

15 April 2002

Mr Paul Belin
Associate Commissioner
Radiocommunications Inquiry
Productivity Commission
Locked Bag 2
Collins Street East
MELBOURNE VIC 8003

Dear Mr Belin

ABA submission on draft Radiocommunications report

This letter sets out the ABA's submission on the Productivity Commission's draft report into Radiocommunications.

The ABA welcomes the opportunity to respond to the Commission's draft report both in writing and in by way of appearance at the Commission's public hearings.

If you would like any additional information from the ABA either before or after the hearing, please contact Gavin Oakes on 02-9334 7774, or by email at gavin.oakes@aba.gov.au.

The ABA's submission

The following comments relate to the relevant parts of chapter 10 of the draft Radiocommunications report. Page references below are to pages in the draft report.

Page 228: Many of the spectrum planning and licensing problems discussed [in the draft Report] result from the ABA attempting to use technical planning processes to achieve social and cultural objectives. The Commission considers that such objectives are better pursued independently by an organisation separate from the organisation that allocates and manages spectrum. The ABA is well suited to managing those aspects of broadcasting licences that relate to regulating content, enforcing codes of practice, controlling ownership and deciding the number of national and community broadcasting licences to be made available.

The ABA has used its planning and licensing powers to promote the objects of the Broadcasting Services Act. These objects differ from the objectives in section 3 of the Radiocommunications Act in that they show a greater concern with the content of services planned.

Examples of Broadcasting Services Act objects that are concerned with content, but that have implications for the way services are planned, include:

1. promotion of the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information (object 3(a)).
2. encouragement of providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance (Object 3(f)).

Note that several other objectives are considered to be of particular relevance to planning, including (b), (c) and (f), also the ABA is required to promote the economic and efficient use of spectrum¹.

Planning decisions have taken account of these objects in various ways. Examples include:

- A high level of customisation of planning, especially in regional areas or for community services, including flexibility as to numbers of services, siting of transmission facilities and market to be served and taking account of the nature of the community interest and the willingness of local service providers to provide services.
- Preparedness to extend coverage of existing services when justified by community identification with that market or lack of entrepreneurial interest in providing new services;
- Where appropriate, ensuring new, competing commercial services match the wide coverage of existing services, protecting outlying viewers or listeners from service degradation to protect the most lucrative parts of markets.
- Mandating diversity by planning additional open narrowcasting, rather than commercial broadcasting, services to provide 'niche' commercial formats, eg. racing radio, foreign language services.
- Similar objectives have guided broadcasting policy making in Australia over many years and under a succession of Federal Governments.

The planning and licensing powers of the Broadcasting Services Act are key tools by which the ABA is able to ensure that these objectives are promoted, whether used alone or in combination with other ABA powers. Examples of where the ABA's planning powers have been used in combination with other ABA powers to promote objects of the Broadcasting Services Act include:

- Licence area planning and s.67 temporary approvals to breach the control rules: the ABA has developed a policy that AM commercial radio licences should not be converted to (more valuable) FM frequencies by an administrative change of technical specifications (ie. through use of the ABA's spectrum planning power), but rather that additional FM frequencies for commercial purposes should be

¹ Source: 'The ABA's General Approach to Analog Planing', December 1999.

auctioned to the highest bidder. Accordingly, the ABA has used its discretion in s.67 to permit temporary breaches of the control rules so as to provide competitive neutrality for any incumbent AM service wishing to convert to FM.

- Planning –v- licensing solutions: Radio for the Print Handicapped is a special form of community radio in which the ‘community of interest’ is more geographically dispersed than for most other types of community radio. The ABA has developed policy approaches that permit extension of RPH radio by using its planning power to expand the licence area/coverage of existing RPH community services rather than through the more cumbersome mechanism of area by area licence allocation.

If the ACA assumes responsibility for the planning function, consideration is needed of how those objectives will be promoted in future.

The ABA accepts that it may be desirable in the longer term to merge the spectrum management functions of the ABA and the ACA, particularly having regard to expected improvements in spectrum productivity arising from digitisation. To jettison these objectives without consideration of how they would be realised in a ‘technically driven’ planning scheme would be premature and would risk losing them by default. At page 227 and 228, the Productivity Commission appears to reject this argument in favour of a complete exclusion from spectrum planning of traditional broadcasting policy concerns about access to types of content. In this context, merger of the regulators is raised and dismissed. The ABA notes that notwithstanding the problems posed for a merged agency by a multiplicity of goals, comparable jurisdictions have either merged these areas of regulation (the US and Canada) or are considering doing so (the UK). If the ABA and its relationship to other regulators is not to be reviewed more comprehensively prior to the loss of a key means for promoting the objects of its legislation, the ABA would recommend careful consideration of the terms and objectives of any new planning regime for spectrum used by broadcasting, especially transmission of free-to-air broadcasting services. Alternatively, the ABA’s powers could be increased so as to ensure that social objectives are not lost by default.

Page 223: ‘In its report on the broadcasting industry,... the Commission argued that fewer analogue services are available in Australia than otherwise might have been the case.’

While this may have been a valid criticism of the planning regime up until 1992, it is no longer so. The licence area planning process has been thorough in planning to meet demand and exhaustive where demand has exceeded supply. Evidence for this can be found in the difficulties experienced by engineering planning consultants working on ‘black spot’ solutions for television reception in finding additional capacity otherwise than in regional areas and for lower power infill services.

ABA planning is efficient and in areas of high demand the spectrum is planned to saturation. The overall number of services reflects tradeoffs between the number and coverage area of services and the costs to service providers – any increase in overall number will typically involve either decreased coverage or increased cost to some providers/consumers.

In the case of television, the number of services has been limited by statutory restrictions on content, not ABA planning. The ABA has planned capacity for two or more additional

digital television channels in all markets to date. Increasing the number of additional channels above two is technically achievable but would mean higher costs to existing service providers and viewers. The impediment is the lack of demand that would justify such a tradeoff, not inefficiency or lack of zeal on the part of the planner.

The ABA has previously argued to the Commission that radio services have been planned to spectrum saturation in metropolitan and other areas where demand to provide new services exceeds the supply of channels.

It is never-the-less possible to make more analog services available in these areas, but at a cost. The ABA could, for example, change the technical criteria used to plan spectrum for broadcasting services within an area by reducing the level of interference protection for services in an area. The ABA is in fact proposing to commence a review of the level of interference protection for radio later this year and this could potentially result in more spectrum available for use in areas. However, the cost of more channels may be a reduction in technical quality of services (because of the likelihood of greater interference to current and new services) and a reduction in signal availability (that is, coverage provided by existing services, especially commercial and national broadcasting services).

Another way that spectrum availability might potentially be increased is through greater co-location of services in an area. Put crudely, this is because separately located FM transmitters in an area usually require wider channel spacing than co-located transmitters so as to avoid interference. There are clearly technical efficiency gains in co-locating and the ABA is empowered to require all broadcasters in an area to co-locate. However, there are potentially significant disadvantages to some broadcasters, particularly community broadcasters, in taking this approach. Particularly in regional areas, access to alternative sites has been crucial to the start-up of new broadcasting services, by lowering market entry costs (eg. by allowing alternatives to incumbent site operators or, particularly in the case of community services, by permitting operation at lower power). Lower entry costs have increased the likelihood that Australians living in regional and remote areas will enjoy access to the type and quality of services available in the larger metropolitan centres. The price of increasing productivity while protecting the diversity of services in markets may prove to be some form of subsidy to these operators.

Page 215: Broadcasting licences, most of which carry the entitlement to sufficient spectrum to provide 'adequate and comprehensive' services in a licence area, are used to regulate the number of broadcasters, their behaviour and the content of broadcasts.

The reference to planning for 'adequate and comprehensive' coverage refers to a former requirement of broadcasters under pre-1992 legislation. As the majority of analog services already existed before 1992, the statement is true to that extent. However, the current legislation sets out a different approach to the planning of broadcasting services, which the ABA has described in some detail in its earlier submissions to the Commission. When planning new services or improved coverage of existing services, the ABA first defines markets ('licence areas' or, for the nationals, coverage areas) based on technical and social criteria - most often these are existing licence areas or different areas that broadcasters or

aspirant broadcasters express interest in serving during the planning process. It then plans spectrum capacity in light of published technical planning assumptions about receiver capability, etc., that are aimed to maximise coverage within the market while minimising it outside of the market.

In the case of digital television conversion, the ABA is required by legislation to achieve the same coverage as the analog service.

Page 227: If licences providing access to spectrum (currently apparatus licences) were formally separated from licences to provide broadcasting services ('broadcasting licences'), then spectrum could be priced to reflect its value, and licences to use spectrum could be made transferable.

... spectrum could be priced to reflect its value ...

The ABA has no issue with the theoretical benefits of greater separation of content and spectrum access arrangements, nor with the principle of pricing to recover the value of spectrum. However, to realise those benefits, the Government would need to accept that broadcasters were free to trade away their spectrum.

Particularly in the case of television, more work would be needed to chart a politically feasible course away from the present, highly regulated and taxed, situation. Such a course would need to take account of a number of features of the *status quo*, including:

- The present licence fee tax on the gross earnings of commercial broadcasters, that is commonly justified by reference to the scarcity of broadcasting channels and the so-called '*quid pro quo*' by which the government restricts entry to the television broadcasting industry in return for the various special imposts on the television industry;
- The ongoing political attractiveness of measures that extend the coverage of commercial television beyond that which television broadcasters themselves are likely to provide. Recent examples include Government assistance with commercial television 'aggregation' in regional Australia, the approximately one quarter of a billion dollars the Government is outlaying to achieve regional equalisation of digital commercial television and the 'black spots' policy by which local community organisations are funded to install analog re-transmission facilities.

Any spectrum usage-based charge would presumably need to take account of the existence of, if not to replace, the current television licence fee regime. Also, care would be needed in the formulation of spectrum charges for regional licensees. To date these services have been heavily subsidised and, to an extent, sheltered from additional competition, in order to push coverage beyond what might otherwise have been commercially feasible. Any net increase in the total taxes paid by regional and remote

licensees and any reduction in fees paid by metropolitan services should be consistent with the current policy emphasis on maximising access to the three network services.

Any reduction in the quality of services (either in terms of coverage area or of content) would be an issue of social and political concern. The concern recently expressed by both viewers and the Government about the reduction of local television news services in remote and regional areas provides a good example of the strength of feeling generated by any reduction in services.

Yours sincerely

Giles Tanner
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