44 Avenue Road
Mosman NSW
Australia 2088

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

18 April 2012

The Secretary
Senate Environment and Communications Legislation Committee
Parliament House
CANBERRA ACT 2600

By email: ec.sen@aph.gov.au

Dear Secretary,

Material on notice – Public inquiry into the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012*

Thank you for the opportunity to appear at the public hearing on Friday 13 April.

At the hearing, Free TV undertook to provide some further information to the Committee.

The following information is attached to this letter:

1. An extract from a report by *Frontier Economics*, showing decline in viewer numbers in the UK after migration of cricket to pay TV;
2. Data on the penetration of Free TV in Australian households;
3. EBITDA figures for Foxtel and Premier Media Group (Fox Sports); and
4. Free TV's response to the *ASTRA Deloitte Access Economics* report.

Please do not hesitate to contact me if I can be of further assistance to the Committee.

Yours sincerely,

Clare O'Neil
Director of Legal & Broadcasting Policy
for

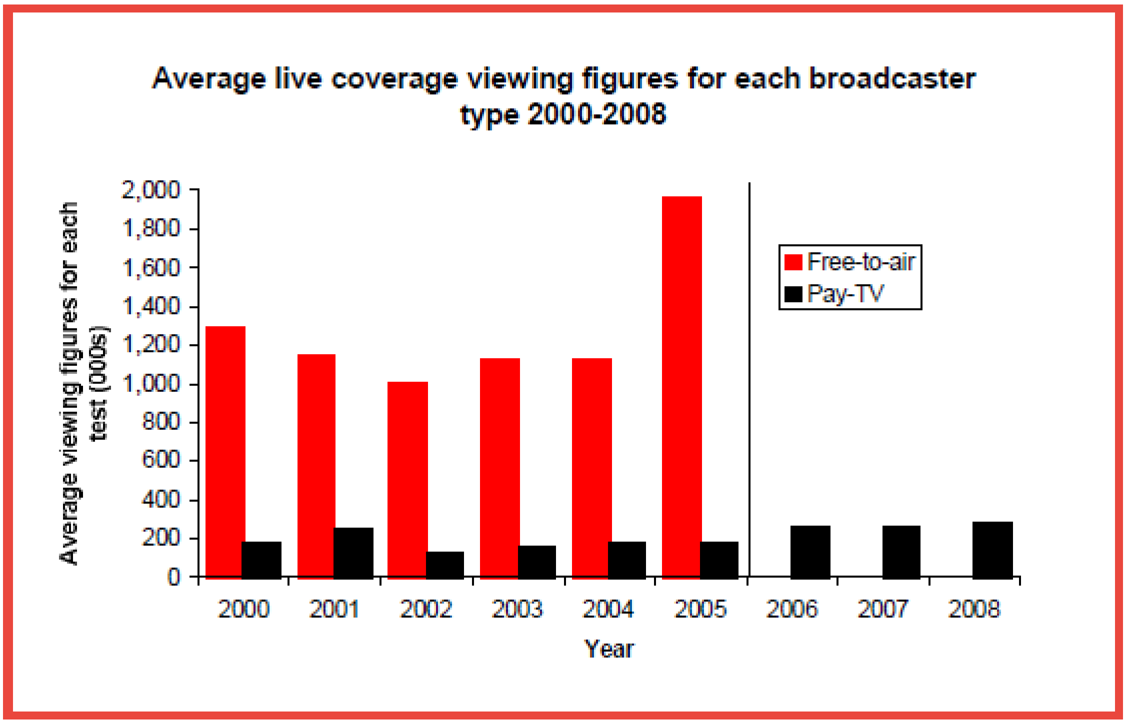
Julie Flynn
CEO

Extract from Frontier Economics report: Material showing decline in viewer numbers in the UK after migration of cricket to Pay TV

Source of extract: Frontier Economics, *The impact of listed events on the viewing and funding of sports*, November 2009, p 38-39
See:http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/publications/FE-DCMS-Impactoflistedevents.pdf

Based on average viewing figures for live coverage of each test match, the graph below compares both the average number of viewers for test matches in each year and for the period 2000-05, the average viewing figure for the test shown on Sky Sports compared to all other tests that year. This shows that:

- between 2000 and 2005, live coverage on qualifying channels of test matches in England attracted an average audience of 1.2 million viewers;
- the audience for the qualifying channels peaked during the 2005 Ashes series, with an average audience for Ashes tests of 2.2 million (peaking at 2.7 million for the final test);
- between 2000 and 2008, live Pay TV coverage of test matches in England attracted an average audience of 0.25 million viewers; and
- since live coverage of all tests in England switched to Pay TV, viewing figures for Pay TV have increased slightly, peaking at around 0.36 million for some tests in 2008.



The above data suggest, therefore, that there has been a material reduction in the number of people watching live coverage of tests in England since the live rights were sold exclusively to Pay TV providers. For example, average viewing figures for those tests shown on Sky during the period 2000-08 were around 1/5th of the average viewing figures for those tests shown on qualifying channels in the same period.

Penetration of Free TV in Australian households

Free TV is in 99.7 per cent of Australian homes, and around two-thirds of homes have two or more TVs.

Source: Free TV Australia and OzTAM's 2012 universe estimates – five cap cities

Household Penetration of Technology at a glance

Free-to-air TV	99.7 %
Two or more TVs	63.9 %
Digital TV*	94.0 %
PVRs	47.0 %
Pay TV	29.9 %

Source: OzTAM metro estimates. Pay TV is a national figure.
See:http://www.thinktv.com.au/content_common/pg-tv-households.seo
*Digital Tracker Q4 2011 reports a national digital penetration figure of 82 %.

Earnings before interest, taxes, depreciation and amortisation (EBITDA) results: Foxtel and Premier Media Group (Fox Sports)

Source: Consolidated Media Holdings *Annual Report 2011*, p 2.

For the financial year 2010-11, FOXTEL reported an EBITDA of $550.6 million, up 15.5% on the preceding financial year.

For the financial year 2010-11, Premier Media Group (Fox Sports) reported an EBITDA result of $145.9 million, down 4.9% on the preceding financial year.

44 Avenue Road
Mosman NSW
Australia 2088

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

ASTRA analysis of free-to-air sector is flawed and misleading

Free TV was disappointed to see the significant errors and misleading conclusions made in the ASTRA/Deloitte Access Economics submission to the Convergence Review (the ASTRA report). The ASTRA report contains flawed assumptions and inaccurate figures which in any case do not substantiate pay TV's attack on the free-to-air sector. The ASTRA report:

- Incorrectly describes the costs of the Government's digital switchover policy as 'support' given to the free-to-air sector
- Incorrectly values broadcasting spectrum by conflating it with the value of mobile spectrum
- Omits key facts in its assessment of spectrum value which would substantially alter the conclusions
- Fails to take into account the expected return to Government (billions of dollars) from the Government's investment in digital switchover policy
- Fails to make any attempt to value any of the public benefits delivered by free-to-air television; and
- Is heavily caveated and contains many inaccuracies.

The net result is a fundamentally flawed and misleading picture which does not stand up to any level of critical review or analysis. The headline figures regarding government 'support' to broadcasters are greatly distorted. The ASTRA report is nothing more than a transparently partisan attack on pay TV's competitors.

<u>Government funding for switchover</u>

The inclusion of DBCDE and ACMA digital switchover program funding as a 'benefit' to the free-to-air platform is particularly misleading (refer to section 3.1). The funding identified does not benefit free-to-air broadcasters – it is designed to accelerate and maximise the value of the Digital Dividend. This funding is a direct cost of implementing the Government's analogue switch-off and Digital Dividend policies.

The VAST satellite is a Government driven solution to localised consumer reception problems with digital transmissions and again is a direct cost of implementing the Government's decision to realise the Digital Dividend.

The analysis is also particularly misleading in that it includes the 'costs' of implementing the Government's switch-off and Dividend policies, without mentioning the expected financial return on these investments (expected to be in the billions of dollars).

If the genuine level of support for the free-to-air sector was considered, the overall total would be substantially less than the ASTRA report figures and the value to the Government would be netted off against its investment. Indeed, if the value of the Digital Dividend were included, the overall figure would become a significant negative number.

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

Spectrum valuation

The assertion that Free TV broadcasters have 'inexpensive' access to spectrum is wrong on any assessment.

The ASTRA report assesses the value of spectrum to broadcasters based on benchmark values paid by mobile broadcasters for spectrum. These valuations do not represent the true value of spectrum to broadcasters.

The ability of broadcasters and telecommunications companies to monetise spectrum varies greatly, with a consequent impact on the broadcasters' ability to pay for spectrum through competitive auction. Broadcasters are not mobile companies – they face significant restrictions on uses of spectrum and other onerous licence conditions. The value of the spectrum to broadcasters is therefore much less. As a result, it is erroneous to liken telecommunications prices to broadcaster value.

In any event, broadcasters are already paying more in licence fees than telecommunications providers have paid for 15-year licences (see table below and section 9.2.3 of our submission).

Even if an ASTRA-style comparison between mobile and BSB spectrum is undertaken, the ASTRA report's valuations are flawed and the analysis lacks key variables. For example, the 2011 figure is especially misleading as it is based on the full spectrum range, even though much of it is about to be released into the Digital Dividend.

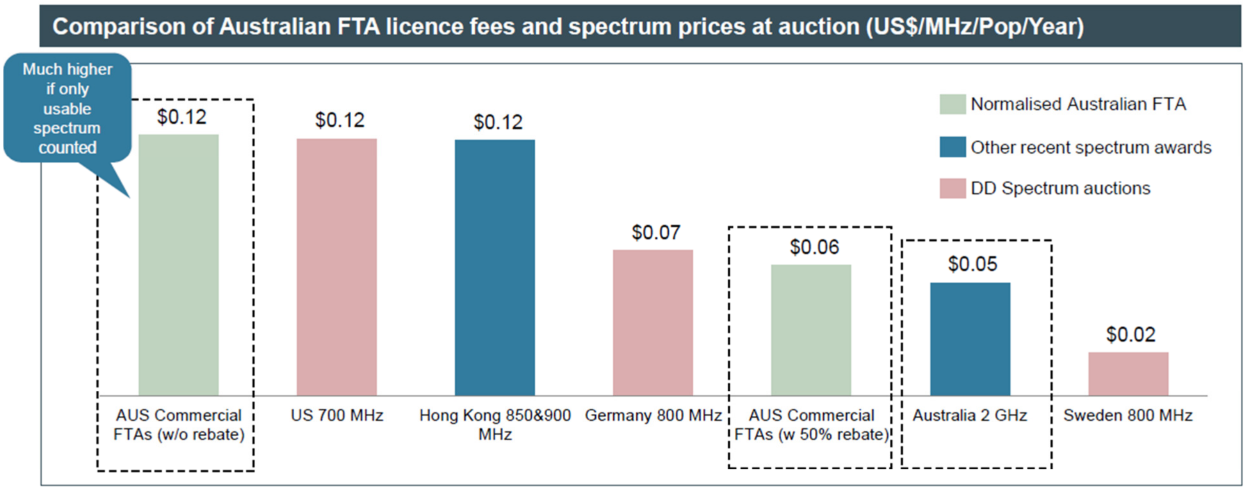
Furthermore, the analysis of prices paid for 800 MHz spectrum (refer to table 3.3) ignores the crucial fact that licence lengths differ between countries. Sweden's licences are for 25 years, Germany's are 15 years and the US licence term is 10 years. The absence of this variable distorts the conclusions considerably.

A more credible analysis would be to consider $/MHz/pop/pa. Applying this approach to the ASTRA report figures substantially changes the results:

Country	ASTRA figure	$/MHz/pop/pa
Sweden (25 year licences)	$0.50	$0.50/25 = **$0.02**
Germany (15 year licences)	$1.01	$1.01/15 = **$0.068**
USA (10 year licences)	$1.20	$1.20/10 = **$0.12**

This completely undermines the ASTRA report's conclusions regarding the valuation of 800 MHz spectrum.

Analysis undertaken by Venture Consulting included this crucial variable, and thus gives a far more reliable and empirically based result. This analysis shows unequivocally that Australia's free-to-air commercial broadcasters pay in excess of market rates for their spectrum.



Methodology:
(1) Australia Commercial FTAs = Annual licence fee / 174 MHz (post DD bandwidth) x 58% (est. % of spectrum used by commercial FTAs) / Pop
(2) Australia 2 GHz = 3G spectrum auction revenue (2001) / 80 MHz / Population / 15 years
(3) International 700 - 900 MHz = Auction Revenue / Bandwidth / Population / Licence period

Note: Exchange rate: 1 USD = 1AUD
Source: ACMA, FCC, Venture Consulting

The ASTRA report then proceeds to benchmark its findings against a Spectrum Value Partners 2009 report completed for the mobile industry (refer to p 23). However the ASTRA report incorrectly attributes 100% of the economic value generated by the mobile industry to the value of spectrum, whereas some of it would be realised consumer benefit (reduced prices) and producer benefit.

The second benchmark used in the ASTRA report (refer to p 24) overstates the free-to-air sector's valuations of their licences by including the benefit derived from anti-siphoning and the value of brands.

We also note that the majority of statements about spectrum pricing in the report are subject to heavy caveats.[1] The overall result is a misleading and totally unreliable examination of spectrum value.

Anti-siphoning

The ASTRA report purports to assess the 'value' of the anti-siphoning scheme to the free-to-air sector but there are two critical flaws in its approach.

Firstly, it relies on a previous Access Economics study from 2008 and therefore ignores the announced changes to the anti-siphoning scheme, which have made massive concessions to pay TV and rights holders. The value of the AFL concessions alone to the pay TV industry and the AFL is significant.

[1] Eg "value of access to spectrum derived in this report should be seen as an estimate only" (p 7) "It is difficult to determine how much additional spectrum for ENG should be valued…and it is unclear how much Commercial Broadcasters will be required to pay." (p 15) "Estimating the value of access to spectrum is not straight forward" (p 17) "accurate valuation of spectrum remains difficult" (p 17) "Ultimately it is unclear how the value of Australian spectrum in the 800 MHz range is likely to compare internationally." (p 19) There is "uncertainty created by various factors as to how Australian spectrum valuations are likely to compare internationally" (p 20)

Secondly, the ASTRA report takes the dollar-value increase in revenue to pay TV and rights holders from a use-it-or-lose-it scheme (which will be included in the upcoming reforms) and attributes that as the 'value' of the scheme to the free-to-air sector. The actual value of the scheme to the free-to-air sector is not considered at all.

Additionally, no mention is made of the public policy benefits which are delivered by the anti-siphoning scheme, namely that all Australians have free access to sporting events of national significance, such as the Melbourne Cup, football finals and the Olympics.

Fourth commercial free-to-air television licence

The ASTRA report's consideration of existing market entry controls is heavily caveated and based on unfounded assumptions which do not hold up under scrutiny.

On the one hand, the ASTRA report argues that the entry of a new broadcaster would "lead to a more diverse range of programming being offered" (p 29) but then concludes it is difficult to quantify the benefits of the existing controls because "it is not clear how successful a potential fourth network would be."

As noted in Free TV's latest submission to the Convergence Review, the most likely impact of a new entrant would be to damage the existing Australian Free TV sector by fragmenting advertising revenue and audience share while driving up prices for premium content (both overseas and local). In order to survive, the new service would need to attract a substantial proportion of the audience base and is therefore likely to attempt to replicate the success of existing services. As a result there would not be any overall increase in diversity.

Cost/benefit analysis and purpose of the report

As a cost/benefit analysis, the ASTRA report is fundamentally flawed. As set out above, it overstates the 'costs' to Government of free-to-air broadcasting in a very misleading way, without considering the value of the benefits the industry delivers in return.

For example, as acknowledged by the Convergence Review Committee's discussion papers, in return for access to scarce spectrum, the free-to-air industry is subject to extensive and onerous public service obligations such as Australian content requirements (which in 2010-11 translated to a $1.23 billion investment).

There are approximately 30 pages in the ASTRA report analysing the 'benefits' free-to-air broadcasters enjoy but there are only 1.5 pages on the substantial public service obligations placed on the free-to-air sector. It is worth reiterating the level of Australian content investment from commercial free-to-air broadcasters ($1.23 billion) compared to that of pay TV, and the fact that in the last 15 years Free TV broadcasters have paid $3.8 billion in licence fees (CPI adjusted).

Further, the ASTRA report only examines the 'benefits' derived from pay TV broadcasting, without considering any of the costs (for example, access to the HFC cable network roll-out of which was fully funded by the then publically owned carrier).

We also note that ASTRA appears to be presenting the report as a serious contribution to the Convergence Review's consideration of Australian content. The true intention of the report (being an attack on the free-to-air sector) is betrayed by the complete absence of any discussion of Australian content on other platforms in a converged media environment – for example there is absolutely no analysis of the 'dilution' of Australian content brought about by the explosion of pay TV channels and the burgeoning number of online and IPTV services.

Inaccuracies

A review of the rest of the ASTRA report by Free TV Australia found numerous other inaccuracies which when combined with the irregularities outline above, cast significant doubt over the report's validity.

For example, the report claims there is 'no transparency' around the actual costs of meeting Australian content quotas (refer to p iii). That is simply not true. Free TV broadcasters' spend on Australian content is reported in detail to the ACMA which publishes the information in its Broadcasting Financial Results. Spend is broken down by genre and this is in addition to the detailed compliance reports released by the ACMA.

In contrast there is no transparency regarding the amount of hours of drama produced under pay TV's modest drama expenditure requirements. As a result it is very difficult to get a clear view of exactly what is being delivered to the public.

The ASTRA report makes an erroneous claim that pay TV is subject to captioning requirements (refer to p 7). This is simply not true. There are no captioning requirements for pay TV in the *Broadcasting Services Act 1992* and pay TV, unlike free-to-air television, has not reached an agreement with the Human Rights Commission for minimum captioning levels.

The report also implies that pay TV broadcasters are subject to limitations on when they can show certain types of content, which is not true (refer to p 7). Classification time zones only apply to free-to-air television broadcasters. In addition there are no time limits or other restrictions on the amount of advertising that pay TV broadcasters run, and at what time. For example, pay TV channels can broadcast advertisements during pre-school programming, which is prohibited on free-to-air television.