



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION

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MEMORANDUM CIRCULAR

NO. 03-03-2005-A

SUBJECT: AMENDMENT TO THE RULES AND REGULATIONS ON BROADCAST MESSAGING SERVICE DATED MARCH 15, 2005

Pursuant to R.A. 7925, E.O. 546 series of 1979, and in order to address consumer complaints, welfare and protection, MC 03-03-2005 is hereby amended, the full text shall now be promulgated as MC 03-03-2005-A, as follows:

Section 1 SCOPE

- 1.1 All Public Telecom Entities and Content Providers operating within the Republic of the Philippines shall adhere to the requirements prescribed in this circular.
- 1.2 This circular shall cover commercial and promotional advertisements, surveys sent via Broadcast/Push messaging service.
- 1.3 This circular shall not cover emergency, distress, public service information messages, network advisories and consumer welfare and protection related advisories.

Section 2 DEFINITION OF TERMS

- 2.1 Broadcast Messaging Service – allows one to send the same SMS/MMS messages to a large number of mobile phones.
- 2.2 Commission - refers to the National Telecommunications Commission
- 2.3 Commercial advertisements – *a notice or announcement* for the purpose of *soliciting/advertising* a business, *product or services* and to generate revenue.
- 2.4 Content Provider (CP) - *an entity/organization that creates and/or maintains a database of information/data and which may offer services and products to the public for compensation.*

- 2.5 Multimedia Messaging Service (MMS) – allows users to send and receive messages containing images, videos, audio and text.
- 2.6 Opt-in – the subscriber has requested to be included on the specific list to receive direct marketing through SMS or MMS.
- 2.7 Opt-out – unsubscribing from commercial and promotional advertisements, surveys and other Broadcast/ Push messages.
- 2.8 Promotional advertisements (*promos*) – advertisements designed to increase visibility or sale of a product *or service*.
- 2.9 Public Telecommunications Entity (PTE) – any person, firm, partnership or corporation, government or private, engaged in the provision of telecom services to the public for compensation.
- 2.10 Push Messages – information transmitted to the mobile phone, either subscribed or unsolicited messages without a user request and are initiated by the *PTE* or CP.
- 2.11 Short Messaging Service (SMS) – a service for sending messages to mobile phones that use Global System for Mobile (*GSM*) Communications in text format.
- 2.12 Spam Messages – unsolicited or unwanted commercial and promotional advertisements and surveys.

Section 3 GENERAL MEASURES AND GUIDELINES ON PUSH MESSAGING

- 3.1 Commercial and promotional advertisements, surveys, and other Broadcast/Push messages shall be sent only to subscribers who have prior consent or have specifically opted-in to receive messages.
- 3.2 All Content Providers shall register with the Commission. All non-registered Content Providers shall, within fifteen (15) days from the date of effectivity of this Memorandum Circular, register with the Commission.
- 3.3 All promos to be sent via broadcast/push messaging service shall be registered and approved by the Department of Trade and Industry (DTI), provided however that the DTI shall not approve promos of PTEs and CPs not registered with the NTC. The DTI shall furnish the NTC with the list of registered and approved promos of PTEs and CPs.
- 3.4 PTEs shall enter into an agreement only with CPs registered with the NTC.

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- 3.5 Subscribers/recipients who do not reply to Broadcast/Push messages shall be considered to have not opted-in and such broadcast shall be stopped.
- 3.6 PTEs and content providers shall provide an easy-to-remember hotline number, that may be accessed by voice calls or SMS and free of charge, to assist subscribers who may have queries on subscribed services and/or who wish to opt-out from a particular service or to be excluded from receiving any broadcast messages.
- 3.7 PTEs and content providers shall also provide methods for subscribers who have opted-in to opt out at some later date. Regular opt-out instructions will be sent once a week for daily subscriptions, once a month for weekly subscriptions.
- 3.8 Broadcast/Push messages shall not be sent between 9:00 PM to 7:00 AM except on paid subscription services.
- 3.9 All broadcast messages shall display the name of the PTE. In the case of Content Provider initiated messages, the Content Providers shall indicate their company names or assigned codes. The PTEs shall furnish the Commission with a list of the assigned codes of their CPs.
- 3.10 PTEs and CPs shall include valid addresses or numbers to which recipients can send requests to cease broadcast/push message. They shall also provide command/message on how to opt-out.
- 3.11 Opting-in/Opting-out shall be free of charge.
- 3.12 There shall be an exclusion list for each PTE/CP which it will regularly update to ensure that subscribers in the list are not sent broadcast messages.
- 3.13 The PTEs and CPs shall regularly consolidate/update their respective list of subscribers who have opted-in/opted-out.
- 3.14 PTEs and CPs are required to adopt the keyword "STOP" as the universal keyword for opting-out.

Section 4 HANDLING OF SPAM RELATED COMPLAINTS

- 4.1 Complainants may file or phone in their complaints with the concerned PTE and the PTE shall act on all complaints received in whatever form and manner within fifteen (15) days from receipt of such complaints.
- 4.2 Complainants who are not satisfied with the action of the PTE may bring the matter to the Commission in writing within three (3) months from receipt of the alleged text spam.

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- 4.3 Complainants shall present the alleged spam message/s to the Commission for verification.
- 4.4 A PTE/CP shall designate two or more authorized representatives to be available to the Commission during regular business hours who will accept inquiries/requests for information regarding complaints from subscribers and who will submit the required text data record. Every PTE/CP shall provide the Commission with an up-to-date list of their authorized representatives' name/s, contact number/s and business address/es. The acts of the authorized representative/s shall bind the concerned PTE/CP.
- 4.5 PTEs/CPs shall submit within five (5) working days from the date of request, the text data record and other pertinent documents showing that the subscriber opted-in to a particular service.
- 4.6 PTEs shall retain the text data records for a period of six (6) months from the date of entry while CPs shall retain the text data records for a period of three (3) months from the date of entry. However, PTEs and CPs shall not destroy or dispose records subject of a complaint filed with the Commission.
- 4.7 There shall be a presumption that when a subscriber complains of text spam, he did not opt-in for that particular service, and the burden of proof shall be upon the PTEs/CPs that the subscriber actually opted-in to such service. The primary proof acceptable to the Commission to defeat this presumption shall be the text data record presented to the Commission by the PTEs/CPs that would show that the complaining subscriber did in fact opt-in.

Section 5 ADMINISTRATIVE AND PENAL SANCTIONS

- 5.1 Non-compliance and/or violation of any of the provisions of this Circular and other relevant laws, rules and regulations of this Commission, shall subject the violator/respondent to cancellation or suspension of their provisional authority/certificate of public convenience and necessity (PTEs) or cancellation or suspension of their certificate of registration (CPs) and imposition of the appropriate fines and penalties after due notice and hearing.
- 5.2 PTEs and CPs in violation of this Memorandum shall be blacklisted by the Commission. Blacklisted PTEs and CPs shall not be allowed to engage in broadcast messaging services.
- 5.3 Violation of this Memorandum Circular, notwithstanding the above provisions, shall subject the PTE/CP to a penalty of two hundred pesos (P200.00) per violation per subscriber.

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5.4 Each text spam shall be considered as a violation. Also, every provision violated or not complied by the PTEs and CPs shall be considered as a violation.

5.5 PTEs/CPs violating the provisions of this Memorandum Circular shall be subject to the following administrative fines and penalties:

Twenty (20) violations or less (per quarter of every year) - fine of P200 per violation.

More than twenty (20) violations to fifty (50) violations (per quarter of every year) - fine of P200 per violation, blacklisting and suspension of provisional authority/certificate of public convenience and necessity (PTE) or suspension of their certificate of registration (CPs).

More than fifty (50) violations (per quarter of every year) – fine of P200 per violation and cancellation of provisional authority/certificate of public convenience and necessity (PTE) or cancellation of their certificate of registration (CPs).

Section 6 REPEALING CLAUSE

6.1 This supersedes any and all existing Orders, Circulars, Memoranda or any part thereof inconsistent herewith.

Section 7 EFFECTIVITY

7.1 This circular takes effect fifteen (15) days after publication in a newspaper of general circulation and three (3) certified copies furnished the UP Law Center.

Quezon City, Philippines, July 3, 2006


JORGE V. SARMIENTO
Deputy Commissioner


RONALD OLIVAR SOLIS
Commissioner


JAIME M. FORTES, JR.
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