

## ERGO

*Analysing developments impacting business*

### NEW DIRECTION BY TRAI TO REINFORCE TCCCPR COMPLIANCE

22 August 2024

#### **Introduction**

In a decisive move to combat the ongoing issue of unsolicited commercial communications and fraudulent activities conducted by spammers, the Telecom Regulatory Authority of India (TRAI) has issued directions to access service providers on 13 August 2024 (Directions). The Directions underscore the importance of strict compliance with requirements under the Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR), with a particular focus on the blacklisting provisions for unregistered senders or telemarketers.

Introduced in 2018, the TCCCPR envisaged to establish a robust framework aimed at curbing spam phone calls and SMSs, utilizing a Distributed Ledger Technology (DLT)-based system to manage consumer consent and enforce penalties on violators. Under the TCCCPR, senders/principal entities and telemarketers are required to carry out the prescribed regulatory pre-checks before sending or making any commercial communication. Despite these regulations, the persistence of unsolicited communications and various fraudulent activities and scams conducted through such communications has necessitated stronger enforcement measures.

#### **Growing concerns around unsolicited communication and coordinated efforts**

The rising tide of unwarranted promotional and spam calls, particularly from unregistered telemarketers in India exploiting telecom resources has prompted coordinated actions between TRAI and the Department of Telecommunications (DoT) as such activities not only infringes on consumer privacy but also undermines the credibility of legitimate businesses that rely on telecommunication channels for their business operations. Earlier this year, the DoT took action against telemarketers involved in fraudulent SMS activities, suspending the operations of the implicated entities.

This latest direction from TRAI is a continuation of these efforts, reflecting the regulatory bodies' growing concern over the persistent issue of spam and fraud in the telecommunications sector. Notably, in 2023 alone, there were over 12 lakh complaints lodged against '*unregistered telemarketers*' (UTMs), and the first half of 2024 saw more than 7.9 lakh complaints. These staggering figures underline the ongoing challenge and the need for stringent enforcement.

#### **Key Provisions of the New Direction:**

- **Immediate cessation of promotional calls from unregistered entities.** TRAI has directed that all promotional voice calls from unregistered senders or UTMs using telecom resources such as session initiation protocol (SIP), public resonance interface (PRI) and other telecom resources, must cease immediately. This move is aimed at cutting off the primary channels used for unsolicited communications.

- **Suspension and blacklisting.** In cases of non-compliance, the Originating Access Provider (OAP), which is the telecom service provider providing or facilitating telecom resources used by the unregistered senders, is mandated to disconnect all telecom resources of the offending sender for up to two years. Additionally, the sender will be blacklisted by the OAP for the same period, ensuring that they are barred from engaging in such unsolicited communication.
- **Cross-provider blacklisting and information sharing.** To ensure comprehensive enforcement, OAPs are required to share information about blacklisted senders with all other access providers on the DLT platform within 24 hours. This rapid information sharing is designed to prevent blacklisted entities from circumventing penalties by switching telecom service providers in order to continue engaging in such unsolicited activities. Upon receiving blacklisting information, all other access providers must disconnect any telecom resources provided to the blacklisted sender within 24 hours, ensuring swift and uniform enforcement across the sector.
- **No new allocation of telecom resource.** Once the telecom resources of such senders are suspended and the sender is blacklisted by the OAP and other access providers, no new telecom resources should be allocated to the concerned sender by any access service providers.
- **Regular reporting requirements.** To maintain transparency and accountability, all access providers are required to comply with these directions, update their Code of Practice accordingly, and submit an updated status on actions taken within 15 days of the direction's issuance. Additionally, they must provide regular reports to TRAI on actions against UTM's on the 1st and 16th day of every month.

## Comments

The intent behind the Directions is to curb unwarranted promotional communication, and not to eliminate promotional communication altogether. Businesses can continue to send promotional communications, but only with the explicit consent of consumers and ensuring all regulatory prechecks are conducted. In this regard, relevant steps will have to be taken at the backend by the access service providers to ensure compliance. This shift emphasizes a consumer-first approach, ensuring that promotional content is welcome and relevant rather than intrusive.

These measures, along with the DoT's revision of the numbering system in May 2024 to distinguish between transactional/service calls and promotional calls, highlight the government's proactive stance in tackling unwanted promotional communications and spam calls. The Directive's focus on disconnecting telecom resources and blacklisting violators could significantly disrupt businesses who are not registered with the access service providers and rely on telemarketing or promotional calls for customer outreach.

Furthermore, with the Digital Personal Data Protection Act, 2023 expected to come into force soon, business entities will be under an additional obligation to obtain explicit consent before processing personal data, including name, contact information used for promotional communications. This dual layer of regulation reinforces the need for compliance with the data privacy principles and consumer protection in an increasingly digital landscape.

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