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The Secretary
Senate Environment, Communications, Information Technology &
the Arts Legislation Committee
Parliament House
CANBERRA ACT 2006

Dear Secretary

Inquiry into the Australian Communications and Media Authority

This submission is made by Free TV Australia (**Free TV**), the peak industry body representing all 48 commercial free-to-air television licensees in Australia.

Free TV welcomes the opportunity to comment on the proposed Australian Media and Communications Authority (**ACMA**).

Free TV (then Commercial Television Australia) and Commercial Radio Australia (**CRA**) made joint submissions to the Department of Communications, Information & the Arts (the **Department**) in response to Discussion Papers issued in 2002 and 2003. In those submissions Free TV and CRA argued that a merger of the Australian Broadcasting Authority (**ABA**) and Australian Communications Authority (**ACA**) was neither necessary nor desirable.

However, in light of the Government's decision to proceed with a merger, Free TV supports the approach outlined in the *Australian Communications and Media Authority Bill 2004* (the **Bill**) to implement an "administrative merger" of the ABA and ACA rather than undertake more fundamental change to current regulatory approaches.

1. The provisions of the Bill

Free TV supports the retention of the existing and separate regulatory regimes for broadcasting, radiocommunications and telecommunications. That is, broadcasting services will continue to be regulated by reference to the regulatory framework contained in the *Broadcasting Services Act* (**BSA**). Telecommunications and radiocommunications services will be regulated applying the objectives and regulatory frameworks in the *Radiocommunications Act* (**Radcom Act**) and the *Telecommunications Act* (**Telco Act**).

Spectrum planning and management

Retention of the existing separate regulatory regimes is particularly important in relation to spectrum planning and management. It is of critical importance that ACMA continues to recognise the primacy of broadcasting services in the broadcasting services bands (**BSBs**), and that ACMA continues to apply the objectives contained in the BSA to the planning of spectrum in the BSBs. This is because the planning objectives and technical planning criteria

which apply to broadcasting are fundamentally different to those applying to other radiocommunications and telecommunications services.

The BSA requires spectrum planning for broadcasting purposes to balance a range of economic, social and cultural objectives, which reflect the 'public service' character of broadcasting. As explained in *The ABA's General Approach to Analog Planning*, the ABA is required to balance objects including the economic and efficient use of the spectrum, the promotion of availability to audiences of a diverse range of radio and television services, the promotion of high quality and innovative programming, the encouragement of appropriate coverage of matters of local significance, and the facilitation of the development of a broadcasting industry that is efficient, competitive and responsive to audience needs.

Broadcasting planning is a fundamental element of the scheme for broadcasting regulation, as planning effectively determines the style of content provided to audiences (depending on whether a national, commercial, community or narrowcasting service is planned), and where and how audiences can receive and decode that content.

The considerations which drive broadcasting planning can be contrasted with other communications uses of spectrum. Most other communications uses focus principally on the carriage of the service, technical objectives or revenue generation. Service providers in these areas are not expected to fulfil community or cultural objectives. As a result, the relevant objectives in the Radcom Act are principally economic, and are solely concerned with obtaining the maximum number of users and revenue from the spectrum. This approach is not necessarily compatible with broadcasting planning objectives, where coverage and quality of service are paramount considerations.

Further, the technical basis for planning broadcasting services is fundamentally different from that which applies to other radiocommunications and telecommunications services. The Free TV and CRA submission to the 2002 Discussion Paper explained the technical differences and illustrated the difficulties which could emerge if the ABA's broadcasting planning assumptions were not retained by the merged entity.

Governance issues

Board

Free TV notes that ACMA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997* and that ACMA will be governed by an appointed board.

In relation to the Board, it is very important that:

- it comprises people who have a practical and commercial understanding of the industries that are subject to regulation; and
- its composition is balanced, so that there is equal representation of broadcasting industry experience and telecommunications, including radiocommunications, expertise amongst board members.

Free TV notes that the Bill does not provide for specific numbers of board members with particular industry-specific expertise. Accordingly, it is important that balance is attained through the appointments that are made.

Clearly the Board requires a sufficient number of members to ensure that it can deal effectively with its range of responsibilities. However Free TV considers that if the maximum number of nine board members is appointed, governance and decision making may become unwieldy.

Free TV supports the provision in the Bill which allows the Board to establish Divisions to allow groups of members or associate members with experience in a function to undertake that function. This may assist speedy decision-making.

Bureau structure & location

Free TV agrees with the proposed 'bureau structure' of the merged entity. That is, that staff of ACMA will be carried across from the existing regulators and be placed in different bureaus depending on whether they are carrying out functions under the BSA, the Radcom Act or the Telco Act. This will assist in maintaining the separate administration of the different regulatory regimes in those Acts.

It is important that offices of ACMA be geographically close to those industries that it regulates. Free TV supports the proposal to maintain the current locations of existing ABA and ACA staff.

2. The powers of the proposed ACMA

Free TV agrees with the statement in the 2003 Discussion Paper that the impact of convergence on applications in telecommunications, radiocommunications and broadcasting is currently manageable within the dual institutional structure. Free TV rejects any suggestion that convergence requires a 'one size fits all' approach to the regulation of telecommunications, radiocommunications and broadcasting.

However, Free TV is optimistic that the merged entity may enable a better coordinated regulatory response to converging technologies and services, such as rules governing audiovisual content delivered via 3G mobile phones. The merged body should also be better placed to coordinate broadcasting and telecommunications issues in international forums. Presently ABA engineers participate in such forums alongside ACA engineers. It is particularly important that, consistent with the 'bureau approach', ACMA's broadcasting engineers take a leading representative role in regional and international forums that address spectrum allocation issues.

3. Overseas regulators

It is important that comparisons with overseas regulators are viewed in context. Regulatory responses necessarily vary according to the unique circumstances of a country, including relevant social, political and economic priorities and characteristics.

Given that other jurisdictions share few characteristics with the Australian broadcasting and communications environment, comparisons are of limited value except in relation to high-level governance issues. That is, how the boards of these bodies are constituted, and how regulatory functions are divided across agencies. To that extent, overseas examples

demonstrate that in a merged regulator, different divisions or branches of the regulator can have responsibility for functions under separate regulatory regimes. In other words, the 'bureau model' proposed for ACMA has been applied in other jurisdictions, particularly the Federal Communications Commission (FCC) in the USA and the Canadian Radio-Television and Telecommunications Commission (CRTC) in Canada

Free TV refers the Committee to its response to the 2003 Discussion Paper which discussed the governance models of the FCC and CRTC.

Free TV would be pleased to be represented before the Committee to answer any questions Committee members may have regarding any aspect of this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Julie Flynn', with a long, sweeping horizontal flourish extending to the right.

JULIE FLYNN
Chief Executive Officer