

**NITV answers to questions on notice
from Senator Hon. Judith Troeth**

Re Senate Environment, Communications and Arts Committee Inquiry

Broadcasting Legislation Amendment (Digital Television) Bill 2010

Response to question taken on notice verbally

Q: Senator Troeth (p7) “...in the expectation of being able to continue as you have gone on, you would have explored funding options and also the sort of programming that you were going to deliver. For instance, could you give us your funding commitment for the next two or three years, for the next cycle?”

A: With respect to NITV’s future funding, it is the case that Minister Garrett in conjunction with Ministers Conroy and Macklin, announced on 15 April , 2010 that the Government would fund NITV for one year, 2010-11 with the sum of \$15.2 million. However, in our Submission lodged in February 2010 to the Department of Environment, Water, Heritage and the Arts (DEWHA), NITV presented an evidence-based case for funding over five years as follows:

	Year 1 \$m	Year 2 \$m	Year 3 \$m	Year 4 \$m	Year 5 \$m
TOTAL	25.8	28.4	31.1	32.2	33.2

Our core activity is providing a national service on television and via digital media to a national audience. With Aboriginal and Torres Strait Islander people as our core audience NITV showcases, celebrates, informs and educates the wider community to the diversity and richness of Aboriginal and Torres Strait Islander people and culture and highlights those issues most affecting First Australians from an independent, Indigenous perspective. Maintenance of strong Indigenous editorial and commercial control underpins our activities.

The existing Funding Agreement between NITV and DEWHA is for \$48.5 million across 4 years from 1 July 2006 to 30 June 2010. During the first year, 2006-07, the NITV steering committee worked to deliver the constitution and business plan. The company was formed in December 2006 and staff were engaged progressively from March 2007. NITV first went to air via the Optus Aurora platform on 13 July 2007.

Our first operational year, 2007-08 was occupied predominantly with setting up the service, purchasing previously existing content and commissioning a limited range of new productions. The peak year for full operations, including commissioning across a wide genre spread, and establishing NITV National News was 2008-09. As our benchmark year, NITV expended approximately \$21.5 m. The vast majority of those funds were expended in commissioning new content primarily from the independent Indigenous production sector.

Television is often called a 'hungry beast'. Providing a 24 a day, 7 day a week programming schedule, as NITV does to more than 8 million Australians, requires a large and continuous supply of suitable content.

Given that there has only ever been a limited number of programs made for, by or about Aboriginal and Torres Strait Islander people, NITV cannot rely on existing content in any significant volume. Therefore our primary objective has, and must continue to be, on the commissioning of original productions as well as the maintenance of stakeholder relationship, especially our viewing audience.

NITV must point out that single year funding negatively impacts upon development, production and delivery of new content and the costs associated with management and transmission of that content.

The nature of television production requires lead time to enable producers to develop, produce and new products. Lead time typically varies by genre. Drama production, for example, requires in excess of twelve months from inception to commencement of production. Other factual programming, including documentary can call upon similar lead times. In many cases, productions fall across financial years. Consider, for example, the production of our footy show – 'Marngrook AFL' and 'Barefoot Rugby League'. In both cases the football season commences around March and concludes in October. To commission a series to cover the 2011 full football season means having to forward commit funds beyond 30 June 2011. Being unable to forward contract means having to commission a series from March until June, and then commission, separately, July to October. NITV and its producers therefore will increase costs, such as in legal and business affairs, amongst many other cost factors.

Most profoundly, one year funding impedes growth of independent production enterprises and diminishes continuity of employment and skills growth.

NITV also notes that one year funding impacts upon costs associated with transmission, infrastructure and indirect costs. In most cases being unable to enter into multi-year agreements diminishes cost efficiency due to supplier amortisation. Be it in provision of data, ISP and telephony, or in delivery of transmission services, or in insurances, leasing of premises, etc., one year agreements are much less cost efficient than those spread across multiple financial years.

In relation to transmission of the NITV service, our funding request included costs associated with continuation of existing transmission services but excludes any additional costs associated with the VAST platform or any other digital terrestrial transmission.

Senators may also wish to note that the primary NITV carriage on the Optus Aurora DTH satellite service and subsequent retransmission via analogue UHF in RIBS communities is undertaken via Imparja. Imparja receives from DEWHA \$2 million annually of which \$820,000 underwrites the costs of carriage.

Therefore NITV will continue to rely on additional indirect funding in 2010-11 to continue carriage on the Aurora platform via Imparja in addition to the direct funding of \$15.2 million as announced. Currently NITV is available Free-to-air:

- Direct to home satellite via the Optus Aurora platform, non-encrypted with no conditional access (which means if you have a satellite dish and receiver anywhere in the country, you can watch NITV);
- retransmission via the 148 RIBS/BRACS sites in remote communities analogue UHF;
- Alice Springs, Mount Isa and Bourke via analogue UHF;
- Sydney on the Broadcast Australia trial service on digital channel 40;
- Parliament House, Canberra on the in-house reticulation service;

NITV is available via subscription TV. In each case, NITV is part of the 'base tier' subscription which means that you don't pay any extra to get NITV if you already get pay TV. NITV appears on:

- Foxtel cable and satellite;
- Austar satellite;
- Optus Vision cable;
- Neighbourhood Cable in Mildura, Ballarat and Geelong;
- TransACT cable in the Canberra and Queanbeyan;
- Austar for Schools Package – a free television and internet resource offered to schools within the AUSTAR satellite coverage area.

As noted above, NITV is carried free to air via terrestrial analogue UHF in three locations, Alice Springs, Mount Isa and Bourke. These sites are managed via Imparja. NITV incurs annual charges of approximately \$53,000 for the operational costs (primarily power) for these sites. These costs are paid to Imparja and are not covered within the \$820,000 they receive direct from DEWHA. The NITV Board had originally agreed to cover these costs only for a single year, 2008. However, we have continued to pay these charges until the end of the current funding agreement with a view to reviewing in the near future. Our submission to DEWHA for 2010-2015 did not include these costs.

NITV notes that the service is available on digital terrestrial in the Sydney metropolitan area via the Broadcast Australia (BA) trial datacasting service. However, as a result of the ACMA decision to cease the trial, NITV along with a range of other services including Parliamentary television, will cease at midnight 30 April, 2010.

This is a matter of grave concern to NITV as the Sydney metropolitan area represents the single largest concentration of Aboriginal and Torres Strait Islander people in Australia.

NITV has recently written to Minister Garrett, and copied Minister Conroy, with a proposal to deliver our service via digital terrestrial in the five capital cities via multiplexing with Community TV transmitters.

Based on commercial in confidence information, we can divulge that this opportunity delivers NITV free to air digital terrestrial in those centres, representing approximately 70% of the Australian free-to-air audience at a cost of approximately only 8 cents per viewer per year.

NITV also notes with some concern, that there is little likelihood of anyone utilising the existing datacasting spectrum until the conclusion of the digital switch-over and spectrum restacking. We have asked Minister Conroy consider allowing continuation of the trial service to ensure until such time as a more sustainable alternative, such as our CTV multiplexing option, is fully considered. We are currently awaiting response from the relevant Ministers in relation to our proposals.

NITV wishes to note that a submission entitled "NITV transfer to Digital Terrestrial" was lodged with the Department of Communications, Broadband and the Digital Economy on 26 October 2009, which in summary outlined NITV's strategy for digital terrestrial transmission.

NITV Responses to written questions taken on notice.

Q.1 *Are you aware whether the Government's proposed conversion of 100 self-help retransmission sites are likely to be in areas where NITV is currently broadcast via analog terrestrial means?*

A.1 First in order to answer the question accurately, let NITV correct some recent information released outlining where NITV is broadcast terrestrially in free to air form.

Contrary to the government press release of 16 April relating to NITV funding in 2010 / 2011, NITV is transmitted in terrestrial analog form in 147 remote indigenous communities of which 71 are so called RIBS communities and 76 are so called BRACS communities (the acronyms are historical and have no meaning of significance to the Senate Committee or this answer). The press release only noted the 71 RIBS communities.

Also omitted from the press release was the fact that since October 2008 NITV has been transmitted in digital terrestrial form on Channel 40 in the Sydney metropolitan TV market. Given current home digital conversion in Sydney this provides NITV with the ability to reach somewhere between 2.5 and 3 million people in Sydney. Indeed the press release actually made a point of saying that "NITV currently has no free-to-air carriage outside remote Australia".

This is not true.

As noted above, as a result of a decision by ACMA, citing the government's Digital Dividend Green Paper as the fundamental reason, these transmissions of NITV along with the digital terrestrial transmissions of another 5 TV open

narrowcast or datacast services (Channel 41 ABC News, Sport and Weather text; 45 Teachers TV; 46 The Australian Christian Channel; 47 and 48 proceedings of the Australian Parliament and its Committees; and 49 the Expo Channel) will cease on 30 April. Surprisingly therefore on this date, apparently at least partly as a result of government policy enunciated in the Digital Dividend Green Paper, Sydney will lose 4 full time, 2 part time (the 2 Parliamentary coverage services) digital terrestrial free to air TV services and one free to air ABC News, Sport and Weather datacasting text service. The frequency on which these services, including NITV, are transmitted will then lie unused by anyone until after the government has determined its Digital Dividend policy and analog TV is switched off in Sydney in 3½ year's time.

Unfortunately therefore the press release issued on 16 April would have been correct concerning NITV 'non remote area' free to air terrestrial transmissions had it been released on 1 May but not when it was released.

Given that NITV is currently terrestrially transmitted free to air in the Sydney metropolitan TV market there are 3 current analog self-help sites within that market listed for upgrading to digital by the commercial broadcasters. These are at Patonga, Woronora and Megalong. These 3 therefore fall within the commercial TV licence area where NITV is currently transmitted in digital terrestrial free to air form.

NITV is transmitted itself in terrestrial analog form from 3 self help facilities in the major outback towns of Mt Isa, Alice Springs and Bourke. The ABC, SBS and the current 2 only commercial TV services (Imparja and 7 Central) are also transmitted in analog free to air terrestrial form in those locations. NITV understands that Imparja and 7 Central will be required to rollout digital terrestrial transmitters in those 3 areas (the ABC and SBS are already transmitting in digital terrestrial form in Alice Springs and Mt Isa). Effectively therefore one could say that the NITV analog self help analog terrestrial facilities will have to be upgraded to digital, presumably by the commercial broadcasters, but it appears those 3 sites have been forgotten in the "Candidate List 1" published on DBCDE's Get Ready for Digital web site during 16 April.

There are no other areas where the commercial TV entities have indicated they will, or are likely to upgrade analog terrestrial free to air self-help services where NITV is currently transmitted in terrestrial free to air form.

Q.2 *Could you give the committee a broad overview of what would be required logistically, and the cost of providing NITV to every Australian?*

A.2 It is important when answering this question to add a vital qualification to its wording if not its intent. First such provision is assumed to be free to air and secondly to be meaningful needs to result in reception of the NITV service via the same domestic free to air television reception facilities as are used by TV homes to watch the companion ABC, SBS and commercial free to air TV services.

Otherwise one could theoretically say that NITV is available now free to air everywhere in Australia – the only catch is that to watch it one would have to specifically acquire and install an Aurora free to air TV platform satellite dish; low noise converter (LNC); set-top-boxes (STB); and cabling between the LNC and each STB and between each STB and the TV sets or recorders just to watch or record NITV.

As we hope NITV has successfully outlined in our primary submission, evidence on 16 April and supplementary submission, being one thematic TV service on its lonesome requiring TV homes to specifically purchase, install and use separate free to air TV reception facilities to watch it, means that effectively the service is not available.

For the government to get value for money from the very significant investment it has made in NITV – an investment it has just renewed to the tune of \$15.2m for 2010/11 – it is vital that the service is available through exactly the same reception facilities and remote control that are used to receive the services of the companion 5 National (ABC and SBS) and commercial free to air broadcasters.

Strangely after the government allows ACMA to close down NITV free to air transmissions in Sydney, only 250,000 people will access to the service in line with the above ‘same reception facilities’ requirement. Another 7.3 million will have access but only if they pay a subscription TV provider.

Allowing for ‘same reception facilities’ caveat, the NITV Transfer to Digital Terrestrial Strategy Report which was delivered to government on 26 October 2009 set out a comprehensive logistical and funding requirement to make NITV available to 21.5 million Australians or 99% of the total population and over 95% of the indigenous population for an extra \$5.8 million per annum (ABC and SBS digital terrestrial TV transmission and distribution expenditure is currently in the order of \$120 million per annum and will rise to about \$160 million a year by December 2013).

Just last week NITV provided government with a fully costed project to make NITV available in digital terrestrial free to air form through the 5 metropolitan TV markets by September this year – by piggy backing on the digital transmitters established through recent government funding and used by Community TV entities.

NITV would be happy to provide its 31 page Transfer to Digital Terrestrial Strategy Report to the Senate Committee for evaluation provided some of the actual results from commercial negotiations were redacted in any publication of the information.

- Q.3 *In your submission you argue that “no mention of, or allowance for, existing Australia wide TV open narrowcast services (such as NITV)” is made in the Bill (page 2). Could you outline to the committee how you would like to see NITV included in the government’s proposed solution for dealing with black spots?*

First, NITV does not regard the initiatives facilitated by the Bill in front of the Committee as being just for “black spots”. In effect the real conceptual basis for the initiative is to “equalise” the availability of free to air TV services to all Australians See opening 2nd and 4th paragraphs of the written DBCDE opening statement on 16 April.

In NITV’s view this laudable concept means taking important metropolitan commercial TV services to the underserved regional areas and the remote areas of Australia. By the same token it would seem to us consistent for important free to air TV services, like NITV, paid for by the people through their taxes and which are accessible free to air through discrete government transmitter facilities expenditure in the remote areas (and at least until 30 April in the Sydney metropolitan market) are made available elsewhere.

Instead however of this ‘equalisation’ concept applying to NITV, on 30 April as a result of an ACMA decision, citing government policy in a Green Paper, the NITV service will no longer be available to the 2.5 to 3 million people with digital terrestrial free to air television reception facilities in the Sydney TV market. This market also happens to contain the biggest single population of indigenous people of any TV market in Australia.

Also contrary to the concept of ‘equalisation’, if NITV is not on the new free to air TV satellite platform, it will very quickly lose its current access to the 100,000 plus fixed location homes that currently view it, as well as the 4 companion commercial and National free to air services from the Aurora free to air satellite platform.

From as early as the Mildura analog TV switch-off in 68 days people will start converting from the Aurora free to air TV satellite platform to the new free to air TV satellite platform. Why would they not do so when one platform has only 4 commercial and National free to air TV services and the other will have 16?

As a result unless those pre-existing Aurora homes:

- maintain their current Aurora STBs;
- maintain the current cabling between them and TV sets and recording devices in the home;
- use 2 separate remote controls (one for Aurora and the other for the new satellite platform); and
- switch between the Aurora platform and the new satellite platform to say switch between watching the ABC News and NITV and vice versa,

then NITV will be ‘lost’ to those homes notwithstanding what DBCDE said – or did not say – on 16 April.

As to the requirement for NITV to have fair and non discriminatory access to the new satellite platform, NITV refers you to our supplementary submission to the

Senate Committee and comprehensive detailed amendments to the Bill (at Attachment 1 here also for convenience).

These are aimed at either:

- the Bill setting up a compressive access regime whereby any TV open narrowcast, community or datacasting service which already, or in the future broadcasts free to air to a significant area of Australia (NITV suggests at least a complete commercial TV licence area to qualify) would have access to the new satellite platform on fair and non discriminatory terms.; or
- should the above generic amendment not prove palatable that providing NITV (the only 24/7 continuous nationwide TV open narrowcast service, currently already the country's 6th biggest broadcaster by potential audience reach and paid for by government) be added to the licence condition of the new satellite broadcasting licensees established under the Bill. In other words these satellite broadcasting licensees would not only be required to transmit at least 6 commercial standard definition TV and 3 commercial high definition TV services in each of the 3 satellite licence areas, but would also be required to re-transmit NITV. NITV estimates this would cost either those licensees or the government which after all is funding them between \$400,000 and \$500,000 per annum.



Patricia Turner
Chief Executive Officer
National Indigenous TV Limited.

22 April 2010

ATTACHMENT 1 re Question 3

NITV suggested amendments - Overview

In the attached suggested amendments to the Bill NITV is suggesting two options to overcome its 'access to the new satellite platform' concerns.

The first option is generic and probably structurally more difficult at this time for the Bill. This would set up an access regime that – subject to sheer transponder capacity being available – TV open narrowcasters like NITV could get access on equal terms to the relevant transponder capacity, the EPG and conditional access and subscriber management smart card systems and hence the STB's used to receive the ABC, SBS and commercial TV services from the new platform.

This may be conceptually a difficult proposition for the government to accept because in evidence to the committee on Friday 16 April DBCDE was at pains to say "*the government is not involved in anything other than funding and setting performance parameters for the new satellite platform.*"

For the Government to now set comprehensive access rules may mean further formal intervention and probably some significant rewriting of the commercial agreement under which the government is paying the VAST joint venture partners \$82.5m over the next 10 years and three months. Clearly however the government would have ensured there was a condition precedent clause in this agreement (announced on 14 April) allowing for any necessary changes occasioned by the passage of the Bill through the Parliament.

The second option, which would satisfy NITV, would be to make it a licence condition for the new satellite broadcasting licensees to carry NITV - just as it is a licence condition for those licensees to carry at least 6 standard definition and 3 high definition commercial TV services in each of the 3 satellite broadcasting licence areas.

As the Financial Impact Statement of the current Bill says "*the existing Bill has no financial implications of itself*" - by definition such mandated NITV carriage amendments would carry with them no financial impacts of themselves either.

NITV would also make a commitment to provide access to its service to the satellite broadcasting licensees for free and meet any underlying rights or other copyright payments that might be involved in the satellite broadcasting licensees meeting this new NITV carriage obligation.

Such an amendment is relatively simple although it would need to be carried through to the Codes of Practice and program classification time zone aspects of the Bill (wherein the satellite broadcasting licensees can choose one of several time zones to which they would adhere to the commercial TV Codes of Practice program classification time zones). In the case of NITV an amendment would need to relate to the TV open narrowcast Codes of Practice program classification time zones.

This option could be achieved by NITV being directly “rebroadcast” by the satellite broadcasting licensees (as envisaged by the current Bill for the 6 standard definition commercial and 3 HD commercial TV services each is required to carry in each licence area), or as envisaged below (under the following heading “retransmission amendment concern”) as a retransmission, just for the NITV service, pursuant to Section 212(1)(c) of the current BSA. The unique “rebroadcast” regime established by the Bill is required for the commercial TV services because fair commercial payments are expected to be made to entities supplying the commercial TV services to the satellite broadcasting licensees. This is not an issue with NITV.

Retransmission amendment concern

At the end of its evidence to the Senate Committee on 16 April NITV pointed out some concerns regarding the current ‘prohibition’ of the satellite broadcasting licensees being able to “retransmit” NITV pursuant to Section 212 (1)(c) of the BSA. Currently NITV operates almost exclusively in a “retransmission” environment.

This prohibition on “retransmission” should be removed if an NITV retransmission rather than a “rebroadcast” regime is favoured in the context of the 2nd NITV Option above and as set out in detail in Attachment 1.

Further at the same time NITV alerted the Committee, government and Parliament in general that if changes in the retransmission or rebroadcasting elements of the Bill are to be made as a result of discussions with, or considerations of Screenrights and Free TV evidence in particular that there should not be any diminution of what NITV sees as the Bill’s current allowance for self-help entities retransmitting program services available from the new satellite platform. Indeed NITV requests that no technical impediment should be put in place by the managers of the new platform to restrict such self-help entities from so operating.

NITV Amendments to the Bill

NITV Option 1 amendment

To provide a comprehensive access regime to all classes of free to air broadcasters providing services by free to digital terrestrial or DTH satellite means to at least one discrete existing commercial TV licence area to have equal and fair access to the new free to air satellite platform the establishment of which is facilitated by:

- **the Bill; and**
- **the Governments actual and prospective commercial and funding arrangements with VAST; WIN and Prime TV in WA; and ABC and SBS.**

Amendments to achieve such a result are likely to need to be drafted consistent with other comprehensive access regimes dealing with monopoly distribution and transmission platforms for other voice, data and audio visual service delivery to domestic homes.

Further the introduction of such a concept when DBCDE said, on behalf of the Government on Friday 16 April at the Senate Committee hearing, that “the Government is not involved in anything other than funding and setting performance parameters for the new satellite platform” may be complex; affect the already existing agreement with the VAST joint venture partners; and need to be referenced in many places within the voluminous and complex BSA.

The above 2 paragraphs point out why it is just beyond the resources of NITV (and we suspect the Senate Committee) to draft successful and comprehensive amendments.

Hence what follows is an Explanatory Memorandum like rhetorical outline of what such an access regime should achieve for non commercial and National free to air broadcasters already providing, or in the future providing services by digital terrestrial or DTH free to air satellite means to TV homes throughout at least one discrete existing commercial TV licence area.

Should the Committee feel that such a generic access regime is needed in the circumstances facilitated by the Bill then it can request the Government to use all the Departmental policy and drafting resources at its disposal to carry out what could be an onerous task in the time available.

Amendment intention outline

“Subject only to the physical availability of relevant satellite transponder transmitting capacity from the satellite transponder capacity provider to the Section 38C licensees and the ABC and SBS for the purposes of establishing the new free to air TV satellite platform the Bill ensures that:

- a) non commercial and National free to air broadcasters (IE currently TV open narrowcasters; community TV broadcasters; and datacasters) already providing, or in the future providing services to TV homes by digital terrestrial or DTH free to air satellite means throughout at least one discrete existing commercial TV licence area are, on equivalent terms to the Section 38C licensees and the ABC and SBS, able to:
 - Obtain relevant satellite transponder capacity; and
 - Be included in the electronic program guide; condition access and subscriber management systems;

such that domestic set top boxes meeting the standards set out for receivers to be used by viewers of commercial and National free to air services on the new platform are also able to receive these free to air services of non commercial and National free to air broadcasters in a non discriminatory way through those same set top boxes.

NITV Option 2 amendments

Requiring the new Section 38C licensees to provide NITV as part of their licence conditions.

Note just as the original Explanatory Memorandum Financial Statement said “the amendments in this Bill (Broadcasting legislation amendment – Digital Television – Bill 2010) will not of themselves result in any direct financial impact on the Government” so NITV can confidently say the same for the following further amendments relating to provision of NITV by the Section 38C licensees.

Apart from the amendments to Section 211A below all NITV amendments are self sufficient and are in black font. In respect of the Section 211A amendments the NITV changes are in red font inserted into the black font of the Bill's original words.

It should be noted that NITV has borrowed from the wording of the current Section 212(1)(c) of the BSA when describing itself in case readers see such a description as being eccentric.

Further NITV acknowledges that it may not have captured all relevant amendments consequent on the key amendment to add NITV to the satellite broadcasting licensees licence obligation in new Schedule 1 Division 2 sub Clause 7D. There is simply no way that in 4 business days following the Senate Committee hearings that we can do a completely thorough trawl of 'consequentials'. As with the 1st NITV amendment option above, should the Committee accept the general NITV amendment thrust, government departmental and Parliamentary drafting staff could quickly do the comprehensive 'consequential' trawl through the BSA. We have done our best to help the Committee in the time available.

Schedule 1 division 1 (page 20) 41CA Services authorised by commercial television broadcasting licences allocated under section 38C

Authorised Services
.....

- (7) A licence allocated under section 38C authorises the licensee to provide a TV open narrowcast service transmitted by National Indigenous TV Limited (NITV) or which does no more than transmit program material supplied by NITV in the licence area.

Schedule 1 Division 1 (page 27) 43AD NITV television programs to be provided to section 38C licensees by NITV

Scope

- (1) This section applies if the licence allocated under section 38C requires carriage of a TV open narrowcast service transmitted by NITV or a service which does no more than transmit program material supplied by NITV in the licence area.
- (2) NITV must provide, without charge to the section 38C licensees, access to its TV open narrowcast service at a location agreed between NITV and the licensee to enable the licensee to meet its licence obligations.

Schedule 1 Division 1 (pages 46 and 47) 211A Time when a television program is broadcast—South Eastern Australia TV3 and Northern Australia TV3 licence areas

Nomination of place—South Eastern Australia TV3 licence area

- (1) The licensee of a commercial television broadcasting licence allocated under section 38C for the South Eastern Australia TV3 licence area may, by written notice given to the ACMA, nominate either or both of the following:
- (a) a specified place in:
- (i) the South Eastern Australia TV3 licence area; or
 - (ii) the Northern Australia TV3 licence area;
- for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;

- (b) a specified place in the South Eastern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services **and the NITV TV open narrowcast service** provided under the licence.
- (2) The nomination must be expressed to be a nomination under subsection (1).

Nomination of place—Northern Australia TV3 licence area

- (3) The licensee of a commercial television broadcasting licence allocated under section 38C for the Northern Australia TV3 licence area may, by written notice given to the ACMA, nominate either or both of the following:
 - (a) a specified place in:
 - (i) the Northern Australia TV3 licence area; or
 - (ii) the South Eastern Australia TV3 licence area;for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;
 - (b) a specified place in the Northern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services **and the NITV TV open narrowcast service** provided under the licence.
- (4) The nomination must be expressed to be a nomination under subsection (3).

Note in Section 211A above the font in red represents the NITV amendments

Schedule 1 Division 2 (page 56) 7D Conditions about the provision of the NITV TV open narrowcast service

- (1) A licence allocated under section 38C is subject to the condition that, if there is a TV open narrowcast service transmitted by NITV or by another service which does no more than transmit program material supplied by NITV the section 38C licensee will provide this service.

The insertion of this new sub Clause in what NITV considers to be the appropriate place would mean that current sub Clauses 7 D, E, F, G, H, J, K and L would need to become sub Clauses 7 E, F, G, H, J, K, L and M respectively. NITV notes that 7I is not listed in the Bill.

Possible further NITV amendment considerations concerning Option 2 above and important advice to the Senate Committee concerning “retransmission” and the current workings of Section 212 of the BSA

Option 2 Retransmission by the satellite broadcasting licensees (Section 38C licensees) comments

Section 41 CA of the Bill lists the services which the satellite broadcasting licensees (Section 38C licensees) are authorised to transmit. These do not include “retransmissions” pursuant to Section 212 (1) of the BSA.

Further changes to Section 135ZZJA of the Copyright excludes “rebroadcasts” made by satellite broadcasting licensees (Section 38C licensees) from Part VC of the Copyright Act.

NITV is concerned that the new Bill allows for NITV to be retransmitted pursuant to Section 212(1)(c) of the BSA by satellite broadcasting licensees (Section 38C licensees) should that prove to be a more propitious way to operate than the obligation for satellite broadcasting licensees (Section 38C licensees)

to “rebroadcast” NITV pursuant to the amended sub Clause 7D above and the new Part VD of the Copyright Act.

If this avenue was chosen the above new NITV sub Clause 7D for the satellite broadcasting licensees (Section 38C licensees) would probably need to be changed by adding the words “*pursuant to Section 212(1)(c)*” to the end of the sub Clause.

NITV overwhelmingly operates in a Section 212(1)(c) “retransmission” world now and given that it is willing to provide its service at no charge (see Section 43AD(2) amendment above) to satellite broadcasting licensees (Section 38C licensees) – unlike the commercial TV service providers – there is no need for the complex new “rebroadcast” regime and the new Part VD of the Copyright Act to be brought into play for NITV. Further should Free TV be successful in its argument that the whole new “rebroadcast and Part VD” regime is unnecessary and that everything should be achieved via normal affiliation agreements between satellite broadcasting licensees (Section 38C licensees) and their commercial TV service providers, then NITV would only have the pre-existing Section 212(1)(c) available to it.

Should this “retransmission” pursuant to Section 212(1)(c) of the BSA ‘route’ be followed to meet NITV access and carriage concerns (rather than the specific Option 2 “rebroadcast” oriented NITV amendment above) then the changes to Section 135ZZJA of the Copyright would need to exclude such retransmissions of NITV from their operation. Otherwise there may be no certain and practical method of reaching agreement with underlying copyright holders in program material contained in the NITV service.

Retransmission on the ground of services provided by the satellite broadcasting licensees (Section 38C licensees)

Given that both Screenrights and Free TV have commented on the proposed “rebroadcasting” parts of the Bill as it relates to both the BSA and Copyright Acts, NITV wishes to ensure that in any consideration of these organisations’ views that nothing happen that would fetter to any extent the ability of any entity to downlink the NITV service being “rebroadcast” or “retransmitted” and then retransmit it by any means pursuant to Section 212 (1)(c) and Section 212A of the BSA and, where relevant, Part VC of the Copyright Act.

It is important to ensure that such entities as multi unit building distribution system providers and self-help communities etc are able to use the new satellite platform as the source of the NITV service and that entities can retransmit NITV sourced in this way to the relevant local community / residents and or the audiences for their suite of services under the regulatory exemption cover of Section 212 – **as happens now using the NITV Aurora feed.**