27 September 2016

Christine McDonald
Secretary
Senate Environment and Communications Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Broadcasting Legislation Amendment (Media Reform Bill) 2016

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to provide additional comment on the Broadcasting Legislation Amendment (Media Reform Bill) 2016 (the Bill), as reintroduced into the Senate on 1 September 2016.

For background regarding ASTRA, its members and policy outlook, please refer to the submission made by ASTRA to the Committee during its inquiry into the Bill in March 2016.

ASTRA's position remains unchanged

ASTRA refers to its earlier submission to the Committee and to the evidence provided by ASTRA representatives at hearings on 31 March 2016. ASTRA's position remains unchanged – that the Government should pursue a whole-of-industry deregulatory agenda which enables all, rather than some, Australian broadcasters to continue growing, investing and creating jobs in the face of challenges represented by largely unregulated offshore entrants.

ASTRA understands the commercial impetus towards liberalised ownership and control rules and does not oppose deregulation in this area provided that deregulation is applied equitably across sectors. Structural and cyclical change in the Australian media industry drives local players towards consolidation and scale as a means of responding to increasing competition for audiences and advertising and other revenues. ASTRA broadly supports a deregulated media industry with minimal ownership restrictions and in which operators compete on a level playing field.

The proposed changes to only two ownership rules in the *Broadcasting Services Act 1992* (BSA), which extends to almost 1000 pages, does not constitute meaningful media reform and does no more than benefit a small number of incumbent media operators in one sector of a broader industry, by facilitating a small number of transactions between some industry participants.

Whilst we are not opposed in-principle to the reforms contained in the Bill, ASTRA does not support selective, operator-specific deregulation, which will entrench the competitive advantages enjoyed by free-to-air (FTA) television networks, thus skewing investment towards the oldest business models and least innovative technology in broadcasting. This will dampen innovation, diminish diversity and deny to Australia the jobs and growth that can be unleashed if reform is applied to the entire industry in an operator-neutral way.

Whilst we refer the Committee to our earlier submission for our views on the key issues, there are a number of other issues, raised during the course of the earlier inquiry which ASTRA wishes to comment on.

Regulation of sports broadcast rights

In our earlier submission, we outlined the urgent case for reform of the anti-siphoning scheme, noting that the emergence of new technologies and new media companies has made the rules, which date from last century, completely redundant, yet still immensely punitive.

It is in the FTAs' commercial interests to perpetuate myths about the origin, purpose and operation of the anti-siphoning scheme and this was continued in submissions to the Committee earlier in the year. ASTRA would like to respond to some of the erroneous claims made in FTA submissions to the earlier inquiry.

Sport on subscription TV is a unique and unrivalled product of great value to Australians

It is simply untrue that, as alleged by the FTAs, the anti-siphoning scheme protects sports which consumers have traditionally been able to watch on FTA television. Subscription TV offers premium, high-value sports products which were never available on FTA television.

Taking rugby league as an example, when regular television coverage commenced in 1961, FTA television offered half a game on a delayed basis. In the 1970s, the ABC showed a single, delayed game. Then, when coverage moved to the Nine Network, Friday night games were delayed until after ratings stalwart *Burke's Backyard.* On Sundays, coverage was delayed and cut down so as to fit in with the lucrative, non-sports prime-time programming schedule. Full games on FTA television were not readily available until around 1998 and delays and editing continued for many years. At no stage during this time was coverage of all games available on FTA television and up until as late as 2014 only one game per week was shown live.

Contrast this to the current subscription TV offering of *all* games in *every* round, live, in high-definition and uninterrupted by advertising during play. This is a product that was *never* available on FTA and has only come to Australian screens through significant investment and innovation provided by subscription TV. From next year, Fox Sports will offer a 24/7 dedicated NRL channel, something never before seen in Australia. This is the culmination of 20 years of innovation and investment from subscription TV and has no resemblance to anything offered by FTA television.

For many years, overseas cricket tours were delayed or not shown on FTA television, and only found full coverage with the involvement of subscription TV. It is the investment of subscription TV which has enhanced consumer welfare by creating competition and choice in relation to sports broadcasting products.

Australian AFL fans can now watch *every* game of *every* round live, in high definition, with no ads during play on a dedicated 24/7 AFL channel. Again, this was never available on FTA television. It is a product that subscription TV is uniquely positioned to provide.

It is also untrue that Australians do not have a willingness to pay for access to premium television content. Almost 10 million Australians aged 14 or older now have a paid media

service in their home.[1] Audiences for sport on subscription TV are also up, demonstrating that Australians see value in the premium sport product subscription TV is able to provide.[2]

The scheme lacks any effectiveness as a piece of public policy

The FTAs also argue that the anti-siphoning scheme has public purpose at its core. This is also untrue. There is no guarantee that any of the 1900 events on the list will be available free, or at all. The only guarantee is that subscription TV is unable to freely compete to acquire those rights and offer a premium product to Australians.

This is demonstrated by the Seven Network's **paid** Olympics app. We question the public policy good achieved by a scheme which gifts FTAs preferential access to Olympics rights, with the purported aim of enabling free access, but which does not then prevent FTAs from charging Australians for access to that content. The scheme only stops subscription TV from freely competing to acquire the rights to offer that product.

The scheme fails on another level, as it does not restrict other companies (telecommunications carriers, 'over-the-top' (OTT) providers, platforms such as Google and Amazon) from acquiring exclusive rights to listed sports.

A clear example is provided in the recent establishment by Optus of the *Optus Sport* OTT or online TV service and its acquisition of rights to the English Premier League. Whilst the English Premier League is not an anti-siphoning listed event, it is evidence of the interest of other content providers in premium sport. It is commonly observed that telecommunications companies, such as Optus, will increasingly look to media content as a means of differentiating their service offering and to drive customer acquisition and retention. It has also been observed that telecommunications companies are able to table much higher bids for premium content than traditional broadcasters.[3]

It should be noted that the Optus Sport English Premier League service delivers coverage with up to a minute delay.[4] This impacts on the quality of the service offering, particularly as regards fans who enjoy using social media (which is instantaneous). This means the product is inferior to that which can be provided on subscription TV, which can deliver coverage in real time.

It has also been reported that US streaming giant Amazon is now pursuing the broadcast rights to a wide range of sports such as tennis and rugby, as it looks for ways to draw new customers to its online TV service.[5] This would be part of a strategy for Amazon to distinguish itself from other online entertainment services and the company has recruited an executive specifically to oversee sports partnerships. There is every possibility these moves could be replicated in the Australian market.

A further example comes in the recent announcement by the American NFL that it has partnered with Twitter to offer live streams of selected games on an OTT basis.[6]

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[1] Roy Morgan, September 2016
[2] https://mumbrella.com.au/fox-sports-501-wins-astra-channel-year-393549
[3] http://www.businessinsider.com.au/how-optus-stole-the-english-premier-league-from-foxtel-2016-5
[4] https://mumbrella.com.au/optus-out-of-sync-epl-coverage-letting-fans-down-394349
[5] http://www.bloomberg.com/news/articles/2016-09-09/amazon-said-to-seek-sports-streaming-rights-from-tennis-to-rugby
[6] https://nflcommunications.com/Pages/National-Football-League-and-Twitter-Announce-Streaming-Partnership-for-Thursday-Night-Football.aspx

FTA Licence fees

Whilst not addressed in the Bill, FTA licence fees have been raised in other submissions to the inquiry and ASTRA wishes to provide comment on this issue. Broadcasting spectrum access and pricing are highly significant regulatory settings which impact on the competitive balance in the industry and, like media ownership reform, any further reductions must only be considered as part of a comprehensive package of deregulatory reforms.

To be clear, the STV industry is of the view that, whatever means the Government ultimately decides to use for allocating and pricing spectrum (including in the broadcasting services bands) commercial FTA broadcasters should be charged market rates for the spectrum they use.

Spectrum is a scarce public asset and ASTRA believes that allocating it to its highest value use on price and access terms that reflect its ongoing opportunity costs is the best way of achieving economic efficiency and maximising return to the spectrum's owner – the Australian public. To this end, ASTRA believes that spectrum for commercial activities should be subject to price-based allocation processes, particularly where commercial entities that use spectrum for the delivery of their services are in direct competition. Market-based pricing of spectrum for commercial use is more likely to encourage the most efficient use of spectrum to provide the services that consumers of media and communications services want.

Conversely, exclusive use of spectrum for commercial activities allocated by means other than market-based mechanisms may not necessarily provide the same incentive for efficient spectrum use, and will almost inevitably preference particular industry sectors to the commercial detriment of other participants.

ASTRA welcomes the Government's review of spectrum pricing and hopes that this process will begin an era in which the cost of spectrum access is determined according to objective principles and sound evidence, rather than the current system of political negotiation and special backroom deals.

References to overseas comparisons

In their submissions and public statements on the issue, FTA broadcasters place great emphasis on the disparity between the level of Australian licence fees and those in other jurisdictions (which, incidentally, have entirely distinct industry structures and regulatory frameworks).

Whilst Australian licence fees are high by international standards, this is no accident. Australian FTA television licence fees reflect the value of unusually significant protections and privileges enjoyed by the major broadcasters, rendering invalid any comparison with fees paid by their international peers.

In exchange for paying licence fees, Australian FTA broadcasters enjoy a legislated ban on competition, guaranteed access to broadcasting spectrum and the world's most protected position for the acquisition of sports broadcast rights.

These strange protections and privileges simply do not exist to anywhere near the same degree in any of the jurisdictions referenced by FTA broadcasters in their international comparisons, a fact which renders those comparisons meaningless.

The focus of policy-makers should not be directed towards out-of-context references to single elements of the regulatory frameworks of overseas jurisdictions. Instead, Australian licence fees should be determined with reference to the value of the spectrum in Australia

and in the context of existing regulatory privileges. To that end, there should be no reduction in licence fees without a corresponding reduction in the privileges and protections from competition that FTA television networks have amassed over decades.

Thank you again for the opportunity to comment on the Bill. If you have any questions or would like further information, please do not hesitate to contact me.

Yours sincerely

Andrew Maiden
CEO