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Dear Sir/Madam

Mobile Premium Services Draft Industry Code C637:2011

Free TV Australia is the peak industry body representing each of Australia's commercial free-to-air television licensees. Free TV welcomes the opportunity to comment on the Mobile Premium Services Draft Industry Code C637:2011 issued on 6 September 2011 (**Draft Code**).

One of Free TV's roles is to provide classification and information services to advertisers, agencies and production houses in relation to television commercials and infomercials.

Free TV member broadcasters are also affected by advertising restrictions relating to mobile premium services in that they affect the promotion of 19 SMS voting and competition services within programs or in connection to programs.

1. General comments

Free TV supports the objectives of the current Mobile Premium Services Industry Code (**Current Code**) and the Draft Code. Free TV also supports the objectives of the changes to the Current Code introduced by the Draft Code, including to enhance community safeguards by imposing new requirements on mobile premium services suppliers and to reduce the number of consumer complaints to the Telecommunications Industry Ombudsman. In particular, in its role as a provider of commercials advice, Free TV supports the focus of the Draft Code on promoting clarity in advertising.

2. Specific submissions

Free TV sets out below its submissions on particular issues in the Draft Code in the context of advertising of mobile premium services.

2.1 Clarity and compliance

While Free TV supports the objects of the Draft Code, Free TV considers that those objects must also be weighed against the cost and ease of compliance with the Draft Code for businesses.

It is widely recognised by the Productivity Commission and other government entities that regulation should go no further than is required to meet its objectives, should be the minimum needed to achieve a clear public purpose, and should not place an unbalanced compliance burden on businesses and industry subject to the regulation.

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In this context, Free TV points to the more prescriptive advertising requirements introduced in Chapter 3 of the Draft Code, particularly in relation to the display of information about Data Fees and Subscription Premium Services.

Free TV understands that the Draft Code has been developed by members of the communications industry and is intended to strike a fair balance between consumer and business interests.

However, Free TV submits that the changes to the Current Code and the more prescriptive advertising requirements introduced by the Draft Code will likely increase compliance costs for businesses, particularly advertisers. Such compliance costs will likely include training to understand the new provisions of the Draft Code, development and/or amendment of internal compliance policies and guidelines, and greater staff time to review advertisements for compliance with the specific requirements of the Draft Code.

Free TV submits that whilst clarity in regulation is important for suppliers and consumers of mobile premium services, the more prescriptive the requirements, the higher the compliance costs imposed on suppliers.

Free TV submits that this issue should be taken into account when finalising the Draft Code.

2.2 Clarification of the "three line breaks" rule

Free TV understands that the deeming provisions in sections 3.1.3 and 3.2.4 of the Draft Code were introduced to provide clarity to advertisers as to what constitutes "sufficient proximity" for the purposes of sections 3.1.2(a)(iii) and 3.2.3(b) of the Draft Code.

Free TV supports the introduction of these provisions as a form of "safe harbour" for advertisers who decide to comply with the sufficient proximity requirements by following the requirements of these deeming provisions.

The deeming provisions are directed at the visual components of an advertisement. In this respect, they appear to be intended for the benefit of television advertisers and broadcasters as well as for the benefit of other visual advertisers (including print). However, it is unclear whether the requirement that the information be "within three line breaks" of either the Short Code (for the purpose of section 3.1.2(a)(iii)) or each other (for the purpose of section 3.2.3(b)) is intended to apply in a television advertisement or program format, and if so, how it is to be applied and measured.

Free TV submits that the deeming provisions are clearly intended to make compliance with the Draft Code easier for suppliers and that television advertisers should be entitled to take the benefit of the protection offered by the deeming provisions. Free TV submits that the deeming provisions should be amended to make it clear that either:

- (a) the "three line breaks" rule within the deeming provisions does not apply to television advertising or in-program promotions; or
- (b) if the "three line breaks" rule is intended to apply to television advertisements and in-program promotions, clarification about how it applies.

If the "three line breaks" rule within the deeming provisions does not apply to television advertising and in-program promotions, it may be preferable to introduce separate deeming

provisions specifically for television advertisements and in-program promotions which are in all other respects equivalent to sections 3.1.3 and 3.2.4.

2.3 Access to the Register

One of Free TV's roles is to provide classification and information services to advertisers, agencies and production houses in relation to television commercials and infomercials. As part of this service and in order to provide advice in relation to the Code, Free TV needs to be able to identify whether advertisers are subject to the Code. Free TV's experience is that this task is not always straightforward, given the complex definitions of entities to whom the Code applies.

Free TV submits that access to the Mobile Premium Services Industry Register (**Register**) should be made publicly available to provide Free TV (and others) with greater certainty in determining whether an advertiser is subject to the Code.

Free TV also notes that under the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.2)*, suppliers are prohibited from contracting with a content supplier to deliver premium messaging services if the content supplier is not registered.

In this context, Free TV submits that it is consistent with the objectives of the Code for the public to have access to the Register on the basis that:


- (a) it will assist Free TV to ensure that the advertisements of those suppliers that are subject to the Code do in fact comply with the specific advertising provisions in the Code; and
- (b) more broadly, it will assist organisations to determine whether or not they may contract with a content suppliers.

2.4 Additional information regarding compliance

Given the complexity of the Draft Code and the various provisions affecting television advertisements and in-program promotions, Free TV would support the development of easy to use fact sheets or guidelines. This would moderate the compliance burden and would encourage greater compliance with the Code and its objects.

A useful example is the Australian Communications and Media Authority's guidelines to the Children's Television Standards, which provide a plain English guide to the Standards and provide several case studies to assist industry in compliance.

Yours faithfully


per
JULIE FLYNN
CEO