1. Evolution of Internet as New Media:

The internet is a global network of computers storing data in every conceivable subject of interest, and retrieving whenever needed. The internet is a global matrix interconnected computer networks using the Internet Protocol to communicate with each other. The establishment of large numbers of interconnected computers created an information transport system with multiple paths and innumerable destinations in a universal uniform mechanism to feed, store, transmit, receive and retrieve the information from one point to any other point without any lapse of time or cost. The growth of internet was accelerated with the creation of world wide web through which it became graphical and interactive. The World Wide Web is a network of sites that can be searched and retrieved by a special protocol known as Hyper Text Transfer Protocol HTTP. This protocol simplified the writing of addresses, automatically searched the Internet for the address indicated and called up the document for viewing. 'Surfing' is the term used in developed countries to refer to the pastime of viewing web pages and moving from one to another by clicking on hyperlinks. With a world wide web of transport path of communication was made available, the scope for transmitting any kind of information, entertainment in written or spoken or audio or visual forms has tremendously increased leading to convergence of every perceivable communication all over the globe. Because a page on the World Wide Web can reach any person in any corner of the world, the boundaries were dissolved and jurisdictions became irrelevant. This aspect made the regulation of internet virtually impracticable and the freedom of speech, expression and communication was practically realised by every person capable of operating a web page on computers. Thus the internet is a technological convergence of all media to form a new comprehensive single media incorporating every imaginable communication. It has every attribute of each and every medium within it and being boundless and global in form and nature, it is difficult to make it subject to existing regulation mechanism. Thus Internet jurisdiction, cause of action, regulation and accountability with possible legal consequences became very complex and difficult issues, which can not be answered easily.

The New Telecom Policy 99 envisaged opening up of Internet Telephony whereupon the Government decided to permit the Internet Service Providers ISPs to process and carry voice signals with effect from 1st
April 2002 subject to prescribed guidelines. The TRAI is the regulator for this service also. The Convergence Bill proposed to regulate every service rendered on cyberspace through a common regulatory commission.

2. EVOLUTION OF CONCEPT OF CONVERGENCE:

TECHNOLOGICAL CONVERGENCE:
Convergence taking place at the technological level refers to the coming together of the telecom, audio visual and information technology sectors as a result of the increased use of the digital technologies. This technology as used initially only in the computers implies the conversion of any type of information into binary digits of 0 and 1. Most of the recent development in the telecom and broadcasting sectors is through digital technology. In the audio – visual sector the basic building block is the MPEG (Motion picture Experts Group.) standards for encoding of moving images. Once encoded in this format they could be modified, manipulate or transmitted in same way as any other digital information on network. Traditionally the analogue technology was used in these sectors. Further this technological convergence is due to the use of compression techniques that reduce the number of bits required to represent the information in data transmission or storage, thereby reducing the bandwidth necessary to transmit the content information or store it on floppy disk, hard disk or tape records. As the information transferred through the internet, it could be the prime mover in the convergence.

NETWORK CONVERGENCE:
This technological convergence leads to a convergence of networks. Networks that previously could transmit only particular type of data can now carry any type of information. The telecom networks can now supply broadcast while the cable TV can be used for telephony, in addition to their traditional businesses. The scenario envisaged is that the Electric and gas companies have to install fibre optic and huge pipes for the supply. These companies could install fiber optic required to transmit information in their controlled public rights of way and lease the same to telecom or broadcaster.

CONVERGENCE OF SERVICES:
Technological and network convergence is leading to the convergence of services. This is due to the creation of a new variety of hybrid services as a result of the cross fertilization between the telecom, broadcasting and information technology. This leads to the development of entirely new services eg. Home banking or home
The wide usage of computer technology has permitted the wide usage of the sophisticated consumer devices like set top boxes, and navigation software essential for the consumer access.

**MARKET CONVERGENCE:**
Convergence is also changing the market structures. Companies that were previously active in marketing of individual products are now seeking to enter into the market of converged products. The most probable way of entry into these markets would be through the merger and alliances between two separate service providers. This would lead to the wide spread restructuring of the markets. For instance the trend towards the vertical integration for instance the content and the infrastructure provider, is indicative of the changing scene.

**INTERNET AS A PRIME DRIVER TO CONVERGENCE:**
The technical architecture of the Internet constitutes its distinctive feature and a factor of convergence. The use of open protocol enables network interconnectivity and, with the required technical adjustment this interconnectivity is applicable to any type of information on any type of network. Hence the Internet competes with any traditional media, which is specific as telecom, broadcasting etc., by providing an alternative means of distribution. For instance the Internet can be used to transmit television or radio programmes, voice telephony or software. In this sense the Internet greatly contributes in bringing these diverse sectors on a single platform though these had previously existed separately.

**REGULATION:**
A general character of regulation in the globalised economy is the breakdown of the general legal norms into more specific subordinate legislations. These leads to wide administrative discretion, in response to the complexities of the economic and technological environment. The sheer bulk of law has been transformed into legal rules, and policy documents, which lay down the broad guidelines and let the market forces do the rest. The plethora of this primary and secondary legislation is supplemented by other instruments like licenses.

Let us first analyses the Telecommunication ‘s industry and the regulatory structure.

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Initially in the common law countries the state involvement in the sector was conspicuously absent. The attempt was to let the normal rules of markets and contracts regulate the sector. But the obligation to provide a degree of service satisfaction and the principles of access to all with the threat of monopolies led to the United Kingdom Nationalization of services in 1911.\(^3\) The United Kingdom followed the government monopoly in telecom for next 70 years. In the United States the response was to leave service providers in private hands, promoting the private monopoly of AT&T, while simultaneously creating specific obligations through highly technical regulation, under the Communications Act of 1934, administered by the Federal Communications Commission. Thus in the US the materialization of law in the telecommunications field came early\(^4\).

With the policies of privatization and liberalization being followed in other common law countries, the European Union began to look towards the United States to develop a regulatory character in the telecom sector. In UK in the 1984 the policy of liberalization came in and the materialization of law did occur but with the detailed provisions on the Universal Service Obligation and the Interconnection. These were to achieve the socio–economic goals with the private investment and legal rules were framed to that end.

The govt and its ministers but the Office of Telecom did the determination of policy. The other country which can be seen to evolve a telecom law paradigm was New Zealand, here the govt. avoided the creation of detailed regulatory rules and institutions but left the general competition norms to govern the telecom sector. Here it needs to be mentioned that the rules could be the general competition norms or the sector specific regulation like the universal service obligation or interconnect rules.

Among the chief external stimuli for the more generalized rules for the telecommunication regulation is the emergence of convergence and globalization. The emergence of the convergence of telecommunication, broadcasting and computing sectors renders the sector specific regulation as a potential barrier to the market and techno changes that would occur. The regime, which is required in such a situation, is that which is technology neutral. The globalization has resulted in the national being superseded by the international norms as are given by the WTO or the EU. Further pressure for generalization of norms arises from the use of a


\(^{4}\) ibid
principle of reciprocity as the basis for bilateral agreement on access for foreign companies to national telecommunications markets.

The decontextualisation of the sectors is occurring at a rapid pace this leads to a situation where the norms for the telecom, media and the computing are made taking into consideration the broader information society apparatus.

**The role of courts:**

The development of highly specific sectoral rules has largely been the work of legislatures. The courts, with a preference for norms of general application, have exhibited a number of contrasting reactions to the complexity and specificity of telecommunications regulation. In some instances they have attempted, either implicitly or explicitly, to unpick highly detailed regimes, by attempting to reassert general values. Such an approach was most marked in the United States, where the assertion by the courts of general anti-trust rules, which reached its climax in the AT&T decision of the District Court of Columbia in 1982, was only reversed through new federal regulatory legislation in 1996. Were this approach of the courts to predominate an increase in litigation associated with liberalization would be likely to provide further pressure for generalization of norms. A second response has been for the courts to throw their hands up in the air on seeing the complexity of the issues they are required to adjudicate on, discouraging the pursuit of preliminary actions to full hearings or refusing to have the court used as the forum for the resolution of such a technical dispute.

In some instances the courts have shown themselves inclined to dilute or substantially reject the specificity of regulatory regimes through the application of more general principles. In *Clear Communications* the Privy Council effectively rejected arguments that had persuaded the New Zealand Court of Appeal, that the application of competition rules in relation to abuse of dominant position had to be tailored to the specific character of the telecommunications sector. In *Scottish Power* the Court of Appeal held the system of individual licence

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5 *Mercury Communications Ltd v Director General of Telecommunications*, (Court of Appeal, unreported) noted in *Utilities Law Review* 1994 5 103-105. See also the House of Lords decision: [1996] 1 All ER 575.

6 *Clear Communications v Telecom New Zealand* Privy Council

7 ibid
modifications was effectively subject to duties to consider whether to modify other licences in similar circumstances, implicitly arguing for general rather individuated rules in that sector.\textsuperscript{8}

In India the experience of the Telecom Regulatory Authority of India with the courts is full of the above complexities, the court in \textit{The Delhi Science Forum Case}.

3. Information Technology Act:

Electronic commerce is commercial transaction on line. Except the communication form being different, this commerce contains all similar characteristics of ordinary commerce. Yet, because of its peculiar form and paperless character, a new form of regulation and legal provisions became necessary. The Information Technology Act is a major attempt to answer these needs. Communicating commercial transactions through electronic, optical or analogous means including EDI, E-mail, etc. With globalization and privatization becoming a reality through world wide web, the new regulation of e-commerce is necessitated. To promote standardization and homogenisation of laws internationally, the United Nations Commission on International Trade Law UNCITRAL has drafted a model la that supports the commercial use of international contracts in electronic commerce. This is called the UNCITRAL Model L on Electronic Commerce, 1996. India being a signatory to this model law, passed Information Technology Act, 2000. The Act facilitates the electronic commerce transactions, electronic filing, maintenance of electronic records and electronic government transactions. It provided legal validity to using of electronic data interchange EDI, electronic records and electronic signatures. This Act made incidental and consequential amendments to the Indian Penal Code, the Indian Evidence Act, the Banker's Book Evidence Act and the Reserve Bank of India Act. Ultimately this law secures electronic transactions enabling the parties to enter into electronic contracts. Electronic signatures and electronic records were given legal status. The Act established a Digital Signature Infrastructure making specific use of Asymmetric Crypto System Technology with new authorities such as the Controller of Certifying Authorities being set up. Contraventions, regarding electronic records like hacking, theft of electronic records, manipulation of records, spreading of viruses etc have been identified and provided for adjudication and punishment. Information Technology offences like tampering with computer source documents, obscenity were created under this Law and provided with punishments. Privacy and confidentiality

\textsuperscript{8} R v Director General of Electricity Supply ex p Scottish Power (Divisional Court, unreported) noted in Public Law [1997] (3) (forthcoming). Contrast the more hands-off approach of the Court of Appeal in R v Director General of Telecommunications ex p British Telecom (unreported) noted in Utilities Law Review (1997) 8 82-83.
of information submitted to statutory authorities is protected. Dissemination to third parties of such information collected in pursuance of powers under the Act is made a criminal offence. The Act sets up Cyber Regulatory Authority such as the controller of Certifying Authorities and the Cyber Regulations Appellate Tribunal. It also envisaged setting up of a Cyber Regulatory Advisory Committee also. It also provided for a limited liability to Internet Service Providers for content on the Internet. This is relevant in regard to copyright violations, pornography and other media related crimes. While the Information Technology Act takes care of e-commerce and its legal validity, all other kinds of regulation of internet and other communication convergence are left to Convergence Bill.

4. Evolution of Convergence Law in India:

The 1995 judgement of the Supreme Court in the case of Secretary Ministry of Information and Broadcasting V The Cricket Association Of Bengal, Justice B.P. Jeevan Reddy and Justice Sawant for the first time went into the dynamics of electronic media. The case related to the denial of uplinking facility to private broadcasting Company to which the Board of Control Of Cricket in India had given right to telecast cricket matches for a tournament called HERO CUP. The petitioners the Cricket Association of Bengal went to the court on the denial of this right by the DoT and the Government of India. The court held the following:

“Airwaves constitute public property and must be utilized for advancing public good. No individual has a right to utilize them at his choice and pleasure and for the purposes of his choice including profit. The right of free speech guaranteed by Article 19 (1) (a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance with such statute. Airwaves being public property, it is the duty of the State to see that airwaves are so utilized as to plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured. The free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing. Conceding such a right would be detrimental to the free speech rights of the body of citizens in as much as only a privileged few - powerful economic, commercial and political interests - would come to dominate the media. By manipulating the news, views and information, by indulging in misinformation and disinformation, to suit their commercial or other

9 (1995) 2 S.C.C. 161, 252, 298-301
interests, they would be harming - and not serving - the principle of plurality and diversity of views, news, ideas and opinions. This has been the experience of Italy where a limited right, i.e., at the local level but not at the national level was recognized. It is also not possible to imply or infer a right from the guarantee of free speech, which only a few can enjoy.

Broadcasting media is inherently different from press or other means of communication / information. The analogy of press is misleading and inappropriate. This is also the view expressed by several constitutional courts including that of the United States of America. The court further noted that “Having regard to the revolution in information technology and the developments all around, Parliament may, or may not, decide to confer such right. If it wishes to confer such a right, it can only be by way of an Act made by Parliament. The Act made should be consistent with the right of free speech of the citizens and must have to contain a strict programme and other controls, as has been provided, for example, in the Broadcasting Act, 1991 in the United Kingdom. This is the implicit command of Article 19 (1) (a) and is essential to preserve and promote plurality and diversity of views, news, opinions and ideas.

These were the important words, which laid the foundation of the autonomy of broadcasting media in the country. Here the court declared the Air Waves as public property and their use to be in the public interest. And also called upon the parliament to enact the separate broadcasting Act in the country. This judgement could be said to be the genesis of Convergence. Subsequently various acts to regulate cable TV and Broadcasting Bill along with the notification of the Prasar Bharti were important.

In December 1998 the Prime Minister constituted a group under the Chairmanship of the Finance Minister to expeditiously implement the Telecom Policy 1999 whilst taking into account the increasing convergence between telecom and IT. Accordingly, a GROUP on Telecom and IT Convergence was duly constituted under the Chairmanship of the Finance Minister by Government of India notification dated December 13, 1999 issued from the Prime Minister's Office.

The Report of Sub-Group: Telecommunications to include Broadcasting:

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10 THE FINAL DRAFT REPORT OF THE SUB-GROUP ON CONVERGENCE (Dated 11-8-2000), www.indiantelevision.com
Sub-Group I in its Report made certain recommendations for strengthening the TRAI Act. A portion of this Report of Sub-Group I is reproduced below:

"The Subgroup(I) discussed the issue of a common authority for broadcasting and telecom. While appreciating the need of a single regulatory authority to regulate both telecom and broadcasting rather than create separate authorities for regulating broadcasting, IT, etc. the Subgroup felt that the nature of disputes in the broadcasting industry were quite different and the number of players too large. It would, therefore, not be prudent to burden the TRAI with this additional responsibility. However, keeping in view the fact that integration of the two sectors was taking place very rapidly in the wake of technological convergence, the Subgroup felt that there was a need to have an enabling provision in the TRAI Act by amending the definition of Telecommunication Service under Section 2 (l) (k) so as to include broadcasting services.".

Thus, the possibility of "telecommunication services" being widened to include "broadcasting" in all its aspects was clearly envisaged in the Report of Subgroup I.

**Telecom Regulatory Authority Bill:**

The amendments recommended by Subgroup I in the TRAI Act were promulgated by Ordinance 2 of 2000- on January 24, 2000: The Telecom Regulatory Authority Bill was introduced and passed by both Houses of Parliament in mid-March 2000, Presidential assent being received on March 25, 2000.

**Sub-Group Report on Convergence:**

Meanwhile the Interim Report of Sub Group III, which was on Convergence, was circulated to members of the GROUP on January 13th, 2000. The tentative conclusion of the report were:

It was necessary to differentiate between carriage of information and content through various different technologies. There has been a convergence of various media especially at the infrastructure level. At that time in the interim report the group had recommended that the Broadcasting Bill, Information Technology Bill was adequate. Hence only the carriage of the information was left to be provided for, this was

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11 Telecom Regulatory Authority of India Ordinance 2000
recommended to be under the broad guidelines issued under the NTP 99, the group recommended that in the new enactment the structural framework of the Indian Telegraph Act was to be retained\textsuperscript{12}.

The reasons for these tentative conclusions mentioned in our Interim Report. They were\textsuperscript{13}:

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

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

Hence the GROUP recommended a very precise legislation, which would give power to delegated legislation, which could be resorted to with the change in technology.

But Interim Report, did include the following caveat:
"If however, it is ultimately decided by the Group that both content and carriage of information should be dealt with in one statute then it would be more appropriate to incorporate the comprehensive Broadcasting Bill and the existing Information Technology Bill, 1999 (already referred to a Committee) under one comprehensive enactment (as for instance along the lines of the US Telecommunications Act of 1996): or along the lines of the Malaysian Communication and Multimedia Act 1998".

At a further meeting of the GROUP (on Telecom and IT Convergence) held on February 14, 2000, the Interim Report was considered, and it was then decided that both content and carriage of transmitted information should be assimilated into one comprehensive statute\textsuperscript{14}.

\textsuperscript{12} Cl. 5 (1),(2),(3) of the final report.
\textsuperscript{13} ibid
\textsuperscript{14} Cl 8 of the final report.
This was the genesis of the Convergence law in India, it was clear from the draft report of the GROUP that the govt. was inclined to follow the Malaysian Act, the first such law in the world to integrate the three sectors\textsuperscript{15}.

Subsequent to this the work on the Draft bill started in right earnest, it was agreed that the information Technology Bill 2000 would solely deal with the E-Commerce aspect, therefore need not be incorporated in the draft bill.

However, it was felt that certain provisions of the Information Technology Bill relating to inclusion of sound in the definition of "Information", those relating to "Interception" and "Encryption" would have to be reviewed in the context of the provisions of the Indian Telegraph Act. It was also felt that the draft needed to cover Indian Telegraph Act 1885, Indian Wireless Act, 1933 and the proposed Broadcasting Bill and perhaps some of the provisions of the Information Technology Bill in so far as convergence was concerned\textsuperscript{16}. On April 24th, 2000 a draft text of the comprehensive Bill titled "The Telecommunication and Broadcasting Bill 2000", was forwarded by the Legislative Department, Ministry of Law to the members of this Subgroup (III). The draft was an amalgamated version of: the improved Telegraph Act as suggested in draft Interim Report, and the Broadcasting Regulatory Authority Bill 2000' (which was an updated version of the 1997 Broadcasting Bill prepared by the Ministry of Information and Broadcasting).

Certain very pertinent were made by the GROUP at this stage were as follows: (These Conclusions were reached at further meetings of this Subgroup (III) held on May 19th and May 24th, 2000 and some vital aspects of the proposed new legislation were discussed.)

(A) Maximum convergence is occurring in the area of access network (telecommunication including data communication) or local delivery services (broadcasting). This is because technological developments now permit the network used for carrying broadcasting signals to the customer premises, namely cable TV network, to be used for purposes of carrying telecommunication and data (including Internet) signals also. Likewise, the telephony access network i.e., the network-connecting subscriber to the telephone exchange can be used for

\textsuperscript{15} See cl. 8 (b) of the draft report.
\textsuperscript{16} See cl. 9 (ii),(iii)
carrying broadcasting signals. In a similar manner, the web-casting function utilised for Internet data transfer though a telecommunication service uses the broadcast mode. All this convergence could not be achieved without inevitable conflict if the licensing authority for telecommunications and for broadcasting services were different and separate.

(B) The regulatory function in the case of telecommunication service is being performed by the Telecom Regulatory Authority of India. (Under the 1997 Act). This Authority, which has been formed under the TRAI Act, has been given the function only of regulation of telecom services. On the other hand the Broadcasting Regulatory Authority of India proposed in the draft-broadcasting bill is to cover regulation of broadcasting services as well as licensing of the broadcasting service. It is felt by this Subgroup (and we do so recommend) that there should be a single regulatory authority for both broadcasting services as well as telecom services.17

(C) Third, the GROUP observed that in the communications sector where there was rapid technological change, the traditional "Command and Control" had lost their relevance and there was need to encourage more self regulation, by the industry, hence the group was of the opinion that the new enactment should be a reflexive law. Hence the Commission recommended, "With this object in view we have recommended the setting up of an independent autonomous Commission, which would continuously interact with various sectors of industry to help set standards and formulate regulatory norms - both as to content and as to carriage of information. The crucial topic of "regulation" is, basically the problem of the use and abuse of power: we envisage that this problem be addressed, in the present context, by using power to advance, facilitate and encourage the growth of technological and social development, thus reducing (if not eliminating) the chances of abuse of power by providing mechanisms ensuring the appointment of highly qualified and independent persons of integrity as members of the autonomous Commission"18

Building Infrastructure for Information Society:

Further the GROUP was of the opinion that the thrust of the new legislation should be:

(i) To promote the national objective of a powerful infrastructure for an information based society, in other words the effort has to be on the convergence of telecommunications including data communication, and

17 See cl. 12 (1)(a) (b)
18 Cl 12 (1)(e)
broadcasting activities, since due to technological changes these areas are tending increasingly to overlap and converge. At the same time, convergence in the administrative and regulatory aspects is also desirable.

(i) To establish a licensing framework for carriage and content of information in the scenario of convergence of telecommunication, broadcasting, multimedia and other related technologies; and to set up a single regulatory framework for carriage and information content.

(ii) To set out the authority to administer and powers and procedures for the administration of this new enactment: with a stress on continuous consultation with individuals and groups affected by this new enactment.

(E) "Frequency spectrum" is a critical natural resource. The European Commission's Green Paper on Convergence makes the point that "frequency (still) remains the key, but finite, resource even in the digital age". It is crucial that frequency allocation be provided for in the comprehensive draft statute keeping in view the overall thrust of a fair, regulatory and facilitative regime. On date, the arrangement for licensing of broadcasting is on the basis of the Indian Telegraph Act and once the Ministry of Information & Broadcasting issues the no objection for a particular user and for a particular broadcasting service, the broadcasting license is ultimately issued by the Wireless Advisor.

(F) Important Terms, which will be used in the comprehensive statute, and in regulations framed thereunder, would have to be set out and defined in the new law with some degree of precision.

(G) The model used could be as used in the Malaysian Law, which does not restrict the licensing to one sector only. The licensing authority should be able to grant licenses to all services like:

(a) Network facilities or infrastructure,
(b) Network services,
(c) Application on any network service, and
(d) Content application service.

This classification was service sector neutral and technology neutral. This was to facilitate maximum possible convergence in the area. Hence it was recommended to grant composite licenses to the same person for all services combined if he so desires. This is because it is envisaged that in future there will be a lot of synergy between the various forms of communication. It was also recommended that with effect from the date of the Notification establishing the Communications Commission under the new law, the Chairperson and full

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time members of the Telecom Regulatory Authority of India established under the TRAI Act 1997 shall be deemed to be appointed as Chairperson and Members of the Communications Commission on the same terms and conditions subject to which they were so appointed under that Act. Likewise with effect from the date of the Notification establishing the Communications Appellate Tribunal under the new law the Chairperson and Members of the Telecom Dispute settlement and Appellate Tribunal established under Sec 14 of TRAI Act 1997 holding office before the commencement of the new law would be deemed to be appointed as Chairperson and Members of the Communications Appellate Tribunal, on the same terms and conditions on which they were appointed under TRAI Act 1997. These transient provisions have been made in order not to disturb the continuity of the regulatory and dispute settlement activities already in place, as also to help assist a smooth take over under the provisions of the new law. Of course, vacancies in the two bodies set up under the new law will be filled up only in accordance with its provisions.

The GROUP was of the firm view that the technological advancement in the technology would make the, current regulatory practices obsolete as the new forms of systems of delivery of communication are developed. The dream of convergence is now fixed on the image of an all media machine that will roll into one the functions of Telephone, TV and the Computer. "Compuphonavision". Hence it was firmly recommended that the statute should be a short one with, adequate provision for subordinate legislation so that it could be resorted to so as to meet the rapidly changing technology. The aim was to make a “Technology neutral law”.

4. The Convergence Bill 2000 and Communication Commission of India

The title of the Statute was proposed to be “The Communication (Carriage and Content) Bill, 2000. The objectives and the long title of the recommended law were adopted in the COMMUNICATION CONVERGENCE, BILL 2000 as tabled before the Parliament. Further the GROUP recommended the creation of a commission called the COMMUNICATION COMMISSION OF INDIA, in order to secure the independence of the functioning of the commission, it was recommended that any member or the chairperson can only be removed by the President on the grounds of misconduct or non performance on a enquiry made by the retd. Or a sitting Supreme Court judge. This was necessary to keep the commission free from any kind of political interference. The kind of regulatory structure envisaged can be summarized as, “It is expected that

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20 See K Maney; "Mega Media Shakeout" (New York J. Wiley 1995), P 33
the Commission will be able to take a broad view of the converging sectors, and to respond flexibly to the emergence of new services, as also ensure a consistent approach to regulation of related activities. As different organisations diversify their activities across the convergent sectors, a regulator with the breadth scope and expertise expected of this Commission would (it is hoped) make the law move to new heights of achievement.

However, there are concerns about the transparency and accountability of a single regulatory body: and we have suggested provisions to help overcome these misgivings in the new statute.

We continue to support the principle that Independent Regulators must conduct regulation on an arms-length basis. Without this, the risk of ad-hoc political involvement in economic regulation will increase regulatory risk, and influence adversely the ability of companies to invest and operate in a settled climate. This principle is even more significant and sensitive in connection with the regulation of content. It is now accepted in most countries that Governments must be seen to stand back from controls, and confine themselves to setting up a general institutional framework”

Another important recommendation was that the Chairperson and the members be appointed by a collegiums comprising :
a) the Prime Minister;  
(b) the Leader of Opposition in Lok Sabha;  
(c) Leader of the House in the Rajya Sabha  
(d) Leader of the Opposition in the Rajya Sabha  
(e) the Minister in charge of Information and Broadcasting and Minister in charge of Communication in the Central Government.

Clause 3 of part IV give the exhaustive list of functions of the Commission and the appellate body. The functions envisaged by the commission are exhaustively laid down by the GROUP, each and every minor function is taken care of. But this in the researchers opinion goes against the whole spirit with which the GROUP wanted to suggest a Technology neutral regime, which would be very compact and for the sake of rely on the subordinate legislation.
Licensing:

Grant of Licenses

(A) Generally:

(1) Generally, it is recommended that conditions and prescriptions for granting licenses by the Commission should be left to be provided for by regulations to be framed (by the Commission) under the Act.

(2) However with regard to Licenses for content obligation services (i.e. principally in the realm of Broadcasting) it may be preferable to enumerate them in the statute, leaving a residual item of content principles/conditions to be provided for by regulations.

(3) The content - obligations to be stated in the statute will be:

17(1). The Commission may from time to time determine by regulations such obligations, conditions and restrictions subject to which the licensee will provide his services.

(2) The service provider of a Content Application Services shall, amongst other, follow the programme standard and codes set and published by the Commission. Ensure that a minimum percentage of programmes (to be determined by the Commission) shall be of Indian origin. Include only such programmes in his service for which he has obtained the necessary copyrights;

(3) The licensee for Direct-Home-Delivery service and Local Delivery service shall, amongst other, provide a specified number and type of broadcasting services of the public service broadcaster and in such manner as may be prescribed include only licensed services or registered services in his delivery package for the purposes of distribution; use not more than such number of channels as determined by the regulations out of the total channels capacity of the system for providing its own programming.

(B) The Commission should be specifically empowered to grant licenses in respect of all or any service/services except such specific service/services as are not permitted to be licensed,

(C) It has been suggested that consultation with the Central Government should be mandated when the Commission exercises its licensing functions. But in the considered opinion of this Sub-Group, this suggestion is neither feasible, nor will it be practicable or workable; "In consultation with" does not mean "with the concurrence of"; to provide for the former would only involve needless duplication, whereas the latter would make the setting up of an independent Commission a meaningless exercise. This Sub group considers that the Sovereign interests of the State will be sufficiently safe guarded: (a) by our proposal that service or services not permitted to be licensed would remain within the discretion of the Central Government, provided such services are duly notified in the Official Gazette and (b) by the further stipulation that in exercising its licensing and
regulatory functions the Commission shall follow such policy - directives and policy guidelines as may be communicated to it in writing by the Central Government from time to time.

Other Licensing Provisions Our recommendations are as follows:

1. The Commission may grant licenses for the following categories, viz:
   (i) Network facilities
   (ii) Network services
   (iii) Application services
   (iv) Content Application services

The commission shall grant licenses subject to terms and conditions which shall be published and decided by the commission, this may include some amount of fees, and for a limited period of time. After the commencement of this act no person shall be allowed own or provide any service under the act, without license. It was also recommended that the licenses already issued under the Telegraph Act, 1885 shall be deemed to be issued under the provisions of this act. And central govt. by notification may provide for exemption in case of common ownership and non-commercial nature.

Concept of convergence:

Convergence of telecom, broadcasting and information technology is occurring at the technological level i.e. digital technology now allows both traditional and new communications services, voice, data, sound or pictures, to be provided over many different networks. For example, voice telephony services may be provided via Internet or cable TV networks may be used to carry both content and telecommunication services. The technological convergence is also leading to hybridization of services such as video on demand. Convergence provides opportunities for operators of one particular service to branch out to new services. The only hindrance to development and use of such technologies is due to the constrictions imposed by the legal and regulatory practices. In this respect the current divergence in the regulatory structures of Telecommunication and broadcasting spheres is a substantial barrier to convergence. The critical aspect of the matter is that the diverging regulations could lead to similar services being differently regulated on the basis of the platform through which they are delivered. Given the pace of the technology development in the Communications, the

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21 Cl 4.2 of part 4
22 Laurent Garzaniti, “Telecommunication, Broadcasting and Internet EU Competition Law and Regulation”, Sweet and Maxwell, London 2000
regulatory framework is uncertain and needs to be clarified. The existing diverging regulatory structures shall greatly impede the investment and ultimate consumer access to the products.

5. The Indian Telegraph Act, 1885

The Indian Telegraph Act, 1885 only define the term 'Telegraph'. That define the Telegraph under section 4 (1) Radio waves and the hertzian have been define to mean the electromagnetic waves of frequencies lower than 3000 and giga cycles/sec propagated in space without artificial guide23.

The definitional scope of telegraph leaves it for the interpretation if it includes materials for building, TC network such as optical fiber or Telegraph wires? This under the little interpretation of section 4 (1) of Telegraph act seems unlikely as the term Telegraph covers only the end-use terminal/apparatus or a medium that actually enables transmission of a message and not the individual ingredients of a telecommunication network network24. In order to be covered by the definition of a Telegraph, the apparatus would have to transmit or receive signals by wire, visual or other electromagnetic emissions or other means. This covers only to the end-use terminal. Hence only defending in receiving apparatus will be the ‘Telegraph’ and not the transmission medium, which transmits the waves25.

Under the guidelines for issue of licence as Infrastructure Service Provider category( IP-II and IP (I)) also states that infrastructure providers who lease, rent or sell end to end bandwidth, capable of carrying digital message shall require licence from TRAI, while providers which provided assets for transmission shall only need to be registered.

Hence the companies that provide physical elements of TC network do not require licence but companies that actually give end-to-end bandwidth that is medium that transmits the message require licence.

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23 Explanation to section 4 (1)
24 Piyush Joshi, “Infrastructure Law In India” p. 422,
25 ibid
The term “telecommunications services” is defined in section 2 K. of TRAI Act, 1997. The Amendment Act of 2000 added the proviso to the section. This definition is based on the definition of Telegraph in 1885 Telegraph act.

It is opined that the proviso has restricted the definition of the telecommunications services, as with the proviso the “other services” to be categorized as telecommunication services, they have to be notified by the central government. This would make the illustrative list have exhaustive. Hence the basic telephone services and Internet services fall outside the ambit of TRAI. Hence DoT would also be outside the scope of TRAI.

Another inherent conflict is that the main definition expressly excludes the broadcasting service but proviso states that Central Government has the power to modify the broadcasting service as telecommunication services26.

Wireless communication is defined under the wireless Telegraphy act. Section 2 (1) defines wireless communication and section 2 (2) defines wireless apparatus. The salient feature of the act is that the act regulates the possession of wireless telegraphy apparatus.

6. TELECOM REGULATORY AUTHOROTY OF INDIA

The genesis of the TRAI lies in the bidding process for the grant of cellular licences and the litigation that followed specially the case of Delhi science Forum v. Union of India27, after the grant of first set of licences under the NTP28, 1994. Section 2 of Part V of the tender documents floated by DoT, Department of Telecom, on the basis of which the bids were invited, specified that, the tariff for the service ‘shall be subject to the regulation by TRAI as and when such an authority is set up by government of India29.

26 Definition under Income Tax Act 1961
27 AIR 1996 SC 1356
28 National Telecom Policy
29 Piyush Joshi p. 427
One of the grounds for challenge in the Delhi science Forum case was that the NTP 1994 did not provide for the creation of a telecom regulator nodded provide for delegation of authority by the central government to such authority to regulate the functioning of NTP 1994. But before the court delivered the judgment, TRAI ordinance 1996 had been promulgated. Supreme Court held that 'with creation of TRAI, now the independent regulatory authority shall supervise and regulate the functioning of various telecom service providers in accordance with the ordinance.'

Supreme Court observed with respect to the TRAI, that TRAI was essential to regulate telecom sector, since the private sector shall contribute to develop telecom sector more than DoT/MTNL, and the role of independent regulator is very important.

The court further held that, ‘the Central Government and the TRAI should not behave like sleeping trustees, but have two function as active trustees in public good.’

TRAI started functioning with the above mandate, and ironically the first dispute that TRAI involved itself against was the central government. The main question here was if the TRAI in the exercise of power is to regulate “service providers”, could it also regulate the functioning of central government at the licensor. Justice Usha Mehra, held that the grant and amendment of licence was the prerogative of the central government as licensor and this fall outside the ambit of the TRAI jurisdiction.

The act established TRAI was chairperson and members were to be appointed by the central government. They were to be persons having special knowledge of and personal experience in Telecommunication industry, finance, law, management and consumer affairs.

The person should have held the post offer Secretary or Additional Secretary in central or state government for a period of not less than three years.

30 ibid
31 UOI v TRAI FAOs 89/98, 93/98, 94/98 & ors. CWs 2764/97, 2805/97, 3947/97 at High Court of New Delhi
32 S. 4 of TRAI Act
The act lays down that the chairperson of members shall not have any financial or other interest, which could affect prejudicially his function\(^{33}\).

The term of office for the chairperson and members would be three years or the age of 65 years whichever his earlier.

The chairperson is mandated the powers of general superintendent and directions in conduct of its affairs and shall preside over its meetings\(^{34}\).

Section 8 (3) states that all issues which come up before the authority shall be decided by majority vote.

Chapter 3 talks of powers and functions of authority, section 11 states that notwithstanding anything in the Indian Telegraph act, 1985 the TRAI will make recommendations:

- the need and timing for introduction of new service provider\(^{35}\), the section does not laid on any specific guidelines as to when TRAI can make recommendations, primarily interviewed that the effect on the existing licensee should be seen.

- Terms on condition of licence was service provider\(^{36}\): the terms on the licences issued under section for after Telegraph act, 1985 which are to be recommended by TRAI , though no guidelines are prescribed yet the terms should evaluate the viability of service provider and consumer interests.

- Revocation of licence for non-compliance with terms: this is an essential regulatory tool in the hands of TRAI , to effectively regulate the private operators, but it is advisable that the TRAI should use this as a last resort.

- Measures to facilitate competition and promote efficiency in the operation of telecommunications services so as to facilitate growth in such services. This is a positive provision, which makes it obligatory on TRAI to make such recommendations and policies so as to optimally develop the sector.

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\(^{33}\) S. 5(1) ibid
\(^{34}\) S.6
\(^{35}\) S.11(1)(a)
\(^{36}\) S. 11(1)(ii)
• Technological improvements in the service provided by service providers—this provision makes TRAI an observer of the telecom scenario is than endeavor to make TRAI responsive to any legal changes required to adapt to that technology.

• Type of equipment to be used by service providers after inspection of equipment used in network. Actual inspection of equipment being used in the network is to be carried out, before change to new technological equipments.

• Measures for development of technology and any other matter will relatable to telecom industry in general—this provision aims to primarily give an impetus to the research and development of the telecom technology in India.

• Efficient management of spectrum—this only provision apart from NTP 1999 which talks of spectrum. Spectrum is not defined anywhere else.

The above were the matters where it is mandatory for the central government to take recommendations from TRAI.

Following regulatory functions of TRAI:

1. Ensure compliance with terms and a condition of licence—the ambit of powers under the section is limited. TRAI can ensure compliance by issuing directions or by recommending termination of licence for non-compliance. The powers are limited as action against the licensor can only be taken by the licensee. TRAI cannot take any steps to enforce the terms of licence. TRAI can issue any directions to the service providers.

   Under section 30 and section 29 of the TRAI act, the penalty for not following the directions of TRAI is fine of Rs one lakh, second contravention Rs 2 lakhs, additional fine of Rs 2 lakh can be imposed for every day of default.

2. Fix the terms and conditions of interconnectivity between the service providers, irrespective of the terms of licence issued prior to TRAI amendment act of 2000. The change was brought by the 2000 amendment from the licences issued by the union government, in which it was specifically stated that interconnection terms would be specified by government but under this provision TRAI has the mandate to take the terms and conditions of interconnect agreement. But critics argue that it would
have been better that TRAI formulates broad principles and leads the players to reach an agreement along those terms.

3. Ensure technical compatibility and effective interconnection between different service providers this provision supplement the above compatibility but ‘effective interconnection’ which takes care of commercial and consumer requirements in a fair manner.

4. Regulate arrangements amongst service providers for sharing revenue derived from providing telecommunications services. The ambit of this power is not clear as it can be interpreted that TRAI can alter and change the agreement between two private players or they may require prior approval of TRAI.

5. Lay down the standards for quality service to be provided by the service providers: Under this provision the TRAI is mandated to conduct surveys so as to ascertain the quality of service provide by the service provider. Then TRAI can lay down the standards for quality service based on consumer interest. Conflict could arise when the standard in the license and guidelines of TRAI vary.

6. Lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers: This function is related to the function of stipulating terms for interconnect of various service providers so as to ensure effective interconnection.

7. Maintain register of all interconnect agreements and of all other matters as may be provided in the regulations: Only important point under the section is that the register to be maintained by the TRAI is open to public for inspection.

8. Ensure effective compliance of the universal service obligation: This is the only provision in the telecom law other than the NTP 9937 Broadly the universal service obligation means that the opportunities through the developments in communications should reach to all classes of people irrespective of their socio-economic strata. Primary function is to identify what constitutes USO, the standards set should not be unviable to the operators, and a coordinated effort by the DoT and the private players would be required.

37 S.6 NTP 99
NTP 99 stipulates that the union Govt. will provide a basic telecom services to all people at affordable cost, the primary aims were:

♦ Provide voice and low speed data service to balance 2.9 lakh villages by 2002.
♦ Achieve Internet access to all district headquarters’ by 2000
♦ Achieve telephone on demand in urban and rural areas by 2002.

It also imposes a Universal access levy, which would be the percentage of the revenue earned by the operators under various licenses. This percent age would be decided by the union govt. in consultation with TRAI.

Rates for the various telecom services within and outside India will be notified by TRAI in the official gazette\(^{38}\) hence the power to determine the tariff is with the TRAI. Earlier govt. under s. 6 and 7 (2) of the telegraph act retained this power.

### 7. THE TELECOM DISPUTES SETTLEMENT

The TRAI Act was amended in 2000 to separate adjudicatory and regulatory functions of the TRAI a new body ‘Telcom Disputes Settlement and Appellate Tribunal (TDSAT), was formed. Chapter IV of the TRAI Act deals with TDSAT. S. 14 of the Act establishes TDSAT to adjudicate disputes between\(^{39}\):

- licensor and licensee;
- between two or more service providers;
- between service provider and group of consumers

Exceptions to these are the disputes relating to the MRTP\(^{40}\), Consumer dispute redressal forum\(^{41}\) and S. 7b of the Telegraph Act.\(^{42}\)

\(^{39}\) S. 14 (a) I, II, III
\(^{40}\) S. 14 (a) proviso A
\(^{41}\) S. 14 (a) proviso B
\(^{42}\) S. 14 (a) proviso C
Analysis of ‘THE COMMUNICATION CONVERGENCE BILL, 2001’

OBJECTS AND REASONS

Increasing need for regulation and inadequacy of existing law are the important reasons behind the attempt to frame new convergence legislation. Convergence means the provision of different kinds of services to provide a wide variety of services with the available infrastructure and also providing for the enhancement of existing technologies. It is a relatively new phenomenon. It is also not possible to predict the emergence of new services with rapid development of new technology. The existing regulatory mechanism is inadequate in dealing with the emerging needs of new media convergence. Furthermore, the existing licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors are currently spread over different authorities. Therefore a flexible type of legislation to accommodate and encourage permutation and combination of technologies and services is required. The Communication Convergence Bill proposes to establish a structured mechanism to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia) in the scenario of increasing convergence of technologies.

The Bill aims at facilitating development of national infrastructure for an information based society, and to enable access thereto; providing a choice of services to the people with a view to promoting plurality of news, views and information; establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

43 S. 18 TRAI Act 1997
44 PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA. [Copy of letter No. 13-7/2001-Restg. Dated 29th August, 2001 from Shri Ram Vilas Paswan, Minister of Communications, to the Secretary-General Lok Sabha] The President, Convergence Bill, 2001 recommends the introduction and consideration of the Communications Convergence Bill, 2001 in the House..
These objectives are proposed to be achieved by setting up an autonomous body to be known as Communications Commission of India with wide ranging powers, duties and functions. The head office of the proposed Commission shall be located at Delhi, and its regional offices shall be located at Kolkata, Chennai and Mumbai. The Commission shall consist of a chairperson, not more than ten Members and the Spectrum Manager as an ex-officio Member. The chairperson and Members, other than the ex-officio Member, shall be appointed by the Central government from amongst persons of eminence recommended by a Search Committee from fields such as literature, performing arts, media, culture, telecommunications, law, broadcasting technology, information technology, finance etc.

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

This flexible licensing regime is expected to optimize the use of resources and encourage the development of infrastructure. The information technology enabled services such as call centers, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex, video conferencing shall not be licensed under this legislation and all the facilities and services exempted from licensing or registration immediately before the commencement of this legislation shall continue to be so exempt, until otherwise notified.

The Commission is envisaged to be involved in the assignment of the spectrum; it will carry out frequency management, planning and monitoring for non-strategic or commercial usage of spectrum; determine appropriate tariffs and rates for services; facilitate and regulate all matters relating to the carriage and
content of communications; promote competition; take measures to protect consumer interest and promote and enforce universal service obligations; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities; report and make recommendations either suo motu or on such matters as may be referred to it by the Central Government etc.

The Commission is also proposed to be empowered with dispute resolution functions and will have the power to appoint Adjudicating Officers. 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, or against orders of Adjudicating officers imposing civil liabilities. 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. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a judge of the Supreme Court and shall be appointed in consultation with the Chief Justice of India. The members of the Appellate Tribunal shall be appointed from amongst persons recommended by the Search Committee and they should be, or should have been, Judges of High Court or should have 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 should be persons who are proficient in any of the fields specified for appointment as Members of the Commission.

**Repealing of Old Legislations:**

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.

The Bill also provides that with effect from the dates of establishment of the Commission and of the Appellate Tribunal, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal respectively, established under the Telecom Regulatory Authority of India Act 1997, shall
stand dissolved and proceedings pending before them shall stand transferred and deemed to be pending respectively before the Commission and the Appellate Tribunal.

Section 1 of the proposed law provides for application of the proposed legislation to the entire country and for appointment of different dates for commencement of different provisions of the proposed legislation. Section 2. of the Bill defines the various expressions occurring in the proposed legislation.

Under the sec. Broadcasting Service is defined as, "Broadcasting service" means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service, but does not include—
(a) a service (including a teletext service) that provides only data, or text (with or without associated still images); or
(b) a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; or
(c) a service, or a class of services, that the Central Government may notify as not being a broadcasting service;

Further, A Channel means a set of frequencies used for transmission of a programme.

"communication" means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electromagnetic emissions
"communication service" means a networking service or network application service or value added network application service or a content application service;
"content" means any sound, text, data, picture (still or moving) other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically.
"content application service" means an application service which provides content meant for the public and includes such other services as may be prescribed;
"frequency" means frequency of electromagnetic waves used for providing a communication service;
"network application service" means the service provided by means of one or more networking services and includes such other services as may be prescribed;

"network infrastructure facilities" means any element or combination of elements of physical infrastructure, which would be utilised by licensees for providing networking services and includes such other facilities as may

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45 S. 2 (3) of the bill.
46 S.2 (5)
47 S.2 (7)
48 S.2 (8)
49 S.2 (9)
50 S. 2 (10)
51 S. 2. (11)
52 S. 2 (16)
53 S. 2 (17)
be prescribed; "network service" means a service for carrying communications by means of guided or unguided electromagnetic waves and includes such other services as may be prescribed; "post" means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility; "programme" means - television or radio programme including advertising or sponsorship, whether or not of a commercial kind, and broadcast programming shall be construed accordingly; "programme code" means the code specified under section 20; under S. 2 (24) the public authority includes the Central Government; a State Government; any person, agency or organisation engaged in land development for public use, or in roads for public transportation; any local authorities legally entitled to, or entrusted by the Central or any State Government with, the control or management of any municipal or local fund; and any institution, concern or undertaking or body which is financed wholly or substantially by funds provided directly or indirectly by the Government that may be specified by notification in this behalf by the Central Government.

"public service broadcaster" means any body created by Act of Parliament for the purpose of public service broadcasting.

"service provider" includes any person who provides a communication service;" spectrum means a continuous range of continuous electromagnetic wave frequencies upto and including a frequency of 3000 giga hertz; "Spectrum Manager" means Wireless Advisers to the Government of India notified as Spectrum Manager, Government of India under sub Section (3) of section 23;

"subscriber of a service" means a person who subscribes to a communication service primarily for his own use; "Universal Service Obligation" means obligation as may be prescribed; "value added network application service" means the service provided by means of value addition using one or more network application services and includes any article or apparatus as may be prescribed; "wireless equipment" means

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54 S. 2 (18)
55 S. 2 (20)
56 S. 2 (22)
57 S. 2 (23)
58 S. 2 (25)
59 S. 2 (29)
60 S. 2 (30)
61 S. 2 (31)
62 S. 2 (32)
63 S. 2 (33)
64 S. 2 (34)
65 S. 2 (35)
any equipment in use or capable of use in wireless communication and includes any article or apparatus as may
be prescribed;” wireless communication\textsuperscript{66} means any communication without the use of wire or cable.
Further the definitions of licensee, licensor, communication commission etc. are also defined in the section.
The above definitions are the of the techcnical terms used in the Act. Most of the have also been defined in
the other statutes dealing with the Telecom and Broadcasting.

Chapter II of the proposed legislation deals with the REGULATION OF USE OF SPECTRUM,
COMMUNICATION SERVICES, NETWORK INFRASTRUCTURE FACILITIES, AND WIRELESS
EQUIPMENT \textsuperscript{66} S. 3 provides that no person shall use any part of spectrum without assignment from the
Central Government or the Commission as provided for in the proposed legislation.

Further S. 4 provides that no person, other than a public service broadcaster, shall own or provide any
network infrastructure facility\textsuperscript{67} or provide any networking service or any value added network application
service or any content application service without a license or registration\textsuperscript{68}. Proviso to the clause stipulates that
that all facilities and services exempted from licensing or registration immediately before the coming into force
of the proposed legislation shall continue to be so exempt under the proposed legislation, until otherwise
notified. Further it provides that the Central Government may by notification exempt any person, or class of
persons or any facility or service from the provisions of this clause\textsuperscript{69}.

Further under S. 5 the act provides that no person shall possess any wireless equipment without
obtaining a license under provisions of the proposed legislation. It also provides that the Central Government
may, in public interest, by a notification exempt any person or class of persons or any wireless equipment or
class of wireless equipment from the provisions of this clause. It further states that any licenses issued or any
persons or equipments previously exempted from the licensing requirements shall continue to be valid until a
further notification is issued\textsuperscript{70}.

\textsuperscript{66} S.2 (36)
\textsuperscript{67} S. 4 (1) (a)
\textsuperscript{68} S. 4 (1) (b)
\textsuperscript{69} S. 4 (2)
\textsuperscript{70} S. 5 (2)
Chapter III of the proposed legislation is dedicated to the formation, structure, functions and objectives of the Communication Commission to be established under the act. It provides\textsuperscript{71} for the establishment of the Communications Commission of India with its head office at Delhi and regional offices at Kolkata, Chennai and Mumbai. The Commission will be a body corporate having perpetual succession, a common seal and shall by the said name sue and be sued.

The commission shall consist of a chairperson, not more than ten Members and the Spectrum Manager as an ex-officio Member. The Chairperson and not less than six Members other than the ex-officio Members and the remaining shall be part-time Members.

Section 7 talks of the appointment and qualification of members and chairperson, it provides that the Members of the Commission (except the ex-officio Member) shall be appointed by the Central Government from amongst persons recommended by a search committee. 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, while one half of the members shall be appointed from amongst persons of eminence in specialized fields such as telecommunications, broadcasting technology, information technology, finance, management and administration, or law. The Chairperson shall be a person of eminence from any of the fields mentioned above. Before appointment the Central Govt. has to satisfy itself that the person to be appointed has no financial or other interest, which could prejudicially affect his functions.

Section 8. Provides that the Chairperson and a whole time Member shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 65 years, whichever is earlier, and he will not be eligible for reappointment. Further it provides that tenure of a part time member shall be such as may be prescribed\textsuperscript{72}.

Section 9 deals with circumstances under which, and the procedure for removal of Chairperson and Members from office, section gives an illustrated list of the conditions where a person can be removed from the commission.

\textsuperscript{71} S. 6
\textsuperscript{72} It also gives the power of general of resignation and that the chairperson shall preside over the meetings of the commission.
Section 13. provides for the Commission to determine the procedure for the transaction of business in its meetings including times and places of its meetings. It also provides that if the Chairperson and a member abstains himself from three consecutive meetings, without leave, he is deemed to have vacated his office.\textsuperscript{73}

Section 14. Provides for the powers of the civil court under the Civil Procedure Code 1908 to discharge its functions. Sub clause 3 of the section further provides that the commission shall not be bound by the code of civil procedure but shall be guided by the principles of natural justice.

Section 16. provides that the Commission may set up a Panel from amongst its Members to deal with matters in relation to the content in content application services\textsuperscript{74}. It also provides that, the Commission may distribute its business amongst its Members; it also provides that the Commission may authorize officers of the Government\textsuperscript{75} to implement and carry out orders and directions of the Commission\textsuperscript{76}.

Chapter IV of the act defines the powers, Functions and duties of the commission. Section 18 indicates that while exercising its functions, the Commission shall strive to achieve objectives and principles governing the administration of the proposed legislation which inter alia include that the communications sector is developed in a competitive environment and in consumer interest, that communication services are available at affordable cost to all, that choice of services is promoted, that defence and security interests of the country are fully protected, that equitable and non-discriminatory interconnection across various networks are promoted, that licensing and registration criteria are transparent and made known to the public and that the principle of a level playing field for all operators is promoted so as to serve consumer interest\textsuperscript{77}.

Section 18 stipulates the powers, duties and functions of the Commission. It lays down that it shall be the duty of the Commission to facilitates and regulate all matters relating to carriage and content of communications. The commission shall also inter alia carry out spectrum management, planning and monitoring for non-strategic or commercial usages; promote competition and efficiency in the operation of communication services and network infrastructure facilities; take measures to protect consumer interests and promote and enforce Universal Service Obligations; formulate and lay down programme and advertising codes in respect of content

\textsuperscript{73} S. 13 (2)
\textsuperscript{74} S. 16 (1)
\textsuperscript{75} DM and SDM can be delegated power to ensure compliance by the commission orders.
\textsuperscript{76} S. 16 (4)
\textsuperscript{77} S. 17 gives the exhaustive list of the objectives and guiding principles.
application services; take steps to regulate or curtail the harmful and illegal content on the internet and other communication services; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities (including equipment); institutionalize appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the basic objectives of the proposed legislation to encourage self regulatory codes and standards; and report and make recommendations either suo-moto or on such matters as may be referred to it by the Central Government. It has also been provided that while exercising its powers and discharging its functions, the Commission shall ensure transparency.

Section 19 gives the power to the Commission, that it may at any time make recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the security, sovereignty and integrity of India, friendly relations with foreign states, public order, decency or morality.

Section 20 of the statute is very important as it provides the power to the commission to lay down the program codes, the Commission shall by regulations specify programme codes and standards which may include inter alia practices to ensure that nothing is contained in any programme which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, public order or which may constitute contempt of court, defamation or incitement to an offence; practices to ensure fair and impartial presentation of news and other programme, promotion of Indian culture, values of national integration, religious and communal harmony, decency in portrayal of women, restraint in portrayal of violence and sexual conduct and to enhance general standards of good taste, decency and morality etc. Hence under the Section the Commission will be the moral policeman of the society and can decide what the society should watch in the best interest of the Nation and the Culture, this provision has a potential to be misused, as has been seen so many times that our Censor board becomes the moral guardian of the society. Each individual or the policymaker or the govt. will want to promote its own policy and ideology, this could lead to misuse of communication sector.

78 S. 18 gives the exhaustive list of the various functions of the commission.
79 S.20 lists out the specific provisions.
Section 21 provides for the Commission to decide any dispute or matter between service providers, between service providers and a group of consumers or any matter arising out of enforcement of the proposed legislation. The commission shall also hear and determine any complaint from any person regarding contravention of the provisions of the proposed legislation or the rules regulations or orders made thereunder and if necessary refer the matter for adjudication to the adjudication officer established under the act. Chapter 10 deals with adjudicating machinery.

Section 22. Empowers the Central Government to issue policy directives to the Commission which may include the procedure and the mode in which any services are to be licensed or registered. It has further been provided that in framing the policy directives, the Central Government shall take into account the objectives and guiding principles governing the administration of the proposed legislation. Hence the Central govt. would retain overall control by issuing policy directives, which shall be mandatory to be followed by the commission. The commission can only request the central govt. to review a particular directive. Ideally the policy should be formulated by the Central govt. in consultation with the commission, as the commission in handling the affairs would be better equipped to advise the govt. on the problems of the industry and the consumers.

Section 23. provides that the Central Government shall be responsible for spectrum management and also for allocation of spectrum for strategic and non-strategic or commercial purposes. This clause also sets up a Spectrum Management Committee with Cabinet Secretary as its Chairman. This also lays down that the Central Government shall notify Wireless Advisor to Government of India as Spectrum Manager, Government of India to act as the Member -Secretary of the Spectrum Management Committee. It also sets out, subject to the general supervision and control of the Spectrum Management Committee, the functions of the Spectrum Manager, and that he shall assign frequencies on payment of such fees as may be prescribed. This is another very important provision of the Act as the effective Spectrum management is the important for development of broadcasting and telecom industry. It is also to be acknowledged that the spectrum is Scarce and hence has to be effectively used.

S. 23 (4) lays down the functions of the spectrum manager: (i) to co-ordinate with international agencies, matters relating to overall spectrum planning, use and its management; (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. (iii) to allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and reassignment of frequencies from time to time. (iv) to review constantly and make available as much spectrum as possible for assignment by the Commission, in particular by optimizing usages, and. (v) monitoring as appropriate, in consultation with the Commission, the efficiency of the utilization of the spectrum by all users including investigation and resolution of spectrum interference; and (vi) after meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs including those of defence, national security and public service broadcaster, the Spectrum Manager shall make the spectrum available, to the maximum extent possible, for assignment by the Commission, both in the shared as well as in the exclusive bands.

Section 24. Provides for assignment by the Commission of spectrum to non-strategic and commercial users and the procedure for dealing with requests by the Commission for allocation of additional spectrum. It states that the Commission shall freely assign only the frequencies allocated to it and in case the frequency band is not exclusively allocated to it then the commission would consult the Spectrum manager.81

Section 25. Provides that before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as the Commission may consider appropriate. It also empowers the Central Government to notify the class or classes of persons or services for preferential assignment of any frequency of spectrum by the Commission.

Chapter 7 of the Act deals with the License or registration Section 26 provides for the grant of license or registration under this Act to service providers subject to such conditions, restrictions ,fee, tariffs and rates etc at which facilities and services will be provided, as may be determined by the Commission, which may also determine the conditions for grant or transfer of license or registration. The commission shall also notify from time to time schemes or plans for licensing or registration after consulting the Central Government for ensuring that the defence and security interests of India are fully protected. This clause further provides for the five categories of licenses namely.

81 S. 24 (1)
1. to provide or own network infrastructure facilities
2. to provide networking services
3. to provide application services
4. to provide content application services
5. to prove value added network application services such as internet services and unified messaging services.

The Clause however also clarifies that information technology enabled services will not be licensed. The Commission may, while granting a license under the above said categories, grant licenses either singly or jointly for one or more of the categories of facilities or services. Further clause provides that a license or registration shall be granted for such period, in such form and subject to payment of such fees as determined by the Commission. It also provides that the Central Government may in public interest exempt any person or class of persons from payment of license or registration fee.

Section 28 is another very important clause which stipulates the duties of service providers. It inter alia provides that every service provider shall wherever required or applicable provide services to give effect to universal service obligations, provide life saving services, provide services to any person on demand with a reasonable time and on a non-discriminatory basis, and follow the codes and standards laid down and specified by the commission. It also lays down that every service provider of a content application service

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82 For the purposes of this clause, network infrastructure facilities shall include earth station, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution
83 For the purposes of this clause, networking services shall include bandwidth services, fixed links and mobile links
84 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);
85 For the purposes of this clause, content application services shall include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting
86 For the removal of doubts, it is hereby declared that information technology enabled services such as call centers, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex and video conferencing shall not be licensed under this Act.
87 S. 27
88 S. 28 (1) (i)
89 S. 28 (1)(ii)
90 S. 28 (1)(iii)
91 S. 28 (1)(iv)
shall, endeavor to provide a suitable proportion of programme of indigenous origin and ensure that no programme forming part of its services infringes any copyright. It further stipulates that every service provider holding a license for providing distribution of broadcasting services shall provide a specified number and type of broadcasting services including those of the public service broadcaster in such manner as may be prescribed. This section is important because it casts a duty on the license holder towards the society, so that all people of all regions without any discrimination have access to Communication facilities of all types. Especially a duty is cast on the Broadcaster to promote indigenous programming and have due regard to copyright laws with respect to that programme. This implies that broadcaster cannot show pirated DVDs and CDs of latest movies. Obligation is also cast to show specified number of channels of public broadcaster.

Further clause provides that certain agreements entered into or made by any service provider or infrastructure facilities provider will be registered with the Commission, within sixty days.\textsuperscript{92}

The lone section under chapter 8 deals with the stipulation that, any person who intends to possess wireless equipment shall have to register with the commission by filing an application.\textsuperscript{93}

Section 31 provides that 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, such event will have to be carried on the network of the public service broadcaster(s) as well. It also provides that such event shall be notified well in advance so as to provide level playing field to other broadcasters and bidders.

This section has wide ramifications especially on sporting events like Cricket matches, which will be mandatory to be telecast by the public service broadcaster so that it is available to widest number of people. Such a requirement is also available in various broadcasting laws of European countries.

Next Chapter in the Act deals with the BREACH OF TERMS AND CONDITIONS OF LICENSE OR REGISTRATION, CIVIL LIABILITY AND ADJUDICATION clause provides for the powers of the Commission in case of breach of terms of the license or registration or failure to comply with its decisions or

\textsuperscript{92} S. 29, it talks of shareholders or promoters agreements, interconnect agreements, and such other agreements specified by the regulations.
\textsuperscript{93} S.30
\textsuperscript{94} Chapter 9
Such powers include the power to revoke the license or registration and also in case of breach of terms and conditions of license or registration, for seizure of equipment being used for provision of services. Any person aggrieved may prefer an appeal to the appellate tribunal within 30 days.

Section 33 & 34 provide for the Civil Liability, if the license holder commits breach and in case any person uses network infrastructure facility or communication service or wireless service, which is required to be licensed and is not licensed.

Section 35 provides that if a person uses network infrastructure facility, communication service or wireless equipment and he has knowledge or has reasons to believe that this service is without licenses under the act then he is liable to a civil liability. Sections 36 & 37 provide for civil liability if any agreement is not registered or if a person willfully does not comply with the directions of the commission, he has a civil liability.

Section 38 provides for the filing before the commission of complaints, the complaints have to be filed within 60 days and if the commission is of opinion that the prima facie case is made, the matter will be referred to adjudicating officer. Section 39 provides for the appointment by the Commission of Adjudicating Officers for the purposes of adjudging whether any person has contravened any of the provision of the proposed legislation, any rule, regulation, direction or order made thereunder or whether he is liable to a civil liability, and for the powers of the Adjudicating Officers. The adjudicating officer for the purpose of discharging his functions shall be vested with the powers of the civil court.

Clause 40.-This clause provides for the imposing of civil liability for willfully or otherwise damaging network infrastructure facility, and for causing interruption of a communication service. The person shall be
liable for the damage of Rs. 5 crore and where the actual damage is greater than 5 Crore, the actual extent of the damage. And any person contravening S.63 (2) shall also be liable\textsuperscript{100}.

Clause 42.- This clause provide for the imposing of a civil liabilities shall not exceed fifty crore rupees, and also stipulates the factors to be taken into account by the Adjudications Officer in adjudging the quantum of civil liabilities, these include the quantification of damages\textsuperscript{101}.

Section 43 provides that the establishment of the Communications Appellate Tribunal. It also lays down that appeals can be preferred to the Appellate Tribunal by any person aggrieved by any decision or order of the Commission, or by an order of civil liability imposed by the Adjudicating Officer. It also lays down that the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, and also that the Appellate Tribunal may call for relevant records for examining the legality etc. of any order or decision of the commission or of the Adjudicating Officer, and pass such order as it thinks fit. Section 44. deals with the composition of the Appellate Tribunal which shall consist of a consist a chairperson and not more than six members to be appointed by the Central Government. The appointment of chairperson has to be made in consultation with the Chief Justice of India. The appointment of the Appellate Tribunal shall be from amongst persons recommended by search committee. This clause also provides for the constitution of benches by the chairperson, and that each bench shall be headed by a judicial member.

Section 45. provides for the qualifications, tenure, salary and allowances etc. of the chairperson and members of the Appellate Tribunal and the manner of filling up of vacancies in the Tribunal.

Section 46. provides for the procedure for resignation, and also the procedure for the removal of the chairperson or members of the Appellate Tribunal. Section 47. provides for the procedure for the distribution of business, and the procedure for the transfer of business, and the procedure for the transfer of cases, amongst benches of the Appellate Tribunal. Section 48. provides for the powers and procedures of the Appellate Tribunal, for the purpose of discharging its functions under the proposed legislation. Section 49. This clause provides for the right of the applicant or appellant to take assistance of legal practitioners etc. before the Appellate Tribunal. Section 50. provides that an appeal against the order, not being an interlocutory order, of

\textsuperscript{100} S. 41
\textsuperscript{101} S.42 (2)
the Appellate Tribunal, shall lie to the Supreme Court. Section 51. Provides that an order passed by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court. Section 52. Provides that if any person willfully fails to comply with any decision, direction or order of the Appellate Tribunal he shall be liable to a penalty which may extend to five crore rupees and no such penalty shall be imposed without giving an opportunity of being heard to the party concerned.\textsuperscript{102}

Chapter XIII\textsuperscript{103} deals with finance accounts and audit, it provides that the proceeds of the license and other fees. And the amounts received by the imposition of the civil liabilities and penalties shall be credited to the Consolidated Fund of the India. Its also lays down that such portion or percentage of the license fee as may be attributable to the Universal Service Obligation shall be credited to a separate fund to be as the Universal Service Obligation Fund in the public account of India\textsuperscript{104}.

Chapter XIV deals with the important issue of the Right of way for laying cables and poles.

Section 59 states that the facility provider may from time to time require to establish poles or underground cables etc. to run their network. The section provides that any public authority under whom the property is vested shall grant necessary permission to lay the infrastructure. This right shall be given to all service providers without discrimination, with the condition that the property shall be restored. Further it is provide that if the public authority thinks that the pole or cable that has been put, needs to be removed for certain reasons, the facility provider shall remove it without any delay\textsuperscript{105}.

\textsuperscript{102} Clause 53.-This clause provides for appointment of the officers and other employees of the Commission and of the Appellate Tribunal, by the Commission or the Appellate Tribunal as the case may be, subject to such conditions as may be prescribed by the Central Government. This clause also provides that the salary and the allowances payable to and the terms and conditions of the service of the officers and the employees of the Commission and the Appellate Tribunal shall be prescribed by the central Government.

\textsuperscript{103} Sections 54 to 58 deal with these.

\textsuperscript{104} S. 54

\textsuperscript{105} S. 61
It is also provided that disputes including refusal of permission by the public authority shall on application be determined by the District court within whose local limits of jurisdiction the property is located.106

The private land may be used by a facility provider for constructing or laying cables or erecting posts only with the written consent of the owner of the land or premises, and when the consent is not forthcoming then the facility provider may request the Commission, and takes steps as authorised by the commission.107

Commission is empowered with the powers to issue orders for requiring any network infrastructure facility to be provided, constructed, installed, altered, moved etc. on private land or premises subject to such conditions as to compensation or otherwise, and the time and manner of doing so. It also provides that failure to comply with the order of the Commission will be liable to imposition of civil liability108. The section restricts the rights of facility providers only to that of a user for laying cables or erecting posts or maintaining them109.

Chapter XV is Interception of Communication and Punishment for unlawful Interception.

Section 66 is very important as it gives the Central Govt. power to intercept the communication network. This clause provides that, subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government, on the occurrence of any public emergency or in the interest of public safety, if satisfied that it is necessary or expedient so to do, in the interest of the security, sovereignty and integrity of the India, friendly relation with foreign state or public order or for preventing incitement to the commission of an offence, may direct any agency of the Government to intercept any communication on any network facilities or services or that any content brought for communication or communicated or received by any service provider shall not be communicated or shall be intercepted or detained or shall be disclosed to the Government or its agency authorized in this behalf. It also stipulates that the service provider shall extend all facilities and technical assistance for interception of the content of communication. It further provides that any service provider who fails to assist authorized agency shall be punished with imprisonment, which may extend to seven years. This

106 S. 62
107 S. 63
108 S. 64
109 S. 65
clause also lays down that any person, save as otherwise provided under this clause, who intercepts or discloses to any person any content shall be punishable with imprisonment which may extend to five years or with fine which may extend to ten lakh rupees and, for a second and subsequent offence with imprisonment which may extend to five years and with fine which may extend to fifty lakh rupees.

This section has the potential to be misused by the authorities and the govt. hence it is very important that the safeguards prescribed in the section are carefully implemented.\footnote{S. 67 further provides that nothing in Chapter XV relating to interception of communication and punishment for unlawful interception, shall affect the provisions of Section 69 of the Information Technology Act, 2000}

Chapter XVI gives the offences and punishments. Section 68 provides for the punishments for unlicensed ownership or provision of any network infrastructure facility or communication service, for knowingly assisting in the transmission or distribution of such service, for diverting any signal without the permission of the service provider\footnote{Punishment of imprisonment of five years and five crore fine. S. 68 (3)} and with intent to defraud, for dealing in decoding equipment\footnote{ibid}, for knowingly benefiting from any unauthorized diversion for tampering with any service or infrastructure facility\footnote{Imprisonment of two years and two crore fine .S. 68 (4)} , for abetting or inducing unauthorized diversion or tampering\footnote{ibid} and for conviction of subsequent offences\footnote{Imprisonment of Six months to five years and fine upto 5 crore}.

Section, 68. (1) states that, “Save as otherwise provided in this Act, any person who, without a licence, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in the transmissions 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 offence, with imprisonment which may extend to five years or with fine which may extend to ten crore rupees or with both.”

Section 69. provides for punishment to any person who possesses any wireless equipment without a license or uses a radio frequency which he is not authorized to use under the provisions of the proposed
The clause also provides for forfeiture of wireless equipment utilized for committing these offences and vesting of any unclaimed wireless equipment in the Central Government. Further the clause also provides for power to any officer specially authorized by the Central Government or the Commission, to search any place in which he has reason to believe that any wireless equipment without a license has been kept or concealed, and take possession thereof.

Section 70. provides for the punishments for any person for sending by means of a communication service or a network infrastructure facility any content that is grossly offensive or of an indecent, obscene or menacing character, or for the purpose of causing annoyance, inconvenience, obstructing, criminal intimidation, enmity etc. knowing that the content is false, and for persistently making use for this purpose a communication service or a network infrastructure facility. The punishment under the section is imprisonment upto three years and fine upto two crore rupees or both.

Section 72. Provides for offences committed by companies under the proposed legislation. It is provided that no court inferior to that of a court of Session shall try any offence under the proposed legislation. Every offence punishable under the proposed legislation shall be cognizable.

Section 75 & 76 state that any proceeding pending before the TRAI or the TDSAT on the date of commencement of this act shall be transferred to the CCI and the Tribunal.

Section 77 clause provides that the Central Government may by notification in the event of war or any casualty of national magnitude, for a limited period, in public interest, to take over control or management of any communication service or a network communication infrastructure facility or suspend its operation or entrust any agency of the government to manage it in the manner directed by the government for such period as provided for in the notification. The clause also provides that the Central Government, if it feels necessary or expedient to do so in the public interest, may at any time request the Commission to direct any licensee or

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116 Imprisonment upto three years and fine upto five crore. S. 69 (1) (b) For the purpose of this subsection "radio frequencies" means any frequency of electro-magnetic waves upto and including a frequency of 3000 giga hertz.

117 S. 69 (2)
118 S. 69 (4)
119 S. 73
120 S. 74
grantee to broadcast specific announcements in a manner as may be considered necessary by the Government or to stop any broadcasting service, which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, or to public order, decency or morality or communal harmony and on issue of such directions it shall be the duty of the licensee or grantee to ensure compliance of such directions.

Section 78. provides for obligations of licensees and grantees which *inter alia* include commencement of operation of service within time specified by the Commission, maintenance of documentary and transmission schedule as specified by the Commission and allow inspection of such facilities and documentary record and schedules by any officer authorised by the Commission. The Commission may call for any information from a licensee or a grantee, and shall also have the power to inspect and obtain information from programme producers, distributors and advertising agents.

Section 81. provides that notwithstanding anything contained in any other law for the time being in force, where the Central or State Government is satisfied that any information or document etc. in possession of any service provider relating to any service availed of by any consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal proceeding, then the Government may authorise an officer in writing who shall direct such service provider to furnish such information.

Section 82 stipulates that the act shall not be applicable for the infrastructure facility or communication service established by the govt. for its own use.

Section 83. provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an Adjudicating Officer or the Commission or the Appellate Tribunal is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Section 87. provides that the provisions of the proposed legislation shall have overriding effect over other laws. The act empowers the central govt. to make rules and regulations.

121 S. 88
Section 91 confers upon the Central Government to remove any difficulty arising out of implementation of the provisions of the proposed legislation. Every order of the Central Government under this clause is to be laid before each House of parliament.

Section 93 deals with repeal of four enactments namely the *Indian telegraph Act, 1885*, *the Indian Wireless Telegraphy Act 1933*, *the Indian Telegraph Wires (Unlawful possession) Act, 1950* and *the Telecom Regulatory Authority of India Act 1997*. It also provides that notwithstanding such repeal, any person, who has obtained a license or registration under the repealed acts or has obtained a 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 the proposed legislation within a period of six months from the date of establishment of the Commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license or registration the Commission will take into consideration the terms and conditions on which such services were licensed or registered and keeping in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Acts or the Policy, as the case may be. Further, with effect from the date of establishment of the Commission and of the Appellate Tribunal under the proposed legislation, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal shall stand dissolved.

Clause 94 - This clause deals with repeal of the *Cable Television Networks (Regulation) Act, 1995*. It also provides that notwithstanding such repeal, any cable operator registered under the repealed Act may continue to provide his cable service if he has made an application to the Commission for the grant of a license under the proposed legislation within a period of six months from the date of establishment of the commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license the commission will take into consideration the terms and conditions on which such cable operator was registered and keeping in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Act.