Submission by Free TV Australia

Inquiry into the Communications Legislation Amendment (Regional Broadcasting Continuity) Bill 2024

Submission to the Senate Environment and Communications Legislation Committee

July 2024

Table of contents

1. Executive Summary

- Regional Australians are starting to lose access to commercial television services and the ongoing availability of local trusted news, local advertising opportunities for regional businesses, and the availability of Australian content in regional areas is at stake.
- There are risks for the health of Australian democracy and social cohesion when accountable local public interest journalism, and Australian sports and entertainment content that reflects our way of life, are no longer available.
- The closure of Mildura Digital Television, which carried the Network Ten terrestrial television services under licence for almost 70,000 people, is the canary in the coalmine.
- Unsustainable fixed costs of broadcasting on ageing equipment mixed with ongoing reductions in advertising revenue means Mildura Digital Television could not sustain the service any longer. Local viewers have been told that they can pay $800 to access these channels via the Viewer Access Satellite Television (**VAST**) satellite service (intended for remote communities, and which does not carry localised advertising), or if they have a stable, fast and reliable internet service they can access the same channels and programs via the 10 Play broadcast video on demand (**BVOD**) service.
- Terrestrially-delivered TV is very important in regional areas—commercial free-to-air terrestrial television represents 58% of all television viewing in regional areas, with Australians in regional areas watching more hours of terrestrial television each week than their metropolitan counterparts.
- Despite the economic headwinds, made worse by the inundation of unregulated digital competitors selling advertising directly against local television providers, regional broadcasters continue to invest in locally-relevant content alongside major Australian content via supply agreements with metropolitan counterparts. In FY23, regional broadcasters spent $35 million on local content, $5+ million more than FY22, in addition to the affiliation fees paid to their metropolitan network program suppliers.
- Short-term regulatory adjustments set out in the Communications Legislation Amendment (Regional Broadcasting Continuity) Bill 2024 (the **Bill**) are not opposed, subject to a number of suggested future-proofing amendments. In particular, amendments which permit regional broadcasters to consolidate transmission arrangements to reduce cost should be widened to include all likely consolidation options.
- However, long-term structural measures are now urgently needed to ensure the future viability of regional commercial television services in Australia, noting that regional broadcasting has been the subject of numerous detailed Government reviews over the past five years, without the announcement of a holistic public policy response from Government.
- Separate to this Bill, the Government has provided additional financial support for VAST for Western Australia providing a short-term lifeline for these remote residents.
- However, VAST installation comes at substantial cost to householders and means householders may not get their local news or advertising. There are questions about whether expanding VAST access to Mildura or other areas that lose access to terrestrial broadcast in the future will deliver real benefits.
- Therefore, Free TV has called on Government to deliver a comprehensive four step plan to place regional television broadcasting on a sustainable long-term footing:
    1. Immediately suspend the outdated and unjustified spectrum tax ($46 million per annum industry-wide), that is the highest in the world, 52 times higher than the equivalent per capita charge on US broadcasters—with the objective of abolishing it completely.

2. Review regulatory imposts on commercial television stations that do not apply to digital competitors who sell advertising against them—such as licence area restrictions and rules that limit ownership arrangements and efficient operation.

3. Implement direct funding support for markets where services are not commercially viable. The Government has used the same principle for decades to underpin telecommunications blackspot solutions with hundreds of millions of dollars and contributions to the Universal Service Obligation and should do the same for regional broadcasting.

4. Review recently-passed television laws to ensure that all Australians can watch their live and free sport no matter how they get their free television, and can find their local television services on their current television sets without needing to buy a new one. By stapling the digital simulcast rights to the broadcast rights, the Government would ensure regional Australia will have access to sports. Inability to acquire digital rights in future would jeopardise the business model for acquisition of broadcast rights, which means millions of Australians will miss out on access to free sports if this step is not taken.

2. Introduction

Free TV Australia appreciates the opportunity to comment on the Bill, which proposes a number of targeted amendments to the *Broadcasting Services Act 1992* (**BSA**) and the *Radiocommunications Act 1992* (**Radiocommunications Act**). Free TV notes these amendments would:

- Give the Australian Communications and Media Authority (the **ACMA**) the power to make certain administrative decisions so that audiences in regional television licence areas have the option to access free-to-air channels via satellite where the channels are no longer broadcast terrestrially.
- Give commercial free-to-air broadcasters some flexibility to consolidate their terrestrial broadcast transmission arrangements to reduce costs, and the ACMA the power to make related adjustments to licence area planning instruments.

This submission sets out comments about drafting and implementation issues related to the Bill and measures it supports, while also providing a broader overview of regional broadcasting and the public policy steps that should now be taken to support its sustainability.

2.1 About Free TV

Free TV Australia is the peak industry body for Australia's commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial FTA television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.

Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent. The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Free TV members provide vital local services to all Australians. In FY23, commercial television networks spent $1.67 billion on Australian content, dedicating 87% of their content expenditure to local programming, an increase of 8% on the previous year. FY23 saw a 16% increase to $35 million in expenditure on regional news compared with the prior year.[1] Regional broadcasters' content costs include production costs for news they produce; and, in the case of three of Free TV's four regional members, program supply or affiliation fees paid to metropolitan networks in return for their supply of programming for broadcast in regional Australia.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia* (the **Deloitte Report**), highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and

[1] ACMA, *TV in Australia: Spending on commercial TV programs for FY23*, released May 2024 – available at https://www.acma.gov.au/commercial-tv-program-expenditure?utm_medium=email&utm_campaign=Report%20shows%20Australian%20content%20spending%20by%20commercial%20television%20in%20202223&utm_content=Report%20shows%20Australian%20content%20spending%20by%20commercial%20television%20in%20202223+CID_06ff9e71eea035fc2ad1a1d662582695&utm_source=SendEmailCampaigns&utm_term=ACMA%20website.

contributed a total of $2.5 billion into the local economy. Further, advertising on commercial TV contributed $161 billion in brand value.[2]

With respect to regional broadcasting, the Deloitte Report found that:

- Commercial television is an important source of news, entertainment and employment for regional and remote communities.
- Broadcast services are a critical way that local residents receive news and information that is relevant to them and help create a sense of belonging to regional communities. This is particularly the case in areas without reliable broadband where, among other things, it is vital that authorities are able to disseminate information to local residents (such as in times of natural disaster like fire and flood).
- This underscores the importance of the news and current affairs programming broadcast to regional audiences. In 2021, these programs made up 16% of total broadcast minutes or 19.5 million minutes (including re-runs).
- Commercial broadcasters also aired a total of over 23,000 hours (1.3 million broadcast minutes) of news and current affairs programs that directly relate to local regional areas.
- Of the 6,234 FTE staff directly employed by the commercial television industry in 2021, more than 1,000 were located in regional or remote areas, contributing directly to local regional economies and ensuring programs and news bulletins are relevant to the local area and meet the needs of communities.

With respect to employment, as economic times have become tougher and competition from online media has intensified, hiring locally to produce local news services has become more difficult and some standalone regional programming has been discontinued. While commercial free-to-air broadcasters employ thousands of journalists and professional content creators and production staff, the same cannot be said for the digital platforms that compete for advertising and recycle television's news content. Unless changes to the regulatory framework address these disparities, these resources will remain under pressure.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity. But for a strong sector we need to balance the regulatory imposts of content quotas, ownership restrictions, accessibility requirements and editorial regulations, against the unregulated competitors who are gaining more and more advertising dollars due to their scale, dominance of the advertising technology market and lack of equivalent content regulation.

Whether in metropolitan or regional areas, free, universally available and accountable news and current affairs programs that audiences can trust are more important now than ever. Robust and independent public interest journalism informs and educates citizens and holds power to account, including at the local level. It plays a critical role in our society and is an essential underpinning of a well-functioning democracy.

[2] Deloitte, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia* (**Deloitte Report**), 2022 – available at https://www.freetv.com.au/wp-content/uploads/2022/09/Everybody-gets-it-2022.pdf.

As Governments around the world grapple with ways to counter mis- and disinformation, address the risks of deep fakes, and deal with how to increase news and media literacy, they must also look at ways to ensure accountable news services, such as television broadcasting, remain sustainable.

3. Regional broadcasting industry context

3.1 Operating context

3.1.1 Terrestrial TV is very important to regional audiences

Terrestrial transmission is very important to regional audiences, especially where internet access, data allowances, and speeds do not match those of metropolitan areas, or where socio-economic conditions for some audience members impact their ability to afford broadband.

While not all markets are measured, including Mildura, most regional television audiences are measured by Regional TAM Pty Limited, which is a joint venture comprising the five free-to-air regional commercial networks. The April 2024 Regional TAM Audit Report[3] shows that for surveyed networks:

- Commercial channel audiences were up slightly year on year for Survey 1 and stable for Survey 2.
- The combined commercial free-to-air audience across all regional markets for Survey 2 was 687,000 viewers.
- This represented 58% of all television viewing,[4] up from 55% last year.
- Analysis of viewing by demographic highlights an audience gain for primary channels amongst people 0–15 and 25–39. For people 65+ there was audience growth on multi-channels.
- In regional areas, 91% of commercial television viewing is carried out live via an aerial/terrestrial transmission.

This is broadly consistent with the ACMA's December 2023 *How we watch and listen to content* report,[5] which noted that regional audiences:

- Are more likely than metropolitan audiences to watch terrestrially-delivered free-to-air TV (60% vs 48%).
- Watch more terrestrially-delivered free-to-air each week (7 hours) compared with metropolitan counterparts (4.9 hours).
- Are less likely than metropolitan counterparts to watch paid streaming services (61% vs 68%) and user-generated online video (51% vs 60%).

While Australian audiences are increasingly watching television online, whether live or at a time of their choosing via video-on-demand services like 7plus, 9Now and 10 Play—which reduces audiences and revenue opportunities for regional broadcasters—this data shows clearly that regional audiences are more reliant than metropolitan audiences on terrestrial television. As such, the case for policy settings which support this means of distribution in regional Australia is unique and important.

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[3] Regional TAM Audit Report, Surveys 1 & 2 2024, April 2024. Regional TAM Audit Report viewing commentary refers to the peak evening viewing period Sun-Sat 6pm-12mn and refers to the entire Regional TAM service footprint i.e.: Combined Aggregate markets, inclusive of all East Coast markets and Regional WA.

[4] In this context, Total TV viewing includes commercial free-to-air, national free-to-air (ABC and SBS), subscription TV and 'spill' (which refers to tuning into a metropolitan television station within a regional market). It does not include including viewing via the internet.

[5] ACMA, *Communications and media in Australia: How we watch and listen to content*, December 2023 – available at https://www.acma.gov.au/publications/2023-12/report/communications-and-media-australia-how-we-watch-and-listen-content.

3.1.2 Advertising is the sole income stream for commercial broadcasters and is challenged for regional television

Unlike their digital streaming competitors, commercial free-to-air broadcasters are licensed and are subject to a range of legislative restrictions and licence conditions.

Importantly, to fall within the legislative definition of a ‘commercial broadcasting service’, a service must, among other things, provide programs intended to appeal to the general public, be made available free, and usually be funded by advertising revenue.[6] They cannot provide a service for a subscription fee or fund a service via a mix of both advertising and subscription revenue (as services like Foxtel, Amazon and Netflix can when they charge both subscription fees and earn advertising revenue).

Commercial broadcasters are also required by law to:

- provide 55% Australian content between 6 am and midnight on primary channels (and 1,460 hours of Australian content between 6 am and midnight on non-primary channels)—which, as set out above, in FY23 cost the industry as a whole $1.67 billion, and regional broadcasters $35 million in local news content;[7]
- broadcast a certain amount of first-release Australian programming each year to meet a first-release Australian program quota set out in regulations; and
- incur other costs such as those relating to regulated complaints-handling processes and closed captioning requirements (with onerous captioning accuracy requirements, including for live news and sport) at significant cost that do not apply to digital competitors.[8]

In this context, the significant reductions in regional broadcasting advertising revenue over the last 10 years, that has accelerated further in the last year, must be taken into account in reviewing sustainability settings for the sector.

[6] BSA, section 14.
[7] Australian content rules are set out in Part 9 of the BSA.
[8] See standard licence conditions in Schedule 2 of the BSA. Note that while many online content providers offer closed captions they are not subject to either quantitative or qualitative requirements. That means they can choose how much closed captioning is provided, and can use more cost-effective means of generating captions because they are not subject to the same regulatory quality requirements as free-to-air broadcasters.

3.1.4 Transmission costs are significant in regional areas

With revenue falling, the cost of distribution of services over the broad Australian landmass must also be taken into account when considering industry sustainability. While there is some variation among Free TV's regional broadcasting members in their approach to providing or procuring transmission services, operating and capital expenditure requirements are escalating for all.

Australia's free-to-air broadcast ecosystem was designed to be ubiquitous and always free. The advent of digital television more than two decades ago bridged the digital divide between regional and metropolitan views, expanding access to the content originating from the three metropolitan networks. However, the *per capita* costs of transmission vary dramatically between metropolitan, regional and remote markets, which has meant that delivering three commercial services to each licence area, including those with small or dispersed populations, has been challenging from the start.

Transmission for metropolitan broadcasters represents a smaller proportion of overall costs compared to regional broadcasters who have larger areas to service and smaller populations to attract advertising revenues. Illustratively, of the approximately 650 terrestrial broadcast transmission towers in use in Australia, some 580 (or nearly 90%) are in regional and remote areas. By contrast, in FY23, less than 20% of commercial television advertising revenue was earned by regional broadcasters.

While advertising revenue from terrestrial broadcasting services has been trending down, the cost of operating and maintaining TV transmission facilities typically grows in step with the consumer price index (**CPI**). Some commercial broadcasters are facing larger cost increases, as the major proportion of their digital transmission equipment, installed during television digitisation (which occurred across Australia between 2001 and 2013), approaches its end-of-life and now requires an expanded capital refresh program to keep services on-air.

This killer combination of falling per capita advertising revenue and fixed, or rising, terrestrial television transmission costs has created a crisis of sustainability for terrestrial commercial television services that are at the margins of viability. For services provided directly by commercial television, this potentially includes:

- some terrestrial transmitters in the Remote Central and Eastern Australian licence areas;
- some terrestrial transmitters in the Regional and Remote Western Australian licence areas;
- some terrestrial infill transmitters in regional areas of Eastern Australia, which are provided by a consortium of regional commercial television broadcasters through RBA Holdings Pty Ltd (**RBAH**); and
- Network Ten affiliate services in small television markets such as Spencer Gulf, Broken Hill, Mount Gambier, Riverland, Hobart, Darwin, Remote Central and Eastern Australia, Regional and Remote Western Australia, and formerly Mildura, where entities other than Network Ten operate distribution.

A related crisis of sustainability is also playing out in the more than 80 small communities serviced by self-help (often council-provided) television re-transmissions. A recent example is Eidsvold, a town in Queensland with around 600 residents, where in 2023 the North Burnett Regional Council decided to de-commission its re-transmission facility.

3.2 Industry developments

3.2.1 Mildura

The Mildura TV licence area, with around 70,000 residents, supports two commercial television operators, Seven Network and WIN Television (the regional Nine affiliate). Until June this year, the Network Ten service was provided under a 'section 38B' commercial television broadcasting licence, held in equal shares by Seven and WIN under a consortium arrangement. Section 38B television licences were designed as an exception to the prohibition against owning or controlling more than one commercial television station in a market. As part of the 'TV equalisation' process—the aim of which was to provide regional viewers with the same viewing choices as those in the metropolitan cities—they were offered in some smaller regional television markets, including Mildura and Darwin, Tasmania, Remote Central and Eastern Australia, and Regional and Remote Western Australia. In these markets it was considered that three independently controlled television networks would be unsustainable.

Following the consortium members' decision to close the loss-making Ten service, viewers in the Mildura licence area will require a broadband plan and a 'smart' TV if they wish to view Ten programs via the 10 Play app. The Eastern VAST service, which carries 10, 10 Peach, and 10 Bold channels, is a potential alternative source of free-to-air Ten services. Eastern VAST services operate in different time zones to Mildura and advertising is not local.

As set out below, there are eligibility criteria for VAST. If they become eligible, viewers, other than those who already have Foxtel satellite service, would need to obtain a satellite dish and a VAST converter box and pay the cost of installation. This is not cheap and Free TV is unaware of how local installers in the Mildura area might choose to price VAST installation. Informal advice Free TV has obtained is that total hardware costs (decoder box, dish, cabling, etc) will be around $400, with installation requiring two hours' work. Existing Foxtel subscribers may not require a dish. A typical all-up charge of around $800 has been referred to in this submission and in previous policy discussions, but individual installers may choose to ask much more.

3.2.2 Mt Gambier/Riverland

Mt Gambier and Riverland are regional television licence areas in South Australia, with a combined population of around 100,000 people. A single operator, WIN Television, provides all commercial television broadcasting services in both markets under section 38A commercial television broadcasting licences. Similar to section 38B licences, these were designed as an exception to the prohibition against owning or controlling more than one commercial TV station in a market, with the aim of 'equalising' commercial television services in all markets. Section 38A licences permit one operator to own and control all three commercial television services in a market. Other examples of section 38A markets are the Spencer Gulf licence area, in South Australia, and the Griffith and Broken Hill licence areas, in NSW.

In Mt Gambier and Riverland, WIN Television was facing the capital refresh costs of replacing ageing transmission equipment installed during television digitisation. By converting all its legacy MPEG-2 television channels to the more efficient MPEG-4 video compression standard, the network was able to increase the carrying-capacity of its three digital television multiplexes. Earlier this year, it used the freed-up capacity to combine its Seven and Ten channels onto a single multiplex. These changes provided a technology solution to the transmission challenges but the commercial challenge of delivering content remains. Seven is now delivering an Adelaide feed to this region as the commercialisation of this feed is not viable.

Therefore, while the proposed legislative changes will prevent WIN from falling foul of its legislative requirements it does not address the commercial challenges of delivering broadcast content to these markets.

3.2.3 Spencer Gulf and Broken Hill

Spencer Gulf and Broken Hill are areas in which Southern Cross Austereo (**SCA**) operates services under a section 38A licence.

In 2022, SCA discontinued its 30-minute news bulletin on weekdays on its Seven Network affiliated regional South Australia service. SCA made this difficult decision after several years of representations to Government about the need for reform of regional media regulation. It noted that current laws pre-date the internet and are not suitable for contemporary media markets. With declining audiences and advertising revenues due to competition from online media, it noted that regional broadcasters are constrained by regulations that limit opportunities to innovate, operate more efficiently, and provide more meaningful careers for people in regional Australia.

In these areas, SCA now expects to take similar steps to those taken by WIN in Mt Gambier to adjust its transmission arrangements to reduce transmission costs.

4. Inter-related policy issues and reviews

A range of public policy settings impact the sustainability of regional broadcasting services which, for the reasons set out in this submission, deliver public goods that should be supported. There have also been, or are on foot, a number of relevant public policy review processes looking at these settings:

- **Consultant reviews of regional broadcasting** – over recent years, Free TV's regional members have provided extensive, and in some cases confidential, information to Government through various consultants engaged to review the future of regional television, in particular three reviews conducted by Ms Megan Brownlow (2019), Korda Mentha (2019) and Boston Consulting Group (2020). Outputs of these reviews have not been made public, nor provided to regional broadcasters.
- **Future of Broadcasting Working Group** – this group is comprised of commercial and national free-to-air broadcasters, consumer and broadcast technology bodies, transmission infrastructure providers, and equipment manufacturers. It was established in 2022 so that Government and other stakeholders could work together to address issues facing the sector, many of which are driven by rapid technology change and the rise of the internet. Potential sustainability issues relating to current commercial terrestrial transmission sites have been identified in relation to several categories of transmitters in this forum.
- **News Media Assistance Program** – the Government has recently consulted on optimal settings to support the production of public interest journalism, an issue that has increased in importance considering Meta's refusal to continue to pay for news shared on its platform. In its consultation paper the Government recognised the importance of trusted Australian news, pressures facing Australian news producers, and suggested that given market conditions some level of Government assistance is required.[9]

Notwithstanding these processes and forums, and the significant investment of time in, and information provided to them, policy solutions have not emerged. Transmission sites at the margins of commercial sustainability are now failing, with audiences losing services, but there is no clear response in sight from Government.

At the same time there have been adjacent policy processes on foot within the Communications portfolio:

- **First Nations Digital Inclusion Advisory Group** – whose consultation process Free TV recently participated in, noting that access to free-to-air television is central to formulating a digital inclusion strategy. In its submission Free TV noted deficiencies in the free availability of television broadcasting to First Nations Australians living in some regional areas and in remote areas served by satellite television.[10]
- **Regional Telecommunications Independent Review Committee (RTIRC) and Universal Service Review** – RTIRC is looking at existing and future telecommunications needs in regional, rural and remote communities across Australia; emerging technologies; broader market developments, and the design and delivery of regional communications programs. The Committee is also looking at the potential to fast track some Universal Service Obligation (**USO**) modernisation outcomes,

[9] Free TV's response to the News Media Assistance Program Consultation Paper is available at https://www.freetv.com.au/wp-content/uploads/2024/03/Free-TV-submission-News-Media-Assistance-Program-March-2024.pdf.

[10] Free TV's submission to the May 2024 discussion paper released by the First Nations Digital Inclusion Advisory Group is available at https://www.freetv.com.au/wp-content/uploads/2024/07/Free-TV-Submission-Paving-the-road-for-First-Nations-digital-inclusion-Long-term-roadmap-towards-achieving-Target-17-in-the-National-agreement-on-Closing-the-Gap.pdf.

particularly within the Government-funded NBN Co fixed wireless network footprint. In parallel, the Australian Government is currently examining long-standing USO consumer protection arrangements, which have been a guarantee of getting a standard telephone service across Australia, in light of changes in available technologies and consumer preferences over recent years.

While broadcasting and telecommunications policy development have traditionally been viewed in isolation from one another, there is a strong case for Government to recognise the close connections between the two issues, such as in relation to the provision of infrastructure funding. This is logical given the complementary nature of broadcasting and telecommunications connectivity, and because it is often the same communities whose services are at stake.

5. Free TV's four point plan

Given that market changes in regional broadcasting are outrunning the public policy framework, Free TV has released the following four point plan to support sector sustainability.

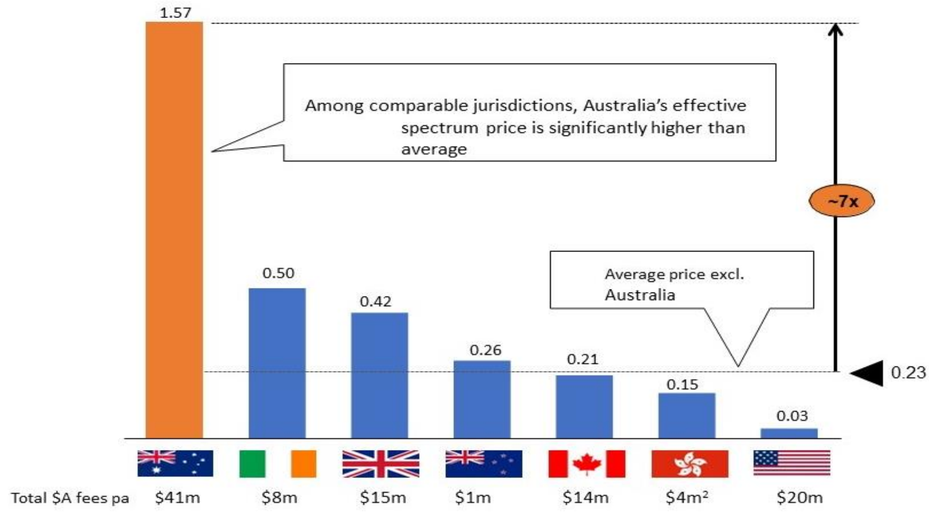
5.1.1 Step 1: Suspend then abolish the outdated and unjustified spectrum tax

Commercial broadcasters have urgently requested that the Government suspend, using current ministerial powers, the Commercial Broadcasting Tax (**spectrum tax**) paid by commercial television broadcasters to support the viability and sustainability of the industry, with a view to it being abolished by legislative amendment. Across all commercial broadcasters this amounts to more than $46 million per annum.

These calls have been made in the context of factors outlined in this submission—significantly reduced advertising revenues, the expense of regulatory compliance, as well as the lost revenue opportunities due to such compliance, intensified competition from digital businesses, cost increases as a result of global subscription streaming businesses driving up the cost of production in this market, and ongoing growth in transmission costs required to make use of spectrum.

While Free TV members continue to address their cost base, in an uncertain market free-to-air broadcasters require all available resources to continue to invest in Australian content and to meet their regulatory obligations.

As shown below, licence fees paid by Australian commercial television broadcasters are the highest in the world—52 times higher than the equivalent per capita charge on US broadcasters.



Source: AU(ACMA),Canada(CRTC),US(FCC), NZ(BSA). UK(OFCOM, ITV), Singapore(IMD), Ireland(BAI), Hong Kong (Communication Authority)

No other comparable jurisdiction places tax burdens of this kind on their free-to-air television broadcasters. UK broadcasters pay only £15,000 per annum for their spectrum licences.

The spectrum tax grows at CPI every year, further exacerbating the impact on an industry that is facing significant advertising revenue declines.

The spectrum tax was imposed in 2017 as an interim measure, subject to an obligatory statutory review to be conducted within five years. Now, seven years on from its introduction, the amount has continued to rise, and the quantum has never been reviewed. Free TV and its members have repeatedly raised this issue with Government in recent years, most recently in our pre-Budget submission.[11]

The need for relief from this excessive and unreasonable tax has now reached a critical juncture for our members and it is incumbent on Government to act immediately in the interests of fairness and the sustainability of the sector.

5.1.2 Step 2: Review regulatory imposts on commercial TV stations

Legislative media ownership and control rules are also relevant to the long-term sustainability of commercial broadcasting, and regional broadcasters in particular. It is understood that Government is developing new evidence frameworks to consider settings in this area, however there is no timetable for holistic media policy review.

This review should be expedited because the ability of broadcasters to scale up activities to compete with global platforms and other digital news platforms is highly relevant to sector sustainability. Ownership rules have become a barrier to innovation and efficiency, especially when competitors are vertically-integrated major multinationals, including the big tech companies (competitors for audience and revenue) or government-funded national broadcasters (competitors for audience).

In particular, the review should examine the ongoing relevance of the following rules in the BSA in the modern economy and the environment in which commercial television broadcasters operate:

- **Statutory control rules**—rules that limit the number of commercial television broadcasting licences in a licence area that can be controlled by a person or company.
- **Media diversity rules**—rules that control media groups that include commercial television broadcasting licences, including those that regulate the number of 'voices' required in a market.
- **Trigger event rules**—rules that impose or increase obligations on a regional commercial broadcaster if a person acquires or ceases to be in a position to control the broadcaster.

5.1.3 Step 3: Implement direct funding support for markets where services are not commercially viable

All Australians require adequate and reliable access to both broadcasting and telecommunications services, regardless of their location. However, the market reality is that Government support is required in less densely populated parts of the Australian continent, where it is not viable for the companies offering either telecommunications or commercial broadcasting services to provide comparable services to those enjoyed by other Australians.

Historically, this need for support has been recognised for both broadcasting and telecommunications. The Commonwealth provides ongoing funding for telecommunications infrastructure operated by private business, with hundreds of millions of dollars provided through telecommunications blackspot funding programs and the USO, and with telecommunications also supplied across non-commercial National Broadband Network infrastructure. On the broadcasting side, the government's long-standing contribution to the costs of transmitting VAST recognises the limitations of the free-to-air, advertiser-funded television model to provide adequate television services to Australians in remote areas or large licence areas with sparse populations.

[11] Free TV's Pre-Budget submission 2024–25 is available at https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Pre-budget-2024-25.pdf.

While broadcasting and telecommunications face common issues around the economics of delivering adequate and reliable communications, Governments have historically dealt with them separately. Thus, Government continues to fund expansion of mobile telecommunications, while serious deficiencies and gaps in free-to-air broadcasting coverage are emerging, which better access to the internet alone will not remedy. In particular, any strategy of sole reliance on the internet would pose intractable problems of affordability, reliability and digital literacy for a substantial subset of Australians. In each case, the free availability of broadcast television services is a key mitigation and likely to remain so for the foreseeable future.

As noted earlier in this submission, terrestrial broadcast transmission (especially in regional areas) will remain essential to Australians and serves an important public purpose. However, broadcast revenues are in structural decline and regional broadcasters do not have access to revenues from free streaming, while broadcast transmission costs continue to escalate. As television transmitters at the margins of commercial viability are ceasing to be economically sustainable, Government policy has failed to keep up.

While Free TV does not advocate the direct transfer of current approaches to mobile blackspot funding to television transmission, more integrated approaches are need to how we ensure essential communications services to all Australians. This may require some re-balancing of expenditure on extending telecommunications, to ensure that current and emerging gaps in the ubiquitous availability of television coverage are addressed.

The Commonwealth has provided ongoing funding for telecommunications infrastructure operated by private business, and it is appropriate to consider a similar approach for broadcasting—in both cases, to ensure critical services are available beyond the edge of commercial sustainability.

While telecommunications blackspot programs are typically designed to expand mobile coverage into areas where it is not currently available, assistance for commercial television should be designed to halt and reverse the erosion of the free and ubiquitous availability of adequate television services. Key priority areas include:

- More systematic initiatives to address the changing economics of commercial television transmission at and beyond the margins of commercial viability.
- Bringing television services to remote First Nations communities where satellite direct-to-home television has failed.
- Safeguarding of terrestrial television transmission in communities, such as Eidsvold, in Queensland, where existing community self-help television transmitters have failed or at risk.

Government funding for the Mobile Black Spot Program

The website of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts provides an overview of Government investment in mobile telecommunications infrastructure over many years.[12] It notes:

- The Mobile Black Spot Program (the **MBSP**) is a Government initiative that invests in telecommunications infrastructure to improve mobile coverage and competition across Australia—with co-contributions from state and local governments, and national Mobile Network Operators.

[12] Available at https://www.infrastructure.gov.au/media-communications-arts/phone/mobile-services-and-coverage/mobile-black-spot-program.

- Over seven rounds, the Australian Government's commitment has generated a total investment of more than $1 billion, to deliver up to 1,400 new mobile base stations.
- Outcomes of round 7 were announced in December 2023, with $170.2 million (GST inclusive) in funding awarded for a total of 136 mobile and broadband solutions across Australia.
- This funding was delivered as part of the Government's $1.1 billion Better Connectivity Plan for Regional and Rural Australia, which commits $400 million to expand mobile coverage and improve communications resilience.
- There will be further funding opportunities under the Government's Better Connectivity Plan for Regional and Rural Australia (**Better Connectivity Plan**).

The RTIRC issues paper also deals with telecommunications black spot funding programs.[13] It notes that there is a National Audit of Mobile Coverage which is part of the Better Connectivity Plan, which will help the government to better identify mobile coverage black spots, target future investment and help assess the accuracy of carrier coverage maps.

5.1.4 Step 4: review prominence and anti-siphoning legislation

To be sustainable regional broadcasters need audiences to be able to find their services, and to be able to show nationally iconic sporting events that bring all Australians together and underpin the commercial broadcasting business model.

This has become increasingly difficult with the advent of multi-national connected television manufacturers selling on-screen real estate to the highest bidder (usually international subscription streaming services) and multinational streaming companies buying digital rights to iconic sport (as with Amazon's recent purchase for its paid service of World Cup Cricket).

With the recent passage of the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024*, Australia will now have a regulatory scheme in the BSA to make local free-to-air services prominent on connected televisions, but only those made and supplied 18 months from now, not those already in Australian homes.

Similarly, while the new anti-siphoning provisions, which relate to free availability of iconic sports on Australian television, look good from a distance, they only guarantee free sports for Australians who have an aerial, not those who use the internet to access free sport.

The laws are subject to mandatory legislative review and Free TV will work actively to improve them for the benefit of all Australians by arguing for amendments that:

- extend the prominence rules to existing connected television sets that can receive updates (as is the case with prominence laws recently passed in the United Kingdom); and
- require that both the terrestrial broadcast and free digital streaming rights must be offered to a free-to-air broadcasters before they can be purchased by a paid streaming or pay television provider.

[13] Available at https://www.infrastructure.gov.au/sites/default/files/documents/rtirc-2024-issues-paper_0.pdf.

6. Legislative drafting and implementation issues

6.1 Bill drafting

Free TV does not oppose the regulatory adjustments set out in the Bill, but our focus remains on the four step plan for industry sustainability. Free TV's only comment on the drafting of the Bill relates to the proposed measures to clarify that two commercial television broadcasting licences can share a single TV multiplex.

The Explanatory Memorandum signals an ambition to 'future-proof' the law around multiplex sharing:

> *These provisions are intentionally broad to allow the ACMA's approach to service consolidation to be flexible as market conditions and technology changes. As these service consolidation amendments respond to such changes, this flexibility will be important in ensuring that section 102AE does not become obsolete.*[14]

Underlining this intention, the Bill contains the added safeguard of discretionary ACMA powers to 'shape' the direction of consolidation where desirable in the public interest.

Free TV considers that it is in the public interest for legislation to accommodate the option for broadcasters if they choose to move to 3-services-into-1 multiplex sharing. While currently hypothetical, this scenario could readily arise in two situations:

- all three commercial TV services in an area share two multiplexes, with some channels from each of the three licensees on each multiplex; or
- all three commercial TV services in an area are carried on a single multiplex.

If consolidation is restricted to two licensees into one multiplex, the range of potential future sharing scenarios is seriously curtailed.

If the objective is to fit three commercial networks into two multiplexes, the problem will often arise that the two services sharing a single multiplex cannot match the service offering of the service with an entire multiplex to itself. (This problem does not arise in the two South Australian markets where consolidation has taken place, as WIN is able to fit two of its three existing network offerings onto a single multiplex. This would not be possible in some larger markets, where multiplexes carry more content).

Second, the elimination of 3-into-1 multiplex sharing options can rule out the 'fairest' 3-into-2 multiplex sharing scenarios. Once again, this issue of equity between the networks does not arise in Mt Gambier and Riverland, where WIN faces no competitor network. But in a competing market, three commercial networks seeking to share two multiplexes are likely to prefer a (1/3, 1/3, 1/3) + (1/3, 1/3, 1/3) configuration over a (1/3, 2/3) + (2/3, 1/3) configuration, where one of the three networks would be forced to distribute its programs, less efficiently, over two multiplexes.

Finally, the possibility of three broadcasters sharing a single multiplex in the smallest markets was seriously canvassed prior to the government's 2011 decisions on TV service 'equalisation,' and will likely arise again in future. Several scenarios involving three-into-one multiplex sharing were also

[14] Explanatory Memorandum to the Communications Legislation Amendment (Regional Broadcasting Continuity) Bill 2024 (**Bill EM**), page 17 – available at https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7213.

investigated as part of the ACMA's recent research into TV receiver performance, which Free TV conducted.[15]

Broadcasters require the greatest flexibility as to how they configure their networks to service the needs of their audiences against the commercial reality of rising transmission costs. Incentives for future exploration of the widest possible range of sharing scenarios include:

- continuing improvements in multiplex carrying capacity, e.g. through adoption of more efficient video compression;
- the scope for reducing transmission costs by moving to a single commercial television transmitter in small markets; and
- the wish to share multiplex capacity fairly between three television networks.

Examples might include scenarios where a decision is made to (continue to) offer a basic terrestrial service in a market where commercial television transmissions are otherwise not viable, owing to a community preference for a single, appropriately regionalised, terrestrial service over full migration to satellite direct-to-home services or non-regionalised streaming alternatives via the internet.

It cannot be said that legislation permitting only 2-into-1 consolidation will 'future-proof' the planning regime.

To enable future potential 3-into-1 multiplex sharing options, amendments would be required in Part 2 of Schedule 1 to the Bill (which deals with impediments to commercial television broadcasters consolidating their terrestrial transmission arrangements) and Part 3 of Schedule 1 to the Bill (which enables the ACMA to amend Television Licence Area Plans (**TLAPs**) to accommodate consolidated transmission arrangements).

6.2 VAST access: Implementation practicalities

Changes to regulatory settings to allow relevant audiences to access VAST services are not opposed, but there are questions about the real benefit of offering VAST as a replacement solution for just one TV network that is no longer accessible terrestrially, especially given the cost to householders of equipment installation.

Securing access by Mildura residents to VAST will depend on a website for which ACMA is responsible, mySwitch. Implementation of the Bill faces two practical challenges:

- as of this date, it appears the information on mySwitch is no longer being updated; and
- the mySwitch tool—a Government website that provides information on digital television reception across Australia following the digital television switchover—is understood to be based on obsolete software and to require replacement in the short- to medium-term. The Government is encouraged to support the ACMA in undertaking this work.

Securing ongoing access to commercial television services via VAST will require a commitment from the regulator to maintain and, in consultation with the administrators of the VAST Conditional Access Scheme (**CAS**), ultimately to rejuvenate or replace the ageing mySwitch tool.

[15] *Final Report On the technical performance of TV receivers in Australia*, December 2023 – available at https://www.acma.gov.au/television-research#television-receiver-technical-performance-capabilities-.

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6.2.1 mySwitch and the VAST Conditional Access Scheme

mySwitch was designed to provide a simple way for television viewers and antenna or satellite dish installers to tap into the ACMA's detailed knowledge of television coverage. By keying an address into a field, users can obtain accurate modelling of the direction and strength of any local terrestrial television signals at that location. The ACMA has also, in the past, used the website to provide information and updates about any changes or problems with television reception at that location. It has been a useful product and of inestimable assistance to viewers as well as to the television industry.

Although it was created primarily to assist television viewers with the changes resulting from the television 'Digital Dividend' process (2008–2014), mySwitch was retained afterwards, and eventually taken over by the ACMA, because it plays an important ongoing role as the VAST public access 'portal'.

The establishment of VAST was a key initiative prior to analogue television switch-off. While the satellite versions of ABC and SBS services were able to go to air unencrypted, for legal and commercial reasons the satellite versions of commercial television networks Seven, Nine and Ten were (and are) encrypted. Encryption protects the integrity of television licence area boundaries, as far as that is possible, noting that the television network affiliates in remote (satellite) television licence areas may be different from the affiliates providing services in adjoining regional terrestrial markets or the corresponding metropolitan markets. Encryption also necessitates an application assessment process with eligibility criteria.

The arrangements for conditional access to satellite commercial television services are summarised in the Explanatory Memorandum to the Bill as follows:

> *VAST services are provided pursuant to commercial television broadcasting licences allocated under section 38C of the BSA. Part 9C of the BSA provides for the registration of a conditional access scheme for each of three section 38C licence areas: South Eastern Australia TV3, Northern Australia TV3 and Western Australia TV3.*
>
> *Each conditional access scheme sets out the rules regarding access to the VAST service in the applicable section 38C licence area, in accordance with statutory policy objectives established under sections 130ZB and 130ZBB of the BSA. These objectives are directed to determining whether viewers have adequate reception of terrestrial commercial television broadcasting services.*
>
> *Conditional access schemes set out area-based categories (A, B and C reception areas for the South Eastern Australia TV3 and Northern Australia TV3 licence areas, and A, B, C and D for the Western Australia TV3 licence area).*
>
> - *In categories A and B, people are taken to be unable to receive adequate terrestrial television reception and, consequently, are automatically eligible for VAST services.*
> - *In Categories C and D, people who do not have adequate terrestrial television reception may be granted a reception certificate enabling them to access VAST services.*
>
> *In addition … the BSA also lists a further area-based category, known as a declared service-deficient area, by which viewers may access VAST services. Declared service-deficient areas are those areas located in a terrestrial television broadcasting licence area, situated within a section 38C licence area, where the ACMA is satisfied that there are fewer terrestrial digital commercial television broadcasting*

> *services than are required to be provided on VAST. In a declared service-deficient area, people are eligible to access VAST.*[16]

A consortium of regional commercial broadcasters, RBAH, manages the conditional access scheme with the help of its outsourced service provider, NAS Australia.

6.2.2 The roles of mySwitch and NAS Australia in providing VAST access

mySwitch provides an initial, automated eligibility check for VAST access. If automatic eligibility is rejected, applicants can still apply to RBAH, but a manual assessment needs to be carried out. RBAH reviews individual applications to obtain VAST and uses predictive coverage tools to form a view as to whether an applicant/address is eligible to access VAST commercial television services. If it considers that the criteria are met, RBAH authorises VAST administrators to activate the smart card associated with the set top box. If an application is rejected, the applicant may appeal the decision to the ACMA. The ACMA advises RBAH of any complaints and invites RBAH to make a submission within 15 business days regarding the complaints. As there are not enough resources to adequately re-assess every complaint, however, submissions are rare and the ACMA routinely authorises access to VAST.

While mySwitch provides the 'front counter' through which members of the public are able to apply for access to the VAST commercial TV offering, applicants seeking access to commercial television services are transferred to a separate industry website (MySatTV) to fill out an application form. The outsourced service provider, NAS Australia, runs the industry website and provides a range of other VAST conditional access support services.

It is imperative that any potential work on the mySwitch website or its replacement involves extensive consultation with the technical experts at NAS Australia, as well as engagement with Optus, the VAST satellite provider. They are mindful that the system is very much a legacy of the 'Digital Dividend' process, which was designed and built more than 10 years ago and appears not to have been well-documented at the time. Any changes to the mySwitch website must be able to work with the existing systems, unless these are also rewritten/rebuilt as part of the same process.

[16] Bill EM, pages 2–3.