



FreeTV
Australia

44 Avenue Road
Mosman NSW
Australia 2088

T : 61 2 8968 7100
F : 61 2 9969 3520
W : freetvaust.com.au

15 September 2004

The Manager
Mobile Content and Credit Management Project Team
Australian Communications Authority
PO Box 13112
Law Courts
MELBOURNE VIC 8010

Dear Sir/Madam,

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

Free TV welcomes the opportunity to provide comment to 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 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 such as carriage service providers that have a billing relationship with the relevant customer, it also 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.

As a general principle, Free TV considers that regulatory intervention should only take place where there is a demonstrable market failure or legislative gap. Any regulatory intervention should also be a proportionate response to a clearly defined and articulated problem.

The ACA Discussion Paper makes particular reference to emerging services such as premium short message service (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.

Free TV members currently provide content for a number of premium services ranging from news and weather information and sports statistics to live streaming of program content on a subscription basis.

Free-to-air broadcasters also rely on mobile platforms to facilitate interactivity with highly popular programming such as *The Block*, *My Restaurant Rules*, *Big Brother* and *Australian Idol*.

Free TV members 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 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 new Code which was registered by the Australian Broadcasting Authority in July this year. Free TV members consider that these provisions cover premium rate SMS services and are applying them as necessary in respect of those services.

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.

Whilst 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, 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.

If you have any questions regarding this submission, please contact me on 02 8968 7100.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Julie Flynn', with a long horizontal flourish extending to the right.

JULIE FLYNN
Chief Executive Officer