



**DIGITAL TELEVISION REGULATION  
FOXTEL RESPONSE TO DEPARTMENT OF COMMUNICATIONS  
CONSULTATION PAPER  
MARCH 2015**

## **INTRODUCTION**

Foxtel welcomes the opportunity to make a submission in response to the Department of Communications (**DoC**) consultation paper, *Digital Television Regulation* (the **Consultation Paper**), dated January 2015.

Foxtel is one of Australia's most progressive and dynamic media companies, directly employing around 2,700 people, and delivering a diverse subscription television (**STV**) service to both regional and metropolitan areas over cable, satellite and broadband distribution.

We offer a better entertainment experience every day to each one of our 2.6 million subscribing homes through delivery of new and inspiring programming across all genres, the world's most popular channel brands, and investment in high quality local content. As constant champions of innovation we have brought customers the iQ personal digital recorder, Australia's largest HD offering, the Foxtel Go App for tablets and mobile devices, our internet TV service, Foxtel Play, and subscription on demand entertainment service, Presto.

In 2015 Foxtel has also launched new television, broadband and home phone bundles with Foxtel internet and voice services delivered over one of Australia's largest telecommunications networks.

Foxtel's submission is structured as follows:

1. The **Executive Summary** outlines Foxtel's key submissions.
2. **Part A** sets out Foxtel's approach to deregulation and holistic regulatory reform.
3. **Part B** sets out Foxtel's comments on specific proposals set out in the Consultation Paper.

Foxtel also refers to and supports the submissions made in response to this consultation by the Australian Subscription Television and Radio Association (**ASTRA**).

## **EXECUTIVE SUMMARY**

- Foxtel wholeheartedly supports de-regulation, but notes that the Consultation Paper in effect proposes a range of liberalisations that would provide new commercial opportunities and benefits to free-to-air (**FTA**) broadcasters without reducing any of the current protections and privileges that are afforded to them. If enacted, these proposals would exacerbate an already distorted competitive environment in Australian media.
- For example, it is proposed that commercial FTA broadcasters would be permitted to broadcast niche content (narrowcast) channels in competition with STV and online providers and lease out their allocated spectrum while continuing to enjoy, among other things: a *legislative* ban on competition; an anti-competitive sports rights regime that even the sporting codes find stifling; and, special arrangements for access to public spectrum where rates are automatically discounted when business conditions get tough.
- The Consultation Paper also implies that it may be appropriate to remove the existing requirement that sporting events on the anti-siphoning list be premiered on a primary commercial broadcasting service. This amendment would provide significant commercial advantage to FTA broadcasters—because they could premiere listed events on multi-channels without interrupting schedules on their primary service. Foxtel strongly opposes any such amendment in the absence of holistic reform of the anti-siphoning scheme.
- The Consultation Paper says that it is appropriate to review the digital television regulatory framework to ensure that it is fit-for-purpose for the next wave of innovation. In Foxtel's view, regulatory settings will only deliver innovation if they minimise, not entrench the competitive advantage conferred on FTA broadcasters via regulation. If media reform is to be commenced—and Foxtel agrees that it is timely that it is commenced—it must be holistic and not be progressed by deregulation of the FTA sector alone.

- Foxtel's specific recommendations to Government include:
  - Requiring FTA broadcasters to expeditiously move to more efficient compression and transmission technologies, and more efficiently arranged digital multiplexes—so that they use less public spectrum. Clear timelines should be placed on this migration since it appears that the FTA broadcasters will be lent the valuable sixth channel for the purpose of testing MPEG-4.
  - Allocating FTA broadcasters only as much spectrum as is needed to replicate the current suite of commercial broadcasting services, while allowing FTA broadcasters to choose whether they broadcast those services in standard definition (**SD**) or high definition (**HD**).
  - Recouping the spectrum FTA broadcasters will no longer need in order to deliver a second Digital Dividend, with proceeds of that sale reinvested back into Australian content production via incentive schemes, including by equalising the producer offset for television to the same level as film.
- In the meantime, and until other regulatory disparities that favour FTA broadcasters are unwound, Foxtel opposes changes to current rules about the nature of services FTA broadcasters may provide over their subsidised spectrum. For example, they should not be able to provide narrowcasting or subscription services using public spectrum.

## **PART A: FOXTEL'S APPROACH TO DEREGULATION AND HOLISTIC REGULATORY REFORM**

Foxtel welcomes the Government's commitment to reducing the burden and cost of unnecessary or inefficient regulation, and removing redundant regulation altogether—in all sectors and across a range of regulatory areas.

It is obviously appropriate that aspects of the *Broadcasting Services Act 1992* (the **BSA**) which dealt with the mechanics of conversion of FTA services to full digital transmission be removed at the end of switchover. This process was recently progressed with passage of the *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2015*.

However, as detailed below, the Consultation Paper goes much further than dealing just with redundant digital switchover provisions. It suggests a range of reforms which might initially appear to be merely de-regulatory, but would in fact have the effect of gifting commercial FTA broadcasters new and broader regulatory protections and privileges—at the expense of their un-subsidised competitors, including STV providers, online content providers and telecommunications companies.

The Consultation Paper notes increasing competitive pressure on FTA broadcasters from online providers and suggests that, in this light:

*the Government considers that it is time to review the current broadcasting regulatory framework to ensure it is fit-for-purpose for the next wave of innovation in the media sector.<sup>1</sup>*

Noting that '*any potential reform of digital television regulation must be placed in the context of a rapidly changing communications environment*<sup>2</sup>' the clear implication is that the Government is considering granting FTA broadcasters more favourable regulatory conditions to compensate for the fact that they are under increasing competitive pressure.

Foxtel strongly submits that this is the wrong response to competitive pressure. A better response is to wind back FTA protections and privileges, equalise the playing field to the greatest extent possible and let consumer benefit flow from proper competition. In Foxtel's view, innovation is driven by fair competition, not regulatory protectionism.

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<sup>1</sup> Consultation Paper, page 6.

<sup>2</sup> Consultation Paper, page 4.

Foxtel considers it appropriate that reforms to digital television rules only be contemplated in the context of broader reform, including proposals for change arising from the recent Spectrum Review (which included the prospect of bringing FTA broadcasters into a unified spectrum management framework and charging them market-rates for spectrum) and review of other important areas such as Australian content regulation.

It is unfortunate that the Consultation Paper notes that this exercise is not intended to be a comprehensive review of all media regulation.<sup>3</sup> Foxtel strongly recommends that the Government reconsider this position and take a holistic view of reform and refers to ASTRA's submission which outlines the STV sector's holistic reform suggestions in more detail.

## **PART B: SPECIFIC ISSUES DEALT WITH IN THE CONSULTATION PAPER**

### **Principles for reform**

The Consultation Paper refers to a list of announcements made by the Minister for Communications in a speech in September 2014, including that:

- spectrum for FTA television services should continue to be preserved;
- the current ban on new entrants to the commercial FTA sector would be retained (achieved by way of a legislative restriction on the number of commercial television licences that can be allocated for each licence area);
- FTA broadcasters should be free to determine the most appropriate mix of services and formats for their audience;
- FTA broadcasters should be increasingly permitted to use spectrum more flexibly and allow third party access to their spectrum;
- the types of services FTA broadcasters offer should not be constrained by regulation apart from retaining the restriction on subscription services; and
- FTA broadcasters should deliver their services through spectrally efficient mechanisms.<sup>4</sup>

While some of these announcements read more like policy decisions, Foxtel is pleased that they are described as strategic principles for reform—because a number of them are presented in the Consultation Paper as issues for discussion. Other issues, such as continuation of the ban on a fourth FTA network, are not presented for discussion, but should be.

Notwithstanding the September 2014 Ministerial announcements, it is important that Government retain an open mind on all matters canvassed in the Consultation Paper, including determination of the most appropriate mix of FTA services and formats, third party access to FTA spectrum and the nature of services FTA broadcasters may offer.

Finally, in conducting this review Foxtel strongly submits that the Government must further adopt the principle that reforms must promote rather than restrict fair competition—because this is how consumer benefit will be delivered.

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<sup>3</sup> Consultation Paper, page 6.

<sup>4</sup> It is notable that this list does not include the announcement also made by the Minister in the same September 2014 speech that *'in the short term, to allow for [the] transition [of FTA broadcasters] to MPEG-4, the Government intends to free up the spectrum known as the sixth channel to assist in the testing and migration to this more efficient technology'* – see Minister for Communications, The Hon. Malcolm Turnbull, MP, *RadComms 2014: Spectrum in the Age of Digital Innovation* – available at <http://www.malcolmturnbull.com.au/media/radcomms-2014-spectrum-in-the-age-of-digital-innovation>.

## Free-to-air service and format mix

### ***Number of commercial broadcasting services***

The Consultation Paper notes that the number and format of services that a FTA broadcasting licensee could, from a technical perspective, provide within a 7 MHz allocation of spectrum depends on the desired picture quality and type of programs transmitted.<sup>5</sup>

From a regulatory perspective, it confirms that following the completion of digital switchover there are no longer legislated restrictions on the number of services that commercial and national broadcasters are authorised to provide, other than the requirement that licensees must provide a 'primary' service for the purpose of meeting Australian content, anti-siphoning and captioning requirements.

The Consultation Paper proposes that the status quo be retained—that is, that the primary service distinction be preserved, but that no new regulation be applied to cap the number of services a FTA broadcaster may provide within their 7 MHz allocation.

Foxtel does not agree with this proposal. In our view, FTA networks should *not* be unconstrained in this way for so long as special pricing arrangements apply to their spectrum and for as long as other regulatory privileges persist—including:

- the ban on new FTA competition;
- the anti-competitive anti-siphoning regime; and
- minimal captioning and Australian content obligations on digital multi-channels.

While Foxtel acknowledges that STV providers are not subject to limits on the number and format of the channels distributed via cable, satellite and broadband, and while Foxtel otherwise supports the theory that consumer demand and commercial factors should drive decisions about service offerings, FTA broadcasters unfortunately remain a special case in this country.

It is notable that in contrast to the FTA broadcasters:

- Foxtel pays market rates for the transmission capacity it acquires—if we want to add new channels we pay the market rate to satellite providers and cable and broadband network operators, not a revenue-based charge set by reference to the health of our business.
- Foxtel is legislatively constrained in acquiring rights (even the *subscription television* rights) to an enormous list of sporting events on the anti-siphoning list—this is despite numerous reviews recognising the anti-competitive nature of the regime and the excessive length of the list, and despite the sporting codes themselves supporting reform.
- Foxtel currently provides closed captioning at different levels on 86 individual services (and is on a legislative pathway to providing 100 per cent captioning on *all* channels). FTA broadcasters only have substantial obligations on one primary channel, with minimal obligations on their digital multi-channels. There is no pathway to extend captioning obligations on FTA multi-channels.
- Foxtel's Australian content obligations apply to any new drama service we launch—and are not just concentrated on one primary service, as is the case with FTA broadcasters.

It is in light of these regulatory disparities that Foxtel opposes free reign for FTA broadcasters.

Once transition to the MPEG-4 compression technology is complete, each FTA broadcaster's 7 MHz spectrum allocation could accommodate up to 10 SD services, four HD services or a number in between if they use a mix of both formats.

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<sup>5</sup> Consultation Paper, page 4.

Foxtel opposes regulatory settings that would allow FTA broadcasters to introduce up to seven additional commercial broadcasting services *each* without the cost of their spectrum going up, or without other regulatory obligations being re-balanced across those multi-channel services and between sectors.

Instead, if current regulatory settings are to persist, Foxtel's proposal is that:

- FTA broadcasters should be required to expeditiously complete transition to MPEG-4 (noting the Government's apparent decision to gift temporary use of the sixth channel for this purpose<sup>6</sup>);
- as set out below, FTA digital multiplexes should be rearranged so that in combination with the use of MPEG-4 compression technology (and, in the future, HEVC and DVB-T2 or successor transmission technologies) they can provide the same number of commercial broadcasting services as they currently provide with significantly less spectrum;
- FTA broadcasters should then be required to return unused spectrum from their current allocation to the Government for auction and re-use (effectively allowing a second Digital Dividend); and
- the Government should invest the proceeds of this spectrum sale into more substantial and more contestable subsidies for production of Australian content in all sectors, beginning with equalisation of the producer offset for television with film at 40 per cent.

Nothing in this proposal would prevent commercial broadcasters from launching new IP-delivered services—for example using their HbbTV platform.

### ***Role of the primary channel***

The Consultation Paper notes that the concept of a core or primary FTA channel stems from the analog era, and that since switchover is now complete it is appropriate to consider the ongoing relevance of the distinction between primary channels and multi-channels—in particular, the current obligation that the primary channel be broadcast in SD.

The paper notes that the distinction remains important so that heavier obligations under the captioning and Australian content regulatory schemes can be applied to primary services than multi-channels. While this consultation does not seek feedback on the appropriateness of those settings—which Foxtel strongly submits should be revisited—the Consultation Paper does propose that the requirement that the primary channel be broadcast in SD be removed.

Enabling FTA broadcasters to deliver a HD primary service is said to be important because the anti-siphoning scheme requires listed events to be premiered on the primary channel, and because viewers are now said to expect to see sport in HD on both FTA and STV services.

The Consultation Paper refers to April 2014 Newspoll research for DoC indicating that 96 per cent of households have a *main* television set or set top box that is HD compatible.<sup>7</sup> While it is accepted that this number may have increased since April 2014, it remains a relevant consideration that many secondary sets in Australian homes may not be HD compatible. Therefore, by making this change the Government is risking removing access for Australians to listed anti-siphoning sporting events and Australian content that is shown on a primary service.

However, notwithstanding the fact that increased HD service offerings on commercial FTA television may have a commercial impact on Foxtel (because it is a point of competitive differentiation that Foxtel provides a much larger HD offering), and so long as the Government is satisfied that HD availability on secondary sets is sufficiently high, Foxtel does not object to this proposal. It is accepted that audiences increasingly expect services in HD.

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<sup>6</sup> Foxtel and ASTRA have previously requested clarification about commercial arrangements for FTA broadcasters' access to the valuable sixth block spectrum, but the Government is yet to have publicly announced a position. Our view is that if FTA broadcasters are to be given access to this spectrum for testing, they should pay market-based prices.

<sup>7</sup> Consultation Paper, page 13.

Nonetheless, Foxtel would not support removal of the current obligation to premiere an event on the anti-siphoning list on the primary channel unless other reforms were made to the anti-siphoning scheme. Removal of this obligation without other reforms being made would result in a significant commercial benefit to the FTA broadcasters and must be counter-balanced by full reform of the anti-siphoning regime.

It must be remembered that STV operators such as Foxtel and Fetch are the *only* providers who are still subject to the anti-siphoning regime with new entrants such as Stan and Netflix being unregulated.

### ***High definition services***

The Consultation Paper notes that following switchover the obligation for certain commercial and national FTA broadcasters to provide a minimum number of hours of HD programming each year has fallen away. It suggests that, as noted above, commercial FTA broadcasters are interested in providing their primary service in HD—and that there is a viewer appetite for more rather than less HD content.

The Government's proposal is that a HD quota not be reintroduced. Notwithstanding the fact that significant spectrum gifts were provided to FTA broadcasters during switchover on the basis that services would be broadcast in HD, Foxtel does not oppose this position. We believe that it is appropriate that, so long as only so much spectrum is provided as is required to replicate their current suite of commercial broadcastings services, FTA broadcasters should be able to choose the format mix of their services. This will of course have an impact on the amount of spectrum the Government could recoup in the second Digital Dividend.

### **Use of spectrum**

#### ***Datacasting and narrowcasting***

The Government proposes to remove the datacasting provisions in the BSA and remove the current restriction on commercial and national FTAs providing narrowcasting services.

While Foxtel does not make any comment on the datacasting proposal, we strongly oppose the proposal that commercial FTA broadcasters would be permitted to provide, or indeed subcontract others to provide, narrowcasting services. Our objection is based on two grounds:

- Commercial FTA broadcasters get subsidised access to a finite and highly valuable public asset—prime radiofrequency spectrum. Since all tax payers are subsidising this access the services provided should be required to appeal to the greatest number of those tax payers. In other words, the services should continue to be required to appeal to the general public.
- Foxtel's STV business model includes providing niche content to targeted audiences. As detailed above, we provide these services without subsidy or regulatory protection. It would be patently unfair for the Government to allow a subsidised and protected competitor to offer niche services—the competitive playing field between FTA and STV niche services would be totally uneven.

The Consultation Paper indicates that the original object of the current narrowcasting prohibition was to ensure that FTA services appealed to the widest possible audience—this was intended to assist digital switchover by encouraging the greatest number of Australians to switch to digital services to see primary services in better quality and to see new broadly appealing digital multi-channels.

Foxtel does not agree that this should have been the only objective of requiring commercial FTA broadcasters to provide services which comply with the definition of 'commercial broadcasting service', which includes that such services must *'provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public'*.<sup>8</sup>

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<sup>8</sup> BSA, subsection 14(a).

In our view, commercial FTA broadcasters using public spectrum should continue to be required to provide broad-based services of general appeal providing, for example, a program package that incorporates multiple program genres.<sup>9</sup> While the FTA sector remains protected and privileged Foxtel supports retention of an express prohibition in the BSA on FTA broadcasters providing narrowcasting services.

It is also very important to consider the inequity of the proposal from the perspective of disproportionate regulatory costs that are currently imposed on niche STV services, but which the Consultation Paper admits would not be imposed on FTA narrowcast services. Of both narrowcasting and datacasting services, the paper notes that:

*[a]s these services are intended to appeal to special interest groups, or provide programmes of limited appeal rather than the broad appeal of traditional broadcasting services, they are less regulated. For example, a key difference is that such services are not subject to the same Australian content and captioning obligations that traditional broadcasting services attract.<sup>10</sup>*

It is already the case, for example, that less onerous captioning obligations are applied to FTA multi-channels than are applied to a broad range of STV channels—even though the audiences of those FTA multi-channels frequently far exceed the audiences of STV channels.<sup>11</sup> This imbalance of regulation, for which we see no policy justification, would be exacerbated if FTA providers were permitted to launch narrowcast services free of captioning (and Australian content) regulation.

### **Third party content**

Foxtel does not object to the supply of content, including whole channels, to FTA broadcasters by third party content providers. This is similar to existing arrangements in the STV sector where Foxtel owned and operated channels are transmitted alongside third party supplied channels.

Indeed, the Consultation Paper notes that, currently, so long as the service complies with the definition of a 'commercial broadcasting service' (with criteria relating not only to programming appeal, but also being required to be advertiser-funded and be operated for profit or as part of a profit-making enterprise), it may be either wholly or partly produced by a third party.

However, as is the case in the STV sector, under current rules a commercial FTA licensee retains all regulatory responsibilities under the licence. The channel provider may be contractually required to comply with regulations, but the primary regulatory obligation remains with the licensee.

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<sup>9</sup> The ACMA's 2007 document *Narrowcasting services on television – guidelines and information* provides useful explanation of the characteristics of a commercial broadcasting service. It notes that:

[t]he more program elements that comprise a service, the more it is likely that the service will appeal to the general public. Commercial broadcasting services commonly comprise a number of distinct program components which, in combination, form a broad-based service of general appeal. A service that incorporates several program genres is less likely to be regarded as narrowcasting, unless its reception is limited by other factors.

While individual programs within a service may each appeal only to niche audiences, if the 'package' of programs provided by a service appears to be intended to appeal to the general public, then the service will be considered to be a commercial broadcasting service, and not an open narrowcasting service.

See Australian Communications and Media Authority, *Narrowcasting services on television – guidelines and information*, May 2007, page 13 – available at [http://acma.gov.au/webwr/assets/main/lib310092/narrowcasting\\_television\\_guidelines.pdf](http://acma.gov.au/webwr/assets/main/lib310092/narrowcasting_television_guidelines.pdf).

<sup>10</sup> Consultation Paper, page 17.

<sup>11</sup> For example, even some of Foxtel's most watched channels, such as FOX8 and The Lifestyle Channel, have an average audience that is significantly lower than the least popular FTA multi-channel. In Q1 FY15, FOX8 had an average audience in any given minute throughout the day of 21,836 and The Lifestyle Channel had an average audience of 14,198. In the same period the average audience for FTA multi-channels was between 31,115 (for ABC3) and 98,983 (for ABC2). Source: OzTAM 5 City Metro Data. Consolidated. Total People. Q1 FY15 (01/07/2014–30/09/2014).



While indicating that it will maintain current arrangements for third-party content in the near-term, the Government is seeking feedback on the idea that commercial FTA licensees may in the future be able to transfer their licensee responsibilities to third parties. This may coincide with flexibility being granted to FTA broadcasters to 'lease out' spectrum to third parties.

The Consultation Paper notes that the proposal is made in the context of *'the Government's intention to provide commercial broadcasters with greater flexibility in their use of spectrum'* and its *'commitment to maintain the prohibition on fourth commercial broadcaster'*.<sup>12</sup>

Incredibly, the Consultation Paper explicitly reveals the Government concerns that FTA broadcasters should be protected from competition—it notes that:

*...concerns about increased competition from new broadcasters would be mitigated by the fact that it is a choice for the current broadcaster to decide the commercial and oversight arrangements that should apply to any multiplex 'renters'.*<sup>13</sup>

Foxtel has significant concerns with these statements for a range of reasons:

- Firstly, no Government should hold a policy position which has as its aim the protection of one sector from competition from other sectors.

Given FTA broadcasters would remain protected from competition from a fourth commercial television network, allowing them to license to third parties permits controlled competition which is not acceptable where there is no equivalent deregulation for STV.

- Secondly, the Government has not clarified charging arrangements for any FTA broadcaster 'leasing' their spectrum—for example, given that FTA broadcasters do not pay a market-rate for spectrum, it would be wholly inappropriate that they might charge third parties market-based 'rent' and then profit from the difference.

Foxtel would only support FTA broadcaster being able to enter into leasing arrangements with third parties provided the FTA broadcasters themselves are required to pay market rates for the spectrum and continue to be liable as licensee for the relevant obligations that attach to use of the spectrum.

### **Subscription services**

Foxtel agrees that the current prohibition on commercial and national FTA broadcasters providing subscription services on their digital multiplexes should be retained. Indeed, the Consultation Paper reminds us that *'[FTA] broadcasters are provided with spectrum, a valuable public resource, on the expectation that their services are made freely available'*.<sup>14</sup>

In addition, in Foxtel's view this prohibition is justified on similar grounds to the argument against FTA broadcasters being permitted to provide narrowcasting services. That is, if FTA providers were permitted to deliver subscription services terrestrially, they would enjoy unfair competitive advantage over others who do not enjoy the subsidies and protections granted to the FTA sector.

Nonetheless, as noted in the Consultation Paper, it is already open to commercial broadcasters to diversify their business model through entry into the *online* subscription video on demand (**SVOD**) sector—as the Seven Network has by entering a partnership with Foxtel in relation to the Presto SVOD service, and as the Nine Network has by entering into a partnership with Fairfax Media to launch the Stan SVOD service.

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<sup>12</sup> Consultation Paper, page 21.

<sup>13</sup> Consultation Paper, page 21.

<sup>14</sup> Consultation Paper, page 22.

Foxtel does not object to FTA broadcasters' diversification into SVOD services because in that sector regulation does not constrain open competition, and privileges are not afforded to one set of providers over another.

### **Online services**

The Consultation Paper indicates that the Government will undertake further work in 2015 on commercial and regulatory implications of FTA services being delivered online, including via the FreeviewPlus HbbTV platform, which it advises is currently regulated under both broadcasting and internet regimes.<sup>15</sup>

Given the ongoing convergence of broadcasting and internet services—both in terms of audience perception of the services and the technical convergence of the way content is delivered, often into a single device—it is logical that the Government would look at regulatory disparity between the two schemes.

However, there is no reason to confine this review to the FTA sector. Such a review should look to find de-regulatory opportunities across all broadcasting sectors. It would be inconceivable that traditional and burdensome broadcasting regulatory settings would be applied to the online sector—instead, we recommend that the Government should minimise regulation across all platforms.

### **Delivery mechanisms**

#### ***More efficient broadcasting technologies***

The Consultation Paper notes that FTA broadcasters currently transmit using the MPEG-2 compression standard, and that by using the more efficient MPEG-4 technology (and, in the future, other technologies such as HEVC) they could broadcast a significantly higher number of services with the same amount of spectrum.

Alternatively, by using these technologies they could broadcast the same number of services using far less spectrum—which, as set out above, is Foxtel's suggested approach.

The Consultation Paper indicates that the Government proposes to encourage broadcasters to commence transition to MPEG-4 and that it may consider setting a deadline in the future. Foxtel itself uses MPEG-4 technology and strongly supports expeditious migration of FTA broadcasters to this compression technology (and indeed DVB-T2 and HEVC technologies). We support the Government setting a deadline so that it is known when the second Digital Dividend can be realised.<sup>16</sup>

We refer to our 2012 submission to the ACMA's consultation *Beyond Switchover – The Future Technical Evolution of Digital Terrestrial Television in Australia*<sup>17</sup> which, among other things, included our recommendation that the Government support development of a voluntary DVB-T2 standard through Standards Australia.

#### ***Multiplex licensing arrangements***

The Consultation Paper notes that under current licensing arrangements FTA broadcasters are granted the ability to transmit their services in a particular 7 MHz of spectrum.

However, digital technology allows for one digital transmitter to provide multiple streams of content at the same time—referred to as multiplexing. Broadcasters are now technically able to share multiplexes, but the law has not caught up to allow them to do so (as it has, for example, in the UK).

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<sup>15</sup> Consultation Paper, page 23.

<sup>16</sup> As with a range of other innovations—including digital multi-channelling, digital electronic program guides, and the integration of broadcast and online program streams in one device—Foxtel pioneered the use of MPEG-4 compression technology for broadcasting in Australia. By 2009 Foxtel had started using MPEG-4, primarily for HD broadcasts.

<sup>17</sup> Available at [http://www.acma.gov.au/webwr/assets/main/lib410179/ffc3-2012\\_foxtel.pdf](http://www.acma.gov.au/webwr/assets/main/lib410179/ffc3-2012_foxtel.pdf).

Foxtel has long supported serious consideration being given to how FTA broadcasters' multiplexes can be adjusted to realise the spectrum efficiencies enabled by using more efficient compression and transmission standards. The Consultation Paper indicates that the Government would like to give FTA broadcasters the flexibility to share multiplexes, but it does not intend to require them to do so.

As set out in detail in the ASTRA submission in response to this consultation, following migration to MPEG-4 (let alone other technologies) it would be possible to move the existing suite of FTA services (commercial broadcasting services, national broadcasting services and datacasting services) currently spread over five 7 MHz channels into three 7 MHz channels of spectrum—as a result, up to 84 MHz of spectrum, including the sixth channel, could be released. Even more spectrum could be recouped, and an even more efficient multiplex arrangements could be used, if existing datacasting services were not offered (for example, current services could be spread over just two multiplexes and up to 112 MHz of spectrum could be recouped).

Foxtel supports the return of this spectrum to the Government for reallocation and so encourages consideration of stronger incentives, if not a requirement, for FTA broadcasters to share multiplexes.