

POSITION PAPER

The Regulatory Treatment of Bulk Messengers



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

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A Position Paper issued by the Telecommunications Regulatory Authority on the Regulatory Treatment of Bulk Messengers

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Purpose: To outline the Telecommunications Regulatory Authority's position on the regulatory treatment of Bulk Messengers (of a certain operative nature) in conducting their operations within the Kingdom of Bahrain.

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Introduction

1. In 2010, the Telecommunications Regulatory Authority (“the Authority”) commenced a review on the regulatory framework governing the licensing of Bulk Messengers operating within the Kingdom of Bahrain.
2. This position paper refers to Bulk Messenger companies who are resellers of a Bulk Messaging service to customers and the licensing framework governing these companies as required by the Telecommunications Law (as promulgated by Legislative Decree No. 48 of 2002) in Article 24.
3. The Authority determined its position through a review of Article 24 (set out in paragraph 9 below), the technical operations of the Bulk Messengers and the provision of their service to customers as well as the current licensing regime in place.
4. This paper is a position paper reflecting the Authority’s views and is a general statement issued based on the facts available to the Authority at the time of stating its position. The Authority reserves its right to alter its position as technological developments and advancements within the telecommunications sector may necessitate the need for adjustments to the regulatory framework.

Background

5. Bulk Messages are defined as short text messages (“SMS”) or multimedia messages (“MMS”) sent or intended to be sent to a group of persons in the Kingdom of Bahrain. The provision of this service can be done so by Licensed Operators (“LOs”) using their own mobile network or through third parties known as Bulk Messengers.
6. Bulk Messengers for the purposes of this Position Paper are essentially resellers of the Bulk Messaging service. The characteristics of a company operating as a Bulk Messenger are generally that they do not own or operate Telecommunications Equipment, Network or Radio-communications

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Equipment as defined by the Telecommunications Law for the conveyance and delivery of Bulk Messages to their customers.

Many Bulk Messengers may not directly interconnect with Licensed Operators in the Kingdom of Bahrain and may market and provide their services through web based applications or interfaces.

Technical Operation of Bulk Messengers

7. Bulk Messengers as described in paragraph 6 are essentially resellers of the Bulk Messaging service from Licensed Operators (whether located in the Kingdom or otherwise). On review of the nature of operations of a number of Bulk Messengers operating within the Kingdom of Bahrain, the Authority finds that many offer a website where customers (who can be individuals or companies) can sign up and purchase a set number of Bulk Messages to send out.
8. As noted above, many of these Bulk Messengers do not own or operate any transmission or Telecommunications Equipment to be involved in the actual conveyance of the Bulk Messages to the recipients and rely upon the mobile networks of other Licensed Operators either operating inside or outside the Kingdom of Bahrain. In these cases the transmission and conveyance of the actual messages are handled by Licensed Operators while the marketing and content of the service is the responsibility of the Bulk Messengers.

The Authority's position in relation to the regulatory framework of Bulk Messengers

9. According to Article 24 of the Telecommunications Law, "*a) No Person shall operate a Public Telecommunications Network, any Telecommunications Network using a Telecommunications Frequency or provide a Telecommunications service in the Kingdom except after obtaining a License for that purpose in accordance with the provisions of this Law.*"
10. The Authority previously required a person providing Bulk Messaging services to hold a Value Added Services ("VAS"). A VAS License is granted under Article 32 of the Telecommunications Law. Value added services are defined

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within the VAS License as “*enhanced or value added telecommunications data and/or voice services (other than public voice services) that act on the format, content, code or protocol of information in order to provide the user with additional or different information that involve subscriber interaction with stored information, including computer and data processing services, data information and exchange services, credit card verification services but excluding those transmission services to or over the internet that require an internet service provider license.*”

11. Upon review of the operations of the Bulk Messengers and the current regulatory framework, the Authority’s position regarding the requirement to have a VAS License to operate a Bulk Messaging service does not apply to Bulk Messengers who exhibit the characteristics described above in paragraph 6 as the services do not properly fall within the definition of VAS. Generally Bulk Messengers are simply involved in the sending of Bulk Messages which do not act on the format, content, code or protocol of information in order to provide the user with additional or different information that involve subscriber interaction with stored information.
12. Put another way, the Authority generally regulates the conveyance and transmission aspect of services provided and not content. In the case of Bulk Messengers described above, their sole operative function relates to marketing a Bulk Messaging resale service and are not involved with specific conveyance of the Bulk Messages to recipients. An analogy to this might be bulk mailings advertising goods using the traditional postal system. The postal system is responsible for carrying the mail. The sender is merely using the postal system to convey its mail.
13. The Authority’s position applies to Bulk Messengers exhibiting the characteristics in paragraph 6 and do not provide any other value added services.
14. Any companies which have Telecommunications Equipment or directly interconnect with LOs and/or their operations include directly transmitting and delivery of Bulk Messages to recipients must apply for a relevant Telecommunications License from the Authority. The specific Telecommunications License required will depend upon the nature of the

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service being provided. If you have any queries in this respect please contact the Authority to discuss this.

The Authority and Consumer Protection

15. The Authority is required to carry out its duties in a manner best suited to protect the interests of Subscribers and Users with respect to provision of service, the quality of service and the protection of personal particulars and privacy of services.
16. As such, the Authority intends to establish a Regulation and Code of Practice for Bulk Messages and Unsolicited Bulk Messages. This will directly regulate Licensed Operators providing Bulk Messaging Services. However the Authority encourages all other persons that resell or use Bulk Messaging services in the Kingdom of Bahrain to become Signatories to the Commercial Bulk Messaging Code of Practice.
17. If you would like to become a Signatory please contact TRA or send an email to [bulk.SMS@tra.org.bh].