

July 3, 2007

**All Commercial Banks
(excluding RRBs)**

Dear Sir,

**Unsolicited Commercial Communications –
- National Do Not Call Registry**

A reference is invited to para 7(i) of our circular No.DBOD.FSD.BC.10/24.01.011/2006-2007 dated July 1, 2006 addressed to all the Scheduled Commercial Banks/NBFCs on Credit Card operations of banks, wherein instructions have been given regarding maintenance of Do Not Call Registry by all credit card issuing banks in order to tackle the complaints relating to unsolicited commercial communications being received by customers/non-customers as part of the telemarketing efforts of banks and with a view to protecting the right to privacy of the members of the public.

2. Keeping in view the continuous complaints from credit card subscribers and the observations of the Hon'ble High Court of Delhi in the context of a Public Interest Litigation in this regard, the Telecom Regulatory Authority of India (TRAI) is in the process of taking certain national level initiatives to address the various issues relating to Unsolicited Commercial Communications (UCC). As part of these measures, TRAI has framed The Telecom Unsolicited Commercial Communications(UCC) Regulations 2007 for curbing UCC.

The Regulation envisages that all the telecom service providers would set up a mechanism to receive requests from subscribers who do not want to receive UCC and for this purpose they will maintain and operate a Private Do Not Call List. The Private Do Not Call List will include telephone numbers and other details of all such subscribers. The telephone numbers and area code from this Private Do Not Call List will be updated online by the operators to a National Do Not Call Registry (NDNC) which will be maintained by National Informatics Centre (NIC) and thus the NDNC 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 modified/scrubbed by excluding the numbers listed in the registry and the modified/scrubbed list will be online transferred back to the telemarketers for making calls. The Telecom Unsolicited Commercial Communications(UCC) Regulations, 2007 has since been **notified in the Gazette** on June 6, 2007(copy enclosed).

3. Further, the Department of Telecommunications (DoT) has issued relevant guidelines for telemarketers alongwith the registration procedure on June 6, 2007 (copy enclosed). These guidelines have made it mandatory for **telemarketers to register** themselves with DoT or any other agency authorized by DoT and also specified that the telemarketers shall comply with the Guidelines and Orders/Directions issued by DoT and Orders/Directions/Regulations issued by TRAI on Unsolicited Commercial Communications(UCC). The detailed **procedure** in this regard is also available on TRAI's website (www.traigov.in).

4. For the effective implementation of the UCC Regulations, TRAI has mandated that the telemarketers have to register themselves with the DoT, Ministry of Communication and Information Technology, Government of India within three months of the issue of the **guidelines for Telemarketers** by DoT, failing which their telecom services may face disconnection. The Telecom Service Providers have been directed to disconnect the telephone connections provided to the telemarketers in case of violation of the UCC Regulations by them.

5. Keeping in view the above aspects, banks are advised to implement the following instructions:

(i) Banks should not engage Telemarketers (DSAs/DMAs) who do not have a valid registration certificate from DoT, Govt. of India, as telemarketers.

(ii) Banks should furnish the list of Telemarketers (DSAs/DMAs) engaged by them along with the registered telephone numbers being used by them for making telemarketing calls to IBA to enable IBA to forward the same to TRAI within three months from the date of issue of the guidelines for Telemarketers by DoT i.e. June 6, 2007

(iii) Banks should ensure that all Telemarketers(DSAs/DMAs) presently engaged by them register themselves with DoT as telemarketers within a period of three months from the date of issue of the guidelines for Telemarketers by DoT i.e. June 6, 2007.

(iv) As per the laid down procedure, the telemarketer(DSAs/DMAs) shall get automatically registered with NDNC Registry while they register themselves with DoT.

(v) As IBA will be the co-ordinating agency at the industry level to ensure compliance with the requirements of TRAI regulations, banks are advised to actively cooperate with IBA in this regard.

(vi) In case banks require any further clarifications in this regard, they may contact TRAI at the following telephone number – 011-23222084 or e-mail address – smkchandra@gmail.com.

6. Banks are advised to initiate prompt action to ensure compliance with the TRAI regulation within the prescribed time frame.

Yours faithfully

(P.Vijaya Bhaskar)
Chief General Manager

Withdrawn

PRESS NOTE

6th June, 2007

REGISTRATION OF TELEMARKETER

It has been constant endeavour of the Government to usher in policy decisions that could facilitate better telecommunications facilities to the people as per National Telecom Policy 1999.

In line with the above policy, Govt. have today announced the guidelines for registration of Telemarketers which will enable curbing of unsolicited commercial calls in the country by putting in place a mechanism for reducing the unsolicited commercial communication. The salient points of the guidelines are as follows:

1. Access Service providers shall accept the application from a Telemarketer in the prescribed proforma alongwith registration processing fee of Rs. 1000/- per telemarketing centre.
2. The applications shall be acknowledged on receipt. The acknowledgement shall be treated as provisional registration valid for providing service by Telemarketer (unless instructed otherwise by the service provider/ DoT / TRAI). This provisional registration shall be valid for a period of three months.
3. Subsequently a registration shall be issued by DoT to the Telemarketer which shall be valid for 10 years.
4. Any person providing telemarketing service, without any registration now, should also register themselves in a manner prescribed for Telemarketer latest by 31st August 2007.
5. After 31st August, 2007, the service providers shall not provide/discontinue to provide telecom resources to the persons providing Telemarketing services without registration.
6. National Informatics Centre (NIC) has been authorized to set up a National Do Not Call (NDNC) registry. The Telephone users who do not want unsolicited commercial calls can register with NDNC registry.
7. The Telemarketers shall scrupulously follow the orders / directions / regulations issued by DoT / TRAI on the unsolicited commercial communication including scrubbing of the list of the subscribers to be called for telemarketing purpose through the National Do Not Call (NDNC) registry of National Informatics Centre (NIC).
8. Detailed guidelines for registration of 'Telemarketer' are available on the DoT's website www.dot.gov.in also.

Guidelines for Telemarketer

Any person or legal entity engaging in the activity of telemarketing is required to register itself and comply with the following guidelines:-

1. Definitions (In this part, unless the context otherwise requires) :-

- (i) 'Telemarketing' - Transmission of any message through telecommunication services for the purpose of soliciting or promoting any commercial transaction in relation to goods, investment or services.
- (ii) 'Telemarketer' - Person/ legal entity engaged in the activity of telemarketing.
- (iii) 'Telemarketing Centre' - The telemarketing facility at a location in India used by the Telemarketer for providing the telemarketing services.
- (iv) 'Telecom Resource' - Telecom facilities provided by licensed telecom service provider.
- (v) 'Remote Location' – A point of presence from where Telemarketer collects and carries the non-voice traffic relating to telemarketing activities.

2. General:

- (i) Telemarketer shall apply for registration to the Department of Telecommunications (DOT) or any other agency authorized by DoT.
- (ii) Telemarketer can have multiple registrations.
- (iii) Each Telemarketing Centre shall be registered separately location-wise.
- (iv) Processing fee of Rs. 1000/- payable per Telemarketing Centre
- (v) The validity of the registration shall be 10 years and renewable.
- (vi) Telemarketer shall inform DoT of any change in the information furnished within 15 days.

3. Technical Conditions for Operation of Telemarketer Centre

- (i) The Telemarketer shall obtain the Telecom Resources from a Licensed Telecom Service Providers only.
- (ii) Telemarketer is permitted to have both way (incoming/outgoing) PSTN connectivity for Telemarketing activities.
- (iii) Telemarketer may have connectivity through leased lines/Internet/VPN for non voice applications to a remote location { clients /National Do Not Call registry (NDNC)}
- (iv) The Telemarketer shall not misuse the Telecom Resources for any other activity and shall be responsible for the same.
- (v) Telemarketer shall ensure complete separation between PSTN lines used for the purpose and any other Telecom resource being used in the same premises.
- (vi) Interconnection between Telemarketing Centres is not permitted.

4. Compliance to Directions/Orders:

The Telemarketer shall comply with:

- (i) Guidelines for Telemarketer
- (ii) Orders/Directions issued by DoT
- (iii) Orders/Directions/Regulations issued by TRAI on Unsolicited Commercial Communication (UCC)

5. Restrictions on 'Transfer of Registration

The Telemarketer shall not, without the prior written consent of DoT, either directly or indirectly, assign or transfer this Registration in any manner whatsoever to a third party or enter into any agreement for sub-Leasing and/or partnership relating to any subject matter of the Registration to any third party either in whole or in part i.e. no sub-leasing/partnership/third party interest shall be created.

6. Requirement to furnish information:

The Telemarketer shall furnish to DoT, on demand in the manner and as per the time frames such documents, accounts, estimates, returns, reports or other information in accordance with the rules/orders as may be prescribed from time to time.

7. Security Conditions:

- (i) The Telemarketer shall make available on demand to the person authorized by DOT, full access to their equipments for technical scrutiny and for inspection, which can be visual inspection or an operational inspection.
- (ii) The Telemarketer will ensure that their equipment installations should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.
- (iii) The Telemarketer shall be required to provide the call data records of all the specified calls handled by the system at specified periodicity, as and when required by the security agencies.
- (iv) Wherever considered appropriate, DoT may conduct any inquiry either suo-moto or on complaint to determine whether there has been any breach in compliance of the guidelines for Registration by the Telemarketer and upon such inquiry the Telemarketer shall extend all reasonable facilities without any hindrance.

8. Prohibition of certain Activities by the Telemarketer.

- (i) The Telemarketer shall not engage on the strength of this Registration in the provision of any Service other than telemarketing and/ or requiring separate Licence / permission.
- (ii) The Telemarketer shall take necessary measures to prevent objectionable, obscene, unauthorized or any other content, messages or communications infringing copyright, intellectual property etc., in any form, consistent with the established laws of the country. Once specific instances of such infringement are reported to the Telemarketer by the enforcement agencies, the Telemarketer shall ensure that the carriage of such material is prevented immediately.
- (iii) Telemarketer will not infringe on the jurisdiction of Licensed Telecom Service Providers and they shall neither provide switched telephony nor use telecom resources as Public Call Office (PCO).

9. Suspension, Surrender or Termination of Registration

(i) The Department of Telecommunications, Ministry of Communications & Information Technology reserves the right to suspend the operation of this Registration at any time, if, in the opinion of DoT, it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the TELEGRAPH. If situation so warrant, it shall not be necessary for DoT to issue a notice for seeking comments of the Telemarketer for this purpose and the decision of DoT shall be final and binding.

(ii) Telemarketer may surrender the Registration, by giving 30 days notice to DoT.

(iii) Registration may be terminated for any failure to comply with the guidelines for Registration of Telemarketer.

Withdrawn

PROCEDURE FOR REGISTRATION OF TELEMARKETER

1. Applicant shall approach the access service provider for getting the provisional registration for Telemarketing along with the application form (TM-1).
2. Acknowledgement for the application shall be issued by the service provider which shall be treated as provisional registration for the Telemarketer for a period of three months. The provisional registration will authorize the Telemarketer to do Telemarketing activities during this period unless otherwise directed/instructed by the DOT/service provider.
3. Subsequently, a registration to the Telemarketer, valid for ten years, shall be issued by DOT.
4. Telemarketer shall make arrangements to get the calling list scrubbed by National Do Not Call (NDNC) Registry of NIC as per procedure laid down for the purpose.
5. Telemarketer shall be responsible for arranging resources for data connectivity to NDNC/Clients remote locations.

Withdrawn

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

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:-

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 (13 of 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

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

(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.

(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.

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 15)

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**

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.

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];

- a. 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;
 - b. 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;
 - c. 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

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;*

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

- 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 authorised 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

- 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.