

Revised Draft Communication Convergence Bill, 2001

Incorporating Comments/suggestions received from interested organisations and individuals on the Draft Bill prepared by the Sub-Group on Convergence* in January 2001.

(Courtesy: The Department of Telecommunication)

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THE COMMUNICATION CONVERGENCE BILL, 2001

BILL

to provide for the promotion, development and regulation of 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 the setting-up 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 telecommunication, broadcasting, data-communication, multimedia and other related technologies and services; and
- (iv) to establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

NOW THEREFORE

Be it enacted by Parliament in the Fifty-first 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 in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision 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)"Appellate Tribunal" means the Communications Appellate Tribunal established under section 43;

(2)"Network application service" means the service provided by means of one or more network services and includes such other services as may be prescribed.

(3)"Broadcasting service" means a content application service for providing television programmes or radio programmes, 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 in the official Gazette, as not being a broadcasting service.

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

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

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

(7)"communication service" means a network service or a content application service.

(8)"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".

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

~~**(10)**"customer premises equipment" means any equipment, apparatus or instrument alongwith its connecting link upto the interface unit located at the customer premises connecting with the network infrastructure facility.~~

~~**(11)**"encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception by unauthorised persons;~~

~~**(12)**~~**[10]** "frequency" means frequency of electro-magnetic waves used for providing a communication service;

~~**(13)**"foreign satellite broadcasting service" means a broadcasting service provided by using a satellite, uplinked from a foreign country and receivable in India;~~

~~**(14)**"free to air broadcasting service" means a non encrypted broadcasting service made available for reception by receiving equipment commonly available to the public without requiring payment of a subscription fee;~~

~~**(15)**~~**(11)** "license" means a license issued by the Commission under Chapter VII or Chapter VIII of this Act;

~~**(16)**~~**[12]** "licensee" means any person who has been granted a license;

~~**(17)**~~**[13]**"licensed service" means a service licensed under this Act;

~~**(18)**~~**[14]** "Member" means a Member of the Commission appointed under sub-section (3) of section 6 and includes the Chairperson;

~~(19)~~ **[15]** "network infrastructure facilities" means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer premises equipment and includes such other services as may be prescribed;

~~(19)~~ "network infrastructure facilities" means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer premises equipment and includes such other services as may be prescribed;

~~(20)~~ "network infrastructure facility provider" means a person who owns or operates any network infrastructure facility;

~~(21)~~ **[16]** "network service" means a service for carrying communications by means of guided or unguided electromagnetic radiation and includes such other services as may be prescribed

~~(22)~~ **[17]** "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

~~(23)~~ **[18]** "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.

~~(24)~~ **[19]** "prescribed" means prescribed by rules made by the Central Government under this Act;

~~(25)~~ **[20]** "programme" means - television or radio programme including advertising or sponsorship, whether or not of a commercial kind.

~~(26)~~ **[21]** "programme code" means the code specified under section 21;

~~(27)~~ **[22]** "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 municipal committee, cantonment board, district board, port trusts, or other authorities legally entitled to, or entrusted by the Central or any State Government with, the control or management of any municipal or local fund.

(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.

~~(28)~~ **[23]** "public service broadcaster" means any body created by Act of Parliament for the purpose of public service broadcasting;

~~(29)~~ "registered service" means a foreign satellite broadcasting service registered with the Commission for its reception in India;

~~(30)~~ **[24]** "regulations" mean regulations made by the Commission under this Act;

~~(31)~~ **[25]** "Secretary-General" means the Secretary-General appointed under sub-section (1) of section 15.

~~(32)~~ [26] "service provider" means any person who provides a communication service;

~~(33)~~[27] "spectrum" means a continuous range of continuous electromagnetic wave frequencies upto and including a frequency of 3000 giga hertz;

~~(34)~~"spectrum manager" means an officer of the Central Government notified as such under clause (3) of section 24;

~~(35)~~[28] "subscriber" of a service means a person who subscribes to a communication service primarily for his own use;

~~(36)~~ [29] "subscription fee" means any form of consideration given by subscriber;

~~(37)~~"uplinking" with reference to satellite broadcast service means uplinking of programme transmitted from an earth station to the satellite.

30 ~~[37A]~~ "Universal Service Obligation" - means obligation as may be prescribed from time to time.

31 ~~[37B]~~ "Value added network application service" - means the service provided by means of value addition using one or more.

~~(38)~~[32] "wireless equipment" means any equipment in use or capable of use in wireless communication and includes any article or apparatus as may be so notified by the Central Government in this behalf.

~~(39)~~[33] "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.

Prohibition of provision of certain services without a license

4

~~(1).~~ Subject to the provisions of sub-section (2) no person shall
(1)-No person shall:

- (a) own or provide any network infrastructure facility, or
- (b) provide any network service, or any application service or any content application service, without a license granted under this Act:

Provided that the Central Government may, by notification exempt any person, or of persons,

from the provisions of this section.

Provided further that the Central Government may by Notification exempt any 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:

The draft Notification has to be issued simultaneously with the Act otherwise the Commission will be inundated with a large number of applications for licences for services and facility which are currently in wide spread use.

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

(2) Nothing contained in sub-section (1) shall apply to any person or equipment already licensed under section 4.

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 purpose 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) seven persons to be appointed as Members.
- (c) the Spectrum Manager, as ex-officio member.

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

Appointment of Chairperson and Members.

7.

(1) The Chairperson and Members (except the ex-officio Member) shall be appointed by the Central Government by notification, from amongst persons of eminence in the various specialised

fields such as broadcasting, telecommunications, information technology, finance, management and law .

(2) Before appointing any person as Chairperson or 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.

(3) A person who is in the service of Government shall have to retire or resign from service before joining as 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 or her 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(A)

The Central Government may remove from office any member -

(a) who has been adjudged insolvent, or

(b) who in the opinion of the Central Government has become physically or mentally incapable of acting as a member, or

(c) who has been convicted of any offence which in the opinion of the Central Government involves moral turpitude or

(d) who has acquired such financial or other interest as is likely to affect prejudicially his functions as Chairman/ member; or

(e) who 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/her 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) issuing interim directions and granting interim relief
- (j) any other matter which may be prescribed.

(2) All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860;

(3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(4) 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 Central Government shall make available to the Commission, a panel of not less than three officers of the rank of the Secretary to the Government of India and the Commission may appoint one of them as the Secretary-General of the Commission.~~

~~(2) The Secretary-General shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as may be delegated to him/her by the Commission.~~

~~(3) The Secretary-General shall be appointed on deputation basis and on such terms and conditions of service as may be prescribed.~~

15. Secretary-General of the Commission.

(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 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.

Delegation of powers

17A.

(1) The Commission may by general or special order in writing delegate to the Chairperson or any other member or officer of the Commission subject to such conditions as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

(2) The Commission may by general or special order in writing also form committees of the members and delegate to them the powers and functions of the Commission as may be specified in writing by the regulation.

Distribution of business and authorisation

18.

(1) Except for the power of making regulations, the Commission may, by general or special order, and from time to time make provision for the distribution of business of the Commission amongst members of the Commission as may be considered appropriate and necessary

(2) 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 directed or authorised the officer so authorised shall be bound in law to implement and carry out such directions and orders

CHAPTER IV

OBJECTIVES OF THE COMMISSION

Objectives and guiding principles

19.

The Communications Commission of India while exercising its functions shall be guided by the following principles :

- (i) that the communication sector is developed in a competitive environment and in consumer interest ~~and that market dominance in a converged environment is suitably regulated;~~
- (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 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 serving consumer interest, including existing operators on the date of commencement of the Act, is promoted.

CHAPTER V

POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

Powers duties and functions of the Commission.

20.

(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 sub-section (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 non-discriminatory 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) Whilst exercising its functions under this Act, the Commission shall ensure transparency.

Sec. 20A - Power to make recommendation in certain cases

The Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice or practices that impinge 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

21.

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.

Hearing of complaints and resolution of disputes by the Commission in certain cases

22 .

(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.

23 .

(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

24

(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/commercial purposes.

(2) For purposes of discharging the responsibility under sub-section (1) above 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 from time to time.

(3) The Central Government shall also notify an officer of that Government 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 :

(i) co-ordinate with international agencies matters relating to overall spectrum planning, use and its management; (ii) carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including defence and national security.

(iii) allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and re-assignment of frequencies from time to time.

(iv) constantly review and make available as much spectrum as possible for assignment by the Commission, in particular by optimizing usages, and.

(v) Monitoring, in consultation with the Commission, the efficiency of the utilization of the spectrum by all users including investigation and resolution of spectrum interference. (vi) After meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs - including defence and national security, 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.

24(A)

The Commission shall be responsible for assignment of the non strategic/ 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 a specified 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 the Commission 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 COMMUNICATION SERVICES AND NETWORK INFRASTRUCTURE FACILITIES

Licenses for service providers

26.

(1) Having regard to the necessity of serving the public interest, ensuring competition and prevention of monopolies in the provision of communication services, the Commission may, by regulations specify, -

(i) eligibility conditions for issue of licenses;

~~(ii) cross-media restrictions having regard to accumulation of interest;~~

"(ii) Such restrictions regarding ownership and or control of the media having regard to accumulation of interest ";

(iii) restrictions or otherwise 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 obligations, conditions, restrictions, tariffs and rates subject to which service provider shall provide services.

(b) The Commission may by regulations determine the conditions subject to which a license may be granted or transferred .

(3) Subject to the provisions of sub-section (1), the Commission may grant license in such manner, and within such time subject to such terms and conditions, on payment of such fees and after following such procedures as may be determined by regulation.

(4) The Commission shall notify from time to time one or more schemes or plans for licensing containing such details as may be specified by regulations.

Provided that the Commission shall before finalising such scheme or plan consult the Central Government in order to ensure that the defence and security interests of the country is fully protected."

(5) Any scheme or plan referred to in sub-section (4) may provide for the eligibility conditions, the number, and scope of licenses 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, (b) to provide network services, (c) to provide application services, and (d) to provide content application services~~

(a) to provide or own network infrastructure facilities,

Explanation:

For the purposes of clause (a) above, network infrastructure facilities shall include facilities such as

(i) Earth Stations

(ii) Cable infrastructure

***** A description of the facilities and services which can be provided by a licensee of network infrastructure facilities, network services; application services and content application services is set out in appendix II which will not form part of the Bill since description will keep changing with time and new technology. It is included here as an appendix only to indicate to the draftsman of the notification contemplated under the definitions which of these services should be included in the definition clause.

- (iii) Wireless Equipment
- (iv) Towers,poles,ducts and pits used in conjunction with other communication infrastructure
- (v) Broadcasting Distribution Facilites

(b) to provide networking services.

Explanation:

For the purposes of clause (b) above, networking services shall include facilities such as

- (i) Band width services
- (ii) Fixed links
- (iii) Mobile Links

(c) to provide network applications services.

Explanation:

For the purposes of clause (c) above, networking services shall include facilities such as :

- (i) PSTN Telephony (Public Switched Telephony Network)
- (ii) Public Cellular Telephony
- (iii) GMPCS (Global Mobile Personal Communication by Statellite)
- (iv) IP Telephony
- (v) Radio Paging Services
- (vi) PMRTS (Public Mobile Radio Trunking Services)
- (vii) Public Switched Data Services
- (viii) Broadcasting (Radio / TV)

(d) to provide content application services

Explanation:

For the purposes of clause (d) above,content application services shall include facilities such as :

- (i) Satellite Broadcasting
- (ii) Subscription Broadcasting
- (iii) Terrestrial free to air TV Broadcasting
- (iv) Terrestrial Radio Broadcasting
- (v) Internet based content on websites

(a) to provide value added network application services

Explanation:

For the purposes of clause (e) above, networking services shall include facilities such as :

- (i) Internt Services
- (ii) U M S (Unified managing Services)
- (iii) I T enabled services including call centres, E-commerce, tele banking, tele education, tele trading and tele medicine, etc.
- (iv) Video -tex
- (v) Video-conference

~~(7) While granting a license for any one of the categories under sub-section (6) the Commission may confine or limit the scope of the service to be provided by the service provider.-~~

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

~~(8) While granting a license under sub-section (6) the Commission may grant licenses either singly or jointly for one or more categories as may be prescribed.-~~

~~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.-~~

"(8) While granting a license under sub-section (6) the Commission may grant licenses either singly or jointly for one or more categories as may be prescribed. 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 licence will be required in respect of any person or class of person, or an facility or services, which has been exempted under the provisos to Section 4 (b)."

Period and form of license

27.

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

(2) A license 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 Central Government may by notification, in public interest exempt any person or class of persons from payment of the license fee.

Duties of service providers

28

~~(1) The Commission may, from time to time, determine by regulations such obligations, conditions, restrictions, tariffs, and rates subject to which the service provider shall provide services-~~

~~(2) Without prejudice to the foregoing provision~~

~~(a) (1) Every service provider shall wherever required or applicable-~~

- ~~(i) provide such services to give effect to universal service obligations as may be prescribed.~~
- ~~(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;~~
- ~~(iv) follow the codes and standards laid down and specified by the Commission;~~

~~(b) (2) Every service provider of a content application service shall wherever required or applicable~~

- ~~(i) endeavour to provide a suitable proportion of programmes 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 or registered services in his delivery package for the purposes of distribution;
- (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 falling under one or more of the following categories shall, within sixty days from the making of such agreement, be registered

with the Commission namely:-

- (a) Shareholders or promoters agreements ;
- (b) Interconnectivity agreements;
- (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 that no application for a license shall be rejected except on grounds of security of State, public order or other public interest.

(4) Every license issued under this section shall be subject to such conditions and restrictions as the Commission may by regulations determine.

CHAPTER IX

SPECIAL PROVISION IN RESPECT OF CERTAIN SERVICES

Provision for live broadcasting of certain events.

32

~~(1) For the purpose of ensuring widest availability of viewing in India of national or international events held in India, no person shall carry a broadcast of any such event in India, as may be previously notified by the Central Government, unless simultaneously the public service broadcaster (and/or any other broadcaster as may be notified by the Commission) have also been offered the broadcasting rights by the organisers of such event, on such terms as determined by the Commission in advance of the bidding for the event.~~

Provision for live broadcasting of certain events.

32

1. For the purpose of ensuring widest availability of viewing in India of national or international events of general public interest to be held in India, the Central Government shall notify the same well in advanced .

2. Such National or International event of general public interest will have to be carried on the network of the public service broadcaster(s) 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

~~PENALTIES AND ADJUDICATION~~

~~BREACH OF TERMS AND CONDITIONS OF LICENSES, PENALTIES AND ADJUDICATION~~

~~Breach of terms and conditions of Licenses, Penalties and Adjudication~~

~~33.(1) With out prejudice to the foregoing provisions of this chapter.~~ In any case of breach of any of the terms of the license or failures to comply with any decision, direction or order of the Commission, the Commission may, after providing an opportunity to the licensee of being heard, do any one or more of the following, namely:-

(a) direct the licensee to do or abstain from doing any act or thing;

(b) suspend the license for a special period;

(c) curtail the period of the license; or

(d) revoke the license.

(e) initiate adjudication proceedings under this chapter.

(2) If the Commission has a reason to believe that the terms and conditions of a license for providing a service have been or are being breached by a licensee, the Commission may authorised the seizure of the equipment being used for provision of such service, and for this purpose the Commission may be 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, to implement and ensure compliance of its directions and orders; and when so directed or authorised the authorities or officers concerned shall be bound to carry out such directions and orders.

(3) Any person aggrieved by such seizure may 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~~ ninety days from the date of its seizure without the approval of the Appellate Tribunal on a report to be made by the authorised officer.

Penalty for breach of terms and conditions of license.

"34 . If any licensee commits breach of or fails to observe any terms and conditions subject to which a license was issued or fails to observe any rule, regulation and order made under this Act, the licensee shall be liable to a penalty under this Chapter". ~~not exceeding rupees fifty crores.~~

Penalty for transmission, distribution etc. in contravention of the provisions or without license.

35.

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 not licensed or which has been established or maintained or operated in contravention of the provisions of the Act or any rules, or regulations made thereunder, such person shall be liable to a penalty under this chapter ~~which may extend to rupees ten crores.~~

Penalty for delivery of content through facilities or equipment not licensed under the Act.

36.

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 in contravention of the provisions of this Act or any rules or regulations made thereunder, such person shall be liable to a penalty under this chapter ~~which may extend to rupees ten crores.~~

Penalty for failure to Register Agreements

37.

If a service provider who 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 a penalty under this chapter ~~which may extend to ten lakh rupees.~~

Penalty for failure to comply with the decision, direction or orders of the Commission.

38.

If any person wilfully fails to comply with any decision, direction or order of the Commission, such person shall be liable to a penalties under this chapter ~~a penalty which may extend to rupees five crores, and in case of a second or subsequent failure with a further penalty which may extend to rupees ten crores, and in the case of continuing failure with an additional further penalty which may extend to rupees two lakhs for every day during which such failure continues.~~

Filing of complaint, limitation, form, reference for adjudication including suo motu reference by Commission.

39.

(1) A complaint may be filed before the Commission alleging that a service provider or any other person has incurred a liability to a penalty 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:

Provided that the Commission may entertain the complaint after the expiry of the said period if satisfied that there was sufficient cause for not filing the complaint, within the time stated or pass such other order as it deems fit

(3) On receipt of a complaint under section (1) if the Commission is of the opinion that there is a prima facie case for referring the matter for adjudication under this Chapter it may refer the same to the Adjudicating Officer having jurisdiction in the matter for adjudication; in all other cases the Commission may summarily dismiss the complaint or pass such other order as it deems fit.

(4) Notwithstanding anything contained in this section the Commission may at any time refer suo

motu any contravention of any of the provisions of this Act or of any rule, regulation direction or order made thereunder, to the Adjudicating Officer for adjudication in accordance with the provisions of this Chapter.

Power to adjudicate.

40.

(1) For the purpose of adjudging whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder or is liable to a penalty under this Chapter, the Commission shall, subject to the provisions of sub-section (3), appoint 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 penalty then such penalty as may be determined by order shall be levied on such person.

(3) No person shall be appointed as an adjudicating officer unless he or she possesses such experience as may be prescribed.

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

(5) For the purpose of discharging his powers and functions, every Adjudicating Officer shall have the same powers as are vested in a civil court under 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 section 123 and 124 of the Indian Evidence Act, 1972, requisitioning any public record or document or a copy of such record or a copy of such record or document, from any office;
- (e) issuing Commissions for the examinations of witnesses 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 it, ex parte;
- (h) reviewing its decisions;
- (i) issuing interim directions and granting interim relief.
- (j) any other matter which may be prescribed.

(6) The Adjudicating officer shall endeavours to decide disputes and complaints referred to in Sec. 39 as expeditiously as possible.

7 ~~(6)~~ All proceedings before the Adjudicating officer shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code; 1860

8 ~~(7)~~ The Adjudicating Officer shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Factors to be taken into account by the adjudication officer.

41. (1) Any penalty imposed under this Chapter shall not exceed rupees fifty crores.

(2) While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer shall 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;
- (e) that the amount of the penalty shall be such as may act as a deterrent even though no financial loss may be caused by such contravention.

Penalty for wilfully or negligently damaging network infrastructure facility and causing interruption

42 (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 penalty which may extend to rupees five crores and where the actual loss or damage caused is more than rupees five crores then to a penalty upto that extent;

(b) where the act is not wilful or deliberate to a penalty not exceeding the actual loss or damage caused.

(2) out of the penalties specified in sub-sec. (1) of Sec. 34 such as may be determined by the Adjudicating Officer shall be payable to the licensee concerned as reasonable compensation for damage to the cable or any part of the network infrastructure facility.

CHAPTER XI

COMMUNICATIONS APPELLATE TRIBUNAL

Establishment of Communications Appellate Tribunal.

43.

(1) The Central Government shall by notification, establish an Appellate Tribunal to be known as the Communications Appellate Tribunal.

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

(3) 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 it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

(4) 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. Such appeal shall be in such form, verified in such manner and accompanied by such fee as may be prescribed.

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

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

(7) The Appellate Tribunal shall endeavour to deal with and dispose of every appeal preferred under sub-section (2) and (4) above 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:

(8) 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 six 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) 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 person who has been a judge of a High Court in India.

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New 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 notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(4) The Chairperson of the Appellate Tribunal may from time to time (according to the exigencies of business) request a Member sitting on one Bench to sit on another Bench.

(5) 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 or more Members, 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 of India;
(b) in the case of a Member, he is or has been a Judge of a High Court in India, 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 the field of information technology, telecommunication, broadcasting, law, industry, or administration.

(2) The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding five years from the date on which he or she enters upon his or her office; Provided that no Chairperson or other Member shall hold office as such after he or she 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 or her 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, 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 joining as Chairperson or whole time member.

Removal and resignation

46.

(1) The Central Government may remove from office, the Chairperson or any 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.

(2) Notwithstanding anything contained in sub-section (1), 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 enquiry, 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.

(3) 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, transfer of cases, difference in opinion by Members.

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.

(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 for disposal, to any other Bench.

(3) If the Members of a Bench 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 a civil court.

49.

(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) issuing interim directions and granting interim relief
(ii) 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.

Representation before the Appellate Tribunal

50.

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 in practice.

Appeals.

51.

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, passed by the Appellate Tribunal to the Supreme Court of India 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 of India 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.

52.

(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 - The expression "civil court having jurisdiction" shall mean, the civil court within whose ordinary civil jurisdiction the licensee 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 or judgement debtor is located.

Penalty for failure to comply with the decision or orders of Appellate Tribunal

53.

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 rupees five crores, provided that no such penalty shall be levied without giving any opportunity to party concerned.

CHAPTER XIA

Officers and employees of commission and Appellate Tribunal

53A (1). The Commission or Appellate Tribunal as the case may be shall appoint such officers or other employees as the Commission or Appellate Tribunal (as the case may be) consider necessary for the efficient discharge of their respective functions under the Act subject to such conditions as may be prescribed .

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

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

CHAPTER XII

Proceeds of Licence Fee.

54.

~~The proceeds of the licence fee shall be credited to the Consolidated Fund of India~~

Sec. 54 (1) Subject to the provisions of sub-sec (2) the proceeds of the license fee shall be credited to the consolidated Fund of India.

Sec. 54 (2) Such portion or percentage of the license fee as may be attributable to the universal Service obligation (USO) as may be prescribed shall be credited to a separate fund known as universal Service Obligation Fund in the public account of India.

Formation of Communications Commission and Appellate Tribunal Fund.

55.

~~(1) There shall be a fund to be called Communications Commission and Appellate Tribunal Fund and there shall be credited thereto any sum of money paid or any grants made by the Central Government for the purpose of this act. (2) Fee and levies receivable by the Commission as also the Appellate Tribunal as per the Act shall also be credited to the 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.

"55 (2) Fees and levies receivable by Commission shall be credited to the Communications Commission Fund, and fees and levies receivable by the Appellate Tribunal shall be credited to the Appellate Tribunal Fund."

Grants and application of funds

56.

~~The Central Government may, after due appropriation made by Parliament, by law in this behalf, credit to the Fund by way of Grant such sum or sums of money as the Central Government thinks fit for being utilized for the purposes of this Act, separately for the Communications Commission and the Appellate Tribunal respectively.~~

Grants and application of funds

56. "After due appropriation made by Parliament by law, the Central Government shall credit to the funds by the way of grant, separately for the commission and for the Appellate Tribunal, adequate sums of money for being utilised for the purposes of this Act, and for meeting the salaries and allowances payable to the Chairperson and Members, 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"

Applications of Funds.

57.

~~The funds shall be applied for— (a) The salaries and allowances payable to the Chairperson and members and the administrative expenses including the salaries, and~~

~~allowances payable to or in respect of officers and other employees of the Commission; (b) The salaries and allowances payable to the Chairperson and members and the administrative expenses including the salaries, and allowances payable to or in respect of officers and other employees of the Appellate Tribunal; and (c) The expenses on objects and for purposes authorized by this Act.~~

Old Accounts and Audit

Old 58 (1) The Commission as also Appellate Tribunal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

~~(2) The Accounts of the Commission as also as Appellate Tribunal shall be audited by the Comptroller and Auditor General of India at such intervals and as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission as also Appellate Tribunal to the Comptroller and Auditor General;~~

Explanation:

~~For removal of doubts, it is hereby, declared that the orders and decisions of the Commission in discharge of their statutory functions (which are appealable to the Appellate Tribunal are not subject to audit under this Section.)~~

~~(3) The Comptroller and Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Commission as also of the Appellate Tribunal shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission as well as Appellate Tribunal.~~

(4) The accounts of the Commission as also 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 Central Government and that Government shall cause the same to be laid before each House of Parliament.

New Section

"58 (1) The Commission as also Appellate Tribunal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed by the Central Government 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

Section 58A(1).

(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 and its laying

58 A.

(1) The Commission shall after the end of each financial year, submit to the Central Government a report on their activities during the preceding financial year and containing such information relating to the proceedings and policy, as may be prescribed from time to time. Such report shall also contain therein the statements of annual accounts of the Commission as also the Appellate Tribunal.

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

CHAPTER XIII

RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS

Users rights over land

59.

(1) Subject to the provisions of this Act any licensee of a net work infrastructure facility (hereinafter called "a 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,

(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) Nothing in this section shall confer any right upon any facility provider other than that of user for the purpose only of laying underground cables or erecting posts or maintaining them.

(5) The facility of right of way for laying underground cables, and erecting posts, shall be available to all facility providers without discrimination and subject to the condition that this right of way

facility shall be available to facility providers to the extent of the provisions contained in their respective licences and subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the option of the public authority:

(6) 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 authorities.

(7) The rights conferred under this section shall be exercised by the said facility provider strictly in accordance with the terms and conditions subject to which the license was granted.

(8) 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 and/or 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 prescribe appropriate guidelines in this behalf.

Rights of public authority to grant permission subject to conditions.

60.

Any permission granted by a public authority 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.

Special 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.

Disputes between the service provider and public authority

62.

(1) If any dispute arises under this Chapter the same shall be referred to the District Court within whose jurisdiction the property concerned is situated for determination by that Court.

(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 will apply to adjudication of all disputes under this section.

(4) Pending disposal of any application the District Judge 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.

Use of private land

62.A.

(1) A facility provider may make use of private land for constructing or laying of cables or erecting posts only with the consent of the owner of the land. 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 Commission, take steps authorised by the Commission for use of the land for constructing or laying cables or erecting posts on such terms as the Commission may deem fit.

(2) Subject to clause (1) above and only where absolutely necessary the facility provider may with the approval of the Commission approach the concerned Government for acquisition of the land required for the purpose and such Government shall there upon take appropriate action under the Land Acquisition Act 1896 and take steps under that Act to acquire the same.

(3) After receiving requests from the facility provider as provided in sub-section (1) above, and with the approval of the Commission, the Government shall acquire such land or interest in such land for use by the facility provider after following such procedures and after determining such compensation to be paid by the facility provider as provided for under the Land Acquisition Act 1896. Such acquisition shall be deemed to be for public purposes under the Land Acquisition Act.

Power of Commission over property not vested in or under the control or management of a public authority

62 B.

(1) The Commission may, by order, require ~~or permit~~ any network infrastructure facility to be provided, constructed, installed, altered, moved operated, used, repaired or maintained on any private land or property ~~and may by order require any such property to be acquired (if and where necessary)~~ 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 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) Orders of the Commission under Sub-section (1) and (2) above shall be enforceable under Chapter X of this Act.

CHAPTER XIV

INTERCEPTION OF COMMUNICATION AND PUNISHMENT FOR UNLAWFUL INTERCEPTION

Interception of communication and safeguards against misuse

63.

(1) Notwithstanding anything contained in Section 69 of the Information Technology Act, 2000 and subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, 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: Provided that press messages, data or information intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained:

(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 or with both.

(5) For the purposes of this section 'intercept' means the aural or other acquisition of the contents through the use of such devices or means as considered necessary.

CHAPTER XV

OFFENCES AND PUNISHMENT

Punishment for provision of unlicensed services

64.

(1) Save as otherwise provided in this Act, any person who, without a license, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in

the transmission or distribution of such service in any manner including,- (a) collection of subscription for his principal,
(b) issuing of advertisements to such service,
(c) dealing in or distribution of equipment for decoding programmes, shall be punishable with imprisonment which may extend up to five years, or with fine which may extend up to rupees five crores and in subsequent offence such fine may extend to rupees ten crores, 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 upto five years, or with imprisonment which may extend to five years and with fine which may extend upto rupees five crores and in subsequent offences to a like term of imprisonment and to fine which may extend to rupees ten crores.

(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 or both.

Punishment for possession of wireless equipment or use of spectrum in contravention of the Act

65.

Any person,-

(a) who possesses any wireless equipment in contravention of the provisions of section 5;
(b) who uses a radio frequency which he is not authorised to use under this Act, shall be guilty of an offence and shall be punishable with imprisonment which may extend to three years or with fine which may extend to rupees two crores, or with both.

(2) When any person is convicted for an offence punishable under this section, 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 be the property of the Central Government.

(4) Any officer specially 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 this section has been committed is kept or concealed and take possession thereof.

Punishment for sending obscene or offensive messages

66.

Any person who-(a) sends, 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

(b) sends by those means, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, 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 for a term which may extend upto three years or with fine which may extend to rupees two crores or with both. Sec. 67 of Information Technology Act, 2000 and clause 66 of the present Bill operate in different fields. Sec. 67 adapts for publication in electronic form the provision of Sec 292 of Indian Penal Code and also deals with new type of offences generated by a new means of communication, known as Cyberstalking.

Attempt to commit offences

67.

Whoever attempts to commit or abets the commission of any offence, under Chapter XIV or under this Chapter shall be deemed to have committed such offence and shall be punished with the same punishment provided for such offence.

Court competent to try offences.

68.

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

Offences to be cognizable.

69.

Notwithstanding anything contained in the Code of Criminal Procedure 1973 every offence punishable under this Act shall be cognizable.

CHAPTER XVI

TRANSIENT PROVISIONS RELATING TO CERTAIN AUTHORITIES ESTABLISHED UNDER THE TELCOM REGULATORY AUTHORITY OF INDIA ACT 1997

TChairperson and Memebers of the Telcom Regulatory Authority of India to be Chairperson and Members of the Commission.

70 . Notwithstanding anythign contained in Chapter III , with effect from the date of the notification establishing the Commission under sub-section(1) of section 6.

(a) The Chaiperson and Members of the Telcom Regulatory Authority of India established under sub-section(1) of section 3 of the Telcom Regulatory Authority of India Act 1997 shall be deemed to be appointed as the Chairperson and Members of the Commission as the case may be on the same terms and conditions subject to which they were so appointed under that Act;

(b) The term of office of the Chairperson and the Members who are deemed to be

appointed to the Commission virtue of the clause (a) shall be deemed to have commenced from the date on which such Chairperson or a Member

Although it was decided at the GOT-IT meeting that clause 70 and 71 of Chapter 16 be omitted, on a reconsideration it is felt that the transient provision is important and the decision has to be taken as to whether the existing members of TRAI and Telcom Dispute Appellate Tribunal should be absorbed in Communications Commission of India and its Appellate Tribunal ; if the Bill goes to the website with such uncertainty it would question the credibility of Government's intention of putting a sound and long lasting regulatory frame work. Having regard to the fact that Amendment to the TRAI Act in January 2000 was pursuant to the recommendations of the sub-group of GOT-IT itself and the changes in the composition of TRAI and Telcom Dispute Redressal Tribunal were pursuant to the recommendation of that sub-group , it would be embarrassing to virtually set these amendment at naught within so short a period without any cogent reason;

Besides, during the somewhat lengthy period that must necessarily ensue that draft bill is being put on on the website and with or without amendment being enacted into law, not providing for any transient provisions would lead to justifiable uncertainty in the minds of the investors regarding continuity of the reforms process and of continued validity of decision already taken by TRAI Act.It is therefore strongly recommended by the sub-group that the existing provisions and clause 70 and 71 of the Bill may be retained-it would facilitate a smoother transition and take over.

assumed office as such Chairperson or Member of the Telecom Regulatory Authority of India established under the Telecom Regulatory Authority Act 1997.

(c) The remaining vacancies in the commission shall be filled by appointing the other members in accordance with the provisions of this act.

(d) All proceedings pending before the said authority shall be deemed to be pending before the Commission and shall be disposed off in accordance with the provisions of this act.

Chairperson and Members of the Telecom Disputes Settlement and Appellate Tribunal to be Chairperson and Members of the Appellate Tribunal

71. Notwithstanding anything contained in Chapter XI-

(a) with effect from the date of the notification establishing the Communications Appellate Tribunal under sub-section (1) of section 43, the Chairperson and Members of the Telecom Disputes Settlement Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act 1997 and holding, office immediately before the commencement of this Act shall be deemed to be appointed as the Chairperson and the Members, respectively, of the Communications Appellate Tribunal on the same terms and conditions on which they were appointed under the Telecom Regulatory Authority of India Act 1997:

(b) the term of office, of the chairperson or a Member deemed to be appointed as the Chairperson or a Member of the Communications Appellate Tribunal under clause (a) shall be deemed to have commenced from the date on which they entered upon their office such Chairperson or a Member of the Telecom Disputes Settlement and Appellate Tribunal established under the Telecom Regulatory Authority Act 1997.

(c) as soon after the commencement of this Act the Central Government shall fill up the remaining vacancies in the Appellate Tribunal by appointing other Members in accordance with the provisions of this Act.

(d) all proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal established under the Telecom Regulatory, Authority, of India Act. 1997 shall stand transferred to the Appellate Tribunal established under this Act which shall hear and dispose of from the stage at which such proceedings were pending before the first mentioned Tribunal in accordance with the provisions of this Act.

(e) all appeals pending before any High Court immediately before the commencement of this Act which stood transferred to Telecom Disputes Settlement and Appellate Tribunal under section 14N of the Telecom Regulatory Authority of India Act, 1997 shall stand transferred to the Appellate Tribunal established under this Act.

(f) where any appeal has stood transferred from the High Court to the Appellate Tribunal-

(i) the High Court shall, as soon as may be after such transfer, forward the records of such appeals to the Appellate Tribunal; and

(ii) the Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from any earlier stage or de novo as the Appellate Tribunal may consider proper and appropriate.

CHAPTER XVII

MISCELLANEOUS

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

72.

(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.