



BROADCAST AUSTRALIA

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The Hon Malcolm Turnbull MP
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Attention: Nerida O'Loughlin, Department of Communications

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Dear Minister

Re: Deregulation: Initiatives for the Communications Sector

Thank you for the opportunity to provide direct input concerning this important initiative. As requested in your letter this response is in three parts. The first is in relation to short-term issues: the second is in relation to "longer term regulatory changes"; and finally some brief comments on the cost of regulation. More broadly, the views we express in this submission focus on communications policy and regulatory issues most relevant to Broadcast Australia's business areas and expertise.

In relation to longer term changes, our initial views in this response have been informed in particular by Attachment 2 to your letter (Deregulation in the Communications Portfolio Framing Paper, November 2013). We note that the paper says "rapid changes in the communications sector also make it timely to consider whether the current communications regulatory framework remains appropriate for the modern communications environment." Hence our comments relate to the overall 'framework' as well as specific deregulatory or red tape matters.

Short-Term Items

We would like to suggest two areas for consideration. The first is a specific suggestion for the streamlining of Section 18 of the *National Transmission Network Sale Act* (NTN Sale Act) that requires Ministerial approval for the disposal of network assets. In relation to land that is redundant and not connected with the delivery of transmission services to nominated customers, this provision reduces our commercial flexibility to deal with assets in which there is no particular public interest, as well as wasting government time and resources.

The second relates to the so called 6th national digital TV multiplex (referred to in the rest of this paper as the 6th MUX) and extension of digital radio to more regional areas of Australia (referred to in the rest of this paper as digital audio broadcasting, or DAB, extension).

This is not so much the removal of regulation but rather clarification and announcement of policy settings and planning work in order for services to be delivered to the public via this unused spectrum. Currently, there is no way forward for the 6th MUX without a policy framework to enable service providers to develop appropriate business cases and for the Department and ACMA to undertake their roles. In respect of the 6th MUX, a 7MHz frequency has been set aside but, apart from the requirement that the frequency cannot be used for a commercial free-to-air television (FTA) service, no other policy settings have been announced.

In the DAB extension context, two 7MHz frequencies have been set aside but the actual frequency planning to allow and organise the extension of DAB to more regional centres has yet to be completed by ACMA.

The development of such policy settings and the regulatory framework for these extensions to current FTA broadcasting services would provide the general public with access to greater choice as well as better quality services. These services would be delivered without ongoing direct or indirect charges to the consumer. As such, we see them as being overwhelmingly in the public interest. At the same time, the use of this unused spectrum would enable the broadcast and media industry to grow and evolve.

We acknowledge that the 6th MUX and extension of DAB do not easily fit into the framework that was provided by Attachment 1. Nevertheless for completeness we have used this framework to précis these two initiatives as well as the proposed streamlining of the NTN Sale Act (see Appendix 1 to this letter).

Longer Term Issues

Spectrum Usage

Spectrum is a finite resource of immense value to the economy and yet today it is not used efficiently due to a web of different and, in some case outdated, regulatory administrative frameworks. Therefore we support measures to make the use and management of this finite resource more productive, less complex and more flexible. This includes simplification of the regulation as well as reducing unnecessary differences between the management of broadcasting, radio-communications and telecommunications spectrum. The current restack of digital television services is a good example of the benefits of a streamlined approach to spectrum management - this has assisted in maximising revenues raised, saved money for the broadcasters, and freed up spectrum for the mobile operators without diminishing the available digital broadcast services.

Alongside the different regulatory frameworks there are different models for the delivery of spectrum management services. An example would be service or channel planning which for Broadcast has been performed in-house by the ACMA but via a band planning approach for other spectrum uses. Under the band planning approach (employed for uses such as Private Mobile Radio and microwave links), the ACMA licences broad blocks of spectrum and then authorises (third party) spectrum planners to undertake the technical analysis to determine appropriate frequencies which are then recorded in the ACMA database.

With the likely need to undertake broadcast channel planning again in the medium term to facilitate a second Digital Dividend and possibly the expansion of DAB to regional areas, it is an opportune time to consider why broadcast channel planning should be treated differently. As there is a DAB sub-band already allocated, the ACMA could tender the technical planning for this work based on a set of defined Government policy objectives. Similarly, once the framework (or high level policy objectives) for a future second Digital Dividend is established, the ACMA could similarly tender the technical planning work required to consolidate the broadcast spectrum.

Free-to-Air terrestrial broadcasting and the public interest

It makes economic sense to use the finite spectrum resource as efficiently as possible within the policy boundaries set by government. It is also in the public interest for as many and varied services as possible to be provided on the terrestrially radiated FTA broadcasting platform provided safeguards maintain key public benefits including access to services, participation in society, diversity of voices, Australian identity, value and safeguards and the national interest.

Not only are such services 'free' (i.e. not subject to any ongoing direct or indirect consumption charges) but the return is maximized on the huge existing government, industry and consumer investment in receiving equipment and systems.

In Broadcast Australia's submissions to the Convergence Review Committee (CRC) at the end of 2011, we estimated this private domestic investment as in the order of \$30 billion involving over 90 million devices. Within that, we estimated that by the end of 2013 some \$23 billion would have been spent on domestic reception equipment just to make the move from analog to digital terrestrial TV broadcasting.

We believe this private domestic investment, the fact that the services delivered by the terrestrial radiated broadcasting delivery platform are free, and that FTA services dominate Australians' consumption of professionally produced audio visual content means that this platform should be the focal point of government consideration of the overall regulatory framework.

We believe any consideration of changes to the regulatory frameworks should not have the effect of reducing the number, quality and variety of FTA terrestrially radiated radio and television services to the Australian public. Rather it should be directed at maximising the number and quality of these services.

What is good for the terrestrial radiated delivery platform is good for the general public

Because of the points outlined above we believe that the Government should closely consider the notion that what is good for the terrestrial radiated delivery platform is good for the general public. Accordingly, we believe the government should focus on how technology changes can bring more, varied and better quality content to Australian homes as soon as possible.

Broadcasting Services and the Internet

Against the above overall objectives, we see significant issues needing to be resolved which centre on the Determination made in September 2000 by the then Minister, declaring radio and television programs transmitted via the internet as not being "broadcasting services" for the purposes of the *Broadcasting Services Act (BSA)*.

The development of the middleware known as HbbTV and its deployment in 2014 in digital terrestrial television receivers means that viewers with HbbTV-enabled TV sets will be able to move seamlessly between FTA television broadcast channels and linear channels/on- demand content delivered online.

No doubt such services and the seamless navigation between broadcast and so called over the top (OTT) content via the same electronic program guide (EPG) and remote control will be promoted by the FTA broadcasters providing them. It goes almost without saying that the completely different regulatory regime that will apply to the broadcast channels vis-a-vis any OTT channels represents an anomaly.

As outlined in our submissions to the CRC in 2011 and 2012, one possible way to approach this anomaly would be to rescind the September 2000 Determination and include OTT linear channels and on-demand services within the definition of "broadcasting services" within the BSA. As we understand it, this is roughly the approach adopted in the United Kingdom and Canada.

Such an approach would allow new OTT, on-demand and linear services to be brought into the purview of broadcasting regulation, but that regulation could be extremely light touch depending on how the Government and the regulator define the new classes of broadcasting services within the BSA that OTT means could deliver.

Measuring and Quantifying the Cost of Regulation

There is one point we would like to make about Attachment 3 which focuses on direct costs of red tape but does not seek to quantify the indirect or opportunity costs. An example of this would be the NTN Sale Act amendments that we are requesting. The administrative, substantive compliance and delay costs are not huge, however, the real cost is that we have valuable assets on our balance sheet that are not required in the provision of broadcast transmission services.

We would be happy to discuss with you any issues raised in this submission.

Yours sincerely



Jim Hassell
Chief Executive Officer

Appendix 1

NTN Sale Act Amendment

Description of relevant regulation	NTN Sale Act (Section 18)
Policy underlying regulation	Ministerial consent is required for transfer of 'original assets' and 'replacement assets.'
Reasons regulation is no longer needed / could be amended	Nominated customers have contractual arrangements in place that adequately protect the provision of the nominated services
Proposal to remove or amend	Amend Section 18 to remove the requirement for Ministerial consent for the disposal of redundant assets
What impact removal / amendment will have on industry	Enable BAI to make commercial decisions on the use of redundant assets, save administrative time and resources for government

6th Digital TV Mux

<p>Description of relevant regulation</p>	<p>Lack of policy and regulatory framework enabling the 6th TV Mux to be deployed including timescales, direction towards usage, award mechanism, auction mechanism, coverage and rollout timing requirements.</p>
<p>Policy underlying regulation</p>	<p>Spectrum has been set aside and only some policy settings have been established (e.g. the 7MHz frequency cannot be used for FTA commercial TV services).</p>
<p>Reasons regulation is no longer needed / could be amended</p>	<p>The lack of policy and regulatory settings mean that valuable spectrum cannot be used for its highest value purpose and the general public is denied the opportunity to watch more, better and varied FTA TV channels on existing reception equipment.</p>
<p>Proposal to remove or amend</p>	<p>Establish the means to allow the Government and regulator to determine the optimum policy and regulatory settings.</p>
<p>What impact removal / amendment will have on industry</p>	<p>Allow the existing and a potentially expanded FTA service provider industry to serve its public better, enriching the viewing experience at the same time as enabling the industry to grow and evolve.</p>
<p>What impact removal / amendment will have on consumers / individuals</p>	<p>Provide the public with greater choice of services free from any new access or consumption charges.</p>

Digital Audio Broadcasting Extension

Description of relevant regulation	Lack of policy, planning and regulatory framework for DAB extension to be implemented.
Policy underlying regulation	Spectrum has been set aside but currently the required spectrum planning has not been done.
Reasons regulation is no longer needed / could be amended	Pending issues associated with funding Commercial, Community and National radio service providers to extend their DAB services, the required spectrum planning could be requested of ACMA.
Proposal to remove or amend	Provide ACMA with the required direction to enable detailed DAB extension spectrum planning to proceed.
What impact removal / amendment will have on industry	Enable the industry to provide as many and varied FTA DAB services as possible, enriching the listening experience at the same time as enabling the industry to grow and evolve.