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**Submission on
Department of Communications
Spectrum Review Issues Paper**

The Australian Community Television Alliance is the peak representative body for the CTV sector, encompassing the three long-term licensees in Sydney, Melbourne and Brisbane, and the two trial licensees in Perth and Adelaide. We welcome this opportunity to comment on the Terms of Reference of the Spectrum Review Issues Paper, as we are users of the broadcasting services band of spectrum. That access to spectrum underpins the very essence of community television, which is to provide to the general public of Australia the ability to participate in the provision of programming content on the medium of free-to-air television; a medium which remains a dominant form of communications, and which benefits from the social inclusion that community television facilitates.

Background

2014 sees the twentieth anniversary of community television commencing broadcasting in Australia. Demand from the public to make programs and have them broadcast is stronger than ever; across the sector, over 120 first-run locally-made programs are produced and broadcast every week. These programs are mainly made by volunteers who donate their time, money and energy into making television content. This scope of production is demonstrable proof that there is public interest in participating in free-to-air television. Indeed, it is precisely the fact that their efforts will be broadcast on free-to-air television which acts as an incentive for people to create this video content. Without the ability to be broadcast on free-to-air television, much of this local Australian content would not be produced at all.

Community television has access to broadcasting spectrum for no charge; however the stations do operate under a strict licensing regime to ensure that this spectrum is utilised for the benefit of the community. There is a strict limit of just seven minutes per hour of sponsorship announcements, which the licensees can sell to cover their operating expenses. Advertising is not allowed, which means that programs have to be free of advertorial and promotional content, and stations can't screen home shopping programs to fill in time and earn a quick dollar. Stations must be seen to be encouraging community participation in the selection and provision of programs, and in the operations of the station.

Across the five free-to-air stations, community television reaches around three million Australians every month. Despite this, it has been suggested that audience figures are too small to justify the use of even a small part of broadcasting spectrum for CTV. Whilst CTV audiences are small by comparison with commercial and national broadcasters, they are still sufficiently large to sustain operating business models based on sale of sponsorship announcements; models which require the stations to achieve a critical mass audience to be viable. It is also worth noting that collectively, CTV is viewed in more households than pay TV and has an audience reach greater than many pay TV channels.

But community television should not have to justify its existence solely on the measure of audience as compared to commercial or national broadcasters; its purpose is entirely different. Community television measures its value in terms of public participation, diversity of voices, social inclusion, and learning outcomes through partnerships with tertiary education providers. When the ACMA renews the licensees' broadcasting service licences every five years, audience penetration is not one of the metrics used to assess whether the licensee has the capacity to operate the service. Instead the emphasis is on areas such as meeting community needs, levels of community engagement, and financial sustainability.

Community television plays a distinct role in the media landscape by providing a platform for content that would otherwise not be seen on mainstream television, but is nevertheless deserving of being made available on free-to-air television. Community television gives voice to communities underrepresented in the mainstream television media including multicultural, multi-faith, youth and disabled groups and local sports organisations. Importantly, community television does this at no cost to the viewer, unlike other delivery methods which require a monthly subscription or incur internet data charges.

Community television is a training ground utilised by many tertiary institutions, aspiring producers and talent. It provides a pathway into mainstream media and leads to a stream of work-ready industry professionals. With entry-level positions at most broadcasters being non-existent, community television stations provide a valuable opportunity for people interested in seeking a career in television to volunteer or undertake internships and gain genuine workplace experience which equips them for employment elsewhere.

Community television stations use the seven minutes per hour of sponsorship announcements available to them to provide a significant amount of their operating revenue. Predominantly sponsors are small to medium sized businesses who could not otherwise afford to promote their businesses on television. By providing access to the free-to-air television platform, community television supports and stimulates these businesses.

Community television offers all these benefits without government funding. All the sector asks for is continued access to free-to-air broadcasting spectrum.

Under the provisions of Section 102(1) of the Radiocommunications Act 1992, if the ACMA issues a commercial or community service licence pursuant to the Broadcasting Services Act 1992, then the ACMA must also issue transmitter licences for transmitting the service. The

exception to this, however, is in the case of a community television service licence. Section 103(4A)(c) of the Radiocommunications Act states that:

A transmitter licence issued under subsection 102(1) does not have effect after the later of the following dates, if the related licence is a CTV licence within the meaning of the Broadcasting Services Act 1992:

- (i) 31 December 2006; or*
- (ii) the date specified in a written determination by the Minister.*

This provision was added to the Radiocommunications Act in 2002, as part of the legislation which introduced the framework for issuing long-term community television service licences. It was originally intended to manage the transition from analogue to digital broadcasting, which would see CTV licensees moving from occupying a whole 7MHz band of spectrum for their analogue service to sharing part of a multiplex as a single standard definition digital channel. This was an issue which was expected at the time to be resolved by the end of 2006; and indeed the explanatory memorandum to the relevant bill notes that this provision was inserted to provide some certainty to community television operators. Unfortunately, it has had exactly the opposite effect. Successive governments have struggled to find a permanent place for community television in the broadcasting spectrum, primarily because it has proved difficult to find any other services for CTV to share a multiplex with. Meanwhile, ministerial determinations have extended the end date for the transmitter licences to the end of 2008; then to the end of 2013; and then for a further single year through to 31 December 2014. This has created unnecessary red-tape for the CTV sector, as licensees have to apply for their broadcasting service licences every five years, and then have to lobby for spectrum access on what has become an annual basis.

The CTV sector is currently engaged in lobbying the Minister for Communications to extend the transmitter licence period once again. The sector has requested that the transmitter licences be synchronised with the broadcasting service licences, which in the case of the three long-term licensees run through to mid-2019. However, it appears that once again only a single year extension will be granted, with it being suggested that community television stations should be relegated to the internet after that. With IPTV still in its infancy in Australia, this would be a catastrophic move, since CTV stations rely on achieving a certain level of audience viewership in order for their sponsorship driven revenue models to be sustainable. Denying CTV access to free-to-air spectrum at this time would inevitably cause the sector's demise.

It is not a lack of spectrum which is preventing community television from attaining a permanent position in the free-to-air television landscape. Planning for digital television has seen sufficient spectrum reserved all across Australia for six 7MHz channels. Five of these are allocated to the three commercial and two national networks, leaving one 7MHz channel, the so-called sixth channel, or Channel A, available for alternative uses. If anything, the problem is that there is currently a surfeit of spectrum, as it would not be an efficient use of spectrum to allocate the sixth channel solely to community television. However, no-one has yet been able to identify any other potential users of the spectrum who could share the capacity with community television services.

During the previous government, a cap of three commercial television networks was legislated, preventing the sixth channel from being used for commercial purposes. There has been no indication that the current government will alter this. There have been suggestions that the sixth channel might be used as part of a scheme to trial and transition to new and emergent technologies such as 3DTV or MPEG4 encoding, but no concrete plans have yet emerged.

However, there is an effective barrier to the sixth channel being used for anything at the moment, and that is that there is currently no broadcast infrastructure for it. No multiplex operator has been assigned a licence, and there are no transmitters available to send out the signal. Until these impediments are addressed, the sixth channel spectrum remains unused; the least efficient outcome of all.

Term of Reference 1: Simplify the framework to reduce its complexity and impact on spectrum users and administrators, and eliminate unnecessary and excessive regulatory provisions.

The ACTA supports this term of reference. We are in favour of the framework being simplified. Currently the CTV sector faces significant complexity in its spectrum access arrangements though having to lobby the Minister for Communications to extend the transmitter licence period on a regular basis. This is unnecessary red tape when the ACMA, in issuing the broadcasting service licences for CTV stations, has already assessed the licensees and found that they meet the necessary requirements to be allowed to continue broadcasting.

Term of Reference 2: Improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference.

The ACTA supports this term of reference. The inflexibility of the current framework in the broadcasting services band is aptly demonstrated by the fact that a permanent place cannot be found for CTV licensees, even though the sixth channel lies vacant. When even existing broadcasters cannot find a permanent space in the spectrum, new entrants stand little chance of accessing spectrum.

Term of Reference 3: Ensure efficient allocation, ongoing use and management of spectrum, and incentivise its efficient use by all commercial, public and community spectrum users.

The ACTA supports this term of reference.

Term of Reference 4: Consider institutional arrangements and ensure an appropriate level of Ministerial oversight of spectrum policy and management, by identifying appropriate roles for the Minister, the Australian Communications and Media Authority, the Department of Communications and others involved in spectrum management.

The ACTA supports this term of reference.

Term of Reference 5: Promote consistency across legislation and sectors, including in relation to compliance mechanisms, technical regulation and the planning and licensing of spectrum.

The ACTA supports this term of reference. The inconsistency which arises from spectrum access for CTV being uniquely determined by the Minister rather than by the ACMA leads to uncertainty for the CTV sector, and additional amounts of red tape in needing to lobby the Minister each year to have the spectrum access extended.

Term of Reference 6: Develop an appropriate framework to consider public interest spectrum issues.

The ACTA supports this term of reference.

The definition of “public interest services” should retain “public and community services”. Community broadcasting including CTV, properly managed and operated, has a demonstrable value. CTV, as a user of a limited amount of spectrum only, is also supportive of sharing spectrum with other users. With access to the sixth channel unavailable to the present time, it may be more appropriate for CTV to share spectrum with another television broadcaster such as SBS, with an appropriate incentive made available to SBS to persuade them to do so.

Term of Reference 7: Develop a whole-of-government approach to spectrum policy.

The ACTA supports this term of reference.

Term of Reference 8: Develop a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits.

The ACTA supports this term of reference.

Questions for stakeholders

3. Which issues should be given priority and why?

From the ACTA’s perspective, those issues which generate greater flexibility in spectrum allocation and facilitate spectrum sharing in the broadcasting services bands, and those issues which eliminate unnecessary regulatory provisions should be given priority. These are issues covered under Terms of Reference 1, 2, 5 and 6.

4. Which issues can be addressed in the short term (the next 12-18 months) and which should be considered over a longer period?

The ACTA would like to see those issues identified in question 3 addressed in the short term, particularly as they relate to potential long-term spectrum access for community television licensees, so that the need to lobby for transmitter licences every twelve months is removed, and some certainty is provided to the CTV sector.

5. What should be the extent of reform – can the framework be improved by adjusting what is currently in place or are more fundamental changes required?

In terms of the broadcasting services bands, arguably there is scope for significant reform in the way spectrum is managed, particularly that allocated for public and community television services. This would involve separating the link whereby each national broadcaster is allocated a 7MHz band of spectrum, and creating a joint operational body to oversee the whole 14MHz (or 21MHz if the sixth channel were included in this) capacity. This would have parallels with the way television broadcasting spectrum is managed in the United Kingdom, where broadcasters are not automatically allocated discrete bands of spectrum, but share multiplexes. This has seen the entrance of new participants into the broadcasting business, as they are able to access sufficient spectrum for individual channels.

There has already been discussion of late of the efficiencies which may be achieved by merging the back-office functions of the ABC and the SBS. This proposal could be seen as a further embodiment of this vision. It could also be a prelude to technological advancement, such as a transition to DVB-T2 and MPEG4 for high definition broadcasts using the sixth channel, in a similar manner to the way that an HD multiplex has been set up with this configuration in the UK for use by all broadcasters.

These are fundamental changes to the way television spectrum is currently used and allocated. They might seem revolutionary and difficult to implement; but there is no doubt that if such a path was followed, much greater efficiencies in spectrum usage in the broadcasting services band could be achieved, with greater public benefit outcomes.