

# The Communication Convergence Bill, 2001

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AS INTRODUCED IN LOK SABHA  
Bill No. 89 of 2001

# THE COMMUNICATION CONVERGENCE BILL, 2001

A

BILL

*to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunication, and multimedia), for the establishment of an autonomous Commission to regulate all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.*

WHEREAS IT IS CONSIDERED NECESSARY -

- (i) to facilitate development of national infrastructure for an information based society, and to enable access thereto;
- (ii) to provide a choice of services to the people with a view to promoting plurality of news, views and information;
- (iii) to establish a regulatory framework for carriage and content of communication in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and**
- (iv) to provide for the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.**

Be it enacted by Parliament in the fifty-second Year of the Republic of India as follows:-

# CHAPTER I

## PRELIMINARY

### Short title, extent and commencement

#### 1.

(1) This Act may be called the Communication Convergence Act, 2001.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

### Definitions.

#### 2.

In this Act, unless the context otherwise requires,--

(1) "Adjudicating Officer " means an officer of the Commission appointed as Adjudicating Officer under sub section (l) of section 39;

(2) "Appellate Tribunal" means the Communication Appellate Tribunal established under sub section (l) of section 43;

(3) "Broadcasting service" means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service, but does not include -  
(a) a service (including a teletext service) that provides only data, or text (with or without associated still images); or  
(b) a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; or  
(c) a service, or a class of services, that the Central Government may notify as not being a broadcasting service;

(4) "Chairperson" means the Chairperson appointed under subsection (4) of section 7;

(5) "channel" means a set of frequencies used for transmission of a programme;

(6) "Commission" means the Communications Commission of India established under, sub-section (1) of section 6 ;

(7) "communication" means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electromagnetic emissions;

(8) "communication service" means a networking service or network application service or value added network application service or a content application service;

(9)"content" means any sound, text, data, picture (still or moving) other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically".

(10)"content application service" means an application service which provides content meant for the public and includes such other services as may be prescribed;

(11) "frequency" means frequency of electromagnetic waves used for providing a communication service;

(12) "grantee" means a person who has been granted registration under Chapter VII;

(13) "license" means a license granted under Chapter VII or Chapter VIII;

(14) "licensee" means a person who has been granted a license;

(15) "Member" means a Member of the Commission appointed under section 7 and includes the Chairperson;

(16) "network application service" means the service provided by means of one or more networking services and includes such other services as may be prescribed;

(17) "network infrastructure facilities" means any element or combination of elements of physical infrastructure, which would be utilised by licensees for providing networking services and includes such other facilities as may be prescribed;

(18) "network service" means a service for carrying communications by means of guided or unguided electromagnetic waves and includes such other services as may be prescribed;

(19) "notification" means a notification published in the Official Gazette and the expression "notified", with its cognate meaning and grammatical variation, shall be construed accordingly;

(20)"post" means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility;

(21)"prescribed" means prescribed by rules made by the Central Government under this Act;

(22)"programme" means - television or radio programme including advertising or sponsorship, whether or not of a commercial kind, and broadcast programming shall be construed accordingly;

(23)"programme code" means the code specified under section 20;

(24)"public authority" means and includes -

(i) the Central Government;

(ii) a State Government;

(iii) any person, agency or organisation engaged in land development for public use, or in roads for public transportation.

(iv) any local authorities legally entitled to, or entrusted by the Central or any State Government with, the control or management of any municipal or local fund; and

(v) any institution, concern or undertaking or body which is financed wholly or substantially by

funds provided directly or indirectly by the Government that may be specified by notification in this behalf by the Central Government.

{25}"public service broadcaster" means any body created by Act of Parliament for the purpose of public service broadcasting;

{26}"registration" means the registration granted under chapter VII;

{27}"regulations" mean regulations made by the Commission under this Act;

{28}"Secretary-general" means the Secretary-general appointed under subsection (1) of section 15.

{29}"service provider" includes any person who provides a communication service;

{30}"spectrum" means a continuous range of continuous electromagnetic wave frequencies upto and including a frequency of 3000 giga hertz;

{31}"Spectrum Manager" means Wireless Advisers to the Government of India notified as Spectrum Manager, Government of India under sub Section (3) of section 23;

{32}"subscriber of a service" means a person who subscribes to a communication service primarily for his own use;

(33) "Universal Service Obligation" - means obligation as may be prescribed;.

(34) "value added network application service" means the service provided by means of value addition using one or more network application services and includes any article or apparatus as may be prescribed;

{35}"wireless equipment" means any equipment in use or capable of use in wireless communication and includes any article or apparatus as may be prescribed;

{36}"wireless communication" means any communication without the use of wire or cable.

## CHAPTER II

### REGULATION OF USE OF SPECTRUM, COMMUNICATION SERVICES, NETWORK INFRASTRUCTURE FACILITIES, AND WIRELESS EQUIPMENT.

#### Prohibition of use of spectrum without assignment

##### 3.

No person shall use any part of the spectrum without assignment from the Central Government or the Commission as provided for in this Act.

#### Provision of services, etc.



#### 4

- (1) No person other than a public service broadcaster shall -
- (a) own or provide any network infrastructure facility, or
  - (b) provide any networking service, or any network application service or any value added network application service, or any content application service, without a licence or registration:

Provided that all facilities and services exempted from licensing or registration immediately before the commencement of this Act shall continue to be so exempt under this Act, until otherwise notified by the Central Government.

- (2) The Central Government may, by notification, exempt any -
- (a) person, or class of persons; or
  - (b) facility or service, from the provisions of this section.

#### Prohibition of possession of wireless equipment without a license

#### 5.

- (1) No person shall possess any wireless equipment without obtaining a license in accordance with the provisions of this Act:

Provided that the Central Government may, by notification, exempt in the public interest any person or class of persons or any wireless equipment or category of wireless equipment from the provisions of this section.

- (2) Nothing contained in subsection (1) shall apply to -
- (a) any person or equipment. licensed under any law for the time being in force immediately before the commencement of this Act; or
  - (b) any person or equipment exempted from the licensing immediately before the commencement of this Act, until otherwise notified by the Central Government.

## CHAPTER III

### COMMUNICATIONS COMMISSION OF INDIA

#### Establishment of Commission

#### 6.

- (1) With effect from such date as the Central Government may, by notification appoint in this behalf, there shall be established for the purposes of this Act, a Commission, to be known as the Communications Commission of India. The Head Office of the Commission shall be located at Delhi with Regional Offices at Calcutta, Chennai and Mumbai .

- (2) **The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, and shall by the said name sue and be sued.**

- (3) The Commission shall consist of the following Members, namely:-
- (a) a Chairperson;
  - (b) not more than ten persons to be appointed as Members; and
  - (c) the Spectrum Manager, as ex-officio member.

(4) The Chairperson and not less than six Members, (other than the ex-officio Member), shall be whole-time Members and the remaining shall be part time Members.

#### **Appointment of Chairperson and Members.**

**7.**

**(1) The Members (except the ex-officio Member) shall be appointed by the Central Government by notification, from amongst persons recommended by a search committee as may be prescribed.**

(2) One-half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities.

(3) One-half of the Members shall be appointed from amongst persons of eminence in the specialized fields such as, telecommunications, broadcasting technology, information technology, finance, management and administration or law.

(4) The Chairperson shall be appointed by the Central Government, by notification, on the recommendation of the search committee referred to in subsection (1) from amongst persons of eminence in one or more fields enumerated in subsection (2) and (3).

(5) Before appointing a person as Chairperson or other Member, the Central Government shall satisfy itself that the person does not have any such financial or other interests as is likely to affect prejudicially his functions as such Member.

(6) A person, who is in the service of Government, shall have to retire or resign from service before entering the office of Chairperson or whole time Member.

#### **Term of office of Chairperson and Members.**

**8.**

(1) The Chairperson and whole-time Members shall hold office for a term of five years from the date on which they enter upon their office or until they attain age of 65 years whichever is earlier. Provided that the Chairperson and whole-time members shall not be eligible for re-appointment

(2) The tenure of part time Members shall be such as may be prescribed.

(3) The Chairperson shall have powers of general superintendence and direction in the conduct of affairs of the Commission and shall, in addition to presiding over the meetings of the Commission, exercise and discharge such powers and functions of the Commission as may be assigned to the Chairperson by the Commission.

(4) The Chairperson or any Member of the Communications Commission may resign from his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the Chairperson or such other Member shall be deemed to have vacated office.

#### **Removal from office of Chairperson and Members.**

**8.**

The Central Government may remove from office any member who -

(a) has been adjudged insolvent, or

(b) has been convicted of any offence, which in the opinion of the Central Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as Chairperson or other Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest

No such member shall be removed from his office under clause (d) or clause (e) above unless he has been given a reasonable opportunity of being heard in the matter.

### **Salary and allowances of Chairperson and Members**

#### **9.**

The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed:

**Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to their disadvantage after appointment**

#### **10.**

### **Vacancy or defect not to invalidate proceedings.**

#### **11.**

No act or proceeding of the Commission shall be invalidated merely by reason of -

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a Member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

### **Functions of Regional Offices.**

#### **12.**

The Regional Offices of the Commission at Calcutta, Mumbai and Chennai will perform such functions as may be determined by regulation \*\*\*.

### **Meetings of Commission.**

#### **13.**

(1) The Commission shall meet at such times and places and shall observe such procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) A Member (other than the Chairperson) shall be deemed to have vacated his or her office if he absents himself for three consecutive meetings of the Commission without the leave of the Chairperson.

(3) The Chairperson or, if he is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any other Member chosen by the Members present from among themselves shall preside at the meeting of the Commission.

#### **Power of Commission to regulate its procedure.**

##### **14.**

**(1) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-**

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1972, requisitioning any public record or document or a copy of such record or or document, from any office;
- (f) dismissing an application for default or deciding it, ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and
- (h) reviewing its decisions;
- (i) granting interim relief; and
- (j) any other matter which may be prescribed.

**(2) Every proceeding before the Commission shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of sections 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.**

**(3) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Commission shall have powers to regulate its own procedure, including the fixing of places and times of business.**

#### **Secretary-general of the Commission.**

##### **15.**

(1) The Secretary-general shall be appointed by the Commission and shall be its Chief Executive Officer and shall exercise and discharge such powers and functions as determined by regulation.

(2) For the purpose of subsection (1) aforesaid the Commission may seek from the Central Government a panel of not less than three officers who are eligible to be, or are of the rank of, the Secretary to the Government of India for being appointed as Secretary-general

(3) The terms and conditions, and period of service, of the Secretary-general shall be such as maybe prescribed.

### Setting up of Panel, Distribution of Business, etc.

#### 16.

(1) The Commission shall set up a Panel from amongst Members appointed under subsection (2) of section 7 to deal with matters in relation to the content in content application services, and the Chairperson shall preside over the meetings of the Panel: Provided that wherever necessary the Chairperson may place before the Commission any issue relating to the matters referred to in this section.

(2) Except for the power to make regulations, the Commission may, by general or special order, make provisions for the distribution of its business amongst Members as may be considered appropriate and necessary.

(3) For the discharge of its functions under this act, the Commission may, if it considers necessary, set up bureaus or divisional organizations on the basis of its principal workload operations and subject to the provisions of section 53, such bureaus or divisional organizations shall be provided with such officers and other employees as are necessary to perform their functions.

(4) The Commission may, by order in writing, authorize any District Magistrate or Sub-Divisional Magistrate in any area or any other officer of the Central Government or State Government or Union territory Administration to implement and ensure compliance of its directions and orders; and when so directed or authorized, such Magistrate or officer shall be bound to implement and carry out such directions and orders.

## CHAPTER IV

### OBJECTIVES OF THE COMMISSION

#### Objectives and guiding principles

#### 17.

The Communications Commission of India while exercising its functions shall be guided by the following principles governing the administration of this act namely :

(i) that the communication sector is developed in a competitive environment and in consumer interest;

(ii) that communication services are made available at affordable cost to all especially uncovered areas including the rural, remote, hilly and tribal areas;

(iii) that there is increasing access to information for greater empowerment of citizens and towards economic development;

(iv) that quality, plurality, diversity and choice of services are promoted;

(v) that a modern and effective communication infrastructure is established taking into account the convergence of information

technology, media, telecom and consumer electronics;

(vi) that defence and security interests of the country are fully protected;

(vii) that introduction of new technologies, investment in services and infrastructure, and maximisation of communications facilities and services (including telephone density) are encouraged;

(viii) that equitable, non-discriminatory interconnection across various networks are promoted;

(ix) that licensing and registration criteria are transparent and made known to the public;

(x) that an open licensing policy allowing any number of new entrants (except in specific cases constrained by limited resources such as the spectrum) is promoted; and

(xi) that the principle of a level playing field for all operators, including existing operators on the date of commencement of the Act, is promoted so as to serve consumer interest.

## CHAPTER V

### POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

#### Powers duties and functions of the Commission.

**18.** (1) It shall be the duty of the Commission to facilitate and regulate all matters relating to carriage and content of communications.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Commission shall-

(i) Carry out management, planning and monitoring of the spectrum for non-strategic/ commercial usages subject to the provision of section 24A;

(ii) grant licenses for purposes of the Act, and determine and enforce license conditions and determine fees (including fees for usage of spectrum) wherever required;

(iii) determine appropriate tariffs and rates for licensed services, wherever considered necessary and keeping in view the objectives and guiding principles in the Act;

(iv) ensure that the grant of licenses will not result in eliminating competition or in one or more service providers becoming dominant to the detriment of other service providers or consumers;

(v) promote competition and efficiency in the operation of communication services and network infrastructure facilities;

(vi) formulate and determine conditions for fair, equitable and nondiscriminatory access to a network infrastructure facility or network service such other related matters in respect thereof;

(vii) take measures to protect consumer interests and promote and enforce universal service obligations;

(viii) formulate and lay down programme and advertising codes in respect of content application services;

(ix) formulate and lay down commercial codes in respect of communication services and network infrastructure facilities;

(x) take steps to regulate or curtail the harmful and illegal content on the internet and other communication services;

(xi) formulate and lay down codes and technical standards and norms to ensure quality and interoperability of services and network infrastructure facilities (including equipment);

(xii) carry out any study and publish findings on matters of importance to the consumers, service providers and the communications industry;

- (xiii) institutionalise appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the basic objectives of the Act; to encourage self regulatory codes and standards;
- (xiv) report and make recommendations on such matters as may be referred to it by the Central Government;
- (xiv) report and make recommendations either suo moto or on such matters as may be referred to by the Central Government in the matter prescribed
- (xv) perform all or any functions in furtherance of the objects of this Act, or such as may be prescribed.

(3) The commission shall ensure transparency whilst exercising its powers and discharging its functions.

### Power to make recommendation in certain cases

**19.** The Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice or practices that impinges upon or adversely affect the interest of the sovereignty and integrity of India, security of the state, friendly relations with foreign countries or State, public order, decency or morality.

### Codes and Standards

**20.** The Commission shall by regulations from time to time specify programme codes and standards which may include inter alia practices -

- (i) to ensure that nothing is contained in any programme which is prejudicial to the interests of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order or which may constitute contempt of court, defamation or incitement to an offence.
- (ii) to ensure fairness and impartiality in presentation of news and other programmes.
- (iii) to ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony, and a scientific temper.
- (iv) to ensure in all programmes decency in portrayal of women, and restraint in portrayal of violence and sexual conduct;
- (v) to enhance general standards of good taste, decency and morality.
- (vi) to ensure avoidance of offence to religious views and belief; and
- (vii) to be followed in connection with the prevention of unjust and unfair treatment in any programme, and unwarranted infringement of privacy in, or in connection with, obtaining of material included in such programme.

### Hearing of complaints and resolution of disputes by the Commission

**21.**

(1). The Commission shall -

(a) decide any dispute or matter -

- (i) between two or more service providers on issues relating to spectrum interference, interconnectivity, denial of fair access and practices restrictive of fair competition; and
- (ii) between a service provider and a group of consumers.
- (iii) arising out of enforcement of any provision of this Act;

(b) hear and determine any complaint from any person regarding contravention of the provisions the Act, rules, regulations or orders made thereunder including contraventions relating to any formulated codes and technical standards, and of other terms and conditions subject to which any license or registration was granted; and if necessary refer the matter for adjudication under Chapter X.

(2) For purposes of sub section (1) the Commission shall pass such orders and issue such directions as it deems fit.

(3) The Commission shall endeavour to decide disputes and complaints referred to in sub-section (1) as expeditiously as possible"

### Directives by the Central Government.

**22 .** (1) In exercising its licensing and regulatory functions the Commission shall follow such policy directives as may be communicated to it in writing by the Central Government from time to time. Such directives may include the route and the mode in which any services are to be licensed, whether by way of auction or in any other form.

(2) In framing the policy directives the Central Government shall take into account the objectives and guiding principles governing the administration of the Act.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

(4) The Commission may request the Central Government by means of a written communication for a review of any policy directive, and if any such request is made the Central Government will respond in writing to such request with all expeditious despatch.

## CHAPTER VI

### FREQUENCY SPECTRUM MANAGEMENT

#### Spectrum Management Committee

#### 23.

(1) The Central Government shall be responsible for coordination with international agencies in respect of matters relating to Spectrum Management and also for allocation of available spectrum for strategic and non-strategic or commercial purposes.

(2) For the purposes of discharging the responsibility under sub-section (1), the Central Government shall establish, by notification, a Spectrum Management Committee with the Cabinet Secretary as its Chairman and consisting of such other members as may be notified by it from time to time.

(3) The Central Government shall notify Wireless Advisor to the Government of India as Spectrum Manager, Government of India, to act as Member-Secretary of the Spectrum Management Committee.

(4) Subject to general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall, inter-alia, perform the following functions, namely :- (i) to co-ordinate with international agencies, matters relating to overall spectrum planning, use and its management; (ii) to carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including those of defence , national security and of the public service broadcaster. (iii) to allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and reassignment of frequencies from time to time. (iv) to review constantly and make available as much spectrum as possible for assignment by the Commission, in particular by optimising



usages, and. (v) monitoring as appropriate, in consultation with the Commission, the efficiency of the utilisation of the spectrum by all users including investigation and resolution of spectrum interference; and (vi) after meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs including those of defence, national security and public service broadcaster, the Spectrum Manager shall make the spectrum available, to the maximum extent possible, for assignment by the Commission, both in the shared as well as in the exclusive bands.

(5) Subject to the general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall assign frequencies on payment of such fee as may be prescribed.

### Assignment of spectrum

#### 24.

(1) The Commission shall be responsible for assignment of the non strategic and commercial spectrum to various users: Provided that the Commission shall assign such frequencies in case these are not exclusively allocated to it, only with the prior approval of the Spectrum Management Committee.

(2) Whenever the Commission seeks allocation of additional spectrum for assignment , including in the shared bands, a process for mutual consultation between the Commission and the Spectrum Manager shall be initiated in such manner and within time frame as may be prescribed.

### Commission to notify schemes for assignment of spectrum

#### 25.

(1) Before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as it may consider appropriate.

(2) The Central Government may, by notification, determine the class or classes of persons or services for preferential assignment of any frequency or spectrum by the Commission.

## CHAPTER VII

### LICENSES FOR REGISTRATION

#### License or registration of service providers .

26. (1) Having regard to the necessity of serving the public interest, ensuring competition and prevention of monopoly in the provision of network infrastructure facilities and communication services, the Commission may, by regulations specify, -

- (i) eligibility conditions for granting of licenses or registrations;
- (ii) restrictions regarding ownership and control of the media ;
- (iii) restrictions on the number of licenses or extent of accumulation of interest in such licenses by a person; and
- (iv) such other conditions as may be considered necessary from time to time.

(2) (a) The Commission may determine by regulation, the obligations, conditions, restrictions, tariffs and rates subject to which service provider shall provide facilities and services referred to in sub-section(1).

(b) The Commission may, by regulations , determine the conditions subject to which a license or registration may be granted or transferred and where a license or registration is transferred, the transferee shall be deemed as licensee or grantees, as the case may be , for the purpose of this

Act .

(3) Subject to the provisions of sub-section (1), the Commission may grant license or registration in such manner, and within such time , subject to such terms and conditions, on payment of such fees and after following such procedure as may be determined by regulations. Provided that the fee for registration shall not exceed thirty thousand rupees.

(4) The Commission shall notify , from time to time, one or more schemes or plans for licensing or registration containing such details as may be specified by regulations: Provided that the Commission shall , before finalising such schemes or plans, consult the Central Government in order to ensure that the defence and security interests of India are fully protected.

(5) Any scheme or plan referred to in sub-section (4) may provide for eligibility conditions, number, and scope of licenses and registration and such other matters as the Commission may consider necessary.

(6) The Commission may grant license to any person -

(a) to provide or own network infrastructure facilities.

Explanation.-For the purposes of this clause, network infrastructure facilities shall include earth station, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution;

(b) to provide networking services

Explanation.-For the purposes of this clause, networking services shall include band-width services, fixed links and mobile links;

(c) to provide application services.

Explanation.-For the purposes of this clause, network application services shall include public switched telephony, public cellular telephony, global mobile personal communication by satellite, internet protocol telephony, radio paging services, public mobile radio trunking services, public switched data services and broadcasting (radio or television service excluding continued);

(d) to provide content application services.

Explanation.--For the purposes of this clause, content application services shall include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting;

(e) to provide value added network application services such as internet services and unified messaging services.

Explanation.-For the removal of doubts, it is hereby declared that information technology enabled services such as call centers, electronic-commerce ,tele-banking ,tele-education, tele-trading ,tele-medicine ,videotex and video conferencing shall not be licensed under this Act.

(7)The Commission may, while granting a license for any one of the categories under sub-section (6), confine or limit the scope of the facility or service to be provided by the licensee in each category of license , and also specify the conditions for providing that facility or services.

(8) The Commission may,while granting a license under sub-section (6) grant licenses either singly or jointly for one or more of the categories of facilities or services specified therein .:

Provided that no license shall be granted under this sub-section if it conflicts with the objectives and guiding principles set out in Chapter IV particularly in relation to ensuring fair access and promotion of competition.

Provided that no license shall be granted under this sub-section, if it conflicts with the objectives and guiding principles set out under this Act particularly in relation to ensuring fair access and promotion of competition.

Explanation.-No license shall be required in respect of any person or class of persons, or any facility or service, which has been exempted under the proviso to clause (b) of sub-section(1) of section 4 unless specifically notified by the Central Government for the purposes of licensing under this Act.

### Period and form of license or registration.

**27.** (1) A license or registration shall be granted for such period as may be specified by regulations.

(2) A license or registration ,granted under this Act ,shall be in such form and shall be subject to the payment of such fees as may be determined by regulations:  
Provided that the fee for registration shall not exceed the amount referred to in the proviso to sub-section(3) of section26:  
Provided that the Central Government may, by notification, in the public interest, exempt any person or class of persons from payment of the license fee or registration fee.

### Duties of service providers

**28** (1) Every service provider shall , wherever required or applicable-

- (i) give effect to Universal Service Obligations;
- (ii) provide such life saving services as may be prescribed;
- (iii) provide service to any person on demand within a reasonable period of time and on a non-discriminatory basis; and
- (iv) follow the codes and standards laid down and specified by the Commission;

(2) Every service provider of a content application service shall , wherever required or applicable -

- (i) endeavour to provide a suitable proportion of programme of indigenous origin; and
- (ii) ensure that no programme forming part of its services infringes any copyright.

(3) Without prejudice to the foregoing provisions of this Act, every service provider holding a license for providing distribution of broadcasting services shall, amongst others, -

- (i) provide a specified number and type of broadcasting services, including those of the public service broadcaster, in such manner, as may be prescribed;
- (ii) include only licensed broadcasting service in his delivery package for the purposes of distribution; and
- (iii) use not more than such number of channels as specified by regulations, out of the total channel capacity of the system, for providing his own programming.

### Certain Agreements to be registered with the Commission

**29.** Every agreement entered into or made by any service provider or infrastructure facility provider ,falling under one or more of the following classes shall, within sixty days from the making of such agreement, be registered with the Commission namely:-

- (a) shareholders or promoters agreements ;
- (b) interconnectivity agreements; and
- (c) Such other agreements as may be specified by regulations.

## CHAPTER VIII

### LICENSING OF POSSESSION OF WIRELESS EQUIPMENT

### License for wireless equipment

**30.** (1) Subject to the provisions of sub-section (1) of section 5, any person who intends to possess any wireless equipment shall make an application to the Commission for the grant of a license.

(2) Every application shall be in such form and shall be accompanied by such fees as may be determined by regulations.

(3) The Commission shall, on receipt of an application under sub-section (1), after making such enquiries as it deems fit, grant the license or reject the application:

Provided that no application shall be rejected unless an opportunity of being heard is given to the applicant;

Provided further that no application for a license shall be rejected except on grounds of security of India or part thereof, public order or other public interest.

(4) Every license granted under this section shall be subject to such conditions and restrictions as may be determined by regulations.

## CHAPTER IX

### SPECIAL PROVISION IN RESPECT OF CERTAIN SERVICES

#### Provision for live broadcasting of certain events.

**31** (1) For the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, the Central Government shall notify the same well in advance.

(2) The National or International event of general public interest notified under sub-section (1) shall have to be carried on the network of a public service broadcaster as well.

(3) In order to strive towards providing a level playing field for bidders for broadcasting rights, or persons interested in receiving broadcasting right for events, notified under sub-section (1), the Commission shall determine, well in advance of such event, the principles and terms for the access to the network of the public service broadcaster.

## CHAPTER X

### BREACH OF TERMS AND CONDITIONS OF LICENSE OR REGISTRATION, CIVIL LIABILITY AND ADJUDICATION

#### Breach of terms and conditions of licenses, etc.

**32.**(1) In any case of breach of any of the terms of the license or registration or failure to comply with any decision, direction or order of the Commission, it may, after providing an opportunity to the party concerned of being heard, do any one or more of the following, namely:-

(a) direct the licensee or grantee to do or abstain from doing any act or thing to prevent such breach or for such compliance;

- (b) suspend the license or registration for a specified period;
- (c) curtail the period of the license or registration ;
- (d) revoke the license or registration ;and
- (e) initiate adjudication proceedings under this chapter.

(2) If the Commission has a reason to believe that the terms and conditions of a license or registration for providing a not work infra-structure facility or Communication service under this Act have been or are being breached, the Commission may direct or order the seizure of the equipment being used for provision of such facility or service, and for this purpose the Commission may ,by order in writing, authorise any District Magistrate, or Sub-Divisional Magistrate in any area ,or any other officer of the Central Government or State Government or Union territory Administration , to implement and ensure compliance of its directions and orders; and when so authorized , such Magistrate or officer shall be bound to carry out the directions and orders of the Commission.

(3) Any person aggrieved by such seizure under sub-section(2) , may prefer an appeal to the Appellate Tribunal within thirty days of the seizure and the Appellate Tribunal may pass such orders ,as expeditiously as possible as to the disposal of the property so seized as it may deem fit. Provided that no such equipment shall be retained by the Commission or the authorised officer for a period exceeding forty five days from the date of its seizure, unless the Appellate Tribunal on the report made by the authorised officer, approves such retention for a longer period.

#### **Civil liability for breach of terms and conditions of license. etc.**

##### **33.**

If any licensee or grantee commits breach of , or fails to comply with any terms and conditions subject to which a license or registration, as the case may be, was granted or fails to comply with any rule, regulation or order made under this Act, the licensee or grantee shall be liable to a civil liability under this Chapter.

#### **Civil liability for contravention of the provision relating to transmission etc.**

##### **34.**

If any person transmits or distributes any communication or performs any service incidental thereto, by the use of a network infrastructure facility, communication service or wireless equipment which is required to be licensed or registered under this Act and not so licensed or registered, as the case may be, or has been established or maintained or operated in contravention of the provisions of this Act or any rule or regulation made thereunder, such person shall be liable to a civil liability under this chapter.

#### **Civil liability for delivery of content through facilities, services or equipments not licensed or registered.**

##### **35.**

If any person delivers any content for transmission or accepts delivery of any content sent by the use of network infrastructure facility, communication service or wireless equipment knowing or having reason to believe that such facility, service or equipment has been established or has been maintained or operated without a license or registration or in contravention of the provisions of this Act or any rules or regulation made thereunder, such person shall be liable to a civil liability under this chapter.

#### **Civil liabilities for failure to Register Agreements**

**36.** If a service provider fails without reasonable excuse to register an agreement, which is

required to be registered as provided for in section 29, he shall be liable to civil liability under this chapter.

### **Civil liability for failure to comply with the decision, direction or orders of the Commission.**

**37.** If any person wilfully fails to comply with any decision, direction or order of the Commission, he shall be liable to civil liabilities under this chapter.

### **Filing of complaint, reference for adjudication etc.**

**38.**

(1) A complaint may be filed before the Commission alleging that a service provider or any other person has incurred a liability to a civil liability under this Chapter.

(2) Every complaint under sub-section (1), except a complaint under section 33, shall be filed within sixty days from the date on which any act or conduct constituting the contravention took place and shall be in such form as may be prescribed:

### **Power to adjudicate**

**39.** (1) For the purpose of adjudging whether any person has contravened any of the provisions of this Act, any rules, regulations, made thereunder or directions or orders issued under this act is liable to a civil liability under this Chapter, the Commission shall, subject to the provision or subsection (3), appoint by general or special order, an officer of the commission as Adjudicating Officer for holding an inquiry in the manner provided for herein and in the regulations.

(2) The Adjudicating Officer shall give the person referred to in sub-section (1), a reasonable opportunity for making a representation in the matter, and if, on inquiry, the Adjudicating Officer is satisfied that the person has committed any contravention, and is liable to a civil liability, then, such liability as may be determined, by order, shall be imposed by the Adjudicating Officer on such person:

Provided that where the Adjudicating Officer is satisfied that there has been no contravention, he may pass such order as he deems fit.

(3) No person shall be appointed as an Adjudicating Officer unless he possess such experience as may be prescribed.

(4) Where more than one Adjudicating officers are appointed, the Commission shall specify, by order, the matter and places with respect to which such officers shall exercise their jurisdiction.

(5) For the purpose of discharging his powers and functions, every Adjudicating officers shall have the same powers as are vested in a civil court under the code of Civil procedure, 1908 in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document or a copy of such record or document, from any office;
- (e) issuing commission for the examination of witness or for production of documents;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by him exparte;

- (h) reviewing his decisions;
- (i) granting interim relief; and
- (j) any other matter which may be prescribed.

(6) The Adjudicating Officer shall endeavour to decide disputes and complaints referred to him as expeditiously as possible.

(7) Any proceeding before the Adjudicating Officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of sections 196, of the Indian Penal Code and the Adjudicating Officer shall be deemed to be a civil court for the purpose of section 195 and chapter XXXVI of the Code of Criminal Procedure, 1973.

**40.** (1). If any person damages, displaces or destroys and cable or any part of the network infrastructure facility laid, established or place in accordance with the provisions of this Act, or if the communication services by reason of the damage or displacement so caused is interrupted, such person shall be liable, -

- (a) where the act is wilful and deliberate, to a civil liability which may extend to rupees five crores and where the actual loss or damage caused is more than rupees five crores then the civil liability up to the extent of damage;
- (b) where the act is not wilful or deliberate, a civil liability not exceeding the actual loss or damage caused.

(2) out of the civil liabilities imposed under sub-sec. (1), such sum as may be determined by the Adjudicating Officer shall be payable to the licensee or the grantee, as the case may be, as reasonable compensation for damage suffered.

**41.** (1) If any person contravenes the provision of sub-section (1), such sum as may be liable to a civil liability as determined by the adjudicating Officer under this chapter.

**42.** (1) Any penalty imposed under this Chapter shall not exceed fifty crore rupees.

(2) The Adjudicating Officer shall, While adjudging the quantum of civil liability, under this Chapter, the Adjudicating Officer, have due regard to the provisions of this Act, and also to the following factors, namely:-

- (a) the amount of revenue loss to the Government;
- (b) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (c) the amount of loss caused to any person as a result of the default;
- (d) the repetitive nature of the default; and
- (e) that the amount adjudged shall be such as may act as a deterrent even though no financial loss has been caused by such contravention.

## **CHAPTER XI**

### **COMMUNICATIONS APPELLATE TRIBUNAL**

#### **Establishment of Appellate Tribunal.**

**43.** (1) **The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Communications Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under this Act.**

(2) Any person aggrieved by any decision or order of the Commission may prefer an appeal to the Appellate Tribunal.

(3) (a) Every appeal under sub-section (2) shall be preferred within a period of sixty days from the date on which a copy of the decision or order made by the Commission is received by the person aggrieved and the appeal shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

(b) Any person aggrieved by an order of penalty imposed by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal within sixty days from the date on which such order is received and the appeal shall be in such form, verified in such manner and accompanied by such fee as may be prescribed:

Provided that the appellate Tribunal may entertain an appeal under clause (a) or clause (b) after expiry of the said period of sixty days, if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) On receipt of an appeal under sub-section (2), or sub section (3), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to each of the parties to the appeal and to the Commission or to the Adjudicating Officer, as the case may be.

(6) The Appellate Tribunal shall endeavour to deal with and dispose of every appeal preferred under sub-section (2) and sub section (3) as expeditiously as possible; and all parties appearing before the Appellate Tribunal shall actively assist in ensuring that the appeal is determined and disposed off not later than ninety days from the date of filing of the appeal.

(7) The Appellate Tribunal may, on its own motion or otherwise for the purpose of examining the legality, propriety or correctness of any order or decision of the Commission or of the Adjudicating Officer, call for all relevant records and make such orders as it thinks fit:

provided that the power under this sub-section shall not be invoked after the expiry of three months from the date of such order or decision. Composition of Appellate Tribunal.

**44.** (1) The Appellate Tribunal shall consist of a Chairperson and not more than six Members to be appointed, by notification, by the Central Government.

(2) The appointment of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) The appointment of members of the appellate Tribunal shall be from amongst persons recommended by the search committee as may be prescribed.

(4) Subject to the provisions of this Act -

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a bench may be constituted by the Chairperson of the Appellate Tribunal consisting of two or more Members as the Chairperson may deem fit;

Provided that every bench shall be presided over by a Judicial member.

Explanation: For the purposes of this section "Judicial Member" means any member of the Appellate Tribunal who has been a judge of a High Court;

(c) the benches of the Appellate Tribunal shall ordinarily sit at Delhi and also at such other places as the Central Government may notify, in consultation with the Chairperson of the Appellate Tribunal.

(d) the Central Government shall, on the recommendation of the Appellate Tribunal, notify the areas in relation to which each bench of the Appellate Tribunal may exercise jurisdiction.



(5) The Chairperson of the Appellate Tribunal may, as the exigencies of business may require, request a member of the Appellate Tribunal sitting on one bench of the Appellate Tribunal to sit on another bench thereof.

(6) If at any stage it appears to the Chairperson or a bench of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a bench consisting of more than two members of the Appellate Tribunal, the case or matter may be transferred by the Chairperson to a bench of more than two Members. Qualification, tenure, salary and allowances, vacancy of the Chairperson and Members of the Appellate Tribunal.

**45.** (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless -

(a) in the case of the Chairperson, he is, or has been, a Judge of the Supreme Court;  
(b) in the case of a Member, he is or has been a Judge of a High Court, or has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years, or he is a person who is proficient in any of the fields specified in sub-sections (2) and (3) of section 7.

(2) The Chairperson and every Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office;

Provided that no Chairperson or other Member shall hold office as such after he has attained-

(i) in the case of Chairperson, the age of seventy years;  
(ii) in the case of any other Member, the age of sixty-five years.

(3) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

(4) (a) If, for reason other than temporary absence, any vacancy occurs in the office of the chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

(b) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, any member of the Appellate Tribunal, as authorised so to do by the Central Government, shall discharge the functions of the Chairperson until the day on which the Chairperson resumes charge of his functions.

(5) Before appointing any person as chairperson or member of the Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interests as are likely to affect prejudicially his functions as such member.

(6) A person who is in the service of Government shall have to retire or resign from service before entering the office of chairperson or member of the Appellate Tribunal.

### **Resignation and removal**

**46.** (1) The chairman or a member of the Appellate Tribunal may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the chairperson or the member shall be deemed to have vacated his office.

(2) The Central Government may remove from office, the chairperson or a member of the Appellate Tribunal, who -

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or  
(c) has become physically or mentally incapable of acting as the Chairperson or a Member; or  
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the chairperson or a member; or  
(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(3) Notwithstanding anything contained in sub-section (2), the chairperson or a member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(4) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference. Distribution of business amongst benches, etc

#### **Distribution of business amongst benches,etc**

**47.** (1) The Chairperson of the Appellate Tribunal may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each bench thereof.

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as may desire to be heard, or suo motu without notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one bench of the Appellate Tribunal for disposal, to any other bench thereof.

(3) If the members of a bench of the Appellate Tribunal consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Appellate Tribunal who shall hear the point or points, and thereafter such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it. Procedure and powers of Appellate Tribunal.

#### **Procedure and powers of Appellate Tribunal**

**48.** (1) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing Commissions for the examinations of witnesses or documents;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it, ex parte;
- (h) reviewing its decisions; and

- (i) granting interim relief; and
- (j) any other matter which may be prescribed.

(2) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Right of application to take assistance of legal practitioner, etc.

#### Rights of applicant to take assistance of legal practitioner, etc

**49.** An applicant or appellant may either appear in person or authorise one or more chartered accountants, or company secretaries, cost accountants or legal practitioners, or any of his or its accredited officers to present his or its case before the Appellate Tribunal.

Explanation: For the purpose of this section-

- (a) "Chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act;
- (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader.

#### Appeals to Supreme Court .

**50.** (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, an appeal shall lie against any order, not being an interlocutory order, passed by the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:  
Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Execution of orders.

#### Execution of orders

**51.** (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of a civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Explanation - For the purpose of this section, the expression "civil court having local jurisdiction" shall mean, the civil court within whose local limits of jurisdiction, the licensee, grantee, or judgement debtor, as the case may be resides or has a place of office or business and also within whose jurisdiction any property belonging to the licensee, grantee, or judgement debtor is located.

### **Penalty for failure to comply with the orders of commission and Appellate Tribunal**

**52.** If any person wilfully fails to comply with any decision, direction or order of Appellate Tribunal such person shall be liable to a penalty to be imposed by the order of Appellate Tribunal which may extend to five crores rupees:

provided that no such penalty shall be levied without giving any opportunity of being heard to the party concerned.

## **CHAPTER XII**

### **OFFICERS AND EMPLOYEES OF THE COMMISSION AND THE APPELLATE TRIBUNAL**

#### **Officers and employees of Commission of Appellate Tribunal**

**53.** (1) The Commission or Appellate Tribunal, as the case may be, shall appoint such officers and other employees as the commission or Appellate Tribunal, as the case may be, considers necessary for the efficient discharge of its functions under this Act subject to such conditions as may be prescribed.

(2) The salaries and allowances payable to and the terms and conditions of service of the officers and employees of the Commission and of the Appellate Tribunal shall be such as may be prescribed.

(3) The officers and employees of the commission shall discharge their functions under the general superintendence and control of the Chairperson of the Commission and the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the chairperson of the Appellate Tribunal.

## **CHAPTER XIII**

### **FINANCE, ACCOUNTS AND AUDIT**

#### **Proceeds of License fee, etc.**

**54.**(1) Subject to the provisions of sub-section (2) of section 40 and sub-section (2) of section 23, the proceeds of the license fee, fee paid under sub-section (5) of section 23, registration fee, amount received by imposition of civil liabilities imposed under this Act and amount of penalties imposed by the Appellate Tribunal shall be credited to the Consolidated Fund of India.

(2) Such portion or percentage of the license fee as may be attributable to the Universal Service Obligation as may be prescribed shall be credited to a separate fund to be called Universal Service Obligation Fund in the public account of India. Communications Commission and Appellate Tribunal Fund

**55. (1) There shall be constituted two separate funds to be called the Communications Commission Fund and the Appellate Tribunal Fund and there shall be credited to these funds sums of money paid or grants made by the Central Government to be utilised for the purposes of this Act.**

(2) Subject to the provisions of sub-section (1) of section 54, fee receivable by the Commission shall be credited to the Communications Commission Fund, and fee receivable by the Appellate Tribunal shall be credited to the Appellate Tribunal Fund. Grants and application of funds

**56. After due appropriation made by Parliament by law, the Central Government, shall credit to the funds referred to in sub-section (1) of section 55 by way of grant, separately for the Commission and for the Appellate Tribunal, adequate sums of money for being utilised for the purpose of this Act, and for meeting the salaries and allowances payable to the Chairperson and Members of the Commission and Chairperson and Members of the Appellate Tribunal and the administrative expenses including the salaries and allowances payable to, or in respect of, officers and other employees of the Commission and of the Appellate Tribunal, as the case may be.**

#### **Accounts and audit**

**57(1)** The Commission as also the Appellate Tribunal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall form part of the annual report of the Commission referred to in sub-section (1) of section 58.

(3) The accounts of the Appellate Tribunal as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government, and that Government shall cause the same to be laid before each House Of Parliament.

#### **Annual Report**

**58.(1)** The Commission shall after the end of each financial year, furnish to the Central Government an annual report on its activities during the preceding financial year and containing such information relating to the proceedings and policy as may be prescribed, and such report shall also contain therein the statement of annual accounts of the Commission.

(2) The Central Government shall cause such report to be laid before each house of Parliament.

## **CHAPTER XIV**

## **RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS**

### **Rights of facility providers in public**

**59** .(1) Subject to the provisions of this Act, any person entitled under the provisions of this Act, services or facilities (hereinafter referred to as facility provider) may from time to time lay, and establish cables and erect posts under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority.

2) Any public authority under whose control or management, any immovable property is vested shall, on receipt of a request from a facility provider permit the facility provider to do all or any of the following acts namely :

(a) to place and maintain underground cables or posts; and

(b) to enter on the property from time to time, in order to place, examine, repair, alter or remove such cables or posts.

(3) The permission mentioned in sub-section (2) above shall be promptly given and shall not be unreasonably withheld or denied:

Provided that in case of an emergency the facility provider may at any time for the purpose of examining, repairing altering or removing any cable or post enter upon the property for that purpose without first obtaining such permission.

(4) The facility of right of way under this section for laying underground cables or erecting posts, shall be available to all facility providers without discrimination and subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the public authority.

(5) Where any shifting or alteration in position of the underground cable or post is required due to compulsive causes like widening of highways and construction of flyovers or bridges, the said facility provider shall shift or alter the same at his own cost within the period indicated by concerned authority

(6) For the purposes of speedy clearance of requests for laying cables or erecting posts on any property vested in, or under the control or management of any public authority, high powered committees, or other appropriate mechanisms shall be promptly set up by the Central Government or the State Governments in the manner prescribed, they shall in each State act as a single nodal agency to co-ordinate all activities in this regard; and the Central Government may provide appropriate guidelines in this behalf.

### **Rights of public authority to grant permission**

**60.** Any permission granted by a public authority under section 59 may be subject to such reasonable conditions as that authority thinks fit to impose as to the time or mode of execution of any work, or as to any other matter connected with or related to any work under taken by the facility provider in exercise of those rights.

### **Provision for removal or alteration of cable or post**

**61.** When under the foregoing provisions of this Act, any cable or post has been placed by any facility provider under, over, along, across in or upon any property and the public authority having regard to circumstances which have arisen since the cable or post was so placed, considers it necessary and expedient that it should be removed or its position should be altered, it may require the concerned facility provider to remove it or alter its position as the case may be and it shall then be so removed or altered without any delay.

### **Determination of Disputes**

**62.** (1) If any dispute arises under this Chapter including refusal of permission by the public authority, the district court within whose local limits of jurisdiction the property concerned is situated shall on application determine the same.

(2) Every such determination shall be in accordance with the provisions of this Chapter and such determination will be deemed to be a decree of the district court and be for all purposes treated as such.

(3) The provisions of the Code of Civil Procedure, 1908 shall apply to adjudication of all disputes under this section.

(4) Pending disposal of any application, the district court may pass such interim orders preventive or mandatory for the doing of any act under this Chapter on such terms and conditions as may be provided for in such order.

#### **Use of private land by facility provider**

**63.** (1) A facility provider may make use of private land for constructing or laying of cables or erecting posts only with the consent in writing of owner of the land or premises, as the case may be:

Provided that where in the opinion of a facility provider consent to the reasonable use of any land is not forthcoming such facility provider, may, on application to and with the approval of the or premises is not forthcoming, such facility provider may, on an application to and with the approval of the Commission, take steps authorized by the Commission for use of the land or premises for constructing or laying cables or erecting posts on such terms as the Commission may deem fit.

(2) where immediately before the commencement of this Act, a facility provider has made use of private land or premises for constructing or laying of cables or erecting posts without consent of the owner of the land or the premises and despite owner's objection, the facility provider shall, within a period of six months from the date of commencement of this Act, obtain a written consent of the owner, and the proviso to sub-section (1) shall apply *mutates mutandis* to this situation

#### **Power of Commission to issue order, regarding use of private land**

**64.** (1) The Commission may, by order, require any network infrastructure facility to be provided, constructed, installed, altered, moved operated, used, repaired or maintained on any private land or premises or any system of method to be adopted by any person interested in or affected by the order, and at or within such time subject to such conditions as to compensation or otherwise and under such supervisions as the Commission may determine to be just.

(2) The Commission may, by order, specify by whom, in what proportion and at or within what time the cost of doing anything required or permitted to be done under sub-section (1) shall be paid.

(3) Any orders of the Commission under Sub-section (1) or sub-section (2) shall be enforceable under Chapter X of this Act as if such order is the order referred to in section 37.

#### **Right of a facility provider.**

**65.** Nothing in this Chapter shall confer any right upon any facility provider other than that of a user for the purpose only of laying cables or erecting posts or maintaining them.

## **CHAPTER XV**

### **INTERCEPTION OF COMMUNICATION AND PUNISHMENT FOR UNLAWFUL INTERCEPTION**

#### **Interception of communication and safeguards.**

**66.**(1) Subject to the prescribed safeguard, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government, on the occurrence of any public emergency or in the interests of the security, sovereignty and integrity of India, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, may direct:

(i) any agency of that Government to intercept any communication on any network facilities or services;

(ii) any service provider that any content brought for communication by or communicated or received by, him shall not be communicated or shall be intercepted or detained or shall be disclosed to that Government or its agency authorized in this behalf:

(2) The service provider shall, when called upon by any agency, which has been directed to carry out interception under sub-section (1), extend all facilities and technical assistance for interception of the content of communication.

(3) Any service provider who fails to assist the agency referred to in sub-section (2) shall be punished with imprisonment for a term, which may extend to seven years.

(4) Save as otherwise provided under this section, any person, who intercepts any communication or causes any communication to be intercepted or discloses to any person, any content shall be punishable with imprisonment which may extend to five years or with fine which may extend up to ten lakh rupees, and, for a second and subsequent offence, with imprisonment which may extend to five years and with fine which may extend up to fifty lakh rupees .

Explanation-For the purposes of this section, "interception" means the aural or other acquisition of the content through the use of such devices or means as may be necessary for such acquisition.

**67.** Nothing in this Chapter shall affect the provision of section 69 of the Information Technology Act, 2000.

## CHAPTER XVI

### CRIMES AND PUNISHMENT

**68.** (1) Save as otherwise provided in this Act, any person who, without a licence, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in the transmissions or distribution of such service in any manner including -

(a) collection of subscription for his principal; or

(b) issuing of advertisements to such service; or

(c) dealing in, or distribution of, equipment for decoding programme,

shall be punishable with imprisonment which may extend to five years, or with fine which may extend to five crore rupees, or with both, and, for the second offence, with imprisonment which may extend to five years or with fine which may extend to ten crore rupees or with both.

(2) Any person who without the permission of the service provider and with the intent to defraud, diverts any signal or decodes any content or deals in decoding equipment for such purpose shall



be punishable with imprisonment which may extend to five years and with fine which may extend to five crore rupees or with both and, for the second or subsequent offence with imprisonment which may extend to five years and with fine which may extend to ten crore rupees.

(3) Any person who, knowingly benefits from any unauthorised diversion or tampering with any communication service or network infrastructure facility with the knowledge that such service or facility is unauthorized or tampered, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to rupees two crores, or with both.

(4) Any person who, abets or induces the making of any unauthorised diversion or tampering with any communication service or network infrastructure facility shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to rupees two crores or with both

(5) Any person who, having already been convicted of an offence under sub-section (3) or sub-section (4) is again convicted thereunder, shall on every such subsequent conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to five years, and with fine which may extend to rupees five crores.

### **Punishment for possession of wireless equipment etc without licence**

**69.** (1) Any person,-

(a) who possesses any wireless equipment in contravention of the provisions of section 5; or

(b) who uses a radio frequency which he is not authorised to use under this Act,

shall be punishable with imprisonment which may extend to three years or with fine which may extend to rupees two crores, or with both.

*Explanation:* For the purpose of this subsection "radio frequencies" means any frequency of electro-magnetic waves upto and including a frequency of 3000 giga hertz.

(2) When any person is convicted for an offence punishable under sub-section (1), all wireless equipments or any part thereof in respect of which the offence has been committed, shall be forfeited to the Central Government.

(3) Any wireless equipment confiscated which has not been claimed by anybody shall vest in the Central Government.

(4) Any officer authorised by the Central Government or the Commission in this behalf may search any building, vehicle, vessel or place in which he has reason to believe that any wireless equipment in respect of which an offence punishable under sub-section (1) has been committed is kept or concealed and take possession thereof.

### **Punishment for sending obscene or offensive messages**

**70.** Any person who sends, by means of a communication service or a network infrastructure facility, -

(a) any content that is grossly offensive or of an indecent obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, any content that he knows to be false or persistently makes use for that purpose of a communication service or a network infrastructure facility, shall be punishable with imprisonment which may extend upto three years or with fine which may extend to rupees two crores or with both.

### Attempt to commit offences

**71.** Whoever attempts to commit or abets the commission of any offence, under sub-section (3) or sub-sections (4) of section 66 under this Chapter shall be punished with the punishment provided for that offence.

### Offences by companies

**72.** (1) Where an offence under this Act has been committed by a Company every person who at the time of the offence was committed was in charge of, and was responsible to, the company, for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it has proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation* - For the purposes of this section -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

### Offences triable by court of session

**73.** No court inferior to that of a Court of Session shall try an offence under this Act.

### Offences to be cognisable

**74.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be cognisable.

## CHAPTER XVII

### TRANSFER OF PROCEEDINGS

### Transfer of proceedings to Commission

**75.** (1) On the date of establishment of the Commission under sub-section (1) of section 6, all proceedings pending before the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 shall be deemed to be pending before the Commission and shall be disposed in accordance with the provisions of this Act.

### Transfer of proceedings to Appellate Tribunal

**76.** On the date of establishment of the Appellate Tribunal under sub-section (1) of section 43 all proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall stand transferred to the Appellate Tribunal which shall hear and dispose such proceedings from the stage at which the proceedings were pending before the first-mentioned Tribunal in accordance with the provisions of this Act.

## CHAPTER XVIII

### MISCELLANEOUS

#### Taking over control and management of Communication Service or network infrastructure facility in public interest.

**77.** (1) In the event of war or any calamity of national magnitude, the Central Government may by notification for a limited period, in public interest, take over the control and management of any communication service or any network infrastructure facility connected therewith, suspend its operation or entrust any agency of that Government to manage it in the manner directed by the Government for such period as provided for in the notification

(2) If it appears necessary or expedient to do so, the Central Government may, in public interest, at any time request the Commission to direct any licensee to-

- (a) transmit in its broadcasting service specific announcements, in such a manner as may be considered necessary;
- (b) stop any broadcasting service which is prejudicial to sovereignty or integrity of India, security of the State, friendly relations with foreign States, or to public order, decency or morality, or communal harmony.

(3) On the issue of such directions by the Commission it shall be the duty of the licensee to ensure strict observance of such directions.

#### Obligations of licensees and grantees.

**78.** (1) Every licensee or grantee shall.-

- (a) commence operation of his service within such period as may be specified by the Commission
- (b) maintain such documentary records and transmission schedules as may be specified by the regulations;
- (c) allow inspection of such facilities and such documentary records and transmission schedules as may be specified by the Commission or by any person authorised by the Commission.

(2) The Commission may call for any information from the licensee or grantee including information necessary for ensuring transparency or for ascertaining the true ownership of the license or licensee or grantee.

(3) The Commission or any officer authorised in this behalf by the Commission shall have power to inspect and obtain information, wherever necessary, from programme producers, distributors and advertising agents.

(4) For effective enforcement of the terms and conditions of licenses or registration, the Commission or any officer authorized by the Commission for that purpose, shall have all the powers of an officer making inspection for the purpose of inspecting books of account and other books and papers of any licensee or grantee officer as provided under Section 209A of the Companies Act, 1956. -1 of 1956.

(5) It shall be the duty of every licensee to carry out the directions of the Commission given under this section.

### Licenses to operate wireless equipment on board ships and aircraft

**79.** (1) No person shall operate any wireless equipment on board any ship or aircraft registered in India without a license granted by such authority or agency as may be notified by the Central Government.

(2) The Central Government may prescribe the qualification for the authority to be notified under sub-section (1) in the manner for granting the license to operate wireless equipment on board, ships and aircraft.

(3) The Central Government may prescribe qualification for the person to whom a licence for operating wireless equipment referred to in sub-section (1) may be granted examination, if any to be conducted for granting such a licence the conditions of the licence, the fee to be paid thereof and other connected matters.

### Recovery of civil liabilities

**80.** Without prejudice to other modes of recovery, any civil liability imposed under this Act if not paid be recovered as an arrear of land revenue and the Commission shall be empowered to suspend the licence or registration of the person on whom the civil liability is imposed till the same is not paid.

### Supply of information to authorised officers

**81.** Notwithstanding anything contained in any other law for the time being in force, where the Central Government or a State Government is satisfied that any information, document or record in possession or control of any service provider relating to any service availed by any consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal proceedings, an officer specially authorised in writing by such Government in this behalf shall direct such service provider to furnish such information, document or record to him and the service provider shall comply with the direction of the officer..

### Act not to apply in certain cases

**82.** Subject to the provisions contained in Chapter VI nothing contained in this Act shall apply to network infrastructure facilities or communication services owned, and operated by the Central Government or any State Government for their own use.

### **Bar of jurisdiction of civil courts**

**83.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or the Appellate Tribunal or the Commission is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

### **Chairman, Members etc. to be public servants.**

**84.** The Chairperson, Members and other officers and employees of the Commission, and the chairperson, members, officers of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

### **Protection of action taken in good faith.**

**85.** No suit, prosecution or other legal proceeding shall lie against the Commission, or any Member or officer or other employee thereof or against the Appellate Tribunal or the chairperson or member or officer or other employee thereof for anything, which is in, good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

### **Exemption from tax on wealth an income**

**86.** Notwithstanding anything contained in the Wealth Tax Act 1957 the Income Tax Act 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains the Commission or Appellate Tribunal shall not be liable to pay wealth tax, income tax or any other tax in respect of its wealth, income, profits or gains derived.

### **Act to have overriding effect**

**87.** The provisions of this Act shall take effect notwithstanding anything inconsistent or contrary therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act..

### **Power to make rules.**

**88.(1)** The Central Government may by notification make rules for carrying out provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.-

(a) other services relating to content application service under clause (10) of section 2;

(b) other services relating to network application services under clause (16) of section 2;

(c) other facilities relating to network infrastructural facilities under clause (17) of section 2;

- (d) other services relating to networking service under clause (18) of section 2;
- (e) obligation in respect of services under clause (33) of section 2;
- (f) other services relating to value added network application service under clause (34) of section 2;
- (g) other article or apparatus relating to wireless equipment under clause (35) of section 2;
- (h) the search committee for the purposes of sub-section (1) of section 7;
- (i) the tenure of part-time members under sub-section (2) of section 8;
- (j) the salary, allowances payable to and other terms of service of the Chairperson and other Members under section 10;
- (k) any other matters in respect of which the Commission may exercise the powers of a civil court under clause (j) of sub-section (1) of section (14);
- (l) the terms and conditions of service of the Secretary-General under sub-section (3) of section 18;
- (m) other matters under clause (vi) of sub-section (2) of section 18;
- (n) measure to protect consumer interests under clause (vii) of sub-section (2) of section 18;
- (o) other matters under clause (xv) of sub-section (2) of section 18;
- (p) fee for assignment of frequencies under sub-section (5) of section 23;
- (q) the manner and time frame for consultation between the Spectrum Manager and the Commission for seeking allocation of additional spectrum under sub-section (2) of section 24;
- (r) life saving services to be provided by a service provider shall provide under sub- clause (ii) of sub-section (1) of section 28;;
- (s) the manner in which the number and type of broadcasting services including those of the public service broadcaster is to be provided by every service provider under clause (i) of sub-section (3) of section 28;
- (t) the form in which a complaint may be filed under sub-section (2) of section 38;
- (u) experience required for the appointment of an adjudicating officer under sub-section (3) of section 39;
- (v) any other matters in respect of which an adjudicating officer may exercise the power of the civil court under clause (j) of sub-section (5) of section 39;
- (w) the form, the manner of verification and fee to be accompanied with the appeal under clause (a) of sub-section (3) of section 43;
- (x) the form, the manner of verification and fee to be accompanied with the appeal under clause (b) of sub-section (3) of section 43;
- (y) search committee for the purposes of sub-section (3) of section 44;

(z) the salary and allowance payable to and other terms of conditions of service of, the chairperson and other members of the Appellate Tribunal under sub-section (3) of section 45;

(za) any other matter with respect to which the Appellate Tribunal may exercise powers of a civil court under clause (j) of sub-section (1) of section 48;

(zb) the conditions subject to which the appointment of officers and employees of the Commission or the Appellate Tribunal shall be made under sub-section (1) of section 53;

(zc) the salary and allowances payable to, and the terms and conditions of service of the officers and employees of the Commission or the Appellate Tribunal shall be made under sub-section (2) of section 53;

(zd) the portion or percentage of the licence fee as may be attributable to Universal Service Obligation to be credited to the Universal Service Obligation Fund under sub-section (2) of section 54;

(ze) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 57;

(zf) the information relating to the proceedings and policy to be contained in the annual report under subsection (1) of section 58;

(zg) the manner of setting up high powered committees or other appropriate mechanism by the Central Government or a State Government under sub-section (6) of section 59;

(zh) safeguards under sub-section (1) of section 66;

(zi) the qualifications for the authority to be notified under sub-section (1) of section 79 and the manner for granting licences under sub-section (2) of that section;

(zj) the qualifications for the person to whom a licence for operating wireless equipment referred to in sub-section (1) of section 79 may be granted, examination if any to be conducted for granting such a licence, the conditions of the licence, the fee to be paid thereof and other connected matters under sub-section (3) of that section;

(zk) any other matter which is to be or may be prescribed or in respect of which provision is to be made by rules.

### Power to make regulations

**89.** (1) The Commission may by notification make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters namely:-

(a) the function to be performed by the regional offices of the Commission under section 12;

(b) the time and places, and the procedure to be observed in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 13;

(c) the powers and functions of the Secretary General under sub-section (1) of section 15;

(d) the programmes, codes and standards to be specified under section 20;

(e) the eligibility conditions for grant of licence or registration restriction regarding ownership and control of the media, restrictions on the number of licences or extent of accumulation of interest of

such licences by a person and other conditions as may be considered necessary under sub-section (1) of section 26;

(f) the obligations, conditions, tariffs and rates subject to which a service provider shall provide facilities and services under clause (a) of sub-section (2) of section 26;

(g) the conditions subject to which a licence or registration may be granted or transferred under clause (b) of sub-section (2) of section 26;

(h) the manner, the time, the terms and conditions, the fee and the procedure for grant of a licence or registration under sub-section (3) of section 26;

(i) the details to be specified under sub-section(4) of section 26;

(j) the period for which licence or registration shall be granted under sub-section (1) of section 27;

(k) the form and the fee payable for granting licence or registration under sub-section (2) of section 27;

(l) the number of channels for providing distribution of broadcasting services under clause (iii) of sub-section (3) of section 28;

(m) other agreements to be registered with the Commission under clause (c) of section 29;

(n) the form of application and the fees to be accompanied therewith under sub-section (2) of section 30;

(o) the conditions and restrictions subject to which the licence may be issued under sub-section (4) of section 30;

(p) the manner of holding inquiry by the Adjudicating Officer under sub-section (1) of section 39;

(q) the documentary records and transmission schedules to be maintained by a licensee under clause (b) of sub-section (1) of section 78

(r)the eligibility and other terms and conditions for granting licence or registration under sub-section (3) of section 98;

(s) such other regulation as may be required to carry out the purposes of the Act.

### Laying of Rules and Regulations

**90.** Every rule and every regulation made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in, the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

### Power to remove difficulties.

**91.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the commencement of this Act.

(2) Every order made under this, section shall be laid, as soon as may be, after it is made, before each House of Parliament.

### Amendment of 2 of 1974

**92.** In the Code of Criminal Procedure 1973 -



(a) in section 91, in sub-section (3),, in clause (b) for the words "postal or telegraph authority" the words and figures "postal authority or any other service provider holding a licence or registration granted under the Communication Convergence Act 2001" shall be substituted;

(b) in section 92, for the words "postal or telegraph authority" wherever they occur the words and figures "postal authority or any other service provider holding a licence or registration granted under the Communication Convergence Act 2001" shall be substituted.

## CHAPTER XIX

### REPEAL AND SAVINGS

#### Repeal of certain Acts, saving of licenses and dissolution of certain Authorities.

**93.** (1) Subject to the other provisions of this sections, the enactments namely, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, Telegraph Wire (Unlawful Possession) Act, 1950, and the Telecom Regulatory Authority of India Act, 1997 are hereby repealed.

(2) Notwithstanding such repeal, any person, who has obtained license or registration under the policy of the Central Government in force may continue to provide his services, if he has made an application to the Commission for the grant of a license or registration under this Act within a period of six months from the date of establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.

(3) The Commission shall, on receipt of an application referred to under sub-section (2), grant a license or registration after taking into consideration the terms and conditions on which such service were licensed or registered under any of the provisions of the repealed Acts, or the policy referred to in sub-sections (2), as the case may be , and keeping in view the objectives of this Act

(4) During the period of six-months mentioned in sub-section (2) or till his application is disposed off, whichever is later, the applicant shall continue to be governed by, and shall comply with, the provision of the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, Telegraph Wires (Unlawful Possession) Act, 1950 or the Telecom Regulatory Authority of India Act, 1997, as the case may be, as if these Acts had not been repealed, or the policy referred to in sub-section (2).

(5) Save as otherwise provided under this Act, with effect from the date of the establishment of the Commission and the Appellate Tribunal under this Act, as the case may be, the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority Act , 1997 and the Telecom Disputes Settlement and the Appellate Tribunal established under section 14 of that Act, shall stand dissolved.

#### Repeal of Act 7 of 1995 and transitional provisions.

**94.** (1) Subject to the other provisions of this section, the Cable Television Networks (Regulation) Act, 1995 is hereby repealed.

(2) Notwithstanding such repeal, any cable operator registered under the Act so repealed, may continue to provide his cable services, if he has made an application to the Commission for the grant of a license under this Act within a period of six months from the date of the establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, which ever is later.

(3) The Commission shall, on receipt of an application referred to under sub-section (2), grant a license after taking into consideration the terms and conditions on which such cable operator was registered under the provisions of the repealed Act, and keeping in view the objectives of this Act

(4) During the period of six-months mentioned in sub-section (2), or till his application is disposed of whichever is later, the applicant cable operator will continue to be governed by, and shall comply with the provisions of the Cable Television Networks (Regulations) Act, 1995 as if that Act had not been repealed.

## NOTES ON CLAUSES

**Clause 1.** - This clause provides for application of the proposed legislation to the entire country and for appointment of different dates for commencement of different provisions of the proposed legislation.

**Clause 2.** - This clause defines the various expressions occurring in the proposed legislation.

**Clause 3.**- This clause provides that no person shall use any part of spectrum without assignment from the Central Government or the Commission as provided for in the proposed legislation.

**Clause 4.**- This clause provides that no person, other than a public service broadcaster, shall own or provide any network infrastructure facility or provide any networking service or any value added network application service or any content application service without a license or registration. It also envisages that all facilities and services exempted from licencing or registration immediately before the coming into force of the proposed legislation shall continue to be so exempt under the proposed legislation, until otherwise notified. Further it provides that the Central Government may by notification exempt any person, or class of persons or any facility or service from the provisions of this clause.

**Clause 5.**- This clause provides that no person shall possess any wireless equipment without obtaining a license under provisions of the proposed legislation. It also provides that the Central Government may, in public interest, by a notification exempt any person or class of persons or any wireless equipment or class or category of wireless equipment from the provisions of this clause. It further envisages that where any person or equipment licensed under any law for the time being in force or exempted from licensing immediately before the commencement of this proposed legislation, shall not be affected by the provisions of this clause, until otherwise notified.

**Clause 6.** - This clause provides for the establishment of the Communications Commission of India with its head office at Delhi and regional offices at Kolkata , Chennai and Mumbai . The Commission will be a body corporate having perpetual succession, a common seal and shall by the said name sue and be sued. The commission shall consist of a chairperson , not more than ten Members and the Spectrum Manager as an ex-officio Member. The Chairperson and not less than six Members other than the ex-officio Members and the remaining shall be part-time Members.

**Clause 7.** - This clause provides that the Members of the Commission (except the ex-officio Member) shall be appointed by the Central Government from amongst persons recommended by a search committee. One half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities, while one half of the members shall be appointed from amongst persons of eminence in specialized fields such as telecommunications, broadcasting technology, information technology , finance, management and administration, or

law. The Chairperson shall be a person of eminence from any of the fields mentioned above.

**Clause 8.** - This clause provides that the Chairperson and a whole time Member shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 65 years, whichever is earlier, and he will not be eligible for reappointment. Further it provides that tenure of a part time member shall be such as may be prescribed. It also lays down the powers of the Chairperson with regard to functioning of the Commission in addition to presiding over the meetings of the Commission. It also deals with procedure of resignation by the Chairperson or a Member of the Commission.

**Clause 9.** - This Clause deals with circumstances under which, and the procedure for removal of Chairperson and Members from office.

**Clause 10.** - This clause provides for the fixation of the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Commission.

**Clause 11.** - This clause indicates the circumstances under which the acts or proceedings of the Commission shall not be invalidated.

**Clause 12.** - This clause provides that the functions of the regional offices of the commission shall be determined by the commission.

**Clause 13.** - This clause provides for the Commission to determine the procedure for the transaction of business in its meetings including times and places of its meetings.

**Clause 14.** - This clause provides for the powers and the procedure of the commission in the discharge of its function under the proposed legislation.

**Clause 15.** - This clause provides for matters relating to the appointment of the Secretary-General.

**Clause 16.** - This clause provides that the Commission may set up a Panel from amongst its Members to deal with matters in relation to the content in content application services. It also provides that, except for the power to make regulations, the Commission may distribute its business amongst its Members; it also provides that the Commission may authorize officers of the Government to implement and carry out orders and directions of the Commission.

**Clause 17.** - This clause indicates that while exercising its functions, the Commission shall strive to achieve objectives and principles governing the administration of the proposed legislation which inter alia include that the communications sector is developed in a competitive environment and in consumer interest, that communication services are available at affordable cost to all, that choice of services is promoted, that defence and security interests of the country are fully protected, that equitable and non - discriminatory interconnection across various networks are promoted, that licensing and registration criteria are transparent and made known to the public and that the principle of a level playing field for all operators is promoted so as to serve consumer interest.

**Clause 18.** - This clause stipulates the powers, duties and functions of the Commission. It lays down that it shall be the duty of the Commission to facilitate and regulate all matters relating to carriage and content of communications. The commission shall also inter alia carry out spectrum management, planning and monitoring for non-strategic or commercial usages; promote competition and efficiency in the operation of communication services and network infrastructure facilities; take measures to protect consumer interests and promote and enforce Universal Service Obligations; formulate and lay down programme and advertising codes in respect of

content application services; take steps to regulate or curtail the harmful and illegal content on the internet and other communication services; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities (including equipment); institutionalize appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the basic objectives of the proposed legislation to encourage self regulatory codes and standards; and report and make recommendations either suo moto or on such matters as may be referred to it by the Central Government. It has also been provided that while exercising its powers and discharging its functions, the Commission shall ensure transparency.

**Clause 19.-** This clause provides that the Commission may at any time make recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the security, sovereignty and integrity of India, friendly relations with foreign states, public order, decency or morality.

**Clause 20.-** This clause provides that the Commission shall by regulations specify programme codes and standards which may include inter alia practices to ensure that nothing is contained in any programme which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, public order or which may constitute contempt of court, defamation or incitement to an offence; practices to ensure fair and impartial presentation of news and other programme, promotion of Indian culture, values of national integration, religious and communal harmony, decency in portrayal of women, restraint in portrayal of violence and sexual conduct and to enhance general standards of good taste, decency and morality etc.

**Clause 21.-** This clause provides for the Commission to decide any dispute or matter between service providers, between service providers and a group of consumers or any matter arising out of enforcement of the proposed legislation. The commission shall also hear and determine any complaint from any person regarding contravention of the provisions of the proposed legislation or the rules regulations or orders made thereunder and if necessary refer the matter for adjudication.

**Clause 22.-** This clause empowers the Central Government to issue policy directives to the Commission which may include the procedure and the mode in which any services are to be licensed or registered. It has further been provided that in framing the policy directives, the Central Government shall take into account the objectives and guiding principles governing the administration of the proposed legislation.

**Clause 23.-** This clause provides that the Central Government shall be responsible for spectrum management and also for allocation of spectrum for strategic and non strategic or commercial purposes. This clause also sets up a Spectrum Management Committee with Cabinet Secretary as its Chairman. This also lays down that the Central Government shall notify Wireless Advisor to Government of India as Spectrum Manager, Government of India to act as the Member - Secretary of the Spectrum Management Committee. It also sets out, subject to the general supervision and control of the Spectrum Management Committee, the functions of the Spectrum Manager, and that he shall assign frequencies on payment of such fees as may be prescribed.

**Clause 24.-** This clause provides for assignment by the Commission of spectrum to non-strategic and commercial users and the procedure for dealing with requests by the Commission for allocation of additional spectrum.

**Clause 25.-** This clause provides that before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as the Commission may consider appropriate. It also empowers the

Central Government to notify the class or classes of persons or services for preferential assignment of any frequency of spectrum by the Commission.

**Clause 26.-** This clause provides for the grant of license or registration under this Act to service providers subject to such conditions, restrictions, fee, tariffs and rates etc at which facilities and services will be provided, as may be determined by the Commission, which may also determine the conditions for grant or transfer of license or registration. The commission shall also notify from time to time schemes or plans for licensing or registration after consulting the Central Government for ensuring that the defence and security interests of India are fully protected. This clause further provides for the five categories of licenses namely, to provide network application services, to provide network application services, to provide content applications services and to provide value added network application services. The Clause however also clarifies that information technology enabled services will not be licensed. The Commission may, while granting a license under the above said categories, grant licenses either singly or jointly for one or more of the categories of facilities or services.

**Clause 27.-** This clause provides that a license or registration shall be granted for such period, in such form and subject to payment of such fees as determined by the Commission. It also provides that the Central Government may in public interest exempt any person or class of persons from payment of license or registration fee.

**Clause 28.-** This clause stipulates the duties of service providers. It inter alia provides that every service provider shall wherever required or applicable provide services to give effect to universal service obligations, provide life saving services, provide services to any person on demand with a reasonable time and on a non-discriminatory basis, and follow the codes and standards laid down and specified by the commission. It also lays down that every service provider of a content application service shall, wherever required or applicable, endeavour to provide a suitable proportion of programme of indigenous origin and ensure that no programme forming part of its services infringes any copy right. It further stipulates that every service provider holding a license for providing distribution of broadcasting services shall provide a specified number and type of broadcasting services including those of the public service broadcaster in such manner as may be prescribed.

**Clause 29.-** This clause provides that certain agreements entered into or made by any service provider or infrastructure facilities provider will be registered with the Commission.

**Clause 30.-** This clause provides for issue of license by the Commission for possession of wireless equipment.

**Clause 31.-** This clause provides that for the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, such event will have to be carried on the network of the public service broadcaster(s) as well.

**Clause 32.-** This clause provides for the powers of the Commission in case of breach of terms of the license or registration or failure to comply with its decisions or orders. Such powers include the power to revoke the license or registration and also in case of breach of terms and conditions of license or registration, for seizure of equipment being used for provision of services.

**Clause 33.-** This clause provides for civil liabilities which may be imposed on a license or grantee for breach of or failure to comply with any terms and conditions of a license or registration or for failure to comply with any rule, regulation or order made under the proposed legislation.

**Clause 34.-** This clause provides for the imposing of a civil liability on any person who delivers any content for transmission or accepts delivery of any content sent by the use of a network

infrastructure facility, communication service or wireless equipment, which though required to be is not licensed or registered or which has been established or maintained or operated in contravention of the provision of the proposed legislation or any rule and regulations made thereunder.

**Clause 35.-** This clause provides for the imposing of a civil liability on any person who delivery any content for the imposing of a civil liability on any person who delivers any content for transmission or accepts delivery of any content sent by the use of network infrastructure facility, communication services or equipment has been established or maintained or proposed legislation or rules and regulations framed thereunder.

**Clause 36.-** This clause provide for the imposing of a civil liability on a services provider who fails to register, without a reasonable excuse, an agreement which is required to be register under Clause 29 of the proposed legislation.

**Clause 37.-** This clause provides for the imposing of a civil liability on any person who wilfully fails to comply with any decision, direction or order of the commission.

**Clause 38.-** This clause provide for the filing before the commission of complaints, limitation period, and reference thereon by the Commission to the Adjudicating Officer, including suo-motu reference by the Commission.

**Clause39.-** This clause provide for the appointment by the Commission of Adjudicating Officers for the purposes of adjudging whether any person has contravened any of the provision of the proposed legislation, any rule, regulation, direction or order made thereunder or whether he is liable to a civil liability, and for the powers of the Adjudicating Officers.

**Clause 40.-**This clause provides for the imposing of civil liability for willfully or otherwise damaging network infrastructure facility, and for causing interruption of a communication service.

**Clause 41.-**This clause provide for the imposing of a civil liability on any person who contravenes the provision of Sub-section (2) of Section 63 of the proposed legislation.

**Clause 42.-** This clause provide for the imposing of a civil liabilities shall not exceed fifty crore rupees, and also stipulates the factors to be taken into account by the Adjudications Officer in adjudging the quantum of civil liabilities.

**Clause 43. -** This clause provides that the establishment of the Communications Appellate Tribunal. It also lays down that appeals can be preferred to the Appellate Tribunal by any person aggrieved by any decision or order of the Commission, or by an order of civil liability imposed by the Adjudicating Officer. It also lays down that the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, and also that the Appellate Tribunal may call for relevant records for examining the legality etc. of any order or decision of the commission or of the Adjudicating Officer, and pass such order as it thinks fit.

**Clause 44.-** This clause deals with the composition of the Appellate Tribunal which shall consist of a consist a chairperson and not more than six members to be appointed by the Central Government. The appointment of chairperson has to be made in consultation with the Chief Justice of India. The appointment of the Appellate Tribunal shall be from amongst persons recommended by search committee. This clause also provides for the constitution of benches by the chairperson, and that each bench shall be headed by a judicial member.

**Clause 45.-** This clause provide for the qualifications, tenure, salary and allowances etc. of the chairperson and members of the Appellate Tribunal and the manner of filling up of vacancies in the Tribunal.

**Clause 46. -** This clause provides for the procedure for resignation, and also the procedure for the removal of the chairperson or members of the Appellate Tribunal.

**Clause 47.-** This clause provides for the procedure for the distribution of business, and the procedure for the transfer of business, and the procedure for the transfer of cases, amongst benches of the Appellate Tribunal.

**Clause 48.-**This clause provides for the powers and procedures of the Appellate Tribunal, for the purpose of discharging its functions under the proposed legislation.

**Clause 49.-** This clause provides for the right of the applicant or appellant to take assistance of legal practitioners etc. before the Appellate Tribunal.

**Clause 50.-** This clause provides that an appeal against the order,not being an interlocutory order,of the Appellate Tribunal, shall lie to the Supreme Court.

**Clause 51.-** This clause provides that an order passed by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

**Clause 52.-**This clause provides that if any person willfully fails to comply with any decision ,direction or order of the Appellate Tribunal he shall be liable to a penalty which may extend to five crore rupees and no such penalty shall be imposed without giving an opportunity of being heard to the party concerned.

**Clause 53.-**This clause provides for appointment of the officers and other employees of the Commission and of the Appellate Tribunal, by the Commission or the Appellate Tribunal as the case may be, subject to such conditions as may be prescribed by the Central Government. This clause also provides that the salary and the allowances payable to and the terms and conditions of the service of the officers and the employees of the Commission and the Appellate Tribunal shall be prescribed by the central Government.

**Clause 54.-**This clause provide that the proceeds of the license and other fees. and the amounts received by the imposition of the civil liabilities and penalties shall be credited to the Consolidated Fund of the India. Its also lays down that such portion or percentage of the license fee as may be attributable to the Universal Service Obligation shall be credited to a separate fund to be as the Universal Service Obligation Fund in the public account of India.

**Clause 55.-**This clause deals with constitution of two separate funds to be called as the Communications Commission Fund and the Appellate Tribunal respectively. These shall be credited with money paid or grants made by the Central Government to be utilized for the purposes of the proposed legislation. These funds will also be credited with fees received by the Commission and the Appellate Tribunal.

**Clause 56.-** This clause provides for providing by way of grant to the two Funds by the Central Government adequate sums of money for being utilized for the purposes of the proposed legislation , and for meeting the salaries and allowances payable to the Chairperson and the Members of the Commision and of chairperson and members of the Appellate Tribunal and the

administrative expenses including salaries and allowances payable to or in respect of officers and other employees of the Commission and of the Appellate Tribunal.

**Clause 57-** This clause provides for maintenance of accounts and other relevant records by the Commission and the Appellate Tribunal and that these shall be audited by the Comptroller and Auditor General of India. It also provides that certified accounts of the Commission together with audit report thereon shall form part of the annual report of the Commission. It also lays down that the certified accounts of the Appellate Tribunal together with audit report thereon shall be forwarded to the Central Government and the Government shall lay the same before each House of the Parliament.

**Clause 58.-** This clause provides that the Commission shall after the end of each financial year submit an annual report containing prescribed information relating to the proceedings and policy and also the statement of annual accounts of the Commission. The report shall be furnished to Central Government which shall cause such report to be laid before each House of Parliament.

**Clause 59.** -This clause deals with the rights of persons entitled for providing services or facilities, referred to as facility provider, for laying and establishing of cables and erecting of posts under, over, along etc. any immovable property vested in or under the control or management of a public authority and issues relating to grant of permission by public authority, obligation for reinstatement or restoration of the property, shifting of cables or posts etc. It also provides for the setting up of high powered committees or other appropriate mechanisms for speedy clearance of such requests for laying cables or erecting posts in such property.

**Clause 60.-** This clause provides that a public authority while granting permission may impose reasonable conditions such as the time or mode of execution of any work.

**Clause 61.-** This clause makes provision for removal or alteration by the facility provider of cables or posts on public property which the public authority considers necessary and expedient to be removed or its position to be altered due to change in circumstances.

**Clause 62.-** This clause provides that disputes including refusal of permission by the public authority shall on application be determined by the District court within whose local limits of jurisdiction the property is located.

**Clause 63.-** This clause provides for use of private land by a facility provider for constructing or laying cables or erecting posts only with the written consent of the owner of the land or premises, and also the procedure to be followed when such consent is not available.

**Clause 64.-** This clause provides for powers of the Commission to issue orders for requiring any network infrastructure facility to be provided, constructed, installed, altered, moved etc. on private land or premises subject to such conditions as to compensation or otherwise, and the time and manner of doing so. It also provides that failure to comply with the order of the Commission will be liable to imposition of civil liability.

**Clause 65.-** This clause restricts the rights of facility providers only to that of a user for laying cables or erecting posts or maintaining them.

**Clause 66.-** This clause provides that, subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government, on the occurrence of any public emergency or in the interest of public safety, if satisfied that it is necessary or expedient so to do, in the interest of the security, sovereignty and integrity of the India, friendly relation with foreign state or public order or for preventing incitement to the commission of an offence, may direct any agency of the



Government to intercept any communication on any network facilities or services or that any content brought for communication or communicated or received by any service provider shall not be communicated or shall be intercepted or detained or shall be disclosed to the Government or its agency authorized in this behalf. It also stipulates that the service provider shall extend all facilities and technical assistance for interception of the content of communication. It further provides that any service provider who fails to assist authorized agency shall be punished with imprisonment which may extend to seven years. This clause also lays down that any person, save as otherwise provided under this clause, who intercepts or discloses to any person any content shall be punishable with imprisonment which may extend to five years or with fine which may extend to ten lakh rupees and, for a second and subsequent offence with imprisonment which may extend to five years and with fine which may extend to fifty lakh rupees.

**Clause 67.** - This clause lays down that nothing in Chapter XV relating to interception of communication and punishment for unlawful interception, shall affect the provisions of Section 69 of the Information Technology Act, 2000.

**Clause 68.** - This clause provides for the punishments for unlicensed ownership or provision of any network infrastructure facility or communication service, for knowingly assisting in the transmission or distribution of such service, for diverting any signal without the permission of the service provider and with intent to defraud, for dealing in decoding equipment, for knowingly benefiting from any unauthorized diversion for tampering with any service or infrastructure facility, for abetting or inducing unauthorized diversion or tampering and for conviction of subsequent offences.

**Clause 69.** - This clause provides for punishment to any person who possesses any wireless equipment without a license or uses a radio frequency which he is not authorized to use under the provisions of the proposed legislation. The clause also provides for forfeiture of wireless equipment utilized for committing these offences and vesting of any unclaimed wireless equipment in the Central Government. Further the clause also provides for power to any officer specially authorized by the Central Government or the Commission, to search any place in which he has reason to believe that any wireless equipment without a license has been kept or concealed, and take possession thereof.

**Clause 70.** - This clause provides for the punishments for any person for sending by means of a communication service or a network infrastructure facility any content that is grossly offensive or of an indecent, obscene or menacing character, or for the purpose of causing annoyance, inconvenience, obstructing, criminal intimidation, enmity etc. knowing that the content is false, and for persistently making use for this purpose a communication service or a network infrastructure facility.

**Clause 71.** - This clause provides that whoever attempts to commit or abets the Commission of any offence under sub-clause (3) or sub-clause (4) of Clause 66 or under Chapter XVI shall be punished with the punishment provided for that offence.

**Clause 72.** - This clause provides for offences committed by companies under the proposed legislation.

**Clause 73.** - This clause provides that no court inferior to that of a court of Session shall try any offence under the proposed legislation.

**Clause 74.** - This clause provides that every offence punishable under the proposed legislation shall be cognizable.

**Clause 75.** - This clause provides for transfer of proceedings pending before the Telecom Regulatory Authority Of India to the commission from the date of its establishment.

**Clause 76.** - This clause provides for transfer of proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal to the Appellate Tribunal from the date of its establishment.

**Clause 77.** - This clause provides that the Central Government may by notification in the event of war or any casualty of national magnitude, for a limited period, in public interest, to take over control or management of any communication service or a network communication infrastructure facility or suspend its operation or entrust any agency of the government to manage it in the manner directed by the government for such period as provided for in the notification. The clause also provides that the Central Government, if it feels necessary or expedient to do so in the public interest, may at any time request the Commission to direct any licensee or grantee to broadcast specific announcements in a manner as may be considered necessary by the Government or to stop any broadcasting service, which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, or to public order, decency or morality or communal harmony and on issue of such directions it shall be the duty of the licensee or grantee to ensure compliance of such directions.

**Clause 78.** - This clause provides for obligations of licensees and grantees which *inter alia* include commencement of operation of service within time specified by the Commission, maintenance of documentary and transmission schedule as specified by the Commission and allow inspection of such facilities and documentary record and schedules by any officer authorised by the Commission. The Commission may call for any information from a licensee or a grantee, and shall also have the power to inspect and obtain information from programme producers, distributors and advertising agents.

**Clause 79.** - This clause provides that no person shall operate any wireless equipment onboard any ship or aircraft registered in India without a license granted by an authority or agency notified by the Central Government for the purpose. The Central Government can prescribe the qualification for such authority and the manner of granting the license to operate wireless equipment. This clause also provides for the prescription of qualifications of the licensee, for conduct of examinations, for conditions of license etc.

**Clause 80.** - This clause deals with recovery of any civil liability imposed under the proposed legislation, in case it is not paid, as arrears of land revenue and also empowers the Commission to suspend the license or registration of the person on whom the civil liability is imposed till it is paid.

**Clause 81.** - This clause provides that notwithstanding anything contained in any other law for the time being in force, where the Central or State Government is satisfied that any information or document etc. in possession of any service provider relating to any service availed of by any consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal proceeding, then the Government may authorise an officer in writing who shall direct such service provider to furnish such information.

**Clause 82.** - This clause provides that subject to provisions contained in Chapter V1 nothing contained in the proposed legislation shall apply to network infrastructure facilities or communication services owned and operated by the Central or any State Government for their own use.

**Clause 83.** - This clause provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an Adjudicating Officer or the Commission or the Appellate Tribunal is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

**Clause 84.** - This clause provides that the Chairperson, Members, officers and other employees of the Commission and of the Appellate Tribunal shall be deemed to be public servants.

**Clause 85.** - This clause provides for protection against prosecution or legal proceeding, of action by the Commission or Appellate tribunal or any member or officer or other employees thereof which is done or intended to be done in good faith in pursuance of the proposed legislation or of any Rule, Regulation or order thereunder.

**Clause 86.** - This clause provides the Commission and the Appellate Tribunal with exemption from tax on wealth, income etc.

**Clause 87.** - This clause provides that the provisions of the proposed legislation shall have overriding effect over other laws.

**Clause 88.** - This clause confers powers upon the Central Government to make rules for carrying out the purposes of the proposed legislation.

**Clause 89.** - This clause confers power upon the commission to make regulations consistent with the proposed legislation and the rules made thereunder, for carrying out the purposes of the proposed legislation.

**Clause 90.** - This clause provides for procedure of laying of rules and regulations in each House of Parliament.

**Clause 91.** - This clause confers upon the Central Government to remove any difficulty arising out of implementation of the provisions of the proposed legislation. Every order of the Central Government under this clause is to be laid before each House of parliament. This power is exercisable only for three years from the commencement of the proposed legislation.

**Clause 92.** - This clause provides for certain required amendments to the Code of Criminal Procedure, 1973.

**Clause 93.** - This clause deals with repeal of four enactments namely the Indian telegraph Act, 1885, the Indian Wireless Telegraphy Act 1933, the Indian Telegraph Wires (Unlawful possession) Act, 1950 and the Telecom Regulatory Authority of India Act 1997. It also provides that notwithstanding such repeal, any person, who has obtained a license or registration under the repealed acts or has obtained a registration under the policy of the Central Government in force may continue to provide his services if he has made an application to the Commission for the grant of a license or registration under the proposed legislation within a period of six months from the date of establishment of the Commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license or registration the Commission will take into consideration the terms and conditions on which such services were licensed or registered and keeping in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Acts or the Policy, as the case may be. Further, with effect from the date of establishment of the Commission and of the Appellate Tribunal under the proposed legislation, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal shall stand dissolved.

**Clause 94** - This clause deals with repeal of the Cable Television Networks (Regulation) Act, 1995. It also provides that notwithstanding such repeal, any cable operator registered under the repealed Act may continue to provide his cable service if he has made an application to the Commission for the grant of a license under the proposed legislation within a period of six months from the date of establishment of the commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license the commission will take into consideration the terms and conditions on which such cable operator was registered and keeping

in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Act.

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## **STATEMENT OF OBJECTS AND REASON**

1. Convergence connoting the provision of different kinds of services over the existing infrastructure and the enhancement of existing technologies so as to provide a wide variety of services is a relatively new phenomena; in addition the rapid technological developments are leading to an inability to predict the emergence of new services. The existing legislations are proving inadequate in dealing with the emerging scenario of convergence. Furthermore, the existing licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors are currently spread over different authorities. Therefore a flexible type of legislation to accommodate and encourage permutation and combination of technologies and services is required. The Communication Convergence Bill proposes to establish a structured mechanism to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia) in the scenario of increasing convergence of technologies.

2. The Bill aims at facilitating development of national infrastructure for an information based society, and to enable access thereto; providing a choice of services to the people with a view to promoting plurality of news, views and information; establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

3. These objectives are proposed to be achieved by setting up an autonomous body to be known as Communications Commission of India with wide ranging powers, duties and functions. The head office of the proposed Commission shall be located at Delhi, and its regional offices shall be located at Kolkata, Chennai and Mumbai. The Commission shall consist of a chairperson, not more than ten Members and the Spectrum Manager as an ex-officio Member. The chairperson and Members, other than the ex-officio Member, shall be appointed by the Central government from amongst persons of eminence recommended by a Search Committee from fields such as literature, performing arts, media, culture, telecommunications, law, broadcasting technology, information technology, finance etc.

4. The Bill proposes to combine and bring under the purview of the Commission the licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors. It is also proposed to replace large number of categories of license with the following five broad categories to enable service providers to offer a range of services within each category, namely: -

- (a) to provide or own network infrastructure facilities;
- (b) to provide networking services;
- (c) to provide network application services;
- (d) to provide content application services;
- (e) to provide value added network application services

5. This flexible licensing regime is expected to optimize the use of resources and encourage the development of infrastructure. The information technology enabled services such as call centers, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex, video conferencing shall not be licensed under this legislation and all the facilities and services exempted from licensing or registration immediately before the commencement of this legislation shall continue to be so exempt, until otherwise notified.

6. The Commission is envisaged to be involved in the assignment of the spectrum; it will carry out frequency management, planning and monitoring for non-strategic or commercial usage of spectrum; determine appropriate tariffs and rates for services; facilitate and regulate all matters relating to the carriage and content of communications; promote competition; take measures to protect consumer interest and promote and enforce universal service obligations; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities; report and make recommendations either suo motu or on such matters as may be referred to it by the Central Government etc.

7. The Commission is also proposed to be empowered with dispute resolution functions and will have the power to appoint Adjudicating Officers. It is also proposed to set up an Appellate Tribunal, to be known as the Communications Appellate Tribunal, to hear appeals against decisions or orders of the Commission, or against orders of Adjudicating officers imposing civil liabilities. The jurisdiction of the Appellate Tribunal may be exercised by its Benches, which shall ordinarily sit at Delhi and at such other places as may be notified. The Appellate Tribunal shall consist of a Chairperson and not more than six members. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a judge of the Supreme Court and shall be appointed in consultation with the Chief Justice of India. The members of the Appellate Tribunal shall be appointed from amongst persons recommended by the Search Committee and they should be, or should have been, Judges of High Court or should have held the post of secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or should be persons who are proficient in any of the fields specified for appointment as Members of the Commission.

8. The Bill proposes to repeal the following legislations namely: -

- (a) The Indian Telegraph Act 1885.
- (b) The Indian Wireless Telegraphy Act 1933.
- (c) The Telegraph Wires (Unlawful possession) Act 1950.
- (d) The Telecom Regulatory Authority of India Act 1997.
- (e) The Cable Television Networks (Regulation) Act 1995.

9. The Bill also provides that with effect from the dates of establishment of the Commission and of the Appellate Tribunal, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal respectively, established under the Telecom Regulatory Authority of India Act 1997, shall stand dissolved and proceedings pending before them shall stand transferred and deemed to be pending respectively before the Commission and the Appellate Tribunal.

10. The bill seeks to achieve the above objectives.

New Delhi;

The 29th August, 2001.

**Ram Vilas Paswan**

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF  
INDIA.

[Copy of letter No. 13-7/2001-Restg. Dated 29th August, 2001 from Shri Ram Vilas Paswan,  
Minister of Communications, to the Secretary-General Lok Sabha]

The President, having been informed of the subject matter of the Communications Convergence Bill, 2001 recommends the introduction and consideration of the Communications Convergence Bill, 2001 in the House under article 117(1) and (3) of the Constitution of India.

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**LOK SABHA**

**A**

**BILL**

*to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunication, and multimedia), for the establishment of an autonomous Commission to regulate all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.*

(Shri Ram Vilas Paswan, Minister of Communications).