

07 November'2001

COMMUNICATIONS CONVERGENCE BILL 2001

I. INTRODUCTION

As has been submitted by us earlier, there are certain critical prerequisites which must be implemented before the Convergence Bill in order to ensure that the proposed legislation meets the fundamental end-requirements of vibrant and effective competition to deliver the benefits of affordable world class communications to the citizens of India.

Introduction of Convergent licensing in India, must be done through a phased & logical process involving the following critical steps:-

- 1. Implement the mandates of NTP 99.**
- 2. Enunciation of a clear Convergence Policy**
 - Formulated in an open, transparent & consultative manner.
- 3. Constitution of a strong Competition Commission**
 - To address concerns regarding SMP operators.
- 4. Formulate detailed Draft Rules & Regulations**
 - In an open transparent & consultative manner.
- 5. Provision of a clear Migration path for existing licensees**
 - Spell out principles of migration.

Ensure fair treatment of existing operators.

COMMUNICATION CONVERGENCE BILL, 2001

Clauses	Existing Provision	Comments & Recommendations
Preamble	<p>A Bill to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunication, and multimedia), for the establishment of an autonomous Commission to regulate carriage of all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.</p> <p>(i) WHEREAS it is considered necessary –</p> <p>(ii) to facilitate development of a national infrastructure for an information based society, and to enable access thereto;</p> <p>(iii) to provide a choice of services to the people with a view to promoting plurality of news, views and information;</p> <p>(iv) to establish a regulatory framework for carriage and content of communication in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and to provide for the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.</p> <p>BE it enacted by Parliament in the fifty-second Year of the Republic of India as follows:-</p>	<p>While the Bill is to promote, facilitate and develop in an orderly manner the "carriage" and also the "content" of communications, the Preamble provides for, inter alia, the establishment of an autonomous Commission to regulate only "carriage" of all forms of communications. Therefore, the word "content" may also be added with respect to the establishment of an autonomous Commission.</p>
Clauses	Existing Provision	Comments & Recommendations
<p>1. (1)</p> <p>(2)</p> <p>(3)</p>	<p>Short title, extent and commencement This Act may be called the Communication Convergence Act, 2001.</p> <p>It extends to the whole of India.</p> <p>It shall come into force on such date as the Central Government may, by</p>	<p>The applicability of the Act may be extended to the territories beyond India also and may be applied to contraventions committed outside India, as in case of Information Technology Act, 2000.</p>

	notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.	
<p>2. (5)</p> <p>(30)</p> <p>(33)</p>	<p>Definitions</p> <p>In this Act, unless the context otherwise requires,-</p> <p>"channel" means a set of frequencies used for transmission of a programme;</p> <p>"spectrum" means a continuous range of electromagnetic wave of frequencies upto and including a frequency of 3000 giga hertz;</p> <p>"Universal Service Obligation" - means obligation in respect of services as may be prescribed;</p>	<p>The expression "convergence" may be defined.</p> <p>The definition of the term "channel" may be modified because besides a program, a channel in telecom parlance also means an audio or a radio channel for the transmission of voice or non-voice messages.</p> <p>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.</p> <p>(a) The term "Universal Service" may be clearly defined as "Access to all people for Basic Telecom Services at affordable and reasonable prices".</p> <p>(b) 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.</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>(c) The Government should not make rules or prescribe the Universal Service Obligations. It should be left to CCI. The Statute must lay down the desired end-objectives sought to be achieved through USO. CCI should then formulate USO package in terms of receipt and disbursal of funds to meet USO objectives. (Even if the Government were to have a say in this matter, it should only be upon mandatory prior recommendations of CCI).</p> <p>(d) Special provisions may be made for</p>

		the level and structure of tariff for the Subscribers of Universal Service. Special provisions may also provide for quality of service.
4. (1) (a) (b)	<p>Provision of services, etc.</p> <p>No person other than a public service broadcaster shall-</p> <p>Own or provide any network infrastructure facility, or Provide any networking service, or any network application service or any value added network application service, or any content application service, without a licence or registration:</p> <p>Provided that all facilities and services exempted from licensing or registration immediately before the commencement of this Act shall continue to be so exempt under this Act, until otherwise notified by the Central Government.</p> <p>(2) (a) (b)</p> <p>The Central Government may, by notification, exempt any-person, or class of persons; or facility or service, from the provisions of this section.</p>	<p>The word "registration" in this Section etc., appears to be misplaced inasmuch as the registration is referable to registration of certain Agreements like Promoters Agreement, Interconnectivity Agreement etc., under Section 29 of the Bill. It also has reference to some schemes under Section 26(4). But its purpose or objective is not spelt out.</p>
Clauses	Existing Provision	Comments & Recommendations
5. (1) (2) (a)	<p>Prohibition of possession of wireless equipment without a license</p> <p>No person shall possess any wireless equipment without obtaining a license in accordance with the provisions of this Act:</p> <p>Provided that the Central Government may, by notification, exempt in the public interest any person or class of persons or any wireless equipment or category of wireless equipment from the provisions of this section.</p> <p>Nothing contained in subsection (1) shall apply to - any person or equipment licensed under any law for the time being in force immediately before the commencement of this Act; or</p>	<p>(a) A Clause may be added that the Subscriber equipment does not require any Licence under the Act.</p> <p>(b) "Subscribers Equipment" may be defined as meaning any equipment, whether hardware or software or device owned and / or used by the end user for availing of any service provided under this Act.</p> <p>In addition to the word licenced, it may be advisable to add a word "permitted / allowed otherwise". This will clarify that all existing handsets/ subscriber equipment owned / possessed by the Subscribers of various services can continue to be used legally.</p>

6.(1)	<p>Establishment of Commission With effect from such date as the Central Government may, by notification appoint in this behalf, there shall be established for the purposes of this Act, a Commission, to be known as the Communications Commission of India and the Head Office of the Commission shall be located at Delhi with Regional Offices at Kolkata, Chennai and Mumbai</p> <p>(2)</p> <p>(3) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract, and shall by the said name sue and be sued. The Commission shall consist of the following Members, namely:-</p>	<p>Appropriate provisions for the establishment and functioning including hierarchical functions of the regional offices at Kolkata, Chennai and Mumbai needs to made. (It should not be left to be determined by regulation under Section 12 because such functions and hierarchical positions require stability, uniformity and predictability).</p>
Clauses	Existing Provision	Comments & Recommendations
(a) (b) (c) (4)	<p>a Chairperson; not more than ten persons to be appointed as Members; and the Spectrum Manager, as ex-officio member. 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.</p>	
7. (1) (2) (3)	<p>Appointment of Chairperson and Members. 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.</p> <p>One-half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities.</p>	<ul style="list-style-type: none"> - The composition of the "Search Committee" to be set up by the Government must be clearly laid down. - Attention may be drawn in this regard to the first draft of the Communications Convergence Bill which had provided that a Search Committee would be appointed by the President of India from a panel that included the Prime Minister, Leaders of the Opposition, in the Rajya Sabha and Lok Sabha, etc. - Such a multi-party, multi-disciplinary Search Committee

	One-half of the Members shall be appointed from amongst persons of eminence in the specialized fields such as, telecommunications, broadcasting technology, information technology, finance, management and administration or law.	<p>would ensure the independence & autonomy of CCI / CAT.</p> <p>- It may also be clearly stated that the selection process will be same for both the full-time as well as the part-time members of CCI.</p> <p>The reference to "one half of the Members" should equally and separately apply to both "whole time" and "part time" Members.</p>
14. (1)	<p>Power of Commission to regulate its procedure.</p> <p>The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-</p>	CCI has been entrusted with a host of functions i.e. - making regulations, issuing Licences, assigning spectrum etc., as also adjudicatory functions. It must be clarified that CCI possess the powers as are vested in Civil Courts with respect to discharge of its such functions under the Act which relate to the determining or adjudicating any issue/
Clauses	Existing Provision	Comments & Recommendations
(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (3)	<p>summoning and enforcing the attendance of any person and examining him on oath;</p> <p>requiring the discovery and production of documents;</p> <p>receiving evidence on affidavits;</p> <p>issuing commissions for the examination of witnesses or documents;</p> <p>subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1972, requisitioning any public record or document or a copy of such record or or document, from any office;</p> <p>dismissing an application for default or deciding it, ex parte;</p> <p>setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and</p> <p>reviewing its decisions;</p> <p>granting interim relief; and</p> <p>any other matter which may be prescribed.</p> <p>The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice</p>	<p>dispute and not with respect to the recommendatory or such other functions. (This comment will be relevant only if CCI adjudicatory powers are retained. However, we strongly recommend some changes as regards the adjudicatory powers from what proposed in Bill. Please see our comments regarding Clause 21 (1) blow).</p> <p>Though the CCI is empowered to regulate its own procedure, it may still be advisable to make provisions for a quorum and decisions to be taken by majority with casting vote vested in the</p>

	and, subject to the other provisions of this Act and of any rules, the Commission shall have powers to regulate its own procedure, including the places at which it shall conduct its business.	person presiding over the meeting etc.
Clause	Existing Provision	Comments & Recommendations
15. (2)	Secretary-general of the Commission. For the purpose of subsection (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.	The Secretary General of the CCI , being an important position, it is suggested that he should also be chosen from amongst a panel selected by the Search Committee.
16. (1)	Setting up of Panel, Distribution of Business, etc. 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 in content application services, and the Chairperson shall preside over the meetings of the Panel: Provided that wherever necessary the Chairperson may place before the Commission any issue relating to the matters referred to in this section. Except for the power to make regulations, the Commission may, by general or special order, make provisions for the distribution of its business amongst Members as may be considered appropriate and necessary. For the discharge of its functions under this Act, the Commission may, if it considers necessary, set up bureaus or divisional organizations on the basis of its principal workload operations and subject to the provisions of section 53, such bureaus or divisional organizations	(a) The composition of the Panel (content) must be clearly stated. (b) Functions of this Penal may only be recommendatory to the CCI. Because when all other decisions are taken by the whole of CCI, the decisions relating to content should not be left to a smaller body. It must 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 whole CCI, because functions like issuing of Licences etc. are very serious powers. Some guidelines may be laid down for setting up of Bureaus and Divisional Organizations including source and eligibility of their officers and employees etc.
16. (2)		
16. (3)		

	shall be provided with such officers and other employees as are necessary to perform their functions.	
Clause	Existing Provision	Comments & Recommendations
17.	<p>Objectives and guiding principles</p> <p>The Communications Commission of India while exercising its functions shall be guided by the following principles governing the administration of this act namely:</p> <p>(i) that the communication sector is developed in a competitive environment and in consumer interest;</p> <p>(viii) that equitable, non-discriminatory interconnection across various networks are promoted;</p> <p>(xi) that the principle of a level playing field for all operators, including existing operators on the date of commencement of the Act, is promoted so as to serve consumer interest.</p>	<p>CCI must encourage technology neutrality.</p> <p>The word "consumer interest" may be widened to state that CCI must ensure that users derive maximum benefits in terms of choice, price, quality and value for money.</p> <ul style="list-style-type: none"> - In addition to being equitable and non-discriminatory, it may also be provided that Interconnection must also be cost-based. - This is the practice the world over, and this is also the principle that has been adopted by the Regulatory Authority. <p>It is laid down that while exercising its functions, the Commission shall strive to achieve the objectives and guiding principles of, inter alia, level playing field for all Operators including existing Operators so as to serve the consumers interest.</p> <p>(a) Level playing field should not only be provided as an objective and guiding principle but it should also form part of Section 18 which deals with the powers, duties and functions of the Commission.</p> <p>(b) Proper provision for ensuring level playing field all through the operation of the Licence Agreements and provision of services needs to be made. It should not be restricted to grant of the Licences as mentioned in the proviso to Section 26(8), which provides that the Commission shall not grant a Licence if it conflicts with the objectives and guiding principles, which naturally includes level playing field.</p>

Clause	Existing Provision	Comments & Recommendations
		<p>(c) The phrase "level playing field" has been qualified by the words "so as to serve the consumer interest". Though one may contend that all will serve consumer interest but "level playing field" concept is directly and heavily related to the economic effect of various steps taken by the Government / CCI on the Service Providers and their financial viabilities and therefore must not be qualified by these words.</p>
<p>18. (2)</p> <p>(i)</p>	<p>Powers duties and functions of the Commission.</p> <p>Without prejudice to the generality of the provisions contained in subsection (1), the Commission shall-</p> <p>Carry out management, planning and monitoring of the spectrum for non-strategic/ commercial usages subject to the provision of section 24A;</p>	<p>(a) A negative covenant be provided that CCI shall abstain from taking any steps/ measures which may contradict, restrict or distort the objectives stipulated in Section 17.</p> <p>(b) The principle of proportionality must permeate all powers, duties and function of the commission.</p> <p>(c) A negative covenant may be provided stating that the Commission shall ensure that there does not take place any distortion or restriction of competition particularly between incumbent/ dominant undertakings and other Operators.</p> <p>(d) CCI must ensure that assigned spectrum is efficiently used and its assignment is cost effective.</p> <p>(e) It must be one of the duties of CCI to remove all obstacles in the provision of service keeping in view the objectives and guiding principles of the Act.</p> <p>(f) CCI must ensure development of consistent regulatory practices and that there should be no discrimination in the overall treatment of undertakings.</p> <p>(g) CCI must ensure a high level of protection of personal data and privacy.</p> <p>(h) It must specifically be provided that the Commission shall carry out all its relevant functions after following</p>

Clause	Existing Provision	Comments & Recommendations
		<p>clearly established procedures and consultation process. The basic guidelines/ parameters of these consultative processes also needs to be specifically stated.</p> <p>(i) The process of consultation must apply even to formulation and laying down of commercial codes. These commercial codes must thereafter be registered under Section 29 or under some other provision so that even violation of these commercial codes must invite some financial penalties in the nature of civil liability. In other words, some legal effect must be given to the commercial codes also.</p> <p>(j) Apart from the duties of encouraging competition, it should be clearly stated that CCI shall take all steps to prevent anti-competitive practice and behaviour, particularly in the matters of interconnections, cross-subsidisation, rate fixing, market sharing, boycott of suppliers of services, apparatus or competitors.</p> <p>k)(i)CCI must be vested with the power to control, plan, administer, manage and assign the numbering and electronic addressing of all services. The CCI must develop, in a time bound manner, a numbering and electronic addressing plan which must include, inter alia, :-</p> <ul style="list-style-type: none"> (i) The use of different numbers and electronic addresses for different kinds of services. (ii) The assignment of numbers and electronic addresses. (iii) The transfer of assigned numbers and addresses.
Clauses	Existing Provision	Comments & Recommendations
		<ul style="list-style-type: none"> (iii) The use of assigned numbers and

	<p>(ii) grant licenses or registration for purposes of the Act, and determine and enforce license or registration conditions and determine fees, including fees for usage of spectrum, wherever required;</p> <p>(vi) formulate and determine conditions for fair, equitable and nondiscriminatory access to a network infrastructure facility or networking service and such other as may be prescribed;</p>	<p>electronic addresses.</p> <p>(iv) The portability of assigned numbers and electronic addresses etc.</p> <p>(ii) CCI must ensure that the numbering plan and procedures are applied in a manner that gives equal treatment to all providers of services. There should be no discrimination in their allotments or their usage by the Service Providers.</p> <p>(l) CCI must encourage and ensure infrastructure sharing and co-location.</p> <p>(m) CCI must encourage and ensure seamless interconnection.</p> <p>(n) CCI must encourage and ensure business separation and accounting separation to, inter alia, avoid cross subsidisation.</p> <p>(o) CCI must ensure right of way to all Service Providers.</p> <p>(p) Both CCI and the Government must frame the regulations and the rules under Section 89 and 88 respectively in a time bound manner. Because this is required to ensure clarity, stability, and predictability in regulating the sectors.</p> <p>(q) CCI must possess power to issue directions for the purposes of exercising its powers under the Act, as was provided in TRAI Act 1997.</p> <p>(r) CCI must ensure "predictability" in regulating under the Act.</p> <p>- It must be clarified whether the fees determined by CCI for use of spectrum will apply to both strategic & commercial spectrum.</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>- The term 'wherever required' is vague & ambiguous as it is not clear who will determine whether spectrum fees are to be paid.</p> <p>This empowers the Commission to formulate and determine conditions for</p>

		<p>fair, equitable and non-discriminatory access (interconnection). However, more details/ provisions are required to be enacted on this subject, which may include :</p> <ul style="list-style-type: none"> (i) It must be provided that this access / interconnection shall also be cost-based. (ii) All operators and specifically dominant /incumbent Operators should be duty bound to interconnect their networks, facilities and services with all other Operators. (iii) CCI should evolve and establish an access (interconnection) code which may provide for model terms and conditions which may include, but not be limited to :- <ul style="list-style-type: none"> (a) The timeframe and procedure for negotiation and concluding of Access (Interconnection) Agreement (b) Rate methodologies (c) Fair, transparent and equitable principle of making interconnection available. (d) Protection of intellectual properties . (e) Protection of commercial information. (f) Provisioning of facilities. (g) Sharing of technical information etc. (iv) The Operators should be allowed to freely negotiate and agree to the terms of interconnectivity including revenue sharing or other terms of consideration. Any party to the negotiations should be entitled to request
Clauses	Existing Provision	Comments & Recommendations
		<p>for mediation or participation of the Regulator in the process. Further, in case any party to the negotiations delays the process unreasonably and/or no agreement can be reached, whether with or without such mediation of the Regulator within a stipulated period of time, say 90 days,</p>

	<p>(vii) take such measures as may be prescribed to protect consumer interests and promote and enforce Universal Service Obligations;</p> <p>(3) The commission shall ensure transparency while exercising its powers and discharging its functions.</p>	<p>any party to the negotiations should be entitled to petition the CCI for determination of the terms and conditions of interconnectivity.</p> <p>(v) Similar provisions may be made for infrastructure sharing by the Operators and same process may be made applicable to them except that in case of infrastructure sharing, more flexibility in negotiations without any mediation of the CCI may be provided for.</p> <p>(a) The clause uses the words "as may be prescribed". Under the Bill, only the "Central Government" can "prescribe" by making "rules". In other words, CCI will not suo moto protect consumer interest or promote USO as a function or duty. It will have to be first prescribed by the Central Government. This anomaly needs to be corrected.</p> <p>(b) In addition to enforcing USO, the CCI should also be responsible for formulating the USO requirement/ code.</p> <p>In addition to the Commission ensuring "transparency" while exercising its powers and discharging its function, it must be added that the Commission shall also ensure "impartiality" and "predictability". These processes and procedures must be made public to ensure predictability.</p>
Clauses	Existing Provision	Comments & Recommendations
<p>21. (1).</p> <p>(a)</p> <p>(i)</p>	<p>Hearing of complaints and resolution of disputes by the Commission</p> <p>The Commission shall -</p> <p>decide any dispute or matter -</p> <p>between two or more service providers on issues relating to spectrum interference, interconnectivity, denial of</p>	<p>(a) While on one hand, CCI is empowered to grant Licence under Section 18 (2) (ii), on the other hand, it is empowered to determine / adjudicate any contravention of the terms and conditions of the Licence under Section 21(1) (b). This overlapping must be avoided.</p>

	<p>fair access and practices restrictive of fair competition; and</p>	<p>(b) Similarly, Under Section 18(2) (vi), the CCI is empowered to determine conditions for access (Interconnection) and under Section 21(1)(a)(i) the CCI is empowered to decide disputes between two or more Service Providers on issues relating to Interconnectivity. This overlapping must be avoided.</p> <p>(c) To avoid all this overlapping and future confusion, instead of Commission having powers to adjudicate, all these powers must be vested in the Adjudicating Officer.</p> <p>(d) Provision must be made that all disputes between two or more Service Providers would be adjudicated by the Adjudicating Officer.</p> <p>(e) Specific provision must be made that disputes between the Licensor (which is the CCI) and the Service Providers / prospective Service Providers / bidders etc., shall be adjudicated by the Adjudicating Officer (otherwise all thir disputes will have to be agitated before the Civil Courts).</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>(f) The Adjudicating Officer must, therefore, be an entirely independent Body. [In fact, in this context, it may even be advisable to maintain the present structure of the Appellate Tribunal (TDSAT) which possess both original and appellate jurisdictions instead of having two separate Bodies. In any event, even if two separate Bodies are to be kept, then the Adjudicating Officer must be a separate entity having only original jurisdiction. And all decisions, determinations, orders of the CCI as also of the Adjudicating Officer may be appealable to the Appellate</p>

		<p>Tribunal.]</p> <p>(g) All consequential amendments to various provisions of the Bill will be required.</p> <p>The power of the CCI to decide on issues of spectrum interference is in conflict with Section 23(4)(v) which gives the Spectrum Manager the powers to resolve issues of spectrum interference. In fact, even this power to resolve disputes relating to spectrum interference may be adjudged by Adjudicating Officer or Appellate Tribunal, as the case may be, because both i.e. CCI and Spectrum Manager are involved in spectrum assignment also.</p> <p>- Although disputes on issues relating to practices restrictive of fair competition come within the purview of CCI, it is not clear how the role of the CCI in this regard will compare with the provisions of the proposed Competition Bill 2001. The definition of services in the Competition Bill 2001 includes communication services.</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>- Section 21 of the Competition Bill, 2000 states that where in the course of a proceeding before any Statutory Authority, an issue is raised by any party that any decision which such Authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such Statutory Authority shall make a reference in respect of such issues to the Commission. The result would be that at any stage, at any time, in any proceedings before the TRAI, the Adjudicating Officer or the Tribunal, any party may raise an issue that the decision of these Authorities may be violative of the Competition Act. With the result that such issues will have to be referred to the Competition</p>

		<p>Commission. It would be counter productive because:</p> <p>(a) Most of the matters in telecom involve competition issues and all these may therefore have to be referred to the Competition Commission.</p> <p>(b) Secondly, the Authorities under the Convergence laws are those who deal with telecommunication issues day in and day out and are more well versed with this subject and therefore could deal with the competition issues relating to telecommunication perhaps better than any other Authority.</p> <p>(c) Therefore, such a reference will not only delay the process, it is a clear case of the avoidable/unwarranted overlapping of the jurisdictions and the powers of the two Commissions and will tend to create more complications.</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>(d) The views of the two Commissions may also be conflicting.</p> <p>Further, the Competition Commission possess power over matters of even predatory pricing. And Section 21 of Convergence Bill also provides for the adjudication by CCI on disputes relating to "Practices restrictive of fair competition".</p> <p>In other words, there is duality of jurisdiction on these issues:-</p>

		<p>(i) That of Competition Commission and the other</p> <p>(ii) That of Communication Commission.</p> <p>- It is therefore imperative that this overlapping of dispute resolution functions must be resolved. It is suggested that all telecom/ convergence related disputes, involving competition issues, should also be dealt with under the CCI Act, and should not be referable to other Tribunals. This will avoid duplicacy and delays. Further the Bodies under the CCI Act will be more well versed with telecom/ convergence issues.</p> <p>As given in Section 43(6) in the case of appeals before the Communications Appellate Tribunal, it is suggested that the time frame for resolution of disputes before the CCI/Adjudicatory officer too, be clearly specified as a maximum of ninety days.(This is subject to comments on CCI's Adjudicatory Powers).</p>
Clauses	Existing Provision	Comments & Recommendations
22.(1)	<p>Directives by the Central Government.</p> <p>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 licence, or in any other form.</p>	<p>- The Policy directives by the Government on the mode of issue of licenses, will greatly compromise the independence & authority of the CCI.</p> <p>- Further, Directives of the Government must be limited to matters of policy & not procedure.</p> <p>- CCI as an expert techno-economic body would have the necessary expertise to determine the mode and procedure under which licenses are to be issued.</p> <p>- The policy powers of the Government must be restricted only to matters which affect the interests of sovereignty and integrity of the country, friendly relations with</p>

		foreign states, public order, decency or morality.
	<p>Spectrum Management Committee</p> <p>23. (1) The Central Government shall be responsible for coordination with international agencies in respect of matters relating to Spectrum Management and also for allocation of available spectrum for strategic and non-strategic or commercial purposes.</p> <p>(2) For the purposes of discharging the responsibility under sub-section (1), the Central Government shall establish, by notification, a Spectrum Management Committee with the Cabinet Secretary as its Chairman and consisting of such other members as may be notified by it from time to time.</p>	<p>(a) The management of spectrum must be "effective" management. It should therefore be specifically provided that the allocation and assignment of spectrum shall be based on objective, transparent, non-discriminatory proportionate criteria and in a timely manner.</p> <p>(b) Disputes relating to resolution of spectrum interference must also be referable to the Adjudicating Officer and not to Spectrum Manager who is involved in allocation / assignment of spectrum.</p> <p>(c) The Service Providers may be empowered to transfer the right to use radio spectrum to third parties. Such</p>
Clauses	Existing Provision	Comments & Recommendations
(3) (4) (i) (ii) (iii) (iv)	<p>The Central Government shall notify Wireless Advisor to the Government of India as Spectrum Manager, Government of India, to act as Member-Secretary of the Spectrum Management Committee.</p> <p>Subject to general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall, inter-alia, perform the following functions, namely :-</p> <p>(i) to co-ordinate with international agencies, matters relating to overall spectrum planning, use and its management;</p> <p>(ii) to carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including those of defence, national security and of the public service broadcaster.</p>	<p>transfer must take place under the supervision of and with the prior consent of the Authority assigning it i.e. the CCI in case of non-strategic and commercial spectrum. No such transfer should result in change of use of the radio spectrum in question.</p> <p>(d) spectrum Manager must establish, evolve and lay down a National Frequency Allocation Plan which must also include the following :-</p> <p>(i) Procedure for allocation of spectrum;</p> <p>(ii) Procedure for assignment of spectrum;</p> <p>(iii) Procedure for transfer of spectrum;</p> <p>Parameters of spectrum interference, if possible</p>

		- It would also be desirable for the CCI to make, publicly available, the current state of allocated frequency bands in respect of commercial spectrum.
25. (2)	Commission to notify schemes for assignment of spectrum 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.	- The Central Government's role in spectrum management must be clearly limited to strategic spectrum only.
Clauses	Existing Provision	Comments & Recommendations
26. (1)	License or registration of service providers . 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 (2) (a) such other conditions as may be considered necessary from time to time. The Commission may determine by regulation, the obligations, conditions, restrictions, tariffs and rates subject to which service provider shall provide facilities and services referred to in sub-section (1). (b) The Commission may, by regulations , determine the conditions subject to which a license or registration may be granted or transferred and where a license or registration is transferred, the transferee shall be deemed as licensee or grantees, as the case may be , for the purpose of this Act . (3) Subject to the provisions of sub-section (1), the Commission may grant license or registration in such manner, and within	(a) The CCI, is empowered to lay down the eligibility conditions, impose restriction on number of Licences, other conditions /obligations etc., of a Licence. While at the same time under Section 22, the Central Government is empowered to issue directions to CCI on, inter alia, procedure and the mode in which any services are to be licensed, whether by way of auction in case of granting Licence or in any other form. These directions are binding on the Commission. This must be avoided, because it provides for excessive Government's control over licensing. (b)The existing Licences may be deemed to have been issued under the new Law. However, it should save all the existing rights accruing to the existing Operators under their existing Licences untill they are modified and/or additional terms are inserted in accordance with the procedure stipulated in the new law. (c) Power to modify the Licences may be specifically stipulated. The modification of the terms of the Licence should also be made by CCI and only after providing notice to the Licensee (and other concerned persons) and should not be allowed to be modified without consent of the Licensee except in cases of national security, public interest etc. It must specifically be provided that CCI

	such time , subject to such terms and conditions, on payment of such fees and after following such procedure as may be determined by regulations.	shall examine the economic, social, technological and other aspects of the "need and timing" for grant of a new Licence and /or for introduction of a new service.
Clauses	Existing Provision	Comments & Recommendations
(7)	<p>Provided that the fee for registration shall not exceed thirty thousand rupees.</p> <p>The Commission may, while granting a license for any one of the categories under sub-section (6), confine or limit the scope of the facility or service to be provided by the licensee in each category of license , and also specify the conditions for providing that facility or services.</p>	<ul style="list-style-type: none"> - This clause appears to be restrictive & retrograde. - From the provisions, it appears that each of the services and / or facilities stated under the 5 category licenses can and may be licensed separately. - This appears to be a gargantuan exercise in over-licensing / over regulation as CCI at the time of granting a license will have to clearly state down to the last microscopic detail, the very strict boundary within which a licensee will be able to offer a service / facility. - For example it could mean that under a network infrastructure facility license, a licensee could be given the permission to say provide towers but no ducts, etc. Besides of course the obvious complexities of such a task, the rationale of this over-regulation cannot be readily understood. - Similarly in the case of a Network Application Service license - if such a license does not give the licensee to right to offer all the services within that license, then how is the situation any different from what is already prevailing under NTP 99. Under the present policy there is complete freedom to offer any service after taking a license for that service. - Thus if one is redefining categories, then a licensee under that category should have the freedom to offer all facilities & services that come under that category. <p>However, such a step would create</p>

		another anomaly. The Act has proposed an open licensing regime, except in cases where scarce resources such as spectrum are
Clauses	Existing Provision	Comments & Recommendations
(8)	<p>The Commission may, while granting a license under sub-section (6) grant licenses either singly or jointly for one or more of the categories of facilities or services specified therein :</p> <p>Provided that no license shall be granted under this sub-section, if it conflicts with the objectives and guiding principles set out under this Act particularly in relation to ensuring fair access and promotion of competition.</p> <p>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.</p>	<p>involved. If wireless services are clubbed as part of network application services, then the automatic limitation on the number of players caused by limited availability of spectrum will also necessarily limit the number of licensees under the NAS license.</p> <p>- It is therefore suggested that spectrum as a resource be kept out of the purview of these category licenses, but instead be auctioned separately to applicants desirous of offering wireless services.</p> <p>This provision contemplates grant of composite Licence also. Some policy parameters or guidelines for introduction of grant of these Licences must be debated and provided for. This also necessitates a clear debate on spectrum and National Convergence Policy and Law. It is significant to note that even in the case of European Union, the process of arriving at the convergence policy and parameters has taken 3½ years i.e. from December, 1997 to July 2001. And the content regulation has not been covered by the carriage regulation.</p>
28 (1)	<p>Duties of service providers</p> <p>Every service provider shall , wherever required or applicable-</p> <p>(i) give effect to Universal Service Obligations;</p> <p>(ii) provide such life saving services as may be prescribed;</p> <p>(iii) provide service to any person on demand within a</p>	<p>This deals with duties of Service Providers. However, some very fundamental duties and provisions therefor are completely missing. These include :-</p> <p>(a) duty to connect and continue to seamlessly connect.</p>
Clauses	Existing Provision	Comments & Recommendations
	reasonable period of time and on a non-discriminatory basis; and	(b) Duties and provisions relating to prohibition of anti-competitive

	<p>(iv) follow the codes and standards laid down and specified by the Commission;</p> <p>(2) Every service provider of a content application service shall , wherever</p> <p>(i) required or applicable -- endeavour to provide a suitable proportion of programme of indigenous origin; and</p> <p>(3) ensure that no programme forming part of its services infringes any copyright. Without prejudice to the foregoing provisions of this Act, every service provider holding a license for providing distribution of broadcasting services shall, amongst others, -</p> <p>(ii) provide a specified number and type of broadcasting services, including those of the public service broadcaster, in such manner, as may be prescribed;</p> <p>(iii) include only licensed broadcasting service in his delivery package for the purposes of distribution; and use not more than such number of channels as specified by regulations, out of the total channel capacity of the system, for providing his own programming.</p>	<p>practices etc.</p> <p>(c) Duties and provisions relating to non cross- subsidization / business separation/ accounting separation etc.</p> <p>(d) Duties and provisions relating to infrastructure sharing and co-location etc.</p> <p>(e) Duties and provision relating to SMPs / other dominant / monopolistic undertakings etc.</p>
	<p>Section 28A (Additional)</p>	<p>(a) The CCI should encourage and ensure the sharing of all infrastructural facilities and properties.</p> <p>(f) CCI may even impose the sharing of facilities or property (including physical co-location) on an undertaking, in particular where undertakings are deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to meet town and country planning objectives, (after an appropriate period of public consultation during which all interested parties must be</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>given an opportunity to express their views). Such sharing arrangements may include rules for apportioning the costs of facility or property sharing.</p>
	<p>Section 28B (Additional)</p>	<p>CCI must require the undertakings providing services under this Act and</p>

		<p>which undertaking have rights for the provision of services in other sector and/or such undertakings are providing more than one service or facility, to :</p> <p>(a) have structural separation of these activities;</p> <p>(b) and until such separation is achieved, to keep separate accounts for the activities associated with the provision of various communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of communications networks or services including itemised breakdown of fixed asset and structural costs.</p> <p>2. The financial reports of these undertakings should be drawn up and submitted to independent audit and published. This requirement should also apply to the separate accounts required under the above suggestion.</p>
	Section 28C (Additional)	<p>1. An undertaking should be deemed to have significant market power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.</p> <p>2. Where an undertaking has significant market power on a</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.</p>

		3. Appropriate provisions to deal with such undertakings must be made so as to ensure healthy competition and avoidance of anti-competitive behaviour and practices. In other words, the relevant provisions from the Competition Bill 2001, will appropriate modification, should be incorporated Convergence Bill, 2001 on this subject.
	Section 28 D (Additional)	Provision for transferability and assignability of the Licences in favour of Financial Institutions etc., needs to be specifically made.
29.	<p>Certain Agreements to be registered with the Commission</p> <p>Every agreement entered into or made by any service provider or infrastructure facility provider ,falling under one or more of the following classes shall, within sixty days from the making of such agreement, be registered with the Commission namely:-</p> <p>(a) shareholders or promoters agreements ;</p> <p>(b) interconnectivity agreements; and</p> <p>(c) Such other agreements as may be specified by regulations.</p>	<p>(a) Upon registration of these Agreements it should be incumbent upon the CCI to examine and determine whether these Agreements or part thereof violate the Act / rules etc., or any terms of the Licence etc. If CCI discovers any such violations, it must take steps to get the Agreement amended.</p> <p>(b) The Service Providers must have the option to submit the Draft Agreement(s) for consideration of the CCI and the CCI must examine and determine whether the same is in accordance with the provision of this Act, Rule and terms of the Licence etc. If so, then CCI should proceed to register the same and if not, then</p>
Clauses	Existing Provision	Comments & Recommendations
		<p>CCI must get the same amended.</p> <p>- See comments under Section 5.</p> <p>The "Subscriber Instrument" must be expressly exempted from any from of licensing requirements.</p>
30. (1)	<p>License for wireless equipment</p> <p>Subject to the provisions of sub-section (1) of section 5, any person who intends to posses any wireless equipment shall</p>	

	<p>(2) make an application to the Commission for the grant of a license. Every application shall be in such form and shall be accompanied by such fees as may be determined by regulations.</p> <p>(3) The Commission shall , on receipt of an application under sub-section (1), after making such inquiries as it deems fit, grant the license or reject the application:</p> <p>Provided that no application shall be rejected unless an opportunity of being heard is given to the applicant; Provided further that no application for a license shall be rejected except on grounds of security of India or part thereof, public order or other public interest.</p> <p>(4) Every license granted under this section shall be subject to such conditions and restrictions as may be determined by regulations.</p>	
Clauses	Existing Provision	Comments & Recommendations
<p>32.(1)</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(2)</p>	<p>Breach of terms and conditions of licenses, etc.</p> <p>In any case of breach of any of the terms of the license or registration or failure to comply with any decision, direction or order of the Commission, it may, after providing an opportunity to the party concerned of being heard, do any one or more of the following, namely:-</p> <p>(b) direct the licensee or grantee to do or abstain from doing any act or thing to prevent such breach or for such compliance;</p> <p>(c) suspend the license or registration for a specified period;</p> <p>(e) curtail the period of the license or registration ;</p>	<p>In accordance with the comments on Section 21etc., hereinabove, these powers must be exercised by CCI :- (a)only after a proper determination by / decision of the Adjudicating Officer; (b)Only for "wilful" failures.</p> <p>It is reiterated that CCI should possess only enforcement powers and not adjudicatory powers.</p>

	<p>revoke the license or registration ;and</p> <p>initiate adjudication proceedings under this chapter.</p> <p>If the Commission has a reason to believe that the terms and conditions of a license or registration for providing a not work infra-structure facility or Communication service under this Act have been or are being breached, the Commission may direct or order the seizure of the equipment being used for provision of such facility or service, and for this purpose the Commission may, by order in writing, authorise any District Magistrate, or Sub-Divisional Magistrate in any area, or any other officer of the Central Government or State Government or Union territory Administration, to implement and</p>	<p>CCI may direct the seizure of equipment only as an interim measure, pending adjudication of the matter of breach by the Adjudicating Officer.</p>
Clauses	Existing Provision	Comments & Recommendations
	<p>ensure compliance of its directions and orders; and when so authorized, such Magistrate or officer shall be bound to carry out the directions and orders of the Commission.</p>	
<p>38. (1)</p> <p>(2)</p> <p>(3)</p>	<p>Filing of complaint, reference for adjudication etc.</p> <p>A complaint may be filed before the Commission alleging that a service provider or any other person has incurred a civil liability under this Chapter.</p> <p>Every complaint under sub- section (1) ,except a complaint under section 33, shall be filed within sixty days from the date on which any act or conduct constituting the contravention took place and shall be in such form as may be prescribed:</p> <p>Provided that the Commission may entertain the complaint after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it, within that period.</p> <p>On receipt of a complaint under sub-</p>	<p>(a) The Adjudicating Officer should possess suo moto powers to take cognizance.</p> <p>(b) Any party to a dispute or difference should possess right to directly approach Adjudicating Officer for determination / adjudication.</p> <p>(c) Subject to other comments herein, CCI's suo moto power to make reference should be with respect to all matters and not restricted to violation of Act/ rules only.</p>

<p>44. (3)</p> <p>(4)</p> <p>(a)</p>	<p>Composition of Appellate Tribunal. The appointment of members of the Appellate Tribunal shall be from amongst persons recommended by the search committee as may be prescribed.</p> <p>Subject to the provisions of this Act - The jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;</p>	<p>The appointment of the members of the Appellate Tribunal do not require any consultation with the Chief Justice of India (or even the Chairperson of the Appellate Tribunal). It is therefore suggested that in addition to the Search Committee, the CJI and the Chairperson of the Appellate Tribunal may also be consulted in the appointment of the members of the CAT.</p>
Clauses	Existing Provision	Comments & Recommendations
<p>(b)</p> <p>(c)</p> <p>(d)</p>	<p>a bench may be constituted by the Chairperson of the Appellate Tribunal consisting of two or more Members as the Chairperson may deem fit; Provided that every bench shall be presided over by a Judicial member. Explanation: For the purposes of this section "Judicial Member" means any member of the Appellate Tribunal who has been a judge of a High Court;</p> <p>the benches of the Appellate Tribunal shall ordinarily sit at Delhi and also at such other places as the Central Government may notify, in consultation with the Chairperson of the Appellate Tribunal;</p> <p>the Central Government shall, on the recommendation of the Appellate Tribunal, notify the areas in relation to which each bench of the Appellate Tribunal may exercise jurisdiction. Existing Provision</p>	<p>The jurisdiction of the Appellate Tribunal can be exercised by Benches consisting of two or more members. And every Bench must be presided over by a "Judicial Member". The explanation to Section 44 (4) defines "Judicial Member" as any Member of the Tribunal who has been a Judge of a High Court. Thus :-</p> <p>(i) Assuming that 3 Benches are constituted, then the Government will have to ensure that at least 2 more Members of the Appellate Tribunal have been judges of the High Court, otherwise 3 Benches will never get constituted.</p> <p>(ii) Under Section 45 (4) (b), the Central Government can authorise any member to discharge the functions of the Chairperson in the absence of the Chairperson. It needs to be clarified that such person must at least be a "Judicial Member" otherwise such person will not be able to preside over any Bench of the Tribunal.</p>
<p>54. (2)</p>	<p>Proceeds of License fee, etc. Such portion or percentage of the license fee as may be attributable to the Universal Service Obligation as may be prescribed shall be credited to a separate fund to be called Universal Service Obligation Fund in the public account of India.</p>	<p>CCI as an expert techno-economic body would have the necessary expertise to determine the extent of funding required to meet universal service obligations as also the extent to which this would be recovered by levying a fee on all service providers. Therefore, the portion / percentage of fees to be credited to the USO Fund must be stipulated by the CCI and not "prescribed" by the</p>

		Central Government.
66.(1)	Interception of communication and safeguards. Subject to the prescribed safeguard, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government, on the occurrence	A provision must be added under this section that the costs involved in this exercise would be borne by the entity that requests such interception / blockage / disclosure , i.e. the Government Agency concerned.
Clauses	Existing Provision	Comments & Recommendations
	<p>of any public emergency or in the interests of the security, sovereignty and integrity of India, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, may direct :</p> <p>(i) any agency of that Government to intercept any communication on any network facilities or services;</p> <p>(ii) any service provider that any content brought for communication by or communicated or received by, him shall not be communicated or shall be intercepted or detained or shall be disclosed to that Government or its agency authorized in this behalf:</p> <p>(2) The service provider shall, when called upon by any agency, which has been directed to carry out interception under sub-section (1), extend all facilities and technical assistance for interception of the content of communication.</p> <p>(3) Any service provider who fails to assist the agency referred to in sub-section (2) shall be punished with imprisonment for a term, which may extend to seven years.</p> <p>(4) Save as otherwise provided under this section, any person, who intercepts any communication or causes any communication to be intercepted or discloses to any person, any content shall be punishable with imprisonment which may extend to five years or with fine which may extend up to ten lakh</p>	

	rupees, and, for a second and subsequent offence, with imprisonment	
Clauses	Existing Provision	Comments & Recommendations
	<p>which may extend to five years and with fine which may extend up to fifty lakh rupees</p> <p>Explanation-For the purposes of this section, "interception" means the aural or other acquisition of the content through the use of such devices or means as may be necessary for such acquisition.</p>	
76.	<p>Transfer of proceedings to Appellate Tribunal.</p> <p>On the date of establishment of the Appellate Tribunal under sub-section (1) of section 43, all proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act,1997 shall stand transferred to the Appellate Tribunal which shall hear and dispose such proceedings from the stage at which the proceedings were pending before the first-mentioned Tribunal in accordance with the provisions of this Act.</p>	<p>It provides that all proceedings before TDSAT shall stand transferred to CAT. But CAT presently does not possess original jurisdiction under CCI Act. Therefore, these original proceedings cannot be so transferred. This requires rectification.</p>
78. (2)	<p>Obligations of licensees and grantees.</p> <p>The Commission may call for any information from the licensee or grantee including information necessary for ensuring transparency or for ascertaining the true ownership of the license or registration or the status of licensee or grantee.</p>	<p>Any information required by any Authority under the Act must be proportionate to the need and cause for such information, which must be shown by the Authority except in national interest etc.</p>
Clauses	Existing Provision	Comments & Recommendations
93.(2)	<p>Repeal of certain Acts, saving of licenses and dissolution of certain Authorities.</p> <p>Notwithstanding such repeal, any</p>	<p>A proviso may be added under this section that the terms & conditions of</p>

<p>(5)</p>	<p>person, who has obtained license or registration under the Acts repealed under sub-section (1), or who has obtained registration under the policy of the Central Government in force may continue to provide his services, if he has made an application to the Commission for the grant of a license or registration under this Act within a period of six months from the date of establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.</p> <p>Save as otherwise provided under this Act, with effect from the date of the establishment of the Commission and the Appellate Tribunal under this Act, as the case may be, the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority Act,1997 and the Telecom Disputes Settlement and the Appellate Tribunal established under section 14 of that Act, shall stand dissolved.</p>	<p>the existing licensees will not be varied to their disadvantage under the new Act.</p> <p>This will act as a safeguard for existing operators enabling them to continue with their funding & growth plans in the intervening period.</p> <p>The TDSAT will stand dissolved w.e.f. the date of establishment of CAT. However, under Section 93(4) all such existing Service Providers, who have applied for a Licence under CCI Act, and who have not been granted the said Licence, will continue to be governed by and under the old TRAI Act. This is conflicting in nature inasmuch as, if some existing Service Providers have been granted Licences under CCI Act and some have not been, then TRAI and TDSAT will continue and govern the rights of those existing Service Providers who have not been so granted the Licences under the CCI Act and the CCI and CAT will govern the rights of those existing Service Providers who have been granted Licences under the CCI Act. Thus, both will function simultaneously. This needs to be reconciled.</p>
------------	---	--