

**NINE ENTERTAINMENT CO SUBMISSIONS TO THE JOINT SELECT COMMITTEE
ON BROADCASTING LEGISLATION**

March 2013

- Nine Entertainment Co Holdings Pty Ltd (Nine) welcomes the opportunity to make a submission to this Parliamentary Committee in relation to the potential abolition of the 75% audience reach rule contained in section 53(1) of the Broadcasting Services Act 1992 (referred to as the 75% reach rule).
- The Committee is rightly focussed on the impact on local content in regional areas, however, the removal of the 75% rule not only provides an opportunity to remove the out of date and now irrelevant rule, but also to ensure greater investment in local content.
- Nine believes the future of broadcasting is local content. In 2012, 47 of the top 50 programs on television last year were Australian and in regular nightly ratings News is always in the top 5 most watched programs.
- 86 percent of homes have internet access and 96 percent of those are on broadband. So anything on video can land in virtually every Australian household - there are no boundaries on the internet, no licence areas and no restrictions on who can distribute their content and where it can be accessed.
- There's an avalanche of content pouring into homes across Australia every minute through new technology - just consider it, everything from social media, to Apple TV, I Tunes, Telstra and T-Box, to 4G mobile networks, to the merger of Foxtel and Austar as a new national business, and the coming NBN. Plus newspapers and radio of course. And none of them, not one of them, face any restriction on the percentage of the population they can reach across the nation. They are all national businesses.

- It's so obviously wrong in this modern age, and it is plainly unfair to disadvantage free to air broadcasters by preventing them from becoming national businesses like EVERYONE else. It's just about impossible to argue a halfway sensible case FOR this nonsensical regulation.
- It's time to act to set this right - not only to provide a level playing field for free to air television, but also so they can grow their businesses and invest in regional Australia. I hear some voices saying 'why the rush' about removing this out of date rule . I say the opposite. Why the delay when the rule has absolutely no modern purpose?
- The fact is the timing is now critical. The debate about the reach rule has been going on for years. The changes were publicly announced last November and were recommended by Free TV to the Government's Convergence Review over a year ago. Of the 6 commercial television broadcasters, 4 are in discussions right now about affiliation agreements. The delay in moving on what is a compelling argument is causing needless uncertainty in the marketplace, when this much IS absolutely clear – ONLY through the removal of the 75 percent rule will regional Australia get MORE local television news.
- More than 95 percent of all programming broadcast in regional areas is provided by metropolitan networks under affiliation agreements.
- Here is what we know about local news today :
 - There is no legislative requirement for the level of news that is produced by WIN and Prime across regional Australia
 - In fact under the existing system they are not required to produce any local news at all.
 - But as they come under increasing commercial pressure from the internet, Pay TV, etc their investment in news is becoming more difficult to sustain.
 - As local news is the main discretionary cost for these broadcasters there is every chance they will look to reduce their current level of services in order to protect their businesses - as we've seen

already with WIN in WA and SA recently despite its tremendous ongoing commitment to local news.

- So what's the answer?
- If metropolitan and regional broadcasters merge, it will make them stronger businesses. And any merger of course will continue to come under the scrutiny of the ACCC and ACMA , which will ensure appropriate levels of competition and diversity of voices
- As merged entities they will have the resources to meet high standards in regional news gathering, which at present vary widely.
- In the event of the removal of the reach rule, Nine is willing to commit to broadcast commercial half hour of news in local licence areas across Australia - that is around 23 regional news bulletins in total – subject to the number of licences that we would control. That will guarantee viewers their own local news in any merger Nine undertakes with a regional broadcaster.
- That means places like Tamworth , Rockhampton , Spencer Gulf , Bendigo , Wagga
- Nine is prepared to deliver this as an enforceable undertaking with the full effect of law and policed by ACMA so that Australians in regional areas simply cannot be disadvantaged In fact they will benefit from more news, produced by a business with a of a long tradition in news gathering. To that end , I am asking this committee to protect local content by requiring any metropolitan purchaser of a regional broadcaster to produce MORE news than is currently required under the Act .
- Nine's undertaking would result in the employment of over 200 journalists, camera and production staff to deliver these local bulletins.
- It's a big commitment but one we're prepared to make because it's both good for the business AND for the local communities who'll be guaranteed local news bulletins. That's a certainty they do not enjoy now.

David Gyngell
Chief Executive Officer,
Nine Entertainment Company Pty Ltd

Undertaking to the Australian Communications and Media Authority pursuant to section 205W of the *Broadcasting Services Act 1992* (Cth)

Date: March 2013

Parties

This Undertaking is given to the Australian Communications and Media Authority (the **ACMA**) pursuant to section 205W of the *Broadcasting Services Act 1992 (Act)* by [**TCN Channel Nine Pty Ltd ACN 001 549 560 /Queensland Television Ltd ACN 009 674 373/General Television Corporation Pty Ltd ACN 004 330 036/Territory Television Pty Ltd ACN 009 594 987/NBN Ltd ACN 000 232 486**] of Level 3, 24 Artarmon Road, Willoughby, New South Wales, 2068 (Nine). [**Select applicable licensee - each licensee to provide a separate undertaking**]

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

In this Undertaking:

ACMA means the Australian Communications and Media Authority.

Act means the *Broadcasting Services Act 1992 (Cth)*.

Commencement date means the date pursuant to clause 2.1.

local area means an area within a regional licence area, as shown in the maps in Schedule 1 of the Notice.

Notice means *Broadcasting Services (Additional Television Licence Condition) Notice* dated 8 November 2007 made by the ACMA under s43(1) of the Act.

Other Regional Licence Areas means any of the following regional licence areas: Darwin TV1, Mount Gambier/South East TV1, Remote and Regional WA TV1, Remote Central and Eastern Australia TV1, Riverland TV1 and Spencer Gulf TV1.

Population Reach Date means the date on which Nine and/or its related bodies corporate come into a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.

regional licence area has the same meaning as set out in section 61CA of the Act.

related bodies corporate has the meaning given to it in the *Corporations Act 2001 (Cth)*.

Undertaking Term means period of operation of these undertakings pursuant to clause 2.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Undertaking.

2 Term

2.1 Commencement

This Undertaking commences when:

- (a) it has been executed by Nine;
- (b) so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Nine;
- (c) section 53(1) of the Act is repealed and the repeal of it has come into effect; and
- (d) under the Act, Nine and/or its related bodies corporate come into a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia,

(together, the **Commencement Date**).

2.2 Termination

This Undertaking will terminate on the earlier of:

- (a) 3 years after the Commencement Date;
- (b) the ACMA giving written notice to Nine cancelling this Undertaking in accordance with sub-section 205W(4) of the Act; or
- (c) under the Act, Nine and/or its related bodies corporate ceasing to be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.

3 Undertakings

3.1 Local and Regional News – Notice Areas

- (a) Nine undertakes that if it is a licensee which holds a commercial television broadcasting licence in a regional licence area to which the Notice applies, by the date which is 12 months after the Population Reach Date, it will broadcast in each local area in the regional licence area:
 - (i) no less than 22 minutes of news that relates directly to the licence area in which the local area is located (“**Daily Regional News Commitment**”) broadcast as, or as part of, a news bulletin between 5 – 8pm each weekday (Monday to Friday), inclusive of the news broadcast pursuant to the Daily Local News Commitment, and measured in accordance with clause 3.1(b) of this Undertaking;
 - (ii) no less than 16.5 minutes of news that relates directly to the local area (“**Daily Local News Commitment**”) broadcast as, or as part of, a news bulletin between 5 – 8pm each weekday (Monday to Friday), measured in accordance with clause 3.1(b) of this Undertaking.
- (b) The Daily Regional News Commitment and the Daily Local News Commitment will be measured as follows:

- (i) The Daily Regional News Commitment will be measured as the average over the period 6am Monday to 11.59pm Friday each week of the amount of news that relates directly to the licence area which was broadcast between 5 – 8pm each weekday (Monday to Friday) during that period.
- (ii) The Daily Local News Commitment will be measured quarterly as the average of the amount of news that relates directly to the local area which is broadcast between 5 – 8pm each weekday (Monday to Friday) in each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.
- (iii) The Daily Local News Commitment forms part of the Daily Regional News Commitment and the broadcast minutes referred to in clauses 3.1(a)(i) and (ii) above are therefore not cumulative amounts.

3.2 Local and Regional News –Other Regional Licence Areas

- (a) Nine undertakes that if it is a licensee which holds a commercial television broadcasting licence in any of the Other Regional Licence Areas (each such area being a “**Controlled Regional Licence Area**”) it will, by the date which is 12 months after the Population Reach Date, broadcast in the Controlled Regional Licence Area no less than 16.5 minutes of news that relates directly to the Controlled Regional Licence Area (“**Daily News Commitment**”) broadcast as, or as part of, a news bulletin between 5 – 8pm each weekday (Monday to Friday), measured in accordance with clause 3.2(b) of this Undertaking.
- (b) The Daily News Commitment will be measured quarterly as the average of the amount of news that relates directly to the Controlled Regional Licence Area which is broadcast between 5 – 8pm each weekday (Monday to Friday) in each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.

3.3 Future licensees

Nine undertakes that if it, or its related bodies corporate, come into a position to exercise control of a licensee who is a holder of a commercial television broadcasting licence within any of the regional licence areas to which clause 3.1 or 3.2 of this Undertaking applies, it will procure that that licensee provide to the ACMA an enforceable undertaking materially in the same form as this Undertaking.

Schedule 1 — Construction

1 Construction

1.1 Construction

Unless expressed to the contrary, in this Undertaking;

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.2 Headings

Headings do not affect the interpretation of this Undertaking.

[insert as applicable]

Signed by **TCN Channel Nine Pty Ltd** in the presence of:

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Signed by **Queensland Television Ltd** in the presence of:

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Signed by **General Television Corporation Pty Ltd** in the presence of:

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Signed by **Territory Television Pty Ltd** in the presence of:

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

This Undertaking was accepted by the **Australian Communications and Media Authority** pursuant to part 14D of the Act on .

The common seal of the Australian Communications and Media Authority was affixed to this undertaking in the presence of:

Signature of Member

Signature of Member

Name of Member (print)

Name of Member (print)