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ABC
Australian
Broadcasting
Corporation

Dr Ian Holland
Secretary
Senate Environment, Communications Information
Technology and the Arts Committee
PO Box 6100
Parliament House
Canberra ACT 2600

ABC Ultimo Centre
700 Harris Street
Ultimo NSW 2007
GPO Box 9994
Sydney NSW 2001
Tel. +61 2 8333 1500
abc.net.au

**Inquiry into the provisions of the Communications Legislation Amendment
(Information Sharing and Datacasting) Bill 2007**

Dear Dr Holland,

The ABC thanks the Committee for the opportunity to comment on the Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007. The Corporation would like to bring two matters relating to the Bill to the Committee's attention.

Disclosure of Information Provided in Confidence

The first matter relates to the disclosure of confidential information by the ACMA to other entities. As drafted, the amendments set out in Part 1 of Schedule 1 of the Bill will empower the ACMA to provide "authorised disclosure information" to Ministers, Departmental Secretaries, Royal Commissions and specified authorities. Under paragraph (a) of the new definition that will be inserted into s.3 of Australian Communications and Media Authority Act 2005 ("ACMA Act"), "authorised disclosure information" will include information provided in confidence to the ACMA in the course of its activities.

Under new subsections 59C(2) and 59D(2) of the ACMA Act, the Chair of the ACMA may impose conditions on authorised disclosure information provided to Royal Commissions and specified agencies. As the Explanatory Memorandum ("EM") to the Bill points out (p.14), a possible condition that might be imposed in this way would be that the recipient of the organisation does not further disclose it. The Bill makes no provision for information disclosed to Ministers or Departmental Secretaries to be made subject to conditions in this way.

The ABC believes that these provisions do not provide adequate protection for sensitive information disclosed to the ACMA on a confidential basis. The Corporation provides very little information to the ACMA confidentially, but when it does, it does so in the expectation that that confidentiality will be respected and maintained.

Accordingly, the ABC believes that the Bill should specify that, in circumstances where the ACMA discloses authorised disclosure information that has been provided to it on a confidential basis to another entity as authorised under the Bill, it must impose a condition on the recipient entity that it not

further disclose the information, unless the organisation which originally provided the information to the ACMA consents in writing for the ACMA to provide the information without such a condition.

Datacasting License Amendments

The second matter relates to proposed changes to the ACMA's ability to modify the channels allocated to datacasting transmitter licences. Part 2 of Schedule 1 of the Bill amends paragraph 111(1)(d) of the *Radiocommunications Act 1992* ("RA") so that the ACMA is able to vary the licence condition applying to a datacasting transmitter licence under in 109A(1)(d) of the RA that restricts the transmitter's operation to "a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence." In effect, this will permit the ACMA to move a datacasting service from one channel to another.

According to the EM (p.19), this change is in part intended to assist the ACMA in preventing datacasting services from interfering with other services. While the EM does not say as much, the clear intention here is to provide the ACMA with a means of responding to potential interference to free-to-air television broadcasts from the mobile television services that are widely expected to operate under Channel B datacasting transmitter licences once they are issued. As mobile television employs a different signal propagation model from traditional television broadcasting, it has significant potential to interfere with services in adjacent bands unless carefully managed. The ABC understands the ACMA has already identified significant interference issues of this kind.

In light of this, the ABC does not believe that the proposed amendments to paragraph 111(1)(d) are an adequate means of protecting terrestrial television transmissions from interference from Channel B mobile television services. Instead, what is required is thorough planning of the channels allocated to Channel B licences of the kind applied to the television services in adjacent channels.

The Corporation supports the arguments for a fully-developed planning regime advanced in greater detail by Free TV Australia.

Should you have any further questions about these issues, please contact Dr David Sutton, Manager Corporate Development, Office of the Managing Director. He may be contacted at (02) 8333 2429, by mobile phone on 0409 241 846 or by email at sutton.david@abc.net.au.

Yours faithfully,

Gary Dawson
Director of Communications