



44 Avenue Road
Mosman NSW
Australia 2088

T : 61 2 8968 7100
F : 61 2 9969 3520
W : freetv.com.au

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Department of Communications,
Information Technology and the Arts
GPO Box 2154
Canberra ACT 2601

To whom it may concern

Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

Free TV Australia represents all of Australia's commercial free-to-air television broadcasters. Free TV welcomes the opportunity to comment on the Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011 (the Bill).

In general, Free TV supports the draft legislation and believes it will efficiently facilitate the transition to digital. In particular, we support the following elements of the Bill:

- The streamlining of processes surrounding digital planning. In particular, we appreciate that 'Television Licence Area Plans' will be more flexible, will allow for digital-to-digital simulcasts and will reduce the need for public consultation.
- The provision in Schedule 2, Item 5 which permits remote area licensees to broadcast only standard definition signals during the simulcast periods using multiplex solutions. This is an important provision, which will significantly reduce the technical and cost burden of conversion for broadcasters in thinly populated areas.
- The introduction of Category D reception areas in Western Australian with respect to viewers who will, after the end of the simulcast period, receive adequate reception of all the applicable terrestrial digital commercial television broadcasting services.

However, Free TV does feel that minor changes or additional information in certain area of the Bill may be beneficial, particularly with respect to provisions dealing with access to satellite services for viewers who will eventually receive an adequate terrestrial signal as part of the digital transition. Comments on this and other specific items are provided in the Attachment.

Thank you again for the opportunity to comment on the Bill. Please contact me if you would like further input or require clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jessica Coates".

Jessica Coates
Manager, Copyright Law & Media Policy

for
Julie Flynn
CEO

Free TV Australia Limited
ABN 76 101 842 184
ACN 101 842 184



Free TV Australia
comments on specific provisions of the draft
Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

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Schedule 1

- Item 1 – Re s6(1) definition of BSB – this amendment repeals the current provision’s reference to datacasting licences. This would suggest to us either that all the datacasting licences have now been terminated, or that they will be terminated before the new provisions come into force. Is this correct?
- Item 6 – s26(1K) – this provision allows the Minister to make a unilateral determination designating a restack day for a licence area. Free TV requests clarification of when and how such a decision may be made, what factors may be taken into account in the decision, and how certainty and consistency will be built into the mechanism.
- Item 21 – s6(5B) and other references to ‘multi-channel’ generally – we note that the BSA does not currently contain a definition of ‘multi-channel’. With the increasing complexity of the technical and licensing regime as we move toward conversion, Free TV feels it may be beneficial at this time to introduce such a definition. This will provide clarity that ‘multi-channel’ is intended to mean alternative programming channels provided by the relevant local broadcasters, as opposed to additional channels that might be provided by other services in the area.
- Item 43 – s102AC(1) – As a minor point, there appears to be an error in this provision. The provision refers to a ‘licence area’; however, the relevant term defined by the Act is a ‘BSA licence area.’ Is this a drafting error, or is it intended that the terms will have different meanings?

Schedule 2

- Re Category D reception areas (various items) – Free TV would like to see an equivalent of the new Western Australian Category D reception area written into the provisions for the South East and North VAST licence areas as a subset of Category B. This removes the risk of viewers receiving VAST approval in areas in which the networks are well advanced in planning for a local digital transmitter that will resolve their problems. It is sensible to have a separate category for areas in which digital coverage will be achieved by the end of the simulcast period or at the time the area becomes a digital only local market area, and there seems no reason why this logical approach should only apply to WA. In the absence of a “sunset” provision as proposed below, we would also like to see this same consideration included in the elements of the Category A Out of Area Authorisation. We

acknowledge, however, that Category D would not be appropriate for Remote Central and Eastern licence areas.

- Item 22 – s130ZBB(15)(e) – This provision states that the Western Australia conditional access scheme must require the scheme administrator to publish on its website a notice informing the public that the relevant day is the designated digital service day for the related terrestrial licence area. However, currently at least one likely administrator (RBA Holdings Pty Ltd) does not have a website and therefore would be unable to comply with this requirement. It seems inappropriate and inequitable to require a company to supply a website simply for the sake of complying with this provision. Free TV therefore proposes that this provision be removed or amended to add flexibility to its application.
- Item 22 – ss130ZBB(16) and (17) – Free TV is concerned with the amendments which make VAST entitlement irrevocable, even once new terrestrial services have been provided. Free TV far prefers the current BSA approach to this issue. The proposed amendments act as a major disincentive for regional broadcasters to invest capital to improve and expand terrestrial coverage in population growth areas, as there seems little reason to provide additional services when all the potential customers are already on satellite. This is also a detriment to consumers, as terrestrial reception is inherently superior and less expensive than satellite reception, and to communities whose economic health and wellbeing is intrinsically linked with the ability of local businesses to advertise to local consumers.
- Item 35 – re definition of ‘service deficient areas’ – as presently drafted, an area will be service deficient (and hence eligible for VAST) if the number of terrestrial digital services is less than the number of VAST digital services. This will cause problems when/if:
 - a new multichannel is added by a metro network - While it is relatively simple for a s38C licensee to expand their platform and pick up the new channel, it is much more difficult, and therefore time consuming, for regional/remote terrestrial operators to do so, particularly where additional transmitter infrastructure is needed to deliver the service. This may lead to a situation where there is a period of time in which the new channel appears on the VAST service, but not the terrestrial, triggering a service deficient status. To address this, Free TV proposes that the service deficient provisions not be triggered where the local terrestrial licensees have lodged a rollout timetable for any new service.
 - a regional broadcaster opts to create its own multichannel, with different content to the metro network – In this circumstance a service deficient status could be triggered if the s38C licensee chose, or was required, to carry both the regional multichannel and the metro multichannel (ie meaning the VAST service had more channels than the terrestrial service). The current provisions would therefore dictate the content of regional services and act as a major disincentive for regional broadcasters to be innovative, respond to local demand or to otherwise program

their services differently from the metros. Free TV therefore proposes that a service deficient status be triggered not by the number of VAST services exceeding the terrestrial, but by the number of metro channels exceeding that in the applicable regional/remote area.

- Item 35 – re s130ZH(3) timeframes for ‘service deficient areas’ – Free TV proposes that the current time windows for equalisation of services be increased from nine and three months after the area becomes digital-only to twelve and six months. This is necessary to provide sufficient time for broadcasters in challenging areas to undertake compliance steps such as the installation of transmitters. As the bill is likely to take several months to come into effect, this is particularly important with respect to areas that are already digital-only, such South Australia and Western Australia.
- Item 42 – s9A definition of ‘under serviced area’ – Free TV supports the intention of this provision to allow ABC to be granted a conversion exemption for sites in which they are currently the only broadcaster. However, as currently drafted, it raises three potential problems:
 - Free TV is concerned that the ABC will be able to apply for an exemption at a site where all the commercials are present, but SBS is missing. This would potentially result in a situation where, because of the lack of a terrestrial SBS signal at a site the ABC was also able to withdraw terrestrially, leaving the commercial services available terrestrially but the nationals only available by satellite. This is clearly not the intention of the legislation, and would force viewers to ‘double up’ their services (and their costs) to receive the complete suite.
 - Free TV is also concerned regarding sites in which one or more of the commercial services is only available via a self help transmitter. It is clearly inappropriate to allow the ABC to obtain an exemption where the commercials plan to install a full set of digital services, but one of them is currently relying on a self help service for its analogue signal.
 - Finally, Free TV is concerned that there is no consideration in this proposed provision of the geographic size of the ‘specified area.’ The draft stipulates a method for determining the population, but is silent as to the upper and lower geographic limits of size of the ‘specified area.’ Even in low population density areas, it would theoretically be possible to define an area which has more than 500 people, if that area is large enough. However, this does not mean that it will be cost effective or technically possible for broadcasters to provide a digital service to this area.

Free TV therefore proposes that the exemption provisions only be triggered where one or more of the commercial broadcasters (as opposed to any broadcaster) is missing in the analogue signal, including analogue signals provided by means of a self help

retransmission service, and where no digital television services are planned to be provided, either by commercials or via a retransmission service. This will allow the ABC to seek exemption for those sites where no-one else is present, whilst avoiding the scenarios above. Free TV further proposes that the geographic size of the 'specified area' be defined as the planned coverage area of a specified transmitter as determined by the relevant ACMA planning guidelines.

Schedule 3

- Item 5 – 5 business day notification requirement– Free TV is concerned that the proposed 5 business day period is not sufficient notice for broadcasters to respond to proposed variations to the commercial television conversion scheme. Free TV therefore proposes that it be extended to at least 10 business days.

Proposed Additional Amendment

In addition to the comment on the existing proposed amendments above, Free TV would also like to propose that ss130ZB(3)(b) and 130ZBB(3)(b) of the BSA be amended to 'sunset' the provisions allowing automatic transfer of Aurora recipients to VAST.

We note that these provisions deal with out of area authorisations in eastern and western areas respectively and providing automatic access to VAST for those people subject to pre-existing out of area authorisations on the Aurora out of area platform. A consequence of these provisions is that they provide a "back door" process by which viewers in Category B reception areas can gain access to VAST earlier than they otherwise might under ss130ZB(13) and (14). Such viewers can submit an out of area application for access to Aurora, and once approved, can receive immediate and automatic approval for access to VAST. Even more concerning, viewers can use this system to obtain access to VAST in areas in which digital transmitters are planned (ie non-Category B areas).

In order to protect the integrity of the processes for planning and commissioning additional digital terrestrial services prior to the determination of Category B reception areas, we submit it is appropriate to add a sunset clause to the out of area automatic access to VAST, limiting VAST access to those receiving Aurora prior to a certain date (eg 1 January 2011). The amendment could be easily achieved by amending s130ZB(3)(b) to add the words 'and was so authorised prior to 1 January 2011' after the current 'is authorised.'

The proposed amendment will not disadvantage viewers, as viewers with prior out of area authorisations will retain their right to access VAST while viewers without prior authorisation would be entitled to access to VAST in the normal course of assessment, if they remain in a Category B reception area within the period set down in ss130ZB(13) and (14).