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July 11, 2023

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Telecom Regulatory Authority of India (TRAI)  
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**USIBC comments on the Consultation Paper on Definition of International Traffic**

Dear Sir,

Since our inception in 1975, the U.S.-India Business Council (USIBC) has tirelessly promoted an inclusive bilateral trade environment between India and the United States and consistently advocates for a strong, strategic bilateral relationship in support of entrepreneurship, job creation and economic growth. Among other things, we engage in stakeholder dialogues to ensure that India's economic growth flourishes based on light-touch regulation and international best practices. USIBC is an integral part of the U.S. Chamber of Commerce, the world's largest business advocacy organization, operating in over fifty countries to promote free enterprise and advance trade and investment. USIBC represents some two hundred companies of every size from multiple sectors based in India, the U.S., and other like-minded nations.

USIBC members include broadcasters, telecom operators, equipment manufacturers, systems integrations, and companies reliant on secure, trusted, and efficient global communications networks. Our members also include e-commerce, sharing economy, and other digital enterprises, as well as the technology service providers and product producers that support and enable India's rapidly expanding digital economy and telecom manufacturing sectors. In short, USIBC encourages a broad set of digital policies that encourage bilateral trade and commerce, thereby creating a transparent and attractive investment environment, and the general ease of doing business.

USIBC has a long history of working with TRAI and hosted your Secretary at our India Ideas Summit last September. We have engaged the current Chair, Members, and staff in support of telecommunications policy, regulations, and the development of the sector, including around fraud prevention, 5G spectrum auctions and implementation, satellite communications, and other critical and strategic technologies. USIBC is a co-chair of the U.S.-India Information and Communications Technology Working Group (ICTWG) where our two nations develop strategies for long-term, multi-stakeholder bilateral cooperation. Within the ICTWG, USIBC leads the Advanced Telecommunications Working Group led by officials from the Department of Telecommunication (DoT) and the Ministry of Electronics and Information Technology (MeitY). Thus, we thank the Government of India and TRAI for issuing on the Consultation Paper on Definition of International Traffic and appreciate your kind evaluation of our suggestions.

Apart from the ability to connect people, messages sent by short messaging service (SMS) are one of the most effective ways for businesses to reach their customers. Transactional, promotional, and service messages are vital to the growth and operation of all businesses, and especially digital businesses which access customers remotely. Messages are important for businesses to communicate to customers, amongst other things, details of payments, delivery of goods and services, multi-factor authentication for logins, etc. SMS is also crucial in the larger context of e-governance, payments, and banking infrastructure, where messages sent via SMS communicate one-time passwords (OTP), transaction details, and other cybersecurity information.

Various regulatory bodies including the TRAI, the Reserve Bank of India (RBI), and MeitY mandate usage of SMS by various entities, including in the interest of cybersecurity, customer support, and many other identification and validation purposes. SMS is available even in areas without the internet, which makes it the most reliable mode of communication for businesses, including e-commerce companies, banks, insurance companies, payment gateways and telecom companies. In short, SMS plays a critical important role in helping achieve the vision of *Digital India*. Thus, it is imperative that relevant regulations provide a clear and unambiguous definition of the terms “International Traffic”, “International SMS”, and “Domestic Traffic” as described in the paper. This clarity will ensure widespread adoption of SMS technologies for businesses to reach their customers in India in line with the *Digital India* vision and prevent ambiguity or arbitrary interpretation. In this regard, please find our responses to specific questions in the appendix.



We also request the opportunity to meet with you to discuss this consultation and ask that we be included in any deliberations on the subject, both formal and informal. Should your office have any questions, my colleague and USIBC Director of Digital Economy Aditya K. Kaushik, [akaushik@usibc.com](mailto:akaushik@usibc.com), would be happy to address them. USIBC is committed to enhancing commerce and investment between India and the United States and is grateful that our submission will be given due consideration.

Warm regards,

A handwritten signature in blue ink that reads "Jay Gullish".

Jay Gullish  
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## Appendix

### Response to Questions:

**Q1. Whether it would be appropriate to define the term 'international traffic' in the telecommunication service license agreements as 'the international long-distance traffic originating in one country and terminating in another country, where one of the countries is India'? Kindly provide your response with a detailed justification.**

We believe the current definition of "international traffic" as suggested by TRAI should be clarified further to prevent any ambiguity.

#### ***(i) Charges leviable for international and domestic SMS***

We understand that the initial representations before TRAI which were forwarded to DoT were in the context of domestic and international SMS traffic. Briefly, international termination charges are charges payable by an Indian international long-distance operator (ILDO) to the Access Service Provider (ASP) in India, and domestic termination charges are charges payable by one ASP to another for terminating the traffic in its network in India. The charges leviable for international and domestic SMS have been set out in the SMS Termination Charges Regulations, 2013 (SMS Regulation). While the SMS Regulation does not define 'international incoming SMS' it specifically provides that "termination charges for international incoming Short Message Service (SMS) shall be under forbearance". Thus, the definition of "international traffic" assumes importance because of the difference in charges levied for the termination of an international SMS and a domestic SMS.

#### ***(ii) Interpretation adopted by telecommunications service providers***

Stakeholders face issues in relation to the definition of "international SMS" adopted by the telecommunications service providers (TSPs) for levying termination charges. For instance, the definition of international SMS in the Code of Practice (CoP) of a TSP<sup>1</sup>, as approved by TRAI, is as follows:

*"Any data/application/system/servers etc. which influences, generates, control, facilitate or enable the generation, dissemination/ transmission of messages from a location outside the territory of India will constitute as International messages. Any mirroring solution in India shall not impact and/or change the nature of such International SMS to national SMS."*

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<sup>1</sup> [https://www.airtel.in/business/commercial-communication/assets/documents/Help\\_Modules/Cop\\_docs/CoP\\_Entities\\_08\\_11\\_2018.pdf](https://www.airtel.in/business/commercial-communication/assets/documents/Help_Modules/Cop_docs/CoP_Entities_08_11_2018.pdf)

A similar definition exists in the CoP of another TSP<sup>2</sup> where advanced technology has resulted in alternate solutions used to generate an SMS message. These upstream applications or systems do not interact with any telecom network, and do not result in the initiation of SMS, and therefore, it would be very expansive to include them within the definition of international SMS “*data, application, or systems which influences, generates, control, facilitate or enable*”.

Given that termination charges for SMS are passed on to the customers, the lack of clarity on "international SMS" and "domestic SMS" allows TSPs to adopt their own interpretation and categorize a message generated by a computer resource/server located outside India as "international SMS". This is in spite of the origination and termination of the SMS being limited to the network of TSPs in India to bring it under the scope of forbearance. This has also led to expansive interpretation by TSPs in India, which has resulted in difficulty in carrying out digital businesses. Entities sending SMS to their customers, for better business practices and for regulatory compliance, are often subject to higher tariff rates as determined by the TSPs.

### **(iii) *Issues with the proposed definition***

While defining "international traffic" is a welcome move in light of the issues mentioned above, the scope of the word "originating" may still cause confusion as it does not clarify where the origination happens. "Originating" should be clarified to mean **originating over a network of the TSP**. In the absence of this clarification, it could lead to ambiguity and arbitrary interpretation by TSPs.

Moreover, the traffic carried by ILDOs include voice, SMS, and data. Data packets generated by the services in the application layer use the network layer provided by TSPs, for the purposes of application to application (A2A) messaging, emails, VoIP calls, etc. Such services are used by customers at large, as well as businesses and other service providers (OSPs), etc. The proposed definition of "international traffic" may be incorrectly interpreted to potentially include all traffic originating through computer servers and delivered to another computer server, where either of the computer server is located in India. Further, there is scope of automated messages originating as data packets outside India to be misconstrued as international SMS, despite such message originating and terminating as SMS on the network of an ASP in India. The TRAI needs to consider all the implications while framing such definition.

***Therefore, it is imperative to amend the telecommunication service license agreements to define "international traffic" and "domestic traffic" and provide a clear definition which is specific to telecom networks.***

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<sup>2</sup> [https://jep-asset.akamaized.net/jio/regulatory/RJIL\\_CoP\\_Entities\\_May2022.pdf](https://jep-asset.akamaized.net/jio/regulatory/RJIL_CoP_Entities_May2022.pdf)

**Q2. In case your response to the Q1 is in the negative, kindly provide an alternative definition along with a detailed justification.**

To remedy the issues highlighted above, we suggest that TRAI considers the following alternative definition for international traffic:

*"International traffic shall mean international long-distance traffic **originating from the telecommunication networks of a telecommunication service provider of one country and terminating in the telecommunication networks of a telecommunication service provider** in another country, where one country is India."*

The above definition of "international traffic" clarifies that the traffic should originate from and terminate over the network of a telecom service provider. However, this would include any voice, SMS, and data packet carried by ILDOs. Therefore, it must be ensured that the termination charges are levied only on calls and SMS, in accordance with the regulatory framework as applicable.

***Imposition of termination charges***

As mentioned above in our response to Q.1, the stakeholder concerns are primarily with regard to wrongful categorization of 'domestic SMS' as 'international SMS' and the levy of higher charges. Termination charges are broadly regulated in India by the Telecommunication Interconnection Usage Charges Regulation 2003 (IUC Regulation) for calls, and the SMS Regulation and Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR) for SMS. While the IUC Regulations clarify when an international termination charge is payable for calls, the SMS Regulation does not mention the same. Therefore, it must be ensured that a broad definition for international and domestic traffic not give leeway to TSPs to misclassify A2A messages/A2P messages originating as a data prompt outside India, as international SMS. **Hence, we recommend that the TRAI should define the term international SMS as:**

***"The term international SMS shall mean international traffic delivered using SMS."***

This definition may either be added in the license agreements or issued as a direction under the SMS Regulation to further clarify the scope of the term "international SMS". Please note that this is also part of the original reference from the DoT. Unless this definition is also clarified, ambiguity and arbitrary interpretation may continue to exist.

**Q3. Since the terms 'Inter circle traffic' and 'Intra circle traffic' are already defined in the telecommunication service license agreements, whether there is still a need to define the term 'domestic traffic' in the telecommunication service license agreements? If yes, what should be the definition of the term 'domestic traffic'? Kindly provide your response with a detailed justification.**

Yes. While the terms "inter-circle traffic" and "intra-circle traffic", which essentially make up domestic traffic, are well-defined in the telecommunication service license agreements, defining domestic traffic is also imperative. This will help in establishing a framework for differentiating domestic traffic from international traffic, enabling effective oversight, and ensuring compliance with applicable regulations. Further, a clear understanding of domestic traffic is crucial for policy development and implementation. By explicitly defining domestic traffic, TRAI can also protect consumers from unfair practices.

***In line with our alternative definition for international traffic, we suggest that domestic traffic should be defined as:***

***"Domestic traffic shall mean 'inter-circle traffic' or 'intra-circle traffic' originating and terminating on the telecommunication networks of telecommunication service providers within the territorial boundary of India."***

This will ensure ample definitional clarity, and leave no room for interpretation within the framework, thereby ensuring that all traffic falls within the ambits of either domestic traffic, or international traffic. This will also ensure that messages which originate over the network of an ASP in India and terminate on the network of a terminating ASP in India are construed as a domestic SMS.

**Q4. Whether there are any other issues/ suggestions relevant to the subject? If yes, the same may kindly be furnished with proper justification.**

Yes. To give full effect to the new definitions introduced in the telecommunication service license agreements, ASPs should be directed to align their CoPs with the definitions under the telecommunication service license agreements. Under Regulation 8 of TCCCPR, ASPs are required to '*develop Code(s) of Practice to establish system and make arrangements to govern the specified activities*'. Regulation 16 provides that the ASPs must submit their CoP to TRAI. Regulation 17 allows the TRAI to direct ASPs to make changes to the CoP, and Regulation 18 mandates that ASPs adhere to the CoPs. ***In light of the proposed definitions of international and domestic traffic being considered to be included in the telecommunication service license agreements, and the inclusion of a definition of international SMS, TRAI must also direct ASPs under Regulation 17 of the TCCCPR to align their CoPs with such definitions.***