

## **GUIDANCE NOTES FOR APPLICATION FOR SELF-PROVIDED EXTERNAL TELECOMMUNICATIONS SYSTEM LICENCE**

### **Introduction**

1. At present, a company or an organization is permitted to “self-provide” its own external circuits (including by the use of very small aperture terminal ("VSAT") or larger earth station) for its own communications provided that it first obtains a Self-Provided External Telecommunications System ("SPETS") licence.

2. In this Guidance Notes, “external” means communications with places outside Hong Kong. Applicants proposing the use of satellites are entitled to use the satellite of their choice whether it is INTELSAT's satellite or a private commercial satellite system.

### **The scope of the SPETS licence**

3. Under the SPETS licence, the licensee is permitted to establish and maintain its own external circuits for sending messages to or receiving messages (or both) from places outside Hong Kong, subject to the conditions in the SPETS licence. However, the SPETS licence prohibits the licensee from operating any public telecommunications service in Hong Kong.

4. If the licensee is a company, the licensee may use the licensed system for sending outgoing messages which originate from and/or receiving incoming messages that are intended for: (a) the licensee, or (b) the licensee’s holding company, or (c) a subsidiary of the licensee, or (d) an affiliated company of the licensee. The meanings of “company”, “holding company” and “subsidiary” have the same meanings as in the Companies Ordinance (Cap. 32) - for convenience these definitions are reproduced at Attachment 1. An “affiliated company” means a company that is a subsidiary of the licensee’s holding company, for example, a “sister” company.

5. If the licensee is an organization, the licensee may send outgoing messages from Hong Kong and receive incoming messages to Hong Kong that relate to the common business or activity of the organization. “Organization” means a group of persons, businesses or companies engaged in a common business or activity which group was formed for the specific purpose of furthering such common business or activity. The Communications Authority

("CA") will determine the types of messages that relate to the common business or activity having regard to the objects as stated in the organization's memorandum and articles of association or other relevant documents relating to its establishment and operation. Note that the CA will not issue a licence to an applicant organization where the common business or activity of the members of the organization is specifically the provision of external telecommunications services or the provision of circuits for the provision of external telecommunications services.

6. The CA wishes to make it clear that in considering applications for a SPETS licence he will pay particular attention to whether the outgoing messages being sent and the incoming messages being received are the licensee's own traffic. The CA will focus on the Hong Kong end of the circuit in forming this view. This means a licensee may, for example, establish a circuit with an overseas company which does not necessarily have share-holding relationship with the licensee (e.g. between a manufacturer and its dealer, between a company and its major customers), provided it can be demonstrated to the CA that the messages sent over the circuit are the licensee's own traffic and not that of others in Hong Kong.

#### **Types of messages**

7. The messages that may be transmitted or received by a system licensed under a SPETS licence may include sound, data, text and images (including facsimile, video pictures, etc.).

8. The SPETS licence will not be granted for a satellite broadcasting service for the transmission of television or sound programmes intended for direct reception by members of the general public. For such a service, application should be made to the Information Technology and Broadcasting Bureau for a broadcasting licence which may include regulation of the programme content.

#### **Interconnection with PSTN**

9. The licensed system is not permitted to be interconnected with the public switched telephone network ("PSTN") in Hong Kong. The CA may consider requests for specific exceptions for the limited purpose of relaying messages between the licensed system and the various locations of the licensee's business in Hong Kong, for example, between branch offices and the headquarters of the licensee and the licensee's VSAT site. Any such PSTN connection would require the prior approval of the CA and be carried out in accordance with strict conditions specified by the CA. The condition restricting PSTN interconnection in Hong Kong is aimed at ensuring that a self-provided external telecommunications system is not mis-used for the provision of an external telecommunications service which is outside the permitted scope of the

SPETS licence. It should be noted that a SPETS licensee may connect all of its sites in Hong Kong by using leased circuits as is common practice currently.

10. In paragraph 6 it was noted that the CA will focus its consideration on the Hong Kong end of the self-provided circuit. This approach will also apply to interconnection with public switched telephone networks. While the CA will not permit interconnection to the PSTN in Hong Kong (subject to the possible exception mentioned above), the CA is not concerned about interconnection to PSTNs outside of Hong Kong. Therefore a SPETS licensee may interconnect a self-provided circuit to PSTNs outside Hong Kong, subject of course to the regulatory conditions of the other end of the circuit.

### **Illustrative examples**

11. To illustrate the scope and restrictions of a SPETS licence as described in paragraphs 3 to 10, Attachment 2 gives some examples of the configurations which may be permitted and not permitted under the SPETS licence.

### **Mis-received messages**

12. A licensee receiving incidentally or inadvertently a message not authorized by the licence, for example, a message meant for transmission to another, unrelated, person will be required to respect the confidentiality of the message.

### **Employment of contractor**

13. Considering that the end user may not have the necessary expertise to install, operate and maintain a self-provided external telecommunications system, the CA will permit the employment of a contractor. However, to ensure that the self-provide arrangement will not be abused for provision of a public telecommunications service by an unauthorized service provider, the end user must be the licensee and he must continue to be responsible for compliance with the conditions of the licence, and the performance thereof, by any contractor. Where it is proposed that a contractor be employed, an applicant for a SPETS licence should request that the contractor assists in providing the detailed technical information necessary to support the application.

### **Local line installation**

14. For connection between the various parts or nodes of the licensed system, the licensee should use the leased circuits provided by the licensed

fixed telecommunications network service providers as far as practicable. As a general principle, the CA does not intend to authorize the installation of a cable network across unleased Government land. Special consideration may be given in some exceptional cases, for example, where the proposed cable to be laid is within the same curtilage or between two adjacent buildings.

### **Safety measures**

15. If the licensed system comprises a satellite dish, the licensee should employ a person registered under section 3 of the Buildings Ordinance (Cap. 123) to certify that the aerial and its supporting framework of the licensed system are structurally safe. The licensee should also take all proper and reasonable measures to ensure that all installations, equipment and apparatus operated or used comply with any relevant Code of Practice or directions issued by the CA for safeguarding against exposure to any electrical or radiation hazard emanating from the installation.

### **Other requirements**

16. The licensed system should comply with the ITU-T and ITU-R recommendations and such other specifications as prescribed by the CA.

17. All radio equipment to be used should be of a specification acceptable to the CA.

18. The licensed system should not cause harmful interference to other legitimate telecommunications systems.

### **Insurance**

19. If the licensed system comprises a satellite dish, the system should be under insurance against third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the system. Licensees are encouraged to arrange insurance of at least HK\$5,000,000 per occurrence.

### **Validity period of the SPETS licence**

20. The licence will be valid for one year and may be renewed on an annual basis on the payment of the appropriate licence fee.

### **Fee for the SPETS licence**

21. A fee of \$750 will be payable on the grant or renewal of the licence. If the licensed system includes one or more earth stations, the following additional fees, calculated according to the type of earth station, will be payable on the grant of the licence: -

- a) a fee of \$6,000 for a Very Small Aperture Terminal (“VSAT”) that requires radio frequency co-ordination by the CA;
- b) a fee of \$5,000 for a VSAT that does not require radio frequency co-ordination by the CA;
- c) a fee of \$17,000 for an earth station, other than a VSAT that requires radio frequency co-ordination by the CA;
- d) a fee of \$11,000 for an earth station, other than a VSAT that does not require radio frequency co-ordination by the CA.

and, for the purpose of this paragraph: -

“Earth station” means a station located on the surface of the earth and intended for communication with one or more satellites;

“VSAT” means an earth station with an antenna diameter of less than 4 metres (or having the equivalent surface area circumscribed by the rim of the antenna if not circular in shape);

“Radio frequency co-ordination” means radio frequency co-ordination as described in Article 11 of the Radio Regulations issued by the International Telecommunication Union.

### **Application for the SPETS licence**

22. Parties who wish to establish and maintain a self-provided external telecommunications system should submit an application to the CA:

- a) in person or by post at the following address:  
Licensing Office,  
Office of the Communications Authority,  
26/F, Wu Chung House,  
213 Queen's Road East, Wan Chai,  
Hong Kong.  
(Attn.: Senior Clerical Officer (Licensing));
- b) by fax to (852) 3155 0985;
- c) by e-mail to [license.mis@ofca.gov.hk](mailto:license.mis@ofca.gov.hk); or
- d) use the “Submit” button in the application form to submit the application online.

The supporting documents may be uploaded following the instruction if the application is submitted online or returned by any of the following methods:

- a) in person or by post to Licensing office of OFCA;
- b) by fax to: 3155 0985;
- c) by e-mail to [license.mis@ofca.gov.hk](mailto:license.mis@ofca.gov.hk).

Any enquiries concerning SPETS licence application can be made on 2961 6671, by fax on 3155 0985 or by email to [license.mis@ofca.gov.hk](mailto:license.mis@ofca.gov.hk).

23. Subject to a complete application being submitted and the correct supporting information being provided, the CA will aim to determine an application within one month of receipt. The processing time for an application involving the transmission or reception of television or sound programmes will be longer as it is necessary to evaluate whether the operation of the system is outside the permitted scope of the SPETS licence.

24. The proposed telecommunications system and other set-up should meet the requirements specified above.

25. The proposed application should contain all of the information specified below:

- 1) Information about the applicant company/organization -
  - i) In the case of a “company”:-
    - (a) a brief description of the business of the company;
    - (b) a photocopy of the Business Registration Certificate and Certificate of Incorporation of the company;
    - (c) a copy of the memorandum and articles of association of the company;
    - (d) a list showing the names of its holding company, the subsidiary companies and affiliated companies in Hong Kong which are to be connected to the licensed system together with copies of documentary proof of the corporate relationship.
  - ii) In the case of an “organization”:-
    - (a) a description of the objects of the organization and the common business or interest of the members of the organization;
    - (b) a copy of the memorandum and articles of association of the organization or any other relevant documents

relevant to the establishment and objects of the organization;

- (c) a list of the members of the organizations which are to be connected to the licensed system.

2) Technical details of the proposed system

- i) A general description of the system and facilities to be installed, including configuration, architecture and operation and, if relevant, any proposed interconnection with public telecommunications networks/services in Hong Kong.
- ii) Relevant specifications and equipment brochures.
- iii) For a proposed system involving the use of VSATs or earth stations:
  - (a) a photocopy of the lease agreement or letter of intent between the applicant and the satellite network operator;
  - (b) the name of the satellite(s) to be used by the proposed system;
  - (c) number of aerials, their sizes and detailed technical information of the VSAT or earth station involved in the system as listed in Attachment 3.

3) Technical support

- i) Details of the technical support available to establish and maintain the proposed system in compliance with licence conditions;
- ii) The applicant should provide evidence of the arrangement made to have access to a registered structural engineer to comply with the structural safety requirement stipulated in the licence.

4) Insurance

Details of arrangements intended to be made on the insurance cover for the proposed system.

5) Other Information

The CA may request the applicant to provide additional information and clarification where necessary.

**Breach of licence conditions**

26. Should a SPETS licensee breach any of the licence conditions a number of sanctions may be brought to bear by the CA. First, the CA may issue directions to the licensee under the Ordinance; failure to comply can result in significant financial penalties. Second, in case of serious breach a SPETS licence could be withdrawn. Furthermore as licences are subject to annual renewal, persistent offenders may find themselves unable to obtain renewals or new licences.

**Communications Authority**



**Companies Ordinance (Cap 32) Definitions**

The SPETS licence draws some definitions from the Companies Ordinance (Cap 32). The relevant definitions as at February 1995 are :

“company” means “.....a company formed and registered under this Ordinance (Cap 32) or an existing company.”

“subsidiary” - s2(4) “.....a company shall, subject to the provisions of subsection (6), be deemed to be a subsidiary of another company, if -

- (a) that other company -
  - (i) controls the composition of the board of directors of the first-mentioned company; or
  - (ii) controls more than half of the voting power of the first-mentioned company; or
  - (iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned company is a subsidiary of any company which is that other company’s subsidiary.

(5) For the purposes of subsection (4), the composition of a company’s board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that other company shall be deemed to have power to make such an appointment if -

- (a) a person cannot be appointed as a director without the exercise in his favour by that other company of such a power; or
- (b) a person’s appointment as a director follows necessarily from his being a director or other officer of that other company.

(6) In determining whether one company is a subsidiary of another company-

- (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable -

(i) by any person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(7) A reference in this Ordinance to the holding company of a company shall be read as a reference to a company of which that last-mentioned company is a subsidiary.

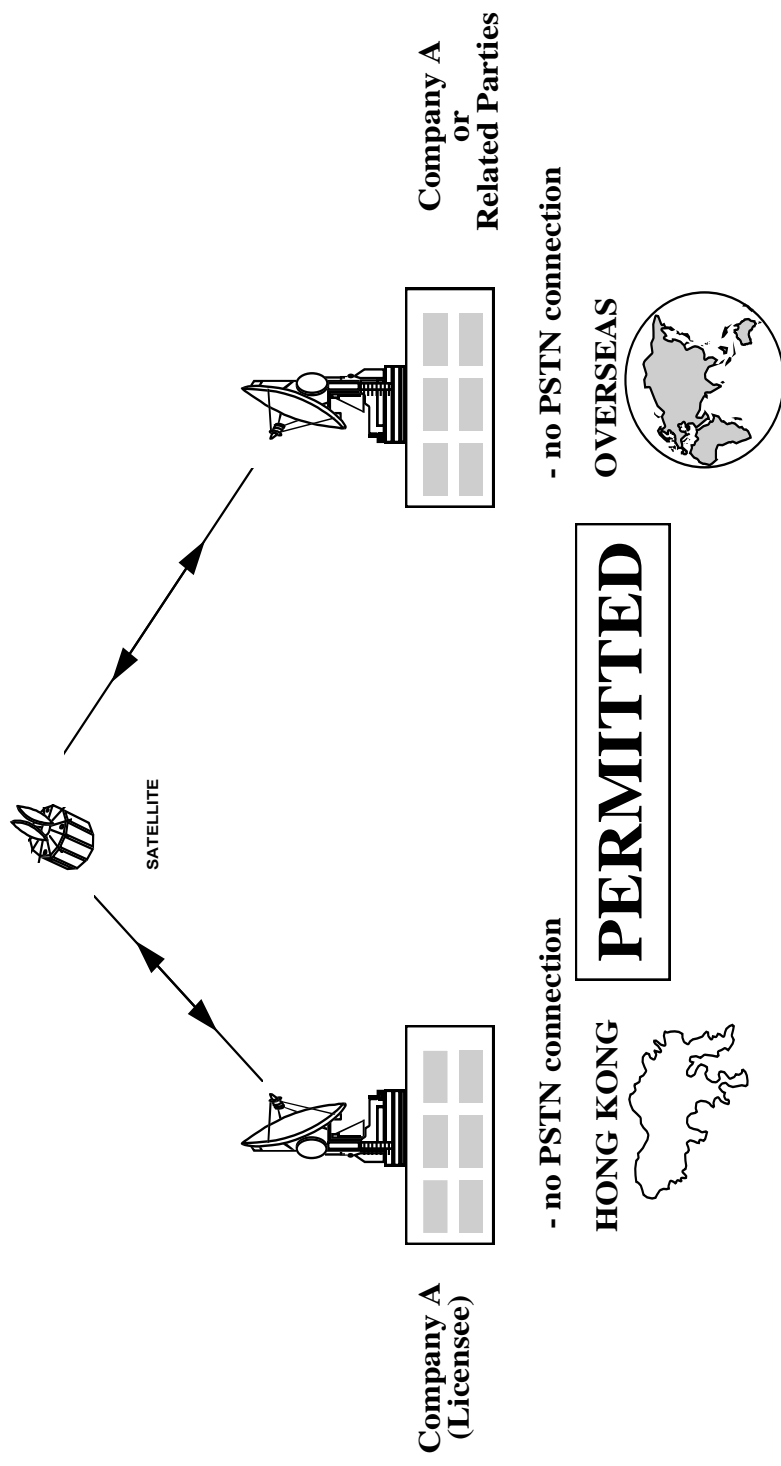
(8) In subsection (4), (5), (6) and (7) the expression "company" includes any body corporate or corporation."

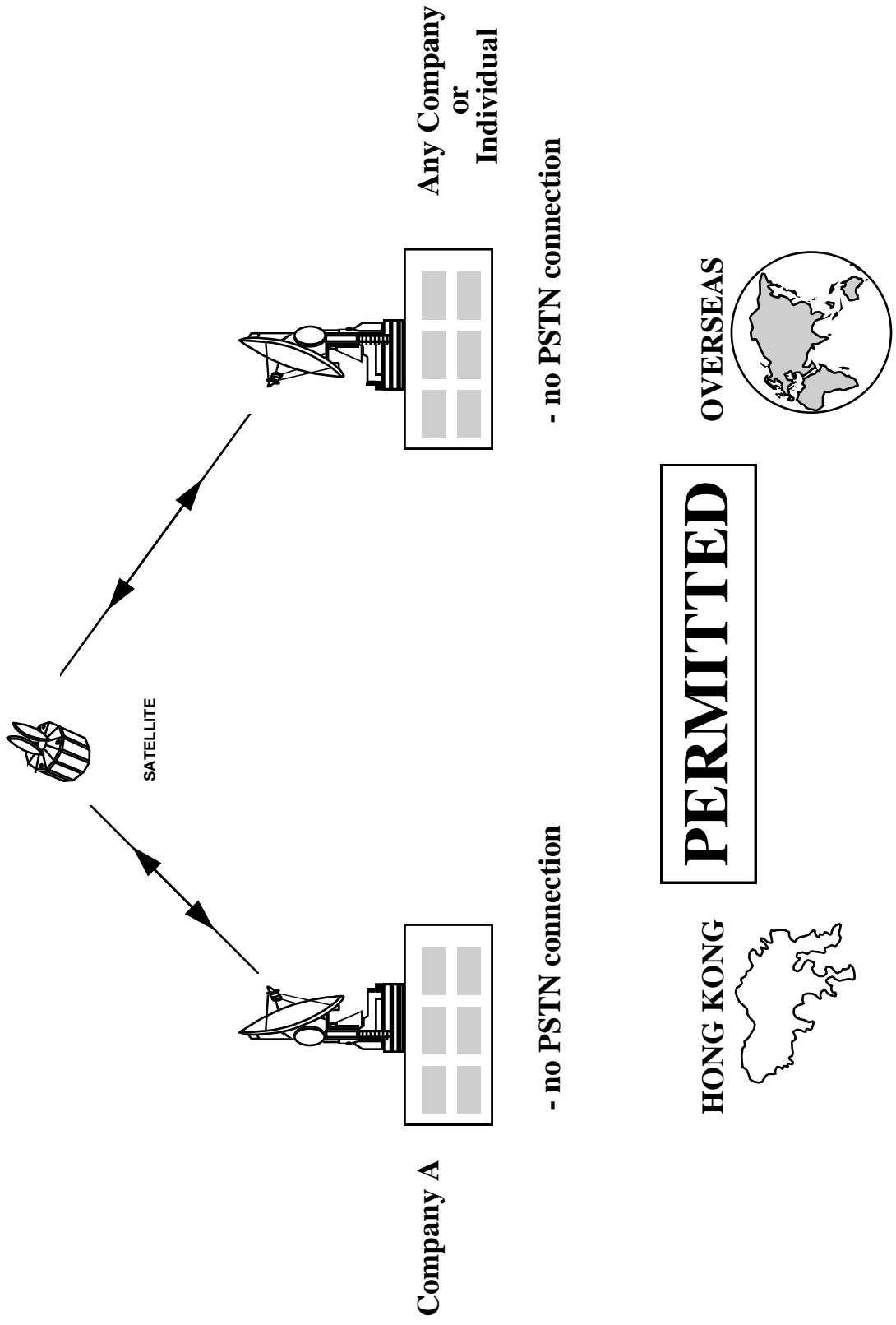
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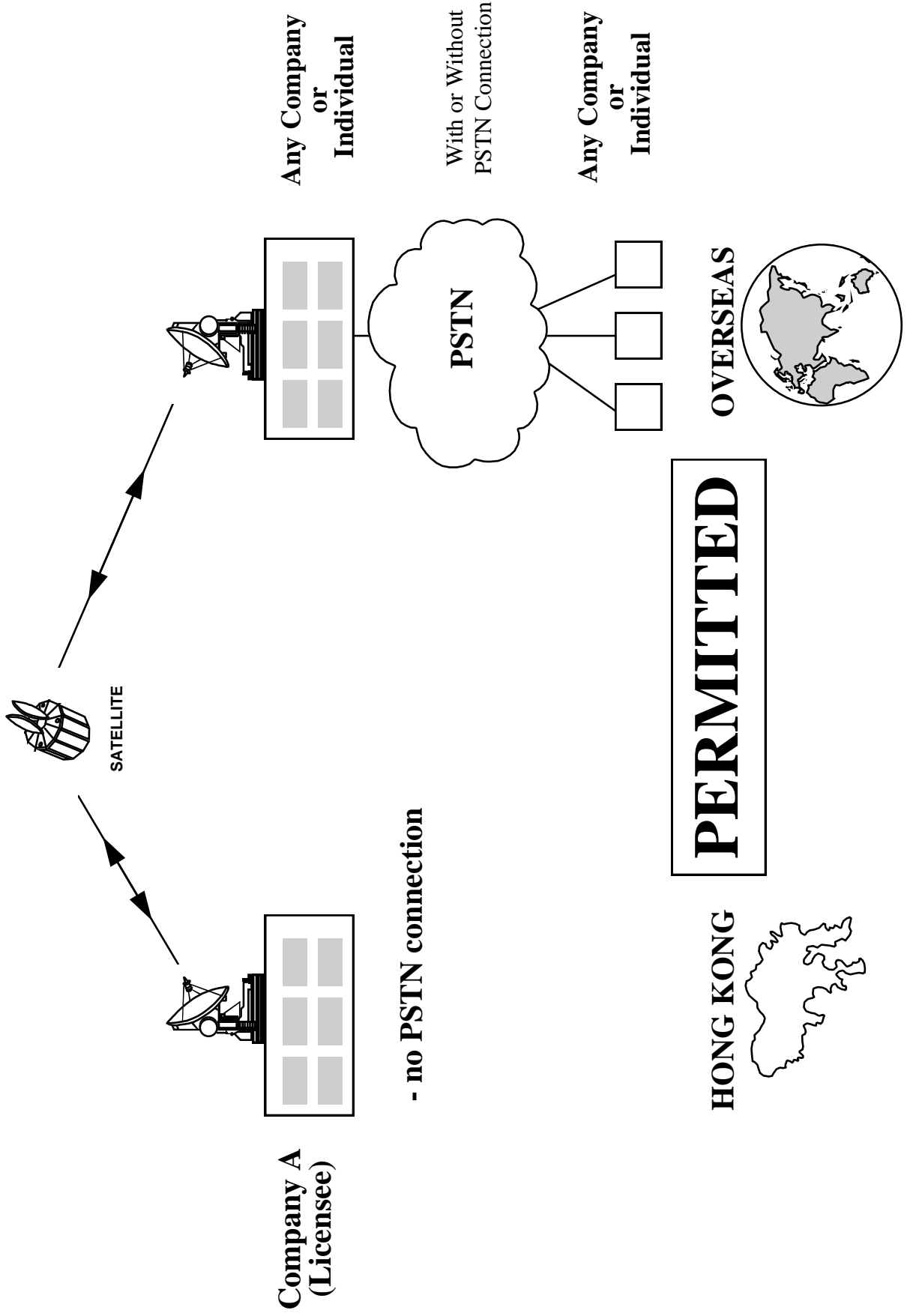
Attachment 2

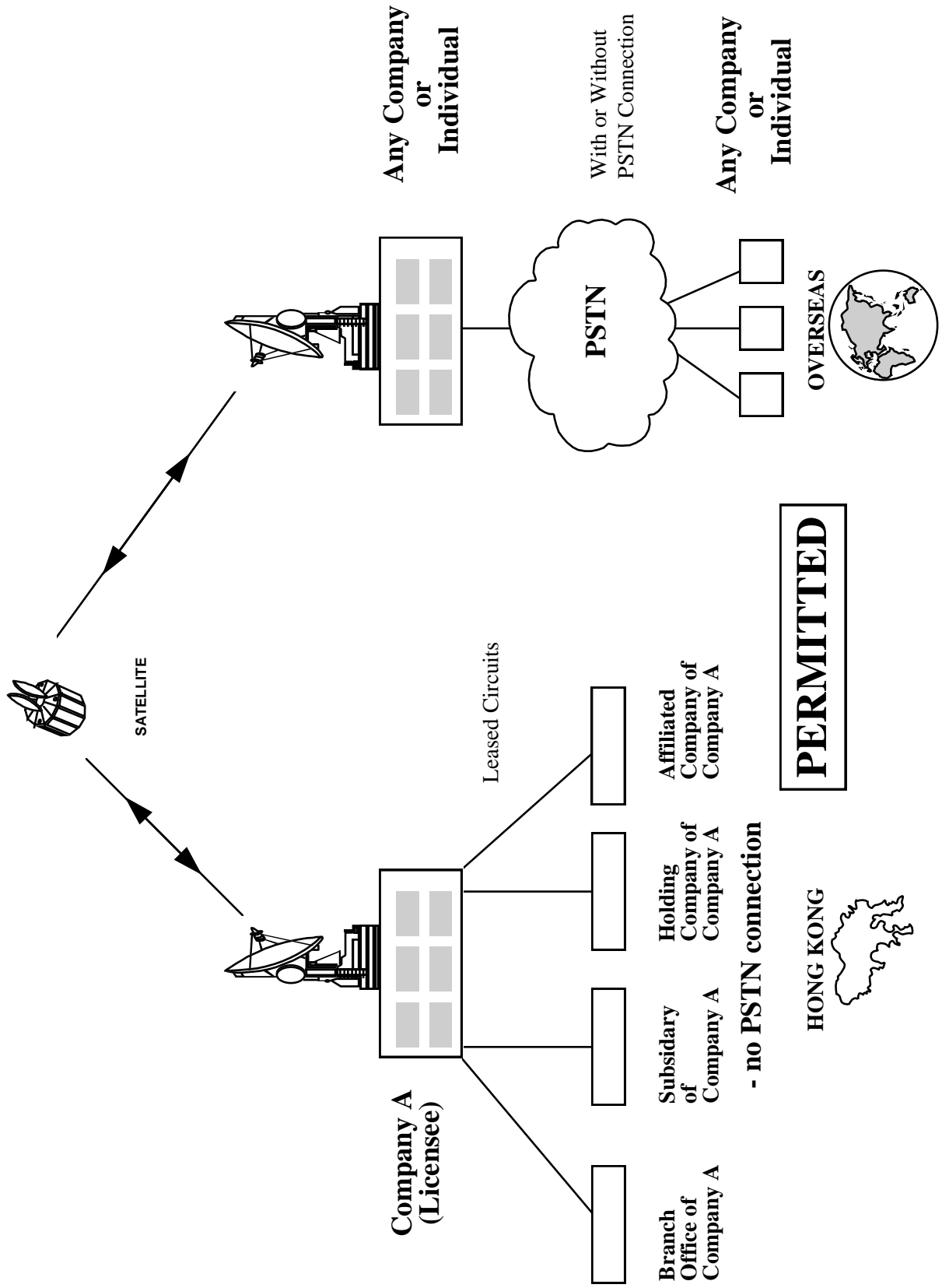
**Illustrative Examples of Systems  
Permitted and Not Permitted Under SPETS Licence**

Category 1 : Systems Conveying All Types of Messages Including Sound, Data, Text and Images Except Television / Sound Programmes

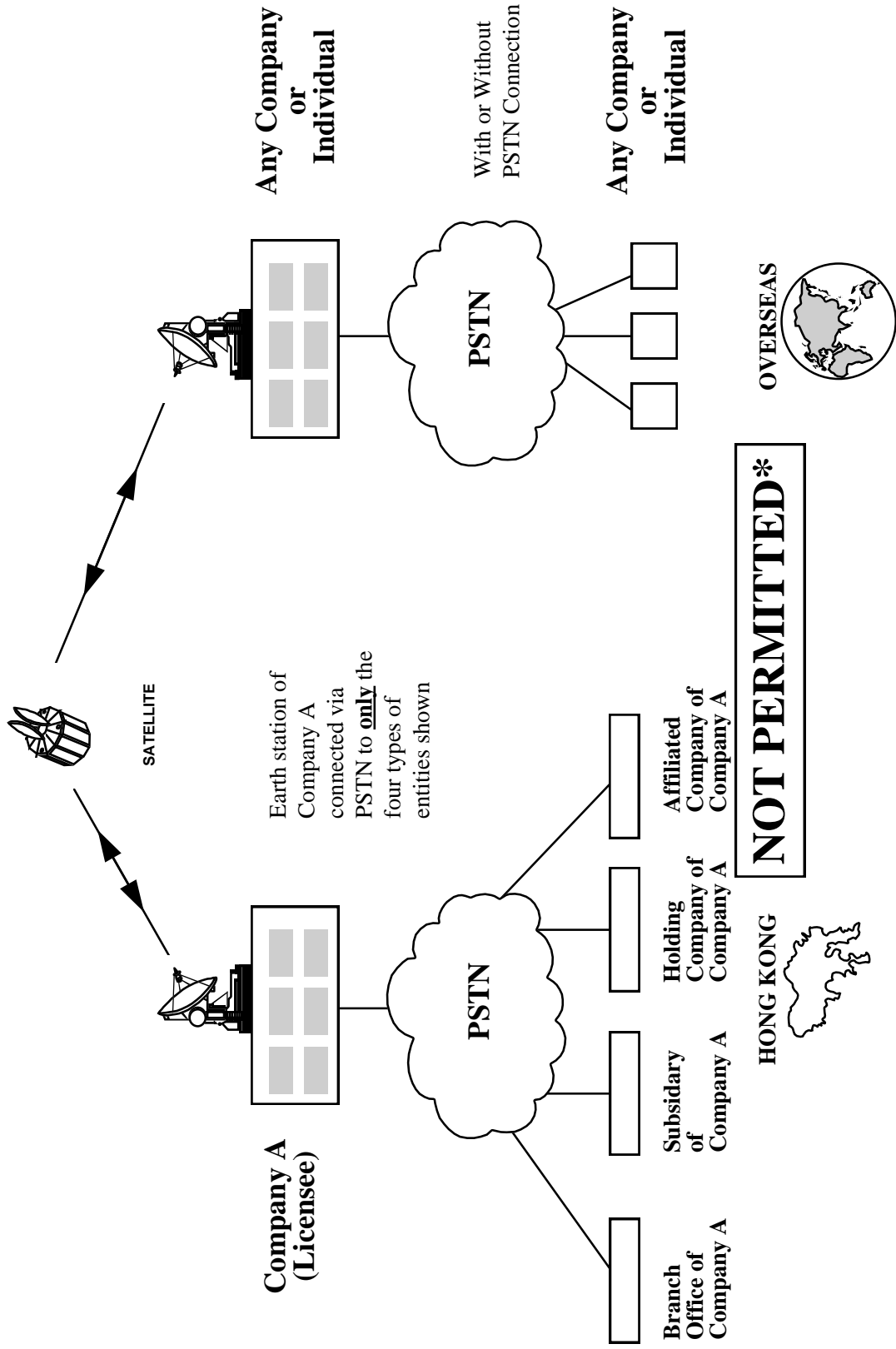




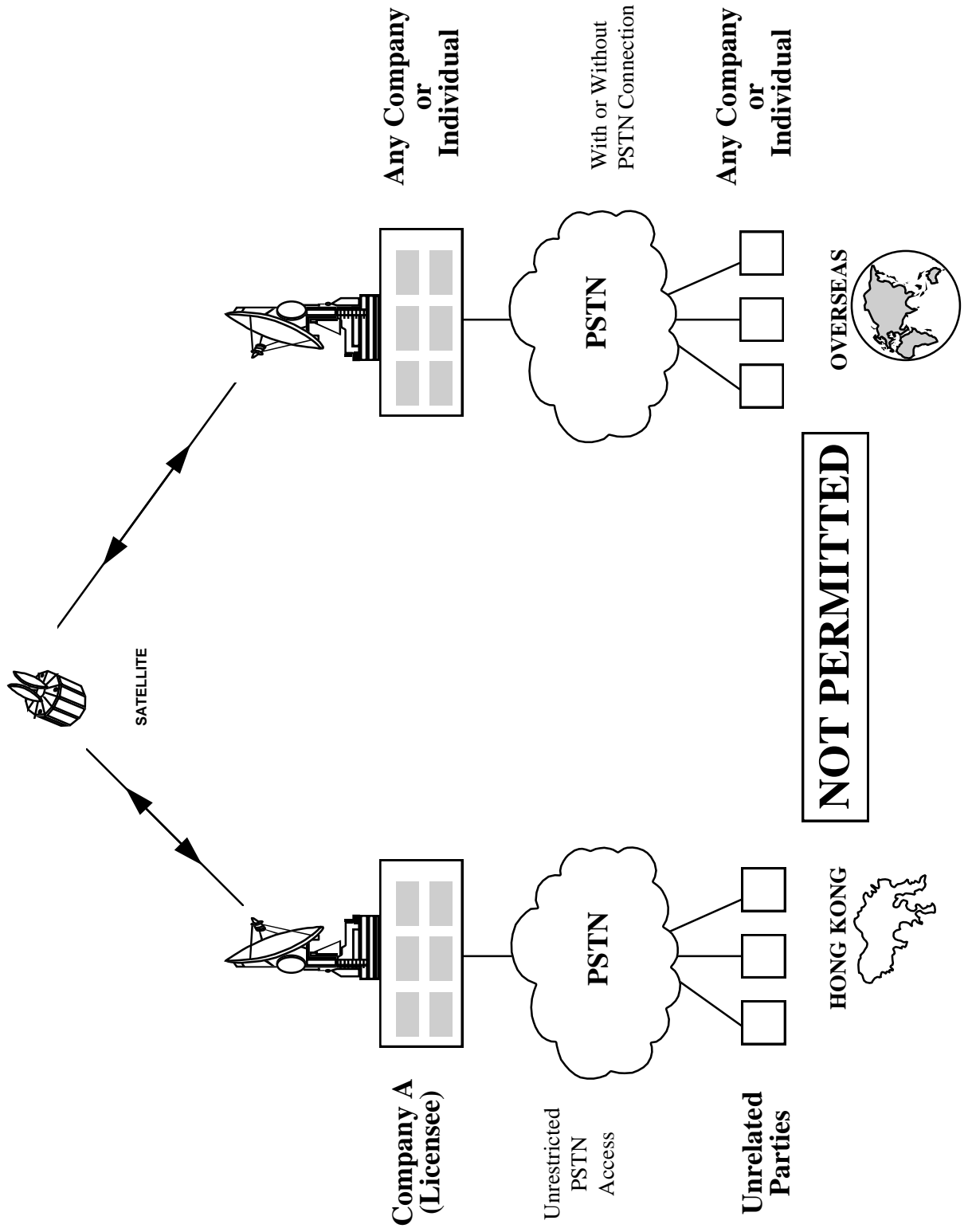




**PERMITTED**

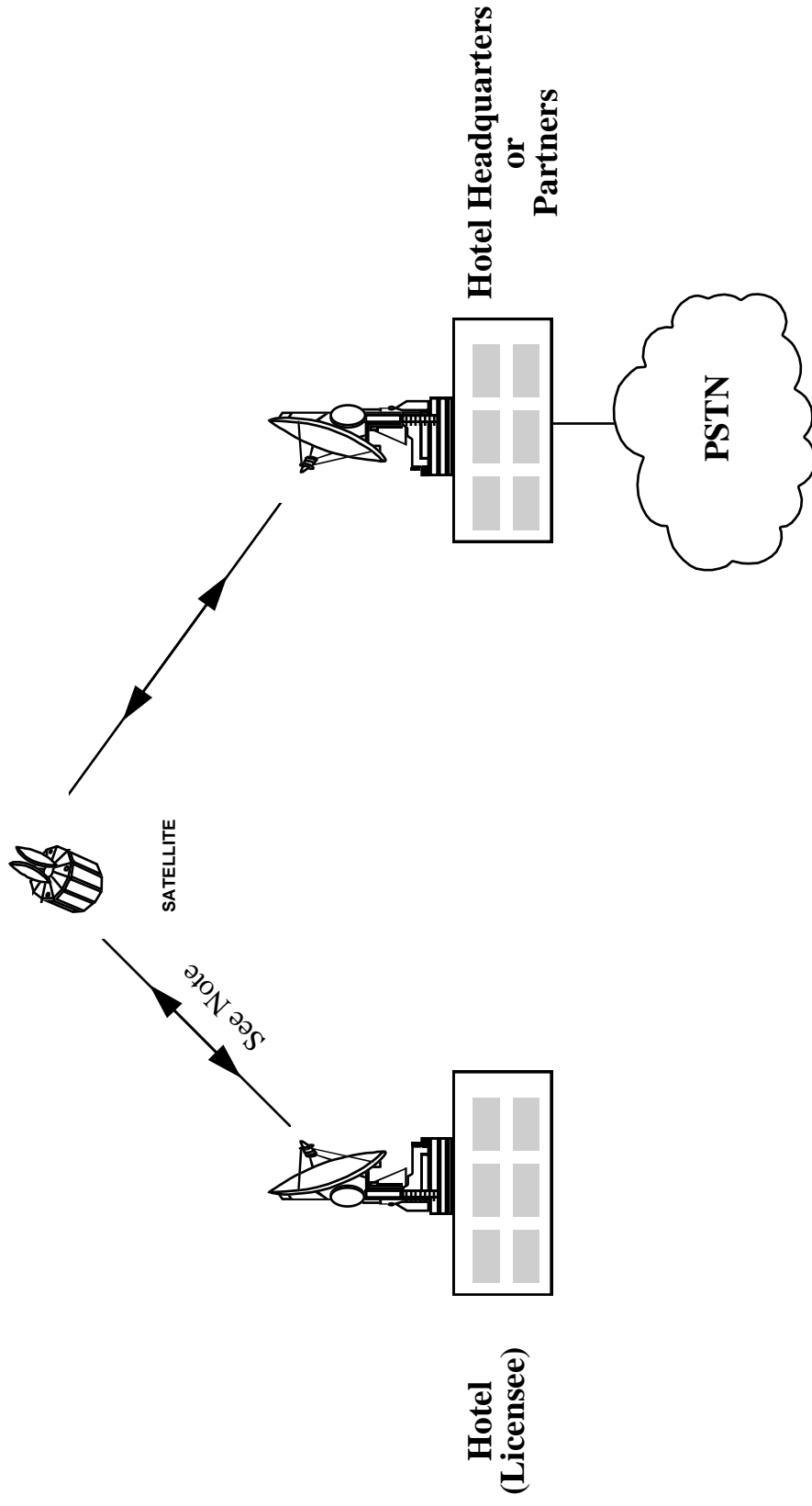


\* Unless specific exception is made by the CA in individual circumstances and subject to such conditions as the CA may set.



**NOT PERMITTED**



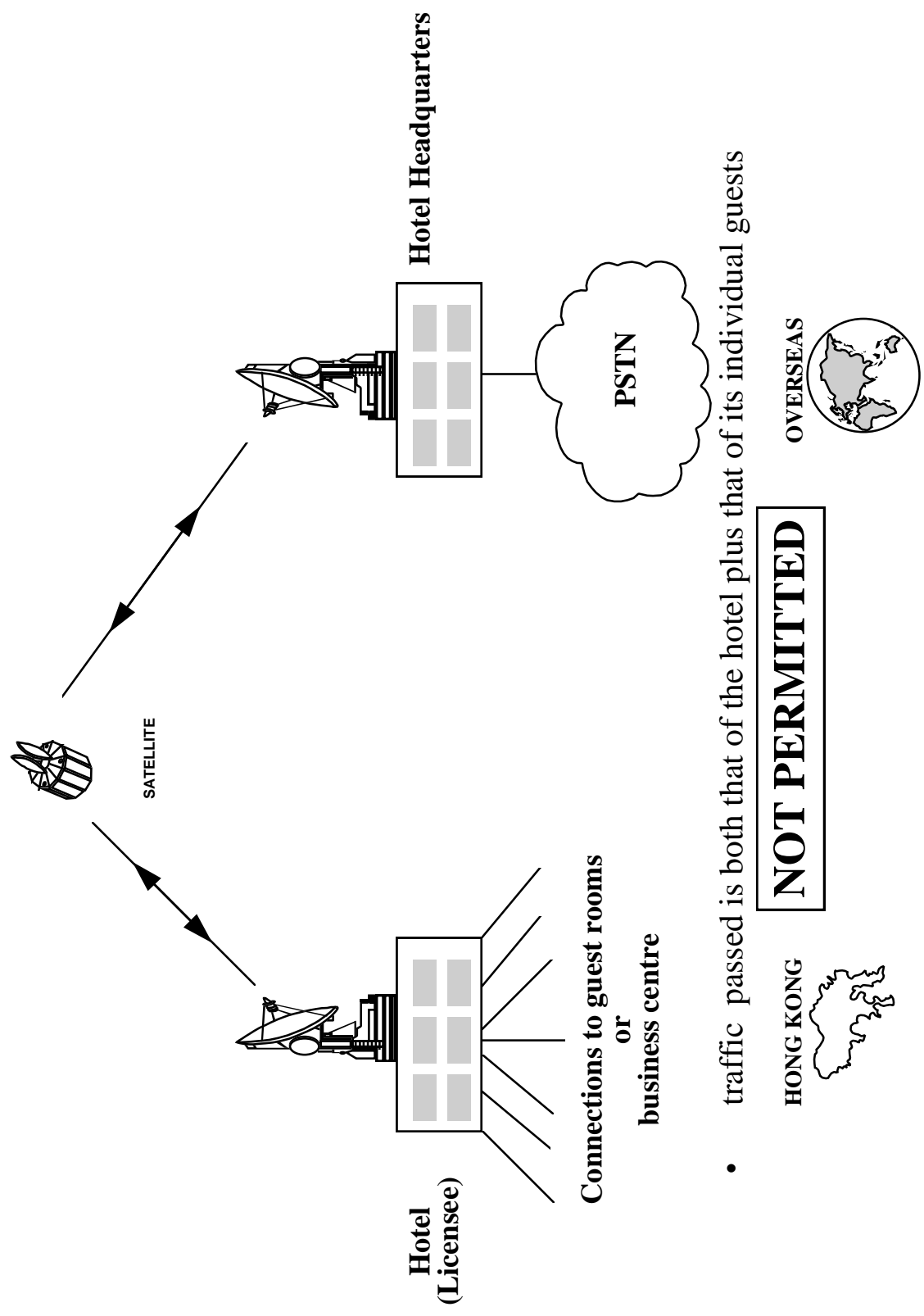


Note : Traffic passed is solely that of the hotel (e.g. booking, accounting, information, management purposes)

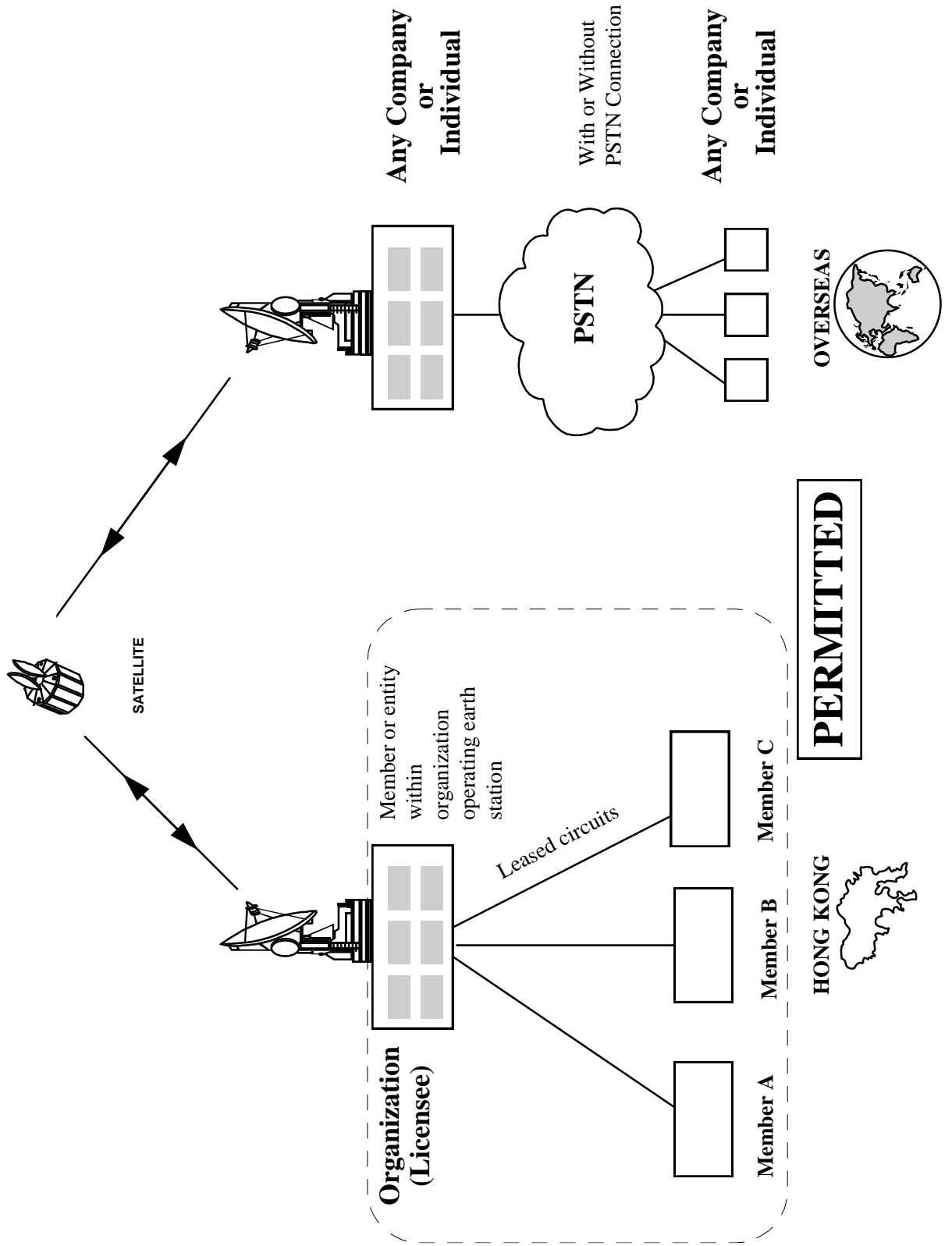
**PERMITTED**

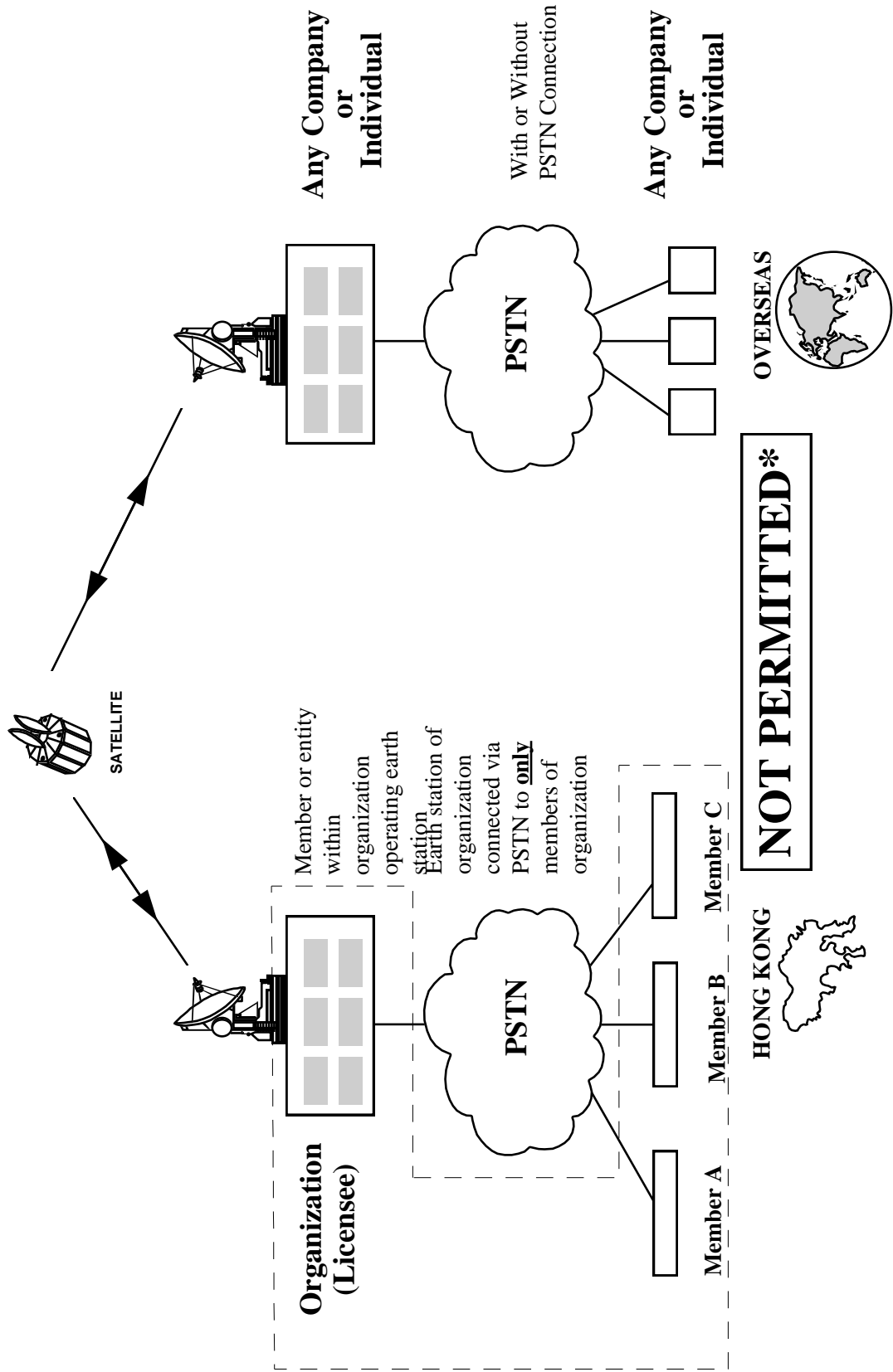
HONG KONG 

OVERSEAS 

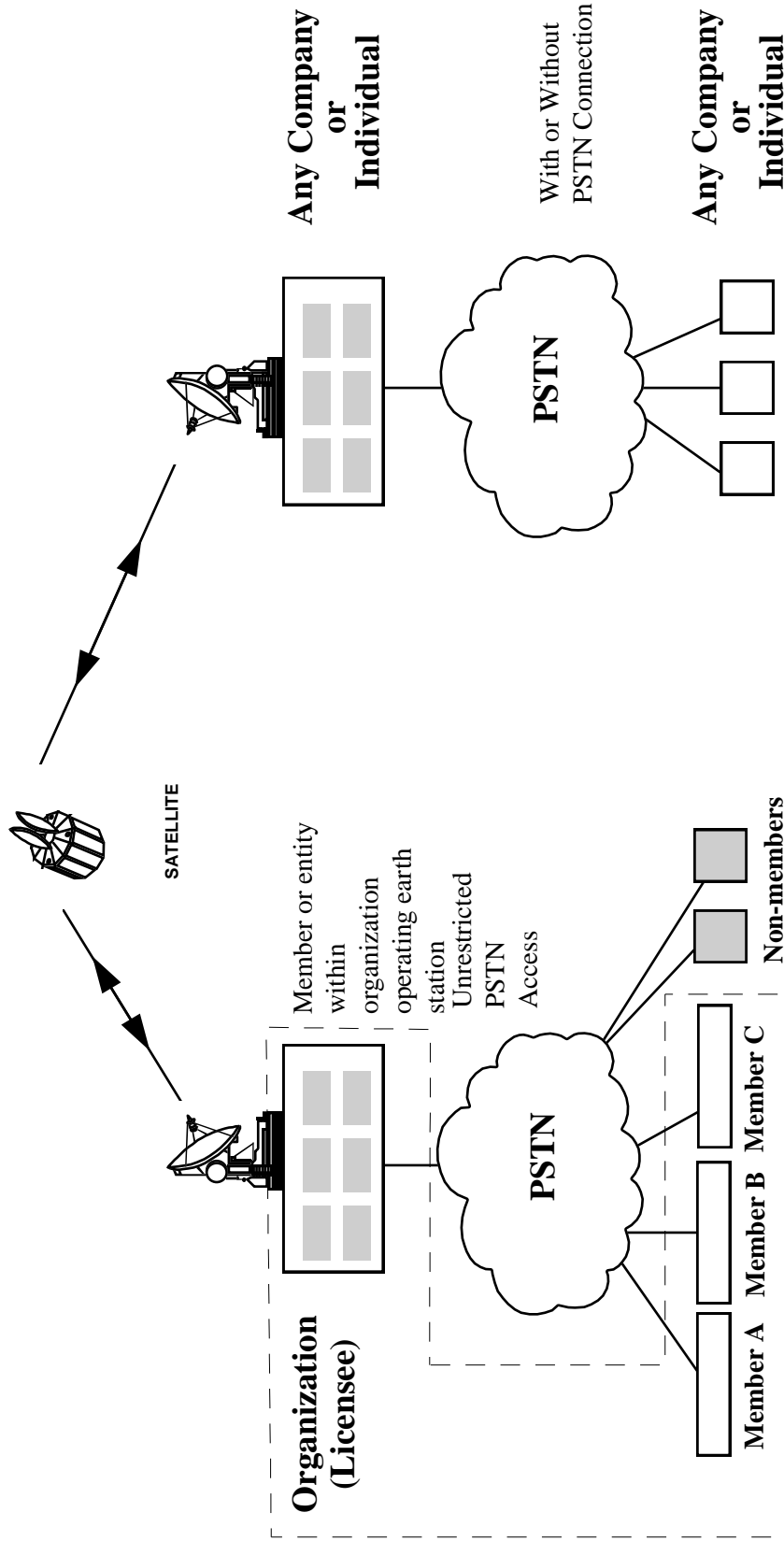


Note : In this case the licensee would not be passing its own messages.





\*unless specific exception is made by the CA in individual circumstances and subject to such conditions as the CA may set.



**NOT PERMITTED**

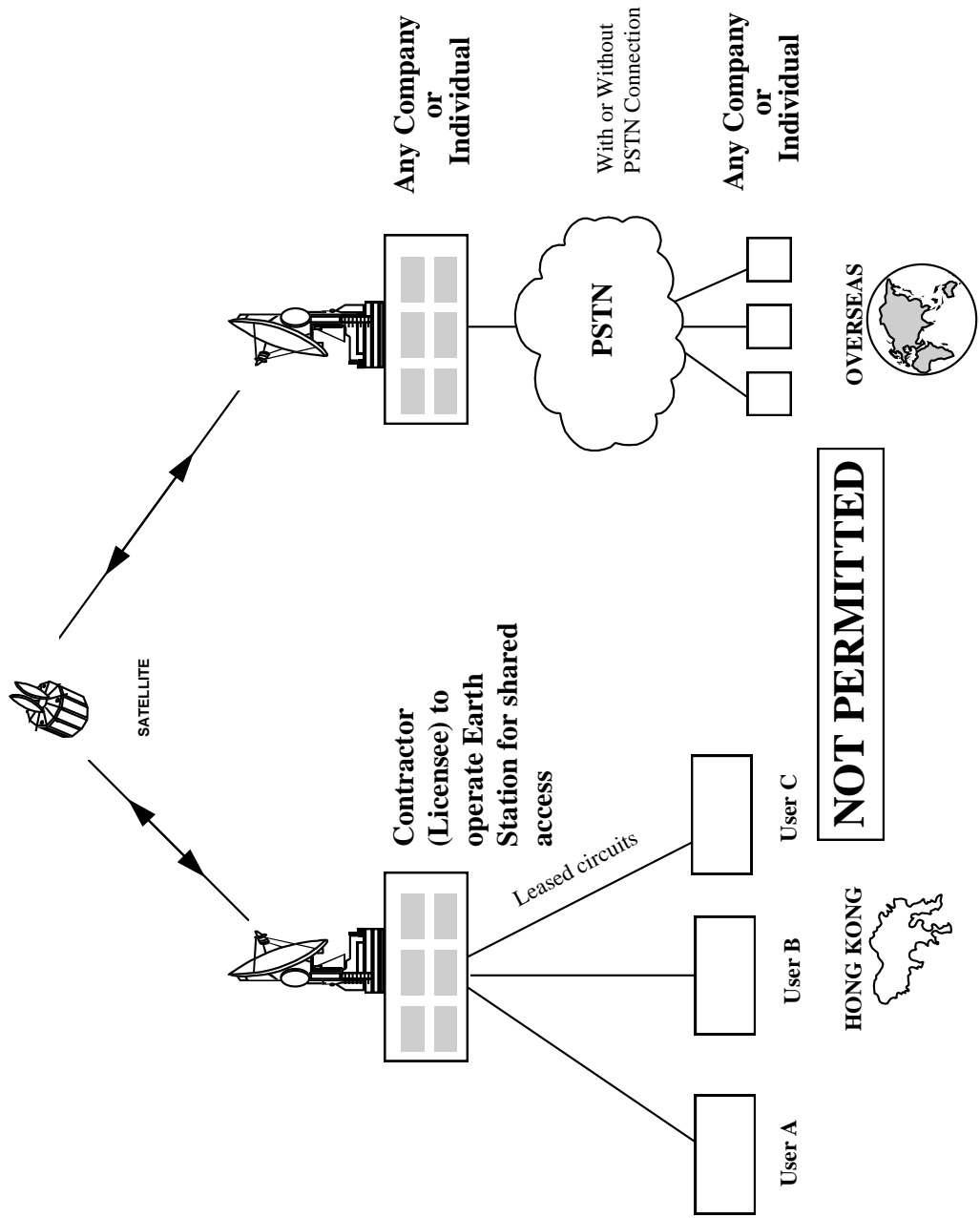
HONG KONG 

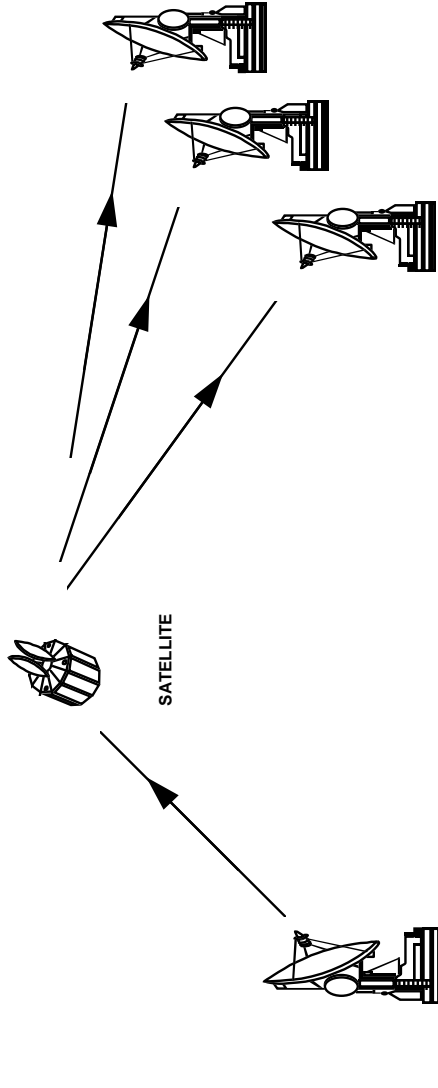
OVERSEAS 

**Any Company  
or  
Individual**

With or Without  
PSTN Connection

**Any Company  
or  
Individual**





**Provider of  
Data/Text  
Information Service  
(Licensee)**

**HONG KONG**  

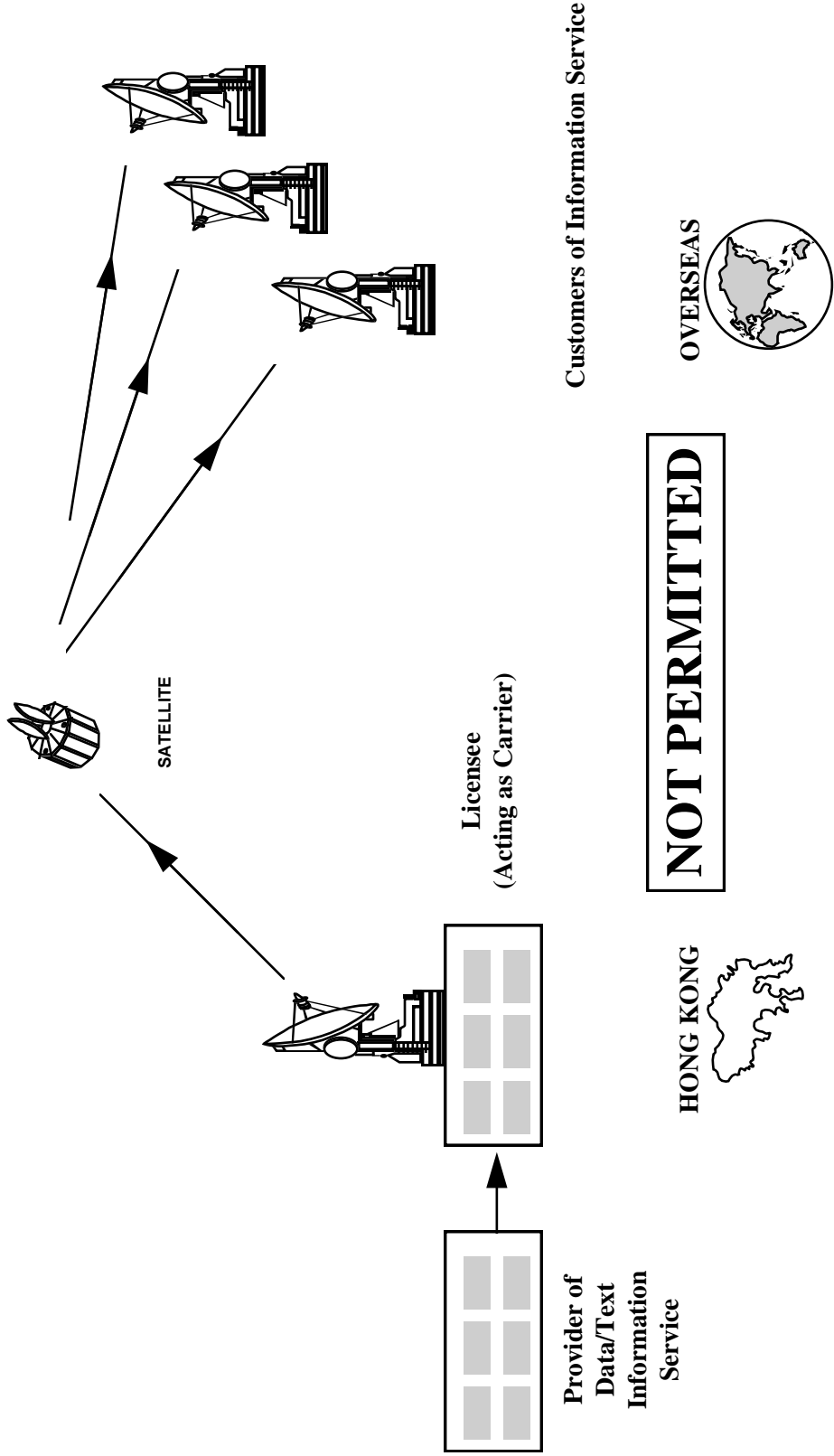

**PERMITTED**

**Customers of Information Service**

**OVERSEAS**  


**Notes**

1. Licensee must be transmitting its own data/text information service.
2. No television/sound programmes are to form part of the information service



Provider of  
Data/Text  
Information  
Service

Licensee  
(Acting as Carrier)

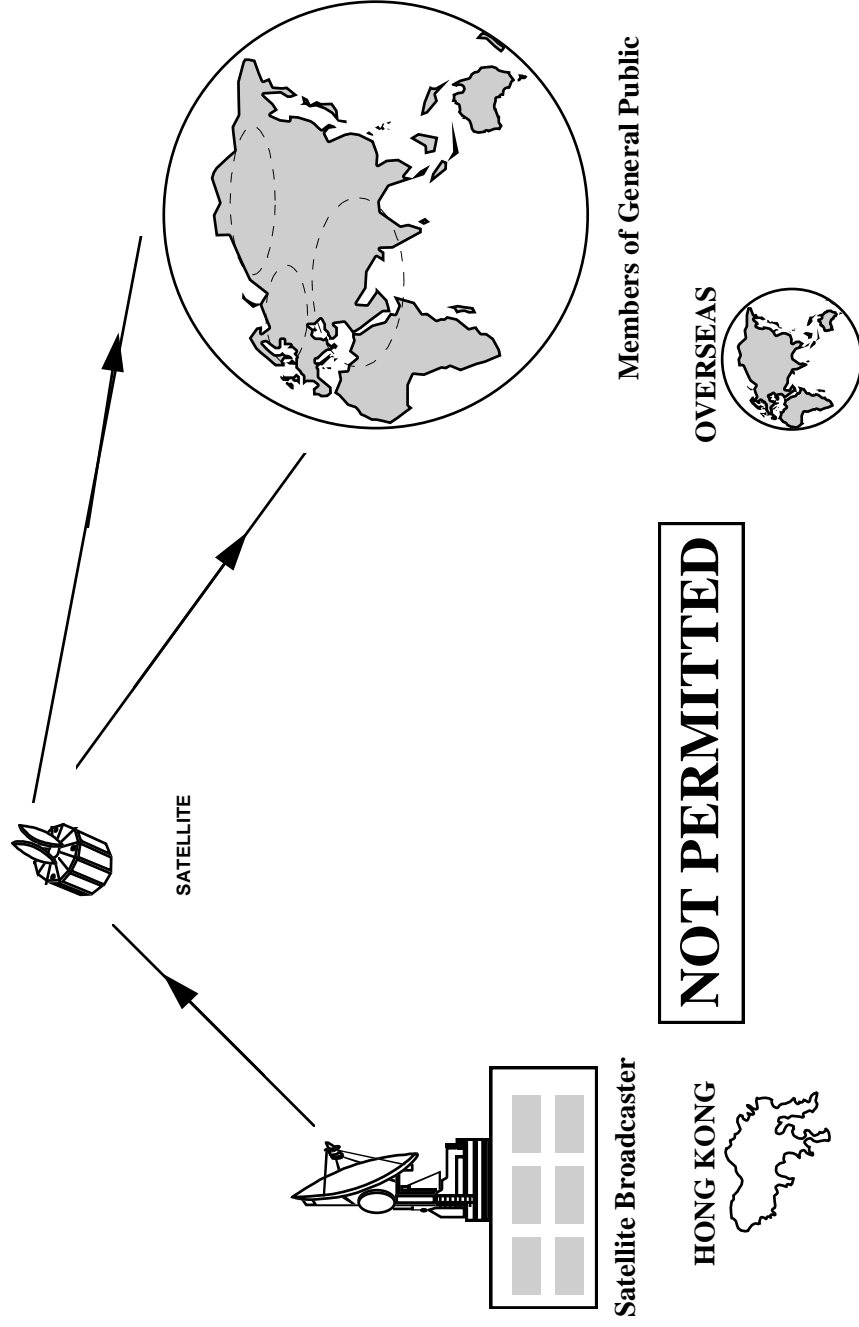
**NOT PERMITTED**

Customers of Information Service

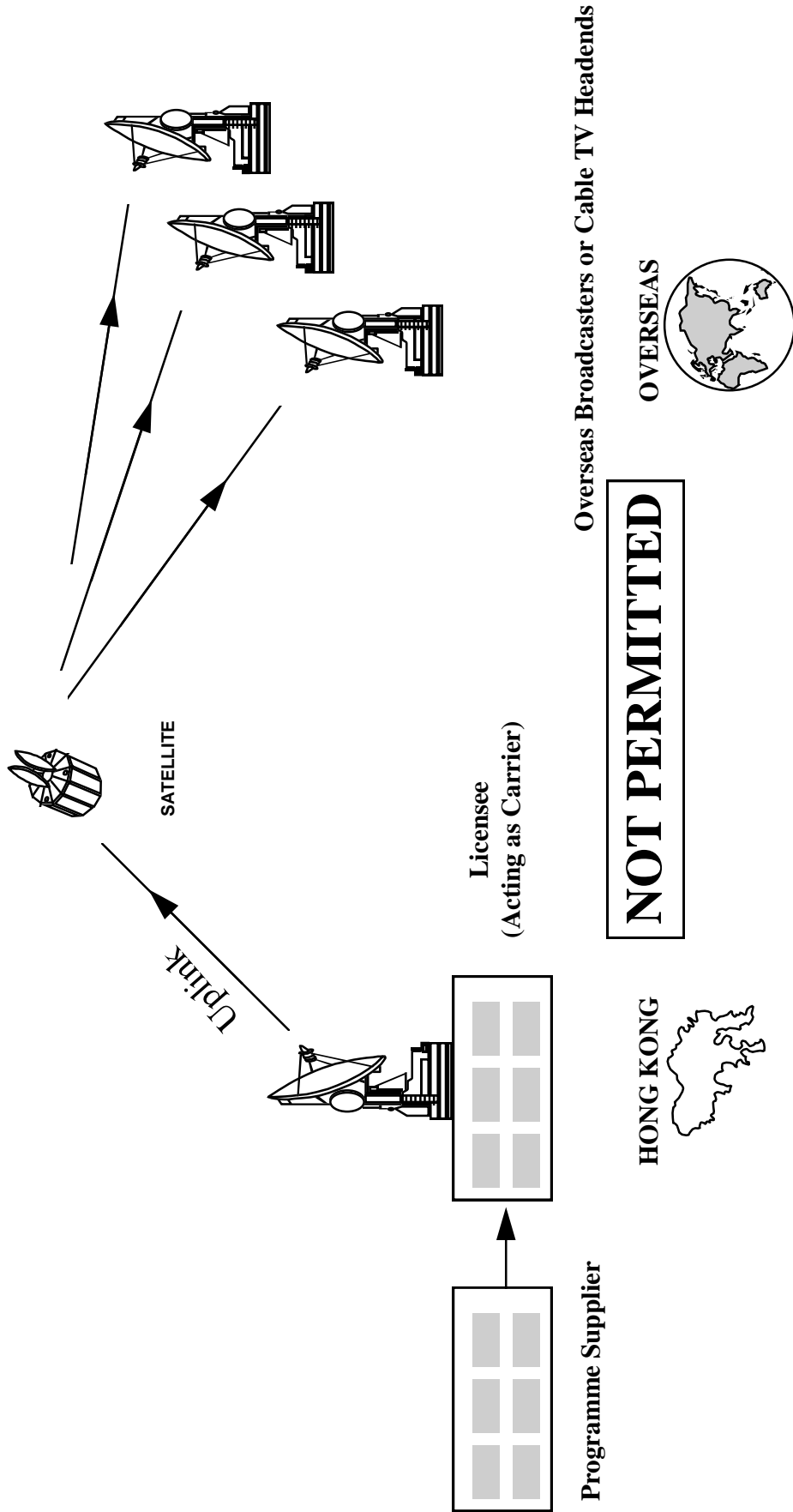
OVERSEAS



Category 2 : Systems Conveying Television / Sound Programmes



**Note :** A satellite broadcasting licence with content controls to be obtained



**NOT PERMITTED**

Overseas Broadcasters or Cable TV Headends

OVERSEAS

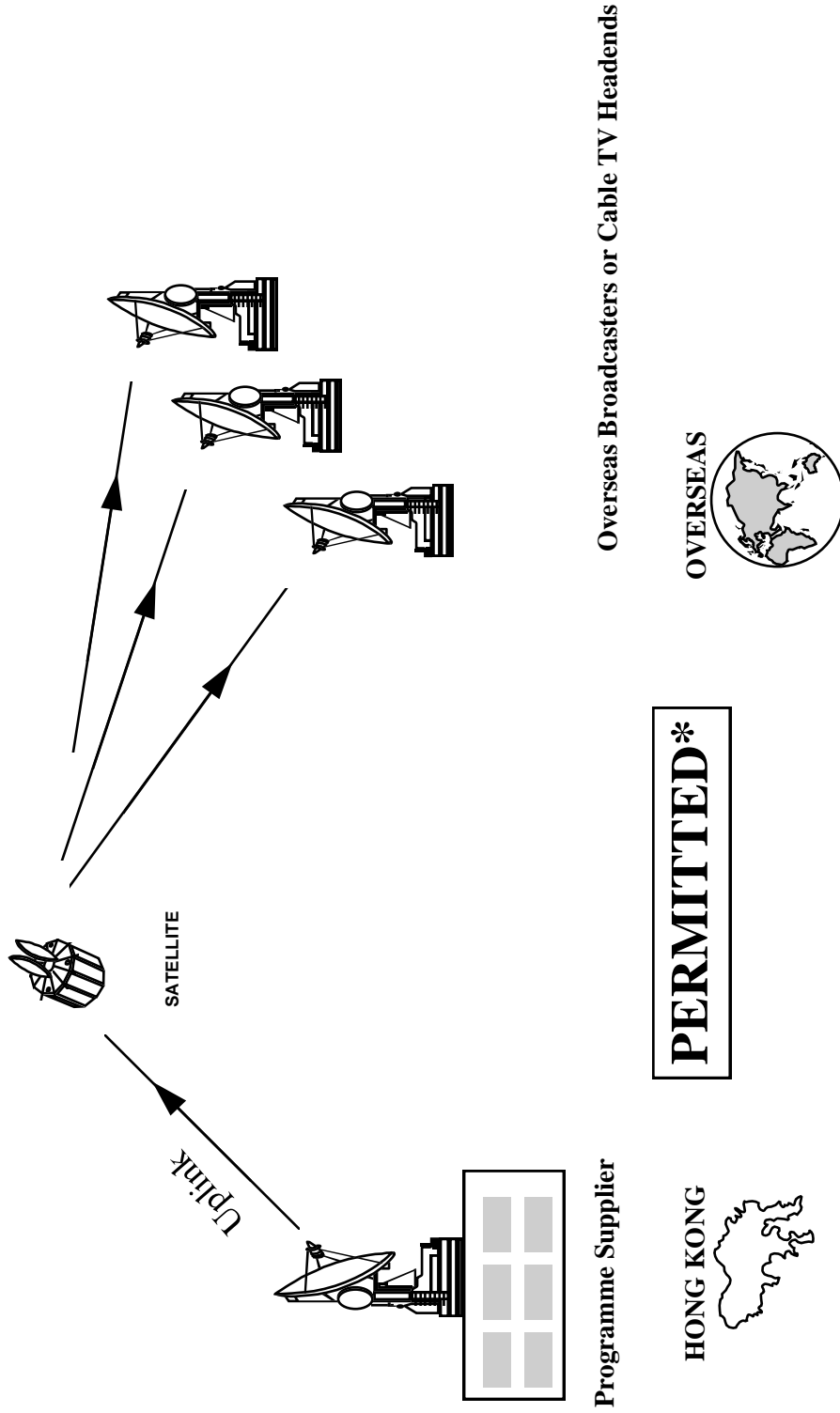
HONG KONG

Programme Supplier

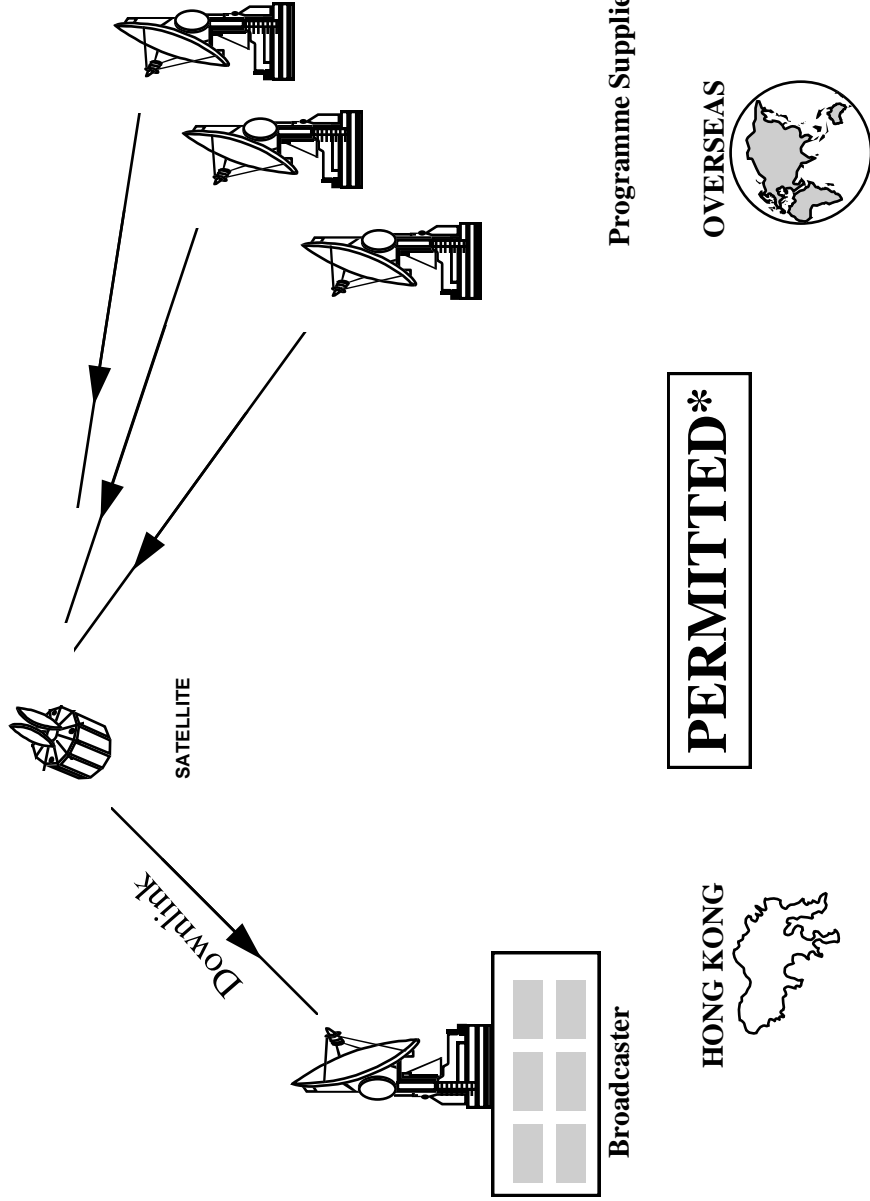
Licensee  
(Acting as Carrier)

SATELLITE

Uplink



\* Note : The above operation, which includes the uplinking for Satellite News Gathering (SNG), is permitted if it does not constitute the provision of an external circuit to third party



\* Note : The above operation, which includes the downlinking for Satellite News Gathering (SNG), is permitted if it does not constitute the provision of an external circuit to third party

**Technical Information of Earth Station**

1. Information in the Form of Notice

Please provide the information in the ITU Form of Notice for Earth Station (ApS4/III) in accordance with IFRB Circular Letter No. 820 issued on 4 May 1990 including a diagram showing the radio horizon around the earth station. A copy of the ITU Form of Notice for Earth Station (ApS4/III) is available from OFCA upon request. The data provided will be used for determining the coordination contour of the earth station for terrestrial coordination in accordance with the Radio Regulations of the ITU.

2. Other Information

The applicant should submit an analysis showing that the proposed earth station will pose no unacceptable health hazards due to radiofrequency electromagnetic fields to members of the general public as well as operational and maintenance personnel for the station in accordance with widely accepted international safety standards.