



**Submission by
Free TV Australia Limited**

Department of Broadband,
Communications and the Digital Economy

Content and access: The future of program
standards and captioning requirements on
digital television multi-channels

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1 Executive Summary

- Free to air digital multi-channels which will drive the switchover to digital television are currently at a critical stage in their development.
- In order for viewers to continue to receive the benefit of these additional free channels it is vital that the regulatory environment reflects the unique and emerging nature of these services and is not overly burdensome.
- The multi-channels launched to date operate under a very different business model to that of the primary services. Existing licensees have invested considerably in formulating channels which can be commercially viable despite much smaller viewer numbers and a household penetration rate of 56%.
- These channels could not continue in their current form if content obligations were imposed and this would threaten their ongoing viability in any form.
- It is unlikely that a multi-channel could generate sufficient revenue to offset the significant fixed cost of complying with Australian and Children's content quotas.
- Content and captioning quotas would therefore represent a substantial financial penalty on Free TV broadcasters who are already facing increased competition from largely unregulated emerging commercial media platforms.
- Furthermore, the application of the same content requirements across the commercial free to air platform would only permit the development of multi-channels which look largely the same as existing primary channels.
- For these reasons, the Australian Content Standard and the Children's Television Standard should not apply to free to air digital multi-channels.
- The current approach to captioning on multi-channels should continue. The more appropriate time to consider the future of captioning on multi-channels is closer to final analogue switch-off, when these services will be more firmly established.
- Amendments to address the exemptions are required urgently. The current exemptions are timed to expire at analogue switch-off in individual licence areas. This will occur in Mildura in six months.
- Switchover will commence in regional Australia in 2010 before progressing to metropolitan areas in 2013. Without urgent amendments more onerous content and captioning obligations will apply to regional broadcasters' multi-channel streams in early switchover areas than apply to the metropolitan broadcasters who supply that content.
- Regional broadcasters do not have the capacity to produce or fund the additional Australian and Children's content or additional captioning which would be required to ensure compliance.
- Regional broadcasters would not risk regulatory breach and as a result, would have no option but to suspend carriage of distinct multi-channel content, to the detriment of regional viewers.
- Whilst not a focus of this review, we would also welcome a discussion regarding additional flexibility in the operation of Australian and Children's content quotas.
- The advent of free to air multi-channelling provides a valuable opportunity to reconsider how free to air broadcasters are required to meet content quotas in an environment where new market entrants and competitors face no similar obligations.

2 Introduction

Free TV Australia represents all of Australia's commercial free to air television broadcasters. Free to air multi-channels are set to play a vital role in driving the switchover to digital television and are currently at a critical stage in their development. Free TV therefore welcomes the review of program standards and captioning requirements on digital television multi-channels.

Free to air broadcasters are strongly committed to Australian content and continue to provide hundreds of hours of children's content each year. Free to air broadcasters have also demonstrated their good faith commitment to improving the level and quality of television captioning.

However, free to air multi-channels are new and unique businesses and the potential impact of regulatory settings needs to be carefully considered. Content and captioning quotas represent significant fixed costs in a very challenging environment for broadcasters. Commercial free to air broadcasters invest almost \$800 million each year in original Australian programming including drama, children's programs, documentaries, sport, news and current affairs and local content. Commercial free to air broadcasters continue to be the main underwriters of Australian content and without a strong free to air sector, the Australian production industry will suffer.

Captioning obligations also represent a multi-million dollar annual commitment for the industry.

Allowing the current exemptions to expire would be equivalent to a decision to double these obligations.

These obligations do not apply at comparable levels to any other media or entertainment platform. Free to air broadcasters also face a range of other obligations and restrictions which do not apply to other platforms, such as local news and information quotas, classification time-zones and strict limits on the type and amount of advertising that can be broadcast.

Free to air broadcasters are still building audiences for their multi-channels and advertising revenue to support programming is limited. The imposition of onerous content and captioning obligations would have a significant impact on the immediate and long-term viability of these services. The formats of these new channels have been carefully devised to give them the best chance of success in a very difficult environment. The application of content quotas would significantly disrupt these channel formats.

Furthermore, setting the same content quota requirements across core services and multi-channels is likely to only permit the development of services which mirror a broadcaster's main channel. This would clearly represent a poor outcome for viewers.

Free TV therefore supports legislative amendments to ensure the existing obligations under the Australian Content Standard and the Children's Content Standard are not increased. We also support a continuation of the existing approach to captioning on multi-channels. This would be consistent with the lighter-touch regulatory policy set down for new and niche services in the *Broadcasting Services Act 1992* (BSA).

With switchover set to commence in Mildura in six months time, there is an urgent need for these legislative amendments. Without urgent action, regional broadcasters will face differing content and captioning requirements across their service areas as switchover progresses and will face more onerous regulatory obligations than apply to their metropolitan content suppliers. The consequent threat of regulatory breach will almost certainly mean that regional

broadcasters would have no option but to cease to provide distinct multi-channel content until after switchover.

Whilst not a focus of this review, Free TV would also welcome a discussion of ways to provide additional flexibility for broadcasters in meeting their Australian and Children's content obligations. Free to air broadcasters are facing a difficult revenue environment and an expanding range of competing platforms which are not subject to any meaningful content requirements. The emergence of free to air multi-channels provides a valuable opportunity to reconsider the ways in which these quotas are met, or the relevant regulatory objectives achieved.

3 Regional Broadcasting issues

As detailed in the Discussion Paper, free to air television multi-channels are currently exempt from the Australian and children's program standards which apply to a broadcaster's primary channel. There is a similar exemption as regards captioning requirements. These exemptions are timed to expire at the end of the simulcast period in a licence area.

With the simulcast period scheduled to end at different times for different licence areas, broadcasters will face differing regulatory requirements across different licence areas. This would not be acceptable or indeed desirable for broadcasters.

Analogue switch-off is scheduled to commence in regional licence areas, progressing through to metropolitan areas in 2013. Regional broadcasters rely almost solely on content provided through affiliation agreements with metropolitan broadcasters. Without legislative action, regional broadcasters carrying multi-channel content provided via affiliation agreements will be subject to content and captioning obligations which do not apply to the metropolitan broadcasters which supply their content.

The content provided to regional broadcasters under network affiliation agreements can be expected to comply with the regulatory obligations that apply to the metropolitan broadcasters supplying the content, who under the current framework will continue to be exempt through to 2013. Aside from the fact this is a highly unusual regulatory outcome, it would impose an impossible compliance burden upon regional broadcasters.

Regional broadcasters would face substantial additional costs in order to comply with content quotas and captioning requirements on multi-channels. It should not be assumed that it is feasible or possible for regional broadcasters to meet such costs or produce such content. There are technical barriers which mean it would cost-prohibitive for regional broadcasters to interrupt pass-through programming streams received from metropolitan partners. There may also be contractual reasons which prevent regional broadcasters from inserting different program content into the program streams received under affiliation agreements.

For these reasons, regional broadcasters carrying multi-channel content supplied by metropolitan broadcasters prior to ASO will not be able to comply with additional content and captioning obligations. Regional broadcasters would be exposed to regulatory breach after analogue switch-off occurs in their licence areas, leaving them with no option but to suspend the carriage of multi-channels until the programming feeds received comply with the regulatory framework.

This would clearly be a poor outcome for regional Australians and would also have a material financial impact for regional broadcasters, who would lose the ability to develop these new business opportunities in the lead-up to ASO, meaning they would have to “start from scratch” in 2013.

These issues were first raised by Free TV in its July 2008 submission to the Department regarding the Legislative Framework for Implementing a Digital Switchover Timetable.¹ Free TV again noted these issues and the need for regulatory action in its October 2008 submission to the Senate Environment, Communications and the Arts Committee Inquiry into the Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008.²

With switchover to commence in just over 6 months time, there is now an urgent need for legislative action to address these issues and to ensure that the content and captioning standards referred to above do not apply to regional broadcasters in a manner which imposes an unreasonable additional burden.

4 The appropriate regulatory settings for content on multi-channels

The current exemptions which apply to free to air multi-channels as regards Australian content, children’s content and captioning should be made permanent. These are new and emerging services and a less interventionist regulatory approach is warranted and necessary to ensure their viability. Applying content quotas would severely impact the business models of the existing multi-channels.

4.1 Multi-channels are developing services

A unique business model is emerging in relation to the multi-channel environment, making it particularly important to carefully consider the impact of regulatory settings. The greater the regulatory burden placed on new digital channels, the less likely they are to be successful.

Viewer numbers of multi-channel content are still relatively low as a result of a combination of low take-up of digital and the niche audiences attracted to specialised programming. The advertising revenue available to fund multi-channel content is limited and the regulatory regime should reflect these commercial limitations.

As noted above, commercial free to air broadcasters invest almost \$800 million each year in original Australian programming and captioning obligations also represent a multi-million dollar annual commitment for the industry. The imposition of similarly onerous content and captioning obligations on multi-channels would have a significant impact on the immediate and long-term viability of these services.

The advent of multi-channels has not expanded the potential viewing audience for free to air television, or the available advertising revenue needed to fund the services. To the extent that advertising revenue is being generated by the new channels, this is needed by free to air broadcasters to help offset rising content costs and the fixed and

¹ http://www.freetv.com.au/media/Submissions/2008-0011_SUB_Legislative_framework%20for_implementing_a_DSO_timetable_110708_FINAL.pdf
² http://www.freetv.com.au/media/Submissions/2008-0019_SUB_Digital_Television_Switch-over_Bill_241008_FINAL.pdf

ongoing costs of the regulatory obligations which apply to main channels and meet the competitive threat of emerging media.

Whilst audience numbers for the multi-channels are encouraging, they are still comparatively low and vary from day to day. As demonstrated by recent ratings results, audiences for multi-channels are complementary to but not comparable with primary channel audiences.

Sunday 13 December 2009

Seven Network			Nine Network			Network TEN		
7	7two	TOTAL	9	GO!	TOTAL	TEN	ONE	TOTAL
27.9	3.6	31.4	24.4	5.8	30.3	20.1	1.4	21.5

Monday 14 December 2009

Seven Network			Nine Network			Network TEN		
7	7two	TOTAL	9	GO!	TOTAL	TEN	ONE	TOTAL
25.7	3.0	28.7	22.2	2.8	24.9	22.5	1.2	24.0

Tuesday 15 December 2009

Seven Network			Nine Network			Network TEN		
7	7two	TOTAL	9	GO!	TOTAL	TEN	ONE	TOTAL
26.7	3.8	30.5	25.4	3.5	28.9	20.5	1.5	22.0

Source: OzTAM Network Ppl 25-54, 5 cap cities, market share %

Free TV is not aware of any comparable jurisdiction overseas which has imposed onerous public service obligations on commercial digital multi-channels. Free TV also notes that multi-channels have failed in selected circumstances overseas, demonstrating that the success of digital terrestrial multi-channels is not guaranteed. For example, ITV Digital failed in 2002 and in the same year the BBC multi-channel BBC Knowledge³ became the first BBC channel ever to close (despite the BBC's extremely generous funding base).

A decision now to impose content quotas will require a fundamental change in the multi-channel offering and could potentially stall or negate audience growth. Regulatory policy must reflect these facts if the digital multi-channel platform is to mature and establish.

4.1.1 Existing regulatory policy

The application of content and captioning quotas to the multi-channels would not be consistent with existing regulatory policy for broadcasting.

³ The UK digital multi-channel BBC Knowledge should not be confused with the new international channel BBC Knowledge (Worldwide) launched in 2007.

The objects of the BSA support a lighter regulatory scheme for new and emerging services with limited audience reach. This was the approach taken in regards to the then-emerging subscription television platform when the regulatory framework was developed for that sector. These same considerations apply in relation to digital multi-channels where audiences and business models are still in the early stages of growth. The appropriateness of a less prescriptive approach for digital multi-channels was explicitly noted by the Parliament in allowing for these services to commence.

This Explanatory Memorandum to the Broadcasting Legislation Amendment (Digital Television) Bill 2006 noted that the initial smaller audience reach of digital multi-channels means “it is appropriate that a lighter regulatory burden be placed on [those channels]” (p 30). This is also consistent with the regulatory policy of the BSA more broadly, which states that different levels of regulatory control should be applied across broadcasting services, according to their level of influence within the community.⁴

Free TV strongly supports this approach and seeks legislative amendments to ensure content quotas are not applied to the multi-channels.

Providing an ongoing exemption would properly reflect the unique and emerging nature of multi-channels and would be consistent with a ‘lighter regulatory burden’ for multi-channels, which reflects the broader policy objective of encouraging a diverse range of new digital services.

Free TV notes that viewers now have access to a wide range of entertainment options, including subscription television, video on demand and IPTV services. With the roll-out of a nation-wide superfast broadband network reaching every home in the country, the range of television-like services is expected to dramatically increase. As emerging services, these competing platforms currently face no significant or meaningful content obligations. It would not be appropriate or equitable to apply more onerous content obligations on free to air multi-channels than apply to other emerging media business models.

Digital free to air multi-channels are already subject to a range of regulatory restrictions which do not apply to other emerging media platforms. These range from restrictions on the amount, type and placement of advertising through to restrictions on the kinds of content that can be shown at different times throughout the day. These restrictions do not apply in any comparable way to other competing media platforms such as pay TV or online content.

4.2 Multi-channels are niche services

Setting the same content quota requirements across core services and multi-channels would severely disrupt existing multi-channel offerings and would restrict the development of additional, targeted or niche digital multi-channels. This is contrary to the Government’s stated objectives of facilitating a diverse range of new and innovative services on the digital terrestrial television platform.

⁴ Subsection 4(1) *Broadcasting Services Act 1992*

The impact would be felt not just by broadcasters in the development of viable services. Such restrictions would also mean reduced choice and incentive for viewers to take up digital television. The Government's Digital Tracker Survey results for the 3rd quarter of 2009 show that one of the main reasons people consider switching to digital is for "more channels and choice" (28%).⁵

4.2.1 *Potential for significant disruption*

The imposition of content requirements would be unduly disruptive for both broadcasters and viewers. Broadcasters have launched specialised multi-channels that target specific audiences - Network Ten's 24-hour sport channel ONE HD, the Nine Network's entertainment channel GO! and the Seven Network's 7two channel (which features themed programming in prime time). These channels could not continue in their current form if content quotas were extended to digital free to air multi-channels.

These multi-channels were launched in their respective formats following lengthy research, development and planning stages. Significant resources have been expended in developing and refining business case plans for these services and advertising and sponsorship partnerships have been secured on the basis of the chosen channel content and strategy.

The imposition of quotas would necessitate a complete change in approach to these multi-channels, jeopardising existing sponsorship and advertising agreements and potentially deterring audiences, who have been attracted to the multi-channels by the particular content currently on offer.

With the main channels continuing to provide the same level of Australian and Children's content, the justification for this kind of disruption is unclear.

By way of illustration, children's programming is incompatible with a 24-hour sports channel such as ONE HD. The application of the CTS to this channel would clearly be unreasonable, particularly in an environment where children now have access to a dedicated free to air children's channel.

Maintaining the existing exemptions will ensure that audiences will receive a valuable mix of new, niche free to air services and the existing primary channels, which remain a strong source of Australian and Children's content.

4.3 **Captioning on free to air multi-channels**

Free to air broadcasters recognise that captioning is a much-valued service within the deaf and hearing-impaired community. Broadcasters have demonstrated their good faith in comfortably meeting the requirements of the previous HREOC exemption to reach a minimum of 70% captioning of programming from 6.00am till midnight by 2007.

Broadcasters have also committed to further significant increases in captioning levels and have undertaken extensive consultations with peak deaf groups on various issues relating to television captioning. Free to air broadcasters have recently committed to further staged increases in captioning to reach 85% of programming by the end of 2011.

⁵ http://www.digitalready.gov.au/media/DigitalTrackerReport_Qtr_3_2009.pdf (page 12)

These targets apply to a broadcasters' main channel. Under the existing framework for captioning in the BSA, only programs which have already been transmitted on the main channel with captions must be captioned on a multi-channel.

Free TV supports the continuation of this approach. Free TV acknowledges the deaf and hearing impaired community's desire to see captioning expand on the multi-channels. However, the significant impact that increased captioning obligations would have for these emerging services must also be considered. Captioning commitments on broadcasters' primary channels alone costs millions of dollars each year and similar costs would arise from the application of captioning quotas on digital multi-channels.

An extension of the current exemption would be consistent with the 'lighter regulatory burden' policy for multi-channels, which reflects the emerging nature of digital multi-channels and the broader policy objective of encouraging a diverse range of new digital services.

Free TV wishes to emphasise that the current regulatory framework, in which broader captioning requirements would apply to multi-channels upon analogue switch-off, would impose a very significant cost and resourcing burden on regional broadcasters. Regional broadcasters would be required to produce and insert captions into multi-channel streams to ensure compliance. This is unlikely to be a feasible or viable option and, as noted above, would likely result in regional broadcasters suspending these services in order to avoid regulatory enforcement action.

Free TV is not seeking any change to the requirement that content which airs on a primary channel with captions must also carry captions if subsequently broadcast on a multi-channel.

This will continue to ensure a level of captioning for programs on multi-channels. For example, Network Ten provides extensive captioning of AFL matches broadcast on its primary channel. These matches are captioned when simulcast or repeated on ONE HD. Similarly, a proportion of programming on GO! and 7two is repeated programming from the main channel and if previously captioned it carries captioning when shown again on the multi-channel.

In addition, the Seven Network has continued to caption programs which have moved from the primary channel to its multi-channel for scheduling or other programming reasons, such as *Lost*, *Heroes* and *Ugly Betty*. This has ensured that deaf and hearing-impaired viewers can continue to enjoy these series on the multi-channel. This represents a commitment over and above regulatory obligations.

4.3.1 Future arrangements for captioning on free to air multi-channels

The appropriate time for the consideration of captioning requirements on multi-channels will come following their establishment in the marketplace. To this end, Free TV notes that it is a requirement for free to air broadcasters to consult with representatives of the deaf and hearing impaired community on multi-channel captioning prior to the expiry of the current AHRC exemption in 2011.

Free TV also notes that as part of its Media Access Review Discussion Report (November 2009), the Government has indicated it is considering a review of captioning on digital multi-channels in 2013 (page 23).

Given the need to allow multi-channels to mature and establish long-term viability, these reviews and consultations would appear to be appropriately timed.

Until then, urgent legislative action is required to ensure that the existing exemptions continue to apply.

Free TV will further discuss this issue with Government in the context of the Media Access Review Paper.

5 The future of Australian and Children's content quotas

Free TV notes that this review is not intended to "examine the actual standards for Australian and children's content".⁶ Free TV nevertheless wishes to express its views regarding the ongoing relevance and efficiency of the existing content quotas, particularly as regards the Children's Television Standard.

5.1 Children's Television Standard

The Children's Television Standards are a significant regulatory burden on commercial free to air broadcasters. These burdens include the production costs for children's programming, the restrictions on advertising and the costs of compliance with the regulatory obligations.

The relative community benefit of the CTS is declining as fewer children watch regulated children's programming.

Free TV was disappointed that the 2007 ACMA review of the CTS failed to include an in-depth consideration of the continuing relevance of the CTS to the Australian child audience in the 21st century.

There have been significant changes to the media landscape since the standards were first introduced.

In 1984, Australian children only had access to children's programming and the occasional feature film on free to air television. In 2009, in addition to free to air television, Australian children have access to over 100 pay TV channels including eight dedicated children's channels, several music channels and a range of other channels of general appeal to children. Australian children now also have access to ABC3, a dedicated free to air children's channel, fully funded by government.

They also have access to the vast array of information and entertainment sources available on the internet, as well as DVDs, digital media players, computer games and increasingly video on demand services, none of which were available when the CTS was created.

None of these platforms are subject to any of the programming requirements or advertising restrictions of the CTS or any other specialised children's content requirements.

⁶ Discussion Paper, page 2

The pace of change in children's use of media is set to increase even further with the rapid uptake of very fast broadband services and on-demand video services.

The commercial free to air model is already feeling the impact of the significant change in children's viewing habits with declines in the number of children viewing and the time spent watching.

In this environment it is appropriate to question the ongoing relevance of the current quota obligations. Free TV has consistently argued that the CTS should be revised to provide greater flexibility for broadcasters and child viewers, particularly in the scheduling of children's programming. Free TV would welcome further discussion with government on tradeable quotas as a way of providing some greater flexibility in the standard.

There is certainly no justification for an increase in the current quota levels, which would be the effect of allowing the CTS to apply to multi-channels, and any change should more appropriately result in a reduction.

5.2 Australian Content Standard

Australia's commercial free to air broadcasters continue to support local production and are the major underwriters of Australian content.

Screen Australia's national production survey shows that in 2008-09, as in previous years, the largest contribution to the combined TV drama slate came from the commercial free to air broadcasters.

In 2008-09 Australian TV drama spend increased to \$294 million, up from \$229 million last year and well above the 5-year average of \$227 million. 614 hours of Australian TV drama were produced, up from 606 hours last year, and again, well above the 5-year average of 581 hours.

The Australian film/TV industry provided the majority of investment for this year's TV drama slate (71 per cent), contributing \$231 million to 42 productions. 2009 has been an excellent year for drama on free to air television, with big audiences for such quality productions as *Underbelly*, *Packed to the Rafters*, *City Homicide* and *Rush*.

Commercial free to air broadcasters invest almost \$800 million a year in original Australian programming including drama, children's programs, documentaries, sport, news and current affairs and local content.

Australian content quotas represent a significant fixed cost in an environment of considerable revenue uncertainty. The launch of digital multi-channels provides an opportunity to review the operation of the existing quotas in the interests of facilitating greater flexibility.

Free TV is not proposing a reduction in Australian programming on free to air television. However, the emergence of a new range of television-like services (such as IPTV, video on demand and other new platforms) which are not subject to any local content obligations, further reinforces the need to consider the ongoing regulatory impact of the Australian Content Standard. Free TV would welcome a discussion regarding additional flexibility in the operation of the Standard in an environment where new market entrants and competitors face no similar obligations. Free TV notes with interest the proposal in the Discussion Paper to permit aggregation of total programming across digital multi-channels as a means of meeting quota requirements

(Option 4, page 14). Such an approach would provide much needed flexibility whilst maintaining the amount and quality of Australian content available to free to air audiences.

Free to air commercial broadcasters continue to be the main underwriters of Australian production. Free TV submits that in considering local content policy objectives, the Government's focus should be on ensuring a viable free to air television platform so as to ensure existing levels of local content production can be maintained. The imposition of additional, commercially non-viable local content obligations on new digital multi-channels, to the exclusion of other emerging media platforms, would be inequitable and ineffective.