

2 April 2015

By email: [Code2015@freetv.com.au](mailto:Code2015@freetv.com.au)

Dear Sir/Madam

ASTRA welcomes the opportunity to provide comment on the draft Commercial Television Industry Code of Practice released by Free TV Australia.

ASTRA welcomes the approach taken by Free TV in preparing a new Code rather than an iterative update of the existing Code of Practice. ASTRA supports the new Code's focus on reducing unnecessary content and duplication and its limitation to addressing key community safeguards. In an environment in which new entrants are subject to little (if any) regulation, it is appropriate and equitable to reduce unnecessary and overly burdensome regulation on incumbents.

However, ASTRA wishes to object in the strongest possible terms to proposed new clause 5.2.1(q) which would permit promotions for the free-to-air commercial television platform to be exempt from the calculation of non-program matter time limits. There is no public policy rationale for the inclusion of this commercially advantageous provision in the Code.

The clause clearly has its roots in clause 5.5.11 of the 2010 Commercial Television Industry Code of Practice. That provision exempted promotions for "digital television services" (including direct references to "Freeview") from the hourly advertising limits.

At the time this clause was introduced to the current Code, its inclusion was justified as supporting the Government's public policy objectives for the transition of free-to-air television to digital. (Notwithstanding this, the clause was used to justify a series of promotions which blatantly promoted the free-to-air platform as an alternative to subscription television – a commercial strategy entirely unrelated to digital switchover). The consultation document<sup>1</sup> for the amendment of the provision to permit specific reference to Freeview specifically links the clause to digital switchover, stating:

*Freeview exists to promote the free to view digital platform in Australia and to provide information to customers about digital television including information about digital set top boxes. An on air campaign will be part of Freeview's core strategy and is intended to assist consumers in switching to digital television ahead of the Government's planned switch off of analogue television.*

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<sup>1</sup> [http://www.freetv.com.au/media/News-Media\\_Release/Code\\_of\\_Practice\\_-\\_Explanatory\\_Note.pdf](http://www.freetv.com.au/media/News-Media_Release/Code_of_Practice_-_Explanatory_Note.pdf)

With the completion of digital switchover in 2013, there is now no public policy explanation for the continued exclusion of free-to-air platform promotions from hourly advertising limits. However, not only has the provision been retained, it has been changed so as to allow promotions for 'free to air television' generally, including the new HbbTV service.

The explanatory materials for the proposed new Code suggest that the exclusions are justified in raising awareness and informing viewers "about developments in the free-to-air viewing platform". Free TV's members may well be seeking to promote their products, however this kind of commercial activity is in no way linked to any identifiable public policy objective and deserves no special treatment under the Code. Platform promotions are commercial messages and should be treated as such. If the commercial free-to-air broadcasters wish to promote their products they should be free to do so within specified advertising time limits.

Furthermore, a continued exemption would represent yet another regulatory advantage being bestowed on commercial free-to-air broadcasters who already enjoy protection from competition, subsidised access to public spectrum and a rigged market for premium sports content.

Given the public policy rationale for the exemption became irrelevant on 31 December 2013, it should have been removed at that time. At the very least, free-to-air broadcasters should not have continued to rely on the clause to exempt commercially driven platform promotions from hourly limits.

Please do not hesitate to contact me should you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a stylized flourish at the end.

Andrew Maiden  
CEO

Cc: Mr Chris Chapman  
Chair  
Australian Communications and Media Authority

The Hon Malcolm Turnbull MP  
Minister for Communications