

POLICY GUIDELINES FOR DOWNLINKING OF TELEVISION CHANNELS

Ministry of Information and Broadcasting, Government of India, 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. These Guidelines envisage two kinds of permissions. The first kind of permission is required to be obtained by an Indian Company which wants to enter into the business of downlinking one or more foreign satellite Television Channels. The second kind of permission is for allowing the downlinking of the satellite Television Channel and registering it in the list of channels permitted for downlinking in India. A foreign Television Channel can thus seek permission for registration under Downlinking Guidelines for being viewed in India by entering into agreement with an Indian Company fulfilling the eligibility criteria prescribed hereunder. Companies which have been granted permission under the Uplinking Guidelines for uplinking Television Channels from India will automatically stand permitted for seeking permission for registration of channels for Downlinking in India. A channel which is permitted to uplink from India and caters to foreign audience only is not required to seek registration under the Downlinking Guidelines. Henceforth, all persons/ entities providing Television Satellite Broadcasting Services (Television Channels) uplinked from other countries to viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (Television Channel), receivable in India for public viewership, shall be required to obtain permission from Ministry of Information and Broadcasting, in accordance with the terms and conditions prescribed under these guidelines.

The revised guidelines are as given below:

1. ELIGIBILITY CRITERIA FOR APPLICANT COMPANIES

- 1.1.** The entity applying for permission for downlinking a channel, uplinked from abroad, (i.e. Applicant Company), must be a company registered in India under the Indian Companies Act, 1956, irrespective of its equity structure, foreign ownership or management control.
- 1.2.** The applicant company must have a commercial presence in India with its principal place of business in India.

1.3. The applicant company must either own the channel it wants downlinked for public viewing, or must enjoy, for the territory of India, exclusive marketing/ distribution rights for the same, inclusive of the rights to the advertising and subscription revenues for the channel and must submit adequate proof at the time of application.

1.4. In case the applicant company has exclusive marketing / distribution rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and programme content.

1.5. [The applicant company should have a minimum net worth as prescribed below:

Sl.No.	Item	Required Net Worth
1.	For Downlinking of First (Non-News or News & Current Affairs) Television Channel	Rs. 5.0 crore
2.	For Downlinking Each Additional Television Channel	Rs. 2.50 crore

1

1.6. The applicant company must provide names and details of all the Directors of the Company and key executives such as Chairperson, MD, COO, CEO, CTO, CFO and Head of Marketing, etc. to get their national security clearance.

1.7. The applicant company shall furnish, technical details such as Nomenclature, Make, Model, Name and Address of the Manufacturers of the equipments/ instruments to be used for downlinking and distribution, the Block schematic diagram of the downlinking and distribution system and also demonstrate the facilities for monitoring and storing record for 90 days.

1.8. The Applicant Company should not have been disqualified from holding such permission under these guidelines.

1.9. *[Notwithstanding the provisions contained in Para 1.5, the minimum net worth requirement for downlinking of additional Television Channels by a Company which held permission(s) for downlinking of a Television Channel as on the date of issuance of the amended Guidelines as on 05.12.2011, would be calculated by applying the net worth norms as they existed prior to the issuance of amended guidelines for the permissions already held on that date, and the revised norms as per Para 1.5 for the additional Television Channel(s).*

1.10. *At least one of the persons occupying a top management position in the applicant company should have a minimum 3 years of prior experience in a top management position in a media company (or media companies) operating News and Current Affairs / Non-News and Current Affairs Television Channels as the case may be. 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. The channels which were*

permitted but could not become operational by the date of issuance of the amended guidelines on 05.12.2011_will also be required to fulfill this criteria.]¹

2. ELIGIBILITY CRITERIA FOR PERMISSION AND REGISTRATION AND OF CHANNELS FOR BEING DOWNLINKED

- 2.1. Only Companies permitted/eligible for permission to downlink, as per Clause 1 above, shall be eligible to apply for permission of channels.
- 2.2. The downlinked channel must be licensed or permitted for being broadcast by the regulatory or licensing authority of the country of transmission, proof of which would have to be submitted at the time of application.
- 2.3. The channel being registered should not have been de registered under these guidelines at the time of application.
- 2.4. No News and Current Affairs channel shall be permitted to be downlinked if it does not meet the following additional conditions:
 - 2.4.1. That it does not carry any advertisements aimed at Indian viewers;
 - 2.4.2. That it is not designed specifically for Indian audiences;
 - 2.4.3. That it is a standard international channel;
 - 2.4.4. That it has been permitted to be telecast in the country of its uplinking by the regulatory authority of that country;

Provided that the Government may waive/modify the condition under clause 2.4.1 on a case-by-case basis.

- 2.5. For the purposes of these guidelines any channel, which has any element of news or current affairs in its programme content, will be deemed to be a news and current affairs channel.
- 2.6. [...Deleted...]³

3. [PERIOD OF REGISTRATION AND PERMISSION

- 3.1. The Permission granted to a company to downlink channels, uplinked from other countries, into India under these guidelines shall be valid for a period of 10 years from the date of issuance of permission. The Registration granted to such channels under these Guidelines shall also be valid for a period of ten years.
- 3.2. The Registration granted under these Guidelines to channels uplinked from India shall also be valid for a period of 10 years and shall be co-terminus with the uplinking permission of the channel.

4. PERMISSION FEE

- 4.1. The Company seeking permission to downlink channels, uplinked from other countries, into India under these guidelines shall pay a permission fee of Rs 10 lakhs at the time of grant of permission.
- 4.2. The Company shall pay a Permission fee for Registration of channels under these guidelines as follows:-
 - 4.2.1. Rs. 5 lakhs per channel per annum for Downlinking of Television Channel uplinked from India.
 - 4.2.2. Rs. 15 lakhs per channel per annum for Downlinking of Television Channel uplinked from abroad.
 - 4.2.3. After being held eligible, the applicant Company shall pay the permission fee for the first year before the issuance of permission. The succeeding year's permission fee will have to be deposited 60 days before such fee becomes due.]¹
- 4.3. [...Deleted....]³

5. BASIC CONDITIONS/OBLIGATIONS

- 5.1. The Company permitted to downlink registered channels shall comply with the Programme and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995.
- 5.2. [The company shall ensure compliance of the provisions of Sports Broadcasting Signals (Mandatory sharing with Prasar Bharati) Act 11 of 2007 and the Rules, Guidelines, Notifications issued there under.]²
- 5.3. The applicant company shall adhere to any other Code/Standards guidelines/restrictions prescribed by Ministry of Information & Broadcasting, Government of India for regulation of content on TV channels from time to time.
- 5.4. The applicant company shall submit audited annual accounts of its commercial operations in India.
- 5.5. The applicant company shall obtain prior approval of the Ministry of Information and Broadcasting before undertaking any upgradation, expansion or any other changes in the downlinking and distribution system/network configuration.
- 5.6. The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service."

- 5.7. The applicant company shall ensure that any of its channels, which is unregistered or prohibited from being telecast or transmitted or re-transmitted in India, under the Cable Television Networks (Regulation) Act 1995 or the DTH guidelines or any other law for the time being in force, cannot be received in India through encryption or any other means.
- 5.8. The Union Government shall have the right to suspend the permission of the company/registration of the channel for a specified period in public interest or in the interest of National security to prevent the misuse of the channel. The company shall immediately comply with any directives issued in this regard.
- 5.9. The applicant company seeking permission to downlink a channel shall operationalise the channels within one year from the date of the permission being granted by the Ministry of Information and Broadcasting failing which the permission will liable to be withdrawn without any notice in this regard. However, the company shall be afforded a reasonable opportunity of being heard before such a withdrawal.
- 5.10. The company/channel shall adhere to the norms, rules and regulations prescribed by any regulatory authority set up to regulate and monitor the Broadcast Services in the country.
- 5.11. The applicant company shall give intimation to Ministry of Information and Broadcasting regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. It shall also obtain security clearance for such changes in its directors and key executives.
- 5.12. The applicant company shall keep a record of programmes downlinked for a period of 90 days and to produce the same before any agency of the Government as and when required.
- 5.13. The applicant company shall furnish such information as may be required by the Ministry of Information and Broadcasting from time to time.
- 5.14. The applicant company shall provide the necessary monitoring facility at its own cost for monitoring of programmes or content by the representative of the Ministry of Information and Broadcasting or any other Government agency as and when required.
- 5.15. The applicant company shall comply with the obligations and conditions prescribed in the downlinking guidelines issued by the Ministry of Information and Broadcasting, and the specific downlinking permission agreement and registration of each channel.
- 5.16. In the event of any war, calamity/national security concerns, the Government shall have the power to prohibit for a specified period the downlinking/ reception/ transmission and re-transmission of any or all channels. The Company shall immediately comply with any such directions issued in this regard.

6. OFFENCES AND PENALTIES

- 6.1. In the event of a channel found to have been/being used for transmitting any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per Para 5.8 or Para 5.16, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws. Further,

the registration of the channel shall be revoked and the channel shall be disqualified from being considered for fresh registration for a period of five years.

6.2. Subject to the provisions contained in Para 6.1 of these guidelines, in the event of a permission holder and/ or channel violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties: -

- 6.2.1.** In the event of first violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 30 days.
- 6.2.2.** In the event of second violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 90 days.
- 6.2.3.** In the event of third violation, revocation of the permission of the company and/or registration of the channel and prohibition of broadcast up to the remaining period of permission.
- 6.2.4.** In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and /or registration-and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission and /or registration in future for a period of five years.
- 6.2.5.** In the event of suspension of permission as mentioned in Para 5.8, 5.16 or 6.2, the permission holder will continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.
- 6.2.6.** In the event of revocation of permission and /or registration the fees paid will be forfeited.
- 6.2.7.** All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder.

7. DISPUTE RESOLUTION

7.1. In the event of any question, dispute or difference arising under the Grant of Permission Agreement or in connection thereof, except as to the matter, the decision of which is specifically provided under the Grant of Permission Agreement, the same shall be referred to the sole arbitration of the Secretary, Department of Legal Affairs or his nominee.

7.2. There will be no objection to any such appointment that the Arbitrator is a Government servant. The award of the arbitrator shall be final and binding on the parties. In the event of such Arbitrator, to whom the matter is originally referred to, being transferred or vacating his office, or being unable to act for any reason whatsoever, Secretary, Department of Legal Affairs shall appoint another person to act as Arbitrator.

7.3. The Arbitration and Conciliation Act, 1996, the rules made there under and any modification thereof, for the time being in force, shall be deemed to apply to the arbitration proceedings as above. The venue of arbitration shall be New Delhi or such other place as the Arbitrator may

decide. The arbitration proceedings shall be conducted in English language.

- 7.4. Upon any and every reference as aforesaid, the assessment of costs, interest and incidental expenses in the proceedings for the award shall be at the discretion of the Arbitrator.

8. PROCEDURE FOR GRANT OF PERMISSION OF CHANNELS

- 8.1. The applicant company shall apply to the Secretary, Ministry of Information and Broadcasting in the prescribed Performa along with full details and documentation relevant for evaluating its eligibility for grant of permission to downlink Television Channels in India. Each application form shall be accompanied by a demand draft of Rs. Ten Thousand towards non-refundable processing fee.
- 8.2. The applicant company shall also submit full details of each channel being/proposed to be downlinked along with all other documents as prescribed in the guidelines.
- 8.3. After scrutiny of the application if the applicant company is found eligible, the same will be sent for security clearance to the Ministry of Home Affairs. In the meanwhile, the Ministry of Information and Broadcasting will evaluate the suitability of the proposed channel for downlinking into India for public viewing.
- 8.4. In the event of the applicant company and the proposed channel being found suitable, the Ministry of Information and Broadcasting will register the channel and the applicant company to enter into a grant of permission agreement with the Ministry of Information and Broadcasting, Government of India.
- 8.5. On receipt of the signed agreement, the Ministry of Information and Broadcasting will issue a registration certificate for the concerned channels and grant permission to the applicant company to downlink the relevant channels in India for the prescribed period.
- 8.6. On receipt of the permission and upon registration of the channel, the applicant company will be entitled to approach the MSOs/Cable head end operators/DTH Operators for receiving/downlinking its channel's signal, for further transmission/ retransmission/ distribution.

9. RENEWAL OF EXISTING PERMISSIONS / REGISTRATION

- 9.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011_will continue to be governed by the terms and conditions of permission as they existed prior to the issuance of amendments on 05.12.2011_till the expiry of such permission.
- 9.2. Renewal of permission/ registration will be considered for a period of 10 years at a time, subject to the condition that the company/ channel should not have been found guilty of violating the terms and conditions of permission including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be determined in consultation with the established self-regulating mechanisms.

9.3. The renewal will also be subject to the permission/ registration holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

9.4. At the time of considering the renewal of permission/ registration of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

10. TRANSFER OF PERMISSION OF TELEVISION CHANNELS

10.1. The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting.

10.2. In case of transfer of permission of a Satellite Television Channel uplinked from India from one company to another as per the provisions of Uplinking Guidelines, the registration of the channel under the downlinking Guidelines shall also stand transferred to the new company.

10.3. In case of companies permitted to downlink channels from other countries, on a written request from the permission holder, the Ministry shall allow transfer of permission in case of merger/demerger/ amalgamation, or from one Group Company to another provided that such transfer is in accordance with the provisions of the Companies Act, and further subject to the fulfillment of following conditions:

- (i) The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared.
- (ii) The new entities should undertake to comply with all the terms and conditions of permission granted.]¹

Note (Superscripts) :

1- Amended vide Order No. 1501/34/2009-TV(I), Dated 05.12.2011 of the Ministry of Information and Broadcasting

2- Amended in accordance with the provisions of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 and the rules and notifications there under

3- Deleted as not relevant as per current Approved Cabinet Note.