Response to TRAI Consultation Entitled "Growth of Value Added Services and Regulatory Issues"

INTRODUCTION

At the outset, Google again conveys its thanks and appreciation to the Telecom Regulatory Authority of India (TRAI) for its inclusive approach to public policy issues.

As TRAI may know, Google's global mission is to organize the world's information and to make it universally accessible and useful. In India, Google's charge is to innovate, implement, and launch free technologies and products that serve Indian users, organizations, and indeed, all Indian citizens. In practice, Google delivers these services – web search, e-mail, maps, and online video, just to name a few – as free applications over the Internet platform.

Increasingly, the mobile phone is becoming a significant platform on which Google's range of information-based services are valuable to end users. Whether it be SMS-based search or orkut, the mobile phone will without question remain a significant platform on which Indians express, entertain, and educate themselves.

As a result, as TRAI notes in its consultation paper entitled "Growth of Value Added Services (VAS) and Regulatory Issues," mobile value-added services will soon emerge as an important "centre of innovation" in India.

In the submission below, Google responds to TRAI's aforementioned consultation paper. While Google's focus is on many of the issues raised by TRAI to stakeholders, the company looks forward to further interactions with the regulatory body about the unique opportunities and challenges presented by mobile value-added services in particular and convergence in general.

In many ways, Google offers this submission not simply on behalf of the aspirations of its own global organization but also on behalf of the countless other Indian innovators and entrepreneurs – those of the present and those that will comprise the future – who seek to deliver powerful value-added services to users over the mobile phone. These companies, of which Google is simply one, are poised to play an important role in the economic and social progress of India.

Google looks forward to a long-lasting and productive relationship with TRAI, one in which both entities can work towards the common objective of ensuring India becomes a leading global information society.

APPROACH AND VISION

At the outset, Google would like to reiterate what TRAI states and implies in the consultation paper: that today, third-party Value Added Service Providers (VASPs) play

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a significant role in the functioning of the mobile VAS ecosystem. Google's view is that this role is sure to become even more strategic and central in the years to come.

As the development of the global Internet has demonstrated, entrepreneurs at the "edge" of the network - and not network access providers themselves - have developed the most ground-breaking technologies and have been the primary source of innovation that has changed the world.

The same is true for mobile VAS worldwide and in India. While operators do play an indispensable role in enabling and developing "non-core" VAS services, it is the countless VASPs that will become the focal point of mobile VAS innovation in India.

The above two statements are not meant to diminish the pioneering role of operators in the development of mobile VAS; instead, the points are meant to acknowledge the likely scenario that VASPs – small in size but large in number – will be the real drivers of innovation in mobile VAS.

It is with this balanced frame of mind, one which appreciates the role of the two most important stakeholders – operators and VASPs – that TRAI should continue to recommend public policy.

To be sure, with the ongoing convergence of the Internet and mobile phone, Google envisions the continued rapid growth of the mobile VAS industry.

The company, in particular, envisions an ecosystem marked by stakeholders that value openness, transparency, and interoperability. Smaller companies will drive innovation, SMS will be universal, WAP services and Internet browsing from the mobile device will become increasingly "core," and social networking will remain a priority for Indian users.

Finally, Google anticipates a mobile VAS industry that is more squarely focused on developing services for rural users – an important constituency that requires thoughtful service and attention.

DEFINITION

As it relates to the definition of VAS presented in paragraph 1.3 of TRAI's consultation paper, Google's initial view is that the definition appears too broad. The inclusion of GPRS as a value-added service does not, for instance, represent ground-level realities of what might constitute "core" and "value-added" services.

As more and more services become "core" and default to the mobile phone - especially as India moves from 2G to 3G - the notion of what is "Value Added" should shift accordingly.

Google hopes TRAI can incorporate this line of thinking into its upcoming public policy recommendations.

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VALUE ADDED SERVICE PROVIDERS

It would be inconsistent of Google - and any stakeholder - to point to the vital, central, and growing role played by VASPs in the overall mobile VAS ecosystem and simultaneously advocate against any formal recognition by the government. This is especially true given the significant business and revenue opportunities afforded by the mobile VAS system, which TRAI has summarized so effectively.

That said, Google would caution against the development of a formal, separate licensing regime for third-party VASPs. Already, the number of VASP companies in India is reaching 1,000 and - within years - it is expected that the number will be virtually countless. This is and should remain a welcome development as VASPs are, by their nature, meant to be small, nimble, and entrepreneurial – the hallmark of a technology innovator. It may not be possible to bring even 20 percent of these companies under a licensing regime.

The creation of a separate licensing regime for mobile VASPs would be analogous to doing the same for the innumerable companies providing innovative Internet-based services. Like their Internet-based counterparts, mobile VASPs rely on an ability to innovate quickly and promote their products swiftly. An entirely new and VASP-focused licensing regime would be antithetical to the objective of creating an environment in which VASPs can perform at their true potential.

Recommendation

Keeping in mind the above – that is, both the need to formally recognize mobile VASPs and the difficulties that would be presented by a licensing regime – the objective of any formal public policy towards VASPs should be to define, recognize, organize, and sanction the role of VASPs.

To that end, TRAI might consider initiating a National VASP Recognition system for VASP companies. Under the rubric of this system, the government may also formally define mobile VASP and issue public policy "directives" to guide relations between VASPs and the various other stakeholders in the mobile VAS ecosystem. VASPs might be required to renew their registration on a timely basis.

The benefits of such a VASP Recognition scheme are many. First, the system would accomplish the goal of formalizing the role of third-party VASPs and would also provide accompanying definitions and criteria that could be clarifying for all stakeholders.

Moreover, this system could provide a useful tool for TRAI as it would create a database and a means via which it could reach out to and report on developments in the mobile VAS industry.

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Finally, such a system could lead to the creation of a government-hosted, consumer-facing "National Discovery Page" where all services and products in the mobile VAS ecosystem are listed and made available. Such a national portal could prove to be immensely useful to the end user as it can become a means via which customers can offer feedback regarding mobile VAS services to TRAI and other stakeholders.

SECURITY IMPLICATIONS

TRAI raises an important security issue in its consultation paper, one which Google wishes to comment on.

In the paper, TRAI expresses its well-intentioned hope that "for security reasons it would be appropriate that the value added services provisioning platforms or servers are located within India."

First and foremost, Google expresses its unequivocal commitment to security in India and belief that security should be the government's paramount concern in its oversight of any industry, including mobile VAS.

Recommendation

That said, Google believes that TRAI's articulated hope for servers in India does not fully appreciate the reality of global network architecture and global organization structure.

For many global organizations, it is significantly more efficient and cost-effective to centralize services in larger data centers rather than creating data centers in each country of operation. Moreover, for many VASP companies, which as stated earlier tend to me small without an array of resources at their disposal, this would be a difficult proposition to guarantee.

Instead, Google assures TRAI that there are ways to meet the government's important security objectives even taking into account the reality of global network architecture. It requires building effective channels of communication, standardized procedures, and clear expectations among all parties involved.

Instead of presupposing that the only way to meet security objectives is for VASPs to locate servers in India, Google encourages TRAI to remain open to other ideas and initiate a dialogue with the VASP industry on this topic where specific ideas can be discussed.

LEGAL IMPLICATIONS

As it relates to the regulation of content in the mobile VAS ecosystem, TRAI seems to suggest in the consultation paper that primary liability ought to wrest with VASP companies.

While Google would encourage a more balanced approach to discussions about legal liability, the company does not dispute the important need for all stakeholders to comply with Indian legal requirements in the mobile VAS ecosystem.

Recommendation

At the same time, Google would kindly request that TRAI consider articulating the need for a "safe harbour" for both operators and VASPs in its upcoming public policy recommendations.

Analogous to trends visible on the Internet, mobile VAS are themselves increasingly centering on "user-generated content." While such services of course present unique challenges, they also present unprecedented opportunities for users to create, express, connect, and educate like never before. Given the inordinate amount of data being carried on mobile networks, it would be nearly impossible for any stakeholder to proactively edit content before it is transmitted.

VASPs, instead, play the important and sensible role of a neutral technology platform, with an obligation to follow lawful procedure when made aware of illegal activity.

Such a "safe harbour" - in line with international best practices - could articulate that operators and VASPs should be presumed immune from liability for unlawful activity taking place via their services unless it is demonstrated that they actively conspired, abetted, or had knowledge of the act. Put more simply, mobile VASPs should be presumed innocent unless proven guilty.

Articulating this latter point would go a long way towards assuaging VASP fears that they may - without any criminal intention on their part - be held liable for the criminal activity of others.

In an industry dominated by small players without significant resources, it is especially important for TRAI to articulate the hope for such a "safe harbour"; to be sure, such a position would encourage participation of mobile VASPs while the lack of such a "safe harbour" would discourage entrepreneurship and innovation.

In making this point, TRAI could also add further credibility to its stated position that the growth of mobile VAS is a desirable outcome for all stakeholders.

TRAI may also of course consider other models of content regulation, including peer and self-regulation models pursued by many government organizations worldwide, including India's Ministry of Information and Broadcasting.

If so desired, Google is happy to elaborate further on the line of thinking proposed above regarding content regulation in the mobile VAS scenario.

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SHORT CODES

One of the prerequisites for successfully promulgating a mobile value-added service to consumers is the procurement of a "short code"; as TRAI knows, SMS serves as a distribution and promotion platform for many VAS services.

As TRAI is well aware, VASPs must currently reach out to individual telecommunications operators and inquire, one-by-one, regarding the availability of a set of numbers.

In each case, individual operators must accept and allocate the chosen number to the VASP. Moreover, some operators also ask VASPs to pay a fee to obtain preferred short codes; matters are made even more difficult given that no set timeline exists in which operators are bound to approve or reject requests from VASPs for short codes.

Recommendation

Undoubtedly, the process via which short codes are obtained needs to become standardized, transparent, and practical.

While there are many ways in which this public policy objective may be met, one option might be to create an online system via which entrepreneurs and innovators can submit a request for available shortcodes, enter relevant contracts, and pay appropriate fees across all operators.

The Common Short Code Administration in the United States, which facilitates the ability of operators to agree on "inter-operator" common short codes, might be an example to follow.

Regardless of the specific route chosen, it is clear that TRAI should recommend the creation of a new national system which can facilitate the coordination of Common Short Codes in India and the creation of a more standardized, transparent, and practical system via which they can be obtained.

If so desired, Google is happy to elaborate further on this line of thinking.

REVENUE SHARING AND PRICING

One of the recurring and most important topics of this TRAI consultation paper has to do with revenue sharing and whether third-party VASPs should receive revenue consistent with the value-added in the overall ecosystem.

Like many other stakeholders, Google will submit that – to date – revenue-share agreements have been disproportionately and unfairly tilted in favour of operators.

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If one approaches public policy and the working of the overall ecosystem with the balanced frame of mind articulated earlier and throughout this submission, it is clear that change is needed in this area.

Recommendation

While some would contend that the existing telecommunications licensing regime be utilized to mandate a certain level of revenue sharing, Google submits that market forces should continue to determine revenue-share agreements.

That said, Google believes that it is of the utmost importance for the government to state in unequivocal terms - in the form of a directive or guideline and perhaps under the National VASP Recognition outlined earlier - its preference for more equitable revenue-sharing agreements that align properly with true value added to the consumer.

More specifically, TRAI might consider articulating a revenue-share band or a minimum floor price based on service type. Such thresholds, benchmarks, and point of reference - while perhaps not mandatory - can add enormous value as revenue-share agreements are finalized.

TRAI could even call for the need to reexamine the current operator billing system, whereby all billing takes place with the operator, which only facilitates the practice of lopsided revenue-shares. If another goal of TRAI is to properly brand mobile VAS, it may be valuable for VASPs to be able to bill consumers themselves, especially as they become central innovators in the mobile VAS ecosystem. Many might even argue that VASPs should lead the setting of prices that end users pay for their services, in addition to being allowed to bill the customer directly.

Google understands that such a system may not be feasible or scalable, given the facts of a fast-growing number of users and low credit-card penetration. That said, Google hopes TRAI considers the intention of this point by, as an example, considering the role third-party billing aggregators can play in India's mobile VAS ecosystem.

Finally, TRAI may also consider encouraging flat data rates from operators. It is proven in many countries that flat data rates encourage data usage and help growing VAS industries. TRAI could create proper incentives for the creation of flat data plans or, alternatively, give disincentives for the creation of plans that price per byte and type of data.

There may be no better way to slow growth and innovation in mobile VAS than by allowing current trends in pricing and revenue-share agreements to continue. TRAI should take a strong position in favour of greater equity and sensibility and take some steps - short of formal regulation - that would guide these agreements going forward.

Doing so is the only way to create an incentive for innovators to innovate in the first place.

WALLED GARDENS

Separately, Google seeks to remind TRAI that, as currently organized in today's licensing regime, it is the exclusive privilege of the operator to decide what consumers can and cannot access.

While this may seem sensible at first glance, operator decisions regarding what to allow and what to reject are not always motivated by issues such as legality and national security; instead, the decisions are often made subjectively and arbitrarily.

Recommendation

To achieve the open and transparent availability of services, subjectivity and commercial bargaining should be reduced and certain guidelines regarding the conditions under which an operator can refuse to carry content should be established. Again, these guidelines can be issued under the rubric of the aforementioned National VASP Recognition system. The guidelines can take many forms.

As an example, they can include the line of thinking that, if a VASP has an arrangement with one of the national-level operators, the arrangement should automatically work with other operators without the need for separate arrangements with individual operators.

Another guideline for the government's consideration might be the articulation of a positive list of criterion which, upon being met, a VASP cannot be denied carriage by an operator; this would be a welcome development in light of the current negative approach taken by operators. For instance, TRAI might affirmatively state that operators, who should of course be able to charge VASPs for access to their networks, should not be able to charge VASPs based on the actual nature of the content or service being provided.

Yet another approach might be for the government to encourage more transparency regarding the "Quality of Service" (QoS) of VAS on mobile networks. Google believes that such transparency - analogous to what is presently available regarding the transmission of voice data - would shed needed light on the current "Walled Garden" which disrupts the availability of some VAS and overall QoS.

If the goal of TRAI and other government agencies is to grow broadband in India, it is becoming increasingly clear that the mobile phone will be the vehicle via which to achieve this goal. Without an open mobile ecosystem in which consumers have unfettered access to valuable content and services, broadband will never reach its full potential in India.

This is a significant issue in which the TRAI and the government at large an opportunity to demonstrate leadership and a commitment to openness and accessibility.

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INFORMATION SYSTEM MANAGEMENT AND RECONCILIATION

As TRAI discusses in its consultation paper, the existing Management Information and Reconciliation Systems, respectively, result in final settlements and payments taking up to 120 days. Stakeholders often present divergent data on the actual use of various value-added services, which leads to conflict and delay.

This is a major impediment to the growth of the industry, and especially VASPs who are much smaller and experience more difficult cash-flow dynamics - in part due to current revenue-share trends. Leaving this issue unchecked will further slow the development of the industry.

Recommendation

One way to streamline this existing Management Information and Reconciliation Systems challenge is for the government to issue a guideline or a directive, again perhaps under the new National VASP Recognition scheme.

Such a directive or guideline could suggest, for example, that 2 percent variation from VASP data is acceptable and that payments should be made within 60 days.

MOBILE PAYMENTS

Google thanks TRAI for including a forward-looking discussion of mobile payments in its consultation paper. In the paper, TRAI correctly states that mobile payments "may become the most convenient, secure and efficient payment method," which would be especially "convenient . . . in rural and remote areas where there is easy accessibility of mobile phone services but banks are not in the closed vicinity."

Recommendation

Google has several points of view on this topic, one which is crucial to the development of India. First, analogous to the point made earlier in the paper regarding billing, operators should consider allowing VASPs to specify charges to end users in terms of mobile minutes.

Second, the transfer of mobile minutes between carriers should be allowed. Implementation of the latter point would allow peer-to-peer and micropayments to flourish and is in line with the important principles of openness and accessibility. A user with one operator should have the ability to pay a user with another operator by transferring mobile minute credits.

Finally, Google would encourage TRAI to work towards a day when mobile currency can be converted to physical currency. TRAI should work towards the creation of a policy environment in which mobile wallets can be created and the stringent "Know Your Customer" (KYC) requirements of the Reserve Bank of India (RBI) are removed.

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The approaches to mobile payments outlined above are merely some of the many ways in which mobile commerce in India - particularly in rural India - can reach its full potential. Google again thanks TRAI for its inclusion of this topic.

CONCLUSION

Google again wishes to commend TRAI for raising many critical issues regarding mobile VAS in this consultation paper. While the company has not commented on all of the issues raised, it believes it has offered its views on the highest-priority topics.

Google looks forward to TRAI's public policy recommendations on this topic and is confident that, aware of its ability to guide the industry by simply stating its position on issues, TRAI will take mobile VAS in India to new heights.

Google looks forward to further interactions with TRAI in which it elaborates further on its views on this and other subjects.

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