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3<sup>rd</sup> September 2012

Telecom Regulatory Authority of India  
MTNL Telephone Exchange Building,  
Jawahar Lal Nehru Marg, Old Minto Road,  
New Delhi - 110 002

**Kind Attention : Shri A. Robert J. Ravi, Advisor (CI & QoS)**

**Subject : Consultation Paper on "Review of the Telecom Commercial Communications Customer Preference Regulations, 2010" and Draft regulations on "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012"**

Dear Sir,

This is with reference to the Consultation paper and Draft Regulation issued by the Authority on 3<sup>rd</sup> August 2012 on the captioned subject.

We are pleased to submit our comments and views on the following:

1. Consultation Paper on "Review of the Telecom Commercial Communications Customer Preference Regulations, 2010.
2. Draft regulations on "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012".

We hope that our submissions will merit your kind consideration and support.

Thanking you,

Yours sincerely,

**For Vodafone India Limited, Vodafone Mobile Services Limited, Vodafone West Limited, Vodafone South Limited, Vodafone Digilink Limited, Vodafone Cellular Limited, Vodafone Spacetel Limited and Vodafone East Limited.**

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**Vodafone's response to "The Telecom Commercial Communications Customer Preference (Tenth amendment) Regulations, 2012"**

The Authority has initiated two separate but simultaneous consultations on the issue of TCCCP (Unsolicited Commercial Communications) regulations. One is in the form of a consultation paper and the other is a draft amendment. We respectfully submit that taking decisions in silos will complicate matters as a whole. Each amendment will have a ripple effect on the entire process and the operations of the service provider. Therefore, we believe that a holistic review needs to be undertaken on the issue of 'Unsolicited Commercial Communications' and 'Telemarketing' regulations and their relation with Quality of Service.

***I) Sub-Regulation (4) of Regulation (3) : "for the second proviso, the following proviso shall be substituted, namely:-***

***"Provided further that Access Providers shall, at the time of providing a telephone connection, whether Basic or Cellular Mobile Telephone, to a new subscriber, other than a telemarketer registered with the Authority, provide in the Customer Acquisition Form the details of Customer Preference Registration facility and obtain from such subscriber an undertaking that the SIM purchased by him shall not be used for telemarketing and in case such SIM is used for telemarketing, he shall be liable to pay such charges as may be decided by the Authority and the telecom resources used for the purpose of telemarketing shall also be liable to be disconnected."***

**A. Changes proposed in the CAF**

The draft amendment has proposed that for all new mobile subscriber acquisition, operators incorporate a clause in the Customer Acquisition Form (CAF) stating that for making Telemarketing calls without having taken TM registration, the customer is liable to pay a charge as decided by TRAI. Additionally, it has been proposed that the charges collected by the operators on this count needs to be transferred to an account specified and controlled by TRAI.

This is akin to regulating the citizens/ mobile subscribers (via operators). We are of the opinion that the regulator derives its powers under the TRAI Act to regulate only the telecom licensees.

Since the exercise of this regulation is being done through the operators, this proposal will also expose the operators to various customer complaints and legal disputes.

We have constantly been maintaining the stand that to handle the issue of Unsolicited Commercial Calls (UCC), the legislature should pass a necessary and suitable law as a deterrent to individuals misusing their telephone connectivity.

The changes proposed in the CAF, especially related to penalty, would be a mere paper exercise. We therefore request the Authority not to notify this regulation.

***II) Sub-Regulation (11) of Regulation (19) "for sub-regulation (11), the following sub-regulation shall be substituted, namely:-***

***"(11) If the Originating Access Provider to whom a complaint has been forwarded under sub-regulation (6) finds that----***

***(i) the unsolicited commercial communication has been sent through voice call and the subscriber making such call is not registered with the Authority as a telemarketer, it shall-***

- (a) *direct the subscriber to forthwith discontinue the sending of unsolicited commercial communications, and if such subscriber sends a commercial communication through voice call to any subscriber on the second occasion, charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through voice call to any subscriber on the third occasion, disconnect all the telecom resources of such subscriber;*
  - (b) *deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;*
  - (c) *not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and*
  - (d) *update the action taken by it in the National Telemarketer Register; or*
- (ii) *the unsolicited commercial communication has been sent through SMS and the subscriber sending such SMS is not registered with the Authority as a telemarketer, it shall-*
- (a) *charge rupees five hundred from such subscriber, and if such subscriber sends a commercial communication through SMS to any subscriber on the second occasion, disconnect all the telecom resources of such subscriber;*
  - (b) *deposit the amount charged from the subscriber under clause (a) in an account specified by the Authority;*
  - (c) *not provide for a period of one year any telecom resource to the subscriber whose telecom resources have been disconnected under clause (a); and*
  - (d) *update the action taken by it in the National Telemarketer Register.”*

#### **B. Charge of Rs.500/- for making UCC**

The draft amendment has proposed a charge of Rs.500/- to a telecom subscriber, who is an unregistered TM, for making a telemarketing call on a second instance and for sending for telemarketing SMS on the first instance.

The majority (more than 90% base) is prepaid. Additionally, with ARPU in the range of Rs.100/-, it is highly unlikely that subscribers would be having a prepaid balance in excess of Rs.500/-. Levying this charge through multiple steps depending on the re-charge amount is not workable. (It may be recalled that a similar situation had arisen in the case of VAS charging and subscriber's balance was going into negative. This practice was discontinued on the basis of discussion with TRAI and their subsequent Direction.)

Even in the case of Post-paid, we do not expect the chances of collecting the amount being high. With such charges in the bills the subscribers may dispute the bill itself which will lead to increase in bad debts.

The subscriber would rather opt to not pay the amount and forgo the connection. Added to that, if operators are forced to transfer the levied amount to a TRAI account, without the operator having realized this amount from the subscriber, it would be grossly unfair.

We would rather disconnect the telecom resource as presently done instead of engaging with the subscriber for the levying and collecting the penalty. The penalties would not be realised and will lead to legal and financial issues.

If this regulation is notified, we would need to show this charge on accrual basis as 'pass through' so that we are not saddled with an additional License fee liability which has to be agreed by licensor, else, operators would end up paying LF for the charges and consequent bad debts as well.

**We therefore request the Authority not to notify this regulation on penalties and continue with the existing regulation of notice (against first instance of complaint) and disconnection (against second instance of complaint).**

### **C. Black-listing of the subscriber**

Black listing a citizen/ telephone subscribers from telephony access implies that we intend to deny the right of a citizen to communicate and conduct legitimate business. If operators start black-listing the subscribers, operators will be exposed to serious disputes and legal challenges.

Even at a practical level, this proposal is impossible to implement. In the case of a registered Telemarketer, the connection is in the name of a company and the entities are tracked through the TAN registration number. However, for an individual retail connection, the customers have been permitted (as per the Licensor's directive) to acquire a connection on the basis of a variety of PoA (proof of address)/ PoI (proof of identity). Due to this, no operator can effectively prohibit a black listed customer from taking a new connection within the same operator let alone prohibit the customer from taking a connection from another operator.

**We respectfully request the Authority to undertake a review of this proposal and not to notify this regulation.**

### **III. Sub-Regulation (2) of Regulation (20) "after clause (1), the following clauses shall be inserted, namely:-**

***(m) every Access Provider shall, within thirty days of coming into force of these regulations, send SMS to its subscribers advising them not to send any commercial communications if they are not registered with the Authority as telemarketer and in case he sends a commercial communication, he shall be liable to pay five hundred rupees for such commercial communication and his telecom resources shall also be liable to be disconnected:***

***Provided that a second such SMS shall be sent within seven days of sending the SMS and such SMS shall be sent to the customer every six months thereafter."***

### **D. SMS Advisory**

Today the active mobile subscriber base stands at around 650 million. We estimate that out of this entire base the number of fly-by-night telemarketers using unregistered connectivity would be miniscule and only a fraction. Therefore, to send such an advisory by SMS to the entire subscriber base, due to the unscrupulous behavior of a miniscule few may not be appropriate. This would surely lead to customer complaints as well as legal disputes.

**We therefore respectfully request the Authority not to notify this regulation.**

### **IV. TRAI TCCCPR Schedule VI para 4, the following para shall be substituted, namely:-**

***"4. A customer may register UCC related complaint by sending SMS to 1909 in the format given below-***

***"short description of UCC; XXXXXXXXXXXX; date in dd/mm/yy"***

***Where XXXXXXXXXXXX- is the telephone number or header of the SMS, as the case may be, from which the UCC has originated."***

#### **E. Format for UCC complaint via SMS**

The UCC complaints received through SMS are handled by a software program and are not handled manually. For that very reason, it is extremely vital that the beginning few characters should be an identifier for the software to be able to identify that this SMS is a UCC complaint.

**We therefore propose that the UCC complaint SMS should commence with the identifier - "COMP".** We can drop "TEL NO". This will make the identifier shorter in length making it easier for the subscriber to type the SMS.

As you are aware, the CDRs are a highly confidential data. Therefore, the access is restricted to a very few officials within a licensee. For conducting a CDR query, to identify a UCC call/SMS, the complaint resolution department needs to send a query to the CDR team. The query is based on certain information since a free search is not permitted. It is therefore essential that we have both the date and time of the UCC complaint.

On the other hand, when any customer makes a complaint against a Voice call or SMS, the details of both events, at the time of his making the complaint are present as records on the mobile hand-set. Without this record, it is highly unlikely that the customer would be able to memorise the 10 digit number from which the UCC was sent.

**We therefore request the Authority not to remove the requirement of typing in the time while sending the UCC complaint through SMS.**