



# Submission by Free TV Australia

## ACMA consultation paper:

- Proposed changes to  
apparatus licence pricing  
structures

May 2023

## Summary

- Free TV Australia welcomes the opportunity to respond to the Australian Communications and Media Authority (**ACMA**) consultation on proposed changes to apparatus licence pricing structures, which commenced on 23 March 2023.
- Free TV Australia is the peak industry body for Australia's commercial free-to-air (**FTA**) television broadcasters. Our members depend on dedicated access to Television Outside Broadcasting (TOB) spectrum to cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.
- Our members also use apparatus-licensed spectrum for a range of other activities ancillary to program-making and broadcasting.

### Updating apparatus licence taxes by population

- Free TV supports the move away from CPI-based adjustments to apparatus licence taxes.
- Administrative spectrum pricing should promote the object of the *Radiocommunications Act 1992*, which is about maximising the long-term benefits of spectrum use to the economy and society. Population-based indexing of apparatus licence taxes, taking account of differential growth between areas, is a less arbitrary way of setting administrative prices.
- We are unclear, however, about the justification for any annual increase where there is no current or near-term expected scarcity of spectrum, unless these are driven by changes to the ACMA's own administrative costs. Increasing the cost of spectrum when there is no scarcity does not promote the object of radiocommunications regulation.
- Acknowledging that responsibility for setting the broadcasting transmitter licence tax lies with the Minister, we believe ACMA's reasoning for abandoning the CPI formula should be considered in this context too.
- CPI indexation of broadcasting spectrum taxes simply punishes commercial TV operators for providing an essential service. It takes money out of the TV industry at the same time as government and industry are in active discussions about the future of TV transmissions at the margins of sustainability.
- Not just CPI indexation but the entire basis of spectrum pricing for TV broadcasting needs to be examined properly, noting this industry already pays more for its TV broadcasting spectrum than in comparable countries.

### Television outside broadcast network

- Free TV welcomes the ACMA's proposal to rectify the current anomalies between general and TOB Network spectrum pricing.

- Spectrum for TV outside broadcasting ('TVOB') makes a huge hidden contribution to TV's capacity to bring Australians together around breaking news stories or major sports. It should be taxed on the same basis as other users of the bands in question.
- Implementation timing will be sensitive, noting that two of the three TOB Network licences held by commercial TV networks will expire in Q3 2023.
- Going forward, Free TV invites the ACMA to consider whether uncompensated coordination work between existing apparatus licensees and applications (such as MSS) seeking to share on a no interference, no protection basis, should be taken into account in setting future apparatus licence taxes. Though it represents a cost to TV operators, this coordination work clearly promotes the object of the *Radiocommunications Act 1992*. It also changes the spectrum denial characteristics of TVOB, especially in areas of light TVOB usage where sharing is most practicable.

## 2. Introduction

Free TV Australia is the peak industry body for Australia's commercial free-to-air television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Australia's commercial free-to-air broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

The price of accessing spectrum, both inside and outside of the 'broadcasting services bands,' is a critical input into many of the activities entailed in program-making and TV broadcasting. The TV industry has a vital interest in its fair and efficient regulation.

Spectrum for TVOB is critical to live coverage of breaking news and major sports. It supports the wireless cameras needed for free-to-air coverage of major sporting events. It allows TV to create temporary communication channels over long distances, crucial for bringing real-time images of major breaking news stories to national audiences, however remote the location.

In recent years advanced technologies have been introduced to improve spectrum management to meet the spectrum demand for television news and outside broadcasting demand within these frequency ranges, including:

- high efficiency video coding,
- centralised management of Australia wide channel usage, and
- increased sub channel / time-based sharing between Seven Network, Nine Entertainment and Network TEN, also ABC.

These advances reflect substantial peaks in the demand for television news and outside broadcasting by the public from Australian commercial television services.

Commercial TV broadcasters also use spectrum for a range of other activities that are ancillary to program-making and broadcasting. Other uses include, but are not limited to:

- Land mobile systems
- fixed links
- satellite earth stations and earth receive stations.

## 3. Updating apparatus licences by population

### 3.1.1 ACMA's question 1

*Do you have any comments on the proposed usage of the ABS dataset 'Estimated resident population, Significant Urban Areas' as the basis for the framework to update apparatus licence taxes annually using changes in geography-specific population?*

**Comment:**

Free TV supports the ACMA's decision to move away from CPI indexing of apparatus licence taxes. CPI adjustment arbitrarily increases the cost of spectrum in all areas, including where there is no current or expected scarcity of spectrum. Abandoning CPI indexing is consistent with the object of the *Radiocommunications Act 1992*, which is about maximising the direct and indirect benefits of spectrum use to the economy and society rather than securing an indexed flow of revenue to government.

Population-based indexing of apparatus licence taxes, taking account of differential population growth between areas, will ensure future tax changes are less arbitrary. The new ACMA approach relies on population change as a rough predictor of future spectrum demand. While it is better than CPI adjustment, the justification for any annual increase at all in areas where there is no current or expected spectrum scarcity is unclear - unless the increase is driven by changes to the ACMA's administrative costs in managing the spectrum. Otherwise, any increase in the cost of spectrum in uncongested areas will not promote the object of the *Radiocommunications Act*.

Acknowledging that responsibility for setting the broadcasting transmitter licence tax lies with the Minister, we believe ACMA's reasoning for abandoning the CPI formula applies equally well to the tax on TV broadcasting spectrum. CPI indexation of broadcasting spectrum taxes arbitrarily punishes commercial TV operators for providing an essential service, including in areas at the margins of viability.

Recent developments in the Future of Broadcasting Working Group process, including a proposal to 'audit' areas where TV coverage is either already deficient or at risk, suggests that government will soon be considering whether to take from regional and remote TV broadcasters with the one hand while giving with the other, as transmission facilities in economically marginal areas reach their end of life. Not just CPI indexation but the entire basis of spectrum pricing for TV broadcasting needs to be examined properly, noting this industry already pays more for its TV broadcasting spectrum than in comparable countries.

### 3.1.2 ACMA's question 2

*Do you have any comments on the indicative timing of annual updates to apparatus licence taxes using changes in geography-specific population?*

**Comment:**

Please note that we have raised a specific issue, below, about timing of implementation of the TOB Network licence change.

In general, alignment of updates with the Financial Year budget cycle used by most companies would simplify budgeting for apparatus licence fee increases, though if alignment is not practical, we acknowledge any discrepancy between predicted and actual tax increases is likely to be minor.

## 4. Television Outside Broadcast Networks

### 4.1.1 ACMA's question 3

*Do you have any comments on the proposal to update the annual licence tax amount for television outside broadcast network licences and the proposed amendment to the Determination?*

**Comment:**

The change is an important piece of housekeeping flowing from earlier reviews of ACMA's administrative pricing of spectrum, which have seen major adjustments in the price of some bands. We regret that it was not picked up sooner but credit is due to the ACMA for moving quickly to apply these reductions to TOB Network licences using the same bands. We strongly support the proposal, which will deliver significant tax relief to the three TV commercial networks.

As implementation is currently slated for 'Q2/Q3', with a 50-day delay proposed between passage of the amendment and its coming into effect, the timing will be sensitive. The Nine and Ten networks' annual TVOB Network licences both fall due for renewal at the very end of Q3 - on 30 September. The amendment should be made at least 50 days prior to expiry of these licences to avert any unfair consequences for these two networks.

If, for whatever reason, the ACMA were not able to implement the tax reduction in good time, we acknowledge that mitigations may be available to the affected networks in the form of an early approach to the ACMA's licensing area to seek a shortened renewal period. The networks would still pay tax at the old rate for the duration of the renewal. The mitigation strategy would work best if the networks had reliable information about the exact date on which the tax changes will take effect, suggesting there would still be benefit to the networks if the instrument were able to be made prior to 30 September, even if it isn't possible to make it 50 days prior. The significant sums involved suggest that ACMA, Free TV and the two networks concerned should keep in touch about this issue as the ACMA's likely time frames become clearer.

### 4.1.2 ACMA's questions 8 and 9

*Do you have any suggestions for additional pricing measures the ACMA could consider to encourage spectrally efficient technology deployments?*

*Are there any other comments that you would like to give relating to the proposals in this paper or other aspects of the apparatus licence tax regime?*

**Comment:**

Possession of a TOB Network licence comes with a substantial administrative burden for licensees. 2 GHz and 2.2 GHz spectrum licensed for TOB is globally harmonised for space (MSS) use and there are significant ongoing costs for TV in negotiating coordination agreements with space industry players keen to use it. The TV industry's coordination work with MSS operators:

- maximises the public benefit obtained from 2 and 2.2 GHz spectrum, thereby promoting the object of the Radiocommunications Act; and
- minimises the spectrum denial 'cost' of TOB licences, particularly in areas where TOB usage is light.

At present, however, the work doesn't benefit TOB licensees themselves, as they don't charge for the service. Recent agreements fall into two classes:

- *De facto* geographic sharing with earth station operators, with acknowledgement of the secondary status of MSS in the relatively unlikely event of interference to or from TOB; and
- Mixed geographic and time-sharing with rocket launch-related activities, on the model pioneered at New Norcia in relation to the European Space Agency. An additional feature of this type of sharing is the need for broadcasters to check schedules of future launch-related activities against planned future TOB usage.

Both approaches take advantage of the fact that TV network use of TOB Network spectrum, though not always predictable, is highly sporadic outside of the major centres for electronic newsgathering and outside broadcasting.

Free TV and networks are currently working to develop an 'envelope-based' approach to coordination agreements for busy earth station sites operating in relatively remote areas, to reduce the red tape for all parties. It isn't core work for our members and the only compensation we will obtain will be savings in current ongoing coordination work. As both the overhead to TV operators and the benefits to the MSS sector are significant, the ACMA should consider whether some taxation or other relief is appropriate, when, as with TOB in 2 and 2.2 GHz, uncompensated coordination work by an existing apparatus licensee facilitates the use of the spectrum for other purposes. Appropriately compensated, TOB operators may be open to exploring further measures to facilitate sharing, e.g. greater transparency around 'scheduled' TOB use. At present, there is no incentive (or spare capability) for the TOB operators to take on such an overhead. The issue is not confined to 2 and 2.2 GHz spectrum but may arise where other bands are licensed for time-critical but intermittent use.