

Shri Asit Kadyan, Advisor (QoS)
Telecom Regulatory Authority of India ("TRAI"),
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road),
New Delhi - 110002, India

18th June, 2018

Dear Sir,

(Subject: Comments on the draft Telecom Commercial Communication Customer Preference Regulation, 2018)

Please find below our comments on the draft regulation as referred to in the above captioned subject:

1. Chapter-I, Regulation 2.(k): As per the definition of "Consent" in current draft, it appears that no consent is required for transaction message or call. Further, please clarify if Consent overrides the Preference Register. From plain reading of the draft regulation, it is understood that that if a Sender has Consent, then he can send a message to even a Fully Blocked [as defined under regulation 2. (y)] Customer [as defined under regulation 2. (u)]. In case it is otherwise, please specify the same in the regulation.
2. Header (z) - it seems that the header can now be a mobile number - this will be a welcome step as it opens two way interactive communication on SMS
3. Chapter-I, Regulation 2.(aq). Please state if the old NDNC/NCPR database will be scrapped. In our opinion it should be scrapped as it was not representative of Consumer volition. Previous NDNC/NCPR database was built by operators through bulk registration of High ARPU subscribers without their explicit consent. It was not a Consumer Preference Register but an Operator Preference Register.
4. Chapter-I, Regulation 2.(aw) read with Chapter-V, Regulation 22: Please specify if the old telemarketer registrations will become invalid. The proposal of registering as a telemarketer with Access Providers looks confusing. Access Providers have been given the role of developing the ecosystem to regulate Commercial Communication. How will a uniform & consensus based implementation be achieved across different Access Providers who may have their own whims and fancies. Regulation should provide more prescriptive guidance to achieve proper implementation with zero room for grey and subjective interpretations. Further, Access Providers will have the right to determine procedures, fees and disincentives applicable to participating entities including RTMs in case of alleged violations of the regulations. This may lead to arbitrary use of the powers vested into Access Providers and shall be against the interest of participating entities. Therefore, the telemarketer registration of RTMs must remain with TRAI or be delegated to a central body formed by

TRAI as their regulator and procedures, fees and disincentive related to the RTMs must also be regulated accordingly by TRAI or such central body, as the case may be.

5. Chapter-I, Regulation 2.(bc): As stated in the definition of Fully Blocked under Regulation 2.(y), commercial communication falling under Inferred Consent category can be sent to Fully Blocked Customer. Therefore, please specify if the scrubbing is required be done where Inferred Consent is available.
6. Chapter-I, Regulation 2.(bf) and (bq): There is an overlapping between the definitions of transactional message and service message. Many messages can fall under either of the categories. Introduction of two categories for existing transactional messages will create operational and compliance complexities and must be done away with.
7. Chapter-II, Regulation 5.(3): Please specify how Access Provider will coordinate with Sender for managing Consent. Will the Sender need to work with all Access Providers or any or will they work with their choice of RTM? Who will educate the Sender on the Consent system? How will the old Consent data belonging to the Sender be migrated into this new architecture? Will Access Provider provide this as a free service?
8. Chapter-IV, Regulation 9: Several Senders (being enterprises/brands) have paper based consents from their consumers. How will these be converted to digital Consents and who will approve and monitor such a conversion?
9. Chapter-IV, Regulation 11: Please specify in the regulations that who will bear the cost of publicity for awareness of Customers to avoid any unreasonable transfer of cost.
10. Chapter-V, Regulation 13: Please specify in the regulations that who will bear the cost of development and maintenance of DLT.
11. Chapter-V, Regulation 14: Please clarify on how the consensus across Access Providers will be ensured on the choice of technology provider and if multiple providers chosen how will interoperability between such providers be enforced.
12. Chapter-V, Regulation 15: Please explain the mechanism to be used by TRAI to ensure that the Code of Practice developed by Access Providers takes fair cognizance of the views of Senders, Registered Telemarketers and Customers.
13. Chapter-VI, Regulation 24.(3): What is the rationale behind storing of 3 year history of Complainant and how will it benefit the Access Provider? Please specify in the regulation, what steps will be taken if the Subscriber ports his number to a different Access Provider prior to the ending of 3 year period.
14. Chapter-VI, Regulation 25.: The complaint mechanism does not specify penalties against RTM or Senders. Is it left for Access Providers to decide? The complaint mechanism only specifies penalties for UTM Senders.

15. Chapter-VI, Regulation 29.: Regulation referred to in the para is erroneously mentioned 26 as against 25. Request you to correct the same.
16. Chapter-VII, Regulation 35.: Please specify if the new charge of 5p will replace the existing charge of 7p (5p+2p). Is the effective date of this new reduced rate 1st July, 2018?
17. Schedule I, Regulation 2.: It has not been specified that will senders (being brands mostly) be required to register with each OAP and hence this is creating ambiguity in terms of implementation. It is suggested that this fact needs to be covered in the regulation to remove ambiguity. Registration of senders with the OAPs will not be practical and hence it is suggested that this process is kept with RTMs, who are servicing the senders. Effectively, the change will be that if sender is routing traffic to RTM via layer of resellers, resellers will also have to register with respective RTMs and hence last mile sender info will be known at RTM level itself. We also recommend that headers' whitelisting process must remain the same as it is today viz. RTMs must register the name of senders against respective headers.
18. Schedule I, Regulation 4.(3): Templates induce lot of complexities and can be error prone when it comes to getting exact match due to different variable types, unpredictable length of variable etc. There can be following alternate ways to implement this and still meet desired objective:
 - i. Partial template: Impose responsibility on the sender to have set of words/phrases as part of message text which signify that its pure transactional/service message, in case of transactional/service message route.
 - ii. Blacklisting: Impose responsibility on the sender to have set of words/phrases as blacklist to restrict sending unsolicited commercial communication.

Reason of highlighting this is that in our experience slightest mismatch of template can lead to message failure and bad user experience. Moreover, as senders have requirement to tweak templates frequently, such process at Access Providers' level will delay making any such change live for senders.

Further, as a single sender may use multiple RTMs and RTMs will use multiple OAPs for a single template, please specify in the regulation whether template registration will get linked to RTM or to sender.

19. Schedule I, Regulation 4.(6)(b): Please specify in the regulation how the identity of scrubbing is to be passed while submitting message to OAP.
20. Schedule I, Regulation 4.(6)(c): Please specify in the regulation how we have to make source of content as part of the message and how will correctness of source be ensured. Also, if source becomes a part of message content as mentioned in draft regulation, then please specify in the regulation how will source info. get captured where sender (for instance, a tier-3 city local business) has 3 layers of resellers and then RTM. And if we have to somehow add info of all resellers to message content, then length of message will go haywire and

sender will not be able to send messages which will turn out to be major financial disincentive for sender to use layers of resellers.

21. Schedule I, Regulation 4.(7): Please include more details on aggregator function, and how is that different from delivery function.
22. Schedule I, Regulation 6.(1)(a): Please specify whether label will be part of message text or not. If yes, number of characters will be reduced for sender and they will have to pay more due to this prefix. Regulation should be for protecting Customers against Commercial Communication and not from transactional & service messages. As we had suggested earlier during open house, this message type can be defined in message header (sender id as TA: Trans Airtel, SV: Service Vodafone, PB: Promo BSNL), so all message types can be defined in headers.
23. Schedule I, Regulation 6.(1)(b): Suffix to revoke consent like send SMS to ABC, or give call to XYZ, click URL etc. will elongate the message length and sender will have to pay more for the message as it may become two message length instead of one message. Therefore, please consider alternate ways to resolve this problem.
24. Schedule I, Regulation 7.: Please elaborate in the regulation what implementation is expected in message sequence chart as currently it is vague.
25. Schedule II: The levels of choices are too vast and it is highly unlikely for Customers to exercise choices at such levels. Hence, this will lead to complexities instead of convenience and should be reconsidered to be simplified.
26. Schedule IV, Regulation 1.(1)(a): Please specify in detail on how can sender be identified through signature.
27. We had requested in consultation for allowing VMN as header as many genuine use cases don't see light of day due to this constraint as on date. Please consider the same and allow two way interactions on VMN.
28. Toll Free short code for SMS was also discussed in consultation, however it has not been considered under this draft. Please consider including that as well.
29. Ambiguity as to what constitutes as ILDO traffic is not clarified in this draft regulation. You are requested to include the same as well.
30. The significance of inferred consent has not been elaborated. Please include more clarity on the practical aspects of inferred consent.
31. Does Consent of Customer need to be shared real time with each OAP, which they may or may be even using for their communication. This process can be with respective RTM's who are serving those senders.

32. If this draft regulation becomes effective, personalized messages will not be allowed for promotion. Several use cases will have challenge due to this. For instance: "Use promo code XYZ" being sent to each recipient, bitly URL being sent to each recipient.
33. Signature definition is not clear. Please share more details on the same.
34. Messages have been by default allowed from 10 AM to 9 PM instead of earlier 9 AM to 9 PM. This should be reinstated as 9 AM to 9 PM. Further, no. of days have also been erroneously restricted under Note 1. of Schedule II.(4)(1). Please remove this note as the same is not applicable.
35. MNP data access on real time basis to RTMs has not been taken into consideration. We highly recommend that the same be allowed to ensure better services and tracking in case of grievances.
36. Message Pre-Check flow has not been defined. Please specify the same along with roles and responsibilities of various participating entities.
37. All types of voice calls will come from 140 as per doc. Hence, does that mean that transactional calls and service calls will also be made through numbers having 140 as prefix?
38. The overall migration from implementation perspective, from existing process to newer one has not been defined. We suggest:
 - i. Implementation to be done in phased manner
 - ii. Implementation of each process should be done at same time across all OAP, and it must be driven by TRAI
 - iii. Each process should have sandbox testing and test run before making it live
 - iv. Sessions to be conducted to get everyone on same page and impart clarity on all aspects of the regulation so that interpretation is similar across all involved stakeholders.

We hope that you will find the above comments in order and consider the same while regulating on the subject matter.

Should you require any clarification regarding our comments, please feel free to write to the undersigned.

Sincerely,
Vishwadeep Bajaj, Managing Director
ValueFirst Digital Media Pvt. Ltd.
vishwadeep.bajaj@vfirst.com