Converge or Quit

The Coverage Bill could usher in an internet revolution for India

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After almost two years of deliberations and several draft, the much hyped Communications Convergence India (CCI) Bill 2001 which seeks to provide a combined regulatory structure for the information technology, telecom and broadcast sector, has finally been introduced in Parliament. Significantly the Bill aims to repeal and absorb at least five laws that have outlived their usefulness – the India Telegraph Act 1985, the Indian Wireless Telegraphy Act 1933, the Telegraph Wire Unlawful Possession Act of 1950, the Cable TV Regulator Act of 1995 and the Telecom Regulatory Authority of India Act of 1997. The government deserves compliments for sorting out the differences, for the present, existing among the three Ministries and readying the Bill. Hopefully, Mr Pramod Mahajan, the prime mover behind the Bill, would be able to push it further.

The Bill however has a long way to go before it sees the light of day, maybe one more year. The Bill is likely to be referred to a Select committee after it is introduced in the House. Which means, curiously, the Bill goes through a similar process that had aborted the Broadcast Bill in 1997-98. The chances of getting through Parliament are however better now for this Bill tactfully avoids some contentious issues although the touch and go composition of Parliament and polarisation of parties is similar to the one that existed in 1997 when Lok Sabha was dissolved just before the Select Committee returned the Broadcast Bill to the House – making almost three years of debate irrelevant.

The proposed Communication Commission (CCI) under the Bill is set to be empowered to issue all licenses for communication facilities and services. It is supposed to facilitate and regulate all aspects of telecom, broadcasting and other communication including all aspects of convergence in these services. The regulator is expected to determine codes, technical standards and decide and levy license fee and determine tariff and rates for licensed services. That is why the proposed CCI is being described as a “super regulator”.

Till now there is no law as sweeping in impact and jurisdiction over the communication scene, including Indian media, as this Bill. The Bill does not take into account the landmark Supreme Court judgment of 1997, which held that “airwaves are a public property” and that a pubic authority should control and regulate the same.

The Bill has generated enormous debate and euphoria. There are certain critical areas of concern that need to be looked into even at this stage. Some are only apprehensions, but some are reservations against the provisions in the Bill. On some others the Bill is silent. These cannot be ignored since much positive is expected as a result of this Bill. Also they should not be susceptible to misuse.

The drafts of the Convergence Bill were discussed by the CII, FICCI and the other industry associations. But despite larger societal implications, there was no instance of a university or an independent social science body discussing the provisions in the Bill. There was no discussion on obligatory provisions that an umbrella Bill should ensure in the context of equity considerations, gender issues, illiteracy and such other divides unique to the country. And then, of course, the universal service obligation. The Centre for Media Studies of New Delhi and New Media Forum of Chennai are some exceptions.

For the actions of CCI on whom accountability rests is not yet clear. How Parliament will be informed and which Ministry will do so should be known at the very outset so that the Act will not end up in riddles and in a “back and forth” tussle for control among the three (or more) ministries. Nowhere it is clear how the Bill is expected to play a “promotional and developmental role” for what is evident in the Bill is primarily a “regulatory one”.

The most controversial provision, presumably withdrawn, was to do with “interception and punishment” allowing the government a free hand to intercept information if thought fit to do so in “public interest”. This is a critical matter since the secretary of DOT tried to justify this provision allowing the Central government to detail press messages except by accredited journalists by arguing out that such a provision to “intercept communication was also present in the Indian Telegraph Act 1885” and he further tried to clarity that there “was no intention on the part of the government to be draconian”.

This provision in the Bill empowers anyone – Centre State or any authorised official – to intercept any e-mail, phone conversation or data transmission of non-accredited journalists on any communication network. The onus for implementation of this provision is expected to rest with service provider with provision or serve punishment.

The reservations about the Bill include provisions for the Commission to enforce some codes on the "content" by imposing "reasonable restrictions". Such restrictions could include "portrayal of violence", "emphasis on Indian culture", "prejudicial coverage of India's external relations" etc.

The contentious issues avoided include cross-media ownership and foreign direct investment in convergent media. The silence may be deliberate, but makes CCI's job difficult. Should content be completely unregulated and if so who will be responsible to Parliament for the consequences? How much of such control is possible with new media like the Internet, websites etc.?

An apprehension is that the Bill provides for the commission to follow the directives of the Union government whose decisions would be final with the regulator having only recommendatory powers. Then of course of the "appointment process" of members and the chairperson of CCI. It should not end up becoming just another government body if the commission is obliged to follow the directives of the Union government.

The provision that members and the chairperson of CCI would be appointed by the Centre should be reconsidered. Members of CCI as well as of Communicate Appellate Tribunal should be selected by a transparent process on the basis of recommendations of a committee represented by the government, the judiciary and the Opposition and there should be provision for representation to "content providers" and subject specialists.

The bill is ambiguous on issues to do with Intellectual Property Rights (IPR), particularly since IT and Internet are open to piracy and cybercrimes and data privacy and data protection issues which are part of the TRIPS agreement. I think it is better that these issues are left to CCI to address as and when they arise.

The draft makes it mandatory to obtain license for five categories consisting of all bandwidth services, PSTN telephony, public switched data services and Internet content services. Although value added network application services are included, the Bill rightly excluded those IT enabled services like call centres, e-commerce, telebanking, tele-education, tele-medicine, and video services like videotext and video conferencing. A clause that needs a relook is the residuary power vested in the centre to exempt any person or corporate entity from requiring a license. This is obviously in contradiction to plenary licensing powers vested with the CCI. Why should any broadcasting channel be given exemption from up-linking from India and favoured?

The Bill proposes the setting up of a Spectrum Management Committee (SMC) which is envisaged to be entrusted with the responsibility of allocation of frequency hands to the Central and state government and also the CCI for their onward distribution. This implies that the SMC will be manned by a "secretary level" person outside CCI. How practical would that be? Why should not a professional wireless advisor continue to play that role?

Setting up a communications appellate tribunal or such legal bodies as part of the CCI Bill are meant to facilitate corporate interests, not so much to cater to societal concerns. Also the Bill looks after the interests of the legal fraternity.

Andhra Pradesh Chief Minister N. Chandrababu Naidu vented his frustration last fortnight over the Centre's failure to implement what has been deliberated and recommended by an IT task force and accepted by the government. He regretted that the government could not even simplify the cumbersome procedures in this regard. He was referring to the 82 recommendations made by the task force of which he is the vice chairman. The country lost precious seven years trying to bring out an urgently needed regulatory mechanism. Even a Supreme Court judgment has not made a difference. That is why I say that a Bill alone, without the will, is not going to lead us to a new era.