



**Submission by  
Free TV Australia Limited**

Department of Broadband,  
Communications and the Digital Economy

Legislative framework for implementing a  
digital television switchover timetable

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## 1 Executive Summary

- Free TV is committed to working cooperatively with Government to deliver a mutually agreed timetable for the switch-off of analogue terrestrial television signals.
- This submission addresses the issues raised in the Department of Broadband, Communications and the Digital Economy Discussion Paper *Legislative framework for implementing a digital television switchover timetable*.
- Regardless of which legislative framework is chosen, the timetable for digital television switchover must continue to be the subject of detailed and open consultation with the commercial free to air television industry.
- Free TV supports amending the *Broadcasting Services Act 1992* to enable the shortening of the simulcast period in some areas. Free TV understands this will be necessary in order to provide the Government with sufficient flexibility to plan an appropriate timetable for switchover.
- Free TV supports a legislative timetable for switchover that accommodates staged switchover in geographic areas other than licence areas.
- It is important to ensure the timetable for analogue switch-off is not artificially constrained and is free to respond to the key issues of broadcaster and viewer readiness. This is critical given the highly complex nature of analogue switchover. The regulatory mechanism used must allow the Government to respond quickly and effectively to on the ground developments.
- An appropriate balance would be for minimum readiness benchmarks, high-level timing and sequencing factors, together with relevant principles and parameters, to be set in legislation. However legislation should not specify exact switchover dates by region. The detailed planning of the timetable should be the responsibility of the Minister. Given the important part that television plays in the lives of Australians, it is appropriate that decisions related to the switchover timetable are made directly by Government through the Minister.
- The task of switchover will be highly complex, resource-intensive and operationally demanding for broadcasters. It would therefore be inappropriate for broadcasters to also face differing content regulatory requirements within and across licence areas throughout the switchover period.
- Current provisions relating to Australian and children's content and captioning on digital multi-channels should be reviewed in the year following switch-off. The current exemptions should be extended to match this timeframe. It is only at this time that the multi-channel operating environment will become clear.
- The HDTV obligations should be amended so as to cease upon completion of switch-over Australia-wide.
- There are a range of technical and operational provisions which are currently timed to operate on the basis of the end of simulcasts in each licence area. Free TV reserves its position on the precise timetable for these provisions to operate, noting that this must be addressed by Government as part of the detailed timetable planning work that is yet to occur. However, Free TV supports amendments which would give the Government maximum flexibility to determine the appropriate time for the operation of these provisions, by allowing them to be delinked from licence area switch-off if deemed appropriate.

## 2 Introduction

Free TV is committed to working cooperatively with Government to deliver a mutually agreed timetable for the switch-off of analogue terrestrial television signals. To this end, Free TV takes heart from the co-operative approach that delivered digital television roll-out and urges the Government to adopt a similarly open and consultative approach.

This submission does not seek to put forward a position on the shape and/or detail of an appropriate digital television switchover timetable. This is a matter on which significant and ongoing collaboration between industry and Government will be required. Rather, Free TV understands the purpose of the Discussion Paper *Legislative framework for implementing a digital television switchover timetable* is to seek feedback on the specific matter of the legislative framework through which the timetable will be set.

Nevertheless, it is apt to note a number of significant issues that must be considered when a detailed timetable is eventually set. The timetable for analogue switch-off needs to be informed by the impact on viewers, as well as the commercial free to air television industry. It is crucial that viewers do not lose access to free to air services at any stage of the switchover process.

There are also transitional costs associated with switch-off. A considerable proportion of these costs will be borne by Australian viewers and the community generally. As such, the timetable for switch-off needs to be carefully managed to ensure that the transition is as smooth as possible for Australian viewers.

Careful planning of the timetable is needed to:

- Allow the necessary technical preparations to be undertaken in each area and allow fine-tuning of preparations as switch-off progresses;
- Allow coverage issues to be managed so to minimise the impact that one area increasing the power of digital signals may have on viewers in an adjacent area;
- Allow manufacturers and retailers to ensure sufficient equipment is available for consumers in each area; and
- Ensure that each area receives specifically tailored information and advice and the need for home visit support is minimised.

It is inappropriate for all aspects of the timetable to be set down in legislation. Sufficient flexibility must be built-in to the switchover process to enable a timely response to changing circumstances within and across licence areas.

It is also vital that the Government act to delink changing content regulatory requirements for digital multi-channels from the end of the simulcast period in each individual licence area. This would be of particular concern should switch-off occur at different times within individual licence areas.

It would be almost impossible for broadcasters to manage differing content regulatory requirements within licence areas. Such an outcome would create an unjustifiably high compliance burden, for no apparent policy benefit.

Much the same position applies as regards differing regulatory requirements across different licence areas. The more appropriate outcome is for the existing regulatory framework for captioning, children's content and Australian content on digital multi-channels continue through

until a review is conducted one-year after digital switchover in 2013, rather than being matched to the end of the simulcast period.

These are new and emerging services, set to play an important role in driving television consumers to switch to digital television. It is only once digital multi-channels are truly established that a proper impact assessment of additional content regulatory requirements can be undertaken.

### **3 Key Issues - Amending the current legislative framework**

#### **3.1 Shortening the duration of the simulcast period**

Free TV supports amending the *Broadcasting Services Act 1992* (BSA) to enable the shortening of the simulcast period in regional areas. Free TV understands this will be necessary in order to provide the Government with sufficient flexibility to plan an appropriate timetable for switchover.

This may prove particularly important in non-remote regional areas. As noted in the Discussion Paper, the BSA does not presently allow for the simulcast period to be shortened. The practical effect of which is that any digital television switchover timetable could not include switchover dates for non-remote regional areas before either 31 March 2011 or 31 December 2011, depending on the area.

Regional broadcasters are disproportionately impacted by the financial costs of simulcasting. Existing analogue transmission equipment is rapidly reaching obsolescence and will be difficult and expensive to replace. The largest of the regional commercial television broadcasters operates more than ten times the number of transmitter and translator sites than the largest metropolitan television broadcaster.

It is important to ensure the timetable for analogue switch-off is not artificially constrained and is free to respond to the key issues of broadcaster and viewer readiness.

#### **3.2 Choice of mechanism for setting a digital switchover timetable**

The timetable for switch-off of analogue television signals must balance the benefits of regulatory and legislative certainty with the need to provide sufficient flexibility to respond quickly and efficiently to on the ground developments.

Any timetable must be planned in a way that responds to technical and market developments. It is likely that levels of technical and consumer readiness will develop at different and difficult to predict rates. Government and industry must therefore be able to respond to varying trends and circumstances in a timely fashion. A need to pursue legislative amendments each time a change in switch-off timetable is required would pose a significant barrier to a well-coordinated switch-off process.

A suitable balance may be for high-level targets to be identified in legislation, with more detailed arrangements to be set through an alternative, consultative framework. Legislation could note key high-level sequencing factors and end-date for the process overall. At a minimum, it must set down the key technical and market 'readiness' factors that must be considered in addressing detailed timetabling issues, such as consumer readiness, transmission, coverage and reception issues.

### **3.2.1 Key benchmarks and readiness factors**

There must be an explicit recognition and statement of the benchmarks for analogue switch-off in each area – for example, the percentage of television sets which are able to receive terrestrial digital broadcasts. Digital terrestrial television penetration levels must be approaching 100% before switchover can occur. The clear statement of such a benchmark will reflect the underlying objective of the switchover project - to ensure that Australians continue to receive the services they have come to value so highly. It will also focus consumers and industry and positively drive preparations.

Of primary importance to viewers, broadcasters and government will be the requirement for at least 'same coverage' to have been met, including the provision of gap-fillers and the conversion of analogue television black-spots (TVBSP). In considering 'same coverage', recognition must be given to issues of likely population change. Before any decision on analogue switch-off can be made in any area, it will be vital that ACMA has reviewed the relevant Digital Channel Plans for that area. The timing for conversion of self-help re-transmission sites must be planned and coordinated with gap filler and other solutions necessary to ensure that all Australians have access to digital terrestrial television after analogue switch-off.

### **3.2.2 Legislative framework for decision-making**

As regards detailed timetable decision-making, Free TV notes that the Discussion Paper identifies several options for a more flexible regulatory framework:

- Switchover timetable set by regulation
- Switchover timetable set by Ministerial Determination
- Switchover timetable set by the Department
- Switchover timetable set by the Australian Communications and Media Authority (ACMA)

A switch-off timetable set by the Minister is clearly the appropriate approach. This would appear to provide a process free from prohibitive administrative requirements that may otherwise hinder a responsive and timely reaction to on-the-ground developments. Timetable decisions are critical to the success of the digital switch-over project and therefore it is appropriate they be made at Ministerial level. The Minister is best able to consider all relevant policy, technical and readiness factors and to take a holistic view of timetabling issues.

Industry and individual broadcasters in each region will have the best on the ground knowledge of transmission and reception issues and it is therefore vital that proper consultation take place. Switchover must be a cooperative effort between broadcasters and Government.

Free TV does not support the delegation of timetable-setting powers to ACMA or the Department. The power to set the timetable should remain with the Minister. Whilst ACMA's advice on the technical issues relevant to an area's readiness for switchover will be vital, the Minister is able to take a broader and more holistic view of a region/area's readiness for switchover. It is also appropriate that the task of timetable setting remain within the same part of Government that is responsible for setting the other key switchover parameters (policy, take-up drivers, etc).

ACMA's role will be to provide the specialist technical advice required to support government decision-making throughout analogue switch-off.

The overriding consideration for the free to air television industry is to ensure that all aspects of the timeframe for analogue switch-off are managed by Government in an open and consultative manner. A regulatory framework for timetable setting that recognises this fact, and which provides the appropriate balance of certainty and responsiveness, should be the Government's priority.

### **3.3 Other provisions affected by changes to the duration of the simulcast period**

As explained in the Discussion Paper, there is a range of regulatory provisions and obligations which are timed to change in accordance with the end of the simulcast period in a licence area. These can be separated into regulatory provisions giving rise to content obligations, and provisions affecting technical and operational matters.

#### **3.3.1 Content-related regulatory provisions**

The end of the exemption for high definition and standard definition multi-channels from Australian and children's program standards and captioning requirements is timed to end with the end of the simulcast period in a licence area. The high definition (HD) quota is also due to expire at this time.

The Discussion Paper notes that "if there is a switchover timetable based on areas other than television licence areas, there may be some licence areas where the simulcast period has ended in some parts of the licence area, while it continues in other parts of the licence area."

The task of switchover will be highly complex, resource-intensive and operationally demanding for broadcasters. Clearly, it would be unacceptable for broadcasters to face differing content regulatory requirements within licence areas. Such a situation would be almost impossible to manage, and would create an unjustifiably high compliance burden, for no apparent public policy benefit. A substantial amount of programming is currently compiled and transmitted on a network basis and significant costs would arise from differing content obligations across different markets.

The same considerations apply as regards differing regulatory requirements across different licence areas. This would not be acceptable or indeed desirable for broadcasters and would be of particular concern for regional broadcasters carrying content provided through affiliation agreements with metropolitan broadcasters.

A more appropriate arrangement would be for changed regulatory requirements to commence on a single date following the complete switch-off of analogue terrestrial television signals (or, phased-in within a specific time-frame, as may be appropriate).

That date should be determined as part of the statutory reviews of the content (Part 9 of the BSA) and captioning (clause 38 of Schedule 4 to the BSA) requirements, as required by section 60C of the BSA.

The appropriate timing for these reviews is in the year following complete analogue switch-off. Free TV has already identified this as an issue in its submission to the DBCDE Discussion Paper *Access to Electronic Media for the Hearing and Vision Impaired*.

Multi-channels are new services, whose final composition and nature are still unclear. This makes it particularly important to carefully consider the impact of regulatory settings for these services. Given the current start-up nature of the digital multi-channels, and the niche audiences attracted to specialised programming, broadcasters are currently building audiences for multi-channel content. This means it will be premature to consider additional content requirements until these services have become established.

The appropriate time for the consideration of future content requirements on multi-channels will come following their establishment in the marketplace and once Australia has moved to a digital-only environment.

It should also be noted that in the year leading up to switchover, broadcasters will be facing significant technical and operational commitments in delivering what the Government has described as the biggest change facing this country since decimal currency was introduced.

For these reasons, Free TV therefore supports the statutory reviews taking place in the year after digital television switchover. It is through these reviews that the future of the existing regulatory exemptions for captioning and Australian and Children's content on multi-channels will be determined. Hence, these exemptions must be extended to accommodate this timeframe, rather than being matched to the end of the simulcast period in individual licence areas.

### **3.3.2 HDTV quota**

At present, the HD quota applies until the end of the simulcast period in each licence area.

For the reasons outlined above, broadcasters should not face different regulatory obligations in different licence areas as switchover progresses.

The HD quota provisions should be amended so that the obligations end upon completion of switchover Australia-wide, consistent with the other aspects of this submission.

Free TV notes that members represented by Regional Broadcasters Australia (RBA) have, in their submission to the Discussion Paper, also supported changes to delink these provisions from the end of the simulcast period in each licence area.

RBA has supported an immediate end to the HD quota provisions, a position which reflects the ongoing impact on regional and remote broadcasters of the regulatory reporting requirements associated with the quota provisions. This position does not reflect a lack of support for high-definition digital television in Australia. As noted by RBA, broadcasters currently exceed the HD quota provisions and HD multi-channels are in operation.

### **3.3.3 Technical and operational provisions**

The Discussion Paper has identified a range of regulatory requirements relating to transmission and planning matters which are timed to change with the end of the simulcast period in each licence area.

These include:

- the requirement for analogue transmissions to cease at the end of the simulcast period (Sch 4, cl 6(3)(h); 19 (3)(h));
- the requirement for same coverage and potential reception quality (Sch 4, cl 6(3)(j); 19(3)(j));
- simulcast requirements (Sch 2, cl 7 (1)(m));
- the return of transmitter licences following the end of the simulcast period (Sch 4 cl 8(4)(b); cl 23 (4)).;
- ACMA's power to determine a 'primary' service for the purpose of anti-siphoning restrictions (Sch 4, cl 41G and 41M (from 1 Jan 2009)); and
- Transmitter licence provisions in the *Radiocommunications Act 1992* (ss 102B; 102AB and 102AC (from 1 Jan 2009)).

Free TV reserves its position on the precise timetable for these provisions to operate, noting that this must be addressed by Government as part of the detailed timetable planning work that is yet to occur. The appropriate timeframe for the operation of these provisions may vary for each licence area or for each broadcaster and these are issues to be worked through as part of the consultative process for setting the detailed switchover timetable.

However, Free TV supports amendments which would give the Government maximum flexibility in coming to such decisions. Free TV would support amendments that delink these provisions from licence area-by-licence area switch-off. This would allow the Government, in consultation with industry, to determine the appropriate time for the operation of these provisions.