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19 December 2013

The Hon Malcolm Turnbull MP
Minister for Communications,
Parliament House
CANBERRA ACT 2600

Dear Minister,

Deregulation: Initiatives in the Communications Sector

Thank you for your letter of 26 November, regarding deregulation initiatives in the communications sector.

Free TV welcomes the commitment by the Government to repeal outdated or unnecessary regulations and reduce the red tape on businesses. Commercial free-to-air television is the most heavily regulated media platform in Australia. In a converged and competitive media environment, a comprehensive review of these platform-specific regulations is timely.

Free-to-air television is critical to delivering highly valued public goods including Australian content, news and current affairs and major sporting events to all Australians for free. However, the industry's ability to continue to meet these needs into the future is dependent on having a regulatory environment that is fit for purpose, and which enables free-to-air television to compete with other new content services on a more level playing field.

This response principally provides details on the short-term issues for much-needed reform, as requested. Free TV looks forward to engaging further in relation to the longer term reforms and costing issues as the Government's deregulation process continues.

Context for reform

As you noted in your letter, the Communications sector is going through a period of tumultuous change. The Broadcasting industry in particular is evolving at the fastest pace in living memory.

From the perspective of the commercial free-to-air broadcasters:

- Competition for both 'eyeballs' and advertising dollars continues to increase rapidly as new entrants, such as Google/YouTube, Netflix, Telstra, Fetch, JB HiFi, etc. enter or consider entering the market. As a result, revenues are under pressure, with the advertising market remaining as 'short' as ever;
- At the same time, commercial free-to-air broadcasters are investing heavily to make their services available across a wide range of devices in both linear and non-linear (catch-up) formats and content costs continue to increase as the FTAs continue to invest in local content

Our response to the Coalition's deregulation initiative has been prepared in the light of this profound competitive, structural and economic 'squeeze' that the industry is experiencing.

As an industry, we acknowledge and accept that from the perspective of many citizens, commercial FTA broadcasting is 'special': it is the home of high quality free content, especially

news and sport; it is also the home of high quality Australian content; and finally, it holds a special place in the affections of many Australians, participating alongside the public broadcasting sector in the national conversation. Therefore, we understand that many components of the regulatory regime are important, including obligations and commitments around local content and sports.

However, during this period of change, commercial free-to-air broadcasters must be free to innovate and to compete hard for both audiences and advertisers. Our members need a level playing field if they are to continue to meet the high expectations of the Australian viewing public.

We have developed two broad deregulatory principals for reform of the Broadcasting sector:

- Primary principal: Deregulation should create a level financial playing field, especially in terms of licence fee and retransmission reform. This will enable the commercial free-to-air industry to compete on fair terms whilst still funding its important regulatory obligations around content, captioning, etc.
- Secondary principal: Out-dated regulation should be removed and critical regulation should be simplified. This will involve specific deregulation initiatives that remove redundant and/or burdensome obligations, for example around main channel / multi-channel distinctions, the Producer Offset regime, ACMA investigations, etc. It will also involve the simplification of regulation around content [and of the Code] in order to preserve policy objectives, but to reduce administration and oversight costs.

Immediate term deregulation reform

Annexure A identifies a set of reforms that could be actioned as part of the initial tranche of reforms to the communications regulatory framework.

Although each of the reforms set out at Annexure A are important, the critical and urgent priorities for the commercial free-to-air industry are those that deliver on our Primary principal of a level financial playing field:

1. Reform of the asymmetric taxation regime in the media/content delivery sector, by removing the licence fee “broadcasting tax” regime; and
2. Replacement of the outdated retransmission exception with a modern retransmission scheme.

Action on these key priorities is vital to ensuring the ongoing competitiveness and viability of commercial free-to-air television in the short to medium term.

In addition, simplifying the Broadcasting Code/regulatory regime and proposed changes and improvements to administrative processes such as reporting requirements will reduce the regulatory burden and its related costs for Free TV members, as well as streamlining government processes.

Medium-term reform of the communications sector

As an industry we are keen to engage with Government around the sorts of broader reforms highlighted in the framing paper at Attachment 2 to your letter. Addressing these will require a more root and branch overview of the legislative regime. This may well take a number of years from commencement to completion.

Regulation involves a balance of concepts and principles which must be considered as a whole. Free TV is generally supportive of the principles for regulation set out in Attachment 2 of your letter.

As you have noted, the regulation of the communications sector is complex due to the societal expectations on the public policy outcomes. There are a number of existing regulatory interventions applicable to free-to-air broadcasters which are successful in providing tangible value and delivering genuine social benefits to the Australian community. They align with consumer and citizen expectations and support the creation, distribution and consumption of Australian content to

the widest range of Australian households, even though they impose significant compliance costs on the businesses. For example:

- Australian content quotas and sub-quotas; and
- Anti-siphoning rules.

These policies continue to be soundly based, but there is scope for the government to improve efficiencies and make savings in some areas while still preserving the integrity of the policies underlying these regulations. Any review also needs to account for the burdens associated with delivering these public goods.

There are a number of provisions in the BSA which are simply redundant, particularly now that the transition to digital broadcasting is complete. For example, all legislation relating to analogue broadcasting will need to be updated and in many cases repealed.

Free TV acknowledges the stated preference in Appendix 2 for an approach which is as technology-neutral as possible, to avoid creating regulatory distinctions between services simply on the basis of means of delivery. However we note that some technology specific regulation may continue to be necessary, for example, technological regulations that ensure that all Australians are able to receive an uninterrupted free-to-air signal.

Many of the regulatory interventions that currently exist are no longer relevant in a converged media environment. For example, while classification guidelines remain important, time-zones are increasingly irrelevant when consumers are accessing the same content across platforms which are not subject to the same restrictions.

The BSA also makes reference to regulatory intervention being commensurate with the level of 'influence' of a particular platform. The concept of regulation according to influence may require rethinking given that new players competing with broadcasters such as Telstra, Optus, Google and Apple provide television like content, and have significant national and international reach and influence, but are not subject to the BSA. The recent sale of digital dividend broadcasting spectrum to telecommunications companies, which will be used to deliver television-like content to mobile devices, highlights this.

Appendix 2 to your letter also canvasses the tools available to government in dealing with the identified enduring concepts. As the media environment fragments, it is our view that tools such as contestable funding and tax incentives will become more effective in delivering outcomes such as Australian content across a wider range of platforms.

The ACMA's recent paper on *Connected Citizens* highlights some of the different strategies available for rebalancing regulatory practice in the digital environment, including greater flexibility, and an increased emphasis on facilitation and communication strategies.¹

This lends itself to an approach that minimises the use of Black letter and Administered laws wherever possible.

Quantifying the cost of regulation

Free TV appreciates the opportunity to identify and consider the financial burden of regulation on our members' businesses.

The work required to accurately quantify these costs is extensive and the information will take some time to compile. For broadcasters, many of the regulations are so pervasive and entrenched that business practices and structures have been built around them.

Examples include classification time zones and advertising placement restrictions. Broadcasters will always require infrastructure ("traffic systems") to organise and schedule programing and

¹ Australian Communications and Media Authority (2013) *Connected Citizens – A regulatory strategy for the networked society and information economy* June 2013, pp 19-22.

advertising material to go to air. However, the cost and complexity of that infrastructure is substantially higher because it must be built to accommodate regulations such as classification time zones, Code advertising placement restrictions, and the Children's Television Standards.

Many of the costs of regulation are also difficult to quantify, such as the opportunity costs that are incurred as a result of programming and advertising scheduling restrictions. We note that opportunity costs are not included in the categories at Attachment 3.

Although the costing model seeks to ascertain the cost impact of regulation on businesses, not-for-profits and individuals, a total assessment of costs should also include costs that are borne by the taxpayer in regulating the broadcast media. This is a relevant consideration in any analysis of regulation and its economic benefits and impacts.

It is also difficult to distinguish some costs that are characterised as "business as usual" in Attachment 3 from regulatory costs. For example, it could be argued that requirements regarding news accuracy had no real cost to business because commercial free-to-air broadcasters would all endeavour to be accurate anyway, regardless of whether it was a regulatory requirement. However, the application and enforcement of the current news and accuracy requirements mean that there are still significant costs associated with this as a regulatory requirement, including staff training and dealing with investigations by the ACMA.

Contact

We appreciate the opportunity to provide this response and look forward to working constructively with you on this and other issues facing the broadcasting industry.

Please contact me on (02) 8968 7100 if you would like to discuss this letter, or any other issue associated with the Inquiry.

Yours sincerely,



Julie Flynn

CEO

Annexure A

Primary: Licence fees

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Commercial television broadcasting licensees are required to pay licence fees of up to 4.5% of gross revenues, in addition to regular corporate taxes and transmitter licence fees. |
| 2 | Policy underlying regulation | Represents an additional tax on commercial television broadcasting licences issued under the <i>Broadcasting Services Act 1992</i> . |
| 3 | Reasons regulation is no longer needed/could be amended | <ul style="list-style-type: none"> • The broadcasting tax dates back to when terrestrial broadcasting spectrum and competitive dynamics allowed commercial free-to-air broadcasters to earn super-normal returns. • To continue delivering the services and content that Australians value, and to meet the significant industry specific regulatory obligations that they face, broadcasters must be able to compete on a level playing field without being encumbered with additional platform specific taxes. • Addresses asymmetric legislative and regulatory settings in a digital environment. Broadcasters are competing for revenue and content with global players who are not subject to regulation, some of whom (unlike our members) do not pay even standard corporate taxes in Australia. • Licence fees remain significantly higher than fees paid by broadcasters in comparable overseas markets, who also have fewer regulatory obligations. • Costs of broadcasters' compliance with other regulatory obligations (such as Australian content and captioning) have increased substantially since the licence fees were introduced. Compliance costs for access to spectrum are already significant. • Over 40% of spectrum is sold to competing services, which are not subject to broadcasting legislation. |
| 4 | Proposal to remove or amend | Remove licence fees. |
| 5 | Impact of removal/amendment on industry | <ol style="list-style-type: none"> 1. Increased innovation. Faster evolution of free-to-air to multiscreen environment. 2. Additional funds to invest in local content. 3. Offset by increase in quantum of ordinary corporate taxes paid, as taxable revenues will rise. |
| 6 | Impact of removal/amendment on consumers and individuals | All Australians will have access to benefits from additional investment by broadcasters in new content and services. |

Annexure A

Primary: Retransmission right

| | | Response |
|---|---|--|
| 1 | Description of relevant regulation | The current retransmission exception contained in section 212 of the <i>Broadcasting Services Act</i> allows competing platforms to retransmit free to air broadcasts without the consent of the broadcaster. |
| 2 | Policy underlying regulation | Current regime was designed to facilitate reception and self-help facilities in areas with poor terrestrial television reception, not to facilitate the growth of pay TV. |
| 3 | Reasons regulation is no longer needed/could be amended | <ul style="list-style-type: none"> • The retransmission exception no longer achieves its intended purpose and is undermining the value of the broadcasters' linear channels at this critical time. • Modern VAST and satellite services mean that section 212 is no longer relevant in a digital environment. • The outdated scheme has given rise to unintended consequences: <ol style="list-style-type: none"> 1. It is an unwarranted exception to broadcast copyright protection in the <i>Copyright Act 1968</i>; 2. Broadcasters cannot negotiate any aspect of the use of their channels; 3. Direct competitors are allowed to benefit commercially from the use of free-to-air channels. • A new retransmission scheme that allows FTAs to negotiate terms of carriage is essential to put FTA broadcasters on a level playing field with all other linear channel providers. • The scheme must incorporate geo-blocking to ensure the integrity of licence areas. • A modern scheme would be consistent with the changing market conditions in Australia as well as internationally. For example: the Dutch Parliament has recently required the negotiation of an uninterrupted carriage of TV signals, including via HbbTV, on distribution platforms including cable and satellite. |
| 4 | Proposal to remove or amend | <ul style="list-style-type: none"> • The exception in s 212 of the BSA regarding retransmission could be either removed or significantly reformed so that third parties cannot circumvent broadcast copyright protection for commercial purposes. • In its place, a 'must-carry/retransmission' scheme could be introduced which reflects the current communications landscape and which is consistent with the <i>Copyright Act 1968</i>. • Free TV is currently drafting proposed legislative changes that could implement such a scheme. |
| 5 | Impact of removal/amendment on industry | <ul style="list-style-type: none"> • The retransmission scheme will reflect modern communications policy objectives. • Commercial free-to-air broadcasters will have the |

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| | | copyright in their broadcast stream recognised, as anticipated by the <i>Copyright Act 1968</i> , and the Rome Convention (to which Australia is a party). |
| 6 | Impact of removal/amendment on consumers and individuals | <p>The retransmission scheme will reflect modern communications policy objectives. All pay TV customers will have access to all digital multi-channels on the platform, in a coherent manner.</p> <p>Increased revenue/savings for FTAs (including the ABC and SBS) will result in additional investment in content and strong, competitive FTA broadcasters.</p> |

Annexure A

Primary: Anti-siphoning

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | <p>The anti-siphoning scheme ensures that nationally significant sporting events remain available free of charge for all Australians to watch. It recognises that nationally significant sporting events play an important role in Australia's cultural and social life and that Australians should not be denied access to these events based on their inability to afford the high cost of pay television services. In this way it effectively delivers a clear public policy goal.</p> <p>Currently however, there is a requirement that events on the anti-siphoning list must be broadcast on a broadcaster's primary channel.</p> |
| 2 | Policy underlying regulation | <p>Before switchover, this policy was meant to ensure that all Australians could access these important events. However, it is not clear what the rationale is for extending this policy beyond switchover.</p> |
| 3 | Reasons regulation is no longer needed/could be amended | <p>Switchover has now successfully occurred.</p> <p>There is an inefficient administrative barrier to showing sport on the anti-siphoning list on a multi-channel.</p> <p>For an event on the anti-siphoning list to be shown on a digital multi-channel, the Minister must issue a notice removing it from the list shortly before broadcast, following a request from the broadcaster. This is an unnecessary administrative burden on both government and broadcasters.</p> |
| 4 | Proposal to remove or amend | <p>Legislative change - Repeal Division 1 of Part 4A of Schedule 4 to the BSA, or at least 41E – 41G(1A) of Schedule 4 (inclusive).</p> |
| 5 | Impact of removal/amendment on industry | <ul style="list-style-type: none"> • Administrative burden of submitting requests to Minister removed. • Greater flexibility to show sport in HD. • More sport on multi-channels means it will be uninterrupted by news bulletins. |
| 6 | Impact of removal/amendment on consumers and individuals | <p>No material change, except potential for more sport shown in HD format, uninterrupted by news broadcasts.</p> |

Annexure A

Secondary: Simplified Code of Practice Requirements

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Broadcasters are required to develop and comply with the Commercial Television Industry Code of Practice, which contains a range of complex requirements around matters such as classification and scheduling (program matter and commercials), complaints handling, news and current affairs and advertising restrictions. It must be reviewed every 3 years and is subject to public consultation. In the co-regulatory system, the ACMA will only register the code if it is satisfied that it meets appropriate community safeguards. |
| 2 | Policy underlying regulation | To implement co-regulatory system for broadcasting regulation. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>The current Code is outdated and does not reflect the way Australians consume media.</p> <p>The current media environment is very different than it was 20 years ago, when the Code was originally developed. The current extensive and prescriptive regulations are no longer an efficient way of regulating broadcasting platforms. The Code has become more and more complex and has not been appropriately recalibrated to reflect the significant changes that have occurred in the media industry. The ACMA has also become increasingly interventionist and prescriptive in the Code process.</p> |
| 4 | Proposal to remove or amend | <ul style="list-style-type: none"> • Legislative change to section 123 of the BSA as follows: • Remove “in consultation with the ACMA and taking account of any relevant research conducted by the ACMA” from 123(1); • Repeal 123(2) to (3D); • Industry to prepare Codes with increased flexibility, fewer prescriptive requirements and less interventionist approach from the ACMA. |
| 5 | Impact of removal/amendment on industry | <p>Ability to develop simplified, streamlined Code with increased autonomy.</p> <p>Improve regulatory parity for broadcasters, enabling greater flexibility and competitiveness.</p> |
| 6 | Impact of removal/amendment on consumers and individuals | Some changes to Code regulations (such as time zones) will provide greater variety regarding what people see on TV and when, reflecting media consumption trends. The Code will continue to provide community safeguards in areas of need. |

Annexure A

Secondary: Producer offset

| | | Response |
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| 1 | Description of relevant regulation | Producer offset for television is only 20%, while for feature films the available offset is 40%. |
| 2 | Policy underlying regulation | Encourage investment in the Australian production industry. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>There is no reason to provide more favourable incentives for film, particularly as television has greater reach and popularity with Australians than film.</p> <p>If the producer offset for television is doubled to 40%, in line with the offset available for feature films, this would be consistent with the principle of regulatory parity, and in-line with a recommendation of the Convergence Review. Successive Screen Australia Drama Reports indicate that the costs of production for television drama are increasing.</p> |
| 4 | Proposal to remove or amend | <p>Legislative Change</p> <p>Amend the following sections of the <i>Income Tax Assessment Act 1997</i>:</p> <ul style="list-style-type: none"> • Division 376-2(3)(a); and • Division 376-60(b); <p>to replace 20% with 40%</p> |
| 5 | Impact of removal/amendment on industry | Additional incentives for investment in Australian content. |
| 6 | Impact of removal/amendment on consumers and individuals | Likely increase in volume and quality of Australian content available on television. |

Annexure A

Secondary: Advertising restrictions

| | | Response |
|---|--|--|
| 1 | Description of relevant regulation | Various advertising restrictions in both Standards and the Codes, particularly in relation to the advertisements that can be aired in children's programming. |
| 2 | Policy underlying regulation | Varied, depending on particular restrictions. Children's advertising restrictions were aimed at reducing children's exposure to potentially harmful content. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>Many advertising restrictions currently in place are platform specific and therefore outdated and not reflective of modern media consumption practices.</p> <p>Classification and placement restrictions provide sufficient protection from harmful material.</p> <p>Other restrictions could be examined for inconsistencies and continuing relevance.</p> |
| 4 | Proposal to remove or amend | <p>Minister to direct ACMA to repeal Part 3 of the CTS, pursuant to s122(7) of the BSA [<i>NB overall preference is for revocation of entire CTS with children's content quotas retained in ACS – see Children's Television Standards ref in Annexure</i>]</p> <p>Remove the Australian content in advertising quota.</p> <p>More detailed review to remove overlapping requirements. For example, commercial free-to-air broadcasters are subject to a licence condition at clause 6 of Schedule 2 to the BSA that they must not broadcast a commercial that requires approval under the <i>Therapeutic Goods Act 1989</i> (TGA) unless it has been so approved. Clause 6.5.2 of the Code requires television commercials for therapeutic goods to be approved by the Australian Self-Medication Industry (ASMI). These requirements are in addition to section 42C of the TGA, which makes it an offence to publish an advertisement that requires approval but has not been so approved.</p> <p>Streamline the regulation of advertising on television by ensuring that Commonwealth laws cover the field, so that regulation is consistent across Australian jurisdictions.</p> <p>Free TV to revise Code to remove out-dated advertising restrictions, such as clause 6.20.</p> |
| 5 | Impact of removal/amendment on industry | Reduced complexity for advertising clearance and traffic systems; more flexibility in advertising. |
| 6 | Impact of removal/amendment on consumers and individuals | Change in the nature and content of some advertisements on television. |

Annexure A

Secondary: ACMA investigations

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Under the BSA, the ACMA must investigate all complaints received. |
| 2 | Policy underlying regulation | Ensure that complaints are adequately dealt with. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>Currently, all complaints are investigated, which includes complaints about matters that are not serious or material. This leads to broadcasters investing significant resources in responding to complaints which have no substance. For example:</p> <ul style="list-style-type: none"> • a complaint in relation to whether a snake was a “large snake” – see the ACMA Investigation Report 1955 – ACMA2008/281; • complaints in relation to material broadcast several years prior to the complaint being lodged – see ACMA Investigation Report No. 2369 – ACMA2010/693; and • complaints brought by individuals based overseas who do not reside in Australia and would not otherwise be subject to Australian law. |
| 4 | Proposal to remove or amend | <p>Amend subsection 149(1) of the BSA so that it is clear that the ACMA has discretion about which complaints it investigates.</p> <p>Amend s 148 of the BSA to impose a time-limit within which a person may make a complaint to the ACMA. The time-limit could be consistent with the time-limits that are already provided for in the BSA and the Code. For example, a time-limit of 30 days after the end of the 60 day period referred to in s 148 (c), may be appropriate.</p> <p>Amend s 148 of the BSA to limit the complaints process to persons who viewed the relevant broadcast in Australia.</p> |
| 5 | Impact of removal/amendment on industry | Fewer resources of both businesses and government directed towards responding to complaints/investigations that are not serious or material. |
| 6 | Impact of removal/amendment on consumers and individuals | Some minor complaints may not be dealt with by the ACMA. |

Annexure A

Secondary: Captioning - Reporting and structure of legislative requirements

| | | Response |
|---|---|--|
| 1 | Description of relevant regulation | <p>Commercial broadcasters must report annually on compliance with captioning quotas and compliance with captioning quality standards. This is despite the fact that all complaints about captioning for commercial television programs will be made directly to the ACMA.</p> <p>The method by which the ACMA calculates a licensee's overall compliance with these obligations means that broadcasters can be held in breach where reasonable efforts have been made to comply, or where there are unforeseen difficulties, or where service to only part of a licence area is lost.</p> |
| 2 | Policy underlying regulation | To measure compliance with captioning obligations. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>We do not recommend any changes to the existing requirements to provide captioning services which provide access to the deaf and hearing impaired.</p> <p>However, current reporting requirements are very onerous.</p> <p>As indicated above, the legislation is structured in such a way that it is very difficult for broadcasters to comply. Strict liability standards and lack of recognition of the nature of broadcasting and captioning services mean that all broadcasters are likely to be in breach. Broadcasters should not be held in breach where reasonable efforts have been made to comply, or where there have been unforeseen difficulties.</p> |
| 4 | Proposal to remove or amend | <ul style="list-style-type: none"> • Legislative change to sections 130ZZC and 130ZZD of the BSA to remove the requirement for annual reporting, and to replace the requirement with a complaints based/spot audit system; • Include a provision to provide that a breach affecting only part of a licence area (less than 50%) will not be considered when calculating a licensee's compliance with quotas; • Amend legislation so that regional affiliate broadcasters are not in breach of the legislative provisions in circumstances where captioning errors occur in "as live" programming delivered to the affiliate from the source. • Amend s 130ZUB of the BSA to: <ul style="list-style-type: none"> ○ Exclude breaches where reasonable efforts demonstrated. ○ Apply exception to breaches of quality standards as well as quotas. ○ Remove "technical" so any unforeseen |

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| | | difficulties are covered. |
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| 5 | Impact of removal/amendment on industry | Significant reduction in reporting requirements More sensible compliance measurement will reduce findings of breach in circumstances where reasonable efforts have been made, captioning error has been caused by programming from another source, there are unforeseen difficulties, or there has been only partial captioning failure in a licence area. |
| 6 | Impact of removal/amendment on consumers and individuals | There will be no impact on consumers, and captioning provision will continue at the current levels and standards. Changes only relate to reporting and compliance measurement. |

Annexure A

Secondary: Material of Local Significance - Reporting

| | | Response |
|---|--|--|
| 1 | Description of relevant regulation | Regional commercial television licensees in seven regional aggregated licence areas are subject to broadcasting minimum levels of material of local significance. Material of local significance includes news bulletins, news updates and weather. Compliance is measured by counting points using a complex system. |
| 2 | Policy underlying regulation | Over-arching policy is to deliver material of local significance to certain regional communities. The policy behind the reporting framework is not clear. |
| 3 | Reasons regulation is no longer needed/could be amended | No change to regulation is sought – only a change to the way that reporting and compliance measurement is undertaken. System of “points” counting is unnecessarily complex, time consuming and resource intensive. Compliance with these requirements could be on a spot audit basis, as recommended by the Convergence Review. |
| 4 | Proposal to remove or amend | ACMA to revoke and remake <i>Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007</i> in a simplified form that: <ul style="list-style-type: none"> • Removes the points system for calculation of content in favour of a simpler requirement; and • Removes the complex reporting requirements and shifts to a spot-audit compliance system |
| 5 | Impact of removal/amendment on industry | Streamlined reporting will require reduced resources, resulting in time and cost savings for business. |
| 6 | Impact of removal/amendment on consumers and individuals | Broadcasters will have additional resources available to invest in content and other activities, which will lead to improved services. |

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Secondary: Main channel in HD

| | | Response |
|---|--|--|
| 1 | Description of relevant regulation | The current legislation prohibits broadcasters from broadcasting their primary service in HD. |
| 2 | Policy underlying regulation | Accessibility of programming to all Australians during transition to digital. |
| 3 | Reasons regulation is no longer needed/could be amended | This is an out-dated regulation in a post-switchover environment, particularly as new technologies develop in the delivery of broadcasting services. |
| 4 | Proposal to remove or amend | Legislative change to cl 41G of Schedule 4 to the BSA – remove requirement that primary service must be an SDTV service. |
| 5 | Impact of removal/amendment on industry | More flexibility in programming and delivery of services |
| 6 | Impact of removal/amendment on consumers and individuals | Potential for viewers to receive more premium content in HD. |

Annexure A

Secondary: Reporting on content quotas

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Broadcasters must fill in detailed annual compliance forms demonstrating compliance with Australian program quotas and sub-quotas, in addition to programming expenditure. |
| 2 | Policy underlying regulation | Measure broadcasters' compliance with regulatory obligations. |
| 3 | Reasons regulation is no longer needed/could be amended | Simplify forms and reduce reporting burden. |
| 4 | Proposal to remove or amend | ACMA to revise section 21 of the <i>Broadcasting Services (Australian Content) Standard</i> , and associated forms, to simplify reporting and move to spot audit system. The ACMA can be directed by the Minister in relation to Standards. |
| 5 | Impact of removal/amendment on industry | Streamlined reporting will require reduced resources, resulting in time and cost savings for business. |
| 6 | Impact of removal/amendment on consumers and individuals | Broadcasters will have additional resources available to invest in core programming activities, which will lead to improved services. |

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Secondary: Ownership notification provisions

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Division 6 of the BSA is onerous and requires ownership notifications even when there is no change. It also requires multiple notifications, which is inefficient. |
| 2 | Policy underlying regulation | Enable ACMA to monitor ownership and control of broadcasting licences. |
| 3 | Reasons regulation is no longer needed/could be amended | Provisions could be streamlined and improved to make them more efficient. |
| 4 | Proposal to remove or amend | Require notification by licensee for change of control only, in a more reasonable time period. Annual reporting should not be required if changes are notified as they occur. Legislative change - Repeal section 62, Amend section 63 to extend notification timeframe to 10 days, Repeal section 64, Repeal section 65A. |
| 5 | Impact of removal/amendment on industry | Streamlined reporting will require reduced resources, resulting in time and cost savings for business. |
| 6 | Impact of removal/amendment on consumers and individuals | Broadcasters can redirect resources to their core activities, such as programming and content, which will lead to improved services. |

Annexure A

Secondary: Children's Television Standards

| | | Response |
|---|--|--|
| 1 | Description of relevant regulation | The CTS contains a number of onerous administrative requirements that are out-dated and unnecessary, such as pre-classification by the ACMA, notification of displacements, and scheduling notifications. The CTS should be revoked and only the children's sub-quota requirements incorporated into the ACS. No other provisions of the CTS should be retained. |
| 2 | Policy underlying regulation | Provide children with safe and appropriate viewing. |
| 3 | Reasons regulation is no longer needed/could be amended | <p>The current rules do not account for the way children are now consuming media.</p> <p>The additional advertising, scheduling and placement restrictions are outdated – now children have access to ABC2 and 3, as well as online or on-demand services, and DVDs. Tools such as EPGs and parental locks mean that parents and carers have more control than ever over what their children watch. These new platforms and tools, along with existing classification rules provides sufficient protection for children from harmful material.</p> |
| 4 | Proposal to remove or amend | <p>ACMA to revoke <i>Children's Television Standard</i>, amend Part 8 of the <i>Broadcasting Services (Australian Content) Standard</i> to incorporate and retain children's sub-quotas.</p> <p>(Minister can direct ACMA to do so).</p> <p>Section 122(2) of BSA does not specify that the Standards required must be separate instruments.</p> |
| 5 | Impact of removal/amendment on industry | <p>Increased flexibility and ability to monetise children's content.</p> <p>Reduction in red tape regarding pre-classification, scheduling and notification requirements.</p> |
| 6 | Impact of removal/amendment on consumers and individuals | <p>Broadcasters will have additional resources available to invest in content and other activities, which will lead to improved services.</p> <p>Children may view advertisements with fewer restrictions on issues such as competitions or celebrity endorsements. Such advertisements will still be subject to various industry advertising restrictions.</p> |

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Secondary: Prohibition on election advertising for period prior to polling day

| | | Response |
|---|--|---|
| 1 | Description of relevant regulation | Broadcasters are currently prohibited from broadcasting an election advertisement from midnight on the Wednesday before polling day in a licence area where an election to a Parliament will be held. These rules do not apply to other forms of electronic media such as internet or mobile advertising. |
| 2 | Policy underlying regulation | This is a historical rule that was part of the <i>Broadcasting Act 1942</i> . |
| 3 | Reasons regulation is no longer needed/could be amended | These rules are no longer relevant or effective given the shift to a 24 hour news cycle and the popularity of online content services. Banning election advertising on TV and radio only is no longer effective in enforcing any real blackout as consumers still have ready access to election advertising (including audio-video advertising) online through popular news sites and apps. The only continuing effect of the rules is to unfairly disadvantage traditional terrestrial broadcasting. |
| 4 | Proposal to remove or amend | Repeal clause 3A of Schedule 2 to the BSA Repeal definition of “relevant period” from clause 1 of Schedule 2 to the BSA |
| 5 | Impact of removal/amendment on industry | Ability to access additional revenue from advertising during the three days before polling day. |
| 6 | Impact of removal/amendment on consumers and individuals | Access to additional information about candidates and political parties right up until polling day. |

Annexure A

Secondary: Audited accounts for small licensees

| | | Response |
|---|--|--|
| 1 | Description of relevant regulation | Broadcasters are required to provide audited accounts to the ACMA. |
| 2 | Policy underlying regulation | To enable the regulator to have accurate accounts for licensees. |
| 3 | Reasons regulation is no longer needed/could be amended | There are a number of small joint ventures holding section 38B broadcasting licences. These are very small licenses and the cost of audited accounts separately for these entities is prohibitive. |
| 4 | Proposal to remove or amend | Amend section 205B to require audited accounts for section 38B and 38C licences. |
| 5 | Impact of removal/amendment on industry | Savings on auditor's fees will relieve financial pressures. |
| 6 | Impact of removal/amendment on consumers and individuals | Nil. |