



COAI Response

On

The Communications Convergence Bill

2000

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New Delhi

COAI RESPONSE ON THE COMMUNICATIONS CONVERGENCE BILL 2000

CHAPTER I - PRELIMINARY

Section 2 (27)

The **definition of Public Authority**” must also include the bodies who are given the authority to develop and manage the affairs of developing Particular Township such as DLF, Unitech etc. These authorities do not fall in the definition of Public Authority. Problems have been faced with such kind of bodies for getting the ROW (Right of Way) permission and hence considerable delays have been experienced. In the interest of the faster implementation, it may be worthwhile to include such bodies in the definition of Public Authority.

CHAPTER III - COMMUNICATIONS COMMISSION OF INDIA

Section 14

A specific mention may be made with regard to the **power of the CCI to grant “Interim Relief” and to pass interlocutory orders.**

This issue has recently been a subject matter of dispute before TDSAT. Since the powers and authorities of the TDSAT have now been bifurcated between CCI and CAT, it may be worthwhile to bring clarity to this issue.

CHAPTER IV - OBJECTIVES OF THE COMMISSION

New Clauses

- i) In the guiding principle of the Commission, issues such as **avoidance of cross subsidization and need for accounting separation** may be specifically covered.
- ii) The same may also include a specific objective **to achieve efficiency, transparency and non-discrimination in spectrum management.**
- iii) A separate Section may also be incorporated stating that **anti-competitive behavior and practices will be specifically prohibited.** It should be provided as a specific duty of the CCI to maintain effective competition and to prevent anti-competitive behavior. The CCI should have specific powers to lay down the rules, guidelines and principles to prevent anti-competitive behavior and practices. The CCI should further have full powers to ensure effective compliance and implementation of such guidelines and be empowered to impose penalties for violation of these principles.

CHAPTER V - POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

Section 20 (2) (iii)

Under this Section, CCI has been given the power to fix “appropriate tariffs” COAI submits that **there should there be a further elaboration / clarification that these tariffs must be cost based and further that floor prices can also be fixed by the CCI.**

Section 20 (2) (v)

This Section should be strengthened to read “promote competition and efficiency in operation of communication services and network infrastructure facilities **and prevent ant-competitive behaviour.**”

Section 20 (2) (vi)

Under this Section, it may also be specifically provided that the **CCI will have the powers to fix terms and conditions of the interconnection, ensure compatibility and effective interconnection between network infrastructure facility, network service providers, Applications service providers, Content Applications Service Providers etc.**

Section 22

This Section gives the CCI the right to hear and resolve disputes amongst service providers, between a service provider and a group of consumers and disputes arising out of enforcement of any provision of this Act.

In contrast to the prevalent situation, wherein the TDSAT has been given the powers for both original and appellate jurisdiction, the Convergence Act proposes to bifurcate the dispute settlement process by giving the CCI the powers for original jurisdiction with the appellate powers remaining with the Tribunal.

In principle, COAI believes that this bifurcation is welcome as it will ensure that the CCI will have the first opportunity to modify / amend its Orders / Directives in the event of the same are adversely impacting any section of stake-holders. COAI would only like a further safeguard to be built into the Act whereby the **CCI has the powers to issue interim Orders and further, is obligated to conclude the said proceeding within a specified time frame as may be decided from time to time.**

If the aggrieved party is not able to get a conclusive outcome of the dispute within the time frame specified, he should be free to approach the Tribunal on the issue under dispute.

Section 22(1)

The CCI shall also hear complaints on the matters relating to the licence agreement and Licensed Services, issues relating to level playing field conditions.

Section 23

In order to ensure effectiveness of the CCI, it is desirable to specify the areas / issues in which the Government will have the right to give directions. This will enable transparency in the dealings of the CCI and will also ensure the speed of decisions.

The Government's right to issue policy, guidelines and directives to CCI may be restricted to matters of security, relations with foreign countries, etc.

CHAPTER VI - FREQUENCY SPECTRUM MANAGEMENT

All powers regarding spectrum allocation and management must vest solely with the CCI. CCI as a specialized independent body who is aware of the requirements of

both the industry and the Government would be in the best position to balance the requirements of the Government and the industry.

CCI should be vested with enough authority and the Act should provide clear guidelines for vacation and re-allocation of frequency band on a requirement basis. Pre-emptive allotment / pre-emptive allocation to any person shall be avoided.

All users irrespective of any category, must pay for the spectrum as this is a scarce national resource.

COAI believes that with the above, the process of spectrum allocation and management will be speedier and more efficient.

As to the role of the Spectrum Manager, COAI is of the opinion that **the Spectrum Manager may continue to represent the interests of the Government on the board of CCI.**

CHAPTER VII - LICENSING FOR COMMUNICATION SERVICES AND NETWORK INFRASTRUCTURE FACILITIES

Section 26

Instead of a negative proviso in the last paragraph of Section 26 which reads that “Provided that no license shall be granted under this sub-section if it conflicts with the objectives and guiding principles set out in Chapter IV particularly in relation to ensuring fair access and promotion of competition” – Section 26 may be prefaced with “Keeping in mind the objectives and guiding principles set out in Chapter IV.....”

Section 26 (2)

This Section which gives the CCI the right to determine the conditions subject to which a license may be granted or transferred, **must include a specific sub-section on the conditions under which a license may be assigned / transferred.** This specific sub-clause **will ensure financeability / fundability of telecom projects.**

Section 28

This Section dealing with the duties of service providers should include **a specific clause that service providers shall refrain from indulging in anti-competitive behavior and practices.**

Section 29

There **does not seem to be any justification to prescribe a condition for registration of shareholders / promoters agreements with CCI.**

CHAPTER VIII - LICENSING OF POSSESSION OF WIRELESS EQUIPMENT

Section 30 – (read with Section 2 (38) Section 4 and Section 5)

Section 30 requires that any person who intends to possess any wireless equipment shall make an application to the CCI for a grant of a license – with the proviso (in Sections 4 & 5) that the Government may, by notification exempt in public interest any person or class of persons or any wireless equipment or class or classes of wireless equipment from the need to obtain a license.

COAI firmly believes that **the power to exempt any wireless equipment from licensing provisions should vest with the CCI** otherwise the entire point of having an empowered CCI is defeated.

COAI further **some wireless items should be exempt by law itself** as under the current proposal, every item of wireless equipment – radios, TVs, etc, will need a license from the CCI. Further, the Act should also specifically exempt wireless equipment for CUG use from the requirement of licensing.

CHAPTER X - PENALTIES AND ADJUDICATION

Section 39

It may be provided that **before proceeding to impose any penalty, an opportunity to the erring service provider is provided to rectify the breach in a time bound manner.** This will be in line with the principle, natural justice and would also avoid undue treatment for inadvertent / minor breaches.

Section 40

As submitted for Section 14, a clarification is also needed under this section that the **CCI has the powers to grant “Interim Relief” and to pass interlocutory orders.**

CHAPTER XI - COMMUNICATIONS APPELLATE TRIBUNAL

Section 43

It must be clarified that the **Appellate Tribunal possesses the powers to grant interim relief and pass other interim orders.**

Section 49

Under this Section too, It must be clarified that **the Appellate Tribunal possesses the powers to grant interim relief and pass other interim orders.**

CHAPTER XIII - RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS

The Act must clarify that the **ROW rights granted to Private Access Service Providers shall be at par with incumbent operators or that of Central Government.**

Section 59 (1)

The Act provides that the right to lay cables and erect posts is allowed to a Licensee of a network Infrastructure facility only. This may be taken to imply that to an application service provider, the ROW may not be granted. Presently a CMSP / FSP is allowed ROW Permissions. Therefore, there should be **a clear provision to grant ROW permission to all kinds of Service Providers.**

Section 59 (3)

Rather than providing that ROW shall not be unreasonably withheld or denied, the Act should clarify that **ROW shall not be denied.** There may be a suitable mechanism to decide upon “Compensation”. **The permission to grant ROW and the issue of**

compensation shall be decided in a time-bound manner as determined by the CCI from time to time.

Disputes between the Service Provider and Public Authority or otherwise shall also fall within jurisdiction of CCI. This will ensure early resolution of issues. The resolution of disputes by District Courts will entail delays.

CHAPTER XVII - MISCELLANEOUS

Section 78

This Section provides that except for the provisions of the Act for spectrum management, none of the provisions of the Act shall apply to the network infrastructure and facilities or communication services owned and operated by the Central Government or any State Government for their own use.

The COAI would like a clarification that **the exemptions from the provisions of this Act shall not apply to any commercial entity or commercial activity of the Government.**

CHAPTER XVIII - REPEAL AND SAVINGS

Section 87 (2)

This Section provides that the licensees licensed under the repealed acts must make a fresh application to the CCI for a grant of license under the new Act.

The existing rights of the licensees under the current legislation, as also rights granted to him by subsequent amendments in his license terms, must be maintained under the new law and there should be no need for the licensee to apply for a license under the new Act.

The existing licenses should be deemed to have been issued under the New Act.

ADDITIONAL POINTS

i) Seamless Interconnection & Sharing of Infrastructure

Provision of fair and non-discriminatory interconnection needs to be made a fundamental duty of the service provider (especially in case of dominant undertakings) to ensure seamless connectivity. This may be added as a sub-clause under Section 28.

Interconnection is a very integral aspect of providing any communication service and this aspect needs to be stressed and strengthened in the proposed Bill. There must be a separate / **specific Section in the Communications Bill, outlining the rights and duties of the Service Providers with respect to provision of fair, reasonable and non-discriminatory interconnections on equitable terms and in a transparent manner.**

The operators should be allowed to freely negotiate and agree to the terms of interconnectivity including revenue sharing and any other terms of consideration. In case any part to the negotiation delays the process unreasonably and / or no agreement can be reached within a stipulated time of say 90 days, then any party to the negotiation should be entitled to request for mediation by the CCI to determine the terms and conditions of interconnectivity.

“Timely” provision of interconnection is a very important aspect especially in view of the CMSPs ongoing attempts for the past 4 years to arrive at an interconnection agreement.

As already submitted in our earlier representation, till vibrant and healthy competition has been established, it would be desirable that **for a pre-determined period of say 3-5 years, the Act specify that it would be the duty and function of the CCI to determine interconnection charges on a forward-looking economic basis.**

Further, it is suggested that **there could be an independent Interconnection manager on the same lines of a Spectrum Manager, who will be responsible for handling all functions relating to Interconnection.** As and when any new licenses are granted it should be mandatory for the existing operators to interconnect with them. There could be **ceiling rates specified for interconnect revenue sharing within which the operators should be free to decide the terms of interconnection.**

ii) Internet Related Issues

It is presumed that the Internet related issues will be covered under bandwidth services. If it is so, the **issues relating to domain names and dispute relating thereto may also be brought in the purview of the CCI** so that there is a speedy resolutions for issues in a time bound manner.