5th September 2011

Telecom Regulatory Authority of India (TRAI)
Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002

Kind Attention: Mr. Rajiv Kumar Upadhyay, Advisor (BB & PA)

Subject: Consultation Paper No. 5/2011 on Mobile Value Added Services dated 21st July 2011

Sent By Email to: 'advbbpa@trai.gov.in' and 'srobbpa@trai.gov.in'

Dear Sir,

At the outset we thank the Hon'ble Authority for having initiated a comprehensive and timely study of the 'Mobile Value Added Services' industry in India.

Please find attached herein our response to the same. Kindly note that we have also factored in our counter-comments to the various responses that have been tendered by several stakeholders in the meanwhile

We sincerely hope that the Hon'ble Authority would find our submissions germane, contextual and useful.

In case there are any further queries, please feel free to contact the undersigned.

Thanking you,
For **Star India Private Limited**

(Pulak Bagchi)
Vice President – Legal and Regulatory Affairs
Encl: as above

I.   The 'Approach' to Regulations:

Today's mobile markets in India are highly competitive, moreover they happen to be facilities-based and no licensee has market power. Indeed, the scope of competitor networks have evolved over time and their range of offerings are by all standards impressive. At the same time, consumer benefits in terms of low prices, penetration rates, service quality and innovation are at par with "global bests". The regulator should therefore forbear from intervening in the setting of the MVAS space. Forbearance in this manner would be in keeping with market developments, government policy and global best practices. The Authority has off late been adopting an "Ex post" regulation with reliance on market failure analysis as is evident from the Direction dated 4th July 2011 on obtaining explicit consent of consumers for subscribing and renewing of Value Added Services. Such an approach is also consistent with extant competition laws. The alternative approach of heavy-handed ex ante regulation of carriers and MVAS providers without demonstrated market power would discourage investment, add to administrative/transaction costs, pile inefficiencies, harm users and would be devoid of factual justification.

II.   The Pre-requisite 'Test':

World over the appropriate "test" for regulatory intervention is the occurrence or likely occurrence of market failure. Restated, this means, in the absence of anti-competitive activity by any player or any likelihood thereof, TRAI should not engage in regulation making. This approach (i.e. competition-based regulation or "economic" regulation) has been adopted across jurisdictions. A prerequisite for regulatory intervention is a definition of the relevant market, a finding of market power (i.e. dominance) and a finding of abuse or likely abuse that would prevent or substantially restrict or adversely affect effective competition. The present market circumstances show no evidence of market power being exercised or abused by any stakeholder in the MVAS value chain. Similarly, the Consultation Paper also has made no finding as to market power or abuse. "Economic" regulation is all about addressing market failure, and none exist as on date that relates to the relevant market.

Whilst it is appropriate to periodically review regulatory policies, it would be inappropriate to modify ground rules simply based on the observations of some market participants that their margins are not high enough. Indeed, the lack of high margins when coupled with other factors such as high consumer benefits, must invariably point to an absence of market failure.

III.   The 'Consultation Paper':

The Consultation Paper clearly demonstrates that the mobile markets in India are mature, highly developed and extremely competitive in India as borne out by the following:

_ There are more mobile traffic minutes and mobile subscribers today than there were even a decade ago;

_ Since the last five years, the number of mobile subscribers has continued to grow whilst the number of fixed line subscribers has not increased; and on the contrary a declining trend is clearly visible owing to increased mobile uptake

_ The mobile market is more vibrant and competitive than it was in 2000.

_ The retail rates offered to mobile users in India are amongst the lowest in the world, and these rates continue to fall;

_ Service quality, technology adoption, innovation, penetration rates, etc. are all at, or near, "world's best";

_ India's interconnection rates are among the lowest in the world;

_ No mobile operator or MVAS provider has market power. No mobile operator or MVAS provider is or could be classified as dominant in the markets;

_ Ex post regulation has been shown to produce consumer benefits;

_ The extant competition laws make any future market failure very unlikely and ensure competitive outcomes.

IV.   Global Trends and International Best Practices in Regulation making:

All over the globe in countries big and small, governments have been favoring market driven results and light-handed regulations that are oriented around a general preference towards non intervention in markets and a specific preference not to intervene in "economic" arrangements among entities lacking market power. This is consistent with global best practices to move to competition-based regimes and not to regulate market arrangements (including the charging methodology) among non-dominant stakeholders. There has been a new regulatory philosophy as exemplified by the international paradigm shift from detailed rule-making to competition-based regulation of the communications sector. There is a gradual recognition of the fact that detailed rules and guidelines could quickly become obsolete or worse still, become hurdles to innovation and investment. Regulations impose costs, interfere with property rights and limit the ability of a firm to select its trading partners. Regulation is therefore the "exception to the rule" and must be clearly necessary before implementing. In competition-based regulatory terms,

there must be a clear market failure or a likelihood thereof before there is economic regulation. A growing realization internationally is that much regulation has not quite worked as planned. It is generally recognized that the reason for this "failure" is because governments and regulators too often do not clearly identify their policy objectives, and are sometimes unable to distinguish between competitive markets and markets in which there is a market failure, and fail to select the least intrusive and burdensome solution. It is also generally recognized that governments and regulators tend to focus on the short term benefits of regulation to particular groups (e.g. new entrants), without giving enough consideration to the long term impact on investment incentives, costs or market efficiencies. As Alfred Kahn, points out:

> *"Historically […] regulatory commissions have shown a systematic tendency to go well beyond ensuring challengers of monopoly telephone companies a fair opportunity to compete on the basis of their relative efficiency – protecting them from cross-subsidized predation or vertical squeezes and ensuring them access on equal terms to essential facilities controlled by the incumbents – by extending preferences unrelated to their efficiency and protecting them from efficient competitive responses by the incumbent firms."[1]*

> *[…] they [predictions of big rate reductions following deregulation and complaints when they do not occur] exhibit a deplorable failure to understand – or, if they understand, fully to reveal – where these hoped-for benefits to consumers would have had to come from and how competition confers its real benefits on the public at large, as distinguished from benefiting some at the expense of others."[2]*

At the same time, regulatory failure may occur when regulators over-state the need for intervention or well meaningly presume that they are better market predictors than the market itself. The comments below by Alfred Kahn on this point in relation to intervention by the US Federal Communications Commission ("FCC") in competitive markets are noteworthy:

> *" The Commission [FCC] has in effect declared: "We will determine not what your costs are or will be but what we think they ought to be. Why should we bother to let the messy and uncertain competitive process determine the outcome when we can determine at the very outset what those results would be and prescribe them now?*

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[1] ***Letting Go: Deregulating the Process of Deregulation, Alfred E. Kahn, MSU Public Utilities Papers, 1998, p36.**.*

[2] ***Letting Go: Deregulating the Process of Deregulation, Alfred E. Kahn, MSU Public Utilities Papers, 1998, p2.***

> *The continued responsibility of regulators to ensure access at 'reasonable rates' creates a responsibility for them to micromanage the process of deregulation. But there is every difference between regulatory interventions establishing the conditions under which competition may be relied on to determine the outcome and interventions intended to dictate that outcome.*
>
> *[…] if regulators are wise enough to be able to prescribe the results competition would produce, there is no need for competition."* [3]

Finally, Kahn has commented on the propensities of regulators to micromanage the competitive process and regulate pervasively in the name of "deregulation":

> *"[…] a regulated transition to "unregulation" has provided the occasion for pervasive demonstrations of the very propensities of regulation that are the principal reasons for its abandonment – propensities to micromanage the process; to prescribe the results that, it is anticipated, the Almighty would have produced if He or She were in full possession of the facts; to handicap the competitive process to produce visible competitors; and, opportunistically, to produce visible price reductions."* [4]

In response to these failures, international best practice among governments now requires regulatory impact statements as a core part of the policy-making process. [5] The development of regulatory impact statements essentially involves a five-step process:

Steps	Process
1.	Define the policy objective (e.g. efficiency)
2.	Define the problem in achieving the objective (e.g. the details of a specified market failure)
3.	Select the options to overcome the identified problem
4.	Assess the costs and benefits of each option
5.	Choose the best option (including the option of taking no action[6])

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[3] *Letting Go: Deregulating the Process of Deregulation, Alfred E. Kahn, MSU Public Utilities Papers, 1998, pp70, 92 and 102.*

[4] *Whom the Gods Would Destroy, or How Not to Deregulate, Alfred E. Kahn, First Distinguished Lecture, AEI-Brookings Joint Center, AEI Press, 2001, pp 2 and 3.*

[5] For example, Section 7 of the UK Communications Act 2003 sets out Ofcom's legal obligation to consider the impact of its proposals.

[6] *"The option of not intervening […] should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of […] regulation and its unintended consequences, may be worse than the effects of the imperfect market."* - **UK Better Regulation Task Force, September 2003, quoted in Better Policy Making: Ofcom's approach to Impact Assessments, Ofcom, 4 February 2005, paragraph 1.1.**

Ofcom, has made the following comments on the need to weigh the costs and benefits:

> *"Ofcom's decisions can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. Our bias against intervention means that the prospective benefits of regulation must exceed the costs. If intervention is justified, we are guided by the principle of choosing the least intrusive means of achieving our objective. These guidelines explain how Impact Assessments can help us make these judgements in a transparent and justifiable way.*
> *It should be borne in mind, however, that Ofcom's bias against intervention means that a high standard of proof must be satisfied. In other words, there must be a clear case for regulation, and the prospective benefits must exceed the costs. If a case for regulation can be made, we will choose the least intrusive means of achieving our objective."* [7]

V.   'Regulation' Versus 'Negotiation':

Ordinarily, any entity wishing to purchase services would engage in commercial negotiations with the seller, and each party would propose offers and counter-offers on the price, terms and conditions of service before an agreement is struck. When no one operator is dominant or possesses significant market power, there should be no reason for the TRAI to assist either of the parties involved in the negotiation process. In fact, the TRAI's willingness to intervene makes a negotiated outcome less likely. Parties might fail to agree because they would prefer their expected regulatory outcome and in such a situation, the costs to the economy are potentially high not only in terms of resource costs for the parties and a drain on public funds but also because inefficient prices can create disproportionately large impacts on investment incentives and costs to the economy. Without the incentives for parties to revert to a default regulatory result, commercial negotiation is likely to culminate into competitive outcomes. Consequently, any distortions to the negotiation process are unlikely to provide any benefit to the economy (since the competitive outcome is likely to arise in the absence of the distortion). Accordingly, the TRAI should not encourage players to rely on its intervention by creating an expectation, in this Consultation Paper or elsewhere, that it will establish a methodology for the calculation of revenue shares for use in future determinations. If the TRAI is minded to intervene, then a finding of dominance and an abuse of dominance must precede any such intervention.

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[7] ***Better Policy Making: Ofcom's approach to Impact Assessments, Ofcom, 4 February 2005, paragraph 1.1. and 5.16.***

VI. The 'Costs' of Regulatory Intervention:

While the administrative costs of asymmetric regulation are substantial and will grow rapidly as competition intensifies, the most important costs imposed on the industry and on society as a whole by regulations in telecommunications services are not administrative. More important, though perhaps less visible, are the indirect costs that arise from the handicaps and perverse incentives inevitably created by conventional regulation in the presence of competition. The many differential regulatory burdens prevent industry stakeholders from using all their substantial assets, both human and tangible, effectively in the competitive arena to meet customer needs. Regulation inevitably reduces incentives to produce efficiently and to innovate vigorously. It does this directly by limiting the allowed returns from efficiency and innovation and indirectly by imposing delays and rigidities that reduce possible returns. Regulation-induced distortions in pricing distort carrier-specific and market-wide demand patterns and thus distort the utilization of existing capacity. While pricing distortions may benefit some competitors and users, society as a whole loses.

VII. No basis for intervention:

The Consultation Paper clearly does not address any market failure issues. On the contrary it clearly lays down the empirical basis to conclude that market mechanics have indeed been working and delivering on both the competition and the consumer front. It is therefore difficult to see any particular advantage or policy basis for TRAI to intervene in the market to change the present dispensation prevailing in the MVAS industry. No market failure has occurred or is likely to occur; relevant markets today are mature, highly developed and extremely competitive and consumers have enjoyed, and will continue to enjoy, substantial benefits in the relevant markets.

The answer to the fundamental question of whether to regulate the MVAS space in the absence of any evidence of market power, dominance or abuse thereof - is emphatically "no". The facts relating to the market and user benefits clearly demonstrate a market success and not a market failure. Competition-based "economic" regulation requires forbearance in the absence of a market failure. Any movement away from forbearance and ex post regulation would first require an evidence-backed finding of dominance and abuse.

As to the follow-on questions raised by TRAI regarding who to regulate and how to regulate, the "no regulation" answer to the threshold question makes these moot.

Accordingly Star's position on the threshold question of whether to regulate the MVAS industry can be summarized as follows:

_ The accepted test for regulatory intervention is one of market failure;

_ This test is consistent with extant competition statutes and regulatory best practices;

_ No evidence of market failure exists (i.e. dominance and abuse of dominance in the relevant market); and

_ Licence terms and extant regulations provide a viable safety net.

Therefore, regulatory forbearance and ex post regulation are appropriate.

VIII. The Caveat:

Of course, forbearance and ex post regulation are not the same as "no regulation". Under forbearance and ex post regulation, TRAI would still retain its powers to deal with market failure in the form of anti-competitive conduct or abuse of dominance. Obligations imposed on carriers under the terms of their licences would also continue to be in force. Recent regulations guiding and informing business conduct for MVAS players are also suitably targeted and well meaning. TRAI should continuously monitor markets, analyze data, call for information whenever required - to arrive at findings of market failure or any likelihood thereof. The recent experiences in the United States and Europe clearly underscores the need for Regulators to remain abreast of market developments in order to timely predict market failures and accordingly initiate corrective and remedial measures before it is too late.

STAR further believes that the regulator does have a meaningful and purposive role to play **in ensuring level playing fields** and in creating and sustaining an enabling environment that fosters competition particularly in so far as **access issues** and **transparency** is concerned - without however getting into the question of dictating minutiae commercial terms among stakeholders in the MVAS value chain.

ISSUES FOR CONSULTATION

3.1 Whether the current provisions under various licences (UASL, CMTS, Basic and ISP) are adequate to grow the MVAS market to the desired level? If not, what are the additional provisions that need to be addressed under the current licencing framework?

Response:

Scope: The MVAS space has experienced unprecedented growth over the last 10 years. We believe that while the extant provisions as contained in the various licenses - have been effective and enabling - the scope of VAS should not be restricted to UASL, CMTS, Basic and ISP alone.

Integration: As the telecom and communication technologies have evolved substantially in the recent years the focus is now more pronounced on integration of various products and services. An increase in digitization enhanced computing power and the establishment of a global standard of IP –have hastened the integration process. This phenomenon in itself poses significant and specific regulatory challenges on whether there is at all any need to establish uniformity in various sub - domains of the communications sector. Regulation making was perhaps easier when services were granular in nature. In that case each service had a different network infrastructure and it was very easy to distinguish and segregate it from others. For example mono directional voice and video traffic was carried on through a television however with the advent of digitized services, the same network could be used to provide multiple services. Regulatory frameworks were earlier based on the premise that various services would be differentiable. But these interfaces and integration led processes made the issue of regulation challenging. One example of immediate recall is that of VOIP (Voice Over Internet Protocol). Since this provides voice conversation like telephone on an IP (internet protocol) channel, it has created difficulties for regulators. In Europe VOIP services have been categorized as internet based services while in Canada they are categorized as telecom services. Also with increased integration and convergence, the issues of "Asymmetric Regulations" across services have come to the fore. Also, as the rate of technological advancement has been quite fast relative to regulatory formulations, possibilities of regulatory confusion and arbitrage abound.

One of the primary characteristics of integrated communication, which is different from traditional telecommunications, is the organic integration of transmission and content. The original "operator-users" service model has been broken, the industrial chain elongated, and content providers and system integrators have been introduced into the VAS industrial chain. However, to regulate the information and communications industry, one cannot simply copy the original traditional telecommunications regulatory regime. While it is appropriate to support telecommunication operators, it is also necessary to protect VAS operators, to avoid having basic telecom companies squeeze the VAS industrial chain in the transformation process, impeding the entire information services industry from becoming bigger and stronger.

What really needs to be done: Accordingly the time has come for the policy informing telecommunications to uniformly address the following through the telecom licensing conditions:

1. Fair and transparent allocation of Short Codes
2. Transparency in Billing/MIS
3. Non discriminatory access to platforms

The TRAI therefore must lay down the norms in respect of the following matters:

1. Mandated Open & equitable access to Telecom Networks to all VAS providers
2. Mandated publication of Reference Interconnect Offer by Telecom Service Providers based on volume of traffic
3. Lay down parameters for Quality of Services
4. Stipulate an appropriate mechanism for MIS, reconciliation and ensure transparency in billing

The mobile telecom operators/access service providers provide access to content and services. As such, there is a need to bring about transparency through published pricing for the provision of such access.

To illustrate by example, a mobile telecom operator/access service provider should charge published rates for access similar to say, a toll road operator. A toll operator publishes rates as below:

S.No	Type of Vehicle	Toll (Rs)
1	Two-wheelers	10
2	Car	25
3	Trucks	50
4	Container trucks	60

Similarly telecom operators must publish access rates for each of the access mechanisms as illustrated below:

S.No	Bearer	Unit	Access Fee (Rs) *(indicative only)*
1	SMS	1 MO-MT	0.50
2	Voice	Minutes of usage	0.50
3	Data	Per KB	0.50

Beyond this, as an access provider or an enabling technology provider, the mobile operator must be obliged to provide access to any content or service provider who is willing to pay the published fees.

These steps would not only benefit the industry but would also be in the best interest of consumers besides promoting the rapid uptake of such services. Since telecom operators themselves provide VAS services, their obligations to enable other smaller players, to share infrastructure and revenue with them must be clearly spelt out. Also, guidelines and procedures for settling disputes must be put into place. VAS providers must not have their services cut off, or their access to telecom infrastructure and alternate revenue generation modes denied by telecom operators, due to perceived competition with such operator's own services.

However for the avoidance of doubt, provision of content and services through SMS, IVR, WAP, GPRS or any other bearer technology should be allowed freely without any need for obtaining any license or taking any permission from any authority.

3.2 Is there a need to bring the Value Added Service Providers (VASPs) providing Mobile Value Added Services under the licensing regime?

3.3 If yes, do you agree that it should be in the category of the Unified Licence as recommended by this Authority in May 2010? In case of disagreement, please indicate the type of licence alongwith the rationale thereof.

Response:

Not Applicable for VASP: Neither content providers nor VAS providers own any telecom infrastructure; as such it would not be appropriate to license them under the Indian Telegraph Act, 1885. Also valued added service are optional services for a licensed telecom operator, accordingly the kind of services (content), their pricing and how the operator wishes to bill for these services should depend on the strategy of each individual operator. Accordingly there is no requirement for VASPs to come under a licensing framework.

The Learning from the Internet experience: The Internet took the world by storm, however this was possible primarily due to low entry barriers for new firms, and the relative ease with which individuals with entrepreneurial vigor could shape and implement their ideas into successful startups. Companies like Google, Face book and many more, started out of college campuses. We see a similarity here in the VAS space as well-- the networks run the pipes (bandwidth, spectrum etc.), but for real innovation to happen smaller companies should be allowed access to the platforms for experimentation. A strong licensing and regulatory framework could be a disincentive for potential entrepreneurs. Low regulation and low entry barriers will ensure that the number of startups entering this space be manifold. This would probably help give birth to a new VAS revolution like the one caused by the internet and add as much value to economy and productivity as the internet revolution has been able to add.

The present stage of the MVAS Industry: MVAS as an industry in India is yet to attain critical mass and it would be premature and misplaced to impose onerous terms and conditions in the form and shape of a license. We have seen this happening in the case of HITS (Head End in The Sky) where no sooner a new technology platform for retransmitting television broadcasts had come into play, the regulatory regime sought to bring it under a strict licensing dispensation. This resulted in the only HITS operator of the country suspending operations and rolling back undertakings. We surely do not want such experiences to be replicated in the MVAS field.

Developments in the US: The US has a vibrant market for MVAS. In the United States, "value added services" do not have a separate regulatory category under that name, but they are closely aligned with the term "information service". The terms "enhanced services" and "IP-enabled services" are also used in describing segments of this category. The FCC does not require registration and licensing of value added service providers, nor does it concern itself much with the information content of the services.

At a 'Broadband for All' conference on June 28, 2010 FCC Commissioner Meredith Attwell Baker stated that the FCC anticipates a 130 % annual growth for mobile data services over the next five years and predicts that within ten years the principle global means of Internet access will be through a wireless device. While the FCC's most recent National Broadband Plan seeks to make an additional 500 MHz of spectrum available for use within the next ten years, it is predicted that a minimum of 1280 MHz of spectrum is needed by 2020. In order to make the most of the existing spectrum, Commissioner Baker called for action in the following five areas:

1. " We should promote the creation of interoperable, dynamic spectrum data bases." The Commissioner hopes one will be developed soon in the US
2. "We must actively promote innovation and investment in state of the art radio communication technologies and infrastructures that can take advantage of the information the database provides."
3. "We need to look at service rules to ensure they enable and encourage spectrum users to take advantage of new information and technology" – Strict allocation and licensing rules can lock in a particular technology or spectrum usage and could result in inefficiencies. By contrast the flexibility of initial cellular licenses in the US allowed US networks to progress rapidly from analog to digital to 3 G and 4G technologies.
4. "We need to ensure secondary market rules to encourage efficient spectrum use."
5. "We need to look at ways to make the international spectrum process less cumbersome."

Developments Abroad: In other countries, in the area of value-added telecom services, there are many spontaneously formed trade associations. Such trade associations play the role of promoting and supporting regulation in many aspects, e.g. offering guidelines to standardize market behavior, providing timely feedback on the development of industry trends, and addressing users' problems. In the value-added business, industry trade associations are needed to play a greater role, to promote the establishment of enterprise self-discipline and to fully mobilize the effective resources and energies of the industry.

In recent years, various domestic associations related to value-added services have developed in China, and most provinces and cities have similar associations. For example, Heilongjiang has established the "Telecommunications Information Services Committee of Internet Association of Heilongjiang Province", which consists of more than 150 telecom business units within the province. The members have since signed a "Self-discipline common agreement of telecommunications information service enterprises in the province". This indicates that telecommunications information services, such as SMS, etc will operate under the group's self imposed conditions. The industry associations are expected to play an active role, and work together with the government to develop value-added services in their respective jurisdictions.

Recommendation: We believe that in keeping with international best practices, an industry body should be entrusted with self regulatory oversight for Mobile VAS. Such a body could evolve a binding code of conduct or practice. VAS providers may register themselves with this body for ensuring industry discipline and orderly growth.

The VAS industry requires a least intrusive and minimal regulatory framework and thus no separate category of license for value added services are needed at this juncture. We are also not in favor of registration of Value Added Service Providers (VASPs) or content aggregators under the "Other Service Provider (OSP)" category. The industry has been growing leaps and bounds because of market forces, rather than regulations, aligning and synergizing stakeholder interests. The same should by all means, continue.

3.4 How do we ensure that the VAS providers get the due revenue share from the Telecom Service providers, so that the development of VAS takes place to its full potential? Is there a need to regulate revenue sharing model or should it be left to commercial negotiations between VAS providers and telecom service providers?

3.5 At the same time, how do we also ensure that the revenue share is a function of the innovation and utility involved in the concerned VAS? Should the revenue share be different for different categories of MVAS?

Response:

The Present Business Model: Value Added Service Providers can be distinguished under two categories – "Off Deck" and "On Deck".

"Off Deck" services are branded, direct to consumer services, such as STAR's 57827 Service, Indiatimes (58888 services), Yahoo Mail/ Messenger on Wap, Televoting on Media shortcodes. Here the information on the services is publicized by the provider of the content or service. The operator's role is limited to carriage of the content/interaction and billing and collection services where applicable.

"On Deck" services are operator branded services provided by the operator to their customer base. Voice Mail, Ring Back Tones are examples of these. The role of the operator in these cases extends to branding, development, promotion, content aggregation as well as access billing and collection.

In the current scenario, the telecom operator decides pricing in both "Off Deck" as well as "On Deck" offerings.

It is clear that in case of "Off Deck" services, if the end consumer has to benefit, the pricing must be left to the owner of the content or the provider of the service. The carriage fees should be published separately by the operator. This will bring transparency. The customer will be aware of the component of the price being charged by the operator as carriage and that accruing to the provider for content.

Recommendation: Therefore, with respect to specifying end-user charges, the responsibility must rest with Telecom Operators for "On Deck" services and with the content / service provider for "Off Deck" services. Also, the telecom access provider should not be allowed to charge a lower access fee for accessing "On-Deck" content - should the owner license such content to the telecom operators portal (in addition to providing the content from their own branded "Off-Deck portal"). Also, the access charges to the consumers for accessing the value added service provided in the off-deck mode should not be more than the access charges applicable under the tariff plan subscribed by them. If the access charges are allowed to be more than the subscribed tariff plan, then the operator may skew the revenue share to his favor. The Authority should therefore mandate publication of access/carriage charges by access service providers so that this will bring competition, bring down the charges to customers, increase the range of services and transparency in provisioning of "off deck" mobile value added services. The charges for the MVAS offerings should also be published by the operator irrespective of whether it is Off Deck or On Deck.

We believe this will increase the range of services available to the end consumer as well as bring down the cost consumers currently pay for these services.

However the exact revenue sharing arrangements should form a subject matter of commercial negotiations between the various stakeholders in the MVAS value chain and it is not desirable for TRAI to stipulate any such share qua any of the stakeholders.

Reason: There are innumerable content services like gaming, video and audio streaming, stock quotes, news and cricket quotes, tele-voting, chatting, astrology etc. Each service differs in content, cost, and demand and are aimed and targeted for different segment of consumers. Therefore, there cannot be a standard revenue arrangement for all content based services. Considering the complexities in deciding the revenue share, content based services being premium services, the market being competitive and there being innumerable value added services, we strongly suggest that there should not be any regulated revenue share model and it

should be left entirely to commercial negotiations. Eventually it is the attractiveness of the VAS service and customer pull which will result in the growth of VAS market in India.

Mandated revenue Share misplaced in present day context: Any attempts to regulate revenue share arrangements would lead to micro regulation as it would mean that each new service would have to be examined separately. This would not only interfere with the free play of market forces but would also result in delays that would impair the 'USP' of the service. Further the current market environment also protects the interest of the VAS providers. The Indian telecom sector is one of most competitive sector in the world with the presence of atleast 11-12 facility based operators in each service area. The competition will further enhance with the implementation of 3G services. The government is also contemplating introduction of MVNOs which will further enhance competition, especially in the value added services sector. The Value Added Service providers will thus have adequate choice and negotiating power to get reasonable terms for revenue sharing with the chosen telecom operators. Therefore, the concern of the Authority on supposedly inequitable revenue share arrangements between the various stakeholders involved in the mobile Value Added service chain may not hold given the free play of market forces.

Immediate Next Steps: The regulator should however consider the release of principles/guidelines for mobile operators to have proper and fair commercial negotiations with MVAS providers. Once a proper framework is in place, the market conditions will determine the commercial negotiations.

Value-added services need to address the risks inherent in the development of the market, take long-term healthy growth as the goal, and take positive measures:

- Accept social responsibility as a duty, and work to mold a healthy market environment;
- Pay serious attention to intellectual property issues, and work to reduce abuse;
- Actively research and explore a value chain cooperation model;
- Establish service provider industry organizations to maintain common interests and enhance self-discipline;
- Work to expand industry applications and tap rural information services demand;
- Strengthen cooperation and be pro-active in innovation.

3.6 Do you agree that the differences come up between the MIS figures of the operator and VAS provider? If yes, what measures are required to ensure reconciliation in MIS in a transparent manner?

Response:

Recommendation: For any negotiation based revenue sharing model to survive it entirely depends on transparent sharing of usage data, number of downloads and

users. By transparency it is meant that an online access to VASP or a sharing of logs where online access is technically is not feasible. The current practice of the Operators on this score does not inspire much confidence. TRAI could therefore look at measures to increase transparency by mandating 'system generated MIS/logs' of operators to be shared with VASP and content providers together with necessary enabling provisions for audit and verification thereof. One certain way of discouraging serious investment and thereby impair competition in the VAS industry is a one-sided MIS and reconciliation system.

A variation of not more than 2 per cent between the service providers should be accepted as a standard and payments should made within 30 days.

Alternatively a standardized mechanism for MIS and reconciliation could be formulated to be administered by an independent body set up by the TRAI or chosen for the purpose.

3.7 (i) Does existing framework for allocation of short codes for accessing MVAS require any modifications? Should short codes be allocated to telecom service providers and VAS providers independently? Will it be desirable to allot the short code centrally which is uniform across operators? If yes, suggest the changes required along with justification.

(ii) Should there be a fee to be paid for allotment of short code?

Response:

Need for short codes: To ease communication between various players in the VAS industry, there is a need for common codes. It is advisable that the Department of Telecommunication or TRAI or an independent industry body formed under the auspices of DoT or TRAI act as a central registry who could then formulate and allot these codes. A list of such short codes could be placed on the website of such registry to ensure transparency and ease of access. Also the Central registry could explore transparency in assigning short codes by using an online process to provide such access codes. A reasonable fee could be charged in this respect.

Service Integration of short codes: A short-code assignment system needs to be put in place that is integrated across all operators. That is a single number should be assigned to every content provider, and this code should work across all Mobile telephone service Providers. This would be an important shift from the current system – the short code needs to be content provider specific. TRAI may choose one nodal agency or a single window disbursal system for short codes. This code should also be mandatorily accepted by all telecom operators (GSM and CDMA). This could very well be along the lines of booking an internet domain name and should cover both voice and data short codes.

Process of availing Short Codes: The process of obtaining a short code has to be faster, easier and transparent with a view to allow timely Start Ups. It will thus be useful to introduce the concept of a 'short code registry' and 'pre-integrated short codes'. Once a short code is allocated then it should be obligatory for all operators to configure it on their networks at the agreed upon price point. It is absolutely imperative for the growth of VAS that the act of having a short code allocated and operationalized in the telecom network becomes a single-window experience. The series of short codes available should be published online in order to allow content providers to "book" them. Once a number is shown to be available and booked it should hold true for all operators. Payments to be made and the contracts to be entered into with access providers in respect of such short codes should be standardized and be the same across all operators. The charges to be paid to operators should be reasonable especially since the number of operators is likely to increase with new licenses and with MVNOs coming in.

Thus, the short-code numbers should have a central registrar so that one short-code number is active across all network operators and there should be standard protocols to enable, activate and operationalize these short-code numbers on all networks instead of the content provider having to deal with each. The short-codes can either be five digit (starting with 5) or longer. A similar mechanism is in place in the United States, which may be taken as a model, duly tempered with and subject of course to Indian conditions and practices.

Recommendation: An important but subtle point is that the short-code ownership and service agreements with network operators should be decoupled. As a result, a content provider should be able to take its own short-code directly from the registrar, and then choose the VASP that provides the best service and rates (for hosting). That will also ensure that the branding of short codes is not controlled by VASPs but rather by content providers or in pursuance to a mutual agreement between the content provider and VASP.

3.8 Is there a need to provide open access to subscribers for MVAS of their choice? If yes, then do you agree with the approach provided in para 2.46 to provide open access? What other measures need to be taken to promote open access for MVAS? Suggest a suitable framework with justifications?

Response:

The case for Open Access: The requirement for "Open Access" is similar to requirements imposed on other infrastructure providers in different industries and regions: including open-access rules in fixed-line telephony in the US, open-access to toll-roads built on the build-operate-transfer model, open-access to the Windows operating system etc. In all these instances, open-access to infrastructure has led to greater innovation.

There is today an urgent need for a policy that prevents Internet Service Providers, mobile carriers and land line carriers from regulating the use of devices, protocols

and applications on their network. This issue has also been debated at length in the United States for the past several years. Attention to the issue of net neutrality was sparked in 2007 with the discovery that a certain carrier was actively interfering with its customers' use of file sharing programmes like Bit Torrent. While there is currently no law against this, in 2008, the FCC issued an enforcement order requiring that carrier to cease and desist in further traffic manipulation and to disclose the methods they had used to manipulate internet traffic. Kevin Martin, FCC Chairman, at the time of this specific case as well as his successor Julius Genachowski, have stated the FCC's commitment to 'preserving the open character of the internet' as guided by the following principles:

1. Customers can access any lawful internet content that they wish
2. Consumers can run applications and use services of their choice, subject to the needs of law enforcement.
3. Consumers can connect their choice of legal devices to the network that do not harm the network
4. Consumers are entitled to competition among network providers, application and service providers and content providers.

The FCC Net Neutrality Order dated 21st Dec 2010 underscores as follows

*"…….To provide greater clarity and certainty regarding the continued freedom and openness of the Internet, we adopt **three basic rules** that are grounded in broadly accepted Internet norms, as well as our own prior decisions:*

i.   ***Transparency.*** *Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;*

ii.   ***No blocking.*** *Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services; and*

iii.   ***No unreasonable discrimination.*** *Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.*

We believe these rules, applied with the complementary principle of reasonable network management, will empower and protect consumers and innovators while helping ensure that the Internet continues to flourish, with robust private investment and rapid innovation at both the core and the edge of the network. This is consistent with the National Broadband Plan goal of broadband access that is ubiquitous and fast, promoting the global competitiveness of the United States."

Also at issue is the practice by telecommunication companies of charging different rates to Internet consumers based on the degree of bandwidth or speed purchased.

Importance for VAS: Value-added service providers are important for the creativity and vitality of the telecommunications industry, allowing customers to enjoy the benefits of modern networking. It is essential that value- added service providers be allowed non-discriminatory, fair and reasonable access to all networks, fixed and mobile. Regulators must ensure this access. Open access rules are important in creating a competitive and pluralistic environment in the multichannel subscriber television sector, and to ensure the growth in the Internet sector. Just like the ISPs don't block sites unless specified by CERT-IN, mobile operators should not block access to sites. Telecom access service providers also should not block mobile portals to their consumers who have subscribed to GPRS or WAP service (web-enabled services) i.e. there should be no selective blocking of mobile portals or short codes.

Need for clear parameters: Access and Interconnection are the most critical issues that need to be resolved for an open and transparent availability of services. Parameters of allowing a service through should be clearly defined and also clear unambiguous guidelines should be established regarding parameters under which an operator can refuse to carry content. It is important that the end user/customer has clarity about product and services and the charges thereof. They should also be aware of how much the MVAS companies are charging as against the actual payment made by them to the telcos.

Access Rates: Access price is an important cost of the project for many VAS providers. We are of the view that while VASP shall make its own arrangements with the Operator for the required telecom resources, however guidance is required as to the cost to be levied for such resources. In our opinion the same should be at commercial terms which shall not be detrimental than the one which the Operator may be offering to its enterprise customers under the most economic plan for the same or similar services. Also the telecom operator shall not differentiate between the VASPs and offer the same terms to all of them. This is required to create a level playing field.

Recommendation: The operators' charges for carriage and billing and any other interconnect charges should be standardized and made available openly, as is the norm in the industry for other interconnects charges. This would enable off-deck service providers to work on a fee system with operators rather than a revenue share model in appropriate cases. Also an off deck service provider should be allowed to publish its own price based on its in-house cost structure. However the manner or approach to be taken should be incumbent upon commercial negotiations and while we appreciate the averments in paragraph 2.46 we do not recommend that 'Open Access be restricted to such approaches alone.

3.9 What measures are required to boost the growth of utility MVAS like m-commerce, m-health, m-education & m-governance etc. in India? Should the tariff for utility services provided by government agencies through MVAS platform be regulated?

Response:

Sl No.	Utility MVAS	Recommendation
1	**M Commerce**	• Extend mobile commerce services to achieving financial inclusion, for which the supporting ecosystem needs to be built. • UID infrastructure can be leveraged to deploy M-Commerce / banking services in India • TRAI needs to educate the Telecom Service providers, directly or through industry associations about the immense potential M-Commerce offers in this country • Ensure consumer awareness and trust in any M-Commerce activity through widespread advertising. In addition to individual players, associations such as COAI, IAMAI can take this up. • The key regulatory body, RBI has already actively instituted measures for the progress of mobile commerce in India. With regular efforts from RBI, key telecom operators and the banks, mobile banking should focus on *ensuring high reliability, security and high performance in this space*.
2	**M Health**	• Initiative by the Indian government: While multiple models exist globally, in India, the government taking a lead will ensure that M-Health is adopted on a mass scale, including becoming accessible to the economically disadvantaged sections of the population. • Focus on voice based applications and simple technology: In India, voice-based services will see maximum usage and growth since this reduces the need for literacy and can be offered in local languages. Also, simple, existing and affordable technology such as SMS needs to be used in innovative ways to facilitate access and spread the word. • Cooperation amongst government / telcos / health care providers: These parties must work together to spread awareness of the applications/ services. • High quality, locally relevant information dispensed from a reliable source: This will be key to ensuring success of the service. This can be achieved through effectives partnerships between private parties such as telecom operators, local NGOs, and healthcare providers, and the government using a strong and well branched out data collection network and a team of doctors. • Clearly specified regulations by the regulator / government: Regulations to be in place for content protection and patient confidentiality, in order to ensure the success of M-Health services.
3	**M Education**	• Government involvement and insight for laying out a proposed framework infrastructure, manpower, reach, etc) and getting various stakeholders involved • Strong community involvement to ensure private sector and individual involvement in developing and spreading content to the target segment E.g. Involvement of students

		from local universities to tutor children on mathematics and other subjects, as enabled by the Dr Math platform • Strong coordination between all stakeholders to ensure smooth development, delivery and constant innovation within the required ecosystem for education services to be provided to the masses. • Nokia's lead role in MXit is an excellent example of such coordination being enabled by a private body. • Heavily subsidized services, to the rural segments to ensure mass reach and adoption • Recognition of distance learning to ensure sufficient reach and adoption, considering limitations of physical infrastructure and manpower availability especially in remote and / or rural areas. The Commonwealth of Learning cites 'Open and Distance Learning (ODL)' as a big frontier for education today. • Emphasis on vocational training in coordination with organizations such as the National Skill Development Mission to increase skill-based knowledge and employability prospects • Practicality and relevance of content and service delivery framework to ensure mass adoption and impact of all education based services offered e.g. Prescribed school reading such as Macbeth on the Yoza platform
4	**M Governance**	• All M-Governance initiatives need to be driven directly by the country's top leadership (e.g. District leadership in Dongcheng District, Beijing) or by a government body (Dubai eGovernment) • All government agencies need to work in tandem, understand critical needs, prioritize services, create a central repository of relevant and updated data – citizen records, government records, etc • There is a need to ensure widespread mobile connectivity for voice and data across urban and rural India. It would be imperative to use the voice platform as well as localized content to ensure relevance / context and ensure widespread adoption • There is a need for collaboration between the government and all operators to ensure 100% reach • The government should look at offering all information based services on a no-fee basis • The government should work to ensure all stakeholders receive adequate returns to stay committed to the cause, and invest in increasing reach and developing innovations for further enablement

3.10 Any other suggestions with reasons thereof for orderly growth of mobile value added services?

- No Comments