



FreeTV
Australia

**Submission by
Free TV Australia Limited**

Department of Communications Information
Technology and the Arts

Review of the Regulation of Content
Delivered over Mobile Communications
Devices

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1 Introduction

Free Television Australia (Free TV) is the peak industry body representing all 48 commercial free-to-air television licensees in Australia.

Free TV welcomes the opportunity to comment in response to the Discussion Paper titled "Review of the Regulation of Content Delivered Over Mobile Communications Devices" (Discussion Paper) which was released by the Department of Communications, Information Technology and the Arts (the Department) on 15 July 2004 (the Review).

The Minister for Communications, Information Technology and the Arts (the Minister) has instructed the Department to undertake a review of the existing regulations that apply to audiovisual and other content that is provided or is likely to be provided on mobile telephones and similar devices (mobile content).

The Terms of Reference for the Review (annexed to the Discussion Paper) are broad in their scope, and require the Department to consider new and emerging devices, platforms and services, as well as relevant technical and commercial issues. The Terms of Reference also require consideration of the application of existing "regulatory approaches" to mobile content, and whether any additional measures are necessary in order to manage the supply and accessibility of new and emerging content services.

Free TV's submission in response to the Discussion Paper is structured as follows:

- In Part A, Free TV's interest in the Review is explained in section 3, and key principles for consideration in the context of the Review are identified and discussed in section 4. Free TV makes specific comments on some of the issues raised in the Discussion Paper in this context, particularly in relation to preferred regulatory models and in relation to classification issues (in section 5);
- In Part B, Free TV makes some observations in relation to some other current regulatory activities. As these activities will impact upon the regulatory landscape in which mobile services operate and in which mobile content is provided, Free TV considers it important to make such observations in the context of the Review.

2 Executive Summary

Free TV has a keen interest in the matters being addressed by the Review. As described below Free TV's members provide content for mobile content services, and rely on mobile platforms to facilitate interactivity with television programs.

- Free TV members current or proposed offerings include sports content, on-request segments from television programs, news alert services and live video streaming (on 3G platforms).
- Free TV members rely on mobile platforms to encourage interactivity and viewer involvement in television programs (eg voting for contestants on reality television programs).
- The range of mobile content services offered by commercial television broadcasters is expected to increase over time as mobile devices that are capable of receiving video footage become more common, and as consumer demand for mobile content services increases.

Free TV is concerned about increased regulation of mobile content services and the potential for such regulation to stifle this emerging new industry and to limit the range

of mobile content available to Australian consumers. The impact is potentially two fold and is particularly in relation to:

- the potential impact of additional regulation on the developing market for mobile content services; and
- the implications of additional regulation for access to that market by third party content providers (like commercial television broadcasters).

In Free TV's view, the key questions to be asked are whether additional regulation is necessary, and what is it intended to achieve? In this sense it is important to ensure that regulation of mobile content does not create a disincentive for carriage service providers (and ultimately carriers) to carry third party content.

One particular aspect of potential regulation that free TV is particularly concerned with is classification requirements. Free TV does not consider that classification of non-adult mobile content should be necessary. However to the extent that classification is ultimately required, Free TV is keen to ensure:

- That there is no requirement for mobile content to be submitted to an external organisation for classification;
- That any classification requirements contains appropriate exemptions for material such as live streaming, news and sports (which either cannot be classified, or do not need to be classified).

To the extent that Department concludes that any additional regulation of mobile content is necessary, Free TV would highly recommend a self-regulatory approach.

Part A

3 Free TV's Interest in the Review

As producers of content who contract with carriers and carriage service providers to deliver content to mobile users, Free TV's members have a close interest in the regulation of mobile content.

Free TV's members already provide a range of new mobile content services including:

- various sports content subscription services. For example:
 - Nine offers an NRL picture service that sends subscribers two still pictures from NRL games each week, for a small fee each time (less than \$1);
 - Ten offers a "Sports Tonight" service (ST Mobile). This provides subscribers to the service with results of sporting events and other sports news and information about AFL, NRL and rugby union;
- streaming of footage from reality television programs. For example:
 - during *Big Brother 4*, Ten provided four streams of live content which was accessible via the "3" mobile platform (ie four different camera feeds). This content was available under a subscription model for the full thirteen weeks of the show, during which "3" subscribers could receive live footage from the Big Brother House, regular Big Brother alerts, and video messages from the housemates. Subscribers could also download Big Brother "wallpaper" for their handsets, and receive still images and Big Brother ringtones;
- services which allow viewers to receive specific clips or segments from television programs on their mobile phone, by sending a short message service (SMS) request. To date, these have been on-sold to providers of 3G platforms, but in the future, commercial television broadcasters may offer this service directly¹;
- "news alert" or "breaking news" services. For example, a text-based service was offered to registered viewers during the war in Iraq. In time, this kind of service is likely to be supplemented by supporting still footage and other audio-visual material ;
- "talk-back TV". For example, on Seven's *Sunrise* program, chat topics are announced during the program and viewers are invited to SMS their comments to a premium (SMS) number. Incoming SMS comments are moderated and selected messages are broadcast during the program.

In addition, television broadcasters offer other services through mobile devices which are linked to television programs. For example, SMS voting services linked to programs such as *Australian Idol*, *The Block* and *My Restaurant Rules* offer a way for viewers to interact with television programs, but do not involve broadcasters supplying audio-visual content to the relevant mobile device.²

¹ Note that television content does need to be re-purposed for delivery on mobile platforms, as there is no common delivery platform at this time. For example, some of the most popular US television programs are filmed in movie format. For broadcast purposes, those programs need to be converted to SDTV, HDTV and 4x3 analog format. However, for excerpts of that program to be transmitted to a mobile device, conversion to MPEG 4 or DVB-H will be required. This is an area where "convergence" has yet to occur.

² To the extent that these services involve calls to "eligible prefixes" (ie prefixes of 191, 193, 194, 195, 196, 197 or 199), they will be regulated as "premium services" by the ACA, at least as an interim step. This is discussed in Part B of this submission.

The new mobile content services and other mobile services described above primarily focus on complementing television programs, to enhance the viewing experience and encourage “viewer stickiness”³ by providing viewers with a means of interacting with television programs. The range of mobile content services offered by television broadcasters will differ from services offered by other content providers non-broadcasters.

Commercial television broadcasters are also interested in the potential of mobile content platforms to increase the consumer’s ability to view television services while “on the move”. Broadcasting services are already being retransmitted to mobile phone handsets in Australia (for example, the television services of the national broadcasters are retransmitted through the Optus Zoo network, and Free TV also understands that Motorola pre-paid handsets can receive FM radio services).

While Free TV members’ broadcasting services are not currently being retransmitted on mobile platforms, it is possible that this could happen in the future, once regulatory issues are resolved (including ensuring that retransmissions are provided within licence area boundaries and that copyright issues are adequately addressed), and when devices that are capable of displaying a moving image become more widespread (eg wireless enabled Personal Digital Assistants, 3G mobile handsets, wireless enabled hand-held computers and new dedicated media players).

In this context, it is understood that the ABA is considering a trial of the DVB-H standard, which is a terrestrial digital television standard that allows the receiving device to move freely when receiving the transmission (which makes it useful for handheld mobile devices). While there are still a range of regulatory issues to be addressed (again, those listed above as well as issues surrounding the provision of subscription services), and while the timing of deployment of that application is uncertain, it is an example of the kind of technical development that could shape the mobile content market in the future.

Going forward, Free TV’s members will continue to pursue new opportunities to provide content services on mobile platforms, particularly as experience starts to demonstrate what mobile content people want most, and as devices capable of receiving moving images become more ubiquitous.

Free TV’s primary concern is that any additional regulation does not (directly or indirectly) unnecessarily hinder commercial television broadcasters’ ability to pursue legitimate opportunities in this arena.

4 Key Principles

Free TV suggests that the following principles should be central to any consideration of mobile content regulation.

4.1 Identification of reasons for regulation and impacts of regulation

Free TV considers that any additional regulation of mobile content services should only be introduced where there is an identified gap in the existing regulatory scheme, or where there are clear policy objectives for regulating.

³ “Stickiness” is a term that started with television, and which is now more often used in relation to Internet websites). The concept of “viewer stickiness” contemplates methods of encouraging consumer loyalty to a television program or a particular channel.

The Discussion Paper acknowledges that the rapidly developing capabilities of mobile devices to offer content are expected to bring substantial benefits to users (in the form of improved services, and greater choice) as well as to content providers and carriage service providers (in the form of new commercial opportunities). In this environment, it is essential that regulators take care not to stifle the commercial potential of these new content services through an unnecessarily expansive and intrusive regulatory regime which regulate all mobile content services, without an assessment of the real threats (if any) posed to users. This is particularly so given that additional regulation can be expected to be accompanied by additional compliance costs, additional business risk, and potentially, a dampening of innovation.

In this context, Free TV wishes to emphasise the importance of any additional regulation being focussed and proportionate to clearly identified regulatory objectives. For example, while Free TV recognises the importance of protecting children from content that is likely to be harmful to them, this does not mean that all content provided on mobile devices should need to be classified or restricted.

4.2 Promoting interactivity and new services

Mobile telephone services offer audiences a direct way of interacting with television programming. Viewers have become accustomed to using SMS to cast votes in connection with television programs, and to enter television competitions. Over time, commercial television broadcasters expect to develop new ways to engage viewers through the use of mobile services, and to help viewers to interact with programming. Free TV is concerned that additional regulation of mobile content services, and mobile services generally, should not restrict development of this part of the mobile services/mobile content industry.

In the free digital television environment viewer interactivity is expected to be an important aspect of television programming. Unlike pay television broadcasters, free-to-air broadcasters do not have a return path between viewers and broadcasters. Therefore, mobile phones have played a significant role in facilitating viewer interaction with free television programs.

Viewers' ability to easily access interactive functions (made available on mobile devices) is a particularly important issue to Free TV members. In particular, Free TV is concerned to ensure that mobile users should not have to "opt-in" to be able to access numbers through which interactive functions are provided by commercial television broadcasters (through their contracted carriage service providers), and should not have to "opt-in" to receive "general" mobile content (ie content that is not likely to be classified as "adult" content).

Free TV considers that an opt-in requirement will provide an extra layer of complexity (and hence an inevitable dis-incentive) for viewers to interact with television programming. In this context, it should be noted that broadcasters receive very few complaints about the content services (including "premium services") they presently offer on mobile platforms. Hence, there does not appear to be a need for additional regulation of mobile content services that are provided by commercial television broadcasters.

While this issue falls within the scope of the activities presently being conducted by the ACA, as noted above, it is also relevant to the present Review as the ACA's activities in the area of credit management and unexpected high bills will impact upon the regulatory framework in which mobile content is provided.

4.3 Consistent regulation

Consumers do not expect that their choice of device (and hence their choice of platform) will impact upon their ability to receive their choice of content. This highlights one reason why a technology-neutral approach to regulation is desirable (if regulation is necessary).

In order ensure consistency with other existing regulatory regimes, Internet content that is accessed through a mobile device (and is not repurposed for a mobile platform) should be regulated like Internet content that is accessed through a PC, and broadcasting services that are retransmitted through a mobile device should be regulated like broadcasting services that are received by a television; that is, under the BSA. This is further discussed at section 5.2(b) below.

Application of this principle should mean that users of mobile devices are not subjected to different rules that are based on their choice of device, rather than on the nature of the content that they receive.

Inconsistent regulation of particular types of content could potentially discourage carriers and carriage service providers from carrying third party content. To place this issue in context, it is useful to describe the commercial arrangements that exist between the different parties that are involved in the supply of mobile content services.

In providing content, commercial television broadcasters usually contract with carriage service providers (such as Informatel, MiG and Legion Interactive) in relation to the carriage of content. In turn, carriage service providers contract with the relevant carriers.

As “gatekeepers” of the relevant mobile platforms, carriers and carriage service providers ultimately control the range of content that is provided to users of mobile devices. However, content providers, including commercial television broadcasters, are concerned to ensure the integrity of the content they provide for delivery on mobile platforms, and to retain “editorial” control of such content.

In this context, Free TV is concerned that additional regulation not give carriers or carriage providers any incentive to stop (or discourage) third party content providers from accessing their distribution platforms.

Free TV considers that a possible consequence of the imposition of inconsistent regulation upon different mobile platforms is that carriers will be unwilling to distribute content other than content that they have aggregated themselves. For example a regulatory regime that required all mobile content other than content provided from proprietary networks (ie walled gardens) to be classified could lead to this result. Similarly, a regime that regulated access to some types of general content on some types of platforms could have a discouraging effect also. An example of this would be if a subscriber was required to opt-in to receive “premium services” (as defined) that are provided by third party content providers, but this was not required for similar services that were supplied or delivered by other means.

Regulation that favoured the delivery of content by particular means, such as by way of a “walled garden”, could well distort the developing market for mobile content and cause a market failure. Free TV is concerned that any regulatory approach that is adopted should encourage a level field of competition.

4.4 Compliance should not be onerous

If additional regulation of mobile content services is determined to be necessary it is important that compliance with such regulation should also not impose onerous financial or administrative burdens on industry participants.

If carriers, carriage service providers and/or content services providers are required to meet additional compliance obligations, it is important that these obligations should be able to be carried out in a cost-effective way. To the extent that such obligations are imposed upon carriers and carriage service providers, the additional compliance costs will almost certainly be passed on to content providers. Ultimately, all compliance costs will be borne by consumers, and this will impact upon the commercial appeal of these services (and hence may result ultimately in a less diverse range of services being available to consumers). It would be unfortunate if additional regulation resulted in a reduction of innovation in the emerging mobile content market.

As third party content providers, Free TV is also concerned that if additional regulation was particularly interventionist or onerous (for example, if it imposed a general "content monitoring" obligation upon carriers or carriage service providers, or for those entities ultimately to be responsible for whatever mobile content they carry), this could be a disincentive for carriers and carriage service providers to contract with third party content providers. While these obligations could be attempted to be "shifted" under contract (ie from the carrier to the carriage service provider, and hence to the content service provider), whether this was feasible would depend on an assessment of the relevant regulatory risks and commercial incentives. In such circumstances, carriers and carriage service providers are likely to prefer to perform the role of "content aggregator" or content provider themselves, rather than relying on third party content providers (like broadcasters) to supply the content for mobile content services (via carriage service providers). If this scenario occurred, the result is likely to be reduced diversity of mobile content.

Therefore, it is important that any additional content regulations do not inappropriately or disproportionately penalise carriers or carriage service providers for the carriage (in good faith) of content provided by third parties, particularly where those third parties are contractually bound to comply with the relevant regulations (but failed to do so).

5 Potential regulatory approaches

The Discussion Paper seeks comment on the "nature of potential regulatory approaches that could apply to services delivered to mobile communications devices, including direct regulation, co-regulation and/or self regulation.

While the mobile content industry is an emerging industry, content that is provided on mobile devices is already regulated.⁴ As a general proposition therefore, and as discussed above, Free TV's view is that the onus must be on any regulator proposing a further layer of regulation to demonstrate that current regulatory regime is lacking. As noted above, any new regulatory measures must also be targeted and proportionate to the identified problem.

⁴ For example, retransmitted television and radio services are regulated under the BSA (and will have been classified under the relevant codes of practice registered by the ABA), Internet content is regulated under the scheme established under Schedule 5 of the BSA, and content that has already been published in magazines will have been classified in accordance with the OFLC's publications guidelines.

5.1 Self-regulation

To the extent that additional regulation is considered necessary, Free TV does not consider that there is any need to subject mobile content to anything like the high level of regulation which applies to commercial television content under the BSA, as contained in licence conditions, standards and codes of practice.

The reasons why commercial television broadcasters are required to comply with this high level of regulation are reflected in the objectives of the BSA, which specifically address content and broadcasting's community service role, (including recognition of its ability to influence the community, and its national significance). However, given the nature of the content services that are offered on mobile devices, and the fact that the industry is an emerging one, Free TV does not consider that these objectives are applicable to the regulation of mobile content.

If the Review finds that some additional form of regulation is considered necessary, Free TV wishes to emphasise the positive experience of the commercial television industry with the self-regulatory aspects of the co-regulatory regime under the BSA⁵, as reflected in the *Commercial Television Industry Code of Practice (the Code)*.

The Code regulates content in accordance with community standards, assists viewers in making informed choices about their television viewing and provides effective procedures for receiving and handling viewer complaints. It operates alongside the requirements contained in the BSA and in Broadcasting Standards determined by the Australian Broadcasting Authority (**ABA**) which regulate the content of children's programs, advertisements directed to children and the Australian content of programs and advertisements.

The Code attempts to balance and provide for the various interests of our diverse society in the delivery of commercial television services. Based on viewer feedback the self-regulatory model works well has been efficient and effective in achieving the relevant public interest objectives (including responsiveness to community views, transparency, flexibility and simplicity).

In this context, Free TV considers that the development of a self-regulatory code of practice, ultimately overseen by the ABA (and its successor, the Australian Communications and Media Authority or "ACMA") could provide an appropriate means of regulating the content of mobile content services.

One of the key aspects to the success of the *Commercial Television Industry Code of Practice* is the fact that it contains a straightforward complaints handling process. Complaints arising under the Code are first referred to the broadcaster to address, and if the complainant is not satisfied with the broadcaster's response, they may refer the matter to the ABA.

A similar process could be applied in relation to mobile content. For example, mobile subscribers could first complain to their carrier (who would refer the complaint to the content provider if relevant), and then they would have the right to complain to ABA/ACMA.

Free TV notes that the Internet Industry Association (**IIA**) has announced that it is amending its Internet Content Code of Practice to cover Internet content delivered on

⁵ This scheme is often described as a "co-regulatory" approach, in that some aspects are directly regulated by the ABA (through licence conditions in the BSA, and broadcasting standards made by the ABA) and other aspects are subject to self-regulation by industry (as reflected in the *Commercial Television Industry Code of Practice*), with the ABA having reserve powers to intervene if codes of practice fail, or if they are not complied with.

a mobile device⁶. While Free TV cannot comment on that process at this stage, it is clearly relevant to the Review. Free TV will provide comments to the IIA when the draft code is released for public comment.

5.2 Classification issues

The Discussion Paper seeks comment on whether the content of new services is suitable for categorisation under the “national classification system”.

(a) General principle

As a general principle, Free TV’s view is that general mobile content should not require classification. To the extent that classification of some mobile content (ie adult content) is considered necessary, and subject to the qualification noted at 5.2(b) below, Free TV considers that the relevant mobile content should be capable of classification under the National Classification Code.⁷

The National Classification Code applies a classification framework to three discrete types of content, namely publications, films and computer games. The nature of the mobile content being provided will determine which of these codes are relevant in a particular case.

Free TV’s view is that if classification is required for certain types of mobile content (ie adult content), it should be for the content provider to ascertain which of the codes should be applied (ie does the content in question have more in common with a film, a publication or a computer game?). In this context, it could be useful for the industry (under a self-regulatory scheme) to issue guidelines that would apply to the classification of mobile content under the National Classification Code (ie applying the relevant aspects of existing OFLC guidelines, and developing additional guidelines for mobile content that does not fall squarely within a particular National Classification Code category).

Free TV also wishes to make some additional points about classification issues:

- news and current affairs services on mobile platforms should not require classification, but subscriber warnings (similar to those required under the *Commercial Television Industry Code of Practice*) could be linked to news programs which in the content provider’s opinion is likely to seriously distress or seriously offend a substantial number of subscribers. This is a regime that has worked well in the commercial television environment, reflecting that viewers have different expectations in relation to the classification and availability of news & current affairs content than other content types. Free TV’s view is that such requirements would be best addressed by an industry code of practice;
- promotions for “MA” rated television programs should not be automatically assumed to be MA when those promotions are provided as a mobile content service. This should depend on analysis of the specific content of the promotion itself and not the classification of the program; and
- content providers should be permitted to classify their own content (as is the case with television broadcasters) and should not be permitted required to provide content to an external body for assessment. Free TV’s members all employ classification officers who have expertise in this area, therefore, in the case of

⁶ At the Law Council’s Media and Communications Committee seminar (*Content on Converging Devices*) on 18 August 2004, this initiative was discussed by the CEO of the IIA. See also at:

<http://www.zdnet.com.au/news/communications/0,2000061791,39159586,00.htm>

⁷ See at <http://www.oflc.gov.au/resource.html?resource=60&filename=60.pdf>

broadcasters it would be particularly inefficient and unnecessary to require content to be submitted to independent assessors.

(b) Broadcasting services on mobile platforms

As the Department will be aware, broadcasting services are already highly regulated. Free TV is particularly concerned that additional regulation of content on mobile devices not result in the “double regulation” of broadcasting services. For example, to the extent that broadcasting services are transmitted or retransmitted to mobile devices contemporaneously with the broadcast of those services, the retransmitted broadcast should not need to be reclassified, or subjected to a higher or additional layer of regulation.

However, it is acknowledged that if the mobile content is time-shifted (ie so that it could not be broadcast on television at that time and comply with the *Commercial Television Industry Code of Practice*), re-classification could be required if access to the content was to be restricted⁸.

⁸ See following discussion about the different regulatory approaches to restricted content.

Part B

6 Other Regulatory Developments and Parallel Reviews

Free TV notes that there are other regulatory processes operating in parallel to the current Review. While Free TV understands that some of this work involves establishing interim regulatory measures, these processes will impact upon the regulatory landscape in which mobile content services are provided. For this reason, some comments about those other developments and processes are noted below.

6.1 Regulation of premium services

On 13 April 2004, the Minister directed the ACA⁹ to make two service provider determinations in relation to “premium services”¹⁰, and to investigate credit management measures that the telecommunications industry is developing to address the issue of unexpected high bills for carriage services or for content services.

This direction was accompanied by a Ministerial Determination that was made under paragraph 3.12(1)(c) of the *Telecommunications Regulations* 2001, that effectively extended the definition of “premium services” that the ACA was entitled to regulate under section 99 of the *Telecommunications Act* 1997 (**Telco Act**). Consequentially, the ACA is now able to make service provider rules that apply to “a content service supplied by way of a call to a number with an eligible prefix”¹¹ (as well as to carriage services supplied in the same way, and to “walled garden” services).

6.2 ACA service provider determinations

As Free TV’s members propose to supply content services from numbers that use eligible prefixes (via their contracted carriage service providers), Free TV has been monitoring the development of the section 99 service provider determinations, particularly in light of the impact that they may have upon competition in the provision of premium services.

One of these determinations relates to 190 and international premium services,¹² and the other relates to eligible prefixes and walled gardens.¹³

In considering these service provider determinations, and noting the potential for further determinations to be made under section 99 (as the exercise of the ACA’s powers under section 99 is not dependent upon a Ministerial direction), Free TV is concerned that the level of regulation imposed by the ACA upon the premium services not result in consequences similar to those noted at section 4.3 of Part A above.

In this context, Free TV is concerned that regulation not make it onerous (from a compliance perspective) for carriers to supply content from “outside” of their walled gardens, as this would provide incentives for carriers to only provide content from their “walled gardens. In turn, this would limit the opportunities for commercial television broadcasters to provide their own content services from the carriers’ platforms. For

⁹ *Australian Communications Authority (Service Provider Determination) Direction* 2004 (No 1).

¹⁰ As defined in the *Telecommunications Regulations*, and as clarified by the *Premium Services Determination 2004 (No 1)*, made by the Minister on 13 April 2004.

¹¹ “Eligible prefix” is defined to mean a prefix of 191, 193, 194, 195, 196, 197 or 199.

¹² *Telecommunications Service Provider (Premium Services) Determination* 2004 (No 1) (as amended)

¹³ *Telecommunications Service Provider (Premium Services) Determination* 2004 (No 2).

this reason, Free TV's view is that content that is created or repurposed for mobile delivery (whether supplied through eligible prefixes, walled gardens or other means) be regulated in a consistent way.

As noted above, Free TV is raising this matter in this submission to highlight that mobile content regulation should not be considered in isolation from other regulatory schemes that apply to the delivery of mobile content. Free TV considers that regulation of new services on mobile devices must be considered in a holistic way.

6.3 ACA inquiry into "unexpected high bills"

Free TV also notes the ACA's current investigation into "unexpected high bills" in the telecommunications industry, and the ACA's discussion paper *Preventing Unexpected High Bills: Credit Management in the Telecommunications Industry* (August 2004) (**the ACA Discussion Paper**).

The Minister's direction of 13 April 2004 (noted above) requires the ACA to report to the Minister on credit management measures that the telecommunications industry has put in place to protect telecommunications consumers from unexpected high bills, and on whether it considers such actions (and the commitment of the industry) to be adequate.

While the scope of the ACA's investigation is broad (addressing billing issues across the telecommunications industry), and focuses on the activities of entities in the "supply chain" who have the "billing relationship" with the relevant customer (ie carriers and sometimes carriage service providers, but not broadcasters and other content providers), it raises issues relevant to the provision of mobile content services.

As content providers, Free TV members have a strong interest in any possible additional regulatory measures aimed at addressing potentially higher incidences of unexpected high bills for carriage and content services.

The ACA Discussion Paper makes particular reference to emerging services such as premium SMS, multi-media messaging (**MMS**) and proprietary content services provided over mobile networks, and the possibility that these services may bring about an increase in unexpected high bills. M-Commerce and premium voice services are also noted in the ACA Discussion Paper as potential contributors to higher levels of unexpected high bills.

As illustrated in Part A of this submission, Free TV members:

- currently provide content for a range of premium services ranging from news and weather information and sports statistics to live streaming of program content on a subscription basis;
- rely on mobile platforms to facilitate interactivity with highly popular programming such as *The Block*, *My Restaurant Rules*, *Big Brother* and *Australian Idol*; and
- are particularly concerned that any additional regulation should not discourage the use or take-up of interactive services. In particular, Free TV would not support any approach which unreasonably limits viewers' ability to access services which allow interaction with programming.

Free TV members are not aware of any widespread incidence of unexpected high bills resulting from premium rate services despite the fact that many of these services have been operational for over 12 months and in that time have already proved extremely popular with consumers, particularly younger consumers.

Free TV would be concerned if the ACA took steps to increase the regulatory burden on provision of premium services on the basis of a small number of case studies that relate more to specific areas of concern such as Internet dumping.

Free TV also notes the ACA emphasis on the *unexpected* nature of the high bills. To that end, the provision of accurate and comprehensive information to consumers on costs and charges is a critical element in minimising unexpected high bills.

Broadcasters have always taken a responsible approach to the use and promotion of premium rate services such as 190 services. Premium rate SMS services have been available under the 188 trial for over 12 months and in that time content providers have been responsible in setting out pricing and other relevant information in promotional and advertising material.

Provisions in the *Commercial Television Industry Code of Practice (Code)* specifically address the use or promotion of premium charge telephone numbers in programs, program promotions and commercials. These requirements have been in place since April 1999, and were carried over into the amended Code which was registered by the ABA in July 2004. Free TV members consider that these provisions cover premium rate SMS services and are applying them as necessary in respect of those services.

For ease of reference, the relevant clauses of the Code are as follows:

Premium Charge Telephone Services

1.25 If, during a program or program promotion, a licensee invites viewers to use a premium charge telephone service (eg. 0055 and 1900 numbers) to obtain information, register a view on a matter or participate in a competition, the licensee must provide clearly readable information about the cost of the call.

1.25.1 In C program and program promotions in C viewing periods, and in any G program that has a substantial child audience and commences before 5.00pm:

1.25.1.1 the information about the cost of the call must be in a form which children can understand, and must be presented visually and orally;

1.25.1.2 children must be invited orally to seek parental permission before calling.

Premium Charge Telephone Services in Certain Commercials

6.25 In any commercial involving the use of premium charge telephone services (e.g. 0055 and 1900 numbers) which is directed to children, or is placed in a G program that has a substantial child audience and commences before 5.00pm:

6.25.1 the basic terms of any competition involved must be presented in a form which children can understand; and

6.25.2 the information about the cost of the call should be in a form which children can understand, and must be presented both in a clearly readable form and orally; and

6.25.3 children must be invited orally to seek parental permission before calling.

Free TV members consider that these provisions ensure that consumers are made aware of the relevant charges associated with premium rate services advertised on commercial television or used in association with programming.

In relation to credit management measures generally, Free TV notes that the ACA's preferred approach is to allow the telecommunications industry to self-regulate, but has indicated that it considers it important that the industry introduces credit management practices that align more directly with those provided in other sectors. In particular, the Discussion Paper states that a multi-pronged industry strategy is required in order to prevent consumers from receiving unexpected high bills. In this regard, the ACA has suggested the use of mandatory caps on premium services (and potentially other telecommunications services) as an option for effective credit management by telecommunications operators.

While carriage service providers in the telecommunications industry are best placed to comment on the appropriateness of particular credit management measures, Free TV notes that the telecommunications and content industries are large and complex and it is highly unlikely that a 'one size fits all' approach can be developed which does not have a downstream impact on content providers. In particular, Free TV is concerned that mandatory caps could unnecessarily restrict customers from accessing services that they would legitimately expect access to and could afford to pay for.

Free TV also wishes to emphasise that from the perspective of content providers, it is important that caps on expenditure be commercially realistic, and that the carriers have some flexibility, for example to set caps that reflect the characteristics of their business operations and subscriber base.

The ACA's Discussion Paper notes that there are material differences between the billing systems of the various carriers and carriage service providers, and between the regulatory issues that arise in relation to pre paid and post paid customers.

This illustrates why the ACA's preference to allow the telecommunications industry to self-regulate is the most appropriate response to these issues. The success of the co-regulatory approach to premium services in the commercial broadcasting environment demonstrates that industry can deal with these issues responsibly and effectively.

To the extent that regulatory intervention is considered necessary, Free TV considers that it is important that such regulation be focused and proportionate, and that compliance with such regulation not create onerous financial or administrative burdens. Given that costs arising from additional regulation of mobile content are likely to be passed on to the content providers, regulation that is unduly interventionist will have a direct and adverse impact upon a developing industry.

For these reasons, Free TV supports the greatest practicable use of industry self-regulation to address the issue of unexpected high bills, as this approach has the greatest potential to achieve the Government's objectives in a targeted and effective way.

6.4 Other regulatory considerations

As a final point, Free TV wishes to note that the emerging mobile content market may also give rise to additional regulatory considerations, some of which will arise under broadcasting and communications regulation administered by the Department and its agencies, and others within other Commonwealth portfolios (eg. copyright). For example, issues such as digital rights management and fair dealing in works protected by copyright will need to be closely monitored.

As rights holders, commercial television broadcasters would be concerned if works protected by copyright were used on mobile platforms without permission, or if there was an undermining of efforts of copyright owners to implement digital rights management and control copy technologies. Free TV will be paying close attention to these matters as the mobile content industry develops.

Free TV appreciates the Department's appreciation of this submission.

Free TV Australia
6 October 2004