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Dear Sir/Madam

## **SPECTRUM TRADING: CONSULTATION ON TRADING AND THIRD PARTY AUTHORISATIONS OF SPECTRUM AND APPARATUS LICENCES**

Free TV represents all of Australia's free to air commercial television broadcasters. Free TV welcomes the opportunity to comment on ACMA's consultation on *Trading and Third Party Authorisations of Spectrum and Apparatus Licences*. Free TV appreciates ACMA's willingness to accept this submission after the formal close of consultation.

By way of background, issues regarding spectrum trading and third party use of spectrum are relevant to Australian terrestrial television broadcasters in circumstances where additional use is made of licensed spectrum in the broadcasting services band:

- Planning for Television Black Spot retransmission facilities;
- Provision for 'drop through' of frequencies under section 34 of the *Broadcasting Services Act 1992*; and
- Low interference potential devices.

ACMA decisions regarding spectrum trading and third party use may also impact on spectrum bands used for services ancillary to broadcasting, such as third party service providers to electronic news gathering and television outside broadcasts.

We note ACMA's consultation paper includes a consideration of various barriers to spectrum trading and seeks comment on these issues. This submission provides comment on selected aspects of ACMA's paper.

As a preliminary comment, Free TV disagrees with ACMA's use of the property market as a useful comparison model for the spectrum market. It would be more appropriate to compare issues of demand and supply of spectrum to commodities or resources where there is also a finite quantity. For example, irrigation licences with respect to water and mining licences with respect to minerals. Housing and car markets are renewable, as they deal in manufactured commodities. Further, the housing market and the spectrum market are very different in terms of the level of regulatory intervention exercised by Government, with a much greater degree of government management of spectrum resources.

A reliance on an inappropriate comparison market may lead ACMA to draw incorrect conclusions regarding spectrum market characteristics, buyer and seller behaviour, barriers to trade and potential solutions to trade barriers.

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Free TV notes with interest ACMA's discussion of the potential for "the acquisition of a licence and subsequent non-utilisation of that licence" to constitute a significant barrier to trade.

Free TV has consistently supported 'use it or lose it' principles in spectrum management as an incentive to efficiency of use and as a means of reducing the likelihood of parties overstating their demand for spectrum. Decisions to change the existing use of spectrum in response to increased demand result in major financial implications for the existing spectrum user and the potential loss of capacity and quality of an existing service.

The implementation of 'use it or lose it' principles would also be an appropriate response to the acquisition of spectrum by parties seeking to prevent competitors from accessing it. Unless 'use it or lose it' principles are introduced, spectrum squatting will continue and will frustrate any attempts to bring on a secondary market for spectrum as a result of spectrum scarcity.

We also note that at several points throughout the consultation paper, ACMA discusses modifying service definitions to increase flexibility in spectrum use. Free TV notes that the modification of radiocommunications services as defined in the ITU Radio Regulations is normally a matter for a World Radio Conference. These definitions are then included in the ACMA's Australian Radiofrequency Spectrum Plan. Free TV considers this important point of context should have been included in the discussion paper.

It should also be emphasised that different services are planned in different ways. For example, broadcasting use is planned in detail to minimise interference whereas mobile use is planned with some possibility of interference. In such circumstances, there is minimal ability to institute flexibility of spectrum use between services as suggested in the consultation paper.

Thank you once again for the opportunity to comment on the consultation paper.

Yours sincerely



**Julie Flynn**  
CEO