Australian Government

Department of Broadband,
Communications and the Digital Economy

Annual Review of Regulatory Burdens on Business - Social and Economic Infrastructure Services

SUBMISSION TO THE PRODUCTIVITY COMMISSION

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INTRODUCTION

Productivity Commission Review

1. Under the terms of reference received by it on 28 February 2007, the Productivity Commission has been asked to conduct ongoing annual reviews of the burdens on business arising from the stock of Government regulation. Amongst other things, the terms of reference require the Commission to identify specific areas of Australian Government regulation that:

    a. are unnecessarily burdensome, complex or redundant; or
    b. duplicate regulations or the role of regulatory bodies, including in other jurisdictions.

2. Following consultation with business, government agencies and community groups, the Commission is required to report on those areas in which the regulatory burden on business should be removed or significantly reduced as a matter of priority, and options for doing so. The Commission will identify options and make recommendations for:

    a. alleviating the regulatory burden on the sectors, including on small business; and
    b. enhancing the consistency or reducing duplication of regulations, or the role of regulatory bodies, for the sectors.

3. In accordance with its terms of reference, the Commission is to identify alternative regulatory and non regulatory approaches that would alleviate the burden imposed in these areas without compromising the underlying regulatory objectives.

4. This year, the Commission is to report, by the end of August 2009, on those regulations that mainly impact on the whole or any part of, the social and economic infrastructure services. In broad terms, this includes the construction, utilities, health, education, transport and communication industries.

5. The Commission relies on submissions from interested parties to identify potential areas of reform. In the absence of submissions concerning a topic, it will be taken as prima facie evidence that no problem exists.

6. The activities of these industries are regulated by a range of Australian Government authorities through a variety of instruments. Consistent with the Regulation Taskforce report, for the purposes of this review, 'regulation' includes government rules that influence or control behaviour, as well as the administration and enforcement of these rules. This includes legislation and formal regulations (including treaties and co-regulation), as well as quasi-regulation such as codes of conduct and advisory instruments.

Department of Broadband, Communications and the Digital Economy

7. The Department of Broadband, Communications and the Digital Economy (DBCDE) seeks to encourage a vibrant, sustainable and internationally competitive communications sector. It provides advice on policy and regulation to support the market sustaining a communications sector meeting the ongoing needs of Australian consumers

and business. It administers programs to help with the communications needs of Australians living in regional, rural and remote areas.

8. DBCDE facilitates the safe participation of individuals and businesses in the digital economy. By investing in the development of innovative uses of digital technologies, it is helping to grow the digital economy in Australia.

9. DBCDE provides advice on broadcasting policy and regulation and is also managing the transition to digital television. Other responsibilities include e-security policy matters including cyber-security and the development of policy and regulation affecting the mobile phone services industry.

10. DBCDE is the Department of State responsible for key pieces of legislation regulating the communications sector. In particular:

- The *Broadcasting Services Act 1992* (the BSA), which makes provision in relation to broadcasting, including the licensing of broadcasters and the role of ACMA, and regulation of online content under Schedules 5 and 7 through a complaints-based mechanism.

- The *Telecommunications Act 1997*, which regulates of the telecommunications environment including emergency calls, telecommunications privacy, law enforcement and national security.

- The *Radiocommunications Act 1992*, which deals with radio frequency planning, spectrum plans and licences. It also lays down general regulatory requirements governing standards, technical use of the spectrum and activities relating to radio emissions.

The Australian Communications and Media Authority (ACMA)

11. ACMA is a statutory authority with regulatory responsibility in the areas of broadcasting, the internet, radiocommunications and telecommunications. ACMA's regulatory responsibilities include:

- Broadcasting – ACMA plans the channels that radio and television services use, issues and renews licences, regulates the content of radio and television services and administers the ownership and control rules for broadcasting services.

- Internet – ACMA is responsible for regulating online content (including internet and mobile content) and enforcing Australia's anti-spam law.

- Telecommunications - ACMA licenses Australia's telecommunications carriers and regulates fixed line and mobile telecommunications.

- Radiocommunications - ACMA plans and manages the radiofrequency spectrum in Australia. It is responsible for compliance with licensing requirements and investigating complaints of interference to services.

ACMA's specific responsibilities include:

- promoting self-regulation and competition in the telecommunications industry, while protecting consumers and other users;
- fostering an environment in which electronic media respects community standards and responds to audience and user needs;
- managing access to the radiofrequency spectrum, including the broadcasting services bands; and
- representing Australia's communications and broadcasting interests internationally.

DEPARTMENT'S SUBMISSION

Introduction

12. A number of submissions have been posted on the Productivity Commission's website that have relevance for the activities of the DBCDE portfolio. The purpose of this submission is to respond, where appropriate, to the issues raised by the submissions and to set out the relevant government activities in respect of them. Following the responses to the submissions, DBCDE provides commentary on the Commission's draft report recommendations. The Department provides this commentary to inform the Commission in formulating its final recommendations and the Commission should not view the commentary as an Australian Government response to the report.

13. A number of the issues raised by organisations contributing to the Productivity Commission's review have been addressed in the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper issued by the Australian Government in April 2009. These issues include, but are not limited to:

- the Telecommunications Access regime;
- Telecommunications-specific issues under the Trade Practices Act, Part XIB and Part XIC;
- the Consumer Safeguard Framework;
- Telstra's Industry Development Plan; and
- the South Australian Government's submission on road damage mitigation.

14. It is anticipated that these and other issues raised in the discussion paper will be addressed in the course of the Government finalising its response to the matters set out in the paper.

15. It has also been drawn to the Productivity Commission's notice that a number of reviews regarding the current regulatory regime for broadcasting are either under way or are scheduled to commence shortly. These include the:

- the Government's response to the Senate Environment, Communications and the Arts Committee Inquiry on the reporting of sports news and the emergence of digital media;

- the Government's response to the Senate Environment, Communications and the Arts Committee Report on the sexualisation of children in the contemporary media;
- the Government's response to the Senate Environment, Communications and the Arts Committee Report on the effectiveness of the broadcasting codes of practice;
- the Media Access Review (captioning and audio description review);
- the Review of the Anti-siphoning Scheme;
- the Review of the Anti-siphoning List; and
- the Review of Local Content, Local Presence and Local Service Requirements.

16. It is anticipated that these reviews will address the majority of the broadcasting issues raised in the industry submissions to the Productivity Commission's review.

17. In light of the Commission's statement that it relies on submissions from interested parties to identify areas of reform, the Department's submission systematically addresses the concerns raised in these submissions. The format of this part of Department's submission is, therefore, as follows. The submissions relevant to portfolio activities have been addressed in order. A brief summary of the submission heads each section and this is then followed by the Department's response. The submission then provides comments on the commission's draft recommendations that are relevant to the Departments activities.

Organisation Submission: Australian Mobile Telecommunications Association (AMTA)

18. AMTA's current submission builds on its previous submission to the Productivity Commission in 2005. AMTA's submission objects to what it describes as a "complex co-regulatory model with overlap and inconsistency between jurisdictional and agency responsibilities and numerous bodies developing policy without adequate reference to other agencies or industry." AMTA states that it is supportive of the Rudd government's commitment to regulatory reform.

19. AMTA's submission describes the following as "key problem areas":

- mobile content regulation;
- law enforcement: pre-paid identity checks; and
- privacy.

20. The submission makes the following recommendations for reform:

- Regulators should publicly commit to best practice regulation and consultation. This requires cultural support at all levels within organisations. Having Regulatory Impact Statements (RIS) and related procedures in place is insufficient, unless they are widely understood, respected and satisfied in spirit.

- All proposed delegated legislation should be accompanied by a RIS, and the RIS process and final documents must be transparent.

- Regulatory forbearance should be the default position of a regulator until such time that it can be clearly demonstrated that a durable market failure exists, and that regulatory intervention will actually deliver a superior outcome compared with market delivered outcomes or than existing regulation. In other words, government must test whether existing regulation can be applied to remedy a perceived issue before recommending or making yet more regulation.

- Ministers and departments must ensure that regulators are not de facto policy makers.

- The Office of Regulation Review should be empowered and properly resourced to act as regular evaluator of regulator performance, including receiving and reviewing complaints from national industry representative organisations about inadequacies in RIS and consultative processes where those have proved irresolvable with regulators. Such reviews should ideally occur *before* new regulation takes effect.

Department's Response

21. The *Telecommunications (Service Provider Identity Checks for Prepaid Mobile Telecommunications Services) Determination 2000* (the Determination) requires the telecommunications industry to collect, verify, store and, on lawful request, retrieve, identity and address information about the purchaser and/or user of prepaid mobile phone services.

22. Since 1997, purchasers of pre-paid mobile telephone services have been required to undergo an identifying process prior to activation of the service. The Determination provides for a point-of-sale process that requires carriage service providers (CSPs) to collect information about purchasers of pre-paid services at the time the service is purchased. CSPs are then required, for all purchases made other than by credit or debit card, to verify the person's identity by viewing identifying documents such as passports or birth certificates.

23. An amendment to the Determination in 2000 provided for an alternative post-sale identity verification process. The lack of an accessible data source for identity verification away from the point of sale has hindered the use of a post-sale process. Another amendment, in 2004, provided for an alternative option, verification of identity in accordance with a process specified in an industry developed compliance plan that has been approved by ACMA.

24. Under the *Telecommunications Act 1997*, CSPs are able to recover the costs of providing reasonably necessary assistance to law enforcement agencies to assist with investigations, on the basis that they neither profit from, nor bear the cost of giving that help. This cost recovery mechanism does not apply to the costs of collecting the information, which is collected in the ordinary course of their business.

25. The Determination is made under subsection 99(1) of the *Telecommunications Act 1997*. Subsection 99(1) allows the Australian Communications and Media Authority (ACMA) to make a written determination setting out rules that apply to service providers in relation to the supply of specified carriage services and/or specified content services.

26. Subsection 99(3) limits ACMA to making determinations on matters specified in regulations or in section 346 (which relates to disaster plans). The relevant enabling regulations are the *Telecommunications Regulations 2001* (the Regulations).

27. Pre-paid mobile phone purchaser information is collected to ensure that it is available when required for investigations by law enforcement and national security agencies. The data is made available by carriers to investigating agencies under the *Telecommunications (Interception and Access) Act 1979*, which is administered by the Attorney-General's Department (AGD).

28. Due to the sensitive nature of investigations, it is difficult for agencies to provide quantitative data on how they use this information. However, AGD advises that the lack of available and accurate purchaser identification and address information could hinder investigations by law enforcement and national security agencies.

29. Industry, and law enforcement and national security agencies have had longstanding concerns regarding the effectiveness of the pre-paid mobile identity checking arrangements. In 2006, ACMA conducted a review designed to improve the identity checking process. Following on from this review, ACMA established a joint industry and government working group to consider ways to address agency concerns and improve the efficiency and effectiveness of the arrangements.

30. Since this time, the Australian Government has been working closely with industry to streamline the process to enable industry to comply with its obligations. To this end, the Australian Mobile Telecommunication Association (AMTA) has developed a form to assist with the collection of information. This form has been rolled out with the assistance of AMTA members.

31. Complementing this work, ACMA has instigated an audit process to check industry compliance with the identity checking requirements under the Determination. Between 28 July and 26 August 2008, ACMA purchased over 100 pre-paid mobile services from a selection of providers (including their authorised agents or retailers) in Melbourne, Sydney and Adelaide. ACMA commenced its second round of audits on the week starting 27 April 2009.

32. It is important that the policy objectives of the Regulations and the Determination are fulfilled in a way that balances the interests of consumers, industry and law enforcement.

33. The Department of Broadband, Communications and the Digital Economy (DBCDE) notes that recent joint efforts to streamline operations have not alleviated concerns about the effectiveness of the current arrangements.

34. Industry is particularly concerned about the costs of compliance with obligations. DBCDE sees merit in a review of the Regulations and the Determination to ensure that they continue to operate effectively and efficiently and balance the needs of all stakeholders. Any review would need to be undertaken in consultation with relevant Government, agency, industry and consumer stakeholders.

Mobile Premium Services (also called Mobile Content Services)

35. AMTA appears to be critical of DBCDE's approach in seeking to address concerns about mobile premium services and states (page 6) that "it has been apparent on a number of occasions that the DBCDE has not even a basic understanding of either the existing regulation or the structure of the mobile content services industry".

36. DBCDE notes AMTA's criticisms but would point out that the mobile premium services industry has been a major concern to consumers for quite some time, as evidenced by complaints to DBCDE, the Minister, the ACCC and the Telecommunications Industry Ombudsman. It would therefore appear that the approach by the industry in relation to mobile premium services has been inadequate to address legitimate concerns raised by consumers. A Code developed by the Communications Alliance has recently been approved by ACMA and it appears to address the main concerns of the current arrangements. However, if the Code does not adequately address the current concerns, then DBCDE will advise the Minister on more direct regulatory options.

37. On 14 May, ACMA endorsed a comprehensive package of measures to protect consumers of premium SMS, including the Code developed by Communications Alliance. Other measures in the package included:

- The development of rules requiring mobile carriage service providers to implement optional barring for premium SMS by July 2010.
- The development of rules to prohibit mobile carriage service providers and aggregators contracting with content suppliers that are not listed on the CA register;
- The development of rules to prevent content suppliers or aggregators responsible for serious breaches of the Code from operating in the Australian market for a specified period.
- The commencement of a rigorous monitoring and compliance programme to identify potential breaches of the code, recurring and systemic problems with services and the service providers that are responsible. Where breaches of the Code are identified, ACMA will take action to direct compliance with the Code.

38. The AMTA submission makes recommendations relating to Regulatory Impact Statements and related processes. ACMA is committed to best practice regulation and consultation and all proposed delegated legislation complies with OBPR requirements. RIS processes are documented and RIS reports are tabled with the appropriate legislation.

Organisation Submission: Commercial Radio Australia (CRA)

39. Commercial Radio Australia (CRA) has identified 3 areas where it considers that the compliance burden on the industry is so excessive that it threatens the industry's viability.

- ***Local Content***: The local content provisions under the *Broadcasting Services Amendment (Media Ownership) Act 2006* (Media Reform Act) oblige commercial radio licensees to follow complex guidelines to determine what constitutes local content, keep daily audio records of broadcasts, publish daily local content statements and report annually to the Australian Communications and Media Authority (ACMA).

Recommendation 1: Exempt remote area broadcasters and providers of racing radio services from all the local content provisions.

Recommendation 2: Permit material of local significance to be counted over any 5 days of the week.

Recommendation 3: Reduce the compliance period from 52 weeks per year to 46 weeks per year for all the local content provisions**.**

- ***Trigger Event****:* The Media Reform Act imposed further restrictions on regional stations following a "trigger event". Of particular concern is the requirement that stations maintain "at least the existing level of local presence" – in terms of staffing and production facilities. This effectively freezes stations in time, and prevents them from operating efficiently and profitably.

Recommendation 1: Restrict the definition of "trigger event" to cross media mergers.

Recommendation 2: Repeal of the "local presence" requirements under section 43B of the BSA.

- ***Current Affairs Disclosure Standard*****. The** ***Broadcasting Service (Commercial Radio Current Affairs Disclosure) Standard 2000*** (Disclosure Standard) requires all licensees to make on air disclosure of commercial agreements between sponsors and presenters. The Disclosure Standard also imposes onerous record keeping requirements on licensees.

Recommendation 1: Simplify the Disclosure Standard.

Recommendation 2: Permit regular disclosure.

Recommendation 3: Remove the obligation to specify the amount or value received by the presenter in the register of commercial agreements.

Recommendation 4: Remove the obligation for presenters to provide the licensee with copies of each commercial agreement.

Department's Response

Local Content

40. CRA claims the compliance reporting and record keeping requirements associated with the local content requirement in the BSA are onerous, time consuming and expensive. CRA considers the requirements should not apply to remote and racing radio broadcasters.

- The Government is aware of CRA's concerns: CRA has provided a detailed submission on options, which the Government is currently considering.

'Trigger event'

41. CRA claims the compliance reporting and record keeping requirements associated with the 'trigger event' provisions in the BSA are onerous, time consuming and expensive. CRA also claims the local presence requirement constrains the industry's ability to operate efficiently and effectively, with implications for the commercial viability and value of individual broadcasting assets. CRA considers the 'trigger event' requirements should not apply to transactions that are not cross-media in nature.

- The Government is aware of CRA's concerns: CRA has provided a detailed submission on options, which the Government is currently considering.

Current Affairs Disclosure Standard

42. The *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000* requires the disclosure of commercial agreements by presenters of current affairs programs. This standard is a condition of a broadcaster's licence and applies to all commercial radio broadcasting licensees who broadcast current affairs programs.

43. The key objective of the disclosure standard is to encourage commercial radio broadcasting licensees to be responsive to the need for a fair and accurate coverage of matters of public interest. The standard requires this through the disclosure of commercial agreements that have the potential to affect the content of current affairs programs. The standard can be viewed at ***www.acma.gov.au*****.**

44. In December 2008, the Australian Communications and Media Authority (ACMA) announced that it would undertake a comprehensive review of the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000* as part of a review of the three commercial radio standards introduced in 2000.

45. To ensure the standards deliver appropriate and contemporary community safeguards, the review is focussing on the provision of current affairs programs, including talkback, seeking to ensure that providers of commercial radio broadcasting services remain responsive to the need to treat advertising and other sponsored content in a way that does not lead listeners to believe that it is editorial comment, free from commercial influence.

46. In undertaking the review, ACMA is also examining contemporary business models operating in the commercial radio sector and changes to the commercial radio industry and to the regulatory environment since the standards commenced in 2001. Consideration will also be given to international approaches to similar issues.

47. ACMA expects to conduct three rounds of public consultation, commencing with the release of an issues paper and a call for submissions in mid 2009. The issues paper will be built on findings from research ACMA is conducting into community attitudes and comparative research on international approaches to regulation which will establish an evidence base for the review. More information can be found on the ACMA website at: ***http://www.acma.gov.au/WEB/STANDARD/pc=PC_311576.***

48. ACMA considers that the Disclosure Standard provides an important element in encouraging the fair presentation of current affairs by licensees. Listeners of commercial radio current affairs programs should be confident that the content they hear has not been influenced by third parties. Where commercial arrangements exist, listeners should be informed about them. In requiring licensees to publish information about their presenters' commercial agreements and to cause disclosure announcements to be made when a sponsor or its products or services is mentioned, the Disclosure Standard encourages commercial radio licensees to be responsive to the need for fair and accurate coverage of matters of public interest.

Organisation Submission: Minerals Council of Australia

49. Operating predominantly in the regional and remote parts of Australia, the minerals industry, represented by the Minerals Council of Australia, has submitted that the key social and economic infrastructure in these areas is suffering from decades of inadequate investment, while duplicate and costly regulatory burdens have also hampered the development of economic infrastructure and the minerals sector more generally.

50. The submission further observes that it is often the case that the minerals industry appears to be expected to provide services that are properly the responsibility of government viz. health, education, housing, communications and transport infrastructure.

51. The Minerals Council of Australia's submission makes the following recommendations for the Productivity Commission to recommend to Australian Governments to undertake:

- to overcome Federal/State duplication and complexity in regulation;
- to establish nationally consistent Occupational Health and Safety regulation based on a preventative systems approach;
- to endorse the MCA's strategic principles for multi-user, multi-owner export infrastructure and promote it as a template under the Council of Australian Governments regulatory reform process;
- to amend the Trade Practices Act, in particular the Part IIIA (access regimes) to ensure:
  - competition be promoted in a market that is substantial and of national significance, other than the market in which the service is being provided, before the service is declared;

- the declared service be truly essential to competition in the market in which competition will be promoted, where 'essential' means indispensable as a practical matter for participation in that market;
- the production process exemption prohibit or strictly limit access where doing so would disrupt a vertically integrated production process; and
- the decision-maker be satisfied that granting access is in the public interest and in so doing, that the decision-maker takes account of the costs and risk of regulatory error;

- to fund the 2007 COAG commitment to develop a proposal for a more harmonised and efficient system of environmental assessment and approval;

- to reform competition policy, particularly in water, electricity and gas (National Energy Market Reform) and the economic regulatory framework for export infrastructure access;

- to pay particular attention to water policy issues such as:
  - additional regulatory measures being developed by the Commonwealth through the application of the Water Act are equitably applied to all water users, such that they do not represent an unfair barrier for minerals industry access to water markets;
  - the ACCC recognises in its advice to the Minister for Water resources that the minerals industry water users should not be required to pay additionally for government's water planning and management activities to which it is already contributing;
  - risks associated with changes to water allocations due to exceptional circumstances are shared between government and industry - this is critical as the extremely variable nature of water supply in Australia has the potential to create substantial risks; and
  - the establishment of a national water market within and between States and Territories that is based on the relevant parameters of the region (catchments or basins);

- to improve the complex and inefficient native title system which is impeding companies and Indigenous Australians reaching mutually beneficial outcomes on land use;

- to strengthen their commitment to the provision of adequate and appropriate community infrastructure and social services to remote and regional Indigenous communities;

- to consider amendments to taxation and financial legislation and arrangements aimed at reducing barriers to economic development in Indigenous communities and to consider the alignment of the many policies and programs in this area including:
  - the Closing the Gap targets on addressing Indigenous health, housing, education and livelihoods;
  - the seven COAG endorsed building blocks to address disadvantage; and;

  - the Australian Employment Covenant, proposed changes to the treatment of Native Title payments, and the upcoming Indigenous Economic Development Strategy;

- in strengthening this commitment to remote and regional Indigenous communities, also consider making additional funding available to ensure:

  - improved access to literacy and numeracy education; work readiness initiatives such as Fitness for Work programs; and the acquisition of standard vehicle licences;
  - improved access to drug and alcohol services; and improved access to human and financial capital to facilitate Indigenous enterprise development; and
  - improved access to adequate housing;

- agree to consider amendments to taxation and financial legislation and arrangements aimed at reducing barriers to economic development in Indigenous communities;

- to address regulatory rigidity and incapacity of existing vocational training and education arrangements; and

- to ensure the new workplace relations legislation builds on, and does not undermine, twenty five years of industrial relations reform that has delivered labour market flexibility, direct employer/employee relationships for mutual benefit, improved productivity and industrial harmony

- support the further development of strong and sustainable regional communities through:

  - the establishment of a Council of Australian Government initiative on regional development which includes a focus on enhancing the provision of physical and social infrastructure;
  - an audit to be undertaken of current infrastructure already provided by mining companies in locations in which the Federal Government/Minerals Industry MOU on Indigenous Employment and Enterprise Development is currently in place; and
  - participation and resourcing of a regional development demonstration project that engages industry, governments and the community in seeking to build capacity; community and economic development at the regional level.

Department's Response

52. The Minerals Council has raised the importance of access to key social and economic infrastructure to the prosperity and sustainability of Australia's regions. Access to affordable, fast broadband is increasingly essential to the way Australians communicate and do business. It will help drive Australia's productivity and prosperity, improve education and health service delivery and connect our big cities and regional centres.

53. The Government has in place an integrated series of measures to promote access to broadband for all Australians. At the forefront is the announcement that the Government will establish a new company to build and operate a new superfast National Broadband Network (NBN). The company will invest up to $43 billion over eight years to build the network. The Government's objective is that a fibre-to-the-premises network will cover 90 per cent of homes and workplaces, and the remaining coverage will be delivered through next generation wireless and satellite technologies within the funding envelope.

54. As part of the NBN initiative, the Government is fast-tracking a $250 million investment in regional backhaul under the Regional Backbone Blackspots Program. This will benefit a number of regional areas where there is a lack of competitive backhaul services.

55. In March 2009, as part of its response package to the report of the Regional Telecommunications Independent Review Committee, the Government announced an initial $61.1 million funding commitment across three funded programs:

- $46 million for the Digital Regions Initiative;
- $11.4 million to enhance the Satellite Phone Subsidy Scheme; and
- an additional $3.7 million to a refocused $30 million *Indigenous Communications Program*.

56. The Digital Regions Initiative will fund digital enablement projects supporting improved access to emergency and other essential services in regional areas. The aim of the Indigenous Communications Program is to improve essential telecommunications services, basic public internet access facilities and computer training for remote Indigenous communities.

57. The Satellite Phone Subsidy Scheme improves the affordability of mobile communications for people living and working in areas without terrestrial mobile coverage, by providing increased subsidies for the purchase of satellite phone handsets.

58. The objective of the refocussed Indigenous Communications Program is to improve essential telecommunications services, basic public internet access facilities and computer training for remote Indigenous communities

59. In the 2009-10 Budget the Government also announced the $80 million Rural and Regional NBN Initiative, which includes $15.3 million for the Australian Broadcasting Corporation to expand its Local Regional Broadband Hubs; an additional $14 million to boost the Digital Regions Initiative funding to $60 million, and $5 million over four years to fund Rural NBN Coordinators.

60. The Government has also provided an additional $250.8 million in funding until 2012 for the *Australian Broadband Guarantee* (ABG). The ABG provides all Australian residents with access to broadband services that reasonably compare to broadband services available in metropolitan areas.

61. The Government's response to the Regional Telecommunications Review also emphasised the importance of collaboration between all levels of government, as well as industry and consumer groups. The Department is currently working with these stakeholders in progressing the Government's response, with a focus on improving telecommunications services for those living and working in regional, rural and remote Australia.

62. The Government has identified the importance of ensuring that appropriate consumer protection safeguards are in place, including during the transition to the National Broadband Network. It has released a Discussion Paper *National Broadband Network: Regulatory Reform for 21st Century Broadband* to explore the options for reform of the existing regime.

Organisation Submission: OPTUS

63. In its submission, OPTUS has raised the following matters for consideration in the course of the review:

- The Operational Separation scheme set out in Part 8, Schedule 1 of the *Telecommunications Act 1997* is wholly ineffective and should be strengthened through the introduction of structural separation.

- The declaration under Part XIC should apply only to operators with significant market power.

- Part XIC should be streamlined such that parties be prevented from:

  - applying for merits-based review of the ACCC's decisions;
  - applying for exemptions from access obligations; and
  - submitting access undertakings materially similar to those previously rejected.

- The Commission should consider certain reforms to make the Part XIB anticompetitive conduct regime more effective, including strengthening the ACCC's enforcement powers and eliminating the Customer Service Guarantee (CSG) draft notices, which impose on Carriage Service Providers (CSPs) specific performance standards and compensation payment requirements with respect to the connection, fault rectification and making of appointments for the supply of standard fixed telephony services to consumers. This is highly burdensome, unevenly applied and outdated.

- The regulations requiring CSPs with mobile networks to collect, verify, store and, on lawful request, retrieve identity and address information about the purchaser and/or user of prepaid mobile phone services are poorly designed, impractical, costly and unreasonably applied.

- The vast amount of information that CSPs are required to provide to their customers to the detriment of both CSPs and consumers themselves. This is because the regulations governing these requirements are poorly developed and inflexible; are in many cases increasingly irrelevant to consumers yet remain in force; and due to their industry-specific nature impose a greater regulatory burden on the telecommunications industry than is applied to other sectors.

- The Commission should consider funding the Universal Service Obligation (USO) from general taxation and that it should recommend abolition of the industry fund. It is inappropriate for Telstra to be subsidised by its rivals, given the significant advantages enjoyed by Telstra as the incumbent and the negative impact on competition resulting from the industry subsidy.

- The record-keeping rules and other information-gathering powers set out in Part XIB of the Act should be retained, but should be applied only to operators with significant market power and should be applied only where necessary to support the ACCC's regulation of an existing declared service.

Department's Response

64. Optus has raised a number of issues about the CSG including reporting, arguing that compliance reporting costs are too high and obligations too onerous, and is therefore seeking regulatory relief. It has also suggested that the CSG should apply only to Telstra. ACMA is reviewing a number of reporting requirements. The *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper has sought comment on CSG related issues.

65. On the matter of provision of information to customers, Optus claims consumer information requirements are burdensome, and counterproductive in assisting customers. Optus also believes that some of the requirements have become redundant over time. Elements of the issues raised by Optus are being considered as part of the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper, which specifically seeks views on the "red tape" issues Telstra raised in its submission to the Productivity Commission review.

66. With regard to the standard form of agreement and other consumer contracts, Optus raises the concern that it has to tailor its services to meet each jurisdiction's individual consumer law requirements. However, Optus has also identified the ongoing development of a national consumer regime under COAG and welcomes this development.

67. On the question of requirements for an industry funded USO, Optus argues that it would be burdensome to small players and it would be more efficient to fund from general tax revenue and abolish the existing levy. Optus believes that the incumbent should be required to deliver the USO. Optus had previously suggested that the ACCC have overall responsibility for costing of USO along with that of pricing issues. USO funding is being addressed under the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper. This also applies to the broader issues in relation to the USO arrangements raised by Optus in its submission to the USO review which it attached to its submission to this review.

68. Regarding record keeping rules (RKR), Optus accepts some degree of information gathering, but that those carriers with significant market power be subjected to RKR. This matter is being dealt with under the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper.

Organisation Submission: Telstra Corporation Limited

69. The Telstra Corporations' extensive submission, made a number of recommendations:

- The Productivity Commission should give priority to reviewing and recommending reform of those regulations that demonstrably constrain investment in the telecommunications segment of the economy.

- The telecommunications access regime embodied in Part XIC of the Trade Practices Act, which affords significant discretion to the ACCC in its administration of the regime, and hence significant uncertainty as to outcomes, continues to stifle investment in much-needed competitive broadband infrastructure.

- The Universal Service Obligation (USO) is another example of regulation that constrains cost recovery. The failure to calculate and recognise the costs of delivering the USO in high-cost locations deters and distorts investment.

- The telecommunications-specific market conduct provisions in Part XIB of the *Trade Practices Act 1974* (TPA) are duplicative and unnecessary and should be repealed, or at least reformed to address its most pressing failings. They were transitional measures to protect embryonic competition that have no place in a fully competitive market where their powers and provisions entirely duplicate other regulation.

- Retail price controls in telecommunications are redundant and should be removed.

- Industry taxes collected by ACMA are funding social policy with national benefits, and economic and administrative efficiency favours broadening the funding base for a number of levies to the Government's tax base rather than just the telecommunications industry.

- 'Low hanging fruit' – regulation contained in Telstra's carrier licence is utterly redundant and hence ripe for removal, without even requiring legislation to do so.

- Objects to completely redundant and/or vastly inefficient regulatory reporting requirements and recommends repeal or significant reform of these requirements. These are:

- accounting separation – which should be repealed as it is entirely obsolete in light of operational separation;
- retail tariff-filing;
- CSG reporting – inconsistencies must be addressed and reporting requirements should be rationalised to ensure a net benefit;
- CSG extreme failure reporting – which should be repealed as simply unnecessary in light of consistent favourable reports; and
- NRF level 3 reporting – which should be reformed to prevent inefficient and unnecessary micro-management of Telstra's service operations.

Department's Response

70. The Government has identified the importance of an efficient and robust regulatory framework for telecommunications, one that is pro-competition and pro-investment. To this end, the Government has released the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper to explore the options for reform of the existing regime including the scope for removing unnecessary red tape. Views on the proposals raised by Telstra in its submission were sought in the discussion paper.

71. ACMA has previously responded to issues regarding taxes, charges and levies through a submission to the Future Tax System Review (the Henry Review). ACMA's submission is publicly available.

Organisation Submission: Communications Alliance Ltd

72. In its submission, Communications Alliance Ltd makes the following points -

- That there is considerable scope for simplification and rationalisation of the revenue raising mechanisms in the communications industry.

Recommendation: the Productivity Commission should be encouraged to work with the Australian Government's Tax System Review Panel and Treasury to devise ways to reduce this regulatory impost on industry.

- The communications industry is subject to a large amount of duplicative and unnecessary regulation around the provision of information to its customers.

Recommendation: a cost benefit assessment should be conducted on any new regulation on the provision of information to customers to ensure that the consumer is getting all the information they want and the industry is not overly burdened with ineffective regulations.

- It is time to review the Customer Service Guarantee.

Recommendation: this regulation has been on the books for nearly a decade and the communications landscape has changed substantially since then. This regulation is incredibly burdensome and costly for industry and it should be reformed.

Department's Response

73. Communications Alliance makes the point that there it is a complexity to the operation of the regulation as well as the compliance burden that has a distortionary effect. This matter is addressed under the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper.

74. ACMA supports the exploration of reform options for the existing regime and the establishment of a regulatory framework to facilitate access to future communications services.

Organisation submission: Australian Subscription Television and Radio Association (ASTRA)

75. The regulatory system for television broadcasting provides protections for the free to air (FTA) networks, discriminates against new players such as STV and creates significant economic inefficiencies.

- **FTA's gifted spectrum**
  The FTA networks were each gifted (i.e. allocated without competitive auction) 7Mhz of spectrum to provide digital services. Such spectrum is the equivalent of "beach front property".

Recommendation: the most economically efficient way of allocating spectrum is best achieved through a decentralised competitive market rather than administrative means.

- **Delayed analogue switch-off**
  The Government delayed the switch-off of the analogue television signal from 2008 (which was the date the 1998 amendments to the BSA mandated for switch off) to 2013. This means that the networks are able to continue to utilise valuable analogue spectrum for an additional five years, which prevents the spectrum from being used for new services and, implicitly, new competitors.

Recommendation: don't delay switch-off any longer.

- **No fourth commercial television licence**
  The amendments to the BSA in 2006 extended the prohibition on a fourth commercial network until at least 2013. This protection of the FTA networks means reduced choice for consumers. Further, it means that the Commonwealth has not realised any monies from the auction of a licence for this unused spectrum. There are no such restrictions to competition for STV licensees and the development of alternate technologies such as IPTV offer continuing competitive tension for established businesses.

- **Anti-siphoning regime**
  The FTA networks also continue to enjoy the protections of the anti-siphoning list, which is the longest such list in the world. The anti-siphoning list essentially provides the FTA networks with a 'first right' to both FTA and STV rights to more than 1350 sporting events in a non-Olympic year and as importantly to negotiations control over the whole process of rights acquisition. STV is unable to purchase any rights to events on the anti-siphoning list until either a FTA network has purchased those rights (in which case our sector can negotiate with the FTA network for access to events that it has bought but will not broadcast) or the FTA networks have passed up on purchasing the rights.

Recommendation: ASTRA has proposed to Government that it reduce the length of the anti-siphoning list by implementing a "Use it or Lose it scheme". Under this approach events not broadcast live and nationally by the FTA networks would be removed from the list by the Minister for Broadband, Communications and the Digital Economy. Events the Minister removed from the list would then go onto the open market and these rights would be available for both the FTA networks and STV to bid for.

Department's Response

76. Realising the digital dividend is an important micro-economic reform that will play a part in Australia's future economic prosperity. As such, decisions about the digital dividend need to be made carefully and on an informed basis.

77. The Minister has announced that that a Government green paper seeking public comment on the costs and benefits of realising the digital dividend will be released this year. Responses to the paper will inform Government consideration of these issues.

78. In response to the analogue switch off issue, the following response is offered. On 19 October 2008, the Minister announced a phased, region-by-region timetable for the switch-over to digital television to be completed by the end of 2013.

79. The proposed timetable consists of eight 'windows' of six months duration, commencing with the Mildura/Sunraysia licence area in the first half of 2010. A phased, region-by-region approach to digital switch-over acknowledges that different local areas will be at different stages of readiness due to specific technical, geographical and market issues. A staggered switch-over will enable the Government to identify specific local issues and manage the deployment of technical and other resources to ensure a smooth transition to digital television.

80. In addition, a phased approach will avoid significant strain on retailers, equipment suppliers and antenna technicians, and the technical and engineering resources of broadcasters, which would be caused by all analogue signals being switched off at the same time.

81. In June 2008 DBCDE released the *Legislative framework for implementing a digital television switchover timetable* discussion paper. The majority of submissions in response to this paper supported a phased, region-by-region approach to digital switch-

over, including submissions from Free TV Australia, Regional Broadcasting Australia and the Australian Digital Suppliers Industry Forum.

82. ASTRA has also raised the matter of the decision not to license a fourth commercial network. The BSA requires that the Minister undertake a review of new commercial television licences before new licences can be allocated.

83. The *Broadcasting Legislation Amendment (Digital Television Switch-over) Act*, passed by Parliament in December 2008, amended the *Broadcasting Services Act 1992* to set 1 January 2012 as the date by which this review must be caused to be conducted.

84. The BSA provides that the Government has three years from the completion of the report of the review to consider whether new commercial television broadcasting licences should be allocated.

The anti-siphoning issues

85. ASTRA argues that the anti-siphoning list, while intended as a consumer protection mechanism, in fact operates as an *industry* protection mechanism for the free-to-air television broadcasters. ASTRA further argues that the anti-siphoning list should be reduced by a 'Use it or Lose it Scheme' with events that are not broadcast live and nationally by the free-to-air television networks removed from the list by the Minister and the associated broadcast rights made available for both free-to-air television and subscription television broadcasters to negotiate.

86. ASTRA's views on the anti-siphoning scheme are well known to the Government.

87. The previous Government required ACMA to monitor the use of anti-siphoning sports rights and periodically report on its findings. On 3 September 2008, the Government removed the requirement for regular monitoring and reporting. However, the Government retains the authority to direct ACMA to investigate matters relating to the anti-siphoning scheme and ACMA still has the ability to monitor the use of sports rights where required.

88. A statutory review of the anti-siphoning regime is scheduled to occur in 2009. The review will take into account all aspects of the scheme and consider the operation of its various rules and whether any of them should be changed or removed.

Organisation Submission: Free TV Australia

89. Free TV Australia has raised the following issues in its submission:

- Annual licence fees must be paid by free to air (FTA) broadcasters but not to other media like subscription TV. Scheduling and content of advertising is highly regulated by both Commonwealth and State legislation and much of this is unique to FTA.

- The Commercial TV Industry Code of Practice is more restrictive than other broadcasting Codes.

- The requirements of the Australian Content Standard 2005 is highly specific and restrictive on FTA broadcasters.

- The Children's TV Standards impose requirements unique to FTA broadcasters. Although it is under review by ACMA, the draft retains much of what FTA has complained about.

- Local news quotas apply only to FTA broadcasters.

- Free captioning requirements are set down by both the BSA and the Disability Discrimination Act.

- FTA broadcasters have also been required to adhere to a High Definition quota during the digital rollout period and to report on adherence.

- Legislative amendment is required to ensure there are adequate parameters around the exercise of ACMA's powers in relation to enforcement. Also, ACMA is demonstrating a more legalistic and interventionist approach to investigations. ACMA is also taking a wider view about what constitutes a complaint under the Code.

- The Commercial TV Industry Code of Practice review is being seen to move away from the co-regulatory model.

- There must be a separate Code for multi-channels.

- Concerns raised by FTA broadcasters on ACMA's draft Five Year Spectrum Outlook have not been adequately responded to and ACMA needs to adopt a thorough, transparent and accountable approach to spectrum demand analysis.

Department's Response

90. In its submission, Free TV Australia is critical of the approach ACMA has taken in developing its draft Five-year Spectrum Outlook, in particular relating to the 2.5GHz band used for electronic news gathering (ENG).

91. Free TV Australia:

- claims ACMA has not identified suitable alternative spectrum that can meet broadcasters requirements;

- questions the adequacy of ACMA's demand analysis methodology of wireless access services spectrum needs; and

- claims ACMA has not adequately considered or responded to concerns it raised during consultations on the 5 Year Spectrum Outlook.

92. ACMA also has primary carriage of the 2.5GHz issue. ACMA has been consulting with broadcasters to determine their future spectrum requirements for ENG including an examination of the functional requirements of broadcasters, transitional issues and costs.

93. The Minister for Broadband, Communications and the Digital Economy has publicly stated that there will be appropriate consultation on future spectrum planning arrangements and the Government will ensure adequate provision for a long-term home for ENG. On 29 April 2009, ACMA announced at its Radcomms09 conference that it would be releasing a public discussion paper in the coming months with proposals for the 2.5GHz band.

94. In response to Free TV Australia's submission regarding the reason for the release of the Multi Channel Appendix at this time not being permitted by the BSA, the BSA requires that, before 1 January 2010, a review be conducted of program standards and captioning requirements as they apply to multi-channelled commercial television broadcasting services. This includes the application of the commercial television broadcasting Code of Practice to multi-channelled services.

95. In response to the issues raised by Free TV Australia in regard to the High Definition quota, the 1040 hour annual quota for high definition television (HDTV) was instituted to provide broadcasters with substantial flexibility regarding when to run HDTV programs but at the same time to provide some assurance that:

- consumers who purchase High Definition-compatible digital receiver equipment can be confident that at least 1040 hours of HDTV transmissions will be provided by each broadcaster each year, for them to enjoy in High Definition mode;

- manufacturers have some level of certainty in making decisions about bringing consumer HDTV equipment to the market; and

- local production companies have potential markets for HDTV material in Australia.

96. Reporting requirements allow the Government to be sure that these policy objectives are being met.

97. The high definition quota for commercial and national broadcasters is due to cease at the end of switchover in the relevant licence area. In the digital-only television broadcasting environment, broadcasters will be free to determine the number of standard definition and high definition channels they transmit, within their allocated spectrum.

4th commercial TV network licence

98. The BSA requires that the Minister undertake a review of new commercial television licences before new licences can be allocated. The *Broadcasting Legislation Amendment (Digital Television Switch-over) Act*, passed by Parliament in December 2008, amended the BSA to set 1 January 2012 as the date by which this review must be caused to be conducted.

99. The BSA provides that the Government has three years from the completion of the report of the review to consider whether new commercial television broadcasting licences should be allocated.

The changing media landscape issues

100. Free TV claims commercial free-to-air television is the most heavily regulated media platform despite an increase in the number of media platforms available to consumers. Free TV Australia claims the payment of annual licence fees, advertising regulation and content regulation, such as Australian content, children's programming and local news and information requirements, are not evenly spread across platforms, particularly the subscription television industry.

101. The Government is aware of FreeTV Australia's views on the regulation that applies to commercial free-to-air television compared with other media platforms.

102. The BSA specifically provides that the Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and Internet services according to the degree of influence that different types of broadcasting services, datacasting services and Internet services are able to exert in shaping community views in Australia.

103. The regulation on the commercial television industry reflects the Parliament's judgement about the controls that should be applied to a dominant and widely accessible media platform.

ACMA's regulatory powers and enforcement Guidelines

104. Free TV Australia claims that the regulatory powers of the Australian Communications and Media Authority (ACMA), including its enforcement powers guidelines, are unclear and create uncertainty for broadcasters.

105. In 2006, amendments to the BSA provided ACMA with a new range of mid-tier enforcement powers, including civil penalties, injunctions, enforceable undertakings, remedial directions and infringement notices. This followed an independent review of ACMA's powers and recognised that the lack of mid-range powers (such as are available under other Acts which ACMA administers) impacted on its ability to effectively regulate the broadcasting industry.

106. Among other things, the amendments required ACMA to develop, have in force at all times and to have regard to guidelines for the use of the new powers conferred under various sections of the Act. ACMA released draft guidelines under section 215 of the BSA for public consultation on 13 December 2006. Following consideration of the submissions that were received, ACMA made 'Guidelines relating to ACMA's enforcement powers under the Broadcasting Services Act 1992' (the Guidelines) in January 2007 by way of legislative instrument.

107. The Guidelines are intended to provide guidance to industry and the community on how ACMA uses its enforcement powers under the BSA. Contrary to Free TV's submission, the Guidelines are not intended to expand on the provisions of the BSA, but

rather provide general guidance on ACMA's enforcement options and relevant matters that will be taken into account by ACMA when exercising those powers.

108. The Guidelines clearly state that it is ACMA's intention to exercise its enforcement powers within the parameters of existing co-regulatory arrangements. However, as the guidelines also indicate, it would be inconsistent with the broad discretion given to ACMA in exercising its enforcement powers to confine or limit the matters in which it may seek an appropriate sanction.

109. In accordance with the obligations imposed on ACMA under section 215, ACMA has had regard to the Guidelines since the date on which they commenced in February 2007. ACMA, therefore, does not accept Free TV Australia's assertions that it has not had regard to its Guidelines relating to its enforcement powers or has acted inconsistently with the co-regulatory framework in the exercise of its powers.

Captioning

110. The BSA requires free-to-air television broadcasters to caption programs between 6pm-10.30pm and news or current affairs programs at other times. The Australian Human Rights Commission has granted a temporary exemption from complaint under the *Disability Discrimination Act 1992* to free-to-air television broadcasters provided captioning increases to 85% of programs between 6pm-midnight by end 2011.

111. On 30 April 2008 a discussion paper was released as part of the Government's investigation into access to electronic media by people with a hearing or vision impairment. The discussion paper looked at requirements for, and current levels of, captioning and audio description on television (free-to-air and subscription), films, DVDs and the internet. Over 160 submissions were received in response to the discussion paper. The Government is considering the complex policy and regulatory issues raised in submissions, including the issue of the interaction of the BSA and *Disability Discrimination Act 1992*, and will respond in due course. For further information on the review can be found at:

http://www.dbcde.gov.au/media_broadcasting/television/television_captioning/television_captioning_discussion_paper.

Consultation

112. Free TV Australia claims that Government consultation and review processes are ineffective and also that detailed submissions do not appear to be acknowledged and addressed. Further, it also claims that consultation processes appear to have pre-determined outcomes which are published with complete disregard of the submissions made by stakeholders.

113. The Government is committed to appropriate consultation with industry and the community and considers all the views expressed through such processes. For example, on broadcasting matters, a number of statutory reviews have been conducted in recent years that have involved public consultation. In addition, on a number of regulatory measures, ACMA is required to consult with stakeholders as part of its administrative and enforcement processes. However, the Government reserves the right to determine the most appropriate way to acknowledge and respond to individual views and stakeholders.

Co-Regulation—ACMA's Role

114. ACMA does not accept for the reasons outlined below, Free TV Australia's criticisms in regard to its approach to investigations under the Commercial Television Industry Code of Practice.

115. ACMA's role in dealing with complaints under industry codes is prescribed by the BSA. ACMA's performance of its role is informed by Section 5 of the BSA, which requires ACMA to, among other things:

- produce regulatory arrangements that are stable and predictable;
- deal effectively with breaches of the legislation; and
- use its powers in a manner that is commensurate with the seriousness of the breach concerned.

116. This requires ACMA to use its enforcement powers appropriately and to identify the most effective and proportionate way of dealing with breaches. This is further reinforced in the Explanatory Memorandum to the BSA.

> It [section 5] promotes the ABA's [now ACMA's] role as an oversighting body . . . rather than as an interventionist agency hampered by rigid, detailed statutory procedures and legalism . . . It is intended that the ABA [now ACMA] monitor the broadcasting industry's performance against clear, established rules, intervene only where it has real cause for concern, and has effective powers to act to correct breaches.

117. This statement reflects Parliament's intention in enacting the co-regulatory framework and ACMA's prescribed role within that framework. ACMA's approach to compliance and enforcement remains entirely consistent with this co-regulatory framework.

Review of Commercial Television Industry Code of Practice

118. ACMA does not accept Free TV Australia's criticism of the review of the industry Code. ACMA is well aware of Free TV's views on these matters and has previously provided explanation of its concerns to Free TV and its members.

119. Under the BSA, ACMA is responsible for registering industry codes of practice if it satisfied that, amongst other matters, the code provides appropriate community safeguards for matters covered by the code. ACMA has a range of concerns on the draft code presented by industry, which it has indicated to Free TV Australia, may influence its decision to ultimately register the code. ACMA has requested the industry's consideration on these matters prior to consultation on the code. This has been standard practice to date in the development of codes and ACMA considers and mitigates against a code coming before it that it cannot register and on which further consultation is required. ACMA is yet to receive a comprehensive draft of the code addressing its concerns.

Five-year Spectrum Outlook

120. Interested stakeholders were invited to provide feedback on the draft Five-year Spectrum Outlook 2009-2013 (the Outlook). The consultation facilitated constructive dialogue with stakeholders to ensure their views are adequately reflected in the Outlook, which is a living document that is open to industry feedback at any time. ACMA will update and publish the Outlook on an annual basis to take account of changing priorities and demands. The Outlook provides transparency about ACMA's views on and knowledge of spectrum demand and a preliminary indication of ACMA proposed approaches to address demand pressures.

121. Free TV Australia's submission to ACMA on the Outlook stated that it is vitally important that ACMA adopt a thorough, transparent and accountable approach to spectrum demand analysis. The Outlook identifies in Chapter 3 what the spectrum demand drivers are, and in Chapter 5 provides analysis and estimation of spectrum requirements of radiocommunications services over the next five years. In response to Free TV Australia's submission, the Outlook was updated to:

- acknowledge that broadcasters rely on non-BSB spectrum;
- acknowledge Free TV Australia's observation that the main objective of digital switchover is equivalent coverage in digital to what is currently achieved in analog; and
- acknowledge Free TV Australia's interest in technological developments.

Organisation Submission: Vodafone Australia Ltd

122. Vodafone's submission raised the following issues:

- the telecommunications industry in Australia is heavily regulated, in terms of economic regulation and social policy regulation, compared to most other countries in which Vodafone operates;
- regulation without a clearly identified market failure simply imposes regulatory costs on business and therefore does not deliver identifiable consumer benefit;
- Vodafone advocates self-regulation as the first regulatory response for the telecommunications industry. Co-regulation should be considered if this doesn't work;
- Part XIC of the TPA could be amended to streamline the operation and application of the telecommunications specific access regime;
- all key stakeholders in the Prepaid Mobile ID process should reassess the merits of the current Determination and work with industry to develop a process that is less costly, more efficient and successful in meeting the objectives of national security policy; and

- members of the telecommunications industry are required to submit numerous reports to government agencies several times a year (ACC, ACMA, ABS) with overlaps often occurring between what each body requests.

Department's Response

123. Concerns raised by Vodafone about regulatory matters are addressed as part of discussion on 'red tape' in the *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper. ACMA is also currently reviewing CSG reporting.

Organisation Submission: Government of South Australia

124. The South Australian Government recommends the Commonwealth improve practical enforcement of the requirements under the *Telecommunications Act 1997* for carriers to take all reasonable steps to ensure land disturbed during the installation or maintenance of telecommunications services is restored to a condition that is similar to its original condition.

125. In particular, lack of enforcement of this requirement imposes significant burden on owners and operators of road infrastructure. Where pavement is not restored by telecommunications carriers to national pavement standards, which are necessary to meet road safety and performance outcomes, State and Territory transport authorities and/or local government have to allocate additional resources to subsequently upgrade the restorations to the required standard.

126. The South Australian Government supports the use of filtering and blocking of internet sites in schools to ensure children are not exposed to inappropriate content, however it has concerns about potential regulatory burdens associated with the proposal by the Australian Government to filter and block internet sites at a global level.

127. Currently in South Australia, the Department for Education and Children's Services (DECS) filters and blocks internet sites on behalf of all South Australian schools. However, individual schools still have the power to individually unblock sites they see fit and useful. DECS has developed comprehensive policies and guidelines to support schools in undertaking this role. DECS considers it necessary for individual schools to retain the ability to unblock sites as there are limitations in a global approach to blocking websites based on broad categories. For example, restricting access to the 'social networking' category of websites to prevent children accessing chat rooms can result in the Wikipedia site being blocked. Wikipedia is a site that contains useful educational material and is not considered inappropriate content for children.

128. Further, South Australia's approach of enabling individual schools to readily remove restrictions to sites that are found to not contain inappropriate content provides for local flexibility, streamlined administration and greater accountability of individual schools in meeting their duty of care to students.

129. This issue will be discussed at the next meeting of the Australian ICT in Education Committee in March, 2009.

Department's Response
Restoration of Land/Road Infrastructure

130. The Department is not aware of any recent instances where complaints have been raised about telecommunications providers failing to properly restore road infrastructure. Carriers have obligations under the *Telecommunications Code of Practice 1997* to ensure remediation works occur.

131. Where State, Territory or local government has concerns about such matter and cannot resolve them with the carriers, they should raise them in the first instance with the Telecommunications Industry Ombudsman (TIO), which was established under Commonwealth legislation to investigate carriers activities with respect to requirements of the Telecommunications Code of Practice and other various matters. Where complaints against a carrier are of a systemic nature, the TIO can refer such matters to the Australian Communications and Media Authority (ACMA) for corrective or regulatory action. The ACMA is the regulator with ultimate responsibility for enforcing the Telecommunications Act and the Telecommunications Code of Practice.

Internet Service Providers, Web Search Portals and Data Processing Services
132. The Australian Government is committed to the implementation of a cyber-safety plan to create a safer online environment for Australian children.

133. A key part of the cyber-safety plan is the introduction of Internet Service Provider (ISP) level filtering.

134. The Government is committed to implementing ISP level filtering through an informed and considered approach including a laboratory trial, extensive industry consultation, a 'live' pilot and close examinations of overseas models to assess their suitability for Australia.

135. The Government is considering ISP level filtering for Refused Classification material. Refused Classification under the BSA, includes child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime, violence or drug use and/or material that advocates the doing of a terrorist act.

136. The Government is also considering offering consumers the chance of additional content filtering which can be configured according to a customer's preferences.

Department's comments on draft report recommendations
137. The Productivity Commission released a draft report on 26 June 2009. That report contained recommendations relevant to this Portfolio. The department provides the following comments on the recommendations.

Draft Recommendation 4.1

The Australian Communications and Media Authority and the Department of Broadband, Communications and the Digital Economy should conduct a comprehensive joint review of all the customer information requirements imposed on

telecommunications businesses, and the processes used in developing new requirements. Specifically they should:

- **review all of the current customer information requirements in consultation with industry and consumer organisations, with the aim of streamlining the requirements to remove duplication, reduce the burden on business, and improve the comprehensibility and clarity of information provided to customers, consistent with principles set out in the Productivity Commission's Report on its Review of Australia's Consumer Policy Framework**
- **review the processes for developing new customer information requirements to ensure that such processes take account of the existing requirements and the new requirements form part of a comprehensive and comprehensible package of customer information.**

Department's Comments

138. The *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper, specifically sought views on the "red tape" issues raised in submissions to the Productivity Commission review. It would, therefore, appear to be pre-emptive to conduct a review as proposed by the Commission until the outcomes of this process are in place.

Draft recommendation 4.2

The Australian Government should review the costs and benefits of identity checks for prepaid mobile phone services in consultation with law enforcement agencies. The review should have the objective of either abolishing the requirement, or substantially revising the regime to better achieve its objectives while eliminating unnecessary costs to business.

Department's Comments

139. The Department notes the Productivity Commission's recommendation for the Australian Government to review the costs and benefits associated with identity checks for prepaid mobile phone services.

140. The Department is aware of the view that there is a need to conduct a review of current arrangements to ensure that they balance the needs of all stakeholders. Prior to the release of the Productivity Commission's draft report, the Department met with the Attorney-General's Department and other Government agencies, industry, and law enforcement stakeholders. At this meeting, the Attorney-General's Department and the Department sought views on the need to conduct a review of the costs and benefits of the current framework. Meeting participants generally agreed that a review should be undertaken from a first principles perspective.

141. The Attorney-General's Department has advised that without accurate purchaser information, investigations by law enforcement and national security agencies could be significantly hindered. As such, abolishing industry obligations to collect purchaser information would be an inappropriate response. At the same time, it is recognised that there are concerns regarding the regime's operation.

142. In particular, the Department is aware of industry's concern about whether the high costs of the current arrangements are outweighed by the demonstrated benefit of the regime. Also, some law enforcement agencies have questioned the effectiveness of current arrangements to provide them with the accurate information they require. This suggests there is value in looking at ways to better achieve the regime's underlying policy intent.

143. The Attorney-General's Department and the Department are in discussions on the potential scope, nature and timeframe of a review. Any review would be undertaken in consultation with relevant industry, government, law enforcement and consumer stakeholders.

Draft recommendation 4.3

The anti-siphoning regime imposes regulatory burdens because of the protracted commercial negotiations required in respect of listed events. To address this issue the Australian Government should substantially reduce the anti-siphoning list.

Department's Comments

144. The anti-siphoning scheme will be reviewed in the second half of 2009. This statutory review is required to consider a range of matters, including the operation of the licence condition on subscription television operators restricting access to anti-siphoning listed events. Any possible revisions to the anti-siphoning scheme or list would be considered by Government in this context.

Draft recommendation 4.4

The policy objective of the local content rules could be met through more flexible rules. The Australian Government should introduce amendments to make provision for regional broadcasters to meet their local content obligations over the course of a longer time period, rather than through rigid daily content obligations. For certain categories of licence, such as racing and remote area licences, consideration should be given to whether there is a need for local content requirements.

More flexible local content obligations should be accompanied by streamlined reporting requirements which target compliance activity on broadcasters who have been identified as having a high risk of non-compliance.

Department's Comments

145. The Government will be undertaking a review of the local content requirements for regional commercial radio broadcasting licences by 4 April 2010. The review will include the operation of provisions relating to the local content obligations.

Draft recommendation 4.5

The Australian Government should introduce amendments to abolish the trigger event provisions for radio broadcasters. Instead, local content provisions should be relied on to ensure broadcast of locally significant material.

Department's Comments

146. The Productivity Commission's draft report suggests that the special local content and presence requirements for regional commercial radio could threaten the viability of some regional media providers by preventing traditional media from utilising economies of scale and scope associated with mergers and acquisitions. The Department notes that since the introduction of these requirements and the changes in media ownership rules in 2006, there has been an unprecedentedly high level of activity in the sale and transfer of regional commercial radio licences resulting in the formation of a number of media companies aggregating television and radio assets and newspaper and radio assets. In addition, the regional commercial radio sector has for a substantial time been characterised by a small number of operators owning large numbers of licences across multiple licence areas facilitating content sharing and networking through regional hubs to achieve scale and scope advantages. The most common market structure for regional commercial radio is either a monopoly (in smaller markets) or a duopoly (in larger markets).

147. The Government will be undertaking a review of the local content requirements for regional commercial radio broadcasting licences by 4 April 2010. The review will include the operation of provisions relating to a trigger event, local content obligations and local presence requirements.

Draft recommendation 4.6

A greater risk management approach should be taken to the radio Disclosure Standard. The Australian Communications and Media Authority should revise the Disclosure Standard to make it less prescriptive. The Australian Communications and Media Authority should engage in further consultations with industry with the objective of incorporating the Disclosure standard into Commercial Radio Codes together with greater alignment with requirements in other media platforms.

Department's Comments

148. This is primarily a matter for ACMA.

149. The Productivity Commission's draft report on page 140 suggests that the issues in relation to disclosure with respect to commercial radio and television are 'generally similar'. The Department notes that while there are disclosure issues for television with respect to on-air statements which may be similar in character as those in commercial radio, the general absence of the 'talk back' based programming on television provides a substantially different environment for potential breaches of disclosure requirements.

Draft recommendation 4.7

The Department of Broadband, Communications and the Digital Economy and the Attorney-General's Department, in consultation with stakeholders, should seek agreement on whether captioning of broadcasts are most appropriately dealt with through broadcasting regulations or the Disability Discrimination Act. The legislation should then be amended accordingly so that broadcasters are only required to comply with a single set of regulations.

Department's Comments

150. The Government's investigation into access to electronic media by people with a hearing or vision impairment is considering a range of complex policy and regulatory issues that were raised in submissions to the inquiry, including the interaction of the BSA and *Disability Discrimination Act 1992*.

Draft recommendation 4.8

The Australian Government should introduce amendments to abolish the requirement for a minimum number of hours of high definition television to be broadcast by free-to-air television broadcasters. Whether abolished or not, the requirement on free-to-air broadcasters to report on compliance with the high definition quota is redundant and should be removed.

Department's Comments

151. The 1040 hour annual quota for high definition television (HDTV) was instituted to provide commercial and national broadcasters with substantial flexibility regarding when to run HDTV programs but at the same time to provide some assurance that:

- consumers who purchase high definition-compatible digital receiver equipment can be confident that at least 1040 hours of HDTV transmissions will be provided by each broadcaster each year, for them to enjoy in high definition mode;
- manufacturers have some level of certainty in making decisions about bringing consumer HDTV equipment to the market; and
- local production companies have potential markets for HDTV material in Australia.

152. Reporting requirements allow the Government to be sure that these policy objectives are being met and to ensure compliance with requirements imposed by Parliament. The high definition quota for commercial and national broadcasters is legislated to end after the switchover to digital television in the relevant licence area. In the digital-only television broadcasting environment, broadcasters will be free to determine the number of standard definition and high definition channels they transmit with their allocated spectrum.

Chapter 4 Information media and telecommunications – comments

153. The Department notes that in section 4.2 of the draft report ACMA is described as administering the five listed 'main regulatory instruments' for telecommunications and broadcasting. While ACMA is the primary regulator of telecommunications and broadcasting as stated in the following paragraph, it is more accurate to ascribe responsibility for administration of the relevant Acts to the Department of Broadband, Communications and the Digital Economy.

154. Similarly, Figure 4.3 is somewhat misleading as significant elements of the regulation framework for broadcasting and telecommunications content are in primary

legislation and it would not be accurate to indicate that the Minister's and Department's roles are limited to infrastructure programs and consumer protection.

155. The Department also notes the statement in section 4.8 that 'subscription television has a five year ban on advertising'. No such ban has applied to subscription television since 1997.

Conclusion

156. The submissions to the Productivity Commission in respect of regulatory burdens experienced by organisations involved in the communications industry have raised a number of issues of interest to the Australian Government. Ongoing and forthcoming review processes, either by DBCDE or by ACMA, are addressing many of these issues.

157. It is also worth noting that policy and regulation in the communications sector is informed by broader public interest and consumer concerns as well as the concerns of the specific organisations that have made submissions to this Review.