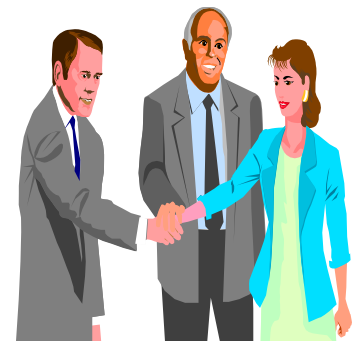




DISPUTE SETTLEMENT MECHANISM IN TELECOM SECTOR IN INDIA

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M U M B A I – 25.09.2004



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DISPUTES SETTLEMENT MECHANISM

- ✓ **FOUR PHASES - CHECKERED HISTORY**
- **INITIAL PHASE – Independent Body or Adjunct to Department of Telecommunications**
- **CONFUSED PHASE – Adjudicatory power over Licensor**
- **UNIMPLEMENTED PHASE – Arbitrator or Adjudicator**
- **CURRENT PHASE**



INITIAL PHASE (1990 -96)

- ✓ **Telegraph Act, 1885 - DoT's monopoly - 1957 - S. 7B - No Regulator or Adjudicator.**
- ✓ **Privatisation (1990s) – NTP-94 - Fair competition - Independent Regulator required**
- ✓ **TRAI proposed as non-statutory body**
- ✓ **Standing Committee recommended statutory status to ensure independence and effectiveness.**
- ✓ **Supreme Court emphasized TRAI's independence**
- ✓ **TRAI Act 1997 enacted.**



CONFUSED PHASE (January 1997-June 1999)

- ✓ TRAI had limited adjudicatory powers - Service Providers inter se or between Service Providers and Group of Consumers - on -Interconnection- Revenue Sharing - Quality of Service -Consumer Interest.
- ✓ Power to issue directions (S.13) - issued to DoT as Licensor
- ✓ DoT challenged TRAI's powers
- ✓ High Court held - TRAI had no power to issue directions to DoT as Licensor
- ✓ Two years of Litigation - Mostly License issues - virtual Vacuum



UNIMPLEMENTED PHASE (June 1999 - January 2000)

- ✓ No separate dispute settlement Forum to entertain disputes between Licensor and Licensees.
- ✓ NTP-99 – TRAI to act as Arbitrator for settling disputes between Licensor and Licensee.
- ✓ Government issued notification to implement it.
- ✓ TRAI never acted as Arbitrator



CURRENT PHASE

- ✓ **TRAI Act** amended in January 2000
- ✓ **TDSAT** is established
- ✓ **Significant changes over earlier law:**
 - ▶ Separation of Regulatory and Adjudicatory functions.
 - ▶ Vested with both Original and Appellate jurisdictions.
 - ▶ Can adjudicate upon “any dispute”.
 - ▶ Empowered to adjudicate disputes between Licensor and Licensee
 - ▶ Appeal now lies to the Supreme Court
- ✓ **TDSAT** empowered in January 2004 to settle disputes in Cable and Broadcasting sectors.



CURRENT PHASE

- ✓ Settle “any dispute” - Wide Powers
- ✓ Original Jurisdiction
- ✓ Appellate Jurisdiction
- ✓ Power to review
- ✓ CPC not to apply
- ✓ Regulate own procedure
- ✓ Orders decree of court
- ✓ Principles of Natural Justice to apply
- ✓ Civil Court’s jurisdiction barred
- ✓ Appeals directly to Supreme Court on questions of law.



CURRENT PHASE

CONT.....

- ✓ TDSAT has entertained matters relating to
 - ▶ **Licensing & Policy - Level Playing Field - Interpretation of Policy**
 - ▶ **Interconnection - Non-Discriminatory - Fair - Cost Based - Revenue sharing - Disconnections**
 - ▶ **Spectrum etc. - Charges.**
- ✓ TDSAT's historic judgments - Far Reaching Consequences
 - ▶ **Level Playing Field - Theoretical Concept to Implementation - UASL & USL**
 - ▶ **Locus standi - License Amendments - Third Party Rights**
 - ▶ **Disputes Settlement by TRAI - No such power**



CURRENT PHASE

CONT.....

- ✓ TDSAT does not have jurisdiction over: Express Exclusions
 - ▶ Monopolistic / Restrictive / unfair trade Practices.
 - ▶ Individual Consumer Disputes
 - ▶ Disputes u/s 7B of the Telegraph Act
- ✓ High Court's Approach - S.14 N - Transferred all pending appeals to TDSAT - Appropriate Forum - Article 226 - High Courts Disinclined to Interfere



THANK YOU

