

**GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING
'A' WING, SHASTRI BHAWAN, NEW DELHI -110001.**

Dated, the 26th November 2009.

ORDER

In pursuance of the Union Cabinet decision on 12th November 2009, whereby Headend-in-the-Sky (HITS) Service has been permitted in India, the guidelines for operating HITS Services in India are being issued as annexure. These guidelines will come into force with immediate effect. A copy of the same is also posted on the website (www.mib.nic.in) of the Ministry for information of general public and stakeholders.


**(ARVIND KUMAR)
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Encls: As above.

Copy to:

- 1. Cabinet Secretary, Cabinet Secretariat.**
- 2. Secretary, Department of Telecommunications, Ministry of Communications and IT.**
- 3. Home Secretary, Ministry of Home Affairs.**
- 4. Secretary, Department of Space.**
- 5. Secretary, Ministry of Finance (Department of Revenue).**
- 6. Secretary, Department of Economic Affairs.**
- 7. Secretary, Ministry of Communications and IT (Department of Information Technology).**
- 8. Secretary, Ministry of Corporate Affairs**
- 9. Secretary, Department of Industrial Policy and Promotions.**
- 10. CEO, Prasar Bharati.**
- 11. Secretary, TRAI.**

Copy to : (i) Economic Advisor (SS) along with website update form for posting the order on the website of the Ministry.

(ii) NIC, M/o Information and Broadcasting for similar action.

(iii) Hindi Section with a request to provide a copy of the order in Hindi to this Section as well as NIC/EA(SS) and also mail the order at e-mail ID of NIC officers for uploading Hindi version of the order under the Heading "Codes & Guidelines" for main head "Broadcasting".

(iv) Copy to : PIB for publicity.


(Ashish Dutta)

Under Secretary (BP&L)

Tele: 23387774.

**GUIDELINES FOR PROVIDING HEADEND-IN-THE-SKY (HITS)
BROADCASTING SERVICE IN INDIA**

INTRODUCTION:

The Ministry of Information and Broadcasting, Government of India has formulated the policy guidelines for grant of Permission to establish and operate "Headend in the Sky (HITS)" broadcasting service from India.

Companies desirous of establishing and operating Headend in the Sky (HITS) Service platform shall be required to obtain Permission from the Ministry of Information and Broadcasting in accordance with the terms and conditions prescribed under these guidelines.

Headend-in-the-Sky (HITS) Broadcasting Service, refers to the multichannel downlinking and distribution of television programme in **C-Band or Ku Band**, wherein all the pay channels are downlinked at a central facility (Hub/ Teleport) and again uplinked to a satellite after encryption of channels. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to the subscribers by using a land based transmission system comprising of infrastructure of cable/optical fibres network.

After obtaining a HITS license from the Ministry of Information & Broadcasting, the HITS operator can himself contract with different broadcasters for buying the content, aggregating the same at an earth station and then uplinking with his own encryption to a satellite hired by him. The uplinked channels can then be downlinked by the cable operators using a dish antenna for onward distribution through last mile conventional cable network to the TV homes. In this model, the HITS operator works like a conventional MSO, except that virtually the head-end is in the sky, instead of being located on ground.

The HITS operator can also decide to merely provide passive infrastructure facilities like transponder space on satellite, earth station facilities and the provision for simulcrypting/multicrypting of channels aggregated by different MSOs with different encryption systems to one or more MSOs or to a consortium of cable operators /MSOs desirous of uplinking TV channels to his HITS satellite for downlinking and further transmission to the TV homes by the cable operators across the country. The HITS operator in this case need not contract with the broadcasters for content. He only enters into contracts with one or more MSOs or consortium of cable

operators desirous of uplinking their aggregated channels from HITS earth station(s) to the HITS satellite.

The HITS operator has the freedom to use his satellite's transponder capacity both for transmitting his own aggregated content, as well as to provide passive infrastructure to other MSOs for uplinking/downlinking their aggregated content.

The permission of the existing two permission holders who have been given permission to provide HITS services in the year 2003 will continue for the remaining period of permission and operationalisation of HITS services may be done by them as per terms and conditions laid down in these guidelines.

1. ELIGIBILITY CRITERIA

1.1 The applicant seeking permission for providing HITS services shall be a Company registered in India under the Companies Act, 1956.

1.2 The Company should have a minimum Net worth of Rs Ten crores. The Net Worth shall be calculated as per the proforma specified and shall be certified by the Statutory Auditor of the company.

1.3 The total direct and indirect foreign investment including portfolio and foreign direct investments into the company shall not exceed 74% at the time of application and during the currency of permission.. The methodology of calculation of the direct and indirect foreign investments would be as per the extant policy of the Government. The company will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on yearly basis.

1.4 FDI upto 49 per cent will be on automatic route. The approval of the Foreign Investment Promotion Board (FIPB) shall be required for FDI in the company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent.

1.5 The company shall 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 would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.

1.6 Broadcasting Company(ies) and/or DTH licensee company(ies) will not be allowed to collectively hold or own more than 20% of the total paid up equity in the company at any time during the permission period. Simultaneously, the HITS permission holder should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS permission holder company shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee

and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS permission holder company and a MSO/cable operator company.

1.7 While determining the shareholding of a Company or entity or person as per para 1.6 above, both its direct and indirect shareholding will be taken into account. The principle and methodology to determine the level of indirect holding shall be the same as has been adopted in Press Note 2 of 2009 dated 13.2.09 of the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry for determination of indirect foreign investment.

2. NUMBER OF PERMISSIONS:

There will be no restrictions on the total number of HITS permissions and these will be issued to any company which fulfils the eligibility criteria & necessary terms and conditions and subject to the security and technical clearances by the appropriate authorities of the Government.

3. PERIOD OF PERMISSION

3.1 Permission for providing the HITS Service will be valid for a period of Ten years from the date of issue of wireless operational license (WOL) by the Wireless Planning and Coordination Wing of the Ministry of Communications and Information Technology.

3.2 The permission may be terminated earlier as provided in paras 10 and 13..

3.3 The permission granted to the company shall be non-transferable except with specific and prior approval of the Government.

4. NON REFUNDABLE ENTRY FEES AND OTHER FEES

4.1 The applicant will be required to pay a non-refundable entry fee of Rs.10 crores.

4.2 No annual fee will be required to be paid.

4.3 The company/permission holder shall also in addition pay the license fee and royalty for the spectrum used as prescribed by Wireless Planning & Coordination Authority (WPC), under the Department of Telecommunications.

5. BANK GUARANTEE

5.1 The applicant company shall, within one month of the issuance of SACFA clearance by WPC, submit to the Ministry of I & B, a Bank Guarantee from any

Scheduled Bank in the format notified, for an amount of Rs.40 crores valid for a period of three years.

5.2 The HITS permission holder should commence uplinking/downlinking operations within a period of one year from the date of issuance of SACFA clearance by the WPC after obtaining Wireless Operational License failing which half of the bank guarantee would be forfeited.

5.3 If the operator does not start the service within two years from the date of issuance of SACFA clearance by the WPC, the full performance bank guarantee will be forfeited and action for revocation of the permission will also be considered on completion of two years from the date of issuance of SACFA clearance by the WPC.

5.4 If the HITS permission holder fulfils the roll out obligation within one year of issuance of SACFA clearance by the WPC, then full amount of performance bank guarantee will be refunded. If the HITS permission holder meets the roll out obligation after one year but within two year of the issuance of SACFA clearance by the WPC, then half of performance bank guarantee will be refunded.

6. BASIC CONDITIONS AND OBLIGATIONS

6.1 The majority of Directors on the Board of the Company shall be Indian Citizens. The Company, Directors, Managing Director, Chief Executive Officer(CEO), and Chief Financial Officer (CFO) will be required to be security cleared from the Ministry of Home Affairs. The company shall give without fail intimation to Ministry of I & B regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place.

6.2 No permission holder shall carry or include in his HITS Service any television broadcast or channel which has not been registered by the Ministry of Information and Broadcasting for being viewed within the territory of India. Notwithstanding any agreement entered into between the permission holder and broadcaster(s)/ TV channel owner(s), the permission holder shall stop from carrying/ including in its HITS service, TV channels, whenever such registration/permission is withdrawn

6.3 The permission holder shall not carry any channels broadcast of which is prohibited by the Ministry of Information & Broadcasting.

6.4 The company shall not carry the channels of a broadcaster against whom the competent authority or any regulatory body, tribunal or court have found the following: -

- (i) It has refused access on a non-discriminatory basis to another broadcasting service provider contrary to the rules, regulations etc. governing the broadcasting services in India
- (ii) It has violated the provisions of any law relating to competition including the Competition Act.

[Explanation: It shall be the sole responsibility of the permission holder to ascertain before carrying any channels on its network whether any television channel broadcaster has been found to be in violation of the above conditions or not. In respect of TV channels already being carried on the platform, the permission holder shall ascertain from every source including the Government, TRAI, Tribunal or a Court whether concerned broadcaster or the channel is in violation of the above conditions. If any violation so comes to its notice, the permission holder shall forthwith discontinue carrying the television channels of such broadcaster.]

6.5 The permission holder shall ensure that each of the channels carried by it follows the Programme Code and Advertisement Code as laid down under the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder or any other code made applicable.

6.6 The permission holder shall invariably ensure that the subscribers of the service do not have access to any pornographic channel or to secret/ anti-national messaging and the like through the HITS platform. If the permission holder fails to do so , the permission granted shall be revoked and the company shall be disqualified to hold any such Permission in future for a period of five years, apart from liability for punishment under other applicable laws.

6.7 The permission holder shall ensure that its facilities are not used for transmitting any objectionable content, messages or communication inconsistent with the laws of India. If the permission holder fails to do so, the permission granted shall be revoked and the company shall be disqualified to hold any such Permission in future for a period of five years, apart from liability for punishment under other applicable laws.

6.8 The permission holder shall provide access to various content providers/channels on a non discriminatory basis.

6.9 The permission holder shall not enter into any exclusive contract for distribution of TV Channels.

6.10 The permission holder shall comply with the terms and conditions of Wireless Operational License to be issued by the WPC Wing, Ministry of Communications & IT.

6.11 The Company shall ensure its continued eligibility as applicable throughout the period of permission and adhere to all the terms and conditions of the permission, failing which the company shall be liable for penalty as specified in Para 14.2 below.

6.12 The government shall have the right to notify the number and names of television channel or channels of Prasar Bharati or any other television channel for

compulsory carriage by the HITS provider in his service and the manner of reception and retransmission of such channels.

6.13 The Permission Holder shall carry other television channels of Prasar Bharati on the most favorable financial terms offered to any other channel.

7. MANDATORY SHARING OF CERTAIN BROADCAST SIGNALS WITH PRASAR BHARATI

7.1 The permission holder shall ensure that channels carried by and telecasting sporting events have ensured compliance with the provisions of Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007.

8. TECHNICAL STANDARDS AND OTHER OBLIGATIONS

8.1 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 broadcasting, distribution and reception system, the Block schematic diagram and also demonstrate the facilities for monitoring and storing record for 90 days.

8.2 The company can uplink in '**C**' Band or '**Ku**' Band only. Uplinking would be permitted both to Indian as well as foreign satellites. However, where the company does not have a satellite of its own or of its group company, proposals envisaging use of Indian satellites will be accorded preferential treatment. Satellite to be used should have been coordinated with INSAT System.

8.3 The HITS operator is required to provide signals directly from his satellite only to the registered MSOs/cable operators and under no circumstances should the HITS operator provide signals directly from his satellite to the consumer. However, he will not be barred from providing signals, through his own cable network if any, to consumers also after first downlinking the signals to his terrestrial receiving station. The signals are to be provided only through QAM set top box.

8.4 The company is required to provide commercial interoperability with respect to its set top boxes so that if the subscribers decide to switch over to any other service provider or platform they should be able to do so at least cost. Commercial interoperability here would mean that in addition to offering the receiver set on an outright purchase basis, a subscriber should also have the option to purchase it on a hire-purchase basis or rental basis with a provision to return the set top box on such terms and conditions as may be laid down by regulations issued by TRAI.

8.5 The addressability provided to every subscriber should be capable of blocking any unwanted channel or group of channels by the Permission Holder.

8.6 The company shall ensure subscriber's interests through a Subscriber Management System (SMS) for an efficient, responsive and accurate billing and collection system.

8.7 The company shall not use any equipment, which is identified as unlawful/or render network security vulnerable.

8.8 All content provided by the HITS service provider to the subscribers, irrespective of its source, shall pass through the encryption and digital addressable system located within the earth-station situated on Indian soil.

9. MONITORING AND PUBLIC COMPLAINTS

9.1 The company at its own cost shall,

(i) Preserve the recordings of broadcast material for a period of three months from the date of broadcast and produce the same to the Government or its authorized representative, as and when required and

(ii) On demand by the Government or its authorized representative, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring of the broadcasting service by or under supervision of the Government or its authorized representative.

9.2 The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time.

10. INSPECTION

10.1 The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government or its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the companies activities and operations.

10.2 The Government of India, Ministry of Information & Broadcasting or its authorized representative will ordinarily carry out the inspection after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

11. NATIONAL SECURITY AND OTHER CONDITIONS

11.1 The Government of India, Ministry of Information & Broadcasting shall have the right to take over the entire services and networks of the permission holder or

revoke/terminate/suspend the permission of the company or to prohibit broadcasting of any or all of the channels for a specified period in the interest of national security or in the interest of emergency or war or low intensity conflict without giving prior notice to the company. The company shall immediately comply with any directives issued in this regard failing which the permission granted shall be revoked and the company disqualified to hold any such Permission in future for a period of five years.

Provided that any taking over or suspension of licence, issuance of a directive as described above shall neither be a ground for extension of licence period nor any compensation.

11.2 The company shall not use any equipment, which is identified as unlawful and/or render network security vulnerable.

11.3 Permission holder shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment.

11.4 The permission shall be subject to permission holder remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith.

11.5 In the event of security clearance of any of the persons associated with the permission holder or foreign personnel is denied or withdrawn for any reasons whatsoever, the permission holder will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government failing which the permission granted shall be revoked and the company shall be disqualified to hold any such Permission in future for a period of five years.

12. VALUE ADDED SERVICES

12.1 The permission holder shall be able to use his network for providing other value-added services which otherwise do not require any specific license or permission. Services which require a specific license or permission from the competent authority can only be provided after obtaining such permission. However the permission holder is required to give prior information of all value added services to be carried by it to the Ministry of Information and Broadcasting.

13. PROVISIONS WITH RESPECT TO EXISTING PERMISSION HOLDERS:

13.1 Notwithstanding anything contained in the terms and conditions of permission issued earlier, these Guidelines will also be applicable to the existing permission holders.

13.1.1 The existing permission holders will be allowed to operationalise their services only after they give an undertaking supported by its Board resolution to Ministry of Information and Broadcasting to ensure compliance with all the provisions contained in the Guidelines within a period of three months from the issuance of these Guidelines which period may, at the discretion of the Government, be extended to a maximum of six months.

13.1.2 Existing permission holder will within a period of one month of the issuance of these Guidelines also submit a detailed plan for ensuring compliance to the provisions contained in guidelines. The existing permission holder will also have to deposit the non-refundable entry fee of Rs. 10 crores and submit proof of such deposition.

13.1.3 If compliance to provisions of 13.1.1 and 13.1.2 is not ensured by the existing permission holder within the stipulated time period the permission given earlier shall stand withdrawn.

13.1.4 The period of permission shall be ten years from the date of issuance of permission by Government of India as per para 13.1.1 and 13.1.2.

14. TERMINATION OF PERMISSION

14.1 Consequences of violation of terms and conditions of the Permission

14.1.1 Subject to the provisions contained in paras 6.6, 6.7, 11.1, 11.4, 11.5 and 14.2 in the event of the company violating any of the terms and conditions of Permission, the Government shall have the right to impose the following penalties:

(a) In the event of first violation, suspension of the Permission and prohibition of broadcast up to a period of 30 days.

(b) In the event of second violation, suspension of the Permission and prohibition of broadcast up to a period of 90 days.

(c) In the event of third violation, revocation of the Permission and prohibition of broadcast up to the remaining period of the Permission.

(d) In the event of the failure of the Permission Holder to comply with the penalties imposed within the prescribed time, revocation of Permission and disqualification to hold any fresh Permission in future for a period of five years.

14.1.2 In the event of suspension/revocation of Permission, the Government shall not be responsible for any investment by the Permission Holder on the service or by any other party on the strength of his permission.

14.1.3 Any suspension/revocation mentioned under this para shall be imposed only after giving a written notice to the company identifying the violation, providing opportunity to rectify it, if its nature so permits or otherwise show cause, within a period of 15 days and non-satisfaction from such rectification and/or cause so shown shall render the company liable for the proposed suspension/revocation.

14.2 Termination for Non eligibility

14.2.1 The Government may, at any time, terminate this Agreement and the Permission, without compensation to the Permission Holder in case the company fails to meet the eligibility criteria as laid down in these Guidelines or its security clearance is withdrawn or liquidation proceedings are initiated or becomes bankrupt or otherwise insolvent or applies for being adjudicated insolvent / bankrupt, provided that such termination shall not prejudice or affect any right of action which has accrued or will accrue thereafter to the Government.

14.3 Termination for convenience

14.3.1 The company may surrender the Permission, by giving an advance notice of one month to the Government as well as to all concerned/affected parties. It is clarified that the Company will not be entitled to claim any refund of the non-refundable Entry Fee already paid to the Government.

15. WPC WING'S PERMISSION

15.1 As aforementioned, a separate specific license i.e. Wireless Operational License (WOL), shall be obtained by the applicant company from the WPC Wing of Ministry of Communications &IT, permitting utilization of appropriate frequencies/band for the establishment, maintenance and operation of the HITS platform/facility under usual terms and conditions of such license. The Grant of such License shall be governed by the rules, procedures and guidelines and shall be subject to compliance with all requirements of the WPC wing.

15.2 For this purpose, an application shall be made to the "Wireless Advisor to the Government of India, WPC Wing, Department of Telecommunications, Ministry of Communications &IT," in the prescribed application form.

15.3 License fee/royalty as prescribed by WPC from time to time, shall have to be paid by the company towards grant of License for usage of frequency spectrum.

15.4 The company shall not cause harmful interference to other authorized users of radio spectrum. WPC Wing will have the sole discretion to take practicable and necessary steps for elimination of harmful interference, if any, to other licensed users.

15.5 The Wireless Planning and Coordination Wing, Ministry of Communications & IT shall have the right to inspect from time to time the installation from technical angles to check conformity with Wireless Operational License conditions.

16. PROCEDURE FOR APPLICATION AND GRANT OF PERMISSION:

16.1 All applicant companies shall apply to the Secretary, Ministry of Information & Broadcasting, in triplicate, in the prescribed proforma alongwith a processing fee of Rupees One Lakh

16.2 On the basis of information furnished in the application form, if the applicant is found eligible for setting up of HITS service in India, the application will be subjected to security clearance of the company, Board of Directors, Managing Director, CEO and CFO in consultation with the Ministry of Home Affairs and for clearance of satellite use with the Department of Space.

16.3 After these clearances are obtained, the applicant would be required to pay a Non-Refundable Entry Fee of Rs.10 Crores to the Ministry of Information and Broadcasting.

16.4 After such payment of entry-fee, the applicant would be informed of intent of Min. of I & B to issue permission and requested to approach WPC for SACFA clearance.

16.5 After obtaining SACFA clearance, within one month of the same, the company will have to submit a Bank guarantee in desired format from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount of Rs.40 crores valid for a period of three years.

16.6 After submission of this Bank Guarantee, the applicant would be required to sign a Grant of Permission Agreement with the Ministry of Information and Broadcasting as per prescribed proforma .

16.7 Thereafter the Ministry of Information and Broadcasting will issue permission to the applicant to provide HITS services in the country in accordance with the terms and conditions of the GOPA.

16.8 After signing of such agreement with the Ministry of Information and Broadcasting, the applicant will have to apply to the Wireless Planning & Coordination (WPC) Wing of the Ministry of Communications for seeking Wireless Operational License for establishment, maintenance and operation of HITS services.

16.9 All kinds of fees and other dues payable to the Government shall be deposited in the form of Demand Draft in favor of PAY & ACCOUNTS OFFICER, MINISTRY OF INFORMATION & BROADCASTING payable at New Delhi.

17. DISPUTES WITH OTHER PARTIES

17.1 In the event of any dispute between the company and any party other than the Government (including in relation to the Permission and/or Broadcasting services, etc) due to any reason whatsoever, it shall be the sole liability of the company to resolve such dispute amicably or otherwise with the other party and the Government shall have no liability whatsoever in this regard. Further, the company shall undertake to fully indemnify and keep the Government harmless in respect of any action, claim, suit, proceeding, damage or notice to/against the Government for any act of omission or commission on the part of the company, its agents, employees, representatives or servants.

Provided that if any such third party dispute arises on account of non-observance or breach of any rules or regulations or any other terms and conditions of permission by the company as provided, the Government shall also have the right to take any action against the company as provided herein.

18. DISPUTE RESOLUTION AND JURISDICTION

18.1 In the event of any question, dispute or differences arising between the Central Government and the company with respect to permissions issued under these Guidelines, the same shall be resolved before Telecom Disputes Settlement and Administrative Tribunal as per the provisions of Telecom Regulatory Authority of India Act, 1997.

18.2 The courts at New Delhi shall have the jurisdiction over all disputes.

19. MISCELLANEOUS

19.1 The grant of Permission/registration shall be subject to the condition that as and when any regulatory authority to regulate and monitor the Broadcast Services in the country is constituted, the company shall adhere to the norms, rules and regulations laid down by such authority.

19.2 The Permission/registration shall be governed by the provisions of the Telecom Regulatory Authority of India Act, 1997, Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 as amended from time to time and any other law as applicable to broadcasting facilities/services which has or may come into force.

19.3 The Government, Ministry of Information and Broadcasting shall have the right to modify at any time the provisions of these guidelines and/or the terms and conditions of permission, if in the opinion of the Government it is necessary or expedient to do so in public interest or in the interest of the security of the State. The decision of the Government shall be final and binding in this regard.
