



# **Submission by Free TV Australia**

Australian Communications and Media  
Authority

*Regional television local content  
investigation*

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## EXECUTIVE SUMMARY

- Free TV welcomes the opportunity to participate in the ACMA's investigation into local content on regional television, commenced following the Ministerial Direction issued on 26 June 2013.
- Regional commercial television broadcasting licensees currently provide a range of culturally significant content to communities in their licence area. This includes the provision of local news and information services over and above what is required under the existing regulatory framework.
- Regional broadcasters believe that the legislation has not failed – and there is no evidence of any such policy failure. The flexibility within the current legislative framework provides individual broadcasters, in their respective licence areas, with a number of options. These need to remain open going forward, having regard to the converged media environment, so that current broadcaster models can be reviewed and revised out of necessity as we face growing competition from internet-based broadcasting services and operators with no regulatory obligations.
- Placing additional regulatory requirements on regional commercial television broadcasters is unreasonable. These services are already heavily regulated and pay up to 4.5% of gross revenues in licence fees. The sector is also under pressure from a range of other sources, including competition from unregulated content platforms, and increasing affiliation fees.
- Market forces in each regional licence area should dictate the provision of local content services. In areas that are not subject to the current licence condition, local news and information services are currently provided where there is adequate demand, and where they can attract sufficient audiences (and advertisers) to be commercially viable. Any requirement to provide additional services in these areas will create a financial impost on regional commercial television broadcasters who are already operating in challenging economic conditions.
- If it is determined that there is a need for additional local news and information services in particular licence areas, then this should be provided by the government, noting the significant additional funding recently received by the ABC for both news and regional programming. Alternatively, a competitive tender process may be an appropriate and efficient way to deliver these services.

## 1. Introduction

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters, including those who provide services in remote and regional Australia.

This submission focuses on whether local content obligations should be extended to additional regional areas in Australia, as raised by question 7 of the *Regional television local content investigation 2013 – Consultation Paper* (the Consultation Paper) and clause 4.2(g) of the *Broadcasting Services (Material of Local Significance – Regional Aggregated Commercial Television Broadcasting Licences) Direction 2013*.

This submission will not address the effectiveness of section 43A in its current form, or the operation of the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007* (the Current Licence Condition).

At the outset, it is relevant to note that all Free TV members provide culturally significant local content to all Australians and this includes the provision of local news services that are relevant and responsive to regional areas. Free TV members who broadcast in regional areas that are subject to section 43A licence conditions make a significant investment in their local news services and employ hundreds of Australians across geographically dispersed areas. They are delivering content that is of relevance to those licence areas, including material that relates directly to the local areas. A number of regional broadcasters provide local news and information services in the absence of any legal requirement to do so.

There are a number of factors that will impact on the nature and volume of local news and information services to regional areas, including population, financial viability, access to available content and other available sources of content (including other commercial broadcasting services). Such factors cannot be generally applied to individual regional areas; market conditions in regional areas under review by the ACMA would need to be considered on a case by case basis to ascertain the ability to sustainably operate under the imposition of local content obligations.

In addition, increasing regulation and imposing additional costs on regional broadcasters in an already challenging environment will place undue pressure on these existing services, which may lead to a decline in the quality and quantity of services that are currently provided. This could undermine the objective of localism, and may ultimately be counterproductive.

It is important to balance the relevant objects at section 3(1)(ea) and (g) of the BSA (concerning the provision of local content) with other applicable parts of the legislative framework, including:

- the object at 3(1)(b) of the BSA, to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
- the regulatory policy at section 4(2)(a) of the BSA, that broadcasting services be regulated in a manner that enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.

For a number of reasons, local content services in regional areas are less economically viable than comparable services operated in metropolitan areas. Inequities in market conditions applicable to regional areas and regional broadcasters include:

- cost of affiliation fees;
- high cost of producing local programming; and
- higher transmission and other costs associated with serving geographically dispersed licence areas.

These factors not only limit regional broadcasters' capacity to compete effectively, but also severely constrain their ability to fund local program production. Imposing a requirement on regional broadcasters to operate a loss-making news or local information service is neither competitive nor efficient, and represents an unreasonable administrative and financial burden.

In Free TV's submission, the regulation of localism in additional regional areas should be left to market forces. In the absence of local content obligations, the market conditions specific to the regional area dictate the provision of local content services; services are provided where there is adequate demand, and where such services will attract sufficient audience to be commercially viable.

If regional broadcasters are required to provide local content services in regions that are not currently subject to s43A licence conditions (including those already serviced by an incumbent provider) the new entrant services are likely to fail for a lack of demand, and because market conditions are not conducive to their entry or establishment. In these circumstances, local content obligations can act as economic imposts on regional broadcasters and could have wider ramifications, jeopardising the existing local content services that are operated presently by regional broadcasters. The free-to-air broadcasters are commercial enterprises, and it is inappropriate that they be required to introduce new services that they would otherwise consider commercially unviable, and to absorb the not insignificant establishment and operational costs associated with such services.

If however it is determined that there is a public policy benefit in the provision of additional services to particular regional markets, serious consideration should be given to government interventions to provide funding and support for such services, whether through the ABC or via competitive tender.

## **2. Additional regulation inappropriate**

All Free TV members provide content that is of significance to all Australians. In 2011-2012, commercial free-to-air broadcasters invested \$1.35 billion in Australian content, including drama, light entertainment, children's programs, documentaries, sports, news and current affairs.<sup>1</sup> Regional broadcasters make significant investments to deliver local news services and other locally relevant programs that are consonant with regional audiences. These Australian stories contribute to the cultural fabric of our society and play an important part in the lives of all Australians, regardless of whether they live in a metropolitan or rural/regional area. To sustain such investment and continue delivering this content to Australians, regional broadcasters must remain viable businesses and be able to compete on equal footing with other content providers in the market.

Commercial broadcasting services cannot continue to be regulated in isolation, without reference to the wider media landscape. In a converged media environment, placing additional regulatory obligations on regional broadcasters is inappropriate,

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<sup>1</sup> Figures compiled by Free TV Australia

particularly when they are facing increasing pressure from many sources. The industry is in a period of significant transition, with the traditional broadcast model being challenged by technology.

The growing popularity of connected TVs and the introduction of the NBN with its “hundreds and hundreds and hundreds” of IPTV channels<sup>2</sup> will increase the existing capacity of audiences to view regulated and unregulated content on a single screen. Similarly, the digital dividend broadcasting spectrum recently sold to telecommunications companies will be used to deliver television-like content to mobile devices. These services are not subject to any content obligations.

Conversely, commercial free-to-air television broadcasters are already heavily regulated. In addition to standard corporate taxes, they pay up to 4.5% of their gross revenue in licence fees.<sup>3</sup> Analysis from Venture Consulting indicates that even at this level, Australian commercial television broadcasters are paying the highest broadcasting licence fees in the developed world, in addition to bearing content obligations that are at least as onerous as any comparable market.<sup>4</sup>

In addition to the challenges introduced by the proliferation of new and emerging media sources, regional commercial television broadcasting licensees face additional economic challenges. A number of businesses in regional and rural areas of Australia are under strain, either closing down, or reducing or modifying their advertising spend. This is in turn having a negative impact on the revenue streams available to broadcasters in these areas.<sup>5</sup> These trends exacerbate the limitations already inherent in regional advertising markets, including inaccessibility, finite viewership, smaller revenue bases and comparatively low population densities.

At the same time, regional television licensees are facing continual increases in the affiliate fees paid as part of their agreements with metropolitan television broadcasters.<sup>6</sup> Engineering transmission costs are also significant, given the large geographic distances involved. Vastly different transmission structures are required to service regional Australian markets compared to metropolitan markets. More than 1,000 transmitters are required in regional and remote Australia compared with about 100 transmitters in metropolitan cities of Australia.

In this context, the imposition of additional, resource-intensive content obligations on regional broadcasters is unreasonable, and is an impediment to their ability to compete on an equal playing field.

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<sup>2</sup> Senator Stephen Conroy, AIIA, June 2009

[http://www.arnnet.com.au/article/310712/conroy\\_nbn\\_bring\\_hundreds\\_tv\\_channels\\_australia/](http://www.arnnet.com.au/article/310712/conroy_nbn_bring_hundreds_tv_channels_australia/)

<sup>3</sup> Down from a maximum of 9% of gross revenues, following the passage of the *Television Licence Fees Amendment Act 2013* (Cth).

<sup>4</sup> Source: Venture Consulting (2012) *Placing a value on Free-to-air Broadcasting Spectrum in Australia* -

[http://www.freetv.com.au/SiteMedia/w3svc751/Uploads/Documents/Venture\\_Consulting\\_-\\_PLACING\\_A\\_VALUE\\_ON\\_FREE\\_TO\\_AIR\\_BROADCASTING\\_SPECTRUM\\_IN\\_AUSTRALIA\\_-\\_FEB\\_2012.pdf](http://www.freetv.com.au/SiteMedia/w3svc751/Uploads/Documents/Venture_Consulting_-_PLACING_A_VALUE_ON_FREE_TO_AIR_BROADCASTING_SPECTRUM_IN_AUSTRALIA_-_FEB_2012.pdf)

<sup>5</sup> See, for example, the submission of WIN Network to the Senate Environment and Communications Committee to the *Broadcasting Services Amendment (Material of Local Significance) Bill 2013* at page 1. This submission noted that 27 businesses who were clients in the Mt Gambier and Riverland areas had closed and a further 76 had cut back their advertising spend.

<sup>6</sup> Morgan Stanley *Southern Cross Media Analysis*, August 19, 2013; pp 6

### **3. Broadcasters' existing contribution to material of local significance**

Free TV members providing broadcasting services in regional licence areas are proud of the services they provide to those communities. In the case of some licensees, material of local significance (whether local news or other information) accounts for close to 100% of the content they produce. This is often their only intellectual property.

Some of these services are provided as a result of the Current Licence Condition. All regional commercial television licensees who are subject to the Current Licence Condition are meeting or exceeding their obligations to provide material of local significance.<sup>7</sup>

It is also relevant to note that in licence areas that are subject to the Current Licence Condition, broadcasters often provide material of local significance over and above what is required. For example, NBN locally produces a community noticeboard Monday-Friday informing viewers of local charity and community non for profit events in respective local areas. Also, NBN produces and telecasts a local initiative entitled 'NBN Junior Journos' for inclusion in the 6pm news bulletin which involves NBN staff engaging with local primary school students to research, write, produce and ultimately present a school news item which is broadcast in NBN's main news bulletin.

Regional commercial television broadcasting licensees also provide local news or information services in licence areas where no regulatory requirements exist, demonstrating a dedication to the communities to which they broadcast.

For example, Prime Media provides a 30 minute weeknight local news service on GWN to regional WA from studios in Bunbury. This service is supported by 18 staff<sup>8</sup> located throughout Western Australia, and including Perth, Geraldton, Broome, Kalgoorlie and Albany. Similarly, the WIN Network provides a number of local news services where there are no regulatory obligations to do so, including in Mildura; Wide Bay (Hervey Bay, Maryborough & Bundaberg) and Central Coast & Whitsundays/Mackay.

Southern Cross Television also provides local news bulletins and updates where there is no regulatory obligation to do so, such as the 5 weekly half hour bulletins for Spencer Gulf on GTS/BKN. This news is sourced entirely by reporters in Port Pirie, Port Augusta, Port Lincoln, Whyalla and Broken Hill. Southern Cross also delivers Mon-Fri news updates for Central and Darwin.

Where there is no regulatory obligation in place and no specific services in a local area, broadcasters also take steps to ensure that the relevant State news services contain material and news from regional areas receiving the service. For example, in the three months following the cessation of its local news services in the Riverland

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<sup>7</sup> See, for example: ACMA Results - *Compliance with Local Content Licence Condition by Regional Commercial Television - Period Commenced 22 July 2012 & Ended 2 February 2013*

<sup>8</sup> Camera operators, journalists, video-journalists, reporters, a news editor and studio director.

and Mount Gambier area, the WIN Network Nine News Adelaide program covered a range of stories that related specifically to those local areas.<sup>9</sup>

Services are provided in areas where it is sustainable and commercially viable to do so and the content is supported by both viewers and advertisers in the relevant local area. The smaller markets that are not subject to the requirements of section 43A are not generally financially viable for more than one commercial television service to provide local news and information. In some cases, this will mean that only one regional commercial broadcaster can provide a viable service in each licence area, because the market cannot support more than one service. Some markets may not be able to sustain any services.

In addition, incumbent broadcasters enjoy a dominant position as a result of historical viewer loyalty. As a consequence, non-incumbents seeking to enter meet difficulties in displacing the incumbent, and cannot recoup the high production costs, particularly as they must pay affiliation fees to their network affiliate even when network programming is not used. These challenges are explored further at section 4, below.

#### **4. Viability of services**

There are number of factors which impact on a regional broadcaster's capacity to provide material of local significance to a regional area.

A number of these constraints are enduring and have not changed since the 2002 Report by the Australian Broadcasting Authority (ABA) into the *Adequacy of Local News and Information Programs on Commercial Television Services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria (Aggregated Markets A, B, C and D)* (the 2002 report), which preceded the Current Licence Condition. Relevantly, these constraints were identified as:

- increasing costs of affiliation fees;
- the costs associated with covering local issues and limited advertising revenue;
- the dominant position of an incumbent in the market; and
- the costs associated with the conversion to digital transmission.<sup>10</sup>

These issues were considered when the ABA decided to impose a licence condition on licensees in the Aggregated Markets.

For the smaller and less populous licence areas, the 2004 report by the ABA into the *Provision of Local News and Information in Solus and Two Operator Markets* (the 2004 report) correctly identified population (both population density and absolute numbers) as a relevant issue in relation to the viability of local news and information services, because it was directly linked to the amount that a broadcaster could

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<sup>9</sup> See WIN Network – Responses to questions on notice - Senate Environment and Communications Committee Inquiry into the *Broadcasting Services Amendment (Material of Local Significance) Bill 2013* – 29 May 2013

<sup>10</sup> Australian Broadcasting Authority Report *Adequacy of Local News and Information Programs on Commercial Television Services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria (Aggregated Markets A, B, C and D)* August 2002, at pages 50-58

charge advertisers for airtime.<sup>11</sup> Importantly for this investigation, the population characteristics of the markets that are not subject to the Current Licence Condition are largely unchanged since the 2004 report by the ABA. In fact, the population figures in some licence areas have dropped,<sup>12</sup> including Broken Hill<sup>13</sup>, Darwin<sup>14</sup>, and Griffith and MIA.<sup>15</sup> Population density in these areas has also not changed. For example, the Remote Central and Eastern Licence area covers more than 3.6 million kilometres and has a population base of less than 700,000 people.<sup>16</sup>

Free TV strongly opposes any suggestion that regional television broadcasting licensees should cross-subsidise the cost of producing local news in areas where it is otherwise not commercially viable.<sup>17</sup> Such an approach is not a feasible solution to the provision of local news and information to communities with a very limited broadcast audience, particularly considering the existing levels of regulation on broadcasters and the increasingly competitive media environment. Cross-subsidisation would also distort competition in the market and create disparity among commercial television broadcasting licensees, disadvantaging those licensees who have a smaller revenue base to draw upon. Each market must be able to draw its revenue from the available licence area population to support commercially sustainable local news and information services.

In the 2004 report, the ABA identified revenue, profitability and service delivery challenges as relevant factors in determining whether the imposition of local content obligations was appropriate, and conducted an assessment of each individual licence area. These issues are still relevant in the current environment. Since that time, regional television broadcasters' share of total advertising revenue has remained fairly static.<sup>18</sup>

In the 9 years since the 2004 report was published, there have been significant changes to the media landscape that pose additional challenges to broadcasters. In particular, the proliferation of additional content services (including mobile services and services provided over the internet) and the introduction of additional digital free-

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<sup>11</sup> Australian Broadcasting Authority *Adequacy of Local News and Information Programs in Commercial Television Broadcasting Services in Regional and Rural Australia (Solus Operator and Two Operator Markets)* June 2004, at pages 44-46.

<sup>12</sup> Comparison between figures stated in the 2004 ABA Report in 2004 and current figures on the ACMA website, based on determination made under section 30 of the BSA:  
<http://www.acma.gov.au/Industry/Broadcast/Television/List-of-TV-broadcasters/broadcasting-licence-areas-television-acma>

<sup>13</sup> Broken Hill TV1 licence area population figures have dropped from 21,000 people in 2004 to 19,561 people at present.

<sup>14</sup> Darwin TV1 licence area population figures have dropped from approximately 111,000 people in 2004 to 107,312 people at present.

<sup>15</sup> Griffith and MIA TV1 licence area population figures have dropped from approximately 66,000 people in 2004 to 64,164 people at present.

<sup>16</sup> Submission by Imparja, Senate Environment and Communications Committee Inquiry in to the *Broadcast Services Amendment (Material of Local Significance) Bill 2013*, and also ACMA website: <http://www.acma.gov.au/Industry/Broadcast/Television/List-of-TV-broadcasters/broadcasting-licence-areas-television-acma>

<sup>17</sup> Senate Environment and Communications Committee *Report on the Broadcasting Services Amendment (Material of Local Significance) Bill 2013* at page 10, paragraph 2.25.

<sup>18</sup> Source: CEASA data – Advertising expenditure in Main Media 2002-2012

to-air channels in each market has resulted in audience fragmentation. The finite number of viewers now have a much broader range of services from which they can access content, meaning that the likely audience numbers for any single service are smaller. At the same time, individuals have the ability to create and access more user-generated content than ever before.

Finally, it is relevant to note that local news and information is expensive to produce, particularly in geographically dispersed areas. Broadcasters operate news bureaux in regional areas that employ locally based news crews and journalists. Capital and operational costs include news studio equipment, cameras, sound recording equipment, videotape and edit suites, production software, communication devices, vision transfer costs, insurance, pre-publication legal advice, captioning, training costs and staff costs. Broadcasters are providing the ACMA with their own data on this issue.

Local content that is provided in licence areas subject to local content obligations are also subject to complicated point calculations in order to comply with minimum standards and reporting conditions. Additional local content obligations may result in regional broadcasters having to deploy additional resources to monitor and record local content points.

The reasons identified in 2004 for deciding not to impose licence conditions on these smaller and more dispersed regional licence areas still exist. There is no rationale for expanding section 43A of the BSA to other regional licence areas. On the contrary, the significant changes to the media landscape mean that the arguments against such an imposition have strengthened since the issue was last examined by the ABA in 2004.

## **5. Alternative interventions**

If the provision of material of local significance to these particular licence areas is determined to be in the public interest, then that material should be provided by the government in a transparent manner, in the same way it has done with children's services on ABC2 and ABC3. It should not be implemented by imposing additional requirements on companies which are already subject to substantial regulatory burdens, and at a time when they face increasing competition from both regulated and unregulated entities.

Free TV notes that in addition to its significant existing regional presence<sup>19</sup>, the Australian Broadcasting Corporation recently received substantial additional funding, including \$10 million in news funding (some of which will be used to place more cameras and video links into regional Australia).<sup>20</sup> A further \$69.4 million has been allocated to the ABC over four years to place more journalists outside metropolitan cities, introduce youth-focussed current affairs programming and expand regional

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<sup>19</sup> In its submission to the Senate Environment and Communications Committee Inquiry into the *Broadcasting Services Amendment (Material of Local Significance) Bill 2013*, the ABC stated that it had 88 reporters working in 48 regional news rooms.

<sup>20</sup> See ABC, *ABC invests in News future*, Media release, 7 February 2013, available at: <http://about.abc.net.au/press-releases/abc-invests-in-news-future/> (accessed 21 August 2013) and Press release from the Hon Sharon Bird MP *Rudd Government Funds Improve ABC Services in Wollongong* 24 July 2013: [http://www.minister.dbcde.gov.au/sharon\\_bird/media\\_releases/008](http://www.minister.dbcde.gov.au/sharon_bird/media_releases/008)

participation in its programming.<sup>21</sup> The role of the ABC in delivering these services was also recognised by the Senate Committee on Environment and Communications in its Report on the *Inquiry into the Broadcasting Services (Material of Local Significance) Bill 2013*.<sup>22</sup>

The ABC is also encouraging and enabling regional Australians to produce their own local content, through the ABC Open Initiative. The ABC Open website states that:

*We all know the media is changing, with more and more people making their own videos, writing stories and sharing photos and ideas through social media. ABC Open is an exciting initiative which provides a focal point for Australian regional communities who want to get involved in sharing their experiences through the ABC via websites, radio and TV.*<sup>23</sup>

Initiatives such as ABC Open represent an innovative and cost effective way of increasing the availability and diversity of material of local significance to regional Australians.

It is also relevant to note that in many of the relevant licence areas there are other available sources of local news and information. For example, in Mount Gambier residents can access:

- the local paper *The Border Watch*, published four days per week;
- 5 ABC radio services, including local radio service ABC South East SA;
- a number of commercial and community radio stations, including 5GTR, whose community interest is the general geographic area; and
- a local online publication <http://www.lakenews.com.au/>, providing community news and information for Mount Gambier and the South East of South Australia.

This is in addition to online news search/aggregation sites that are now available to all Australians, such as Topix<sup>24</sup> and Google.<sup>25</sup> All of these are rich sources of local news and information for a particular area.

An alternative intervention may be for the government to put the provision of local news and information services in these licence areas out to competitive tender. This mechanism would limit the financial impost on commercial broadcasters, and create an incentive to provide services efficiently.

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<sup>21</sup> Commonwealth Government, *Budget 2013–14, Part 2: Expense Measures, 'Broadband, Communications and the Digital Economy*, available at: [http://www.budget.gov.au/2013-14/content/bp2/html/bp2\\_expense-06.htm](http://www.budget.gov.au/2013-14/content/bp2/html/bp2_expense-06.htm) (accessed 21 August 2013).

<sup>22</sup> Senate Environment and Communications Committee *Report on the Broadcasting Services Amendment (Material of Local Significance) Bill 2013* at page 10, paragraph 2.29 and at page 11, at paragraph 1.6 of the Coalition Senators Additional Comments.

<sup>23</sup> Source: <https://open.abc.net.au/about>

<sup>24</sup> See, for example: <http://www.topix.com/au/mount-gambier>

<sup>25</sup> See, for example:  
<http://www.google.com.au/#fp=fcd436d87a70513c&q=mt+gambier&tbn=nws>

## **6. Existing reporting requirements**

Although this submission is not intended to substantively address the general operation of the Current Licence Condition, one matter that Free TV members do wish to raise is the substantial administrative burden of the existing reporting requirements.

The current reporting requirement could be significantly simplified or replaced with an ability for the ACMA to audit compliance without compulsory reporting. This would not result in any diminution of local content, but would be a great benefit to regional broadcasters in these challenging economic conditions. Reducing the administrative reporting obligations on broadcasters will free up valuable resources that could be better utilised in the creation or quality local content.