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Peppi Wilson  
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Dear Peppi

### **Proposed Draft Mobile Content Scheme and Guidelines**

I refer to recent meetings to discuss incorporation of comments made during public consultation on the ACIF/TISSC Scheme into the Industry Scheme proposed by AMTA.

At the most recent meeting on Wednesday 8 March, Free TV agreed to provide detailed drafting comments (these are in addition to the broader issues raised in Free TV's submission and discussed at the meetings to date). Given the timeframe for comments, we have not had an opportunity to consult on detailed matters with our members. We may wish to provide further comments as the draft progresses. Our comments are set out below.

### **Draft Scheme**

1. **Informing customers of terms and conditions:** There are several references throughout Sections 5 and 10 to Content Service Providers ensuring customers are "*informed of the terms and conditions of the relevant service*".

We query what is required to fulfil this obligation. We are concerned that an obligation to ensure customers are "*informed of the terms and conditions of the relevant service*" appears to set a very high bar and might be interpreted as requiring the full terms and conditions of a service to be set out.

We suggest that, at least in relation to advertising, the obligation should be to provide information regarding the basic terms and conditions of the service, such as the nature of the service, the age suitability if relevant and the cost of the service and any other basic terms and conditions such as the expiry date of any offer, competition etc. There should also be a reference to where a copy of the full terms and conditions can be obtained eg a website or phone number.

We think it is also worth clarifying that the obligation to ensure a customer is "informed" does not require the service provider to do any more than provide the information in a clear and adequate manner.

2. **Competition and voting:** We are satisfied with the current wording of Clause 5.3.7, except that the reference to ensuring that the customer is clearly and unambiguously informed of the terms and conditions of the competition should be clarified in light of our comments above.
3. **Assessment of services:** Clause 7.2.2(b) currently states that a service that is a news and/or sport service (whether or not it is a live or real time service or is a direct content feed under a contract with the Carriage Service Provider) is not required to be assessed under this Scheme. Whilst we agree that this position is sensible, we understand that ACMA have raised some

concerns that exempting news/sport and ring tones without images is not consistent with the Determination. We suggest that the wording be amended to the effect that such services will not generally require age-restriction, however, the content provider must ensure that a warning is provided before any material which may seriously distress or seriously offend a substantial number of viewers (similar to the requirement regarding live programming in Clause 7.1.2)

4. **Training of assessors:** We agree with the current wording of Clause 7.1.3
5. **Age-restricted services:** We refer you to the comments and suggested amendment in our submission on the ACIF/TISSC scheme regarding the definition of a parental guidance service. For the reasons set out in our submission, we suggest that the definition in clause 10.3.1 be amended to *"a mobile premium service is deemed to be aimed at persons under 15 years of age if, on average, 50% or more of the readers of viewers of a publication or program that includes an advertisement for the service are under 15 years of age. The average is measured on an annualised basis"*.
6. **Complaints handling:**
  - o *How complaints are made:* We reiterate our concern that complaints be required to be made in writing. This is for the reason set out in our submission. In some cases, complaints may go via one or two providers before reaching the entity responsible for investigating the complaint eg if the complaint is first made to the escalated body, or to the carriage service provider, it will need to be handed on to the content service provider, and in some cases the content provider for investigation. This process will be very cumbersome and open to error if complaints are not made in writing. If the complaint is escalated, it will also be more difficult for the escalated complaints body to investigate the matter if the original complaint is not in writing.
  - o *Time period for making complaints:* We reiterate our concern to ensure that the Scheme requires complaints to be made within a specified time period (we appreciate that there may be different time periods suitable for content complaints and billing complaints). In relation to content complaints we have suggested a period of 30 days from date of accessing or receiving the material. Our object is to ensure that the provider is in a position to investigate the complaint. We are happy to consider suggestions from those representing content service providers. The Scheme's escalated complaints processes would only apply to complaints made within the relevant time period; however, the provider would be encouraged to respond to other complaints as appropriate.
  - o *Response to complaint:* Clause 11.2.3 (and following clauses) require the service provider to *"propose a resolution of the complaint"* within 30 days after the complaint is lodged. We suggest that the requirement should be to *"provide a substantive response"*, on the basis that a resolution may not always be possible, however if the service provider disagrees with the customer complaint it should explain why it disagrees. We also suggest the substantive response advise the customer that he or she may refer the matter to the escalated complaints body if they are not satisfied with the response. If these changes are made Clause 11.2.4 will not be needed. We suggest that the 30 day period run from date of receipt (not lodging) of the complaint. Also it may be necessary to provide for an extension of the time for response where the complaint needs to be referred from the body receiving the complaint to the appropriate provider for response (see clause 7.11 of the Commercial Television Industry Code of Practice for a drafting example).
  - o *Directions and remedies:* Clause 11.4.1 states that where the escalated complaints handling body determines that a provision of the Scheme has been breached and/or a customer complaint has been upheld, then it will direct that an appropriate remedy shall be implemented. We are concerned that this wording is prescriptive and requires the escalated complaints handling body to direct a remedy be implemented. It is not clear that a 'remedy' will be appropriate in all cases. In some cases, the remedy may be that the content is

removed or reclassified, and/or that the service provider implement training to seek to ensure that an erroneous understanding is rectified. Perhaps the clause could be clarified to ensure that remedies could encompass a range of things, as appropriate and may be agreed between the provider and the escalated complaints body.

- *Handling of other complaints:* We are unclear how complaints concerning matters other than billing or content are proposed to be handled eg complaints regarding advertising. Will these be referred to the ASB?

## Guidelines

We support the use of non-binding Guidelines to explain how the provisions of the Scheme may be met. In our view, clear and simple guidance on the interpretation of the Scheme, including use of concrete examples, will be an important part of enabling good compliance. We have suggested some minor drafting amendments below that may assist in making the Guidelines even clearer.

As a general comment, one of the best features of the Scheme is that it is written in relatively simple language and is easy for a range of users to understand. By comparison, the Guidelines often use technical language or acronyms. Some of these terms are undefined, while others are defined only in the Definitions section at the back of the Guidelines.

Some parts of the Guidelines may benefit from being re-worded in more user friendly language in the same manner as the Scheme. For example, the distinction between terms like 'clear' and 'authenticated' consent is not apparent from reading the Guidelines.

It would also be useful to move the Definitions section in the Guidelines to the front of the document to make it easier for the reader to find and refer to. The Definitions section could also be expanded to include all technical terms and acronyms used in the Guidelines. While some terms may already be defined in the Scheme, it would be useful to reiterate the definition in the Guidelines as the reader may not be referring to both documents at once.

Free TV also recommends a minor change to *Clause 4.1.2 Advertising and Promotion of Subscription Services and Section 6*.

- It would be extremely useful if the guidelines gave an example of text that could be used in the advertisement as they do for other clauses like 6.1. For example, 'Subscription service costs \$5 to subscribe and \$2 per message sent. Avg 5 msg per mth. To unsubscribe send 'STOP' to XXX. Terms and conditions at www.xxxxxxx.com.au. Service provider = XXXXX. Helpdesk = xxxx.' This example could serve as a safe harbour, in that if an advertiser provided this information in the way specified in the Guidelines they could be confident of complying with the Scheme. However, this approach would be non-binding and the advertiser would be free to choose an alternative form of words.
- Free TV supports the requirement that the provider/advertiser must indicate the cost per message and the total cost, if possible, when advertising a subscription service.
- In addition, we believe it would be useful for advertisers to clearly advise customers that their information may be collected for use in a marketing database (refer to last paragraph in Clause 4.1.2).

There are two other aspects of the Guidelines about which we would appreciate further clarification as we are unclear about their application in a television environment.

- *Clause 3.5.3* states that a marketing database may only list a person's details where the person has purchased content. We would appreciate clarification on what constitutes 'purchasing' content. In particular, is it envisaged that it would include a person voting in a television show such as *Big Brother*, or entering a SMS competition run by a program? In these scenarios a

person will pay the premium SMS charge to enter, but may not be purchasing content as such. We also query whether it is necessary for a person to have purchased content in order for their details to be retained if the person has already agreed to their details being kept on the database, for example, by visiting a program website. Finally, the Guidelines state that any marketing message sent to a person in the database must relate to services provided by the content service provider that are of the same nature as the services previously utilised by the customer. In Free TV's view this should allow a broadcaster to send a message about an upcoming show to a viewer who has voted in a different show.

- *Clause 6.2 Marketing to Children* states that a restricted service cannot be provided or marketed to children under 18 years of age in any circumstances. While Free TV agrees that these services need to be carefully marketed, we query whether this statement needs further qualification. For example, a restricted service includes a service that offers MA15+ content. In a television environment an MA15+ program may be viewed by 15–17 year olds. We would not like to create an expectation that an MA15+ program will not refer or mention an MA15+ premium mobile service that is related to the program and may carry the same content. MA15+ television shows are already subject to time zone and classification restrictions that limit their accessibility to people aged 15 years and over.
- Clause 6.2 also requires that any personal information collected from children may not be disclosed to a third party without the explicit consent of the child's parent or guardian. While we support responsible marketing to children, we query whether a provider may not inadvertently breach this rule as the age of a person using the service may not be known.

Thank you for providing Free TV with an opportunity to comment.

We are happy to discuss these comments with you further.

Yours sincerely,



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