

## Registration of TV Channel

This article enumerates the brief transaction procedure involved in obtaining licenses for operating a TV channel as per the laws force in India. It shall be noted that the activities described hereunder covers various relevant legislations, regulations and rules, for the time being in force in India and the legal entity has to obtain approval/register itself with Ministry of Information & Broadcasting (“**MIB**”) and/or Telecom Regulatory Authority of India (“**TRAI**”) and/or (Wireless Planning & Coordination Authority) Wing of the Ministry of Communication and Information Technology (“**WPC**”) as the case may be.

### Preface

Though the Indian Telegraph Act, 1885 (“**Telegraph Act**”) does not explicitly define ‘telecommunications service’ and ‘broadcasting service’, the TRAI Act, 1997, defines communication service in Section 2(1)(k) as:

“Service of any description (including electronic mail, voice mail, data services, audio-text services, video-text services, radio paging, and cellular mobile telephones services) which is made available to users by means of a transmission or reception of signals, writing, images, and sounds or intelligence of any nature, by wire, radio, visual or any other electronic means but shall not include broadcasting services.”

[Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.]

Although, ‘broadcasting’ is expressly excluded from this definition, as per MIB’s directive dated January 09, 2004, the government was authorised to notify broadcasting services to be a telecommunication service. This notification gave TRAI the authority to regulate broadcasting and cable services in India. The licence required for broadcasting (the Wireless Operating Licence) is given by WPC.

In general, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licences:

- (i) A Grant of Permission (“**GOPA**”) to offer broadcast services which is issued MIB; and
- (ii) A wireless operating licence from the WPC under the Wireless Telegraphy Act.

For a broadcaster to offer its programmes to the end consumers requires uplinking (i.e., sending signal from ground station to satellite) and downlinking (i.e.. transmitting signal from satellite to receiving station on the ground to be relayed to customer). MIB has a separate set of guidelines in respect to uplinking and downlinking which has been discussed below. The application process has three distinct phases which are for:- (i) approval to uplink TV channel; (ii) approval for setting-up Teleport for uplink or endorsement by third party Teleport for uplink; and (iii) approval for downlink of TV channel.

The list of government departments and agencies involved in the entire application process are as follows:

- (i) Ministry of Information and Broadcasting
- (ii) Ministry of Home Affairs
- (iii) Department of Space
- (iv) Foreign Investment Promotion Board under Ministry of Finance (only if foreign investment is involved)
- (v) Ministry of Communication and Information Technology
  - Wireless Planning & Coordination Authority Wing under Department of Telecommunications
  - Standing Advisory Committee on Frequency Allocation under Wireless Planning & Coordination Authority

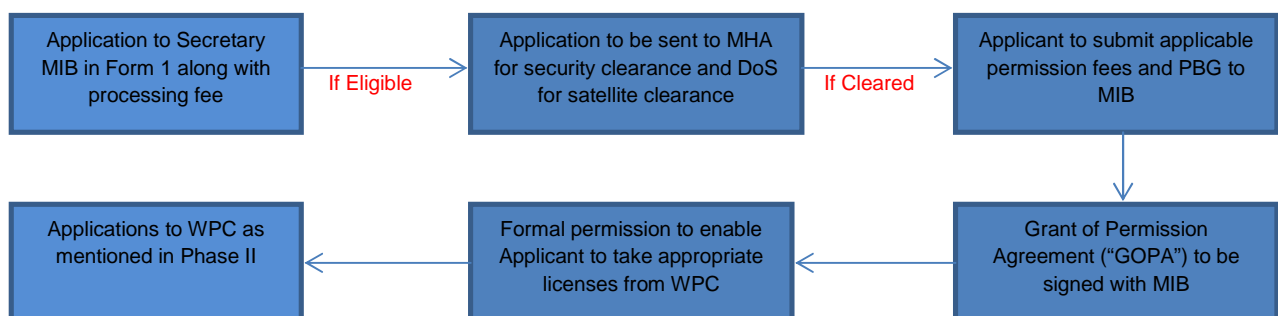
**POLICY GUIDELINES FOR UPLINKING OF TELEVISION CHANNELS FROM INDIA (“UPLINKING GUIDELINES”)**

The Uplinking Guidelines were first notified by MIB in July, 2000 which underwent various amendments. In order to gather all the amendments in one set of guidelines, MIB notified the consolidated Uplinking Guidelines, in supercession of all previous guidelines which came into effect on December 02, 2005.

The Uplinking Guidelines classify uplinking into three categories:

- (i) Companies that provide uplinking facilities such as hubs and teleports. These can only transmit television channels that have been authorised by MIB.
- (ii) Television channels that use uplinking facilities (including that cover news and current affairs).  
 Example:- NDTV, CNN, BBC etc
- (iii) News agencies channels that use uplinking facilities (including that cover news and current affairs).  
 Example:- Reuters, Press Trust of India, Indo-Asian News Services etc

**Flowchart of the application process**



**Eligibility Criteria**

(i) For Uplinking HUB/Teleports

- Has to be a Company registered under Companies Act, 1956
- Foreign equity holding including NRI/OCB/PIO in the Company should not exceed 49%. Foreign Direct Investment (“FDI”) can extend to 74% with the condition that upto 49% is through automatic route and beyond 49% is through Foreign Investment Promotion Board’s (“FIPB”) approval route.
- Company to have minimum net worth of INR 3 Crores for first teleport and additional minimum net worth of INR 1 Crore for every additional teleport.

(ii) For Uplinking A Non-News & Current Affairs TV Channel

- Has to be a Company registered under Companies Act, 1956
- FDI allowed to an extent of 100% through FIPB approval route.
- Company to have minimum net worth of INR 5 Crores for first TV channel and additional minimum net worth of INR 2.5 Crores for every additional TV Channel.
- At least one of the persons occupying a top management position in the Company should have a minimum 3 years of prior experience in a top management position in a media company in this segment.

*[Note:- The term “top management position” in this context shall mean the Chairperson or Managing Director or Chief Executive Officer or Chief Operating Officer or Chief Technical Officer or Chief Financial Officer of the Company.]*

(iii) For Uplinking A News & Current Affairs TV Channel

- Has to be a Company registered under Companies Act, 1956
- The total direct and indirect foreign investment including portfolio and FDI into the company shall not exceed 26% through FIPB approval route at the time of application and during period of license. Company has to certify continued compliance through its company secretary at the end of each financial year.

*[Note:- TRAI has recommended increasing direct and indirect foreign investment in these companies to 49% through the FIPB approval route. This is still under contemplation by the central government.]*

- Equity held by the largest Indian shareholder in the Company is at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions as defined in Section 4A of the Companies Act, 1956 at the time of application.
- Company to make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these to be disclosed to MIB, within 15 days of any changes, having a bearing on the foregoing Agreements.
- Company to intimate MIB, the changes in FDI in the company, within 15 days of such change while ensuring to remain within the FDI limit mentioned above.

- Company to intimate MIB of the names and details of all persons, not being resident Indians, who are proposed to be inducted in the board of directors.
  - Company to intimate the names and details of any foreigners/ NRIs to be employed/ engaged in the company either as consultants (or in any other capacity) for more than 60 days in a year, or, as regular employees.
  - At least 3/4th of the directors on the board of directors of the Company and all key executives and editorial staff shall be resident Indians.
  - The representation on the board of directors of the company shall as far as possible be proportionate to the shareholding.
  - All appointments of key personnel (executive and editorial) shall be made by the applicant company without any reference on from any other company, Indian or foreign.
  - The company must have complete management control, operational independence and control over its resources and assets and must have adequate financial strength for running a news and current affairs TV channel.
  - CEO of the company, known by any designation, and/ or Head of the channel, shall be a resident India.
  - Company to have minimum net worth of INR 20 Crores for first TV channel and additional minimum net worth of INR 5 Crores for every additional TV channels.
  - At least one of the persons occupying a top management position in the Company should have a minimum 3 years of prior experience in a top management position in a media company in this segment. Top management position shall mean as mentioned above.
- (iv) For Uplinking by Indian News Agencies
- Has to be a Company registered under Companies Act, 1956
  - Company to be accredited by Press Information Bureau (“**PIB**”).
  - Company should be 100% owned by Indian, with Indian Management Control.

[Note:- ‘Net worth means the sum total of the paid-up capital and free reserves after deducting the provisions or expenses as may be prescribed. Explanation for the purpose of this clause, “free reserves” means all reserves created out of the profits and share premium account but does not include reserve created out of revaluation of assets, write back of depreciation, provisions and amalgamations.]

#### **Period of Permission**

- (i) For Uplinking HUB/Teleports – Permission granted for a period of 10 years
- (ii) For Uplinking A Non-News & Current Affairs TV Channel - Permission granted for a period of 10 years
- (iii) For Uplinking A News & Current Affairs TV Channel - Permission granted for a period of 10 years
- (iv) For Uplinking by Indian News Agencies – Period of permission shall be as per WPC license.

### **Applicable Fees**

- (i) For Uplinking HUB/Teleports –
  - INR 10,000/- per teleport as non-refundable processing fee
  - Permission fee of INR 2 lakh per teleport per annum
  - Upon being held eligible, Company to pay permission fee for first year before issuance of permission and succeeding permission fees to be paid 60 days before due date
- (ii) For Uplinking A Non-News & Current Affairs TV Channel –
  - INR 10,000/- per TV channel as non-refundable processing fee
  - Permission fee of INR 2 lakh per Non-News and Current Affairs Channel per annum
  - Upon being held eligible, Company to pay permission fee for first year before issuance of permission and succeeding permission fees to be paid 60 days before due date
- (iii) For Uplinking A News & Current Affairs TV Channel –
  - INR 10,000/- per TV channel as non-refundable processing fee
  - Permission fee of INR 2 lakh per News and Current Affairs Channel per annum
  - Upon being held eligible, Company to pay permission fee for first year before issuance of permission and succeeding permission fees to be paid 60 days before due date
- (iv) For Uplinking by Indian News Agencies – No particular fees to be paid to MIB

### **Submission of Performance Bank Guarantee**

After being held eligible, the applicant Company is to furnish a Performance Bank Guarantee (“PBG”) before issuance of permission for fulfilling the rollout obligation to operationalize within one year of date of permission being granted by MIB failing which MIB shall cancel the permission and forfeit the PBG. The PBG to be furnished to MIB is as set forth:-

- (i) For Uplinking HUB/Teleports – INR 25 lakhs for each teleport
- (ii) For Uplinking A Non-News & Current Affairs TV Channel – INR 1 Crore for each Non-News & Current Affairs TV Channel
- (iii) For Uplinking A News & Current Affairs TV Channel – INR 2 Crores for each News & Current Affairs TV Channel
- (iv) For Uplinking by Indian News Agencies – No PBG required

### **Permission For Use Of Satellite News Gathering (“SNG”)/Digital Satellite News Gathering (“DSNG”) Equipment In C Band And KU Band**

- (i) Permitted user –
  - News and Current Affairs channels uplinked from India for live news/footage collection and point-to-point transmission
  - PIB accredited content providers for collection and transmission of news footage to permitted News and Current Affairs Channels

- Entertainment Channels uplinking from their own teleport, for transfer if video feeds to permitted teleports
- All Foreign channels, permitted entertainment channels uplinked from India and companies/individuals not covered in above points with temporary uplinking permission for any live coverage/footage collection and transmission on case to case basis
- (ii) Only permitted teleport operators and Doordarshan may offer/hire out SNG/DSNG equipments/infrastructures to other broadcasters who are permitted to uplink from India.
- (iii) Application to be made to MIB for usage of SNG/DSNG equipment/infrastructure
- (iv) Period of Permission –
  - For teleport owners – Co-terminus with teleport license
  - For permitted News & Current Affairs Channels – for the period of the Channel permission
  - For content providers to permitted Channels – for the period of the Channel permission
  - For other broadcasters having temporary uplinking permission – for periods as specified in the temporary uplinking permission
- (v) Application to WPC – Company permitted to use SNG/DSNG shall apply to WPC for frequency authorization of WPC. It should be renewed yearly in time and a copy to be submitted to MIB by the Company every year.

#### **Procedure for Obtaining Permission from MIB**

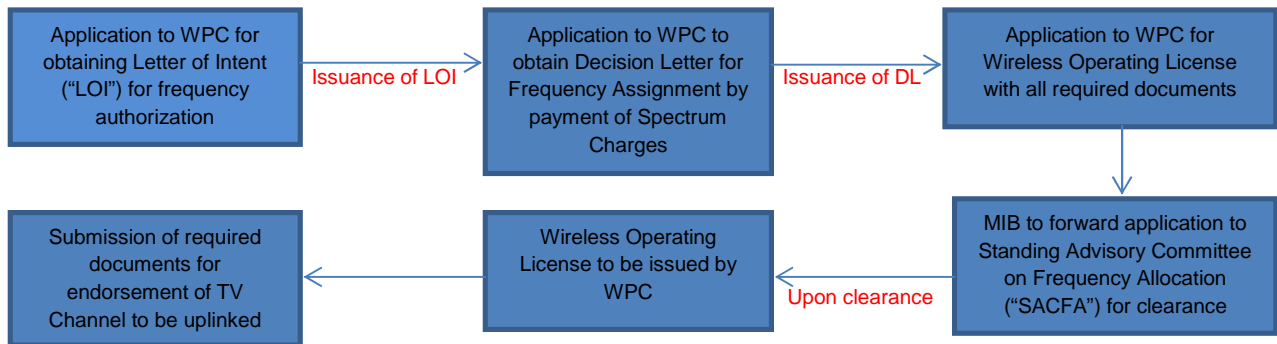
- (i) The applicant company can apply to the Secretary, MIB, in triplicate, in the prescribed format “Form 1” along with all requisite documents including a demand draft for an amount equal to processing fee as mentioned earlier in this note. The list of other documents that will need to be enclosed along with application in Form 1 are as follows:-
  - Memorandum & Article of Association of Applicant Company
  - Shareholding Pattern as per Table 1 for Applicant Company & Table 2 for investing companies
  - Calculation Sheet for Foreign Equity in the company (Direct & Indirect) with copy of FIPB approval
  - Audited Balance sheet and Profit & Loss Account for the immediate preceding financial year and Certificate of Net Worth (as per enclosed format with notes) by a Chartered Accountant on the basis of the documents submitted in this regard
    - In case the networth certificate is on a date different from end of the financial year, it should be supported by certified balance sheet from the statutory auditor on the date of such certification.
    - In case shares have been allotted on basis of valuation of a property / equipment, then valuation certificate from an approved valuer should also be enclosed.
  - Satellite lease agreement and details of footprint of satellite to be hired

- Project Report with all technical details, flow of funds and source of funding
  - Copy of the agreement with the Teleport Service Provider, in case of a third party teleport
  - PIB Accreditation Certificate in case of News and Current Affairs TV Channel
  - Shareholding and Loan Agreements, if any
  - Affidavits in Form 1A & 1B or 1C
- (ii) If Applicant Company is found to be eligible by MIB, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space (wherever required).
- (iii) Upon receipt of such clearances, MIB will require Applicant Company to furnish demand draft for amount equal to permission fees and PBG payable in favour of - Pay & Accounts Officer, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi
- (iv) As next step, Applicant Company will be required to execute "Grant of Permission Agreement" ("**GOPA**") with Government of India represented by MIB.
- (v) Upon execution of GOPA, the Company would be issued a formal permission to enable it to obtain requisite license/clearance from WPC or approach teleport service provider in case of TV Channels/uplinking by an Indian news agency.

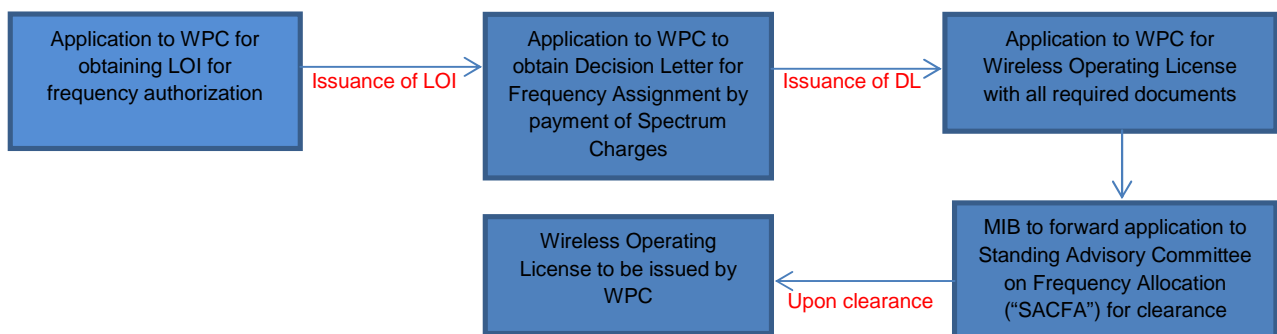
**PROCEDURE/APPLICATIONS TO BE FILLED WITH WPC**

**Flowchart of the application process**

(i) Requisite authorization for operating teleport and to endorse TV Channel for uplinking



(ii) Requisite authorization for usage of SNG/DSNG Equipment



(i) Teleport License

- Firstly, a Letter of Intent (“**LOI**”) for frequency assignment has to be obtained from WPC. The steps involved in obtaining the same are as follows:-
  - WPC Application Form (Earth Station Form) duly filled and signed by authorized signatory
  - Permission from MIB for establishment of teleport to be submitted
  - Transponder allocation from satellite operators (domestic or other foreign satellite operators) to be submitted
  - Frequency/Carrier plan from Network Operations Control Centre to be submitted
  - Submission of link budget in the recommended proforma of the Telecom Engineering Centre (“**TEC**”) under Ministry of Information and Technology
  - Undertaking in WPC recommended form to be submitted by Applicant Company
- Upon obtaining the LOI, next step is to obtain a Decision Letter for Frequency Assignment for which the following activities need to be done:-



- Submission of a copy of the LOI
- Make Spectrum Charges and payments as per the LOI
- Upon obtaining Decision Letter, next step is to obtaining the Wireless Operating License as follows:-
  - Submission of a copy of the Decision Letter
  - Submission of a copy of the equipment invoice
  - Submission of a copy of import license
  - Submission of a copy of Dealer Possession License (“**DPL**”) in case procured from the Indian DPL holder
  - Application to MIB for Standing Advisory Committee on Frequency Allocation (“**SACFA**”) clearance
  - Issuance by MIB of SACFA clearance
  - Submission of MPVT result from National Operations Control Centre
- (ii) For usage of SNG/DSNG Equipment
  - Firstly, a Letter of Intent (“**LOI**”) for frequency assignment has to be obtained from WPC. The steps involved in obtaining the same are as follows:-
    - WPC Application Form (Earth Station Form) duly filled and signed by authorized signatory
    - Permission from MIB for SNG/DSNG terminal
    - Transponder allocation from satellite operators (domestic or other foreign satellite operators) to be submitted
    - Frequency/Carrier plan from Network Operations Control Centre to be submitted
    - Submission of link budget in the recommended proforma of the Telecom Engineering Centre (“**TEC**”) under Ministry of Information and Technology
    - Deployment of SNG/DSNG on the frequency carriers, along with location after use
    - Undertaking in WPC recommended form to be submitted by Applicant Company
  - Upon obtaining the LOI, next step is to obtain a Decision Letter for Frequency Assignment for which the following activities need to be done:-
    - Submission of a copy of the LOI
    - Make Spectrum Charges and payments as per the LOI
  - Upon obtaining Decision Letter, next step is to obtaining the Wireless Operating License as follows:-
    - Submission of a copy of the Decision Letter
    - Submission of a copy of the equipment invoice
    - Submission of a copy of import license
    - Submission of a copy of Dealer Possession License (“**DPL**”) in case procured from the Indian DPL holder
    - Submission of MPVT result from National Operations Control Centre

- Submission of SACFA clearance for SNG/DSNG terminal (only for fixed terminal) on allocated frequency band/frequencies
- (iii) For endorsement of TV Channels in teleport license – For endorsement the steps to be followed as set forth:-
  - Submission of the permission of MIB through the specific teleport in concern
  - Submission of a copy of the valid teleport wireless operating license, whose name is mentioned in MIB's permission
  - Request from Teleport service provider for endorsement of TV Channel
  - Request from TV Channel owner for endorsement by teleport
  - Justification along with data rate for each existing channel including the new channel and undertaking to maintain the channel quality

**POLICY GUIDELINES FOR DOWNLINKING OF TELEVISION CHANNELS (“DOWNLINKING GUIDELINES”)**

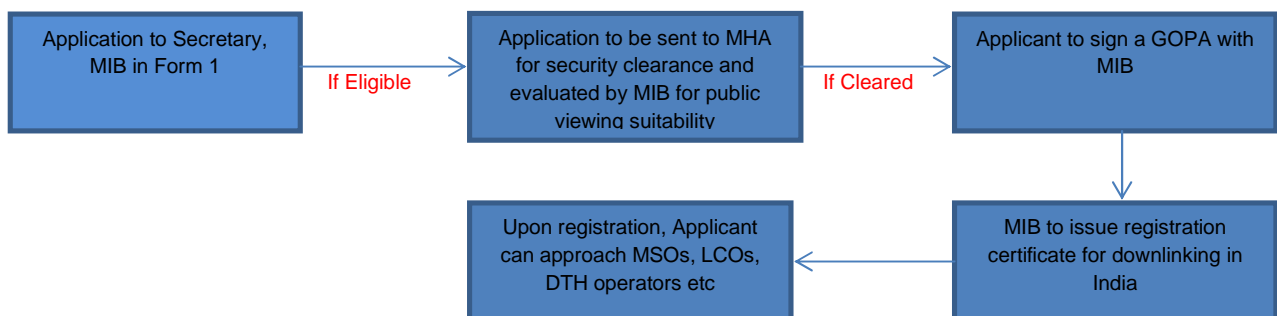
MIB has formulated policy guidelines for downlinking all satellite television channels downlinked/ received/transmitted and re-transmitted in India for public viewing. Consequently, no person/entity shall downlink a channel, which has not been registered by the Ministry of Information and Broadcasting under these guidelines.

The Downlinking Guidelines envisage two kinds of permission as follows:

- (i) Indian company which wants to enter into the business of downlinking one or more foreign satellite television channels
- (ii) Downlinking of the satellite television channel and registering it in the list of channels permitted for downlinking in India

[Note:- Companies which have been granted permission under the Uplinking Guidelines for uplinking Television Channels from India as discussed above, will automatically stand permitted for seeking permission for registration of channels for Downlinking in India.]

**Flowchart of the application process**



**Eligibility Criteria** – The eligibility criteria mentioned in the Downlinking Guidelines is not germane for the Applicant Company which has received MIB's approval for uplinking of TV channel. As such the eligibility criteria mentioned therein will be applicable to an Indian company seeking permission to downlink foreign TV channels or for any TV channel to register in list of channels for downlinking.

However, the Indian TV channel which has received MIB's approval for uplinking has to make a separate application for permission to downlink the same channel.

**Period of Permission** - The registration granted under these Downlinking Guidelines to TV channels uplinked from India shall be valid for a period of 10 years and shall be co-terminus with the uplinking permission of the TV channel.

**Applicable Fees**

The Company shall pay a permission fee for registration of channels under these guidelines as follows:-

- (i) INR 5 lakh per channel per annum for downlinking of TV channels uplinked from India
- (ii) Upon being held eligible, the Applicant Company to pay permission fee for first year before issuance of permission and succeeding permission fees to be paid 60 days before due date.

**Procedure for Obtaining Permission from MIB**

- (i) The applicant company can apply to the Secretary, MIB, in triplicate, in the prescribed format "Form 1". The list of other documents that will need to be enclosed along with application in Form 1 are as follows:-
  - Memorandum & Article of Association of Applicant Company
  - Shareholding Pattern as per Table 1 for Applicant Company
  - Separate sheet giving Name, Address, contact Telephone of Promoters & Majority Shareholders and equity held in terms of amount and percentage of paid up equity
  - A list of Key Executives along with bio-data of each Director giving date of birth, place of birth, parentage, nationality, permanent address, residential address, official address, passport number (if any), qualification, experience, parentage etc.
  - Details of map of footprint of the satellite proposed to be hired/being used for downlinking (channel wise)
  - Copy of the permission for uplinking the channel
  - An indicative programme schedule
  - Affidavits in Form 1A and 1B
- (ii) If Applicant Company is found to be eligible by MIB, its application will be sent for security clearance to the Ministry of Home Affairs and MIB will evaluate the suitability of the proposed channel for downlinking into India for public viewing.
- (iii) Upon MIB finding the TV channel to be suitable for downlinking, it will register the channel and the Applicant Company shall enter into a GOPA with MIB.

- (iv) Upon execution of GOPA, the Application Company would be issued a registration certificate for the TV channel to be downlinked in India.
- (v) Upon receipt of permission and registration of the TV Channel, the Applicant Company can approach the Multi-System Operators, Local Cable Operators, DTH Operators for receiving/downlinking its channel's signals for further transmission/retransmission/distribution.

#### **Spectrum Fees applicable for Uplinking and Downlinking**

Apart from the application fees, permission fees and PBG, Company has to pay license fees and royalty charges for frequency allocation as per WPC's order dated March 22, 2012 along with Revision of Spectrum Usage Charges Corrigendum dated September 4, 2012. Relevant portions of these orders have been provided in Annexure 1.

#### **ECA's Commitment:**

- Complete assistance for making the necessary filings, applications etc. for obtaining the required approvals from MIB and WPC to operate teleport and/or TV Channel and SNG/DSNG equipment.
- Informal discussion with contact personnel within MIB and WPC so as to perfect the application before the same is submitted.
- Follow up support at various points in time during and after the pendency of the application so as to ensure that any additional documents/records requested by MIB and WPC are submitted in a systematic and timely manner.
- Updating Company on a regular basis as to the status of the pending application.

#### **Disclaimer**

Our article is based on the laws of India as on date. The laws and regulations mentioned herein are subject to changes from time to time and any such changes may affect the article. We have no responsibility to update our note for events and circumstances occurring after the date of this memorandum, unless specifically requested for.

We do not, in giving this article, accept or assume responsibility for any other purpose or to any other person to whom this memorandum is shown or in whose hands it may come unless expressly agreed by us in writing.

## ANNEXURE 1

### License Fees

WPC Order dated March 22, 2012 (No. P-11014/34/2009-PP (IV)) along with WPC Corrigendum dated September 4, 2012 (No. P-11014/03/2012 – PP)

SI No.	Type of License	Annual License Fee (in INR)	Remarks
xi.	Station in Satellite Network (e.g., Satellite Radio/DTH/Teleport/HITS/DSNG/NLD/ILD/DCP/IP-II etc)	1,000/-	Per Fixed Station

### Royalty Charges for Assignment of Frequencies to Captive Users

WPC Order dated March 22, 2012 (No. P-11014/32/2009-PP (III)) along with WPC Corrigendum dated September 4, 2012 (No. P-11014/03/2012 – PP)

The above mentioned circular is applicable to Satellite Based Systems (i.e., Broadcasting, Satellite Radio, Teleport, DTH, HITS, DSNG, INMARSAT, VSAT, IP-II etc).

The *Standard Annual Royalty Factor* shall be INR 35,000/- per frequency. It shall be applied to total licensed bandwidth of each frequency of any type of satellite-based radio-communications network (including ILD, NLD, Teleport, DSNG, DTH, VSAT, INMARSAT and Satellite Radio), together with relevant *Bandwidth Factor (B<sub>s</sub>)* given in table below, to arrive at the amount of *Annual Royalty per Frequency, R*, payable for an Uplink or Downlink as per the following formula:-

$$\text{Royalty, } R \text{ (in INR)} = 35,000 \times B_s$$

#### ***Bandwidth Factor (B<sub>s</sub>) for Satellite Communications***

Bandwidth Assigned to a Frequency (W KHz)	Bandwidth Factor, B <sub>s</sub> , for an uplink		Bandwidth Factor, B <sub>s</sub> , for a downlink	
	Broadcast	Others	Broadcast	Others
Up to and including 100 KHz	0.25	0.20	NIL	0.20
More than 100 KHz and up to and including 250 KHz	0.60	0.50	NIL	0.50
More than 250 KHz and up to and including 500 KHz	1.25@	1.00@	NIL	1.00@
For every 500 KHz and every part thereof	1.25@	1.00@	NIL	1.00@