

The Communication Convergence Bill, 2001

REPORT

Introductory

The Communication Convergence Bill, 2001 was introduced in Lok Sabha on 31 August, 2001. The Hon'ble Speaker referred it to this Committee for consideration and report. The Bill is stated to be an enabling legislation, designed to fully harness the benefits of the converged technologies and the emerging converging technologies of the future to meet the growing social and commercial needs. It tends to set up a single Super Regulator - Communications Commission of India with wide ranging powers to deal with the carriage & content. The members of the Commission are to be appointed on the recommendation of a Search Committee.

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

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

3. The Commission is also proposed to be empowered with dispute resolution functions. It is also proposed to set up an Appellate Tribunal to be known as the Communications Appellate Tribunal, to hear appeals against decisions or orders of the Commission. The jurisdiction of the Appellate Tribunal may be exercised by its Benches, which shall ordinarily sit at Delhi and at such other places as may be notified. The Appellate Tribunal shall consist of a Chairperson and not more than six Members.

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

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

5. Keeping in view the importance and the repercussion of the Communication Convergence Bill on the future of India, the Committee invited memoranda on the Bill from the public in general and experts/professional, organisations/associations representing Industry, Commerce, telecommunications, electronic media and films etc. in particular for which the text of the Bill was hoisted at the website www.parliamentofindia.nic.in. Copies of the Bill was sent to Leaders of the political parties in Lok Sabha, Rajya Sabha, Chief Secretaries, Supreme Court Bar Association, High Court Bar Associations, Telecom Regulatory Authority of India (TRAI), Leading Chambers of Commerce and Industry in the country, Media Agencies and Leading National Newspapers, I.T. Companies and Major Pvt. Telecom Companies.

6. Numerous memoranda/representations were received. The Committee invited some Organisation/Association/Institute/Professional/Experts/Individuals for oral evidence. In all 18 sittings of the Committee and 9 sittings of Sub-Committee were held in which the representatives from various Association/Organistaion/Institute appears before the Committee to tender evidence. Besides representatives of the Department of Telecommunications, Department of Information Technology and Ministry of Information & Broadcasting also appeared to clarify certain provisions of the Bill.

7. There were divergent views on the various clauses and timing of the Bill. A large number of witnesses including representatives of business organisations like Confederation of Indian Industry (CII), Indian Broadcasters Foundation (IBF) and Professor Rekha Jain and Professor Siddhartha Sinha of Centre for Telecom Policy Studies, Indian Institute of Management, Ahmedabad were of the view that the Bill is too early and it is not the right time to have such a enabling & restricted legislation. They

held the view that Information Technology industry has made tremendous progress simply because of the fact that there had been no intervention from Government side. Individuals and Corporates responded to the technology and market conditions without any interference from Government side. Moreover, they believed that technology and time had been changing so fast that nobody can predict the shape of things to come in IT industry. So these witnesses pleaded that “this is not the time to have such an enabling and restrictive legislation at this point of time”. Shri F.S. Nariman, M.P. who headed the sub-committee on draft Communication Convergence Bill has been of the view that for smooth functioning of convergence there should be convergence of concerned administrative ministries as well and that Convergence Commission of India formed under the Act should better consider itself as “facilitator” instead of “regulator”. Those who gave oral evidence & opposed the Bill in its present form are representatives of Confederation of Indian Industry (CII) who stated that *“This is not the time to have such an enabling and a restricted legislation at this point of time”*. The representatives of Indian Broadcasting Foundation (IBF) too stated that *“It is too early in the day to have a bill of this kind”*. The representatives of Internet Service Provider Association of India (ISPAI) stated that *“Looking at certain apprehensions in so many clauses, Bill would not serve the purpose of Internet Service Providers”*. The representatives of Indian Institute of Management (IIM, Ahmedabad) said that *“Bill is little too early”*. A Retired Member of Telecom Commission also opposed the Bill. The Technical Advisor on IT to Govt. of Andhra Pradesh was of the opinion that for the content there is no necessity of the Bill.

8. After a close perusal of the voluminous material the Committee received from experts/professionals, organisations/associations and individuals in the field of telecommunications and electronic media, the Committee finds that opinion is sharply divided about the desirability of having a Communication Commission of India at this stage. Many of the prominent witnesses apprehended that instead of being a facilitator in the growth of Information Technology, the Commission may turn out to be a regulator and may de-celerate the growth of the industry. They are of the view that this sector should be left alone to develop itself by self-regulation. They asserted that the Government intervention is not at all desirable at this stage. However, considering it to be the duty of the Committee to scrutinise the Bill as it

has been referred to the Committee it proceeds to examine the Communication Convergence Bill, 2001 in succeeding paragraphs.

9. Clause 1 is regarding short title, extent and commencement which states that *“this Act may be called the Communication Convergence Act, 2001”*.

10. Some of the non-official witnesses pointed out that in the long run, it would be communication which will be dealt with and the word ‘convergence’ may lose its significance and above all it is a law on Communication and not Convergence. The Preamble also reads as “A Bill to promote, facilitate and develop in an orderly manner the carriage and content of communications”. The Committee, therefore, pointed out that after a certain timeframe, the word ‘Convergence’ would look superfluous, so why not the word ‘Convergence’ be deleted from the title of the Bill.

11. In reply, Secretary, DoT stated that the Department wanted to focus on Communication, Broadcasting which are the essential features of the Bill. He further stated that in order to enable convergence to come in, the word convergence was incorporated in the title bring out the focus of the Bill.

12. Secretary, I&B supplemented that if the word Convergence is not added and it is called Communication Bill, then there would be confusion that the Press is also covered which is not the intention.

13. The Committee is of the opinion that convergence is already a reality and in view of the long-term relevance of the provisions of the Bill, on enactment it should be termed as the Communication Act to avoid redundancy of the term ‘convergence’ later. The Committee has also, in the following paragraphs, recommended specific exclusion of the Press from the operation of the provisions of this law. Hence, the Committee recommends that in clause 1 “Communication Convergence Act, 2001” be substituted with the words:- “The Communications Act, 2002”.

CHAPTER I
PRELIMINARY

DEFINITIONS

14. Clause 2 is the definition Clause.

Clause 2 (1) reads “*Adjudicating Officer*” means an officer of the Commission appointed as Adjudicating Officer under sub-section (1) of section 39.

15. The Committee feels that the need to provide for an Adjudicating Officer is not clear because the power of dispute settlement vests in the Commission itself as provided under Clause 21 and elsewhere. As discussed herein later, the Committee does not appreciate introduction of the concept of “Adjudicating Officers” for dispute settlement. Hence, the Committee recommends that the clause 2 (1) be deleted.

16. Clause 2 (3) defines “broadcasting Service” excluding under sub-clause (3)(b) “*a service that makes programme available on demand on a point-to-point basis, including a dial-up service*”.

Clause 2(5) states that “*channel*” means a set of frequencies used for transmission of a programme; Clause 2(10) defines, “*content application service*”, Clause 2(16) “*network application service*”, Clause 2(17) “*network infrastructure facilities*” and Clause 2(18) defines “*networking service*”.

17. Regarding definition of “Broadcasting Service”, “Channel” “Content Application Service”, “Network Application Service” etc. it was submitted by the non-official witnesses that these definitions in the Bill need more clarity. It was stated that instead of adopting Internationally accepted definitions, specially of technical terms as provided in the Regulation/Recommendations/Reports of the International Telecommunication Union (ITU) Geneva, which have been ratified by the Government of India, the Bill contains some unclear definitions, necessitating detailed explanations regarding the same terms elsewhere in the Bill.

18. When asked about the specific purpose, or the connotation of actually bringing in category as ‘content application service’ instead of just ‘content service’. The Secretary,

DoT replied that in the definition 'content application service' word 'application' means delivery of content through electronic means which is inter linked with the definition of the term 'content' in clause 2(9) and in case of word 'application' is removed, then the electronic application of the content disappears. The Department has stated that no change is required. The Committee accepts this reasoning.

19. With regard to the "Network Application Service", "Network Infrastructure Facilities", "Networking Service" the Department of Telecommunications has agreed to the amendments proposed by the Committee stating therewith that the proposed amendments retain the flexibility for notifying any service in future in the various categories.

20. The Committee feels that the definition of some terms in the Bill need more clarity. It recommends the following amendments in Clause 2 (3)(b), Clause 2 (5).

Clause 2(3)(b) in line 12 – Insert the words "or information" after the word 'programme'.

Clause 2(5) line 18 insert the words "one or" before the words 'a set'

21. The Committee is of the opinion that the terms "content application service" in Clause 2(10), "Network application Service" in clause 2(16), "Network infrastructure facilities" in Clause 2(17), "Networking Service" in clause 2(18) lack completeness. The Committee, therefore, is of the opinion that the self-contained definition of these expressions will be useful in proper understanding of the same.

22. The consequential amendments would be as under:-

Clause 2(10) line 33: After the word "includes" insert the words "Satellite broadcasting, subscription broadcasting, terrestrial free to air television Broadcasting terrestrial radio broadcasting and"

Clause 2(16) page 3 line 2 and 3 –

After the word "includes" insert the words "public switched telephony, public cellular telephony, global mobile personal communications by Satellite, Internet protocol telephony, radio paging services and broadcasting (excluding radio or television programme), position locating systems and"

Clause 2(17) line 6: After the word “includes” insert the words “earth stations, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, distribution facilities (including facilities for broadcasting distribution) and”

Clause 2(18) line 10: After the word “includes” insert the words “band-width services, fixed links and mobile links and”

23. Clause 2(24)(iii) defines public authority to include *any person, agency or organisation engaged in land development for public use, or in roads for public transportation;*

24. The Committee feels that public authority also undertakes execution of work for public use as entrusted by the Central Government or any State Government or any local authority. The Department of Telecommunications in reply has agreed to the amendments proposed by the Committee stating that the Committee may consider the amendment. Hence, the definition of “Public authority” in clause 2(24)(iii) line may be amended as under:-

For the words “land development for public use, or in roads for public transportation” substitute the words “execution of any work for public use as entrusted by the Central Government or any State Government or any local authority”.

25. Clause 2(25) states: *“public service broadcaster” means any body created by an Act of Parliament only for the purpose of public service broadcasting;*

26. In this context, in their representations made to the Committee by certain private organisations, it was stated that the definition of “public service broadcaster” appears to be synonymous with “Public Sector Broadcaster” and since such an entity is operating on a commercial basis, it cannot be conferred special privilege or any favourable discrimination which is contrary to the principle of providing level playing field. In other representations it was stated that the word ‘only’ be deleted in order to give wider scope to ‘Public Service Broadcaster’ in terms of commercial activities/services.

27. The Department of Telecommunications has also agreed to the second proposal made to the Committee.

28. The Committee, on its part, also feels that the word 'only' will restrict the scope of "public service broadcaster." The Public service broadcaster also has to play an important role in delivering healthy entertainment. Therefore, the Committee recommends that in Clause 2(25) (line 36 at page 3) the word 'only' be deleted.

29. The Committee further recommends that "radio frequency" be defined as under by inserting a new clause 2(25)(A);

25(A) "radio frequency" means any frequency of electro-magnetic waves with which radio communications are capable of being made." Further, in view of this insertion in the definition clause, explanation to this effect in lines 22-24 at page 28 be deleted.

30. Clause 2(30) defining spectrum states "*spectrum*" means a continuous range of electromagnetic wave of frequencies up to and including a frequency of 3000 giga hertz;

31. It has been represented to the Committee by various organisations that the term "Spectrum" may be widened by including such other or further frequencies as may be specified by the central Government from time to time. When inquired from the Department of Telecommunications why the definition was being limited to 3000 GHz., Secretary DoT stated that beyond 3000 GHz it is no longer a radio wave and it becomes a light wave. This view, he said, was according to the present technology but the broader definition as given by ITU is stated to be "Spectrum is the range of frequencies within which radio communication are capable of being made." He stated that this definition could be considered to substitute the one given in the Bill.

32. The Committee, feels that as the technology is changing very fast, the present definition limits the scope of the "spectrum" which can lead to misinterpretations at a later stage. The Committee, therefore, feels that wider definition of the spectrum will be helpful in correctly conveying the meaning of the term. The Committee therefore, recommends that the definition of 'Spectrum' may be widened by substituting the words "upto and including a frequency of 3000 giga hertz" by the words "within which radio communications are capable of being made."

33. Clause 2(33) reads "*Universal Service Obligation*" means obligation in respect of services as may be prescribed;

34. In this regard, Cellular Operators Association of India (COAI) has submitted that the term “Universal Service” may be clearly defined as “Access to all people for Basic Telecom Services at affordable and reasonable prices”. Further the definition of “Universal Service” may specifically include Public Pay Telephones, VPTs, etc. providing all services whether local, national or international calls including fax and data communications as also permitting Internet access. Thirdly, it was also stated that the Government should not make rules or prescribe the Universal Service Obligations which should be left to Communications Commission of India (CCI). The Statute must lay down the desired end-objectives sought to be achieved through Universal Service Obligation (USO). CCI should then formulate USO package in terms of receipt and disbursement of funds to meet USO objectives. The COAI further contended that even if the Government has to issue policy directive in the matter, it should have prior mandatory recommendations of CCI. Lastly, special provisions should be made for the level and structure of tariff for the Subscribers of Universal Service. Special provisions may also provide for quality of service.

35. Clarifying the position in this regard, the DoT has stated that the present definition of the term “USO” is quite sufficient, hence no change is required.

36. The Committee is not convinced with the reply of the Department of Telecom as the increase in the teledensity in the rural areas should be the first priority of the Department and should be given utmost importance. Hence, the Committee feels that present definition of Universal Service Obligation is not sufficient. Therefore, the Committee is of the view that rural areas and the difficult terrains be brought under the preview of Universal Service Obligation. The Committee therefore, recommends that the following changes be made in Clause 2(33):

In lines 6&7 at page 4, After the words “in respect of” insert the words “increasing teledensity in rural areas and difficult terrains and such other”

CHAPTER III
COMMUNICATIONS COMMISSION OF INDIA

Clause 6- Establishment of Commission

37. Clause 6(4) provides that “ The Chairperson and not less than six Members other than the ex-officio Member, shall be whole-time Members and the remaining shall be part-time Members”.

38. Some of the non-official witnesses who appeared before the Committee were of the view that since Communication Commission of India(CCI) will have multifarious functions as defined in Chapter IV and V of the Bill, there has to be full time devotion of all the ten Members for effective results. Therefore, all the Members of Communication Commission of India should be full time Members, they averred.

39. During evidence, the Committee desired to know the concept of whole-time Members and part-time Members in the composition of the Communication Commission of India(CCI). In reply, Secretary, DoT explained that there may be people of eminence who may not like to come on a full-time basis but at the same time the expertise of such persons may be required. Further, larger number of members can be appointed on full-time basis as the Clause provides that not less than six Members will be full time Members and, therefore, number of part-time Members can be reduced.

40. The Committee pointed out that when CCI will have advisors and consultants, it might not require part-time Members. To this Secretary, DoT submitted that they can certainly call consultants and advisors but a need has been felt to have flexibility at the Commission level. And number of Members to be appointed as whole time Members would be decided by the Government under Clause 7(1).

41. The Committee notes that the number of part-time Members can be reduced by increasing the number of whole-time members and in this regard a need has been felt by the DoT to have flexibility at the Commission level. The Committee feels that the word, ‘shall’ with the term ‘part-time members’ may some time create a difficulty, and therefore, recommends that for the word ‘shall’ occurring second time in line 17 page 5 the word “may” be substituted.

Clause 7 –Appointment of Chairperson and Members

42. Clause 7(1) provides that “the Members (except the ex officio Member) shall be appointed by the Central Government, by notification, from amongst persons recommended by a Search Committee as may be prescribed.

43. On being pointed out by the Committee that the Bill does not provide for the qualifications of Members and the Bill is silent on this aspect, Secretary, Ministry of Information Technology submitted that the Chairman and Members of the UPSC are appointed by the Government and there is no Search Committee. Search Committee in this case has been kept as a safeguard. As regards the manner of functioning of the Search Committee and how it will to select a person as Chairman of CCI and the Appellate Tribunal, the Secretary, DoT stated that the Search Committee is intended to consist of people who are knowledgeable in this area and are capable of identifying people of eminence in this area. Having gone through this exercise there may not be any need for a change unless some of the Members go away in the middle. If the Search Committee is determined in the Statute, it is quite possible that after three or four years those Members may not be really relevant at that point of time when new technologies are developing everywhere. So the flexibility is being provided through a clause which says that the Government will prescribe the Search Committee.

44. Some of the non-official witnesses who deposed before the Committee desired that constitution of the Search Committee should be spelt out and should include Leader of Opposition in Lok Sabha & Rajya Sabha. It has been pointed out that the first draft of Communication Convergence Bill had provided that a Search Committee would be appointed by the President of India from a Panel that will include Prime Minister, Leaders of Opposition in Rajya Sabha and Lok Sabha, Chairman of Standing Committee on Information Technology. It has been stated that vast majority of decisions, conclusions and dispute resolutions in case of regulators, especially communications, are matters relating essentially to the economics and competition/anti-trust regulation. This necessitates that the CCI must include as full time Members, such individuals who are qualified economists, preferably with public policy background and who understand competition-related issues.

45. The Committee notes that the Members of the Commission shall be appointed by the Central Government from amongst persons recommended by a Search Committee. The composition of such a Search Committee has not been prescribed anywhere in the statute. The Committee feels that it is a vital and substantive matter and the composition of the Search Committee should have been provided in the Act itself rather than under the Rules. The Committee, therefore, recommends the following amendment in Clause 7(1):-

“The words “from amongst.....as may be prescribed” should be substituted by “as selected by the Committee consisting of the Vice-President, Speaker of Lok Sabha, Minister of Communication and Information Technology, Minister of Information and Broadcasting, Leader of Opposition in Lok Sabha and Chairman of the Standing Committee on Information Technology.”

46. Clause 7(2) provides that “One half of the Members shall be appointed from amongst persons of eminence in the field of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities”.

47. Clause 7(3) provides that “One-half of the Members shall be appointed from amongst persons of eminence in specialised fields such as telecommunications, broadcasting technology, information technology, finance, management and administration or law”.

48. The Committee pointed out to the DoT that as per Clause 7(2), there is no bar for appointing more than one Member from the same field. It was suggested that there should be only one Member from each of the fields mentioned in the Clause. As the Bill primarily deals with telecommunications, it may not be fair to have five persons from amongst the field of literature, performing arts, media, culture, education etc. And going by Clause 7(3) one half of the Members would be appointed from the field of Information Technology, finance, management and administration or law, ultimately leaving one or two persons from the field of telecommunications. The Secretary, Ministry of I & B stated that when ‘carriage issues’ are discussed, ‘content Members’ may not be present.

But when 'content' is discussed the 'content Members' would surely be present. It has further been clarified by Secretary, DoT that Clause 16(1) says that the Commission will set up a panel for matters in relation to content in content application services and the Chairperson shall preside over the meeting. Therefore, the content related matters could be discussed by this content panel where there is no need to interact with the 'carriage Members.' However, where necessary, the Chairperson may place issues relating to such matters before the full Commission.

49. On being pointed out by the Committee that to discuss 'carriage' there is no separate panel and the 'content Members' will also give their views, the Secretary, Department of IT submitted that initially the thinking was that there could be two Bureaus, Content and the Carriage Bureaus so that they could function separately. There can be few issues which could come to the whole Commission which would be the aggregate of two. But later on, it was felt that 'Content Bureau' is a specialised kind of activity relating to content regulation where Carriage members need not be present.

50. It was further added that the most important thing is content and not carriage as far as broadcasting and media are concerned. For instance it is not the printer or the printing press which is important in the newspaper organisation. It is the editor who is an important person. Similarly as far as content of a broadcasting media is concerned, there should not be preponderance of people from the carriage discipline at the cost of the content people. It must be evenly balanced.

51. In this context, some of the non-officials witnesses have been of the view that the majority of the CCI Members should have sufficient technical expertise to assess trend of technological changes and its merits-demerits impact or side effects of such technological changes on the people of the country. The representation of eminent person from technical fields in CCI, therefore, has to be proportionately appropriate. The persons from the field of literature, performing arts, culture, education etc. according to them, are not of that relevance to CCI. Similarly persons from the field of management and administration are not of any relevance to CCI, it being policy making level body.

52. The Committee notes that Clause 7(2) says that one half of the Members shall be appointed from the field of literature, performing arts, media, culture, education, films and from amongst persons prominent in social and consumer activities. And under Clause 7(3) one half of the Members shall be appointed from the field of telecommunications, broadcasting technology, information technology, finance, management and administration or law. Therefore only one or two Members would be from the field of telecommunication which is the area of utmost importance for CCI. The Committee strongly feels that the representation of eminent persons from technical fields should be proportionately appropriate and suggests the following amendments:

In Clause 7(2) the words “ one-half of the Members” be substituted by “Not more than three Members”.

Clause 7(3) be split in two sub-paras, i.e.,

7(3A) “At least one-third of the Members shall be appointed from persons of eminence in the field of telecommunications” and

7(3B) “the rest of the Members shall be appointed from amongst persons of eminence in the specialised fields of broadcasting technology, information technology, management and administration, finance economics, public policy and law”

Provided that not more than one Member shall be appointed from any one field.

53. Clause 7(6) provides that “A person, who is in the service of the Government, shall have to retire or resign before entering the office of Chairperson or whole-time Member”.

54. The Committee recommends that in order to give more thrust to the provision in Clause 7(6) the following amendment should be made:

At the end, the words “and shall be ineligible to seek any employment, public or private, thereafter” be added.

Clause 8-Term of office of Chairperson and members

55. Clause 8(3) provides that “The Chairperson shall have powers of general superintendence and direction in the conduct of the 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”.

56. The Committee desired to know the nature of functions anticipated in Clause 8(3). In reply, Secretary, DoT stated that the Board of Directors delegates certain powers to the Chairman or the Managing Director which are assigned to the Commission. So they have made an enabling provision where if the Commission so requires, some of the powers can be exercised by the Chairman because there may be certain situations where the Commission may not be able to meet immediately.

57. The Committee pointed out that though it is a regulatory or an enabling provision, it would cover every part of activity. The Chairperson has been given all the powers of the Commission and it could become a totally one-man Commission. To this, Secretary, DoT stated that this has been done for the sake of convenience to make the Commission effective to deal with any issue which emerges urgently and calls for immediate response.

58. The Committee enquired why one person has to be so empowered as to give him the power of general superintendence. To this Secretary, Telecom illustrated that if for example, it becomes necessary to disconnect the STD in a particular area then it may take time for the Commission to meet and take that decision. In such contingencies they can spell out that the Commission can give powers to the Chairperson.

59. The Committee finds that Clause 8(3) provides for delegation of power to the Chairperson of general superintendence and direction in the conduct of affairs of the Commission and of exercising and discharging such powers and functions of the Commission as may be assigned to the Chairperson by the Commission. The Committee is of the view that such a provision could lead to the Commission becoming a one man Commission. The Committee is not fully convinced with the plea of the DoT that this has been done for the sake of convenience and to make the Commission effective in dealing with emergent, short-term issues. For instance, functions of the Commission under Clause 21 are such which should not be

delegated to one person, whether he be the Chairman. The Committee, therefore, recommends the following amendment in Clause 8(3):

After the words “the Commission”, the words “other than the powers and function mentioned in Section 21” be added.

Clause 9- Removal from office of Chairperson and other members

60. Clause 9 reads as “The Central Government may remove from office any Member, who:-

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

61. Provided that no such Member shall be removed from his office under Clause(d) or Clause(e) unless he has been given a reasonable opportunity of being heard in the matter”.

62. Some of the non-official witnesses represented to the Committee that on the lines of TRAI Act, 1997 a provision should be there for removal of Chairperson and Members of CCI. It has also been pointed out that in proviso to Clause 9 it has been mentioned that the Member should be heard by the Government before removal. In this context, the Committee desired to know the procedure being contemplated and as to who would be the hearing authority. To this, the Secretary, DoT stated that the “existing provision” gives the overall picture. Because appointments would be made by the Central Government, the hearing authority should also be determined by the Central Government.

63. Reacting to a point made by the Committee that the Government should formulate a charge-sheet pointing out the reasons for the removal of the Member from the Board and as to who will finally decide as to whether a Member of the CCI is guilty or not, the

Secretary, DoT stated that the final decision would be by the Central Government. Even in the existing TRAI Act, the Central Government gives reasonable opportunity, he said.

64. The Committee feels that the Government may be given the benefit of an inquiry report of an independent Authority as in the case of the Appellate Authority under Clause 46 where an inquiry by Supreme Court on a reference made to it in this behalf has been provided for removal of a Member, similar provisions be made in the case of removal or dismissal of a Member of the Commission by the Government. The Committee, therefore, recommends that the following amendments be made in the Proviso to Clause 9:

In line 21 of page 6, the words “he has been.....matter” should be replaced by the words “the Supreme Court on a reference being made to it in this behalf by the Central Government, has , on an inquiry held by it in accordance with such procedure as it may specify in this behalf reported that the Member ought on such grounds to be removed’.

Clause 14-Power of Commission to regulate its procedure

65. Clause 14(2) reads as “Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973”.

66. One of the non-official witnesses submitted that CCI has been entrusted with the function like making regulations, issuing Licenses, assigning Spectrum etc. so, it must be clarified that CCI possesses the powers as are vested in Civil Courts with respect to discharge of its functions under the Act which relate to the determining or adjudicating any issue/dispute and not the recommendatory or such other functions.

67. The Committee is in agreement with this suggestion and recommends that in clause 14(2) (line 22 of page 7) after the words “the Commission”, the words “relating to any dispute or complaint” be added.

Clause 15-Secretary-General of the Commission

68. Clause 15(1) provides that “ the Secretary General shall be appointed by the Commission and he shall be its chief executive officer and shall exercise such powers and discharge such functions as determined by regulations.

69. Clause 15(2) provides that “ For the purpose of sub-section(1), 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”.

70. In regard to Clause 15, the Committee received a number of Memoranda from many individuals/organisations in which they have expressed their doubts that the word ‘may’ used in Clause 15(2) has the effect of ‘shall’ and would mean that the Commission will have to appoint a person as Secretary General only from and out of the names in the panel provided by Government of India thereby depriving the CCI of the expertise that may be available else where. The Commission, therefore, should be left free to appoint its Secretary General who may either be from the Commission’s own cadre or selected by Commission from anywhere with expertise and experience relevant to the functioning of the Commission. The Memoranda were forwarded to the Department of Telecom for comments.

71. The Department of Telecom in its reply has clarified that as clearly stipulated in Clause 15(1), the power to appoint Secretary General is with the Commission itself. However, the Commission may seek from the Government a panel of not less than 3 officers which has been made amply clear by using the word ‘may’ in the relevant clause and thus CCI is at liberty to appoint its own nominee. It was added that there was no ambiguity in the legislation on this point.

72. The Committee is convinced with the clarification. However, in order to remove any confusion, it recommends that in clause 15(2) (line 35 of page 7) after the words “the Commission” the words “if it considers necessary” be added.

Clause 16-Setting up of panel, distribution of business etc.

73. Clause 16(1) stipulates that “The Commission shall set up a Panel from amongst Members appointed under sub-section(2) of section 7 to deal with matters in relation to the content application services, and the Chairperson shall preside over meetings of the Panel:

Provided that wherever necessary the Chairperson may place before the Commission any issue relating to the matters referred to in this section.

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

74. Some of the non-official witnesses represented that in Clause 16 it should be clarified that the CCI is empowered to delegate its functions, except the regulation making functions and adjudicatory functions. However, all final decisions must be that of the entire CCI, especially as functions relating to licensing has crucial implications on investment, consumer interest and the ability to meet policy objectives. It was further pleaded that clear guidelines may be laid down for setting up of Bureaus and Divisional Organisations including source and eligibility for appointment of the staff.

75. Secretary, DoT during evidence stated that as per Clause 16(1), the Commission will set up a Panel to deal with matters in relation to content in content application services and the Chairperson shall preside over the meeting of the Panel. Content related matters could be discussed by the Content Panel where there is no need to interact with Members of the Commission belonging to other categories. However, the Chairperson may place such issues before the full Commission wherever he feels necessary. The Secretary, DoT further added that if the issue is related to content regulation, the Carriage Members need not be present. Therefore, a Content Panel has been created. But in case of content matters, there will be many regulatory issues where enforcement will be required. That enforcement can be made only through the means of Carriage. One has to take action against the errant cable operator. So carriage gets involved. For a content-related violation, carriage gets involved. That is why, it has to be the whole Commission.

76. To a specific query, it has been clarified that setting up of content Panel is mandatory but it is left to the Chairperson to decide whether he brings such an issue before the entire Commission or not.

77. The Committee, recommends that in view of its recommendations regarding clause 7, the words “ the Commission shall set up a Panel from amongst Members appointed under sub-section(2) of section 7” should be substituted by “Members appointed under sub-section(2) of section 7 shall constitute a Panel”

78. The Committee, further, recommends the following amendment in Clause 16(2) : (line 1 of page 8) After the words “the Commission may”, the words “subject to provisions of sub-section 1” be inserted.

79. Clause 16(3) provides for setting up of bureaus or divisional organisations on the basis of work load and posting of officers and other employees to perform their functions.

80. In this regard, non-official witnesses pleaded that some guidelines may be laid down for setting up of Bureaus and Divisional Organisations including source and eligibility of their officers and employees etc.

81. The Committee stressed that there is a need for more specific information about bureaus and divisional organisations because there is no provision in the Bill. In reply, Secretary, DoT submitted that it has been left to the discretion of the Commission to determine the size. But it has been indicated that there could be within the organisation, separate bureaus for separate functions. However, their number has not been prescribed.

82. To a suggestion of the Committee to include consultants and advisors also under this clause, Secretary, DoT submitted that if they are not included in the provision, the Commission has a certain degree of flexibility in appointing the consultants and advisors as per the terms and condition as it may deem appropriate. It was further added that consultants and advisors have been kept separate as they are contractual. They would not be the employees of the Commission.

83. The Committee enquired about the details of bureaus and Commission and that who will determine their number, location and appointments. In reply, the Secretary, DoT clarified that the Commission may set up bureaus or divisional organisations on the basis of its workload and the bureaus shall be provided with such officers and other employees as are necessary to perform their duties. For the discharge of its function, the Commission

will determine the requirement of the employees. To another specific query, it was clarified that Clause 16(3) has to be read with Clause 53 which says “as the case may be”. The Commission/Appellate Tribunal shall appoint such officers and other employees as the Commission or appellate tribunal, as the case may be, consider necessary for the efficient discharge of its functions.

84. The Committee pointed out that the wording “such bureaus or divisional organisations shall be provided with such officers ----as are necessary” is a bit confusing and it may mean that the Government will provide those officers. It does not clearly state by whom. To this Secretary, DoT submitted that the powers of appointment are given under clause 53(1). So whomsoever the Commission wants to appoint comes under clause 53(1). The objects of appointment are given in clause 16(3). Clause 16(3) does not give powers of appointment.

85. The Committee is convinced with the clarification given by the Department but for the sake of clarity, it recommends that in clause 16(3) the words “on the basis of its principal workload operations” should be substituted by the words “with such powers, other than powers under section 21 and 38 as may be specifically assigned to them”.

86. Clause 16(4) reads that “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 Union Territory Administration to implement and ensure compliance of its directions and orders; and when so directed or authorised, such Magistrate or officer shall be bound to implement and carry out such directions and orders”.

87. The Committee desired to know the nature of orders which District Magistrate or Sub-Divisional Magistrate are expected to carry out in discharging the activities under section 16 which deals with setting up of Panels, distribution of business etc. and that what sort of direction can the Commission give to DM and any other officer. To this Secretary, DoT stated that if a seizure of certain equipment is to be ordered, the Commission may not have any particular officer at that particular place to effect that seizure and it will be the Sub-Divisional Magistrate or the DM who would have the authority to do so.

88. To another query as to how and under what power will the DM seize it, Secretary, DoT replied that the Act provides specific powers of seizure which are given to the Commission under clause 32(2) and DM/SDM will implement the same. It was further clarified that Clause 16(4) has been provided as an enabling provision.

89. It was added that this Clause relates to Content Panel also because there will be a direction given by the Content Panel. There may be certain stoppages or seizures which may be required for obscene contents. How would the Commission deliver and enforce this would be decided by the DM.

90. The Committee finds that Clause 16(4) has nothing to do with the setting up of panel, distribution of business etc. It rather relates to function of the Commission. It therefore recommends that after deletion of the words “be bound to” in line 13, page 8, Clause 16(4) should be transposed as sub-clause 18(4) under Chapter V which actually deals with the powers, duties and functions of the Commission.

CHAPTER IV **OBJECTIVES OF THE COMMISSION**

Clause 17- Objectives and guiding principles

91. The Committee recommends that in Clause 17(i) at the end, the words, “and that abuse of market is prevented” be added.

92. The Committee further, recommends that Clause 17(vi) be renumbered as 17(vi)(a) and another Sub-Clause 17(vi)(b) be added, as follows:

“that electromagnetic compatibility amongst all electronic systems is ensured and that no system is degraded by electromagnetic interference by any other system”.

93. Also in clause 17 (xi) **after** the words “level playing field.” the words, “through a fair, non-discriminatory and transparent treatment” be added.

CHAPTER V
POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

94. Add to clause 18(2) after (xv):

(xvi) fix a time frame to expedite licensing frequency allocation, interconnection between networks and services, that will enable speedy delivery of competitive services to consumers.

Clause 19-Power to make recommendations in certain cases

95. Clause 19 provides that “The Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the society, sovereignty and integrity of India, friendly relations with foreign States, public order, decency or morality”.

96. The Committee drew the attention of the Department to the wording of the Clause which says that Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice and pointed out that it is not clear about whose “practice” the Commission may make appropriate recommendations to Central Government. The Secretary, DoT replied that it is the ‘practice’ by the Broadcaster, for instance. To a similar query, it was added that ‘practice’ was mentioned in the context of broadcasting and communication. Communication covers everything like Internet, DTH and multi-media etc.

97. The Committee further asked that if the Commission finds that a particular broadcaster indulges in some unfair practice and the Commission has power to deal with its own then why should it recommend to the Government to that effect instead of initiating action on its own. In reply, it has been stated that if anything requires to be done with reference to a governmental intervention, then the Commission will bring it to the notice of the Government.

98. **The Committee recommends that the Clause 19 should be substituted by the following:**

“The Commission may at any time in the discharge of its duties and functions under this Act bring to the notice of the Central Government any

matter which the Commission feels should be intimated to the Central Government for consideration and action, if necessary”.

Clause 20—Codes and standards

99. Clause 20 provides that “The Commission shall, by regulations, 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, security, 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 programme;”

100. The Committee recommends that in Line 15, the word “programme” be replaced by “programmes” and that a Sub-Clause (viii) be added as under:

(viii) “to protect the confidentiality of data collected by different service providers, subject to the provisions of the law relating to the right of information”.

Clause 21-Hearing of complaints and resolution of disputes by the Commission

101. Clause 21 of the Bill provides for dispute settlement mechanism. **Clause 21(1)(b)** reads as under :-

“(b) hear and determine any complaint from any person regarding contravention of the provisions of this Act. Or the 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 to the Adjudicating Officer under Chapter X”.

102. The Committee pointed out to the representatives of DoT that Clause 39(2) of the Bill which provides for the power to adjudicate, says that the Adjudicating Officer ‘shall’ give a person referred to in sub-section(1), a reasonable opportunity for making a representation in the matter and desired to know whether these provisions can be

reconciled with those contained in 21(1)(b) which is mandatory. To this the Secretary, DoT stated clarified that there was a difference in the context and if there is a civil liability to be established then it requires to be referred to an Adjudicating Officer. On receipt of the complaint under sub-clause 1, if the Commission is of the opinion that there is a prima-facie case for referring the matter for adjudication under Chapter VIII, it may refer the same to the adjudicating officer having jurisdiction.

103. The Committee pointed out that Clause 21 (1)(b) provides that the Commission may hear and determine any complaint or refer the matter to the adjudicating Officer . To this the Secretary, DoT replied that if a civil liability is involved, the matter gets referred to the adjudicating officer under Chapter-X.

104. The Committee feels that appointment of Adjudicating Officers by the Commission for deciding matters at times involving enormous civil liability could lead to many problems. Powers of dispute resolution should best be exercised by the high powered Commission itself and not delegated to junior officers. Accordingly, the Committee recommends that in clause 21(1) (line 29 of page 10), after the words “The Commission shall”, the words “set up a panel of three persons from amongst its Members to” should be added. Further in clause 21(1)(b) (line 41 of page 10) the words “and if necessary, refer the matter for adjudication to the Adjudicating Officer under Chapter X” should be deleted.

Clause 22 - Directives by the Central Government.

105. Clause 22 (1) provides that

“(1) The Commission shall follow such policy directives as may be communicated to it in writing by the Central Government from time to time and such directives may include the procedure and the mode in which any services are to be licensed or registered, whether by way of auction in case of granting license, or in any other form”.

106. The Bill provides for directions by the Central Government to the Commission on any matter and such directives may include the procedure and the mode in which services are to be licensed or registered, whether by auction in case of granting license or in any other form. The Committee wanted to know whether ‘mode’ could be interpreted to

mean 'auction' or 'otherwise' for grant of a licence etc. The Secretary, DoT stated that this is an issue which was debated on length. Many of the existing regulations of setting up regulatory authority have provisions for giving directives. For instance, the Central Expenditure Reforms Commission (ERC) Act, 1999 has such a provision. Securities and Exchange Board of India (SEBI) has a similar provision. Industrial Research and Development Association (IRDA) also has it. Even the present TRAI Act itself has a provision for such directive. But what is more important was that the manner in which this direction is to be given should be very transparent. As Clause 22(2) says, the directives cannot be on anything but within the framework of the objectives and the guiding principles governing the administration of this Act.

107. Thirdly, the decision of the Central Government as to whether a directive is a policy directive or not will be final. But most importantly as per Sub-Clause 4, the regulator can always come back and question the directive given and ask for a review and if such a request is made, the Central Government has to respond with reasons in writing expeditiously. So, if the regulator raises a question that this directive perhaps does not come within the framework then the regulator has to be conveyed in writing the specific reasons for the same.

108. The Committee pointed out that the regulator can only ask for reasons for a particular directive. Thereupon, whatever reason is given, it will be binding. It is not expected that the Commission will go to the Court and challenge the reasons. To this the Secretary, DoT replied in affirmative.

109. In tune with the spirit in which the independent regulatory authority in the form of CCI is being set up, the Committee feels its independence has to be guarded assiduously and it must not ever be shackled by the overzealous directives of the Executive. To inspire confidence of all concerned, it is imperative that the Commission's independence is not diluted by issuing directions on purely procedural matters relating to say, mode of grant of licence i.e., whether by auction or sealed tenders etc. The Committee feels that directives should be confined to purely policy matters.

The Committee, therefore, recommends that words "and such directives.....other form" in Clause 22(1) (lines 2 to 5) be deleted.

CHAPTER VI
FREQUENCY SPECTRUM MANAGEMENT

Clause-23

Spectrum Management Committee

110. Clause 23(1) provides that “the Central Government shall be responsible for coordination with international agencies in respect of matters relating to spectrum management and also for allocation of available spectrum for strategic and non-strategic or commercial purposes”. Clause 23(2) states that “for the purposes of discharging the responsibility under sub-section(1), the Central Government shall establish, by notification, a Spectrum Management Committee with the Cabinet Secretary as its Chairman and consisting of such other members as may be notified by it from time to time”.

111. Some of the non-official witnesses who deposed before the Committee, have been of the view that since the Commission will have to work in close coordination with the Spectrum Management Committee (SMC) and any plan of action in regard to its allocated share of Spectrum Management will be impacted by the decisions of the SMC, it would be in the interest of optimum utilisation of the spectrum available in the country to make the Chairman of the Communications Commission of India (CCI) a permanent member of the SMC.

112. Some other witnesses have stated that Cabinet Secretary may not be the best person to chair the SMC. That is because spectrum management is a highly complex and technical work and the Cabinet Secretary may not be able to spare enough time and attention in chairing the SMC due to his diverse responsibilities.

113. When the Department of Telecommunications (DoT) was asked to give comments on the views of the non-official witnesses, it stated that spectrum is utilised by a number of organisations like Defence, Police and some Departments in the Central and State Governments, in addition to utilization by service providers. These matters are currently being looked after by the Central Government. However, it is now being

proposed, through this Bill, to empower the CCI in respect of non-strategic or commercial usage of Spectrum.

114. It has further been stated by the DoT that since the CCI will only be involved in respect of non-strategic or commercial usage, no purpose will be achieved by making the Chairperson of the CCI a Member of the SMC. However, to provide close coordination between the CCI and the SMC, the Spectrum Manager is being made an ex-officio Member of the CCI.

115. As regards the provision of making the Cabinet Secretary the Chairman of the SMC, the Department has stated that Cabinet Secretary will have an overall view of the requirements of the Government organisations like defence, police etc. and will be able to ensure optimal utilisation of this limited resource.

116. The Committee is not convinced with the reply of the Department. It feels that since spectrum is utilized by many different organizations/agencies including Defence and Police in the Central and State Governments, permanent membership for the Chairman of CCI in the SMC may help avoid likely delays in spectrum allocations and would facilitate its optimum commercial utilisation. It will also ensure better coordination and consultation between the Government and the Commission.

117. The Committee is also of the view that the Cabinet Secretary with his diverse responsibilities and pre-occupations may not be able to devote the required time and attention in chairing the Spectrum Management Committee which in turn may result in avoidable delay in spectrum allocation. Moreover, Spectrum Management being a highly complex and technical work, should be better left to the overall guidance of a professional in that arena.

118. Further, the Committee finds that States are not represented on the Spectrum Management Committee (SMC). The Department's contention that a specific provision of this nature in the legislation itself is not desirable does not convince the Committee. The Committee is of the opinion that some provisions should be incorporated to accommodate States in the SMC on rotation basis.

119. The Committee recommends that in clause 23(4)(v) (lines 44&45) words "including investigation and resolution of spectrum interference, and" should be

deleted as this would otherwise tend to create a dual authority on the subject with the CCI having been given the same power under Clause 21.

120. Clause 23(4)(vi) should be numbered as 23(5) and Clause 23(5) should be numbered as 23(6) and consequential grammatical changes may also be effected.

Clause 24

121. Clause 24(1) reads “The Commission shall be responsible for assignment of non-strategic and commercial spectrum to various users” while Clause 23(1) states “The Central Government shall be responsible.....for allocation of available spectrum for strategic and non-strategic or commercial purposes”.

122. In the statement of objects and reasons of the Bill at page 49 (Paragraph NO.6) it has been stated that the Commission is envisaged to be involved in the assignment of spectrum; it will carry out frequency management, planning and monitoring for non-strategic or commercial usage of spectrum.....”.

123. Some of the non-official witnesses pointed out that there has been some contradiction and lack of clarity in the above provisions as non-strategic requirements can be of non-commercial as well as commercial types. The Department has stated that no change is required since provisions are clear. As regards the role and interference of the Commission *vis-à-vis* the Spectrum Manager in the assignment, pricing etc. of frequencies, the Department has stated that the role of CCI relates to disputes amongst service providers while investigation and resolution of spectrum interference in the broader context rests with the Spectrum Manager.

124. **The Committee is not satisfied with the reply of the Department as the provisions of Section 24(1) appear to be in conflict with the provisions of Section 23(1) and 23(5) [renumbered by the Committee as 23(6)] . At one place, allocation of spectrum has been stated to be the responsibility of the Central Government whereas elsewhere such responsibility has been assigned to the Commission. Similarly, the function of the Spectrum Manager to resolve issues of spectrum interference is in conflict with Clause 21(1)(a)(i) which empowers CCI to “decide any dispute or matter between two or more service providers on issues relating to spectrum interference”. Department’s contention that role of CCI relates to**

disputes amongst service providers while investigation and resolution of spectrum interference in a broader context rests with the Spectrum Manager, is not convincing. The Committee feels that such overlapping provisions in relation to assignment, interference etc. in spectrum matters may lead to confusion. Needless to mention, the divergence in various spectrum related provisions should be removed and the role and functions of the Central Government, CCI and the Spectrum Manager should be unambiguously spelt out in this regard.

Clause 25

125. Clause 25(2) reads “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”.

126. Some of the witnesses stated that rationale for an overriding provision of this nature in the Commission’s assignment of spectrum is not quite clear because while the Commission has been empowered to assign spectrum, the Central Government has been empowered to grant preferential assignment of any frequency or spectrum.

127. DoT has clarified that as most of the frequency bands are shared amongst different types of services, there could be a need for preferential assignment consistent with national priorities and, therefore, the provision in clause 25 regarding preferential assignment is not considered as overriding.

128. The Committee, on its part, feels that as the Spectrum Management Committee (SMC) will take care of all spectrum requirements of the Central and the State Governments and make available spectrum for assignment by the Commission only after meeting those requirements, provision for preferential assignment may turn out to be anti-competitive. It is true that consistent with national priorities, there could be a need for preferential assignment of spectrum. But lest such preferential assignment should lead to some complications like allegations of favouritism, disturbance of the level playing field and promotion of anti-competitiveness and discrimination, the Committee recommends that the provision of ‘preferential assignment’ of spectrum under clause 25(2) should be reconsidered in the light of these facts and adequate guidelines for the purpose be prescribed in the rules.

CHAPTER VII
LICENSE OR REGISTRATION

Clause 26

Licence or Registration of Service Providers

129. Clause 26 states:-

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

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

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

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

(2) Subject to the provisions of sub-section (1), the Commission may grant license or registration in such manner, and within such time, subject to such terms and conditions, on payment of such fee and after following such procedure as may be determined by regulations:

Provided that the fee for registration shall not exceed thirty thousand rupees.

- (3) The Commission shall notify, from time to time, one or more schemes or plans for licensing or registration containing such details as may be specified by regulations:

Provided that the Commission shall, before finalising such schemes or plans, consult the Central Government in order to ensure that the defence and security interests of India are fully protected.

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

- (5) The Commission may grant license to any person....

- (a) to provide or own network infrastructure facilities.

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

- (b) to provide networking services.

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

- (c) to provide network application services.

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

(d) to provide content application services.

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

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

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

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

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

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

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

130. In regard to the abovementioned clause the Committee received a number of representations from many individuals/organisations and some of them appeared before the Committee to put across their concerns. Their suggestions/comments broadly were that there was need to reduce the number of licence categories (with necessary changes being made in the definition of these categories in Clause-2 of the Bill), that single/composite licensing system should be provided, that categorization of different services under the five licence categories is not very clear and coverage of categories is not exhaustive and that the proposed licensing scheme may lead to over regulation/inappropriate regulation of the sector etc.

131. Asked to comment upon the abovementioned views/suggestions, the Department stated that five categories of licenses have been specified to take account of the existing system of licenses and the fact that currently different categories of licenses have different licence obligations etc. While the first two licence categories in the Bill correspond to the existing I.P-I and I.P-II categories, the other three licence categories broadly reflect existing service wise classification of licenses.

132. It has further been stated that the five categories of licenses specified in the Bill would help the Commission to frame licensing schemes or plans keeping in mind the historical/existing licences issued to various licensees. It would also help in providing a seamless migration to the new licensing regime. The provisions also make clear that the list of services is not exhaustive.

133. The Department of Telecom has also stated that it has not been possible to provide for single licence since each category of service carried its own licence conditions, entry fee, roll out obligations etc. and that it also has not been the international practice.

134. However, composite licensing has already been provided for – firstly because the new licensing regime will replace the existing large number of licence categories into only five and secondly because the scheme of composite licences has been further taken care of by Clause 26(8) of the Bill which empowers the Commission to grant licences either singly or jointly for one or more of the categories.

135. The Committee is more or less satisfied with the reply of the Department to the extent of introduction of five categories of licences as per the international

norms to take care of different categories of licensees who have different licence conditions, entry fee, roll out obligations etc. However, the danger of the sector being over-regulated or inappropriate regulation cannot be completely ruled out. It is, therefore, imperative that this extremely complex task is accomplished in an open and transparent manner with all fairness to the existing licensees so that there is no apprehension of under-investment or ineffective competition.

136. In order to remove confusion, the Committee recommends that explanations under Clause 26(6)(a), (b), (c) and (d), respectively should be removed.

137. The Committee further desires that in the Explanation under sub-clause-(6)(e) of Clause-26 (line 37 of page-13), “webcasting, personal website” should be added after “tele-medicine” with a view to covering all IT enabled services.

138. The Committee further recommends that after the word ‘media’ in Clause 26(1)(ii) (line 30 of page no.12) “other than cinematographic films and print media like newspapers etc.” should be added to avoid any ambiguity.

139. Similarly, in line 41 of page 12 relating to clause 26(2)(b) ‘grantees’ should be corrected as ‘grantee’ as the word ‘licensee’ in the same clause has been used in singular form.

140. The Committee recommends that in Clause 26(3) (line 46 and 47) for the words “provided that the fee for registration shall not exceed thirty thousand rupees” the words “provided that the fee for registration shall be determined by regulations but shall not exceed the amount as may be prescribed” may be substituted. This will obviate the necessity to make frequent changes in the Act when passed and also avoid repetition to this effect in Clause 27.

141. It is also not clear whether the registration fee and licence fee will have the same upper limit. This needs to be spelt out specifically.

142. The Committee also recommends that after line 45 of page-12 relating to Clause-26(3), sub-clause 3(A) should be inserted as follows with regard to requirement of registration:-

“3(A) Notwithstanding anything contained in sub-clauses (1), (2) & (3) above, the Central Government shall prescribe the facilities and services that require registration as aforesaid”.

Note:- Shri Sanjay Nirupam has opined that the numbr of licences for a particular applicant should be restricted to two only. The sub-Committee did not agree with this.

Clause No. 27

Period and form of Licence or Registration

143. *Clause 27(1) of the Bill states “A licence or registration shall be granted for such period as may be specified by regulations”.*

27(2) reads “A licence or registration, granted under this Act, shall be in such form and shall be subject to the payment of such fee as may be determined by regulations:

Provided that the fee for registration shall not exceed the amount referred to in the proviso to sub-section (3) of section 26:

Provided further that the Central Government may, by notification, in the public interest, exempt any person or class of persons from payment of the licence fee or registration fee”.

144. In this context, some of the witnesses have been of the view that since jurisdiction in relation to licencing vests with the Commission, the Central Government ought not interfere or grant such exemptions that would affect fair competition.

145. In response to that, the Department has stated that the clause should not be construed as being against the underlying principle of promoting a competitive environment as exemption from payment of licence or registration fee to any person or class of persons will be done by the Central Government “in public interest”.

146. The Committee can not subscribe to the statement made by the Department, because any exemption from payment of licence or registration fee to any person or class of persons, even if accorded in public interest, can lead to situations such as inadvertently going against the underlying principle of promoting a competitive

environment. The Committee, therefore, recommends that sub-clause(2) of Clause-27 (lines 7 to 14 of page-14) should be completely deleted and Clause ‘27(1)’ should be numbered as ‘27’.

Clause-28

Duties of Service Providers

147. Clause 28(3) stipulates that “every service provider holding a licence for distribution of broadcasting services shall provide a specified number and type of broadcasting services including those of the public service broadcaster and include only licenced broadcasting service in his delivery package for the purposes of distribution”.

148. Some of the non-official witnesses have requested for the deletion of the abovementioned provisions as according to them it may amount to interference with the operator’s nature of operations and affect his competitive ability besides causing undue hardship.

149. The Department has replied that it is a matter of detail to be specified in the subordinate legislation.

150. The Committee expects that the concern expressed in many quarters that the interest of the service provider will be hampered due to such provisions be taken note of while framing rules under this Act. The Committee also recommends that in Clause 28(1) and (2) (lines 15 and 23 page-14), the words “or applicable” which are redundant should be deleted in order to remove ambiguity.

Clause-29

Registration of Agreements

151. Clause 29 deals with certain agreements which are to be registered with the Commission.

152. In order to maintain confidentiality of such agreements upon request by a licensee, the Committee desires to incorporate the following proviso after Clause 29(c):-

“Provided that if specifically requested by a licensee, the Commission on being satisfied about the merit of such request, not disclose commercially confidential Clauses in the agreements to third parties”.

CHAPTER IX
SPECIAL PROVISION IN RESPECT OF CERTAIN SERVICES

Clause-31

Provision for live braodcasting of certain events

153. Clause 31 reads:

- “(1) For the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, the Central Government shall notify the same well in advance.
- (2) The national or international event of general public interest notified under sub-section (1) shall have to be carried on the network of a public service broadcaster as well.
- (3) In order to strive towards providing a level playing field for bidders for broadcasting rights, or persons interested in receiving broadcasting rights 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 public service broadcaster”.

154. Some of the witnesses have been of the view that the provision under Clause 31 are most likely to be seen as favouring a particular public service provider or a class of service providers which is not in line with the best practices of non-discriminatory regulation. They have further stated that the provisions under the clause would, in effect, prevent private service providers from acquiring exclusive rights with respect to certain events.

155. The Department has responded that the realistic situation in India is that only one broadcaster has an extensive terrestrial coverage, which carries content to the largest section of the population. Therefore, it will be unrealistic to deprive people of viewing

national/international events, particularly those held in India, on the ground of promoting free competition. In other words, the clause is necessary to ensure widest availability of viewing national or international events of general public interest and such interest must receive priority over commercial considerations.

156. The Committee is broadly in agreement with the reply of the Department that general public should not be deprived of viewing events of national/international importance in the name of free competition or under commercial considerations. However, with a view to giving a fair chance to all persons interested in receiving broadcasting rights for events, notified under sub-section (1), the Committee recommends that a proviso after Sub-Clause (3) of Clause 31 be added in the following manner:-

“Provided that while proceeding under sub-section(3), the Commission shall give adequate opportunity of hearing to all persons interested therein and also to ensure that the principles and terms determined by it do not dissuade broadcasters from bidding for the rights to broadcast any such event”.

CHAPTER X

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

Clause-32

Breach of terms and conditions of licence etc.

157. Clause 32 deals with the breach of terms and conditions of licence etc. and suspension, curtailment revocation of such licenses etc.

158. As regards the title of Clause 32 (lines 31 & 32 at page 15) of the Bill, the Committee recommends that the word ‘AND ADJUDICATION’ should be deleted and the word “AND” should be inserted between words ‘REGISTRATION’ and ‘CIVIL LIABILITY’.

159. Further, the provision in Clause 32(1)(e) which reads “initiate adjudication proceedings under this chapter” should be substituted by “determine and impose civil liability”.

160. In Clause 32(2), (line 2 of page 16), the word “not” should be corrected as “net”. The Committee further recommends that in view of the provisions of clause 16(4) to the same effect, lines 5 to 10 in Clause 32(2) (page-16) which read “and for this purpose.....Commission” should be deleted and the sentence should culminate with the words “or service”.

161. Also, in tune with principles of natural justice, an opportunity of hearing should be accorded to a person likely to be affected by an order under clause 2. Accordingly, the Committee recommends that the following proviso should be added after Clause 32(2):-

“Provided that before making any order or direction under this sub-section, the Commission shall give an opportunity to make representation and of hearing to the person or persons who is/are likely to be affected by such direction or order”.

Clauses 38 to 42

Filing of Complaint etc.

162. Clauses 38 to 42 deal with filing of complaint, reference for adjudication etc.

163. Since the Committee has already recommended against the system of ‘adjudication’ by ‘Adjudicating Officers’, sub-clauses (3) & (4) of Clause 38 (lines 4 to 13 of page 17) need to be completely deleted.

164. In Clause 39(1) (line 16 of page-17) the word “and” should be inserted between the words “Act” and “is” in order to have a correct sentence framing. Further, it is recommended that for the words “subject to.....for holding” (lines 14 to 16 of Page-17) the word “hold” be substituted.

165. The Committee reiterates that the need to provide for an Adjudicating Officer is not quite understood because the power to adjudicate and other related issues vest in the Commission itself as provided under Clause 21 and elsewhere. But due to the provision of an ‘Adjudicating Officer’, the Commission would be forced to transfer disputes for a separate and fresh adjudication on penalty etc. by the Adjudicating Officer. Needless to mention, it would unnecessarily delay decisions. The Committee, therefore, recommends that the term “Adjudicating Officer” wherever occurring in Clause 39(2) (line nos. 21, 23, 25 and 27 of Page-17), Clause

40(2) (line no.23 of page-18), Clause 41 (line no.27 of page-18) and Clause 42(2) (line no.31 of page-18) should be substituted with the word “Commission”.

166. Consequently the word “he” occurring twice in Clause 39(2) (line 28 of page-17) should be substituted with the word “it”.

167. Further, clauses 39(3) to 39(7) (line nos.29 to 49 of page-17 and line nos.1 to 10 of page-18) need to be completely deleted.

Chapter XI

Communication Appellate Tribunal

168. As a sequence to the amendments suggested to clause 39, in Clause 43(3)(b) (line 11 page 19) and Clause 43(5) (line 22 & 23 page 19) also the word “Adjudicating Officer” will have to be substituted by the word “Commission.”

169. Clause 43(6) reads that “*The Appellate Tribunal shall endeavour to deal with and dispose of every appeal preferred under sub-section (2) or sub-section (3) as expeditiously as possible; and all parties appearing before the Appellate Tribunal shall actively assist in ensuring that the appeal is disposed of not later than ninety days from the date of filing of the appeal*”.

170. The non-official witnesses in their written representations to the Committee were of the opinion that to enable matters to be quickly disposed of, the time frame ought to be 30 days.

171. In response, the Department of Telecommunications submitted that being a judicial process specific time limit may not be possible to adhere to, hence the amendment proposed may not be required.

172. **The Committee is not satisfied with the statement that being judicial process specific time limit may not be possible to be adhered to. The Committee feels that 60 days is a sufficient period in which the Appellate Tribunal should be able to dispose of an appeal filed by any person aggrieved by a decision or order of the Commission. Therefore, the Committee recommends the following amendments to be made-**

Substitute Clause 43(6) by:

43 (6) “The Appellate Tribunal shall dispose of every appeal within a period of sixty days.”

In clause 43(7), for the reasons explained in the preceeding paragraphs, the words “or the Adjudicating Officer”, be deleted.

Clause 44(3)- Composition of Appellate Tribunal

173. 44(3)- Provides that *“the appointment of Members of the Appellate Tribunal shall be from amongst persons recommended by the search Committee as may be prescribed”*.

174. It was represented to the Committee by various Associations/Organisations that the Composition of the search Committee has not been spelt out in the Bill. It was stated that the appointment of the Members of the Appellate Tribunal should be done by a selection Committee to be chaired by the Prime Minister with Leader of Opposition and Chief Justice of India being the other two Members on the Committee. Some of the witnesses stated that it should be in consultations with the Chief Justice of India (or even the Chairperson of the Appellate Tribunal) in addition to the search committee, as is the case with Central Administrative Tribunal (CAT) members. Some other witnesses opposed this view.

175. The Committee feels that in view the importance of the Appellate Tribunal, the Composition of Search Committee should consist of distinguished persons like the Vice-President, Speaker of Lok Sabha, the Minister of Communications, Minister of Information & Broadcasting, Leader of Opposition in Lok Sabha and Chairman, Standing Committee on Information Technology. The Committee, therefore, recommends that the words, “as may be prescribed” be substituted by the words- “constituted under sub-section (1) of section 7”.

176. The Committee further recommends that Explanation under clause 44(4) be amended by inserting the words “or is eligible to be” (in line 2) after words “has been.”

177. Clause 45(1)(b) reads that “*in the case of a member, he is, or has been, a Judge of a High Court, or has held the post of Secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or he is a person who is proficient in any of the fields specified in sub-section (2) and (3) of section 7*”.

178. The Committee was apprised by Association of Basic Telecom Operators (ABTO) that the Qualifications for the appointment of Members of the Tribunal (other than Chairperson, Judge or Secretary) might be provided similar to that of CCI Members. The removal of the Members of Communication Commission of India (CCI) should be as specified.

179. Reacting to the above proposal, the DoT stated that the intention was to have an actual Judge, rather than somebody who is only eligible to be a judge of High Court as Members of Appellate Tribunal. So, according to DoT amendment proposed was not required.

180. The Committee is not convinced with the logic advanced by the DoT. It feels that qualifications of Members of Tribunal should not be restricted to a Judge of High Court alone. It should be widened to include those also who are eligible to become a Judge of High Court. The Committee, therefore, recommends that in clause 45(1)(b) (line 22) after the words “has been” may be added the words “or is eligible to be.”

181. In line 25 of the same clause, the Committee further suggests that for the words “who is proficient”, the words “who has achieved excellence and eminence” be substituted to give added emphasis on qualifications required for this high job.

182. Clause 45(4)(b) provides for the discharge of the functions of Chairperson during his absence which reads “*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*”.

183. In the representations submitted to the Committee it was stated that Clause 45 (4) (b) provides that any Member can be appointed in the absence of the Chairperson for

certain specified reasons to discharge the functions of the Chairperson, while 44(4) (b) lays down that only a judicial Member can be preside over a bench. Hence the confusion needs to be sorted out.

184. In reply to a query by the Committee in this regard, the Department of Telecommunications stated that the Government would take into consideration various aspects before proceeding under the Clause.

185. The Committee is not at all satisfied with the views of the Department. The Committee feels that in order to remove any ambiguity in the law, in the absence of chairperson of the Appellate Tribunal, it will be appropriate that the senior most Member should discharge the functions of the chairperson until the day on which the chairperson resumes charge of his functions. Therefore, the Committee proposes that in clause 45(4)(b) (line 45-46 page 20) for the words “any Member of the Appellate Tribunal, as authorised so to do by the Central Government,” substitute the words “the senior most Member”.

186. The Committee also recommends that in order to give more thrust to the provision in Clause 45(6) the following amendment should be made in line 8 page 21:

After the words ‘Appellate Tribunal’ the words “and shall be ineligible to seek any employment, public or private, thereafter” be added.

187. Cluase 47(3) provides for the decision in case difference of opinion among Members in a bench of the Appellate Tribunal and reads “*if the members of a bench of the Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Appellate Tribunal who shall hear the point or points, and thereafter such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it*”.

188. A view was put across that in case the chairperson himself is one of the Members of the two member bench of the Appellate Tribunal, it will be the chairperson whose verdict will prevail, reducing the whole process to just a formality. It was also felt that the chairman should refer it to a third Member in order to make the procedure more purposeful.

189. Clarifying the position, DoT in reply have stated that it would be the prerogative of the chairperson as this practice is followed in the Judiciary. Hence, the proposed amendment may not be required.

190. The Committee is not satisfied by the view of the Department. The DoT is not correctly informed about the procedure followed by the Judiciary in case of a difference of opinion. The Committee feels that to resolve a difference of opinion between two members, Chairman should refer the matter to a third Member. The Committee, therefore, recommends that in clause 47(3) after the words “and make a reference to a chairperson” (line 46 page 21) the words “and the chairperson shall refer the matter to a third Member” be inserted.

CHAPTER XII

OFFICERS AND EMPLOYEES OF THE COMMISSION AND THE APPELLATE TRIBUNAL

191. Clause 53 deals with the officers and employees of Commission and Appellate Tribunal, sub-clause 53(1) reads “*the Commission or Appellate Tribunal, as the case may be, shall appoint such officers and other employees as the Commission or Appellate Tribunal, as the case may be, considers necessary for the efficient discharge of its functions under this Act subject to such conditions as may be prescribed*”.

192. It was submitted to the Committee in a representation that since both the functions i.e., licensing and regulation involve a lot of technical intricacies, it is desirable that the talent pool available with the Government should be suitably utilised for effective licensing and regulation of the converged telecom sector.

193. The DoT has been of the view that since the legislation will repeal the TRAI Act, Clauses 75 to 76 of the Bill respectively provide for the transfer of proceedings pending before TRAI and TDSAT to the new Commission and to the new Appellate Tribunal, with effect from the date of their establishment. Similarly, Clause 93(5) provides for the dissolution of TRAI and TDSAT with effect from the respective dates of establishment of the Commission and of the new Appellate body. Further, it was submitted that it was not considered desirable to mention in this legislation about the transfer of officers and employees, as these are matters of administrative detail.

194. The Committee is not satisfied with the explanation given by the Department. The Committee feels that it would be useful to provided for the transfer of persons working in TRAI and TDSAT in Clause 53(1) in order to avoid any dispute at a future date. Further, the employees of any official agency, the Committee feels, should not be ordinarily pushed into a state of uncertainty about their future career and they need to be assured about the same. Hence the Committee recommends that the following proviso be added after sub-clause (1) of Clause 53:-

“provided that from the day the Commission and the Appellate Tribunal are established, every person employed under the Telecom Regulatory Authority of India Act, 1997 and working with TRAI shall stand transferred to the Commission and any person working with the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) shall stand transferred to the Appellate Tribunal”.

CHAPTER XIV

RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS

195. Clause 59 deals with Right of way for laying Cables and erection of Posts – Right of facility providers in public land. Clause 59(1) reads “*Subject to the provisions of this Act, any person entitled under the provisions of this Act for providing services or facilities (hereinafter referred to as facility provider) may from time to time lay and establish cables and erect posts under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority*”.

196. A view was expressed that this clause in particular should be made subject to any policy/guidelines of respective State Government/Public authorities.

197. The DoT held the view that this may create difficulties for service providers to establish their network.

198. The Committee feels that this clause would give exclusive right to the service providers over public property. Further, in the long run, the right to way in laying Cables and erecting posts under, over, along, across, in or upon any immovable property can cause a problem which may have serious repercussions because

“immovable property” also includes ‘buildings’ and the vesting of such absolute right in the Service providers even over public buildings is fraught with serious doubts. Hence, the Committee recommends that in clause 59(1) after the words “immovable property” the words “other than buildings” be inserted.

199. Clause 59(4) reads *“the facility of right of way under this section for laying underground cables, and erecting posts, shall be available to all facility providers without discrimination and subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the option of the public authority”*.

200. In this context, divergent views have been expressed. State Government of Maharashtra stated that “the State Government has to have more powers than what has been presently specified in 59 (4) in giving the right of way for laying under ground Cables and erecting posts”. On the other hand, Govt. of Haryana submitted that “Clause 59 in particular should be made subject to any policy/guidelines of respective State Government/Public Authorities”. Some other witnesses have held the view that there should be a clause imposing penalty if the service providers availing right of way fail to restore the property to its original condition.

201. Asked for their comments on this issue, the DoT in a note has stated that the existing provision of sub-clause (4) gives sufficient flexibility to the public authority for laying down terms of reinstatement or restoration of property or payment in lieu thereof while granting permission to the facility provider.

202. The Committee feels that it is the duty of the service provider to restore the public property to its original condition. Therefore, the Committee finds it appropriate to clarify the position further with regard to the obligation of reinstatement or restoration of the property by the service provider and accordingly recommends that the following sub-clause be added after clause 59(4).

“59(4)A”. If a service provider availing the right of way under this section fails to restore the property to its original condition, he shall be liable to pay such additional charges as the public authority may levy in accordance with its rules and regulations and any person may file a complaint in this regard.”

203. The Committee also considers it appropriate to provide that the State Governments or public authority may lay common ducts in urban areas and offer the joint use thereof to service providers on payment of a fee.

204. In response, the DoT stated that the State Government and Public Authority have this inherent power with them. Hence, amendments proposed may not be required.

205. The Committee feels that it would be more appropriate if the clause is self explanatory though the State Government and Public Authority have such inherent power with them. The Committee is also of the view that the provision regarding ‘facility of right of way’ in the said clause is a significant one and needs transparency. So, it recommends that the following to be added after sub-clause 59(4)(A) as 59(4)(B).

“59(4)(B). Notwithstanding anything contained herein above, any State Government or public authority may lay common ducts in urban areas and offer the joint use thereof to service providers on payment of a fee.”

206. Clause 63 deals with the use of private land by facility provider which reads as under:-

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

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

63(2) Where, immediately before the commencement of this Act, a facility provider has made use of private land or premises for constructing or laying of cables or erecting posts without consent of the owner of the land or the premises and despite owner’s objection, the facility provider shall, within a period of six months from the date of commencement of this Act, obtain a written consent of the

owner, and the proviso to sub-section (1) shall apply mutatis mutandis to this situation.

64(1) The Commission may, by order, require any network infrastructure facility to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained on any private land or premises or any system or 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 supervision as the Commission may determine to be just.

64(2) The Commission may, by order, specify by whom, in what proportion and at or within what time the cost of doing anything required to be done under sub-section (1) shall be paid.

207. In this Context, the Government of Maharashtra submitted that “in case of dispute arising between the license holder and a landholder, the application for adjudication must either be made to the district court, or could lie with the State Government whereas appeal against the State Government could lie with the Commission”. On the other hand, the Government of Madhya Pradesh stated that “State Government and Local/District Administrators should also be made facilitators in this regard”. Some other non-official witnesses stated that there should be a penal provision against the Cable operators in case they don’t seek the consent of the owner.

208. The Department of Telecommunications has concurred with the proposal to amend clauses 63 and 64.

209. The Committee feels that for erection of high towers even on private rooftops, prior intimation should be given to the local Municipality etc. and if the latter objects to such erection on grounds of public safety etc. an agreed way out should be found. Accordingly, the Committee recommends that another proviso be added to clause 63(1) in the following terms:

“Provided further that before erecting a high tower on any building the service provider shall inform the concerned local authority about the same and if

the latter objects thereto within a period of two weeks from the date of receipt of such intimation, a tower shall be erected only on clearance of the proposal by that authority.”

210. The Committee also is of the view that it will not be practically possible for the Commission to deal with disputes arising between licence holders and property owners as it will be required to perform various other functions. It will thus be appropriate that these functions be carried out by the respective district courts within whose local limits of jurisdiction, the property concerned is situated. Hence, the Committee recommends that the following amendments be made in clause 63 & clause 64:-

(i) In clause 63(1) (line 18, page 26) substitute the word “Commission” by the words “District Court within whose local limits of jurisdiction the property concerned is situated” and in line 19 thereof, substitute the word “Commission” by the words, “the court”

(ii) In clause 63, again (line 20-21, page 26)

Substitute the words “the Commission may deem fit” by the words “the Court may determine within two months after hearing both the parties”

(iii) In clause 64 substitute the word “Commission” by the word “Court”

CHAPTER XVI

OFFENCES AND PUNISHMENT

211. Clause 68 deals with the punishment for unlicensed services and clause 68(1) reads as under:-

68(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; or*
- (b) *issuing of advertisements to such service; or*
- (c) *dealing in, or distribution of, equipment for decoding programme,*

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

212. The Committee is of the opinion that the words “knowingly” in clause 68(1) needs clarification to obviate any ambiguity later. It therefore, proposes that the word “knowingly” be substituted by the words “any person, knowing that the said service is operated without a license.”

213. Clause 69 - Since definition of the term ‘radio-frequency’ has been included in clause 2, Explanation to this effect in clause 69(1) may be deleted.

CHAPTER XVIII

MISCELLANEOUS

214. Clause 83 – For reasons given earlier, substitute the words “an Adjudicating Officer or the Appellate Tribunal or the Commission” by the words “the Commission or the Appellate Tribunal”

215. Clause 88(2)(h)– Delete part (h) of sub-clause (2) of clause 88

216. Clause 88 (2)(s) states that “*the manner in which the number and type of broadcasting services including those of the public service broadcaster is to be provided by every service provider under clause (i) of sub-section (3) of section 28;*

217. The Committee notes that in clause 88(2)(s) (line 26, page 32) the word ‘is’ is mentioned instead of ‘are’ which is singular whereas the clause talks about the type of services which are to be provided by the public service broadcaster. The

Committee therefore, feels that in clause 88(2)(S) (line 26 page 32) the word 'is' be substituted by the word 'are'.

218. **Clause 88(2)(u):** In view of the opinion expressed earlier about the concept of 'Adjudicating Officer', sub-clause (2)(u) of clause 88 also needs to be deleted.

219. Likewise, in **Clause 88(2)(v)** substitute the words "**an adjudicating officer**" by the words "**the Commission.**"

220. **Clause 88(2)(y):** Since provision of a Search Committee in the Act itself has been recommended, as a consequence thereof sub-clause (2)(y) of clause 88 will have to be omitted.

221. **Clause 92** states that:-

- (a) *in section 91, in sub-section (3), in clause (b), for the words "postal or telegraph authority", the words and figures "postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001" shall be substituted;*
- (b) *in section 92, for the words "postal or telegraph authority", wherever they occur, the words and figures "postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001" shall be substituted.*

222. As already recommended earlier in clause 1 dealing with title of the Bill by the Committee, it is reiterated that the words and figures "Communication Convergence Act, 2001" in clause 92 also be substituted by the term "Communication Act, 2002".

223. **Clause 93:** Clause 93 of the Bill provides for repeal of certain Acts, saving of licences and registrations and dissolution of certain Authorities. Sub-Clause (2) of Clause 93 stipulates that any person having an existing licence or registration under any of the Acts now being repealed may continue to use the same if he has made an application

under the new Act within a period of six months. Sub-Clause (3) deals with the grant of a new licence or registration under the new Act.

224. Almost all the non-official witnesses expressed reservations against these provisions and said that the new Act should not in any way affect the “existing licences” as they have entered the arena on the assurances of the Government and the latter must not arbitrarily alter the conditions of their licences or registration or permit new players at comparatively soft/easy terms.

225. The Committee has considered this question in depth and finds some merit in the view of the existing service providers. Accordingly, it recommends that the following proviso be added after sub-clause (3) of clause 93 (page 35 line 36):

“Provided that such licence or registration shall not deprive a person of any right already acquired under the licence or registration granted under any of the Acts repealed under sub-section (1) till the time such licence or registration would have remained in force under that.”

226. Clause 94 of the Bill repeals the Cable Television Networks (Regulation) Act, 1995. An amendment like the one suggested to clause 93(3), the Committee feels, is not necessary to this clause as the Cable Act (under repeal) only provided for registration while now licencing of cable operators is stipulated under the new Act.

227. The Committee, however, feels that there should be an alternate provision of making application, referred to in the clause 94(2). There should be a provision to submit the application also by registered post. Hence, it is suggested that the existing sub-clause (2) be re-numbered as 2(i) and after the sub clause so renumbered the following be added:

“2(ii) The application referred to in clause (i) above alongwith the requisite fee, may also be sent to the Commission by Registered Post with Acknowledge Due.”

228. Before parting with this Report, the Committee notes that Committee on Subordinate Legislation in its 24th Report (10th Lok Sabha) while analysing the reasons for delay in framing the rules/regulations and their notification has recommended that with a view to ensure timely framing of rules under the Acts passed by the Parliament,

the Ministry/Department concerned should ensure that the “framing of draft rules is initiated simultaneously with the drafting of the proposed Bill so that the draft rules become ready by the time the Bill is introduced in the House”. It has also been recommended that “whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a note in the ‘Memorandum of delegated legislation’ appended to the Bill to the fact that the draft rules have also been prepared under that Bill. **As such the Committee trusts that the draft rules have been framed by the Department of Telecommunications and the same will be amended in the light of the amendments now proposed by the Committee. The Committee recommends that the rules be ready by the time the House takes up the Bill for consideration.**