

# INTERIM REPORT OF THE SUB-GROUP ON CONVERGENCE

India's dream of becoming a super-power in Information Technology. India is in a competitive race for investment and it is believed that investment in this new millenium will flow to countries where there is visible evidence of a strong policy framework supported by clear and precise laws facilitating growth of business in a converged environment.

3. The Sub-Group on Convergence held meetings on 30-12-1999, 4-1-2000 and 8-1-2000. It also elicited through the Department of Telecommunication Services views expressed (after extensive discussion) with representatives of consumers, industry, bulk users, security agencies and private telecom service providers.

## 4. APPROACH

In arriving at its recommendations/suggestions, the Subgroup on Convergence:

### (A) HAS TAKEN INTO CONSIDERATION:

The constitutional constraints in respect of the subject matter of reference to this Subgroup, and noted the judicial interpretation of some existing provisions of the Telegraph Act, 1885 - this forms the subject of a separate note appended as Annexure I to this Interim Report (pages 25 to 30).

The clear message emerging from the constitutional provision (Article 19 (1) (a) - free speech) is that there should be a separate treatment of transport and content aspects of telecommunication - implying a horizontal approach to regulation.

### B. HAS BORNE IN MIND

(1) that convergence should not be seen as an end in itself but as a development induced by modern technology. New technologies will impact equally on society and citizens, giving access to new services and new applications.

(2) that Convergence should not lead to additional regulations but provide the right regulatory framework to maximise benefits of convergence to consumers and promote a level playing field to service providers.

### (C). HAS BEEN MOTIVATED:

(1) by the following major aspects set out in the NTP, 1999 namely:

(a) that provision of world class telecommunication infrastructure and information is the key to rapid economic and social development of the country, and is critical not only for the development of the Information Technology industry but also has widespread ramifications on the entire economy of the country.

(b) that it is anticipated that a major part of the GDP of the country would be contributed by the Telecom Sector.

(c) that there should be a comprehensive and forward looking legal framework and structure for development of the telecommunications industry.

### (D) AND HAS BEEN INFLUENCED:

By the following major events that have already taken place after the announcement of NTP, 1999 (April 1999), namely,

(1) the firm resolve of the Information & Broadcasting Ministry to introduce in the next session of Parliament a comprehensive Broadcasting Bill along the lines of the Broadcasting Bill of 1997 (which had lapsed only on account of dissolution of the Lok Sabha in 1997) together with further substantial amendments to cover the entire content aspect of Broadcasting including provisions for setting up of a separate regulatory Authority, and

(2) the introduction of the Information Technology Bill No. 135 1999 in the Lok Sabha on 16-12-1999 regulating all aspects of electronic commerce along the lines of the UNCITRAL's Model - Law adopted by the UN General Assembly Resolution dt. 30-1-1997.

#### 5. TENTATIVE CONCLUSIONS:

Since the entire Broadcasting aspect of telecommunication, (i.e. "Broadcasting" in all its manifestations) is to be taken care of by a separate comprehensive enactment and since the regulation of Telecom services is already covered by the Telecommunications Authority Regulatory Act, 1997 (with further amplifications which may be recommended by Subgroup I), the conclusions of this Subgroup on Convergence are as under:

1. It is necessary to differentiate between the carriage of information through a variety of technological drivers and the content of that information. In the former, micro electronics, digitalization and software has been consistently pushing hitherto separate streams of Infrastructure Services and Appliances (ISA) into a convergence of integration, especially at infrastructure and appliance levels - a phenomenon referred to in technological terms as "Multimedia Information Highway" (MIH).

2. So far as content of information is concerned:

(a) It is to be comprehensively dealt with in a new Broadcasting Bill, along the lines of the Broadcasting Bill, 1997 which had lapsed on account of the premature dissolution of the Lok Sabha - this Bill is proposed to be introduced very soon in Parliament with substantial amendments.

(b) It is also already dealt with (as to all aspects of E-Commerce) in the Information & Technology Bill introduced in the last session of the Lok Sabha on 16th December 1999 (and referred to a committee).

3. Consequently since only the carriage of information through various channels/media is left to be provided, for, which the policy underlined by NTP 1999 envisages to be in a regime with little or no controls, it would be more appropriate to refrain (in a new enactment) the structural framework of the 1885 Act, whilst, substantially altering or amending its relevant provisions, so as to adequately reflect the thrust of the New Telecom Policy (NTP-1999)

There are several reasons for this:

(I) Structurally the 1885 Act is along the pattern of many such Acts of that period - viz, to describe in briefest outline the thrust of the legislation and its main features, leaving details to be provided for by rules, (delegated legislation).

(II) Within the field of regulatory enactment for "telecommunication" (a modern updated version of the expression "telegraph"), it is recommended that the overall legislative scheme be an enabling one. Delegated legislation could then afford easy means of adjustment without further recourse to Parliament; in other words, by use of delegated legislation the legislative scheme could be expanded so as to encompass new technological changes and developments.

(III) If only carriage of information is to be dealt with under the proposed new law (as is proposed) there is an additional reason why a short statute rather than a long one is more appropriate. The ITU, in its colloquium had noted that in the future, the impact of convergence upon regulation would be greater than the impact of regulation upon convergence; the question is not how to regulate convergence but how regulation should (and must) change in the light of convergence.

A short statute enables the rule making authority to promulgate different sets of rules to meet different situations that keep arising in the future on account of the rapid and (at times, even) unpredictable changes in technology, and consequently convergence).

(IV) The infrastructure for convergence is one which would encompass, though not control, various channels of wired and wireless connection: this could, with some modifications, be fitted into a skeletal framework of telecommunication law, leaving details to be supplied by delegated legislation. However, the expression "Telegraph" both in the title and in the definition, has become obsolete. A suitable word has to

be found to give expression to the phenomena of convergence and it is proposed that the expression 'telecommunication' should replace "telegraph" both in the title of the new Act and in the definition. As to the text of the definition introduced in the 1885 Act in the year 1961 (by an amendment) although it does encompass the components of the definition given by the International Telecommunications Union, it is proposed to widen this further.

(V) It is suggested that the proposed Broadcasting Bill (as envisaged in the 1997 Bill) will have to be revised to reflect advances and development of technology and internet, which has made possible voice and video capability on computer screen (known as web casting). This suggestion is made particularly because web-casting is not covered under the existing IT Bill, 1999 already introduced in Parliament.

(VI) Since the existing TRAI Act, 1997 defines Telecom Services and since the new comprehensive law of Telecommunication (as proposed by this Subgroup) would encompass a broader spectrum, it would be necessary (in order to prevent any inadvertent duplication of treatment) to expressly provide that whatever telecommunication service is regulated under the TRAI Act would continue to be exclusively regulated under that Act. This is also one reason why a broader definition of "Telecommunication Services" needs to be provided for in the new proposed law.

(VII) In order to meet with some of the concerns voiced by sections of operators, consumer groups and others, it will also be necessary to provide in the new law of telecommunication: A suitably flexible provision incorporating wherever possible Universal Service Obligations: the range of Universal Service Obligations: their character and content, being different in different places, and under different situations, it is felt that this should be left to be prescribed by rules : for example in an unlicensed area of operation a service provider may be obliged by the relevant rules/notifications to provide essential services like life line service, distress service, even extending into areas which may be unremunerative; likewise, too for telecommunication services for certain providers like health care providers, educational providers and the like.

An additional reason why this Universal Service Obligation should be left to be provided by rules is that there are other conceivable ways in which such obligations can be provided for (e.g. that a particular percentage of the revenue earned by a service provider could be directed to be set aside for creating a fund for providing services to remote areas which would otherwise be unremunerative, (or cost effective) for the service provider to provide).

6. In the light of the foregoing our proposals for the new comprehensive statute would be as follows:

#### I GENERAL:

(A) The comprehensive statute is to be called the Telecommunications Act and it is proposed that the 1885 Act be repealed.

(B) to emphasize the thrust of the new law, there should be a preamble which should expressly provide:

(I) that this is an Act to abolish the Central Government's exclusive privilege with respect to telegraph and to make new provision that it shall be the function of Central Government to provide Telecommunication services.

(II) that it is enacted to promote and encourage the growth of telecommunication based on the development and use of technologies which maximise user control over the carriage of information in a environment of convergence.

(C) Although the existing definition of "telegraph" (as inserted by amendment in 1961 in the Telegraph Act of 1885) could encompass within its expanding areas of modern telecommunication, it is desirable (in order to reflect technological advances the world over) that the word 'Telegraph', wherever it occurs in the Act (including the definition section) be replaced with the generic word 'Telecommunication'.

(D) It is not considered necessary at this stage to define "convergence" in the Act - however, whenever necessary, this could be done so in an appropriate applicable rule.

#### II SUGGESTIONS FOR DEFINITIONS

The definitions of some of the terms used in the Act, currently not existing, but which now require to be defined are given below:

##### (a) TELECOMMUNICATION (new)

"Telecommunication" means the process of conveyance through transmission, emission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual, or other electro-magnetic emissions, radio waves or hertzian waves, galvanic, electric or magnetic means.

Explanation: Telecommunication includes the transmission of information of the users' choosing behaviour or among points specified by the user without any change in the form or content of the information sent and received, but does not include the content of any information sent and received.

To widen the definition even further it is recommended that the Central Government be empowered by notification in the official Gazette to add newly emerging technologies.

##### (b) 'TELECOMMUNICATION SERVICE' (new)

"Telecommunication service" means the offering of telecommunication or the bandwidth for telecommunication, for a fee or otherwise, to the public or to such class or classes of users as to be effectively available directly to the public, regardless of the facilities used; Provided that telecommunication service shall not include broadcasting service as defined in any law made by Parliament with respect to broadcasting.

(c) "TELECOMMUNICATION SYSTEM/EQUIPMENT" (new)

"Telecommunication System/Equipment" means hardware software and upgrades of the system (integral to the equipment) utilised for the purpose of providing telecommunication service".

(d) "SERVICE PROVIDER:" (new)

"Service provider" is a person who provides telecommunication service.

### III MAIN PROVISIONS IN THE NEW LAW

#### Power to establish and maintain telecommunication:

1) The Central Government shall have the function of establishing, maintaining and working of telecommunications, and in exercise of that function may grant licenses on such conditions and in consideration of such payments as prescribed, to any person to provide Telecommunication services (within the whole or part of India) in a manner which encourages general growth of telecommunication, except services which, from time to time and for reasons to be recorded, the Central Government may by notification in the Official Gazette reserve to itself or to a specified authority.

Provided always that the Central Government shall, in granting licenses and when imposing conditions for grant of licenses, observe the following principles:

(a) to convert the telecom sector progressively into a competitive environment.

(b) to make telecommunication services available to all uncovered areas including the rural, remote, hilly and tribal areas.

(c) to make available telecommunication services capable of meeting the needs of the country's economy.

(d) to create a modern and effective telecommunication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics.

(e) to protect the defence and security interest of the economy.

2) The Central Government may, from time to time, notify in the official Gazette

(a) such telecommunication services for which license may not be required under the Act, and

(b) the authority or authorities empowered to exercise the functions under Section 4(1) of the Act.

3) Licenses may be separately granted for telecommunication systems for infrastructure and also for individual telecommunication services

### IV FURTHER PROVISIONS

Note: The Telegraph Act was enacted in the year 1885 when the Central Government was controlling all telegraph activity. With the liberalisation and opening up of the economy during the last decade a number of private operators have been granted licenses by the Central Government in exercise of its powers under the Indian Telegraph Act, 1885. The existing Act does not define the powers, obligations and liabilities of these service providers. Although these have been incorporated in the form of conditions of the license agreement, it is felt that some additional conditions be incorporated in the Act as follows:

(1): Powers, obligations and liabilities of service providers:

It should be ensured by the service provider that the service is provided to subscribers on a non discrimination basis. It should be also ordinarily obligatory for the service provider to provide life saving services (except where otherwise mentioned by rules). The service providers should not deny availability of service to any subscriber on the ground of race, religion, caste, sex, financial status nor on ground only of remoteness of area.

(2): Regulation of Service Provider:

The functions of regulation of service providers shall be discharged by the Telecom Regulatory Authority of India in accordance with the provisions of the TRAI Act, 1997.

(3): Powers with regard to the right of way etc. to the service providers:

All operators, whether Government or private, should be treated at par in regard to delegated powers of the Central Government for the purpose of providing telecommunication services, except in case of right of way where the delegation may be done from time to time for specific or limited purposes only.

(4): New Provision regarding interception of messages

Note: Existing Section 5 of the Indian Telegraph Act, 1885, deals with the powers of the Government to take possession of "licencee, telegraphs" and to order "interception of messages" - these provisions have been narrowly interpreted by the Apex Court and in accordance with that interpretation and guidelines, rules have been framed under the existing law. (A copy of the existing rules are annexed as Annexure-II: pages 31 to 37).

The Maharashtra Government, has recently enacted a law, viz., Maharashtra Control of Organized Crime Act, 1999 in which Section 14 (copy of the section is enclosed and marked as Annexure III: pages 38 to 55) deals with the authorisation of interception of wire, electronic or oral communication This Act, has received concurrence of the President, having been duly scrutinized by the Central Government: It is suggested that the provisions of Section 14 of the Maharashtra Control of Organised Crime Act, 1999 be

adapted in the proposed new law on telecommunication and dovetailed into the existing Rules (Annexure II)

(5) Protection of action taken in good faith

"No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of Central Government for any thing which is in good faith done or intended to be done under the Act or the rules or regulations made thereunder".

(6) DISPUTE REDRESSAL MECHANISM

At present the Telegraph Act contemplates dispute redressal mechanism only with regard to the disputes of individuals with the Telecom Authority (Section 7B). The disputes amongst the service providers with regard to matters specified in Section 14(2) of the TRAI Act 1997 fall within the jurisdiction of TRAI.

Barring the areas where disputes are to be settled by TRAI, it is proposed that the dispute mechanism be provided for in the new law itself. It is suggested that the provisions of the Consumer Protection Act, 1986 as well as the Legal Services Authority Act, 1987 for the resolution of disputes of the individual consumers with the non-Government service providers may be utilised. Resolution of disputes through Lok Adalats as contemplated in the Legal Services Act, 1987 may be made obligatory. In addition it is recommended that the provisions for Conciliation (provided in the new Arbitration and Conciliation Act, 1996) which have not been use of so far, should be institutionalised and utilised for settlement of disputes between service providers and consumers.

(7) GUIDING PRINCIPLES

In the provision (in the new enactment) enabling rules to be made for carrying out the purposes of the Act a set of guiding principles also need to be added, as follows:

"The following guiding principles will govern the administration of the Act" viz.:

- (a) to develop the national information infrastructure, and promote quality, plurality, diversity and choice in services.
- (b) to encourage introduction of new technologies and investment in services and infrastructure;
- (c) to support universal access to telecommunication services at affordable cost;
- (d) to promote equitable, nondiscriminatory interconnection across various networks.
- (e) to provide a level playing field serving the consumer interest and provide for licensing criteria to be made known to the public;
- (f) to regulate excessive market power in a converged environment
- (g) to promote an open licensing policy allowing any number of new entrants (except in specific cases constrained by resources such as the spectrum).
- (h) generally to secure effective competition, and through this and other means, to secure the competitiveness of industry as a whole;

(8) PENALTIES:

Note: Part IV of the existing Telegraph Act deals with penalties.

These penalties have become meaningless with the passage of time. Investigating agencies have been insisting for more powers to have access to information relating to documents for investigating crimes. A separate set of proposals with regard to penalties (to be incorporated in the new law) is annexed as Annexure IV (pages 56 to 66).