



SBS SUBMISSION TO
THE PRODUCTIVITY COMMISSION

Radiocommunications Draft Report (February 2002)

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1. Introduction

SBS is established under the *Special Broadcasting Service Act 1991*. The principal function of SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.

The fulfilment of SBS's Charter objectives is predicated on the use of radiofrequency spectrum for the delivery of broadcasting services in Australia. SBS operates extensively in the AM, FM, VHF and UHF broadcasting services bands. (Some support services such as microwave links also use radiocommunications spectrum but on a competitive basis.)

Radiofrequency spectrum is therefore fundamental to, as well as an integral resource for, SBS's business and the provision of SBS services. As a public broadcaster established by Parliament to provide services in the public interest, it is essential that the regulation of spectrum operates to facilitate the most cost effective and efficient way for SBS to deliver its services to "all Australians", as required by its Charter. This includes ensuring that sufficient spectrum is made available throughout Australia to enable SBS to meet its public service commitment. This requirement is currently met, in part, through the reservation of a certain quantum of broadcasting spectrum to meet SBS's future needs by a Ministerial reservation process under the *Broadcasting Services Act 1992* (BSA).

SBS welcomes the opportunity to comment on the Productivity Commission's Draft Report on Radiocommunications (the Report).

2. Summary

In October 2001, SBS made a submission to the Productivity Commission's public inquiry into the Review of the Radiocommunications Acts. In this earlier submission, we strongly supported the existing broadcasting arrangements for spectrum management.



SBS continues to support this view and calls for the current model to be maintained at least until such time as digital terrestrial conversion begins to free up spectrum availability.

In support of the above, SBS opposes the following draft recommendations set out in Chapter 10 of the Report, *Managing spectrum for non-commercial and broadcasting services*:

- that section 31(b) of the *Radiocommunications Act 1992* should be repealed, transferring responsibility for the broadcasting services bands of the spectrum to the Australian Communications Authority, to be managed under the provisions of the Act;
- that licences granting access to spectrum should be separated from content-related licences that grant permission to broadcast, and the spectrum access charges should reflect the opportunity cost of the spectrum used.

SBS believes that these recommendations are not soundly based and, if implemented, would result in a poorer and less efficient free to air broadcasting service.

Should the final report of the Productivity Commission recommend the transfer of broadcasting spectrum management to the Australian Communications Authority and/or the separation of broadcasting spectrum access from content related licensing, it is essential that the report consider the particular needs of the national broadcasters (SBS and ABC) and offer mechanisms to ensure that these broadcasters can continue to fulfil their public policy and Charter objectives under their separate Acts.

3. Broadcasting and the public interest

There is repeated criticism in the Report regarding the "special treatment" given to some spectrum users, including broadcasters. Elsewhere in the report, the Commission reiterates its argument expressed in the *Broadcasting Report* (PC, 2002) that "the social and cultural objectives of broadcasting should be pursued independently of the technical planning and licensing of the broadcasting services bands" (qtd. p227).



While SBS recognises that this approach is consistent with the Productivity Commission's Charter, the view of the Commission that social and cultural objectives should be independent of technical planning is at odds with the practicality of providing free to air broadcasting and, in particular, public broadcasting.

Australian broadcasters are entrusted with using the public airwaves to provide information, education and entertainment. Free to air broadcasters provide an important service for the benefit of the Australian public, regardless of socio-economic status. SBS' Charter requires it to serve the needs of some of the most disadvantaged groups in Australian society.

The Commission's approach fails to adequately take into account the public service role of the media. It also fails to address the national and cultural significance of public services, including public service broadcasting.

SBS disagrees with this approach and believes that public interest issues, including access and equity are being given insufficient weight in the current inquiry.

The cultural aspects and benefits of broadcasting are not necessarily in opposition to the economic aspects and benefits of the industry. As Goldsmith et al point out, it need not be the case that "the cultural dimensions of broadcasting are *always* to be counterposed against the commercial interests of the industry or the economic benefits of a more liberal policy approach" as implied by the *quid pro quo* approach to Australian broadcasting regulation.¹

The key point here is that broadcasting policy and the consideration of spectrum planning and allocation processes should not be considered independently of the Government's stated objectives in this field (i.e. the Government's social and cultural objectives for broadcasting). As an example of the Government's long-standing policy aims, the objects of the BSA relating to the Ministerial reservation process of spectrum represent a statement of cultural and social policy for broadcasting. (It is of note that the Ministerial reservation of capacity in the broadcasting services bands for national broadcasters is not referred to in the Report, a point discussed further in section 5 of this submission.)

¹ Ben Goldsmith, Julian Thomas, Tom O'Regan, and Stuart Cunningham, *The Future for Local Content? Options for Emerging Technologies*, Australian Broadcasting Authority, June 2001, 15.

4. SBS's Response to Chapter 10 of the Draft Report

4.1 Transfer of spectrum licensing management

SBS is opposed to the transfer of spectrum licensing management for free to air broadcasting from the Australian Broadcasting Authority (ABA) to the Australian Communications Authority (ACA), as recommended in the Report. We strongly disagree with the Report's contention that:

The first step to improve the management of the broadcasting services bands is to make the ACA responsible for planning spectrum for these bands (p226).

This recommendation appears to be based essentially on two principles:

1. that the spectrum would be managed more productively by the ACA; and
2. that separation of the licensing of spectrum and content for broadcasting would provide a more transparent and efficient outcome together with opportunities for the establishment of carriage operators.

SBS believes that the spectrum is already effectively managed by the ABA. However, this submission primarily addresses the second principle.

In SBS's view, the Report does not properly take into account the fundamental difference between the free to air commercial and national broadcasting industry and other forms of broadcasting such as cable, MMDS and satellite Pay TV and narrowcasting services. In particular, as with most countries in the world, the importance of directly linking the spectrum and content licences creates the viability and value of free to air broadcasting. A free to air broadcasting content licence has little value without access to broadcasting spectrum to carry that content.

On a number of occasions, the Report refers, in support of its findings, to broadcasting services delivered using different means from the conventional broadcasting services bands. The following examples demonstrate the limited relevance for free to air broadcasting of broadcasting that is not carried in the broadcasting bands.



1. Pay TV is delivered by cable, MMDS and satellite. These are not 'free' services to the community. They all require specialised equipment for reception. Furthermore, the final output from these systems still uses a universal, internationally standardised television set to display the Pay TV service. This standard set is designed to receive free to air television² and the Pay TV providers have to deliver an output from their domestic set top box (in the viewer's home) which can be fed to a conventional television set designed to be used to receive the Australian television broadcasting bands. There is a cost involved in both providing the service and the specialised receiving equipment.
2. There are broadcasting services that do not use the conventional broadcasting services bands. Almost all such services in Australia are narrowcast or subscription services which require non-standard receiving equipment and are almost invariably not free to air services. Except for Pay TV services, these are invariably services of minor importance that are delivered to small audiences.

The reference to satellite and cable delivery of broadcasting services on page 214 of the Report is almost entirely in the context of Pay TV services, not free to air, and is not directly relevant to free to air commercial and national broadcasting.

In both of the above cases, the nature of the services is distinctly different from mainstream commercial and national free to air broadcasting. The discussion of these services should not, therefore, be used as an argument for adopting a similar approach for the extensive range of national and commercial free to air television and radio services that use the broadcasting services bands.

4.2 Separate carriage operator

With regard to the concept of a separate carriage operator, SBS has direct experience of this arrangement having been in such a relationship with the NTA over 20 years. The change from the NTA days to the present environment where we own the spectrum licences and tender for transmission services has been a major step forward for SBS. We are strongly opposed to any other party owning our spectrum licences.

Separation of the spectrum and content licences could see a situation develop where SBS's spectrum licences were sold to a carriage operator (who may not be a

² It is worth noting that the report does not acknowledge that the receiving equipment for free to air television and radio is essentially internationally standardised. This is especially the case for radio where portability enables people to travel the world with a single standardised receiver.



transmission services provider), thereby making SBS less independent, subject to vicarious cost increases, as well as requiring a further layer of administration.

4.3 Separation of spectrum licensing from content licensing

The Report is critical of the current regulations under which it is not possible to transfer access to the spectrum separately from the licence to broadcast (p215). SBS can see no reason (apart from corporate structural reasons) for such a separation given that both licences are needed to broadcast. Neither is there any benefit for a free to air broadcaster in being able to transfer the spectrum licence for their service independently of their content licence.

The Commission develops its argument for separating spectrum licensing from content licensing (in 10.4 Policy Options) based on an incorrect premise that spectrum and content are unrelated. The Report states that:

"there is a degree of overlap between the functions of the ABA and the ACA. The ABA is responsible for licensing all broadcasters, including broadcasters that do not use the broadcasting services bands. Broadcasters using a different delivery platform receive a content-related licence from the ABA, but are licensed by the ACA if they use spectrum outside the broadcasting services bands. In addition, broadcasters that are licensed by the ABA to use spectrum also have licences for the use of non-broadcasting parts of the spectrum." (p226-67)

Given that free to air broadcasting requires both spectrum and content licences to ensure a viable business, we do not believe it is sensible to provide the right to broadcast content without granting access to the spectrum.

The link between spectrum and content licences is not necessarily the case for subscription services and mostly irrelevant for minority services such as narrowcasting. However, the Report repeatedly presents the case in support of separation based on minority users of spectrum for free to air broadcasting.

Current narrowcasting and subscription television licences do not include access to spectrum in the broadcasting services bands (footnote 2, p215)

The ABA already has the authority to issue commercial broadcasting licences that do not include access to spectrum (s40 licences). These licensees are

still liable to pay licence fees, even through these fees largely amount to fees for the use of spectrum. (p228)

As noted above, narrowcasting and subscription television services that do not use the broadcasting services spectrum are either Pay TV services or small specialised services that are irrelevant in the big picture (i.e. to what happens to commercial and national free to air broadcasting).

Finally, an issue that is not addressed in the Report is the ABA's responsibility to plan and allocate broadcasting spectrum to achieve certain cultural objectives and, as far as is possible, ensure that all television and radio networks have generally equal coverage in an area so the community can receive the full range of services intended for them. This is a direct and important link between spectrum and content delivery.

4.4 Digital Convergence

There is a strong view that once television has been converted to digital and the analogue services are switched off, a large amount of broadcasting spectrum will become available for re-use.

The Report states that:

there is scope to rationalise the amount of spectrum set aside in the broadcasting services bands once the conversion from analogue television broadcasting to digital television broadcasting is complete (p225).

While spectrum availability will increase once analogue television ceases, it will be at least a decade, and more likely considerably longer, before digital conversion begins to free up spectrum availability as promised. The date for analogue television switch off, even in a limited number of geographic areas, is well into the future with industry experts estimating 12 to 30 years depending upon the extent to which future governments might introduce measures to speed up digital conversion of terrestrial television. This, then, should not be used as an argument to change the present arrangements, which work well. It would be more appropriate and opportune for this issue to be addressed when we start to approach the end of analogue television.

When parts of the television broadcasting spectrum do become available, it will be up to the government at that time to decide whether the spectrum would continue



to be best used for additional broadcasting services or for some other purpose. As part of such a decision, consideration, at that time, could be given to transferring spectrum management from the ABA to the ACA. It is our contention, however, that now is not the time to make such a change in view of the uncertainties over timing and the likely long period before significant spectrum becomes available from analogue television switch off.

5. Ministerial reservation process

There is no reference in the Report to the Ministerial reservation process for spectrum for national broadcasting services. (This Government policy is set out in Section 31 of the BSA.) Without this legislative provision, which has ensured that spectrum has been preserved for national broadcasting, SBS may have found it extremely difficult, if not impossible, to undertake the recent, and ongoing, major extension of our television services to regional Australia. This extension program has resulted in richer free to air television services in regional Australia.

On a related spectrum issue, of ongoing concern to SBS is the need to extend SBS FM radio to regional areas, to provide broadcasting services to regional Australians. We note that one of the Productivity Commission's stated principles guiding the Inquiry was to "provide efficient outcomes for the whole community" (p9). There is a danger that the implementation of the Commission's recommendations regarding broadcasting spectrum would inhibit SBS's ability to deliver its services to regional Australians.

6. Opportunity costs

The Report acknowledges that licence fee exemptions granted to national broadcasters using spectrum in the broadcasting services bands is "justified in the public interest" (p222). It should be noted that where SBS pays for spectrum used outside the broadcasting services bands, that spectrum usage is discretionary and not exclusive to the delivery of SBS services to audience's receiving systems.

Were the Productivity Commission's recommendations regarding spectrum access charges adopted, SBS would require additional government funding in order to be able to access broadcasting spectrum in a more commercially competitive environment to carry its content.

7. Conclusion

While SBS is not averse to the Productivity Commission's recommendation to grant spectrum licences in perpetuity, we could only support such a recommendation on the proviso that the licences for our broadcasting services were in SBS's name and fully under SBS's control. We would not support this recommendation however, if responsibility for licence management was transferred from the ABA to the ACA or if there was a separation of spectrum and content licensing for free to air commercial broadcasters.

Were the Productivity Commission's recommendations regarding spectrum management for broadcasting services to be adopted, mechanisms would need to be established to ensure that SBS could continue to fulfil its Charter objectives. Evaluating the effect of the proposed changes on SBS is difficult given the Report's lack of clarity regarding the arrangements that would apply to the national broadcasters should the Commission's recommendations be adopted.

We believe that a substantial change to free to air national and commercial broadcasting at this time is neither justified nor in the public interest. The present broadcasting licensing system for national and commercial free to air broadcasting works effectively, preserving the social and policy objectives of broadcasting and serving the interests of the Australian public.

Special Broadcasting Services Corporation

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