

28 May 2010

Manager
Digital Television Regulatory Analysis
Australian Communications and Media Authority

By Email (DTRAS@acma.gov.au)

Dear Sir/Madam

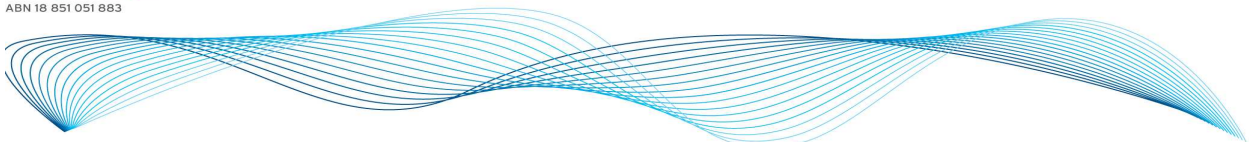
Declaring Primary Commercial Television Broadcasting Services

ASTRA welcomes the opportunity to respond to the ACMA's consultation paper (the "**Consultation Paper**") dealing with a proposed declaration under clause 41G of Schedule 4 to the *Broadcasting Services Act 1992* (the "**BSA**") specifying a Primary Commercial Television Broadcasting Service (the "**Primary Service**") for each of the three commercial television broadcasting licences in the Mildura/Sunraysia TV1 licence area (the "**Declaration**") and the general issue of declaring Primary Services for each licence area at the end of the relevant simulcast period.

ASTRA represents the interests of subscription television platforms and channel providers / producers. ASTRA members broadcast subscription television services throughout Australia and many subscribers are able to access local free to air broadcast channels through set top boxes provided to them as part of the AUSTAR or FOXTEL branded subscription services. AUSTAR and FOXTEL provide a wholly digital service to all their subscribers, having completed switchover from analogue services in early 2007. In 2010, 34% of the Australian population have subscription television.

Proposal to Declare Primary Commercial Television Broadcasting Services under clause 41G(2) of Schedule 4 to the BSA

ASTRA believes that it is critical that the ACMA declare a Primary Service for each commercial television broadcasting licensee prior to the end of the relevant simulcast period. A failure to declare a Primary Service will have serious policy implications and enable the commercial television broadcasters to potentially avoid significant regulatory obligations. Most importantly, a failure to declare a Primary Service at the point of digital switchover has the potential to significantly undermine the legislative requirement that an event on the anti-siphoning list only be televised on a secondary channel if it has been previously televised or is simultaneously televised on the primary channel. As identified by the ACMA, the current anti-siphoning regime is the subject of review and any variation of the current regime should only be effected by the Federal Government in view of its highly controversial nature.



A failure to declare the relevant Primary Service would also mean that the commercial television licensees avoid the more restrictive obligations that apply in respect of the hourly limits on non-programme material and classification zones as set out in the Commercial Television Industry Code of Practice (**Commercial Television Code**). Instead the less restrictive provisions that currently apply to the multi-channels as set out in Appendix 6 of the Commercial Television Code will apply in relation to those matters. This would mean that the commercial television broadcasters would be able to:

- televise an extra 2 minutes of advertising per hour during the prime time of 6pm to midnight as the right in relation to the multi-channels is capped at 15 minutes whereas the right in relation to the primary service is capped at 13 minutes (with some additional exceptions); and
- avoid the General classification zones that apply to the primary service between 6am – 8am and 4pm – 7pm on weekdays and 6am -10am on weekends and enable the commercial television broadcasters to broadcast PG programming instead.

ASTRA submits that the above consequences are unacceptable. The obligations that attach to the primary service in relation to the hourly limits and classification zones are in consideration of the rights of the commercial television licencees to use public spectrum that provides them with access to close to 99% of Australia homes. The cap on the number of non-programme minutes per hour is also important to the consumer experience and again should not be varied without the opportunity for public comment.

Accordingly ASTRA believes that it is imperative that prior to each licence area switching from an analogue or simulcast service to a digital only service the ACMA makes a declaration of a Primary Service with respect to each commercial television broadcasting licence held in that licence area. ASTRA notes from the Consultation Paper that this is the ACMA's current intention and ASTRA commends the ACMA's recognition that: "Declaring a Primary Service will provide certainty in respect of the regulatory obligations applying to each service provided by a commercial television broadcasting licensee" ¹

Methodology for designating the service to be declared as the Primary Service

The ACMA is proposing that the Primary Service be designated by reference to that service's on-air tag. ASTRA does not object to this designation but notes and agrees with the ACMA's statement in the Consultation Paper that a relevant licensee or the public be given the opportunity to propose a service other than the core service to be the Primary Service ². This statement was made in the context of rejecting an alternative approach of designating a licensee's analogue core commercial television broadcasting service. However, the ACMA's preferred methodology does not itself allow for any such nomination or consultation from licensees or the public.

¹ page 1 of the Consultation Paper

² p 8 of the Consultation Paper

ASTRA would welcome a process where the relevant commercial broadcasting licensee could, at some defined point prior to the end of the relevant simulcast period, nominate which service would be its Primary Service and allow for a period of public consultation before the ACMA confirms that service as the Primary Service.

Do not hesitate to contact ASTRA if there is anything further that we may be able to provide to assist in the consultation process.

Sincerely,

A handwritten signature in black ink that reads "Petra Buchanan". The signature is written in a cursive, flowing style.

Petra Buchanan
CEO
ASTRA