco dated 21.4.2005
37th	312-7/2003-Eco dated 2.5.2005
38th	312-7/2003-Eco dated 2.6.2005
39th	310-3(1)/2003-Eco dated 8.9.2005
40th	310-3(1)/2003-Eco dated 16.9.2005
41st	310-3(1)/2003-Eco dated 29.11.2005
42nd	301-34/2005-Eco dated 7.3.2006
43rd	301-2/2006-Eco dated 21.3.2006
44 th	301-34/2006-Eco dated 24.1.2007
45th	301-18/2007-Eco. dated 5.6.2007
46th	Under process.

Note 2 – The Explanatory Memorandum explains the objects and reasons for the Telecommunication Tariff (Forty- seventh Amendment) Order, 2008.

EXPLANATORY MEMORANDUM

Background:

The Telecom Regulatory Authority of India (the Authority) had issued the “Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007)” on the 5th June, 2007 for curbing the unwanted telemarketing calls and thereby reduce the nuisance and inconvenience to the subscribers of telephone/mobile services from the unsolicited tele-marketing calls/messages.

2. The Authority has set up the National Do Not Call (NDNC) Registry which is operational since October 2007. The NDNC is being operated and maintained by the National Informatics Centre (NIC), Government of India. The tele-marketers are required to verify their calling telephone numbers’ list with the NDNC Registry before making tele-marketing calls. The subscribers can get their telephone numbers listed in NDNC through their respective service providers . The respective service providers shall upload the telephone number to the NDNC within thirty days of receipt.

3. All tele-marketers are required to get themselves registered with the Department of Telecommunications (DoT) Ministry of Communications and Information Technology. On line registration facility is available in the NDNC Registry.

4. The Authority, Cellular Operators Association of India (COAI) and Association of Unified Telecom Services of India (AUSPI) have advertised in the leading National dailies, the procedure for registering in NDNC. The details of call center number/short message service (SMS) numbers on which the registration can be done are available on the websites of respective service provider. The same can also be accessed from the website www.ndncregistry.gov.in.

5. The Authority also held a series of meetings with the service providers to ensure effective implementation of the “Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007)”.

6. Till date, more than 7.5 million phone users have registered for 'Do Not Call' in NDNC Registry. 12183 telemarketers have got themselves registered. The NDNC is being accessed by around 600 tele-marketers daily for scrubbing their calling list. Out of approximately 85 million numbers uploaded by the telemarketers for scrubbing, 78 million numbers were cleared by NDNC for calling.

Non-compliance of the Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007).

7. The Authority has received several complaints with regard to the harassment of the consumers even after the notification of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007). In the said context, (although it has been mentioned in the Explanatory Memorandum of the Telecom Unsolicited Commercial Communications Regulation 2007 dated the 5th June 2007 that the Authority has neither any power to impose penalty nor power to adjudicate the complaints) the matter was reconsidered in depth by the Authority and, as advised now, the Telecom Regulatory Authority of India has sufficient powers, under sub-clause (i) and sub-clause (v) of clause (b) of sub-section (1) of section 11, read with section 13 and 36, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), to ensure the quality of service provided by the service providers so as to protect the interests of the consumers. This would necessarily include the power to impose financial sanctions for the contravention of regulations made in this regard, by the service providers. Unless some financial sanction is imposed by the Authority against the service providers, it would not be possible to ensure the quality of service so as to protect the interests of the consumers of the telecom services. The ambit of the above mentioned provisions of the Telecom Regulatory Authority of India Act, 1997 is very wide and enables the Authority to take all possible steps to ensure quality of service in the interest of the consumers.

8. There have been judicial pronouncements also that regulation of a particular matter embraces within its fold the power to do all those things necessary and incidental for regulating that matter. The power to regulate sale of sugar cane has been held to include the power to fix higher price [UP Cooperative CU Federations Vs. UP Sugar Mills Association – AIR (2004) SC 3697]. Hence, under the Telecom Regulatory Authority of India Act,

1997, the regulatory power includes all acts necessary to ensure quality of service and to protect the consumer interest.

9. It is an important function of the Authority to secure the interest of the consumers, for whom ultimately the telecommunication service is meant for. Accordingly, the Authority has decided to amend the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008.

Object of the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008.

10. The object of the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 is to improve the effectiveness and compliance of the said regulations by imposing financial sanctions in case of non-compliance of the aforesaid regulations by the telecom service provider.

11. The tele-marketers who are non-compliant with this Regulation can be categorized into three types as specified below:-

- (i) Registered Tele-marketers.
- (ii) Un-registered Tele-marketers.
- (iii) Telecom service providers.

12. There was no provision in the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) for imposing monetary sanctions on the service providers who do not comply with the provisions of the said regulations (before amendment by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008). However the said regulations, 2007, *inter alia*, provided that-----

(a) the Originating Access Provider, to whom the complaint has been forwarded 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-

- (i) direct the sender of such unsolicited commercial communication to forthwith discontinue the sending of such unsolicited commercial

communication to the complainant under the said regulations;

(ii) in case the sender referred to in (i) above, 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 which was rupees five hundred only; .

(iii) without prejudice to the provisions contained in (i) and (ii) above, if the Originating Access Provider found that the sender, has made an unsolicited commercial communication after having such communication been charged at the rate specified in (ii) above, the Originating Access Provider shall disconnect the telephone of such sender.

The above provisions applied to the registered tele-marketers. In the case of tele-marketers who failed to register themselves with the Government of India, in the Ministry of Communication and Information Technology, Department of Telecommunications, their telephone connection shall be disconnected or provision of telecom service be discontinued, as the case may be, by the Access Provider as provided in regulation 15 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007).

13. As already stated in paragraph 7 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), the telemarketing calls have engaged the attention of our Parliament, the Hon' Supreme Court of India, the Hon' High Court of Delhi, the Reserve Bank of India, and the State Commission (Consumer) of Delhi. Besides there have also been a number of consumer complaints made to the Authority about telemarketing calls. Financial sanctions as an effective deterrent to non-compliance of the Telecom UCC Regulations, 2007 (4 of 2007) has become a necessity.

14. In order to provide some more financial sanctions for registered telemarketers it has been provided by the Telecommunication Tariff (Forty fifth Amendment) Order, 2008 that five hundred for each unsolicited commercial communication [made from Basic Services (Other than ISDN) and Cellular Mobile Telecom Service (CMTS)] shall be charged. It has now

been revised as Rupees five hundred for every first unsolicited commercial communication and rupees one thousand for every subsequent unsolicited commercial communication.

15. In order to provide some financial sanctions for the non compliance by the telecom service provider, it has been provided by this Amendment that if any telecom service provider does not comply with the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), it shall be liable to pay an amount not exceeding rupees five thousand for first non-compliance and in case of second or any subsequent non-compliance, an amount not exceeding rupees twenty thousand for each non-compliance.

16. The financial sanctions upon the telecom service provider shall be imposed by an order of the Authority after considering of the report of an inquiry committee consisting of three officers not below the rank of Advisor in the Authority. The detailed procedure has also been provided by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 for conducting the inquiry. It has also been provided that no order imposing penalty shall be made by the Authority unless the concerned service provider had been given a reasonable opportunity of representing against the findings in the report of the inquiry committee.

17. Section 14A of the Telecom Regulatory Authority of India Act, 1997, *inter alia*, provides that any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Hon'ble Telecom Disputes Settlement and Appellate Tribunal. Therefore, any person aggrieved by any order made by the Authority imposing financial sanctions for non compliance of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) as [amended by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008] can make an appeal to the Hon'ble Telecom Disputes Settlement and Appellate Tribunal.
