

## **FREEVIEW CODE OF PRACTICE**

### **SERVICE PROVIDERS**

(Channel Partners)

## **Ensuring equitable access for existing broadcasters and new entrants on open, fair, transparent and non-discriminatory terms.**

### INTRODUCTION

Freeview is a television, radio, and data broadcast platform, and has published this code of practice to describe its procedures in relation to current and potential Service Providers. In this context, 'Service Provider' includes all content providers (broadcasters) who wish to include their broadcast service in the Freeview service offering.

Freeview Limited is a joint-venture company whose shareholders include Television New Zealand, TV Works, Maori Television, and Radio New Zealand. It is structured to encourage FTA broadcaster participation and competition, and will provide equitable access for existing and new broadcasters on open, fair, and non-discriminatory terms.

Freeview aggregates television, radio, and data services on two distribution platforms – DTH (Direct to Home) digital satellite and DTT (digital terrestrial television) under a single brand and Electronic Programme Guide (EPG). Freeview does not provide transmission services, which Service Providers need to contract separately. Transmission capacity on both the satellite and terrestrial networks is limited.

The processes described in this code of practice are:

1. Service Provider criteria
2. Procedure for Service Provider entry
3. Service Fee ratecard
4. EPG allocation
5. Service Provider exit
6. Dispute resolution
7. Conflicts of Interest

Freeview welcomes interest from existing Broadcasters and new entrants to free-to-air broadcasting in New Zealand.

## 1. SERVICE PROVIDER CRITERIA

To be eligible to be considered for inclusion on the Freeview platform each Service Provider must meet the following criteria:

	<b>Criteria</b>	<b>Rationale</b>
a)	The Service Provider must make their own arrangements for the provision of content for their intended service.	Freeview is not a broadcaster or content provider.
b)	The Service Provider must make their own arrangements for the transmission of their service.	Freeview is not a provider of transmission services and Service Providers will need to separately contract transmission services <sup>1</sup> .
c)	The proposed service must be available on a free-to-air basis.	Freeview is exclusively a free-to-air platform.
d)	The proposed service must be available to be received via a certified Freeview set-top box (or receiver) and include the necessary Freeview EPG data <sup>2</sup> .	A Freeview certified set-top box is critical to the functionality of the Freeview EPG.
e)	The proposed service must be either a digital terrestrial or digital satellite service or both. Preference will be given to Service Providers proposing a service on both platforms.	Freeview is a hybrid (satellite and terrestrial) platform. There will be separate Freeview EPG's, and mostly separate set-top boxes, for the terrestrial and satellite platforms. Service Providers may opt for either or both.
f)	The Service Provider must provide evidence of its commercial viability, including any relevant funding arrangements.	It is important that the Service Provider is sustainable to avoid viewer confusion arising from frequent changes to the service offering.
g)	The Service Provider must provide evidence of the technical reliability of the service by demonstrating that the service will be operated in an appropriate operational facility and with appropriate technology.	It is important that the service is technically sound to avoid the viewer perception that the service offering from Freeview is substandard.

<sup>1</sup> Transmission services, including multiplexing, satellite carriage, and terrestrial transmission can be obtained from a transmission provider.

<sup>2</sup> The service may also be available to other television platforms. It does not have to be Freeview exclusive.

	<b>Criteria</b>	<b>Rationale</b>
h)	<p>The Service Provider must be prepared to enter into Freeview's standard Service Provider agreement and agree to the terms and conditions contained in that agreement, including:</p> <ul style="list-style-type: none"> <li>i. Payment of service fees,</li> <li>ii. Provision of information for the EPG in an acceptable form,</li> <li>iii. Provision of air-time for Freeview promotions,</li> <li>iv. Undertaking to ensure adherence to the Broadcasting Standards Authority and the Advertising Standards Authority guidelines as they apply to free-to-air broadcasters.</li> </ul>	<p>A copy of the agreement will be provided to Service Providers at their initial meeting with Freeview.</p> <p>Service fees are a contribution to the marketing and overhead costs of Freeview Limited to fairly apportion costs between all Service Providers. (see service fee ratecard below).</p>
i)	<p>The Service Provider must provide sufficient details of the intended service, to enable Freeview to assess its benefits to the platform with the objective of developing a diverse and meaningful free-to-air digital broadcasting offering for the New Zealand public.</p>	<p>Freeview's success will be measured by the number of New Zealand households' that access free-to-air digital services through it. Freeview therefore needs to maximise the consumer appeal of the total range of services provided to the public.</p> <p>The ability of Freeview to add services is constrained by the transmission capacity on both satellite and terrestrial platforms. (This will not be a reason for declining an application but may result in a delay in joining, awaiting additional or released capacity).</p>

## 2. PROCEDURE FOR SERVICE PROVIDER PARTICIPATION

The following procedure is designed to ensure transparency of process to all Service Providers:

*Note: The initial allocation of EPG positions and inclusion of Services from shareholding Service Providers that are required by the terms of their Digital Licenses have already been made. All subsequent service proposals will follow the procedure as outlined below.*

- a. Freeview will, from time to time, publish on its website, and circulate amongst current and prospective broadcasters, a "request for service proposals". This request will allow for at least a four week response time. Such an invitation by Freeview will be in respect of additional allocations of EPG positions and will in no way effect previous allocations (i.e. "first-in-first-served" status will be preserved and existing Service Providers will not need to re-apply).
- b. A potential Service Provider should as soon as possible notify Freeview in writing of its interest in participating in the platform.
- c. Freeview will then arrange a preliminary and informal meeting with each interested Service Provider to discuss the type of service planned, its funding arrangements, and its willingness to work with the Freeview framework. At this meeting Freeview will provide the potential Service Provider with the standard Freeview Service Provider agreement. If the parties wish to proceed from this point they will do so under a mutual confidentiality agreement.
- d. From this stage it will be necessary for the potential Service Provider (if it has not already done so) to enter into discussions with a transmission provider. An agreement to transmit a service does not automatically result in or imply Service Provider status on Freeview, and agreement to provide services to Freeview does not guarantee a transmission agreement with a transmission provider. In some cases provisional agreements may be necessary to align resolution and timing of Freeview agreements and those of the transmission provider.
- e. Once the Service Provider has made provisional arrangements with a transmission provider it should provide a detailed service proposal to Freeview. This should be provided within six weeks of the signing of the mutual confidentiality agreement.
- f. The proposal shall include but is not limited to:
  - i) The nature of the service proposed, including:
    - The type of proposed service
    - The programming genre(s)
    - Intended days/hours of broadcast
    - Whether satellite (DTH) or terrestrial (DTT) or both are proposed to be used for distribution, and advice on the status of negotiations towards finalising a transmission agreement. Preference will be given to Service Providers proposing a service on both platforms.
    - Evidence of commercial viability of the potential Service Provider.
  - ii) The EPG category that the Service Provider believes the service fits. Noting that EPG positions 1-19 are unlikely to be allocated to a service which is not proposed for both platforms (see section 4 below).

- iii) A commitment to work towards the eventual signing of a Service Provider agreement;
- g. On receipt of the detailed service proposals, Freeview will assess the proposals, taking into account the following:
- i) The contribution the proposed service is likely to make to the overall Freeview service offering,
  - ii) The current mix of genre provided by the current services and where the proposed service would sit amongst all services<sup>3</sup>.
  - iii) The affect the proposed service might have in encouraging households to take Freeview,
  - iv) Whether the service is proposed on both DTH and DTT, and
  - v) Whether the proposed service provides the best utilisation of the limited transmission capacity.

Within six weeks of receipt of the detailed service proposals Freeview will advise the prospective Service Provider, whether or not their proposal has been accepted. If the proposal is rejected, Freeview will advise the prospective Service Provider of the reasons for the rejection.<sup>4</sup>

- h. If the proposal is accepted, it will be subject to:
- i) Freeview (or its agent) accepting the evidence of commercial viability as provided by the potential Service Provider (including bank guarantees if requested), and
  - ii) The Service Provider confirming its arrangements for transmission, and
  - iii) The Service Provider entering into a 'conditional' Services Provider agreement, which is conditional upon the launch of the service within three months for existing broadcast services or six months for new services.<sup>5</sup>
- i. If the proposal is successful an EPG position for the new service will be allocated by Freeview at its sole discretion.
- j. If the service is not launched within three months for existing broadcast services or six months for new services then the following procedure will be applied:
- i) If sought by another party (who is in a position to launch their service), the Service Provider will be given the opportunity to utilise the allocated EPG position within one month,
  - ii) If the service is not launched within the one month extension the EPG allocation will lapse,
  - iii) The Service Provider will then need to reapply for a new EPG position.

*This procedure is included to prevent Service Providers sitting on valuable EPG positions without launching a service.*

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<sup>3</sup> In assessing the genre mix amongst services any potential or actual competitive effects that a proposed new service might have on any existing services will not be a factor in the Freeview Board's assessment of proposals.

<sup>4</sup> Freeview may (at its discretion) invite an independent and appropriate qualified person to assist meetings of the Board in relation to the selection and rejection of Service proposals.

<sup>5</sup> The Service Provider agreement will remain 'conditional' until the service is launched.

- k. When the service is launched the Service Provider agreement will become unconditional.
- l. If the service is not launched within the three month (for existing broadcast services) or six month (for new services) 'conditional' period the Service Provider will be given the opportunity to present a revised launch timeframe to Freeview. If a revised timeframe is not presented or is not accepted by Freeview then the Service Provider Agreement will be terminated.

Freeview Shareholders, in reviewing applications, recognise that they may receive privileged access to the plans of other FTA channels seeking to launch in NZ. Prospective Service Providers can be assured that a "Chinese wall" will exist between members of the Board of Freeview and those shareholder personnel responsible for creation and programming for their channels.

### 3. SERVICE FEE RATECARD

The following ratecard is provided to ensure that potential Service Providers have clarity and transparency of the costs associated with being part of the Freeview service (fees are per annum and exclude GST).

Freeview (non-shareholder) Service Provider - Service Fee Tier structures				\$000's		
Tier	Description	Year:	Year One	Year Two	Year Three	
<b>Television Service - Fee per Service Provider not for each Service.</b>						
One	Near-national Broadcaster with gross revenues of >\$2m p.a.		100	150	200	
Two	Near-national Broadcaster with gross revenues of <\$2m p.a.		50	85	125	
Three	New entrant (digital only) Broadcaster with gross revenues of <\$2m p.a. Single region Broadcaster with gross revenues of >\$2m p.a. (price / region)		25	50	75	
Four	Single region Broadcaster with gross revenues of <\$2m p.a. (price / region)		10	15	25	
<b>Radio Service - Fee per Service Provider not for each Service.</b>						
One	Near-national analogue Broadcaster		10	20	30	
Two	New entrant (digital only) broadcaster		5	10	15	
<b>Data Service - Fee per Service Provider not for each Service.</b>						
One	All		5	10	25	

**Notes:**

- 1 Freeview reserves the right to review this ratecard at its sole discretion.
- 2 A new entrant is defined as an organisation (with a broadcast service) that is not currently, or has not been, broadcasting on either analogue or digital platforms of any kind in the last two years.
- 3 The Gross Revenue calculation will be based on actual revenue of the prior year for existing broadcasters, and reviewed at the end of each year for new entrants.

All service fees contribute directly to the operating costs of Freeview Limited - these include marketing, contact centre, labour, EPG management, and operational overheads.

Shareholding service providers, i.e. TVNZ, TVWorks, Maori Television, and Radio New Zealand, are contributing more in service fees than the above rates. No non-shareholding service provider will pay more in service fees than the lowest paying shareholding Service Provider (within their category – being either a television, radio, or data service provider). All fees will be pro-rated down if the contributions of non-shareholding service providers results in this situation occurring.

Commensurate with Service Fee contributions Service Providers receive marketing exposure for their service by being part of Freeview. This includes inclusion in the Freeview EPG, in Freeview's own marketing (above and below the line, at retail point of sale, and online) and the marketing activity of retailers of digital reception products.

There will be a periodic review of fees to eventually equalise the fees paid by all commercial service providers on the platform.

#### 4. EPG ALLOCATION

EPG number allocation is an important process that Freeview will manage with both the viewer and Service Providers in mind. The following category system has been designed to make navigation between services as easy as possible for viewers and thereby ensuring the viewer knows where each Service Providers service can be found. Freeview will allocate EPG positions at its sole discretion.

Television Service Providers paying service fees in tier three or four are unlikely to be allocated EPG positions 1-19.

*Again please note that the initial allocation of EPG positions and inclusion of Services from shareholding Service Providers that are required by the terms of their Digital Licenses have already been made. All subsequent service proposals will follow the procedure as outlined below.*

Freeview will allocate EPG numbers within the following numerical and defined categories, while attempting to maintain logical groupings of like services e.g. Regional services will be grouped:

##### A) 1-19

- i) Existing near-national analogue television services, and/or
- ii) New digital-only services of mass market appeal

*Broadcasting on both DTH and DTT, at least in primetime (5.30 to 11.00pm), and seven days per week, paying service fees in tier one or two.*

##### B) 20-29

- i) Spill-over from A) above, and/or
- ii) Niche market or genre specific television services
- iii) Itinerant (Event based) services which are broadcast for a fixed period

##### C) 30-49

- i) Spill-over from B) above, and/or
- ii) Region specific (local) television services

##### D) 50-69

- i) Mass market radio entertainment or factual services

##### E) 70-79

- i) Spill-over from D) above, and/or
  - ii) Niche market or genre specific radio services
- F) 80-99
- i) Data Services (including interactive services) for which video and/or audio is secondary to the primary nature of the service.
  - ii) Note: Data Services may also be available from a coloured or dedicated remote control button.

If an EPG number has been allocated to a service that is only on one platform e.g. DTH that EPG number will not be allocated on the other Freeview platform.

As at the publication date of this code the following EPG numbers have been allocated:

- 0. Freeview
- 1. TVOne
- 2. TV2
- 3. TV3
- 4. C4
- 5. Maori Television
- 6. TVNZ6
- 7. TVNZ7
- 8. TV3 Plus 1
- 9. TVWorks (new service 2) – reserved
- 10. Prime
  
- 20. TVNZ Sport Extra
- 21. Triangle Stratos
- 22. Parliament TV
- 23. CUE TV
- 24. Te Reo
  
- 28. CTV8
  
- 30. TV Central
  
- 50. Radio New Zealand National
- 51. Radio New Zealand Concert
  
- 70. George FM
- 71. Base FM

Freeview reserves the right at some future point to re-number and reallocate services within the EPG should it determine that this is either operationally necessary or preferable to provide clearer sign posting for Freeview users. If this is considered Freeview will provide all service providers a minimum of three months notice and will openly consult with all Service Providers during the process.

## 5. SERVICE PROVIDER EXIT

The Service Provider agreement entered into between Freeview and the Service Provider will set out the process and requirements whereby a service can be removed from the Freeview platform. The standard agreement sets out the following procedure:

- a. Freeview may terminate this Agreement without notice if any steps are taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator or any other like person to the whole or any part of the Service Provider's assets or business.
- b. The Service Provider must give not less than sixty (60) days' written notice of its intention to withdraw its service(s) from the Freeview offering; or
- c. Freeview may determine that the Service Provider should cease to be a provider of a service. Freeview's reason for serving notice may include the following:
  - i. The Service Provider is unable to pay the service fees;
  - ii. The Service Provider fails to meet the required air-time (Freeview promotions) commitment under this service agreement;
  - iii. Programmes included in its services (on repeated occasion) fail to meet the Broadcasting Standards Authority codes of practice and any advertisement the Advertising Standards Authority's codes and it does not comply with all requirements and rulings of those Authorities; and

To provide the Service Provider a fair and reasonable time to rectify any of the above issues Freeview will, write to the Service Provider outlining the reason why the Service Provider is not meeting its obligations, and will allow a period of three months before final written notice is given. If the issue is not resolved final written notice of not less than sixty days will be given.

- d. Not more than sixty days after the giving of the notice the parties will meet to discuss whether termination is still the likely outcome. If so, the Service Provider will be obligated to continue to pay the service fees due under the agreement for the following six months and may, if agreed between the Service Provider and Freeview, continue to have its service carried by Freeview.
- e. The termination date of the Agreement will then be the end of the six month period following the initial sixty days notice period.
- f. Notwithstanding the conditions in a) to e) above, Freeview reserves the right to terminate this agreement if the actions of the Service Provider materially affects the public perception or business activities of Freeview.

## 6. DISPUTE RESOLUTION

If a Service Provider has a dispute with Freeview in relation to the above processes such dispute can at the option of either the prospective Service Provider or Freeview be resolved through the dispute resolution process, as follows:

- a. Negotiate: the Parties will use their best endeavours to resolve the dispute by negotiation in good faith. The Parties will attend at least one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief);
- b. Mediation: if the dispute cannot be resolved by negotiation within 20 Business Days of the dispute arising, the Parties will refer the dispute to mediation by a mediator jointly appointed by them and failing agreement, a mediator appointed by the chairman for the time being of the NZ Chapter of Lawyers Engaged in Alternative Dispute Resolution ("LEADR"); and
- c. Arbitration: if the dispute is not resolved within 20 Business Days of its reference to mediation, then the Parties will refer the dispute to arbitration by a single arbitrator agreed on by all the Parties to the dispute, or failing agreement, the appointment will be made by the President for the time being of the New Zealand Law Society. The dispute referred to arbitration will be resolved according to the rules and principles of arbitration established by LEADR as amended from time to time. Arbitration costs will be apportioned between the Parties in a manner determined by the arbitrator.

## 7. CONFLICT OF INTEREST

If a Freeview Board member (acting for his/her Shareholding Company) has an interest in any proposal received by the Board for inclusion on the Freeview platform, then that Board member will:

- a. Immediately disclose the interest and the nature of that interest, to the Board; and
- b. After such disclosure, refrain from voting on that particular proposal.

For the avoidance of doubt, a Board member will be deemed to be conflicted in circumstances where they have an interest in a proposal made to the Freeview Board via a relationship they have with the applicant which is outside of their role as an employee of a shareholding company.

## AGREEMENT TO TAKE PRIORITY

This Code of Practice sets out certain criteria and procedures and other terms and conditions that will apply to the relationship between the intended Service Provider and Freeview. Should the Service Provider's proposal be accepted and a Service Provider Agreement entered into between the parties, then the provisions of that agreement will take priority if there is any conflict with the provisions of this Code of Practice.

Freeview shall not be liable in any way to the Service Provider for acting in accordance with the terms of this Code of Practice. It also reserves the right, at any time, to review and amend the Code of Practice at its sole discretion.

Last updated: 16<sup>th</sup> March 2009.

[ENDS]