Declaration of Primary Commercial Television Broadcasting Services: South Eastern Australia TV3 and Northern Australia TV3 licence areas
Consultation paper

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Executive summary

The Australian Communications and Media Authority (the ACMA) is seeking comments on its proposal to make a declaration under subclause 41G(4) of Schedule 4 to the Broadcasting Services Act 1992 (the BSA) specifying Primary Commercial Television Broadcasting Services (Primary Services) for the commercial television broadcasting licences in the South Eastern Australia TV3 (SEA TV3) and Northern Australia (NA TV3) licence areas.

The commercial television broadcasting licences in the SEA TV3 and NA TV3 licence areas have been allocated to Eastern Australia Satellite Broadcasters Pty Limited (EASB) under section 38C of the BSA. These licences authorise the provision of digital commercial television broadcasting services delivered by satellite (satellite delivered services).

The ACMA must ensure that a declaration of up to three Primary Services is in force at all times after the start date for the licence areas concerned, which is proposed to be 15 December 2010. The government’s intention is for the satellite delivered services which correspond with the core commercial television broadcasting services (Core Services) provided by members of each of the major terrestrial networks (Nine Network, Network Ten and Network Seven) to be declared as Primary Services.

Declaring a Primary Service for licences allocated under section 38C will ensure that the regulation of content on the satellite delivered service is consistent with the regulation of content provided by commercial television broadcasting licences in other licence areas.

EASB intends to provide a suite of services under these licences from the start date for each licence area. Three of these services will provide programming based on the Core Services of each of the major terrestrial networks. As such, the ACMA proposes to declare these three standard definition services, known as ‘Southern Cross Television’, ‘Imparja’ and ‘CDT(Ten)’, as the Primary Services for the licences held by EASB in the SEA TV3 and NA TV3 licence areas.
Background

Section 38C licences

EASB was allocated licences under section 38C of the BSA (section 38C licences) on 16 September 2010 to provide satellite delivered services in the SEA TV3 and NA TV3 licence areas. The SEA TV3 licence area covers New South Wales, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Jervis Bay Territory. The NA TV3 licence area covers Queensland and the Northern Territory.

EASB is a joint venture between Imparja Television Pty Limited and Regional Television Pty Limited (a subsidiary of Southern Cross Media Australia Pty Limited), both of which currently provide commercial television broadcasting services to the Remote Central & Eastern Australia (RCEA) TV1, RCEA TV2 and Mt Isa TV1 licence areas.

The satellite delivered services provided under the section 38C licences form part of the Viewer Access Satellite Television (VAST) service. This is a government initiative, announced in January 2010, to provide access to a suite of metropolitan-equivalent broadcasting services to people in remote areas and to viewers in terrestrial digital television ‘black spots’, who would not otherwise be able to receive commercial television broadcasting services when analog services are switched off in their licence area. The VAST service will provide commercial and national broadcasting services, including multi-channels. It will also make provision for open narrowcasting and community broadcasting services to be carried. Further information on this initiative can be found at www.digitalready.gov.au/newsletter/edition2/VAST-satellite-service/article-VAST-satellite-service.aspx.

Satellite delivered services operate under a regulatory framework established by amendments to the BSA, effective 30 June 2010.1 Under this framework, the section 38C licensee is required to provide a suite of commercial broadcasting services, including digital multi-channels, that is the same or substantially the same as those services provided by the commercial broadcasters in the related remote licence areas (remote commercial broadcasters), being the RCEA TV1 and TV2, and Mt Isa TV1, licence areas. This includes at least three distinct services that are the same or substantially the same as the Core Services (that is, the service that is simulcast in analog) or Primary Services provided by remote commercial broadcasters.2

Where the remote commercial broadcasters provide fewer services than in the metropolitan licence areas at the start date, the licensee of the satellite delivered services is required to replace the ‘missing’ services with services the same or substantially the same as those provided in metropolitan licence areas. These services are required to be provided from the start date, which is proposed to be 15 December 2010.3

EASB has advised that it intends to provide a suite of 10 services under the section 38C licences from the start date (listed in the table below). Two of these services, ‘Southern Cross Television’ and ‘Imparja’, are the same or substantially the same as

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1 See the Broadcasting Legislation Amendment (Digital Television) Act 2010.
2 In addition to declaring Primary Services for section 38C licences, the ACMA may declare Primary Services under clause 41G to Schedule 4 of the BSA for all commercial television broadcasting licences at the end of the simulcast period for a licence area, or for a small number of licences allocated under section 38B after 1 January 2009 during the simulcast period. Declarations for these services were discussed in detail in the ACMA’s consultation paper at www.acma.gov.au/WEB/STANDARD/pc=PC_312120.
3 The proposed start date is currently the subject of a separate consultation process. For further details, go to the ACMA’s website at www.acma.gov.au.
the Core/Primary Services provided by the remote commercial broadcasters licensed in the related terrestrial licence areas, and one service, ‘CDT(Ten)’ is the same or substantially the same as the Core/Primary Service provided by a commercial broadcaster in a metropolitan licence area. Each provides programming based on one of the three major terrestrial networks.

### Primary Service Declarations

The ACMA is required to ensure that a declaration of at least one but no more than three Primary Services is in force on, and at all times after, the start date for the licence areas concerned, which is proposed to be 15 December 2010.

The intention is for the satellite delivered services which correspond with each of Core/Primary Services provided by licensees in the major terrestrial networks (Nine Network, Network Ten and Network Seven), to be declared as Primary Services. These will either be services the same or substantially the same as the Core/Primary Services provided by the remote commercial broadcasters licensed in the related terrestrial licence areas, or services the same or substantially the same as the Core/Primary Services provided by commercial broadcasters in metropolitan licence areas, where there are fewer than three Core/Primary Services provided by the relevant remote commercial broadcasters.

Declaring a Primary Service for section 38C licences will ensure that the regulation of content on the satellite delivered service is consistent with the regulation of content on commercial broadcasting licences in other licence areas. This will notably have effect in relation to restrictions on televising an event on the anti-siphoning list, captioning requirements, program standards for Australian content and children’s programs and provisions in the Commercial Television Industry Code of Practice 2010, as summarised below.

### Table 1 Impact of declaring a Primary Service for section 38C licences

<table>
<thead>
<tr>
<th>Current terrestrial commercial television broadcasting legislation</th>
<th>Primary service declared for section 38C licences</th>
<th>No Primary Service declared for section 38C licences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-siphoning—Restrictions on televising an anti-siphoning event apply to the SDTV and HDTV multi-channels.</td>
<td>Anti-siphoning—Restrictions on televising an anti-siphoning event apply to the SDTV and HDTV multi-channels.</td>
<td>Anti-siphoning events can be shown on all SDTV multi-channels.</td>
</tr>
<tr>
<td>Program standards for Australian content and children’s programs apply to the Core Service only until the last switchover date in Australia.</td>
<td>Program standards for Australian content and children’s programs apply to the Primary Service only until the last switchover date in Australia.</td>
<td>Program standards will not apply to any services before the last switchover date in Australia.</td>
</tr>
<tr>
<td>Captioning requirements apply to the Core Service only until the last switchover date in Australia (unless a program has previously been transmitted on the Primary Service).</td>
<td>Captioning requirements apply to the Primary Service only until the last switchover date in Australia (unless a program has previously been transmitted on the Primary Service).</td>
<td>Captioning requirements apply to all channels.</td>
</tr>
<tr>
<td>Code of Practice—Classification zones and the inclusion of non-program material on the Core service is regulated under the provisions of the Code, rather than those in the multi-channel appendix.</td>
<td>No change to application of the Code.</td>
<td>Classification zones and provisions for the inclusion of non-program content for multi-channels in Appendix 6 of the Code will apply to all channels.</td>
</tr>
</tbody>
</table>

In May 2010, the ACMA consulted the public and industry on its proposed approach to declaring Primary Services for commercial television broadcasting licences other than section 38C licences. A copy of the consultation paper is on the ACMA’s website at [www.acma.gov.au/WEB/STANDARD/pc=PC_312120](http://www.acma.gov.au/WEB/STANDARD/pc=PC_312120). Relevantly, the approach, which was supported in the submissions received, is to identify the service to be declared as the Primary Service, by reference to its on-air identification tag.

That consultation process didn’t refer to declarations for section 38C licences as the process took place prior to the legislation establishing the section 38C regulatory framework was passed. However, this approach to identifying the Primary Service is still applicable and the ACMA proposes to use the on-air identification tag to identify the Primary Services in relation to the section 38C licences.
Declaration of the Primary Service

The proposed start date for commercial television broadcasting licences in the SEA TV3 and NA TV3 licence areas is 15 December 2010. Consequently, the ACMA is currently considering the declaration of Primary Services for the commercial television broadcasting licences in these licence areas, to take effect from that date. The ACMA proposes to declare the following services as the Primary Services for each licence in the SEA TV3 and NA TV3 licence areas, as follows:

<table>
<thead>
<tr>
<th>Commercial television broadcasting licensee</th>
<th>BSL</th>
<th>Services proposed to be provided (on-air tag)</th>
<th>Primary Service proposed to be declared (on-air tag)</th>
</tr>
</thead>
</table>
| Eastern Australia Satellite Broadcasters Pty Limited | SL 1130135 | > Southern Cross Television  
> Imparja  
> CDT(Ten)  
> 7Two  
> Go!  
> One (until January 2011)  
> Eleven (due to commence in January 2011)  
> Regional News*  
> 7Mate  
> Gem  
> OneHD | > Southern Cross Television  
> Imparja  
> CDT(Ten) |

* All news segments will carry the branding of the regional commercial television service that originally broadcasts that news.
### Table 3 Northern Australia TV3 licence area

<table>
<thead>
<tr>
<th>Commercial television broadcasting licensee</th>
<th>BSL</th>
<th>Services proposed to be provided (on-air tag)</th>
<th>Primary Service proposed to be declared (on-air tag)</th>
</tr>
</thead>
</table>
| Eastern Australia Satellite Broadcasters Pty Limited | SL 1130136  | > Southern Cross Television  
> Imparja  
> CDT(Ten)  
> 7Two  
> Go!  
> One (until January 2011)  
> Eleven (due to commence in January 2011)  
> Regional News#  
> 7Mate  
> Gem  
> OneHD | > Southern Cross Television  
> Imparja  
> CDT(Ten) |

# All news segments will carry the branding of the regional commercial television service that originally broadcasts that news.

**The ACMA is seeking comment on:**

> its proposal to make a declaration under subclause 41G(4) of Schedule 4 to the BSA for licences in the South East Australia TV3 and Northern Australia TV3 licence areas.
Submissions

Written submissions in relation to the matters raised in this paper, and other issues associated with the declaration of a Primary Service, are welcome.

Submissions must be received by the ACMA by 12 November 2010.

Submissions should identify:
> the name of the party making the submission
> the organisation represented, where applicable
> contact details, including telephone, postal address and email address.

Submissions should be directed to:
Manager, Digital Television Regulatory Analysis
Email DTRAS@acma.gov.au
Mail Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building NSW 1230

Enquiries about matters raised in this paper should be directed to Jeanette Knowler on +61 (0)2 9334 7895, or by email to DTRAS@acma.gov.au.

Publication of submissions
In general, the ACMA publishes all submissions that it receives. However, the ACMA will not publish submissions that it considers contain defamatory or irrelevant material. The ACMA prefers to receive submissions over which confidentiality is not claimed. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material over which confidentiality is claimed and provide a written explanation for the confidentiality claim.

The ACMA will consider each claim for confidentiality on a case by case basis. If the ACMA accepts a confidentiality claim, it will not publish the confidential information unless required or authorised by law.

Release of information in submissions
Any submissions provided to the ACMA may be released under the Freedom of Information Act 1982 (Cth). The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (e.g. a court subpoena). While the ACMA seeks to consult and where required by law will consult, with submitters of confidential information before that information is provided to another body or agency, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

Sharing of information
Under the Australian Communications and Media Authority Act 2005, the ACMA may disclose certain information to the Minister, the Department including authorised officials, Royal Commissions, the Telecommunications Industry Ombudsman, certain Commonwealth authorities such as the Australian Competition and Consumer Commission and Australian Securities and Investments Commission, and the authority of a foreign country responsible for regulating matters relating to communications or media.
Effective consultation
The ACMA is working to enhance the effectiveness of its stakeholder consultation processes, which are an important source of evidence for its regulatory development activities. To assist stakeholders in formulating submissions to its formal, written consultation processes, it has developed the following guide: *Effective consultation: A guide to making a submission*. This guide provides information about the ACMA’s formal, written, public consultation processes and practical guidance on how to make a submission.