16 February 2007

SUBMISSION FROM SKY NETWORK TELEVISION LIMITED

TO

THE MINISTRY OF CULTURE AND HERITAGE AND THE MINISTRY OF ECONOMIC DEVELOPMENT

ON

THE MINISTRIES' DISCUSSION PAPER ON ANALOGUE SWITCH-OFF

16 FEBRUARY 2007

TABLE OF CONTENTS

1. INTRODUCTION

Preliminary

1.1 SKY Network Television Limited ("**SKY**") welcomes the opportunity to respond to the Discussion Paper "*Analogue Switch-Off Issues For Consideration* " issued by the Ministry of Culture and Heritage ("**MCH**") and the Ministry of Economic Development ("**MED**") in late December 2006 www.mch.govt.nz

1.2 This submission comprises SKY's general comments below and SKY's responses, in the Annex to this submission, to the specific questions contained in the Discussion Paper.

1.3 SKY wishes to take up the invitation in the Discussion Paper for a discussion of the proposals with officials.

1.4 SKY has no objection to the release of this submission in its entirety.

Contact Details

1.5 Our contact person for this submission is:

Tony O'Brien,
Director of Communications,
SKY Network Television Limited,
P O Box 9059,
Newmarket,
Auckland

DDI: 09 525 8335
Mobile: 021 497 830
Email: tobrien@skytv.co.nz

Background on SKY

1.6 SKY is a publicly-owned company with some 7,880 shareholders and more than 700 full time equivalent employees.

1.7 SKY operates pay-TV and free-to-air television services in New Zealand.

1.8 Its pay-TV services are broadcast in analogue over four terrestrial UHF-TV networks and over a digital satellite service, which provides a large range of channels and services. SKY also retransmits national and regional free-to-air television broadcasters over its digital satellite service.

1.9 SKY's more than 80 pay-TV channels include 6 sports channels (4 general sports channels, the dedicated Rugby Channel and, through an agreement with the TAB, Trackside), 5 movie channels, 4 documentary channels, 4 news channels (CNN, BBC World, CCTV-9 and SKY News NZ (including UK, Australian, and New Zealand services)), as well as ethnic and children's channels, general entertainment and music, culinary and other lifestyle channels.

1.10 SKY's pay television consumers comprise around 667,000 subscribers, representing 43% of New Zealand's 1.5 million households as well as numerous other outlets. SKY's services are watched by a wide cross-section of New Zealanders.

1.11 Amongst SKY's pay-TV subscribers, more than 90% are on the satellite digital service which has virtual 100% national coverage, the remainder on terrestrial analogue services with approximately 83% national coverage. The satellite digital subscribers include a significant number of viewers subscribing only to the free-to-air broadcast services SKY retransmits.

1.12 In February 2006, SKY acquired the free-to-air business of Prime New Zealand. Prime is broadcast over an analogue UHF-TV network now with more than 91% coverage. Prime's programming is diverse and includes the delayed FTA transmission of major sporting events.

1.13 As at 31 December, SKY's pay-TV services had an audience share of approximately 27.1% and, combined with Prime's audience share of 5.5%, up to 32.6% nationally (all 5+ 24 hours).

1.14 The Minister of Broadcasting has in the past commented, in justifying funding subsidies and other policies skewed in favour of TVNZ, as "*public broadcaster*" (including policies in respect of digital television discussed in this response), that he considers that "*public broadcasting"* content includes programming that causes people to be "*entertained, stimulated and enlightened"*, minority content, and local content. SKY (including Prime New Zealand) broadcasts a significant amount of programming that falls within these criteria, in addition to re-broadcasting of national, regional and local free-to air television broadcasters.

1.15 In 2005, SKY acquired spectrum licence renewal rights from the Crown in respect of its four terrestrial UHF networks for the period 2010-2020. In February 2006, as part of its acquisition of the business of Prime New Zealand Ltd, SKY also acquired, with the consent of the Crown, Prime's UHF renewal rights to UHF spectrum licences for the same 10 year period. As part of the 2005 renewal rights acquisition process and the consent process for the acquisition of Prime's renewal rights, SKY sought, and obtained, assurances from the MED that SKY would be able to convert to digital use both its existing licences and licences to be issued under its renewal rights. This right was also confirmed in the Government's May/June 2006 DTV decisions.

SKY's commitment to the development of digital television

1.16 As will be evident from the above background, SKY has been at the forefront of investing in and developing new forms of broadcasting ever since it was established in 1987. From initially broadcasting over a UHF-TV terrestrial broadcast system, SKY introduced analogue direct broadcasting satellite service in 1997. This service not only allowed SKY to reach virtually every New Zealand home, but also gave it the opportunity to offer its viewers more channels and interactive options. This satellite service was upgraded to a digital service in December 1998, making SKY the first digital broadcaster in New Zealand.

1.17 Since launching its digital service in 1998, SKY has sought to attract new customers and migrate existing UHF customers to this technology platform. SKY has sought to encourage the uptake of digital through a focus on advertising SKY digital packages and through partial subsidy of digital decoders for new and migrating customers. More than ninety percent of SKY's subscribers are now on SKY's satellite digital service.

1.18 SKY has also recently introduced its MY SKY set-top boxes. These contain digital hard drive recorders in addition to SKY's set-top box technology.

1.19 SKY acquired Prime New Zealand in February 2006, which it currently broadcasts free-to-air over its analogue UHF frequencies (as well as over its digital satellite service). SKY is preparing for the digital terrestrial broadcast of Prime, with an intention that this be available in high definition television ("**HDTV**") in early 2008. This would be the first free-to-air, HDTV channel available in New Zealand.

1.20 SKY is also developing other forms of digital content delivery including delivery of services through digital mobile telephony. On 18 December 2006, SKY and Vodafone NZ announced the launch of SKY Mobile TV. This new mobile service for Vodafone customers with 3G handsets comprises, for a fee of $2.50 per week, a bundle of at least 8 SKY channels including entertainment, information, SKY news, and sport and documentary programmes. Vodafone's network comprises more than 1100 mobile phone sites covering 92% of the population and an overall customer base of 2.1 million.

1.21 None of SKY's digital initiatives have been as a result of Government subsidies. These initiatives also demonstrate SKY's continuing commitment to investment in a digital television future for New Zealand. To assure this investment, SKY has strong interest in a clear, certain and, above all, fair, policy and regulatory framework for pay-TV and free-to-air television.

SKY'S RESPONSES TO MCH'S/MED'S QUESTIONS

1.a. Should an ASO date be announced when penetration has reached an agreed percentage? What would an appropriate threshold level be — for example 50% or 60%?

The study undertaken by Spectrum Strategy Consultants suggested that the optimal date change was between 2012-2015.

SKY supports the proposal that the ASO be set on a basis similar to that implemented in the UK. The May 2006 Cabinet paper identified the UK process as only a possible approach that could be adopted, with an ASO date announced when total digital penetration reaches a threshold of 60%. The threshold percentage would include <u>all</u> digital television.

In this particular context, any "ASO" should relate only to the use of VHF television network licences (including fill-in UHF analogue licences used for those networks) and the new multiplex DTT licences. The only logical "ASO" date is 2015. This is because 2015 is the expiry date for VHF TV frequencies used by TVNZ and CanWest for free-to air-television, and therefore the date is the necessary transition date for the extension of the hitherto "*simulcasting*" licences to full 20 year digital-only UHF licences for free-to-air television. The Government has already decided that VHF licences are not being renewed for television upon their expiry. Moreover, 2015 has also been deemed the latest optimal date by Spectrum Strategy Consultants to achieve the net benefits justifying Government support for digital free-to-air TV and to achieve the "*digital dividend*" of $131m arising from auctioning those licences for other purposes (see paragraph 20 of Paper 1 of the March/April 2006 Cabinet Papers).

1.b. How would progress towards this percentage be monitored or measured, and by whom? How would we determine when the agreed percentage has been reached?

SKY's digital penetration is easily quantifiable based on its digital subscriber numbers. Free-to-air digital penetration would be calculated based on the number of households with a free-to-air digital receiver. A methodology would have to be adopted to monitor and subsequently calculate this figure.

1.c. What total threshold would be appropriate for ASO to occur — e.g. 90% or 95%?

SKY supports a figure of 95% DTV penetration as this is likely to be an optimal tradeoff between minimising consumer disruption and maximisng ASO economic benefits.

2. Criteria for achievement of ASO

2.a. For the purposes of ASO, do all TV sets need to be converted, or would it be a minimum of one per household?

For the purposes of ASO, one digital receiver per household would be the requirement.

2.b. What action, if any, might need to be considered for conversion of VCRs?

VCR's cannot be "converted" to handle DTT transmissions; however as digital receivers/decoders have an analogue output their continued use should be possible

Furthermore, VCR technology is likely to become less relevant in the future, especially with the uptake of digital or personal video recorders. This technology is increasingly likely to be integrated within digital set-top boxes, (e.g., SKY's MySKY set-top box). Such technology is often able to be linked to the DTV Electronic Programming Guide, enhancing the functionality and usability of this recording technology.

SKY would recommend consumer information be made available to assist consumers in re-connecting their home entertainment equipment (e.g., TV's, stereos, VCRs, personal video recorders) as part of the ASO programme.

2.c. What is the best approach to ensure optimal functionality and convenience for consumers needing to purchase multiple STBs (including compatibility questions between free-to-air and conditional access options)?

By definition, there is unlikely to be any compatibility between DTT Freeview set-top-boxes and conditional access devices. Please note that Prime would continue to be broadcast as a free-to-air channel on the DTT platform.

3. Announcement of a switch-off date

3.a. Should New Zealand adopt a target, consensus or obligatory approach to setting an ASO date?

SKY proposes that New Zealand should adopt a consensus approach to setting an ASO date. In the UK, agreement was reached between the Government and industry stakeholders as to the criteria before a target date was announced. The three key criteria should be availability, accessibility and affordability.

Using the UK criteria, this would ensure that everyone receiving the main free to air channels in analogue form would technically be able to receive them as a digital service, with the switch to digital being an affordable option for the majority of the population. In New Zealand the digital situation comprises a mix of satellite and digital terrestrial television, as a result of the topography.

3.b. Should some form of switch-over steering group be considered for New Zealand, and if so what form should it take? What role would it have?

SKY supports the establishment of our industry steering group consisting of broadcasters and other key stakeholders.

Digital UK has been established for the UK ASO: SKY would recommend establishing a similar independent not-for-profit organization in New Zealand with responsibilities, including:

- Meeting Policy Objectives - implementing the government policies surrounding ASO
- Consumer Education – managing and leading a consumer education campaign to drive customer awareness of ASO and encourage switchover
- Technical Strategy – identification of the best technical approach and technical coordination of the ASO

- Stakeholder Coordination - including broadcasters, DTV network providers, consumer groups, supply chain groups and government departments.

The industry steering group should be independent and impartial: supporting all digital TV platforms and encouraging a diversity of digital TV options and services.

4. Extent of ASO

4.a. To what free-to-air services would ASO apply? All those services being simulcast on the DTV platform? All those services being simulcast on any digital TV platform? All services?

ASO should apply to all national analogue free-to-air broadcasters.

4.b. Should analogue conditional access systems, such as SKY UHF, be included in an ASO process?

SKY's UHF pay television services should not be included in an ASO process.

4.c. Would ASO apply to free-to-air services, such as Prime, NZRB and local or regional broadcasters, which may not initially be included on the DTT platform?

PRIME would broadcast on High Definition digital service coincident with the establishment of a DTT platform.

4.d. If some analogue services are not covered by ASO, what are the implications for use of spectrum, maintenance of the transmission infrastructure etc? Who would bear the costs? Would Kordia be ready to continue providing a dual analogue/digital transmission service?

This is, and should be, a commercial question for BCL/THL ("*Kordia*") and any broadcaster wishing to pursue analogue TV broadcasting services. Obviously, competition law issues may arise in the event of Kordia declining access to its facilities and services for analogue television services other than for clear commercial reasons.

6. Big bang or progressive turn-down

6.a. Which approach ("big bang" or progressive) to ASO would be best suited for New Zealand?

To date very few countries have attempted the big bang approach.

Berlin took this approach, but it must be noted that more than ninety percent of Berlin homes have cable television and therefore the impact of terrestrial change was minimal.

The UK approach will be a progressive switch off with low density population areas to be targeted initially. SKY proposes that this will be the best approach for New Zealand.

6.*b. If a progressive approach were selected, who would make the decision about which sites to switch off and when? (Kordia? Broadcasters? Government? All three groups by consensus?)*

The industry steering group would manage the planning and implementation of the transition to digital.

6.*c.* ***Should a trial switch-off in one or two areas be arranged to test the process in advance of a full switch-off?***

See SKY's response to Question 6 (b).

6.d. ***How would liaison with distributors, retailers and installers best be managed? What sort of notice period would they require?***

In SKY's experience, very close liaison with, and substantial advance notice to, such industry participants would be required by Government and individual broadcasters. This could be best coordinated via the industry steering group.

In some cases, broadcasters may arrange for and promote the use by consumers of their own equipment and installation services.

7. **DTT band planning/close off date for further new analogue licences to be issued**

7.a. ***Is a termination date for the allocation of new analogue licences necessary? If so, should it be the same time as when an ASO date is determined?***

The use of yet to be created licences is usually a matter for Government decision (typically as Management Rightholder) except for licences created under renewal rights contracts.

However, SKY sees no reason for any compulsory restrictions on licence use including analogue use except VHF licences and concessional DTT multiplex licences (confined to digital free-to-air television use) consistent with Government policy. Use will otherwise be determined by technical parameters and normal economic and commercial considerations i.e. consistent with longstanding spectrum allocation policies.

7.b. ***Would it be a viable alternative for any new analogue licences to be issued from 2007 to include a requirement that they will be cancelled at ASO — i.e. the term of the licence would be limited to planned ASO date, with the resource charge to be adjusted accordingly?***

SKY notes that there will no doubt be an ongoing and occasional temporary requirement for analogue users to obtain individual licences with analogue use specifications from MED to complement or facilitate any residual transitional analogue use of existing and renewal rights network licences.

8. **Regional and local broadcasters**

8.a. ***What cost-effective options for the digital delivery of local and regional services can be identified?***

This issue is discussed in paragraphs 17-19 of Paper 2 of the May/June 2006 Cabinet Papers. The Paper noted that a number of such broadcasters would need to transfer their services from analogue to a free-to-air-digital delivery platform where the signals can be contained to specific regions.

However, Paper 2 did not consider the option of local and regional service broadcasters choosing to have their existing analogue channels re-broadcast on SKY's digital satellite services. Such rebroadcast services are confined to SKY's subscribers but SKY's subscription services include a special package for national as well as local and regional rebroadcast free-to-air services at a modest price.

A new option is referred to in Question 8(c) below (but is not discussed in the preceding comment in the Discussion Paper) of providing a new dedicated DTT multiplex spectrum licence for these services. This appears to arise from the availability of an additional DTT multiplex licence in the event that SKY did not take up the DTT multiplex licence offer made to it.

8.b. Is DTH delivery of local and regional services viable, and if so, how could it be achieved?

SKY currently carries regional broadcaster Southland TV, on its digital satellite platform and with bandwidth availability increasing, this option may be available to other regional broadcasters.

The Discussion Paper makes no reference to the fact that re-broadcasting of free-to-air services is already provided through SKY's DTH digital satellite services.

This Question implies, however, that the Government may be contemplating that re-broadcasting of all, or a selected group, of such local and regional services might be subsidised so that they would be available solely by DTH and on a free-to-air basis. If that were so, any such subsidy should be tendered on the open market to all organisations potentially able to provide such services including SKY. Obviously any such tender would have to be conducted by an organisation independent of the Government (given its ownership of TVNZ and BCL/THL) such as NZ on Air, providing NZ on Air was not subject to any Government direction affecting the choice of tenderers.

8.c. Should consideration be given to the creation of a dedicated local/regional DTT multiplex, subject to the availability of suitable spectrum?

The creation of a dedicated local regional DTT multiplex, subject to the availability of suitable spectrum, should be explored.

8.d. Are there other delivery platforms (existing or emerging) that might provide the best long-term solution to the digital delivery of local and regional services?

SKY contends that there is no single platform suitable for all local and regional services. Rather, the choice of platform delivery needs to be investigated on a case by case basis by each service provider, taking into account the availability of access networks (e.g., cable, copper, fibre, broadcast, satellite, mobile or wireless technologies), the nature of the content being delivered (linear or interactive) and the costs of delivery.

8.*e.* *How important is it for local and regional broadcasters to be included on an EPG?*

SKY believes it is critical for any local and regional broadcasters to be included on an EPG, in order to generate consumer awareness of their presence on the particular platform.

SKY confirms that any local or regional service broadcast or rebroadcast using SKY's DTH or future DTT services would be included in its EPG.

9. Licence renewals: UHF in 2010

9. What, if any, adjustments need to be made in respect of commercially acquired licences being renewed in 2010 to take account of ASO occurring prior to 2020?

Any adjustments, without the voluntary agreement of the renewal rights holders would be in breach of the contract between the Crown and with those renewal rights holders (See SKY's response to Question 4 (a)). The rights holders directly concerned comprise only SKY, which operates one free-to-air channel (Prime), and the NZ Racing Board ("**NZRB**") given that TVNZ is to give up its single UHF network licences and related 2010-2020 renewal rights (in return for a new concessional DTT multiplex licence).

SKY and NZRB already have assurances from MED that their existing and renewal rights licences may be converted to digital use at the choice of the licensees/right holders. There are obvious commercial incentives for SKY and NZRB to do so. However, adjustments for digital use will be at the initiative of the rightholders and sign off by MED, for all practical purposes, only on technical grounds.

SKY has indicated to MED its willingness, to the adjustment of its existing UHF licences and renewal rights licences to allow for the proposed new UHF multiplex offers to proceed. This is subject to various issues and other final terms such as who bears the costs of these adjustments.

An important issue, but not directly covered by Question 8, is the anomalous and unfair position in which SKY and NZRB would be placed, if the Crown did not provide an extension of their renewal rights from 2020 to 2035. SKY has made a request to the Government for this purpose and is awaiting its response.

Our request recognises that the conversion of SKY's UHF-TV licences to digital involves similar considerations to the factors identified in paragraph 15 of the Cabinet Policy Committee Minute of 18 October 2006, which are referred to as justifications for granting an extension of the initial DTT multiplex licences up to 2035. Our request also recognises that the uncertainties over future technological change, including uncertainties relating to digital television, that were perceived by Ministers in December 2004 leading up to the granting of the UHF renewal rights for only 10 years, have now been clearly resolved as part of the Government's May/June 2006 Digital TV decisions as evidenced by the decision to extend the DTT multiplex licences for "*simulcasting*" from 2015 to 2035.

Cabinet has created a new precedent for renewal of UHF spectrum beyond 2020. There is no sustainable argument for refusing to grant SKY an opportunity now (not later), as for CanWest, TVNZ and BCL, of an extension of its renewal rights to 2035. To do so would be discriminatory. Without an extension of its renewal rights, it is SKY (and NZRB) that would continue to be left in the seriously anomalous position relative to all other spectrum holders that was created in 2004. Now the "technological" issues have been resolved, the anomaly should not be perpetuated. We note also that the Government has already determined very recently that AM/FM sound broadcasters should have 20 year renewal rights.

The price for renewal of SKY's UHF-TV licences should be no less favourable than the price payable by TVNZ and CanWest for the renewable multiplex sets for the period post 2015 to 2035.

It is appreciated that further renewals (2020 – 2035) would be on the basis of digitally converted licences.

10. “MUSH” issues (museums, universities, schools and hospitals)

10.a. Would the costs to some institutions be such that they would be likely to seek government support?

This should be decided on a case by case by basis taking into account the Governments priorities for the relevant public expenditure votes, e.g Health, Education & Welfare.

10 b. What is the best means of ensuring appropriate information is conveyed (to MUSH institutions), and in a timely manner?

SKY supports the development and implantation of a timely public information strategy which could be developed and monitored by the industry steering committee.

11. Dealing with non-adopters

11. Most of the factors considered important in maximising take-up of DTV have been taken into account by government decisions and the coordinated approach developed within the broadcasting sector. Are there further actions that should be considered by these parties to encourage take-up? If so, at what point in the transition should they be initiated?

SKY supports the allocation of funds to subsidise digital installs for the elderly and the disabled. This should apply to all forms of digital television including pay television services. In addition as per Question 10.b the development of a timely public information strategy will be a critical factor in the digital take up rate.

12. Retailers and installers

12. Is this aspect of the transition to ASO well-prepared and coordinated? If not, what more needs to be done?

SKY agrees on the importance of careful planning to ensure the availability of supplies of the consumer premises equipment for digital television whether ahead of any ASO or otherwise. This will however be a matter for the industry sector as a whole including individual broadcasters or groups intending to package equipment tailored for their own services. SKY already has substantial experience in this latter respect.

SKY also agrees that retailers and installers need to be well-briefed to be able to provide accurate information and advice to consumers.

There are also potential concerns over the accuracy of information issued by broadcasters or broadcasting groups promoting the use of their own equipment and systems.

13. Public information

13. Is such a carefully targeted and modest information campaign warranted? If so, what is the optimal form and timing? How might it best be delivered (e.g. through any switch-over steering group)?

SKY supports a carefully targeted information campaign which could be administered by the steering committee. The timing and nature of information releases could be established by the steering committee and would need to take account of key milestones and the need to maintain constant momentum towards ASO.