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To Whom It May Concern,

Regulator Performance Assessment Framework

Thank you for your correspondence of 8 April 2014, regarding the Productivity Commission's framework to audit the performance of regulatory agencies in relation to the compliance costs they impose on business and other related entities.

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide fifteen channels of content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 14 million Australians.

Free TV supports both the Government's deregulation agenda and the general approach outlined in the Productivity Commission's advice, and agrees that a framework for auditing the performance of regulatory agencies should be implemented.

In order to ensure that regulations are effective in achieving regulatory objectives at minimal cost and in the public interest, and to avoid regulation creep, any framework to measure and report on regulator performance should focus on the need for a regulator to be:

- accountable
- transparent
- consultative with industry; and
- consistent in its regulatory approach.

1. Accountability

Free TV agrees that any framework to measure and report on regulator performance should include concrete accountability mechanisms, tailored to the particular regulator, and provide incentives for regulators to minimise the costs they impose on business.

The key piece of legislation regulating broadcasters, the *Broadcasting Services Act 1992 (BSA)*, is outdated and complex, and does not place concrete accountability requirements on the Australian Communications and Media Authority (**the ACMA**) as the regulator. Similarly, the *Australian Communications and Media Authority Act 2005* contains only minimal requirements in relation to reporting.¹ It does not provide for any mechanism to measure the regulator's performance, either in relation to administrative efficiency or in relation to compliance costs on regulated entities.

¹ The ACMA Act, ss 56 and 57.

Free TV supports the introduction of a requirement for the ACMA (or any future regulator) to develop an audit plan containing concrete performance indicators, and to publicly report and be measured against that plan.

2. Transparency

Any framework to measure and report on regulator performance must be transparent and ensure that the regulator undertakes all of its activities in a transparent way.

In order for the framework to be transparent, audit plans and reports should be required to be made public on the regulator's website and performance measures should provide data and metrics to properly demonstrate how the relevant measure has been achieved.

In order to achieve transparency in the manner in which the regulator undertakes its activities more generally, the framework should promote the need for regulations to be as minimal, simple and consistent as possible. Consistency increases transparency. Australia's current broadcasting regulatory framework and the BSA in particular, has been amended, supplemented and reworked to the point where it is complex, convoluted and burdensome. This is not conducive to transparency.

The framework should also require information about how regulatory activities are conducted to be made available in a transparent way. For example, the ACCC publishes information in relation to its enforcement policies and priorities. This should be required of regulatory agencies generally.

3. Consultation

Any framework to measure and report on regulator performance should be developed in consultation with business, industry groups and other stakeholders, to ensure that the performance measures used are appropriate, that any gaps in the assessment process are identified, and that the audit plan limits business compliance costs.

Similarly, any framework must incorporate the need for regulators to approach their functions in a consultative manner.

4. Consistency

Any framework to measure and report on regulator performance should promote a consistent regulatory approach.

Currently, the BSA and associated Codes and Standards impose a disproportionate level of regulation on broadcasters compared to platforms which deliver content over the Internet or by mobile telephony. This in turn subjects broadcasters to significant legal, financial, administrative and resourcing constraints when compared with competing platforms.

Consistent treatment of like services regardless of the platform or technology used to deliver the service is essential to ensuring that regulation remains relevant with evolving market conditions and technological developments. Applying an inconsistent regulatory approach undermines the public policy principles underlying the relevant regulations and is thus ineffective and inefficient in terms of achieving public policy outcomes.

Additionally, the current regulatory regime for broadcasters is not always applied consistently. For example, the ACMA does not consider itself bound by previous rulings or advice which it subsequently considers incorrect, resulting in a situation where broadcasters may be found in breach of the law despite the fact that they acted in good faith and in accordance with the

regulator's previous rulings or advice.² Retrospective changes to the manner in which regulations are implemented leads to inconsistency, increased business costs and decreased business confidence.

Contact

Thank you for the opportunity to provide feedback on the Regulator Audit Framework. We look forward to working co-operatively with the Office of Deregulation to develop an industry-supported framework and to reduce the regulatory and administrative burdens on our members.

Yours sincerely

A handwritten signature in black ink, appearing to read "Julie Flynn".

Julie Flynn
CEO

² For two examples of this see: ACMA Investigation Report No. 1888 (ACMA 2007/1680) at 12; and ACMA Investigation Report No. 2379 (2010/0523) at 8.