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NOTIFICATION

NEW DELHI, THE 5th JUNE, 2007

THE TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS REGULATIONS, 2007 (4 OF 2007)

No. 101-60/2006-MN.----------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, namely:-

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CHAPTER I

Preliminary

1. **Short title and commencement,----**(1) These regulations may be called the Telecom Unsolicited Commercial Communications Regulations, 2007.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions. **—**In these regulations, unless the context otherwise requires,-

(a)"Act" means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(b)"Access Providers" includes the Basic Telephone Service Provider, Cellular Mobile Telephone Service Provider and Unified Access Service Provider;

(c) "Area code" means any number earmarked or allotted to a specific short distance charging area in the National Numbering Plan for accessing the telephone in such area;

(d) "Authority' means the Telecom Regulatory Authority of India established under sub section (1) of section 3 of the Act;

(e) "Basic Telephone Service" covers collection, carriage, transmission and

delivery of voice or non-voice messages over licensee's Public Switched Telephone Network in licensed service area and includes provision of all types of services except for those requiring a separate licence;

(f) "Basic Telephone Service provider" means a service provider who has been granted licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885) to establish, install, operate and maintain Basic Telephone Service in the specified service area;

(g) "Cellular Mobile Telephone Service",--

(i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wireless telegraphy where every message that is conveyed thereby has been, or is to be, conveyed by means of a telecommunication system which is designed or adapted to be capable of being used while in motion;

(ii) refers to transmission of voice or non-voice messages over Licensee's Network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service;

(iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable;

(h) "Cellular Mobile Telephone Service Provider" means a licensee authorized to provide Cellular Mobile Telephone Service under a licence granted under section 4 of the Indian Telegraph Act, 1885 (13 of 1885), in a specified service area;

(i) "message" shall have the meaning assigned to it in clause (3) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);

(j) "National Do Not Call Register" means a data base or register, containing list of the telephone numbers of all subscribers who have opted not to receive unsolicited commercial communication;

(k) "National Numbering Plan" means the National Numbering Plan 2003 made by the Government of India, Ministry of Communication and Information Technology, Department of Telecommunications or any such plan subsequently made by it;

(l) "Private Do Not Call List" means a data base or register, ----

(i) maintained by an Access Provider for its exclusive use and such database or register is not in public domain;

(ii) containing details of the telephone numbers and other details of all of its subscribers who had opted not to receive unsolicited commercial communication;

(m) "regulations" means the Telecom Unsolicited Commercial Communications Regulations, 2007;

(n) "sender" means the Telemarketer who initiates an unsolicited commercial communication;

(o) "subscriber" means any person or legal entity, who or which, subscribes to any service from the Access Provider;

(p) "Telemarketer" means any person who transmits any message, through telecommunications service, for the purpose of soliciting or promoting any commercial transaction in relation to goods, investments or services;

(q) "unsolicited commercial communication" means any message, through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investments or services which a subscriber opts not to receive, but does not include, ----

(i) any message (other than promotional message) relating to a service or financial transaction under a specific contract between the parties to such contract; or

(ii) any messages relating to charities, national campaigns or natural calamities transmitted on the directions of the Government or agencies authorized by it for the said purpose;

(iii) any message transmitted, on the directions of the Government or any authority or agency authorized by it, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(r) "Unified Access Services", --

(i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wired or wireless telegraphy;

(ii) refers to transmission of voice or non-voice messages over licensee's network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service;

(iii) in respect of which the subscriber (all types, pre-paid as well as post-paid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable;

(s) "Unified Access Service Provider" means a licensee authorised to provide Unified Access Services under a licence granted under section 4 of the Indian Telegraph Act,1885(13 of 1885), in a specified service area;

(t) all other words and expressions used in these regulations but not defined, and defined in the Indian Telegraph Act, 1885(13of 1885) and the Telecom Regulatory Authority of India Act 1997 (24 of 1997)and the rules and other regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or such other regulations, as the case may be.

CHAPTER II

DO NOT CALL LIST

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3. Setting up of mechanism for registering request of subscribers for not receiving unsolicited calls,----- (1) Every Access Provider shall, within fifteen days from the date of establishment of the National Do Not Call Register under sub-regulation (1) of regulation 6, set up a Call Center or any such office or mechanism for the purpose of receiving the request of its subscribers for registration of their telephone number in the National Do Not Call Register.

(2) Every call center or any such mechanism set up under sub-regulation (1) shall earmark or allot or establish a specific basic telephone or cellular mobile telephone number having sufficient lines or connections of toll free nature for "customer care number" or "help line number" at every such call center or such mechanism for the purpose of registering the requests of its subscribers for not receiving unsolicited commercial communication and all such calls shall be treated as free calls.

(3)The Access Provider shall by appropriate means give due publicity of this mechanism.

4. **Setting up the Private Do Not Call List**. **—**Every Access Provider shall, within fifteen days from the date of establishment of the National Do Not Call Register under sub-regulation (1) of regulation 6, maintain and operate for the purposes of these regulations, a list to be called a Private Do Not Call List in which the preference of its subscribers for not receiving unsolicited commercial communication shall be entered in accordance with the provisions of these regulations.

5. Contents of the Private Do Not Call List,---- (1) Every Private Do Not Call List shall include, *inter alia,*----

(a) the name of each subscriber who makes a request to the Access Provider for not receiving the unsolicited commercial communication;

(b) telephone number and Area code of the subscriber referred to in clause (a) above;

(c) the date and time of making of request by the subscriber referred to in clause (a) above;

(d) the name of each subscriber who makes a request to the Access Provider for revocation of his earlier request for not receiving the unsolicited commercial communication ;

(e) telephone number with Area code of the subscriber referred to in clause (d) above;

(f) the date and time of making of request by the subscriber referred to in clause (d) above;

(g) details of the option referred to in sub-regulation (1) of regulation 11

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(2) Every Access Provider shall maintain in duplicate the Private Do Not Call list at least at such two places as may be considered appropriate by it having regard to the security of the database or register.

6. Contents of the National Do Not Call Register,----(1) The National Do Not Call Register shall be established and maintained by a person on the basis of Memorandum of Understanding (MOU) executed with the Authority and shall contain the particulars relating to, ---

(a) the telephone number and Area code of each subscriber who makes a request to the Access Provider for not receiving the unsolicited commercial communication and whose name and other particulars have been entered in the Private Do Not Call List under regulation 5;

(b) details of option included in such request as indicated in clause (g) of sub-regulation (1) of regulation 5;

(c) such other particulars as may be specified by the Authority.

(2) No particulars other than those referred to in sub-regulation (1), shall be entered in the National Do Not Call Register.

(3) The establishment of the National Do Not Call Register shall be appropriately publicized by the Authority including posting on its website (www.trai.gov.in) and shall not be later than three months from the date of commencement of these regulations.

CHAPTER III

PROCEDURE FOR REGISTRATION OF REQUEST FOR NOT RECEIVING UNSOLICITED COMMERCIAL COMMUNICATION

7. Registration for not receiving unsolicited commercial communication,---- (1) Every existing subscriber and new subscriber may, immediately after establishment of call center or office or mechanism under sub-regulation (1) of regulation 3, make a request, through telephone or electronic means or through a letter to his Access Provider, for registration of his telephone number in the National Do Not Call Register.

(2) Every Access Provider shall, at the time of providing the telephone service, whether Basic Telephone or Cellular Mobile Telephone Service, to a new subscriber, give him an option for registration of his telephone number in the National Do Not Call Register.

(3) No amount shall be charged from the subscriber for giving option under sub-regulation (2).

8. Procedure for registration of requests for not receiving unsolicited commercial communication,-----(1) Every Access Provider shall, immediately on receipt of a request under sub-regulations (1) and (2) of regulation 7 for not sending unsolicited commercial communication at a Call Center or any such office or mechanism referred to in sub-regulation (1) of regulation 3,----

(a) verify the correctness of the request so received;

(b) communicate, within ten days of such receipt, a unique registration number to the subscriber who had made the request for registering his telephone number in the National Do Not Call Register.

(2) Every Access Provider shall, within fifteen days after receipt of request under regulation 7, record details in respect of each such request, as the case may be, in the Private Do Not Call List after verification of such request as per clause (a) of sub-regulation (1).

9. Withdrawal of request or option of subscribers relating to unsolicited commercial communication,------- (1) Any subscriber may, at any time after the expiry of three months from the date of registration of his request or giving the option under regulation 7, revoke such request or option, as the case may be, already made under these regulations to the Access Provider.

(2) Every Access Provider on the receipt of request for revocation under sub-regulation (1) shall,

(a) verify the correctness of such request;

(b) record details within fifteen days in respect of each such request in the Private Do Not Call List.

10. **Updation of content in National Do Not Call Register,---**(1) Every Access Provider shall, within thirty days from the date of receipt of request under regulation 7 or request for revocation under regulation 9, update by incorporating, the content referred to in clause (b), clause (e) and clause (g) of sub-regulation (1) of regulation 5, in the National Do Not Call Register.

(2) Every Access Provider shall update the Private Do Not Call List and the National Do Not Call Register incorporating therein,---

(a) the changes, if any, in the National Numbering Plan and other changes on the request of its subscribers;

(b) omission of telephone number upon permanent disconnection of such number registered in Private Do Not Call List and National Do Not Call Register.

11. Inclusion or exclusion of class or classes or type or category or categories of unsolicited commercial communication in the Private Do Not Call List and National Do Not Call Register,------ (1) Any subscriber may, after expiry of period of nine months from the date on which the National Do Not Call Register has been established under sub-regulation (1) of regulation 6, make a request to the Access Provider for inclusion in, or, exclusion from the request made under regulation 7 or revocation under regulation 9, any class or classes or type or category or categories of unsolicited commercial communication in accordance with the facility developed by the agency establishing National Do Not Call Register.

(2) Every Access Provider shall, within thirty days of receipt of request made under sub-regulation (1), update the data, referred to in clause (g) of sub-regulation (1) of regulation 5, in the Private Do Not Call List and the National Do Not Call Register.

CHAPTER IV

OBLIGATIONS OF THE ACCESS PROVIDERS AND TELEMARKETERS

12. Reporting requirements:- Every Access Provider shall furnish to the Authority such information relating to the Private Do Not Call List as may be required by it to protect the interests of the consumers or discharge its functions under the Act.

13. Registration of Telemarketer:- Every Telemarketer is required to be registered within three months of issue of the guidelines for Telemarketers by Department of Telecommunications, Ministry of Communication and Information Technology,

14. Undertaking from the Telemarketer,-----(1) Every Access Provider, after the commencement of these regulations, at the time of providing Basic Telephone or Cellular Mobile Telephone connections or service to Telemarketers, shall obtain an undertaking in the Form annexed to these regulations.

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(2) Every Access Provider, in relation to its Basic Telephone or Cellular Mobile Telephone connection or service allotted, to a Telemarketer, before the commencement of these regulations, shall, within three months of the commencement of these regulations, obtain an undertaking from the Telemarketer in the Form annexed to these regulations.

15. Disconnection of Basic Telephone or Cellular Mobile Telephone connection or service in certain cases,-----(1) In case the Telemarketer fails to register with the Government of India, in the Ministry of Communication and Information Technology, Department of Telecommunications, as referred to in regulation 13, his telephone connection shall be disconnected or provision of telecom service be discontinued, as the case may be, by the Access Provider.

(2) In case the Telemarketer referred to in regulation 14, fails to give the undertaking, he or it shall not be provided telephone connection or telecom service OR his telephone connection or telecom service shall be disconnected, as the case may be by the Access Provider.

(3) The telephone connection of a Telemarketer shall not be disconnected or services to him discontinued under sub-regulation (2) by the Access

Provider unless such Telemarketer had been given a notice of not less than seven days.

16. Complaint relating to unsolicited commercial communications and its consequences,—(1) In case any subscriber receives unsolicited commercial communication after expiry of forty five days from the date of his request for registration in the National Do Not Call Register under regulation 7, he may make a complaint, mentioning the call originating telephone number, to his service provider.

(2) The service provider shall, within seven days of the receipt of the complaint under sub-regulation (1),---

(a) acknowledge every such complaint with a unique complaint number;

(b) verify the registration of the telephone number of the complainant in the National Do Not Call Register at the time of receiving unsolicited commercial communication;

(c) forward the complaint (including call detail record and other relevant information and documents in respect of the complaint) to the service provider from whose network such unsolicited commercial communication originated (hereafter referred to as the Originating Access Provider).

(3) The Originating Access Provider, to whom the complaint has been forwarded under clause (c) of sub-regulation (2), 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-

(a) direct the sender of such unsolicited commercial communication to forthwith discontinue the sending of such unsolicited commercial communication to the complainant, being the subscriber referred to in sub-regulation (1);

(b) in case the sender referred to in clause (a) 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.

(4) Without prejudice to the provisions contained in sub-regulation (3), if the Originating Access Provider finds that the sender, whose originating telephone number had been mentioned under sub-regulation (1), has made an unsolicited commercial communication after having such communication been charged at the rate specified in clause (b) of sub-regulation (3), the Originating Access Provider shall disconnect the telephone of such sender.

17. Service Provider not to send unsolicited commercial communications –No service provider shall, without prejudice to the terms and conditions of its licence or any penalty which may be imposed under its licence, send any unsolicited commercial communication to its subscriber after expiry of forty five days from the date on which such subscriber makes a request under regulation 7 for registration in the National Do Not Call register.

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CHAPTER V

MISCELLANEOUS

18. Confidentiality - Without prejudice to the provisions of any law for the time being in force, every Access Provider and the person authorized to maintain the National Do Not Call Register under sub-regulation (1) of regulation 6 shall, keep confidential all the information disclosed by the subscriber and entered in the Private Do Not Call List and the National Do Not Call Register maintained under these regulations, and, not disclose the contents thereof to any person except as allowed under these regulations or any law for the time being in force.

UNDERTAKING

(See regulation 14)

I _____, (Name of the person responsible for managing the affairs of the telemarketer) son of/ daughter of/wife of _____ being the person responsible for managing the affairs of ---------- (*Name of telemarketer)* having principal/registered office (mention address----------) holding registration number ----------(Mention registration details with the Central Government, in the Ministry of Communication and Information Technology, Department of Telecommunication as telemarketer) who has been allotted basic / cellular telephone Number or Numbers._____, do hereby give the following undertaking, namely:-

(a) that I/we hereby agree not to make unsolicited commercial communications to any subscriber whose telephone number appears on the National Do Not Call Register;
(b)that in case I/we make any unsolicited commercial communications through my /our such telephone allotted to me/us to any subscriber whose telephone number appears on the National Do Not Call Register, my telephone connection may be liable to be disconnected;
(c) that in case I/we am/are required to make an unsolicited commercial communication to any subscriber whose telephone number does not appear on the National Do Not Call Register**,** such communication shall be prefixed with the following text in English or Hindi or regional language with which the recipient of the message is conversant:- "This is a commercial message, if you do not want to receive further messages, please register with your service provider's Do Not Call List".

Date:

Signature of subscriber/ Authorised Signatory
(Name of subscriber/ Authorised Signatory)
Address
Seal, if any.

(R.K. ARNOLD)
Secretary

Note: The Explanatory Memorandum explains the objects and reasons of the Telecom Unsolicited Commercial Communications Regulations, 2007

Explanatory Memorandum to the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) dated 5th June 2007

Background:

1. Telemarketing has emerged as one of the simplest and cost efficient tool for marketing of products. A large number of these 'telemarketing' calls and SMSs are unsolicited, i.e. the receiving party does not want to receive such calls or messages. Such messages disturb the recipients, intrude into their privacy, and impose a cost in terms of the time and effort. We can term such type of calls or messages as Unsolicited Commercial Communications (UCC).

2. There are also telephone communications that depend upon some prior relationship between the caller and called party, or where the called party expects such communications. For example, a retail store will expect calls from potential customers asking for product details; a person who has purchased a computer invites follow-up calls from the dealer. Such communications are expected, or solicited. Another type of communication is unsolicited, where the called party has no prior relationship with the calling party. This includes a large number of telemarketing calls or promotional messages. Such calls are unexpected or unsolicited. Thus, **another classification of telephone communications based on nature is of solicited versus unsolicited communications**.

3. A number of subscribers view unsolicited communications as a nuisance and inconvenient because they encroach on the called party's time and often interfere with the called party's activities. The telephone is a point-to-point communication technology that demands immediate attention since no one wishes to miss important or urgent messages. Most, if not all, subscribers also have their mobile telephones with them at all times and hence can be disturbed during personal or business events. In addition, subscribers often view such unsolicited communications as an invasion of privacy in the home or office.

4. People also receive unsolicited non-commercial communications. Such calls include fund-raising by not-for-profit or non-government agencies, public awareness campaigns. Another category of non-commercial communication may be obnoxious in nature intending to harass the recipient. There are provisions in the law, for example, the Indian Penal Code (45 of 1860) to deal with such calls. **Further, the**

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Authority believes that unsolicited non-commercial communications constitute a relatively insignificant number of all telephone calls.

5. On the other hand, there has been a significant increase in the volume of unsolicited commercial communications (UCC) over the past few years. There are now over 212 million telephone subscribers across the country. The direct marketing and sales industries have begun to use the telephone as a medium through which to reach potential customers. **This activity, comprising of informing about, or selling a commercial service or product over a telephone, or other telecom network, is colloquially referred to as telemarketing**, and the person(s) who engage in telemarketing as telemarketers.

6. A large industry comprising of call centers and business process outsourcing centers has grown in recent times to cater to business' need of telemarketing. There are no firm estimates available to the Authority of the number of telemarketing telephone calls made in India annually. However, based on information collected by the United States' Federal Trade Commission (FTC), the number of telemarketing calls completed per year in the USA was 16 billion.[1] Adjusting this statistic for the number of telephones in India, **the Authority estimates that telemarketers make more than 10 billion calls in India every year**. Such a large volume of calls, many of which are unwanted and seen as a nuisance also imposes burden on telecommunications networks, and a reduction in unwanted UCC will increase the efficiency of telecom networks.

7. Over the past two years, 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.[2] There have also been a number of consumer complaints made to the Authority about telemarketing calls.

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[1] Consolidated opening brief of appellant Federal Trade Commission, respondent Federal Communications Commission, and respondent-intervenor United States of America in *Mainstream*, 10th Circuit Court of the USA, 2003

[2] For details, please refer to TRAI Consultation Paper on Unsolicited Commercial Communications, Consultation Paper 15 of 2006, paragraph (¶) 1.3 to 1.11

8. In response some efforts have been made in past to curb the menace of Unsolicited commercial communication however, they have been very limited and fragmented. Some banks and service providers have given the option to their subscribers to list in their own do-not-call registers where the subscriber can register if they do not want to receive commercial communication from these specific organizations. It is therefore a very feeble attempt to curb the menace. There is an urgent need for a comprehensive approach to tackle the problem of Unsolicited commercial communication.

9. Responding to the near hostile expressions of consumers with telemarketing, the Authority initiated a consultation process on November 20, 2006 seeking the views of all stakeholders for a comprehensive solution that prevents the bulk of such unsolicited commercial communications. The Authority also conducted an Open House Discussion on this issue in December 2006.

10. Various approaches such as establishment of National Do Not Call Registry (hereinafter called 'NDNC registry'), earmarking separate block of numbers for telemarketers, automatic blocking of calls from the telemarketers to the subscribers who do not want to receive UCC and a Do Call approach under which telemarketers will make calls to only those subscribers who have specifically opted to receive commercial calls were discussed during the consultation process. A few solution provider companies made technical presentations to the Authority on possible technical solutions to telemarketing

11. Based on responses to the abovementioned consultation paper, the discussions and meetings conducted, the Authority has issued the foregoing the Telecom Unsolicited Commercial Communications Regulations, 2007.

12. Principles followed in the regulations —

    a. The Authority wanted to establish a system that protect the subscriber's privacy and right to live a peaceful life. The right to privacy is allied to the fundamental rights under Article 19 and 21 of the Constitution of India [People's Union for Civil Liberties (PUCL) versus Union of India and Another (1997) 1 SCC 301];

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b. One of the key concerns of the Authority while making the regulations was to ensure that these regulations do not, in any way, infringe on the fundamental rights to the freedom of speech and profession, occupation, trade or business as guaranteed in Articles 19(a) and (g) of the Constitution of India. The Authority agrees with the view of Reserve bank of India's (RBI's) working group on regulatory mechanism that it might not be advisable to ban all marketing calls, since they are an important marketing tool and a number of people are in favour of receiving calls regarding new products/information updates on existing products. In addition, it is pertinent to note that the telemarketing industry also generates useful employment. Consequently, the Authority has made sure that these regulations do not ban telemarketing as a whole, but only restrict the incidences of unwanted UCC;

c. The Authority wanted to make it easy for subscribers to avoid getting UCC, and allow subscribers to make a range of informed choices about whether they want to receive UCC or not;

d. Finally, the Authority sought a solution that is simple, protects subscriber's privacy and at the same time did not impose any significant cost on subscribers or service providers in terms of time, effort, or money.

13. It may be mentioned that most of the UCC are generated by telemarketers contracted by banks, insurance companies, Other Service Providers (OSPs) for selling / marketing their goods or services. In the regulation, **"Telemarketer" means any person who transmits any message, through telecommunications service, soliciting or promoting any commercial transaction in relation to goods, investments or services"**. As per the definition of the telemarketers, all the agencies making voice calls or sending SMSs for marketing of products, including those content providers who offer various services through SMS and voice using short codes fall in the category of telemarketers and they have to register as telemarketer.

14. In the foregoing regulation, the Authority has mandated that all the access providers will set up a mechanism to receive request from the subscribers who do not want to receive UCC. They will maintain a Private Do Not Call List, which will include

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telephone numbers and other details of all such subscribers. The telephone numbers and the area code from this Private Do Not Call List will be updated by the operators to a NDNC registry and thus the NDNC registry will have the telephone numbers of all the subscribers all over India who have opted not to receive any UCC. Telemarketers will have to register in the NDNC registry. The telemarketers would submit online the calling list to the NDNC registry where the list will be scrubbed by excluding the numbers listed in the registry and the scrubbed list will be online transferred back to the telemarketer for making calls.

Definition of Unsolicited Commercial Communication:

15. The primary challenge in front of the Authority while addressing the issue of UCC was to define Unsolicited Commercial Communication. In the consultation paper, the TRAI had given the following definition for comments from stakeholder:

> "Any message through a telecommunications service that is transmitted for the purpose of informing about, or conducting a commercial transaction related to, goods, investments, services, or ideas where the receiving party has not explicitly indicated that it wants to receive such a message"

16. Although some of the stakeholders including consumer associations have agreed to the above definition, some stakeholders suggested to change the definition that " …where the receiving party has explicitly indicated that it does not want to receive such a message". This was considered in the light of 'opt-out approach' being followed internationally and the possible impact on BPO industry. Further, majority of stakeholders have suggested the following while defining the UCC :

- Remove the term 'ideas' in the definition unless it is properly defined /articulated.
- Messages relating to charities, national campaigns should be excluded in UCC definition
- Exclude messages from telecom service providers regarding new tariff packages, billing information, new value added services etc. from the definition

17. While defining the UCC, the Authority has considered these suggestion and defined UCC as

"any message, through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investments or services which a subscriber of a service provider opts not to receive but does not include, ----

(i) any message (other than promotional message) relating to a service or financial transaction under a specific contract between the parties to such contract; or

(ii) any messages relating to charities, national campaigns or natural calamities transmitted on the directions of Government or its authorized registered agencies;

(iii) messages transmitted, on the directions of the Government or any authority authorized by it, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

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18. The Authority also decided that while addressing solution to this problem it should not be limited to voice calls but all other modes of electronic communication including SMS, IVR, MMS etc. As such the definition covers all types of unsolicited commercial communication

Technical solution - Unsolicited Commercial Communication:

19. The consultation paper has discussed various possible technical solutions and sought the views of stakeholders. Most of the stakeholders preferred telemarketer oriented solution in view of the following:

- The direct beneficiary of telemarketing activity is the telemarketer whereas service providers and customers are benefiting indirectly. In the telemarketer oriented solution it is the responsibility of the telemarketer to ensure that they do not call those customers who are not interested in such commercial messages. Therefore, Telemarketer oriented solution is preferred method

- Implementation of other solutions require a separate numbering scheme and up gradation in the network which can not be implemented immediately. Such up gradations are difficult in Fixed networks

20. Additionally, a committee comprising of members from DOT, TEC and TRAI was formed to deliberate on the technical feasibility of allotment of separate level for telemarketers and to work out a technical solution for automatic barring of unsolicited commercial communications from telemarketers to the subscribers. The committee has evaluated various options and has recommended that any such solution would result in highly inefficient utilization of numbering resources, would require up-gradation of switches entailing substantial investment on the part of the Access providers and would also increase signaling and processor load on the equipment leading to degraded performance of the network.

21. Based on the foregoing and the international practices, the Authority has decided that the most effective and easily enforceable solution would be to create a national database containing telephone numbers of the subscribers, who have opted not to receive UCC, to be called 'National Do Not Call Registry'. In the regulation, the Authority has mandated that all the access providers will set up a mechanism to receive request from the subscribers who do not want to receive UCC. They will maintain a Private Do Not Call List, which will include telephone numbers and other details of all such subscribers. The telephone numbers and the area code from this Private Do Not Call List will be updated by the operators to a NDNC registry and thus the NDNC registry will have the telephone numbers of all the subscribers all over India who have opted not to receive any UCC. Telemarketers will have to register in the NDNC Registry. The telemarketers would submit online the calling list to the NDNC registry where the list will be scrubbed by excluding the numbers listed in the registry and the scrubbed list will be online transferred back to the telemarketer for making calls.

22. In order to design, install and operate the National DNC, the Authority had prepared a Request For Proposal and forwarded it to National Informatics Centre (NIC), Dept. of Information Technology, Govt. of India for their comments and conveying willingness for setting up the same. NIC has responded to this positively

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and has agreed for taking up the work of designing, installation, operation and maintenance of the NDNC Registry. The authority has approved the NIC's proposal. In pursuance of the recommendations of the Authority regarding Unsolicited Commercial communication, DOT has authoritsed NIC for installation, operation and maintenance of NDNC registry. The Authority has decided to bear the expenditure for the same.

23. This regulation mandates every access provider, within fifteen days from the date of establishment of NDNC Registry, to setup a mechanism for registering request of subscribers for not receiving unsolicited calls and required to setup private do not call list. The Private Do Not Call List may contain various details such as name of subscriber, telephone number with area code, date and time of making of subscriber request, revocation of request etc.

24. Service Provider will update National Do No Call Register centrally maintained by NIC within 30 days after receipt of the customer registration/revocation request. Access Provider will perform updations in case of any changes in the National Numbering Plan or service of a customer is discontinued.

25. Telemarketers will have to register in the NDNC Registry. The telemarketers would submit online the calling list to the NDNC registry where a list will be scrubbed by excluding the numbers listed in the registry and the scrubbed list will be online transferred back to the telemarketer for making calls.

26. In order to make telemarketers accountable, TRAI has mandated all telemarketers to register within 3 months with the Department of Telecommunications. Thereby only registered telemarketers can be the subscribers of a Telecom Service Provider. If an existing telemarketer failed to register with DOT within the stipulated period, Telecom Service Providers have been authorized to disconnect their telephone connection.

27. A provision has been made through this Regulation that any subscriber who receives UCC after expiry of 45 days from the date of his request, may make a complaint mentioning the call originating number to his service provider. The telecom Service Provider will acknowledge such complaint, verify the UCC registration of the

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complainant and forward the same (including call detailed record and other relevant information) to the service provider from whose network such UCC was originated.

28. Originating Access Provider to whom the complaint has been forwarded will examine and warn the guilty telemarketer/ customer for the first time. If the UCC is repeated by the same customer for the second time the originating access provider can charge a higher tariff which is separately notified by TRAI in the Telecom Tariff Order, 1999. The Telecommunication Tariff (Forty fifth amendment) Order, 2007 specifies the tariffs for such unsolicited commercial communications to be charged from the sender by the Access Service Providers. If the customer sends the UCC for the third time, the access provider is empowered to disconnect the services of the guilty customer/telemarketer. Some views have been expressed that a tariff recovered by the service provider should be passed on to the affected subscriber. However, it is clarified that TRAI has neither any power to impose penalty nor power to adjudicate the complaints. Therefore, it has decided to follow the route of levying higher tariff on those telemarketer who violates the do not call list. The higher tariff charged by the service provider will be counted in the Adjusted Gross Revenue (AGR) of the service providers for the purpose of license fee and spectrum charges.

29. The Authority expects that notifying higher rate of tariff (i.e at Rs. 500/- for each such communication) for unsolicited commercial communication would protect the interest of consumers and service providers and facilitate orderly growth of the telecom sector.

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

TELECOM REGULATORY AUTHORITY OF INDIA

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

No. (1 OF 2008)

NOTIFICATION

New Delhi, the 17th March, 2008

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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 11 of the principal regulations, in sub-regulation (1),-----
(a) for the words "period of nine months", the words "period of two years" shall be substituted;
(b) the following proviso shall be inserted, namely:-
" Provided that a subscriber may make such request for inclusion or exclusion before the period of two years, in case the facility referred to in this sub-regulation has been developed before a period of two years.".

4. In regulation16 of the principal regulations,--
(a) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-
"(1A) Every complaint under sub-regulation (1) shall be made by a subscriber within fifteen days of receipt of unsolicited commercial communication by him.";
(b) in sub-regulation (3),-
(i) in clause (a), for the words "direct the sender", the words, brackets and letters "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 letter "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.

5. In regulation 17 of the principal regulations, the following proviso shall be inserted, namely:-
"Provided that nothing contained in this regulation shall authorise 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 Government of India in the Ministry of Communications and Information Technology (Department of Telecommunications) 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 regulation7;
(c) if such unsolicited commercial 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.".

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

"CHAPTER IVA
INQUIRY AND PROVISION FOR FINANCIAL DISINCENTIVE FOR SENDING UNSOLICITED COMMERCIAL COMMUNICATIONS

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 an amount, by way of financial disincentive, not exceeding five thousand rupees and in case of second or subsequent such contravention, to pay an amount not exceeding twenty thousand rupees for each such contravention, as the Authority may, by Order under regulation 17H, direct.
17B. Factors to be taken into account by the Authority for deciding the amount of financial disincentive.---While deciding the amount of financial disincentive 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 into the contravention of the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be and as may be specified by the appointing authority, and, to report thereon to the Authority.

17D.**Composition of inquiry committee.**------- (1) The inquiry committee, for the purpose of holding inquiry as referred to in regulation 17C,shall consist of three officers not below the rank of Advisor in the Authority comprising of,---

(a) one representative from the Regulatory Enforcement Division in the Authority ;

(b) one representative from the Legal Division in the Authority;

(c) one representative from any other Division in the Authority,

as may be nominated by the appointing authority:

Provided that an Advisor in the Authority, dealing with the case being inquired into, or, directed to be inquired into, shall not be nominated by the appointing authority 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 nominate 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 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 through his authorised representative.

(4) The inquiry committee shall give an opportunity to the concerned 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 an authorised representative of 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 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,

as the case may be, and submit such report to the Authority.
(2) Every report made under sub-regulation (1) shall specify 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 all the members of the inquiry committee.

17G.Service of notices.---The notices referred to in sub-regulations (1) and (3) of regulation 17E 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 authorised representative; or
(b) by sending it to the concerned service provider by registered post with acknowledgement due to the address of its place of business or at its registered office.

17H. Order for payment of amount by way of financial disincentive by Authority on report of inquiry committee.----- (1) The Authority may, after considering the report of the inquiry committee, by order, direct the service provider, which violated the provisions of regulation 15 or regulation 16 or regulation 17, as the case may be, to pay such amount, subject to the provisions of regulation 17A, by way of financial disincentive, as may be specified in the order:

Provided that no order for payment of any amount by way of financial disincentive 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 making an order for payment of any amount, by way of financial disincentive, under these regulations.

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

7. In the Form of undertaking annexed to the principal regulations, in item (c), for the words “This is a commercial message, if you do not want to receive further messages, please register with your service provider’s Do Not Call List”, the letters and words “Pls speak to your operator if U do not want commercial msgs’’ shall be substituted.

(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.

EXPLANATORY MEMORANDUM

Background:

The Telecom Regulatory Authority of India (the Authority) had made 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 basic telephone or cellular mobile telephone 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), in the Ministry of Communications and Information Technology. 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 Ministry of Communications and Information Technology (Department of Telecommunication) 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. The Department of Telecommunications has also allotted a special four digit code "1909" to enable easy access to the consumers to register their number in NDNC.

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 8.3 million phone users have registered for 'Do Not Call' in NDNC Registry. About 13600 telemarketers have got themselves registered with the Ministry of Communications and Information Technology (Department of Telecommunication).The NDNC is being accessed daily by around 600 tele-marketers for scrubbing their calling list. Out of approximately 1522 million numbers uploaded by the telemarketers for scrubbing, 1411 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 the5th 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. The Authority has revisited the matter 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 and protect the interests of the consumers. 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. [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. 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. It has therefore been decided by the authority to make service provider liable to pay an amount, by way of financial disincentive, not exceeding five thousand rupees for contravention of the provisions of regulation 15 or regulation 16 or regulation 17 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) and in case of second or subsequent such contravention, to pay such amount not exceeding twenty thousand rupees for each such contravention. Unless such any amount by way of financial disincentive is introduced by the Authority for preventing the Unsolicited Commercial Communications 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.

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 to introduce financial disincentive in relation to the service providers for preventing sending of the Unsolicited Commercial Communications**.**

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 disincentive 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 payment of any amount by way of financial disincentive by 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 Acces 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 Explanatory Memorandum to the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), the telemarketing calls have engaged the attention of our Parliament, the Hon'ble Supreme Court of India, the Hon' High Court of Delhi and the Reserve Bank of India. Besides there have also been a number of consumer complaints made to the Authority about telemarketing calls. The situation is still much below the desired level and non-compliance of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) continues as there has not been provision for effective financial sanctions.

14. In order to ensure strict compliance of the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), it has been provided by the Telecom Unsolicited Commercial Communications (Amendment) Regulations 2008, certain financial disincentive for the telecom service provider in cases of non-compliance of the provisions of the principal regulations.

15. In addition to the above provision mentioned in preceding paragraph, the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 amends the principal regulations, i.e., the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) so as to *inter alia* provide ---

(a) for the detailed procedure for conducting an inquiry by the inquiry committee (consisting of three officers not below the rank of Advisor in the Authority, as may be nominated by the Chairperson or the Authority) for violations of certain provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007);

(b) for payment by the telecom service providers [which violate certain provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007)] of certain amounts by way of financial disincentive, as may be directed by an order of the Authority after considering of the report of the inquiry committee referred to in sub-paragraph (a) above;

(c) payment of an amount, by way of financial disincentive, not exceeding rupees five thousand for first non-compliance of the provisions of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) and in case of second or any subsequent non-compliance of the said regulations, an amount not exceeding rupees twenty thousand for each non-compliance.

(e) that no order for payment of any amount by way of financial disincentive 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 and the Authority to be guided by the principles of natural justice for the purposes of making an order for payment of any amount by way of financial disincentive under these regulations.

16. Existing provisions contained in regulation 16 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) do not specify the time limit within which the aggrieved subscriber of Unsolicited Commercial Communications shall make a complaint to his telecom service provider. In the absence of the time limit for making a complaint to his telecom service provider, the service providers are required to preserve call data records permanently. Therefore, a time period of fifteen days has been provided to the subscriber for making a complaint to his telecom service provider in respect of unsolicited commercial communications.

17. As per the undertaking given in the Telecom Unsolicited Commercial Communications Regulations, 2007, as it stood before the amendment by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 , every telemarketer if he makes an unsolicited commercial communication to any subscriber whose telephone number does not appear on the National Do Not Call Register, such communication shall be prefixed with the following text -

"This is a commercial message, if you do not want to receive further messages, please register with your service provider's Do Not Call List."

Some stakeholders made a representation in this regard to Authority stating that the said text has a length of 160 characters whereas the prefixing the above said message before each unsolicited commercial communication / promotional message and therefore is very highly lengthy and ineffective. Therefore, they have suggested that this could be shortened or reduced in terms of number of characters. Therefore the said message to be prefixed with the following text is suggested as under-

'Pls speak to your operator if U do not want commercial msgs'.

This suggestion has been broadly accepted and the relevant text of the undertaking has been modified suitably.

18. Under the provisions contained in sub-regulation (1) of regulation 11of the Telecom Unsolicited Commercial Communications Regulations, 2007, any subscriber may, after expiry of period of nine months from the date on which the National Do Not Call Register has been established under sub-regulation (1)of regulation 6, make a request to the Access Provider for inclusion in, or, exclusion from the request made under regulation 7 or revocation under regulation 9, any class or classes or type or category or categories of unsolicited commercial communication in accordance with the facility developed by the agency establishing National Do Not Call Register. The National Do Not Call Registry has become operational with effect from 12th October 2007 and the provisions of said sub-regulation (1) of clause11 would come into force by 12th July 2008. However, in view of number of complaints being received from the subscribers in the existing framework itself about violation of Unsolicited Commercial Communications Regulations, it may require some more time for the existing system to stabilize. Therefore, it is proposed to extend the said time limit up to two years. However

it has also been provided that a subscriber can make such request for inclusion or exclusion before the period of two years, in case the facility referred to in the said sub-regulation(1) of regulation 11 has been developed before a period of two years

19. 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 for payment of any amount by way of financial disincentive 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.

20. Apart from the above financial disincentive on the service providers, and in order to discourage the registered telemarketers also from sending Unsolicited Commercial Communications , the Telecommunication Tariff Order, 1999 is also being amended by the Telecommunication Tariff (Forty- seventh Amendment) Order, 2008 so as to provide that five hundred rupees shall be payable as tariff for each unsolicited commercial communication [made from Basic Services (Other than ISDN**)** and Cellular Mobile Telecom Service (CMTS)] for every first unsolicited commercial communication and rupees one thousand shall be payable as tariff for every subsequent unsolicited commercial communication.

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 21st October, 2008

THE TELECOM UNSOLICITED COMMERCIAL COMMUNICATIONS (SECOND AMENDMENT) REGULATIONS, 2008. (No. 3 OF 2008)

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No. 104-15/2008-MN.----------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 further 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 (Second Amendment) Regulations, 2008.
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In regulation 7 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007), (hereinafter referred to as the principal regulations), in sub-regulation (2), after the words "the National Do Not Call Register", the words "and such option shall form part of the application form or agreement form or enrolment form, or any other form, as the case may be, required for providing the telephone service connection" shall be inserted at the end.
3. In regulation 16 of the principal regulations, -----
(a) in sub-regulation (1), for the words " make a complaint, mentioning the call originating telephone number," the words "make a complaint, mentioning therein, the telephone number from which the unsolicited commercial communication was received by the complainant, the date, time and brief description of such unsolicited commercial communication" shall be substituted;
(b) in sub-regulation (2), in clause (c), for the brackets and words "(including call detail record and other relevant information and documents in respect of

the complaint)", the brackets and words "[along with the date of lodging of the complaint with the service provider and the particulars of the unsolicited commercial communication as furnished by the complainant under sub-regulation (1)]", shall be substituted;
(c) in sub-regulation (4), for the words " disconnect the telephone", the words "disconnect the telecom resources like telephone number, internet protocol (IP) or any other form of connectivity with SMS centre" shall be substituted;
(d) after sub-regulation (4), the following sub-regulations shall be inserted at the end, namely:-
"(5) In case any complaint has been forwarded by a service provider, after the expiry of seven days referred to in sub-regulation (2), to the Originating Access Provider, such Originating Access Provider shall, notwithstanding that such complaint had been forwarded to it after seven days referred to in said sub-regulation (2), take action on such complaint in accordance with the provisions of sub-regulation (3) or sub-regulation (4), as the case may be, and forwarding of such complaint after the expiry of seven days referred to in sub-regulation (2) shall continue to be in contravention of the provisions of the aforesaid sub-regulation (2) by such service provider who forwarded such complaint after the said period of seven days.
(6) The Originating Access Provider to whom a complaint has been forwarded under clause (c) of sub-regulation (2), shall, within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act,-
(a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;
(b) intimate, the result of the investigation and the action taken by it on the basis of the complaint, to the service provider which forwarded the complaint;
(c) maintain records of the complaints and their redressal, including relevant call detail records, for a period of atleast six months from the date of redressal of each complaint.
(7) The service provider who received the complaint of the subscriber under sub-regulation (1) shall, upon receipt of the intimation from the Originating Access Provider under clause (b) of sub-regulation (6), within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act, intimate, to the complainant, the result of the investigation and the action taken by the Originating Access Provider on his complaint.
(8) In case the service provider to whom a complaint has been made by a

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subscriber under sub-regulation (1), finds after carrying out the verification under clause (b) of sub-regulation (2), that the unsolicited commercial communication in respect of which complaint had been made by the subscriber, originated from its own network, such service provider, being the Originating Access Provider, shall, within such time and in such manner, as may be specified by direction issued by the Authority under section 13 of the Act ,-
(a) complete the investigation referred to in sub-regulation (3) and, if after such investigation, the Originating Access Provider finds that such call is an unsolicited commercial communication, take action referred to in clause (a) and clause (b) of sub-regulation (3) or sub-regulation (4), as the case may be;
(b) inform the complainant about the result of the investigation and the action taken by such service provider on the basis of his complaint;
(c) maintain records of the complaints and their redressal, including relevant call detail records, for a period of atleast six months from the date of redressal of each complaint".
4. In regulations 17A, 17B and 17C of the principal regulations, for the words and figures " regulation 15 or regulation 16 or regulation 17," wherever they occur, the words and figures "regulation 7 or regulation 15 or regulation 16 or regulation 17" shall be substituted;
5. In regulation 17D of the principal regulations, in sub-regulation (1), -------
(a) clause (b) shall be omitted;
(b**)** clause (c) shall be numbered as clause (b) thereof and in clause (b) so numbered,--------
(i) for the words "one representative", the words "two representatives" shall be substituted;
(ii) for the word "Division", the word "Divisions" shall be substituted;
6. In regulation 17E, 17F and 17H of the principal regulations, for the words and figures "regulation 15 or regulation 16 or regulation 17" wherever they occur, the words and figures "regulation 7 or regulation 15 or regulation 16 or regulation 17" shall be substituted.

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(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 and subsequently amended, vide notification number No. 15-2/2008-RE dated the 17th March, 2008 published in the Gazette of India, Extraordinary, Part III, Section 4 dated the 17th March, 2008.

Note.2. --The Explanatory Memorandum explains the objects and reasons of the Telecom Unsolicited Commercial Communications (Second Amendment) Regulations, 2008.

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Explanatory Memorandum

The Authority has made Telecom Unsolicited Commercial Communications Regulations, 2007(4 of 2007) (hereinafter referred to as the principal regulations) providing for setting up of mechanism for registering requests of subscribers for not receiving unsolicited commercial communications. The Authority has subsequently amended the principal regulations by the Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008 (1 of 2008) to improve the effectiveness and compliance of the said regulations by imposing financial disincentives in case of non-compliance of certain provisions of the principal regulations by the telecom service providers.

2. As per regulation 7 of the principal regulations, Access Providers are required to provide option to every new subscriber at the time of providing telephone connection, for registration of his telephone number in the National Do Not Call Register (NDNC). In the absence of specific provision as to the manner in which the service provider is required to provide such options to the new subscribers, some of the access providers are merely informing such new subscribers about the option to register in the NDNC. Therefore, it is felt that there is necessity to provide for the manner in which such option is to be given to the new subscriber, i.e., as part of the customer agreement/enrollment form meant for providing a new telephone connection.

3. On the basis of the experience in handling the complaints, certain service providers have represented that some of the service providers are rejecting the forwarded complaints on the ground that the same were received by them beyond the period of seven days as specified in sub-regulation (2) of regulation 16. While the forwarding of the complaints by a service provider beyond the period of seven days as specified in the said regulation is a violation of the said sub-regulation, the same cannot be allowed to be taken as an excuse for not taking action on such complaints by the Originating Access Provider. Therefore, there is need to incorporate suitable provisions mandating that even in case of complaints forwarded after the expiry of the period of seven days as specified, the Originating Access Provider shall take action in terms of the provisions of sub-regulations (3) and (4) of regulation 16 so as to ensure that no complaint which has been made to a service provider is accordance with sub-regulation (1) goes unredressed.

4. During the course of monitoring of implementation of the principal regulations, it has been observed by the Authority that there is also a need to specify time limits for handling complaints by the Originating Access Provider

or the service provider (in case such service provider itself is the Originating Access Provider) and for communication of the result of investigation and the action taken on the basis of the complaint to the subscriber who made the complaint. Accordingly, suitable provisions have been incorporated in the present amendment to the principal regulations providing for time limits to be specified by the Authority under a direction under section 13 of the TRAI Act, 1997 for these purposes.

5. Further, it has been brought to the notice of the Authority that requirement of forwarding of call detail records (CDR) is acting as hindrance to the timely forwarding of complaints and that the insistence of some of the service providers on the forwarding of call detail records before accepting UCC complaints, results in a situation where timely redressal of the complaints becomes difficult. In view of this, clause (c) of sub-regulation (2) has been suitably modified removing the mandatory requirement of sending/forwarding CDRs with each and every forwarding complaint and mandating the forwarding of details of the complaint including the date of lodging of the complaint and the particulars of the unsolicited commercial communication as furnished by the complainant under sub-regulation (1) and other relevant information and documents in respect of the complaint to the Originating Access Provider along with the complaint. However, the present amendment mandates the service provider and the Originating Access Provider to maintain the records of the complaints and their redressal which would obviously include relevant call detail records.

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