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FURTHER SUBMISSION TO THE JOINT SELECT COMMITTEE ON BROADCASTING LEGISLATION IN RELATION TO THE POTENTIAL ABOLITION OF THE REACH RULE

Introduction

1. WIN has now had an opportunity to consider further the proposal for the abolition of the 75% reach rule and, in particular, has had the opportunity to review the submissions on this topic made by other interested parties, as well as the outcome of the Government's media regulation reform package.

2. WIN's position on the proposed abolition of the reach rule remains as it was when it made its written and oral submissions to the joint select committee on broadcasting legislation on 18 March 2013. In short, whilst not necessarily opposed to the ultimate abolition of the reach rule in the medium to longer term, as things currently stand further consideration of, and clarity on, a number of issues is required before WIN could support any such abolition, and WIN also believes that convergence has not yet reached a stage which justifies any such abolition. WIN's reasons for maintaining this position are set out below.

The reach rule should not be abolished in isolation from other necessary reforms

3. The reach rule is one of a series of statutory tests which are designed to prevent inappropriate concentrations of media power.

4. The Convergence Review (at p. 26) recommended abolishing the reach rule and related statutory tests, and instead subjecting mergers and acquisitions involving commercial broadcasters to **both** an overarching "public interest" test and also to the ACCC existing merger clearance role under s 50 of the *Competition and Consumer Act 2010* (Cth) ("**CCA**")

5. In essence, the Convergence Review proposed replacing the current "quantitative" acquisition limits (such as the reach rule) imposed by existing legislative requirements with an overarching discretionary test, administered by an independent regulator, which would address the same underlying public policy considerations (including implications of any merger on regional broadcasting) on a case by case basis.

6. However, the Bills establishing the proposed independent regulator and setting out the proposed public interest test – the *Public Interest Media Advocate Bill 2013* and the *Broadcasting Legislation Amendment (News Media Diversity) Bill 2013* – are no longer proceeding.

7. As such, the Convergence Review's recommendation to abolish the reach rule, if implemented now, will prove problematic – as the abolition will proceed without the Convergence Review's anticipated (and recommended) safeguards. In this respect, the

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Convergence Review specifically noted (at p. 23) that the ACCC's current powers under s 50 of the CCA would be insufficient to address media ownership concerns – the ACCC's powers being powers which are principally directed to economic issues, and not wider public policy issues.

Convergence does not, by itself, justify abolishing the reach rule

8. In practice, the reach rule has ensured that commercial broadcasting has not become dominated by a limited number of national broadcasters focused only on servicing key metropolitan markets. Convergence, however, has to some extent made the reach rule marginally less effective – as traditional television broadcasters can, through non-traditional platforms such as webcasting, extend their audience reach to more than 75% of the population.

9. At this point in the process, however, the effects of convergence are overstated.

10. Traditional television and radio broadcasting presently remain dominant. As noted in the submission to this committee by the Department of Broadband, Communication and the Digital Economy ("**DBCDE**"), use of traditional media channels has up to the time of that submission remained relatively stable over the past five years, even in the context of significant growth in non-traditional media. Traditional broadcasting also remains of greater community importance than non-traditional media channels (especially in regional areas), most notably in the context of local news, sport, advertising and community engagement.

11. As such, while change may be occurring, convergence has not, so far, fundamentally altered the nature of traditional commercial broadcasting – nor does its existence necessarily justify a radical change in regulatory approach at this time. As long as commercial broadcast media continues in a form similar to today, the public policy reasons which have supported the retention of the rule remain valid. This appears to be supported by recent comments of the chairman of the ACCC who, in an interview with the Australian Financial Review on 6 March 2013, stated that any merger proposals would still be assessed on the "here and now", rather than by reference to speculative technological developments.

Adverse impact on regional broadcasting

12. One inevitable outcome of removing the reach rule is that it will facilitate mergers and further consolidation within the commercial broadcast media – principally between metropolitan stations (Seven, Nine and Ten) and current regional affiliates (such as WIN, Southern Cross and Prime).

13. Were the reach rule abolished, the following statutory regimes would apply to such mergers:

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(a) the "minimum number of voices" or "4/5" rule, the "2 out of 3 rule", the "one-to-a-market" rule (for commercial television) and the "two-to-a-market rule" (for commercial radio) ("**BSA Rules**"); and

(b) the generally applicable competition policy regime under CCA s 50 and, in the case of foreign investments, a national interest test under Part 2 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

14. In its submission to this committee, DBCDE considers the potential breach of the key BSA Rules resulting from any of the possible mergers between Seven, Nine and Ten and the key regional affiliates, noting that statutory impediments existed in only a small number of regional markets (principally based on the mergers resulting in an impermissible reduction in "voices" under the "4/5" rule – which can, in any event, be addressed by the merged entities disposing of assets in affected markets, and possibly by other means as well).

15. As noted above, the Convergence Review itself notes that CCA s 50 provides an inadequate mechanism for considering the broader public interest issues raised by media mergers involving commercial television licensees. Accordingly, as things currently stand, the reach rule is the only key impediment to several potential mergers within the commercial broadcast media between metropolitan and regional broadcasters.

16. The first major area impacted by any such mergers would be regional news and other regional content.

17. Existing legislation and relevant licence conditions allow broadcasters to meet their regional content obligations in very different ways. For example, certain broadcasters satisfy these requirements by providing short regional news updates read from a metropolitan studio, without having any regional physical presence and without having to employ any regional journalists. WIN, on the other hand, chooses to invest in regional news by producing and airing twenty-five separate local bulletins each day in six states, across twenty-five markets and eighty electorates, and by employing over four hundred journalists, cameramen, producers, editors, presenters and operational and management staff throughout Australia.

18. Clearly, it is up to the individual broadcasters as to how these obligations are met and some more than others will be subject to shareholder cost-cutting pressure. However, the proposition that a merger between a regional broadcaster and a metropolitan broadcaster would somehow necessarily result in greater regional content is by no means assured, and indeed is not even persuasive. In fact, the reverse proposition is likely to be true. It is extremely difficult to see how, when certain regional broadcasters currently provide no more than the bare minimum of regional content, this would or could be increased in any material respect following a merger with a metropolitan broadcaster.

19. In fact, WIN's experience over many years of investing in regional news is that to build effectively a regional presence, with all the personnel, equipment and infrastructure that entails, is a costly and lengthy process. For example, WIN's investment in its purpose built facility at Maroochydore took over a year to implement. Further, even after such investment has been made, there are continuing heavy expenses in providing regional

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content, in terms of salaries and wages of journalists, presenters, editors, cameramen and operational and support staff, studio and office accommodation costs, continuing equipment costs, travel and related expenses etc. While there are benefits to be derived from providing such local content, the foregoing expenses are material, such that the cost/benefit analysis becomes marginal, and it does not take much for the costs to outweigh the commercial and other benefits.

20. Given that successful mergers invariably result in cost-cutting exercises, it is hard to see how there would or could be a genuinely greater commitment post-merger to regional content in the case of those regional broadcasters which currently do no more than satisfy the bare legislative regional content requirements, and given that to fulfil any such commitment would require considerable time, money and resources.

21. Producing news and other programming is expensive, and producing regional news and programming (given smaller audiences, and the need to maintain staff, equipment and facilities across Australia) is still more expensive to produce. The commercial reality is that, in any merged broadcaster which straddles both metropolitan and regional areas, broadcasters who do not already have a strong commitment to regionalism will inevitably invest in its most profitable (metropolitan) operations, and not in its less profitable (regional) operations.

22. Where such strong commercial incentives favour reducing regional news and other content, most broadcasters are likely to take a "bare minimum" approach to compliance with regional content licence obligations or any relevant undertaking provided to secure merger clearance. Further, if the reach rule is abolished, it is likely that there will be mergers between metropolitan and regional broadcasters; and it may be questioned whether even regional broadcasters with a demonstrated commitment to providing regional content would be able to continue to provide such content against the likely commercial pressures which might be expected from the merged broadcasters.

23. As regards undertakings to guarantee regional content, WIN queries both the legal and practical enforceability of such assurances – as WIN's successful experience in developing regional news demonstrates, developing such capacity takes a significant amount of time and a significant dollar investment. Capacity cannot be achieved overnight, and advertiser and consumer support is neither assured nor immediate. Nor is it clear how any relevant undertaking which does not secure compliance with a specified provision of the *Broadcasting Services Act 1992* (Cth) or a registered code of practice would constitute an enforceable undertaking under either s 205W or s 205X of that Act.

24. Even for regional broadcasters which do not merge with a metropolitan affiliate, there is a real risk that the abolition of the reach rule, and any resulting mergers between metropolitan and regional broadcasters, could still in practice result in a "race to the bottom" as regards regional content. Any merger of a competitor would cause all broadcasters to review their existing arrangements and policies and some or all of them may conclude (whether or not they themselves merge) that to remain competitive in the new marketplace means that they have to cut down on their regional commitments, particularly in circumstances where to do more than the minimum legislative requirements is at best often economically marginal and at worst uneconomic.

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Adverse impact on the regional community

25. By virtue of WIN's presence and contacts in regional communities, WIN is able to provide considerable support (financial and otherwise) for local sporting, cultural, charitable, religious and business organisations. This commitment is long-standing and ongoing, and is in no small measure due to the local relationships forged during WIN's history as a regional broadcaster. If regional broadcasters were subsumed into metropolitan broadcasters as a result of mergers following the abolition of the reach rule, with only possible exceptions of special cases, there would likely be a switch of focus resulting in this special relationship and ongoing support being lost. In this regard, it is worth observing that WIN has received an overwhelmingly positive amount of support from its regional communities for its stance on maintaining regional news and community support since the initial hearing of this committee on 18 March 2013. Similarly, WIN has received a great deal of negative feedback on imbedded gambling in sport, which is the subject of another committee.

Adverse impact on regional business

26. In regional markets, approximately 35% of television advertisements are used by regional businesses to promote themselves. In the event of a merger between a regional and metropolitan broadcaster, this figure would inevitably decline because the newly merged entity would naturally be inclined to sell its enlarged audience footprint to national and international advertisers. Regional businesses would therefore inevitably suffer.

Adverse impact on broadcasting generally

27. Any overall reduction in a commitment to regional broadcasting as a result of the abolition of the reach rule would also, ultimately, have an adverse effect on the quality of metropolitan journalism. Regional broadcasting has a strong track record of supplying metropolitan markets with talented journalists who have learnt their trade in regional markets. Examples include Dimity Clancy, Matt Snelson, Erin Molan, Georgie Gardiner, Steve Jacobs, Karl Stefanovic, Jessica Rowe and Natalie Barr. Any reduction in commitment to regional broadcasting would obviously have an impact in this area.

28. In addition, the reach rule reflects the fact that commercial broadcasting is a heavily regulated industry with very significant barriers to entry for new participants – limiting established participants to no more than 75% of the population helps ensure that there is sufficient capacity for new entrants to join the commercial broadcast media (especially in regional areas) and grow over time. This reduces media concentration and fosters a greater diversity of views and opinions.

29. Abolishing the reach rule, without any clear alternative policy or appropriate safeguards in place, would simply contribute to greater media consolidation while also reducing regional news and content.