

iCe Hotline

May 11, 2006

PRESS RELEASE BY MIB ON UPLINKING AND DOWNLINKING GUIDELINES

The Ministry of Information and Broadcasting (MIB) has issued a Press Release on May 9, 2006 in respect of compliance with the Uplinking and Downlinking Guidelines, respectively. This Press Release has been issued amidst growing confusion with respect to the Downlinking Guidelines and the impending May 10, 2006 deadline for filing applications.

The Press Release allows continuation of telecast of channels being downlinked in India from abroad, which have applied for channel registration on or before May 11, 2006.

DOWNLINKING GUIDELINES

The Downlinking Guidelines are applicable when the channel is uplinking from outside India. The Downlinking Guidelines prohibit any cable operator or DTH service provider, after the expiry of 180 days from the date of the Guidelines, to carry or include in his cable/DTH network any television channel that has not been registered under the guidelines. This 180-day period expired on May 10, 2006. In the absence of the abovementioned Press Release, those channels being uplinked from outside India, who have failed to complete all formalities of registration, under downlinking guidelines prior to expiry of the deadline, would have had to stop the downlinking until such downlinking permission and registration is obtained.

So as to expedite and support compliance with the Downlinking Guidelines, the MIB has through this Press Release granted relief to those channels, who have made an application for registration on or before May 11, 2006. Broadcast of such channels can continue for a period of six months beginning from May 11, 2006 or till such registration has been granted or refused, whichever is earlier. The benefit of this provision can also be taken by a TV channel, which has not started its broadcast into India but have filed their application before May 11, 2006.

The TV channels, which file the application for registration after May 11, 2006, can continue with their broadcast only after obtaining channel registration.

The Downlinking Guidelines are intended to control the TV channels being uplinked from outside India, by requirement of obtaining downlinking permission through their own entity in India or an exclusive marketing and distribution agent and also requiring channel registration. There are certain other controls imposed by the downlinking Guidelines, which appear to be reasonable. However, many companies are finding the requirement of 1.5 net worth too onerous.

UPLINKING GUIDELINES

The Press Release also clarifies that the channels that were granted permission to uplink from India prior to December 2, 2005, (*i.e. the date of issuance of the revised Uplinking Guidelines*), **shall be treated as "registered" television channels and they can be carried or included in the cable service.** That means they need not again apply to MIB for channel registration as per the procedure prescribed under Downlinking Guidelines. The MIB will also provide on its website (www.mib.nic.in), the names of the 173 channels that are permitted to uplink as per the earlier Uplinking Guidelines. In the absence of this clarification, undue burden would have been put these TV channels of payment of Rs. 5, 10,000 (USD 11,333 approx) as registration fee. However, the MIB has not clarified the term for which those licenses would be deemed to have been registered as the earlier Uplinking Guidelines provided for registration for 10 years, while the present provides for 5 years.

Further, earlier Uplinking Guideline was silent as to requirement of Applicant company for channel registration to be an Indian company. However, under the present Guidelines the applicant company has to be an Indian company. The rationale for this distinction is not clear. The entire intention of controlling the companies that provide channels would get defeated in case of companies which have obtained channel registration prior to December 2, 2006.

The MIB is also in the process of providing on its website the complete list of broadcasters in India and the applications that are pending for approval so that it remain a comprehensive control of the payers in the broadcasting sector.

Please find a comparative chart of some brief issues of comparison between earlier Uplinking Guidelines and the revised Uplinking Guidelines.

Apart from the above issues, instances are coming up where the validity of certain provisions of the Downlinking Guidelines is being challenged. Ten Sports has filed a case in the Supreme Court wherein they have taken objection to the requirement under the Downlinking Guidelines that feed for sporting events of national importance should be compulsorily shared with Prasar Bharati (the owner of the Government channels). Ten sports argues that the requirement of sharing feed is arbitrary and without authority of law. Thus constitutional validity of such provision itself is being challenged. The outcome of this Special Leave Petition requires to be closely followed as this will have a significant impact on some of clauses of the Downlinking Guidelines which has caused the greatest concern to

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- **Sushma George & Gowree Gokhale**

Source: *From the website www.mib.nic.in dated May 09, 2006*

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