



**Submission to the Australian Government's Digital Television Regulation
Consultation Paper**

2 April 2015

1. Introduction

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Australian Government's Digital Television Regulation Consultation Paper ('Consultation Paper').

ASTRA supports the submission made separately by Foxtel.

2. About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) television (STV) and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major STV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

Now in its 20th year, STV is one of Australia's most popular industries, enriching the lives of millions, creating 6600 jobs, investing more than \$600 million annually in production and adding \$40 million to the economy every week. In 2015, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast, as well as the best international content.

This success has been achieved without public subsidy, largely without public spectrum and despite regulatory handbrakes. It has been achieved through extensive investment and innovation, with the consumer always at the centre.

3. Executive Summary

- ASTRA supports deregulation of the media industry, and agrees that it is timely to review the current broadcasting regulatory framework to ensure it is 'fit for purpose.'
- Competition through balanced regulation is more likely to maximise consumer outcomes through increased content diversity and new communications services.
- However ASTRA does not support selective, sector-specific deregulation which would further distort competition and result in additional protection and advantage for commercial free-to-air (FTA) broadcasters.
- ASTRA supports a whole-of-industry approach to policy and deregulatory reform which takes into account the overall regulatory balance. For so long as significant regulatory advantages accrue to FTA broadcasters, it is impossible to argue that a truly deregulatory approach is being taken.
- For this reason, ASTRA wishes to raise the strongest possible concerns that the Consultation Paper's proposals have been put forward in isolation of any consideration of the existing regulatory privileges FTA broadcasters enjoy, the wider industry impact and the impact on the Australian public.
- In this submission, ASTRA sets out the issues it believes must form part of a holistic deregulatory recalibration of broadcasting industry policy and regulatory settings. All Australians will be the beneficiaries of a truly deregulated media sector where competition forces businesses to become more responsive consumer preferences and to constantly innovate and improve services.

- ASTRA also provides comment on the reform proposals in the Consultation Paper which, when taken together, would gift additional spectrum capacity to FTA broadcasters, and would enable them to use that additional capacity to launch as many new services as would be economic. ASTRA opposes these proposals in the strongest possible terms. In particular, there would be considerable opportunity cost to the taxpayer arising from the Paper's proposals regarding spectrum use.
 - Analysis suggests the FTA broadcasters' holdings of 210 MHz of spectrum may hold a value of approximately \$6.5 billion (yet FTAs continue to pay discounted rates for access to this scarce public asset).
- In addition, FTA broadcasters would be gifted the ability to launch 'narrowcasting' services, whilst still being protected from any competition as regards their legacy services. There is also the prospect of FTA broadcasters being able to monetise the public spectrum they access on privileged and discounted terms through sub-letting arrangements.
- The opportunity cost to Government of allowing FTA broadcasters to keep additional spectrum capacity freed up through new technology could run into the hundreds of millions of dollars.
- Any spectrum capacity which is not required to replicate the existing Freeview platform after transition to MPEG-4 should not be treated as a broadcaster asset which can be sublet and monetised. That spectrum is a public asset and unused capacity should be returned to the Government for allocation on commercial terms.
- ASTRA is also opposed to any removal of the requirement that FTA broadcasters must premiere anti-siphoning listed sports on their primary channels in the absence of a broader reform of the anti-siphoning scheme.
- ASTRA does not support any of these reforms being undertaken in a piecemeal fashion in isolation of a broad deregulatory package which winds back entrenched regulatory privilege.

4. ASTRA's position on deregulatory reform

ASTRA supports deregulation of the media industry, and believes light touch regulation and free competition will lead to better outcomes for consumers, the industry and the economy overall. ASTRA acknowledges that the additional flexibilities for FTA broadcasters which are proposed in the Consultation Paper are prima facie consistent with the Government's deregulatory agenda.

ASTRA also recognises that the provisions which regulate digital television were largely formulated with the objective of digital switchover in mind. With the achievement of switchover, it is appropriate to reconsider these provisions and whether there is public benefit in repeal, revision or reform.

However, the regulations and reforms in question would allow FTA broadcasters to launch more services and gain additional flexibilities and for this reason, cannot be considered in isolation. These are fundamental issues which stand to have far-reaching impacts on the competitive balance within the Australian media industry,¹ and on the consumers of services provided by that industry. It is vital then that a whole-of-industry approach to policy and reform is taken.

¹ According to latest Australian Bureau of Statistics figures the subscription and commercial television industry brought in over \$8 billion in income in 2011-12 -

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8679.0Main%20Features32011-12?opendocument&tabname=Summary&prodno=8679.0&issue=2011-12&num=&view=>

ASTRA is concerned that the proposals put forward in the paper are being considered in isolation of their wider impacts. These issues are addressed in full in section 6 of this submission.

5. The Consultation Paper's proposed reforms to FTA spectrum use

ASTRA's view is that the reforms proposed in the Consultation Paper should be cumulatively weighed and then considered as part of a wider deregulatory reform agenda which looks to maximise the public interest in a deregulated communications sector (see section 6 below).

Notwithstanding this, ASTRA would like to comment on the key individual reform proposals set out in the Paper.

As a general comment, ASTRA notes that the proposals are put forward through a very narrow policy prism which undermines the credibility of the individual proposals. There appears to be a consistent focus on the benefits of the proposals for FTA broadcasters, rather than considering the full range of impacts on competitors and consumers.

One example of the limitations of the Paper's approach can be found where the case for a deregulatory approach to the mix of services authorised by a FTA licence is being made out. The paper says "other content providers – delivering services online or through cable – are not subject to limitations on the number and format of services they provide." Whilst this is true, such a comparison ignores the fact that whilst those other content providers are not limited in terms of service provision, neither are they protected from competition, given a special deal with regards to premium content acquisition (through the anti-siphoning scheme), and most importantly granted access to public spectrum. Cable, satellite and online providers pay market rates for access to distribution networks, unlike the FTA broadcasters whose access to spectrum is subsidised by the Australian taxpayer.

Furthermore, FTA broadcasters are completely at liberty to launch IP-based services accessible on smart TVs using technologies such as HbbTV.

The comparison made by the Consultation Paper is simply not valid and demonstrates the danger in taking a narrow view of deregulatory reform.

The paper also posits that deregulation of service provision rules after switchover is justified because "it would be appropriate to reduce the regulatory requirements on commercial broadcasters and allow consumer demand and commercial decisions to play a greater role in determining the number of services provided."

As noted above, ASTRA supports deregulation and believes that light touch regulation will lead to better outcomes for consumers, the industry and the economy overall. However, if consumer demand and commercial decisions are of policy importance, they would also justify a wide range of other reforms to the regulatory framework, including reconsideration of the areas in which Government intervention suppresses consumer choice and free and open commerce, such as the anti-siphoning scheme and the grant of subsidised access to public spectrum.

In terms of the specific proposals, ASTRA makes the following comments.

5.1 Migration to MPEG-4 and the dividends of efficiency

ASTRA supports the migration of commercial and national FTA broadcasters to next generation transmission technologies. As noted by the Consultation Paper, a transition to MPEG-4 would facilitate much more efficient spectrum use. Spectrum is a scarce public resource and public

policy should always encourage efficiency and an appropriate return to the Australian taxpayer.

MPEG-4 functionality has been a feature of televisions sold in Australia for the last four or five years. This has been driven by the introduction of the standard in overseas markets, inclusion of MPEG-4 functionality in set-top-boxes certified under the 'Freeview' arrangements and MPEG-4 capable boxes being supplied under the Household Assistance Scheme. Given the lifecycle of television sales, it is reasonable to conclude that a migration to MPEG-4 could be undertaken with minimal impact on the public and could occur in the short- to medium-term future.

Given that migration to MPEG-4 will allow the transmission of existing FTA services using less spectrum, there will be excess spectrum capacity following migration. The future use of this excess capacity must be determined with the public interest in mind.

ASTRA is concerned that the Consultation Paper too narrowly focuses on the migration of existing terrestrial television broadcasters and the potential benefits for those broadcasters from the introduction of new transmission technologies. There is comparatively little discussion on the potential for spectrum use efficiencies to release further broadcast spectrum for either new broadcasting services or for other non-broadcast uses. ASTRA notes that the possibility of a second Digital Dividend was specifically raised by the Minister for Communications in his keynote address to the ACMA Radcomms Conference in September 2014.

The Consultation Paper argues that the move to more spectrally efficient technology would "allow a significant increase in the number of services that could be provided within the same spectrum allocation." In other words, the benefits of more efficient use of public spectrum are proposed to flow back to FTA broadcasters, rather than the public which owns the spectrum.

No justification is provided for this apparent gift of spectrum capacity to a sector that already pays below market rates for its spectrum access (or, in the case of national broadcasters, does not pay at all).

There is also an alarming absence of any acknowledgment of the competitive impact of additional FTA multi-channels on competitors providing content services - participants who are not subsidised by Government or protected from competition.

It should also be noted that new commercial FTA multichannels would enjoy a comparatively light-touch regulatory burden compared to competing STV channels. Commercial FTA multichannels are subject to minimal Australian content and captioning requirements, whereas competing STV services are on a regulatory pathway to 100% captioning on all channels. Drama channels are also subject to minimum Australian content expenditure requirements from the day they launch. Captioning and Australian content requirements on subscription television broadcasters impose substantial financial burdens.

The Consultation Paper also does not consider the opportunity cost to Government and taxpayers of such an approach. The efficiencies gained through migration to MPEG-4 open up opportunities for the spectrum allocated to FTA broadcasters to broadcast their current mix of services to be reduced, with the remainder of unused spectrum thus becoming available for auction.

This was the model adopted by the Government in pursuing and executing the Digital Dividend. The move to digital transmission allowed for 126 MHz of spectrum to be recouped, and this spectrum was placed on the market, attracting just short of \$2 billion² in proceeds that flowed directly back to the public via consolidated revenue.

² Auction also included 140 MHz of spectrum in the 2.5 GHz band recouped from FTA broadcasters (used for outside broadcast and electronic news gathering)

The results of the auction of the Digital Dividend spectrum in April 2013 revealed a market value of \$1.36 per MHz/pop for digital dividend spectrum. While the value for the specific spectrum bands still held by FTA broadcasters after the completion of switchover is difficult to estimate with any precision – due to the uncertainty over future designations of these bands for uses such as mobile broadband – applying this market value suggests that the FTA broadcasters' remaining holdings of 210 MHz may hold a value of approximately \$6.5 billion.

In 2012-13 the commercial FTA broadcasters paid license fees of \$294 million, but effectively paid just \$151 million after receiving the rebate. The cost to the taxpayer of this rebate over the period 2012-13 to 2015-16 is \$761 million.

There is no acknowledgement in the Consultation Paper of spectrum recoupment even being one possible result of MPEG-4 migration (or adoption of other technical improvements such as multiplex sharing and DVB-T2). Given the demand for UHF spectrum, and the potential additional revenue, a failure to even consider this as an option is a strange omission in the Consultation Paper.

Spectral efficiency

ASTRA also notes that should spectral efficiency be a policy goal of Government³, such efficiency would also be encouraged by market-based pricing of broadcasting spectrum.

ASTRA has consistently supported a spectrum management framework in which FTA broadcasters move to paying a market rate for the spectrum they use.

ASTRA submits that competition for spectrum and the charging of appropriate market rates will encourage incumbent FTA broadcasters to actively seek more efficient approaches to spectrum use through adoption of new transmission standards. It will also ensure an appropriate return to tax-payers for the use of the spectrum.

The current spectrum framework for the broadcasting services bands (as part of a wider commercial broadcasting licensing regime) does not encourage efficient spectrum use. More spectrum than necessary has been allocated to deliver particular services, and there has been little scope for reallocating spectrum from less to more valuable uses. Market-based pricing of broadcast spectrum would also encourage incumbent broadcasters to be more proactive in working with equipment manufacturers and suppliers to ensure a swift uptake of terrestrial digital television receivers that are compatible with more efficient technical transmission standards.

In a converging media and communications environment that is bringing once distinct industry sectors into greater direct competition in the delivery of services and content, the allocation of spectrum for commercial activities by means other than a market-based approach will almost inevitably preference particular industry sectors to the commercial detriment of other participants. Spectrum allocated for carriage of commercial FTA television services represents perhaps the most significant example of spectrum allocation for commercial activities on distinctly non-commercial terms. There is little evidence of public benefit in taxpayers continuing to subsidise FTA broadcasters' use of spectrum.

5.2 Digital television multiplexing

ASTRA welcomes the Consultation Paper's consideration of digital television multiplexing. This is a transmission arrangement which could further facilitate efficient use of spectrum, which

³ ASTRA notes that one of the Principles for Reform on page 7 of the Consultation Paper is that commercial and national broadcasters should deliver their services through spectrally efficient means.

ASTRA contends should result in the return of spectrum to the public for reallocation on commercial terms.

Following migration to MPEG-4, under a multiplexing model, the current suite of services provided over 5 x 7 MHz spectrum blocks (national broadcasting services, commercial broadcasting services plus datacasting services) could be broadcast using only 3 x 7 MHz channels of spectrum, with a potential second 'digital dividend' of up to 84 MHz of spectrum (including the 6th channel).⁴

If further efficiencies were to be sought, datacasting services could be excluded from terrestrial transmission, leaving only the services permitted under commercial television broadcasting licences to be combined (together with the services of the national broadcasters) over 2 x 7 MHz channels of spectrum, yielding a dividend of up to 112 MHz. Under this approach, only those services of broad, general appeal should be transmitted over public spectrum, with any broadcaster free to launch additional datacasting-type services over alternative platforms, such as IP or HbbTV.

The UHF band spectrum which would be freed up under this model is very much 'in demand' for use for mobile broadband. Auctions of UHF spectrum overseas and in Australia demonstrate potential returns to taxpayers of billions of dollars if this spectrum is sold at open auction.

As outlined above in section 5.1, it is ASTRA's view that any spectrum capacity freed up from a move to more efficient broadcasting technologies or, in the case of multiplexing, more efficient transmission arrangements, should be returned to Government. Allowing FTA broadcasters to retain spectrum capacity in excess of what is required to replicate the current suite of Freeview channels would impose a significant opportunity cost on the Australian tax payer, given the discounted rates at which broadcast spectrum is priced.

Further, as outlined at section 5.1, the Government must consider the competitive impact of additional FTA multi-channels on other participants competing for television audiences. Permitting FTA broadcasters to exploit additional spectrum capacity freed up through technological innovation would, once again, further distort the regulatory balance in favour of commercial FTA broadcasters.

If, however, the Government decides to permit FTA broadcasters to use the additional capacity to increase their channel offering, it is only equitable that access to that spectrum be priced at market-rates (ASTRA supports market pricing of spectrum regardless of whether FTA broadcasters hand back excess spectrum). Other operators competing for multichannel audiences and advertising revenue, such as STV, have had to pay market rates for additional transmission capacity where they have wanted to increase their multichannel offerings. There is no public policy justification for continuing the market-distorting 'special deal' that FTA broadcasters enjoy as regards spectrum access.

As noted above, pricing spectrum at market rates also provides a strong incentive towards efficient use of spectrum and ensures the public receives a fair return on the use of publically owned spectrum.

ASTRA also notes that the use of DVB-T2 is approximately 35% more efficient than DVB-T, bringing about even higher efficiencies.

⁴ This assumes the current service mix of 1 x HD plus 2 x SD services. The amount of spectrum freed up would be less if the mix was, for example, 3 x HD. 84 MHz is the total of 2 x 7 MHz freed in each of the four spectrum 'blocks' plus the sixth channel in each of the four spectrum 'blocks'.

5.3 Spectrum sub-letting

The proposal that commercial FTA broadcasters be permitted to rent space on their multiplexes to a third party content provider would further weight the scales in their favour.

As noted elsewhere, ASTRA is concerned that the focus in the Consultation Paper is on the benefits of the proposal for commercial FTA broadcasters with no consideration of the need to offset additional benefits with a reconsideration of existing regulatory privileges. This additional privilege must be factored in to an overall assessment of the regulatory balance (or imbalance) across the industry.

Further, ASTRA notes that key issues surrounding the terms of sub-letting are not addressed. The terms on which sub-letting is permitted will determine the impact of this proposal on the overall regulatory balance.

Commercial FTA broadcasters access spectrum on reduced rates compared to other commercial spectrum users. For this reason, it would be inequitable for those broadcasters to charge market rates for access to third parties and retain the income. At the very least, ASTRA submits that any revenue obtained from sub-letting spectrum should be considered as revenue for the purpose of calculating licence fees.

It is not clear from the Consultation Paper whether the transmission capacity which FTA broadcasters would sublet arises from the efficiencies of MPEG-4 broadcasting and multiplexing, or from FTA broadcasters reducing their current service offering.

In either case, it is ASTRA's view that any spectrum capacity which is not required to replicate the existing Freeview platform should not be treated as a broadcaster asset which can be sublet and monetised. That spectrum is a public asset and unused capacity should be returned to the Government for allocation on commercial terms.

If FTAs wish to launch additional services they can invest in IP-based platforms such as HbbTV.

5.4 Narrowcasting

The proposal to permit commercial FTA broadcasters to carry narrowcast services on their spectrum would have two key impacts, neither of which are considered in the Consultation Paper.

Firstly, the proposal would gift FTA broadcasters the ability to compete for niche audiences, whilst at the same time they would continue to enjoy protection from competition for their legacy services. This would further exacerbate the entrenched imbalance in industry regulatory settings, as FTA broadcasters would gain additional flexibility with no reconsideration of their existing privileges.

Secondly, there is a direct competitive impact on existing providers of niche services, which includes STV broadcasters. ASTRA is not arguing against competition among providers of niche services. ASTRA strongly supports open competition as the best way to spur innovation and create choice for consumers.

However, any area in which commercial FTA broadcasters compete is far from a level playing field. This will continue to be the case for so long as they enjoy protection from competition, discounted access to spectrum and a rigged market for premium sports content.

There is also a question over the public policy justifications for such a proposal. If FTA broadcasters benefit from subsidised access to public spectrum, there is an argument that they should ensure the programming distributed over that spectrum is broadly appealing to the

general population. In other words, tax-payers subsidise FTA services and hence those services should appeal to as many of those tax-payers as possible.

ASTRA also notes that any new FTA narrowcasting services would get a free ride in terms of many of the regulatory obligations that apply to FTA broadcasting services and STV services. It appears that narrowcast channels would not attract either captioning or Australian content obligations, whereas all STV channels will ultimately be required to provide captioning and all drama channels on services classified as subscription broadcasting services are subject to a 10% expenditure requirement for Australian content.

Commercial FTA narrowcasting services, which would compete with subscription television broadcasters for niche audiences, would not attract these kinds of regulatory imposts.

5.5 Role of the primary channel

The Consultation Paper discusses the continued relevance of the requirement that primary channels be broadcast in SD, given that this requirement was linked to switchover policy.

The Paper also goes on to note that the concept of a primary channel is also “grounded in the analog era” and argues that “it is appropriate to consider whether the concept of a primary channel continues to be relevant, and whether current channel specific obligations are fit for purpose.”

Reference is then made to the process by which the Minister for Communications has removed a large number of events from the anti-siphoning list as a means of permitting FTA broadcasters to side-step the requirement to premiere listed sports on the primary channel.

Whilst the Paper stops short of recommending the removal of the requirement that listed sports must be premiered on the primary channel, it is clearly within consideration and ASTRA wishes to note its strong objection to any such reform in isolation of a broader review.

Whilst the Consultation Paper says the Government will be separately considering the anti-siphoning scheme, it has nevertheless identified one aspect of the scheme for discussion, without also noting the impact that reform would have on the overall distorting qualities of the scheme. ASTRA is also concerned that this element of reform has been raised in isolation of its impact on the wider regulatory balance across the industry.

Removal of the primary channel requirement would be commercially advantageous to FTA broadcasters who could continue to cherry-pick premium sports content without disrupting their more lucrative primary channel services. This exacerbates the distorting effect of the scheme and cannot be considered in isolation.

ASTRA does not agree that the fact that the Minister has decided to delist events in the past to allow them to premier on the mulitchannels represents a sound policy reason for further enhancing FTA regulatory privilege in this area. It is ASTRA's view that if listed events were truly of national importance and cultural significance (the legislated criteria for listing a sporting event), then they would be worthy of broadcast on the primary channel.

6. Deregulatory reform

ASTRA wishes to raise the strongest possible concern that the Consultation Paper's proposals have been put forward in complete isolation from any consideration of the existing regulatory privileges FTA broadcasters enjoy, consideration of the wider industry impact and consideration of the impact on the Australian public.

The remainder of this section addresses the range of regulatory issues which ASTRA submits should be a part of any reconsideration of media industry regulation.

6.1 Media ownership, control and reach rules and FTA licence fees

ASTRA understands the commercial impetus towards liberalised ownership and control rules and does not oppose deregulation in this area provided that deregulation is applied equitably across sectors. Structural and cyclical change in the Australian media industry drives local players towards consolidation and scale as a means of responding to increasing competition for audiences and advertising and other revenues. ASTRA broadly supports a deregulated media industry with minimal ownership restrictions and in which operators compete on a level playing field.

However, ASTRA has consistently advocated for any such deregulation to be part of a comprehensive package which addresses the regulatory benefits conferred on FTA broadcasters.

Commercial FTA broadcasters occupy a 'special' place in the Australian media landscape, enjoying a continuing significant degree of influence through universal penetration into Australian homes, and a regulatory framework that provides guaranteed and discounted access to public spectrum, a rigged market for sports content, and protection from competition from new commercial FTA networks. The STV industry, which uses next to no spectrum and receives no protections, would support liberalisation of ownership restrictions only as part of a comprehensive deregulation package that addressed these benefits. For the avoidance of doubt, the STV industry does not support abolition of FTA licence fees and as set out in section 6.5 submits that commercial FTA broadcasters should be charged market rates for the spectrum they use.

6.2 Sports broadcast rights

One of the most significant Government interventions in the media industry is the anti-siphoning scheme and it is inconceivable that a deregulatory agenda could proceed without addressing the anti-competitive impact of this outdated and protectionist scheme.

The anti-siphoning scheme currently operates well beyond its original public policy intentions to the detriment of sports bodies, the competitors of the FTA broadcasters and, ultimately, to the general public who are denied the full potential for innovation and choice that would flow from improved competition for sports broadcast rights.

Reform of the anti-siphoning scheme to encourage greater competition for sports broadcast rights is in the interest of sports bodies and the sporting codes they represent and, ultimately, the general public who will benefit from more and better quality sports coverage on television.

To promote competition and deliver better results for viewers, sporting codes and grassroots participants, restrictions on the acquisition of sports broadcast rights should be minimised.

6.3 Retransmission

FTA broadcasters have subsidised access to public spectrum which gives them nearly ubiquitous coverage of the Australian population. In the areas where terrestrial reception is not available, FTA services are available through the Government-subsidised VAST satellite service. Therefore, there is no argument that STV broadcasters should be subject to a US-style 'must carry' retransmission scheme to reach audiences. Similarly, the ubiquitous free availability of FTA services means that they are retransmitted on STV platforms merely for the convenience of users.

The retransmission of FTA broadcasts on STV has, up to this point, been successfully achieved under the existing regulatory regime for retransmission and through commercial negotiation between STV platform providers and commercial and national television broadcasters. Under this arrangement, there is no cost passed on to STV viewers. Australians are well served by the current arrangements which help to maximise the coverage of FTA services.

Retransmission consent regimes operate to varying degrees in a number of European jurisdictions and the United States. Australian commercial television broadcasters have, in recent years, argued for a similar regime to be adopted here.

In calling for the introduction of a 'retransmission consent' scheme in Australia, commercial FTA broadcasters are effectively seeking an additional revenue stream from STV customers for television services that are required to be freely available and where those customers can already receive those services without payment. Any fee would likely be passed onto consumers of STV services.

Under the current arrangements, retransmission is merely an alternative way for viewers to access services that are ubiquitously available (often with the assistance of government subsidy). Contrary to the arguments put forward by FTA broadcasters, there is no marketing benefit accruing to STV given the FTA services would otherwise be available (unlike in the United States).

A move away from the current arrangements for retransmission to a scheme requiring STV to pay fees to carry FTA services would be anti-consumer and only serve to further compound FTA regulatory privilege, with no discernible public policy benefit. ASTRA submits that a Government decision on retransmission should only be made in the context of a holistic and deregulatory approach to media reform which takes a broad view of the regulatory imbalance already greatly skewed in favour of commercial FTA broadcasters.

6.4 Australian content and production

The subscription television industry understands the value of providing Australian content. ASTRA members invest over \$600 million in Australian content annually. This investment is made across all genres, not just the regulated genre of drama, and notwithstanding that STV receives no corresponding regulatory benefits. Subscription TV understands the benefits to Australian viewers of telling Australian stories in Australian voices.

Australian content regulation and incentivisation sit prominently within the suite of regulations applying to the Australian media industry. It would be consistent with a holistic deregulatory approach to reform to also consider whether Australian content obligations are fairly and equitably applied across sectors and whether alternative regulatory mechanisms could be employed to reach the same public policy outcomes.

ASTRA believes that the rise of the digital economy, new media and distribution platforms, and rapidly changing media consumption patterns mean that more flexible, focused and transparent ways of ensuring Australian content on our screens should be considered.

At a broad level, ASTRA supports incentive-based systems and more funding for an increase in the rate of the producer offset for television to align with that available for film. Improved investment conditions would enhance the capacity for the STV sector to deliver more quality Australian productions to Australian audiences.

If the Government were to consider such an approach, a possible source of funding for direct subsidies may be from the sale of spectrum recouped as a result of migration to more spectrally efficient broadcasting technologies (see sections 5.1 and 5.2 above).

6.5 Spectrum management

Spectrum is a scarce public asset and ASTRA believes that allocating it to its highest value use on price and access terms that reflect its ongoing opportunity costs is the best way of achieving economic efficiency and maximising return to the spectrum's owner – the Australian public.

ASTRA seeks clarity on the interaction between the proposals regarding spectrum use in the Consultation Paper, and those set out in the 2014 Department of Communications Spectrum Review Issues Paper.

The 2014 Spectrum Review Issues Paper sought to take a holistic view of spectrum management reform, setting out proposals for a single spectrum management framework and for market-based pricing of spectrum used for commercial purposes. ASTRA supported these proposals and supported the broad-based nature of that review.

In contrast, the Consultation Paper has put forward sector-specific approaches to spectrum management in the Broadcasting Services Bands and has completely ignored the crucial issue of spectrum pricing. Sector-specific approaches risk further entrenching regulatory privilege and risk short-changing the owners of the spectrum – the Australian public. This is certainly the case for the spectrum use proposals set out in the Consultation Paper.

ASTRA therefore contends that no significant reforms of the kind set out in the Consultation Paper should be undertaken until the broader Spectrum Review has completed and the Government has responded to its recommendations. This should mean that the Government has come to a position on the critical issues of broadcasting spectrum allocation and pricing. This would in turn allow the spectrum proposals in the Consultation Paper to be considered in proper context.

ASTRA reiterates its view that broadcasting spectrum access and pricing are highly significant regulatory settings which impact on the competitive balance in the industry and any reform proposals (whether arising from the current review or the broader Spectrum Review) must only be considered as part of a comprehensive package of deregulatory reforms.

ASTRA's position on spectrum management

ASTRA considers that spectrum for commercial activities should be subject to price-based allocation processes, particularly where commercial entities that use spectrum for the delivery of their services are in direct competition. Market-based pricing of spectrum for commercial use is more likely to encourage the most efficient use of spectrum to provide the services that consumers of media and communications services want.

Conversely, exclusive use of spectrum for commercial activities allocated by means other than market-based mechanisms may not necessarily provide the same incentive for efficient spectrum use, and will almost inevitably preference particular industry sectors to the commercial detriment of other participants.

This is certainly the history of FTA spectrum allocation and pricing, where licensees are guaranteed access to spectrum and are protected from market-based pricing through a system which provides discounted access coupled with licence fee rebates.

Spectrum allocated to commercial FTA broadcasters is not subject to a competitive process, but rather is provided to broadcasters as part of a broader arrangement that is tied to regulatory obligations and (indirectly) to licence fees.

ASTRA has consistently supported market-based pricing for Broadcasting Services Band spectrum as the best way to ensure efficient spectrum use and an appropriate return to the tax

payer. An approach worthy of consideration may be to tie pricing of broadcasting spectrum to pricing of other spectrum which has been the subject of a competitive allocation process.

ASTRA submits that if the Government remains minded to subsidise one sector over another then this should be done transparently. For the avoidance of doubt, it is noted that ASTRA does not support subsidisation of one sector over another. However, if this practice is to persist then the Government should make clear that, as a matter of industry policy, it is providing a special deal to FTA broadcasters. The opportunity cost to the Australian tax-payer of managing spectrum in this way should also be calculated and made publicly available.

It should also make clear the reasons why this is warranted (for example by quantifying the connection between FTA spectrum pricing and cost of fulfilling Australian content obligations). While subsidising business models in retreat would not be consistent with recent past practice in other industry sectors—such as automotive—it will be important for the Government to clearly justify any ongoing separate FTA arrangements.