

Submission

to the

**Review of the
Radiocommunications Acts
and the Role of the
Australian Communications
Authority**

by the

Productivity Commission

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cc. Mr. Kemp
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Introduction

The scope of the review is very broad.

First some understanding of the scope of the review is needed.

In the Terms of Reference, scope sections 3(a) and 4 (a&b) seek to understand the objectives of the Radiocommunications Act (the RCA).

Scope- RCA Objects

The main problem is that even if there is legislation and regulations will they be enforced? The present pattern with the international freebanders, lots of international and a significant number of Australian unlicensed operations suggests not.

This leads to the question of irrespective of what legislation will the ACA, or any replacement body or bodies enforce any legislation? After a 4 year long inquiry, coordinated by the Department of Communications, Information Technology and the Arts (DCITA), their "Report of the Radiocommunications Review" June 2001 (the June 2001 Report), recommended this inquiry into the competition aspects of the RCA. The June 2001 Report noted (Pg 19), 'Submissions expressed a great deal of concern about interference' and 'They considered it important that interference be avoided and that self regulation . would increase the risk of interference.'

This leads to the question (in the Terms of Reference) of the "benefits to the community as a whole" (or in the first of the objects of the RCA "maximisethe overall public benefit"). Unfortunately many interest groups, especially the Productivity Commission (PC) and the Australian Communications Authority (ACA) have a very narrow view of this, such as maximising company profits or maximising the tax take for government. Section 3(b) in the scope tries to get groups to have a wider view of 'overall public benefit'. This area needs much more effort! Most recent inquiries dating back to the 'Inquiry into the Apparatus Licence System', 1993, have shown career public servants are unable to grasp this concept. Recent revelations of bonuses for tax department employees who reach tax monetary targets (ie where a public servant has a personal financial objective not related to public benefit) perhaps shows why.

Scope - consistency, efficiency and duplication

This is in reference to scope sections 3(c) and 6. The recent June 2001 Report took 4 years with 2 public and 2 more restricted rounds of hearings or submissions. Both the PC and the Australian Competition and Consumer Commission (ACCC) were kept informed, but from the list of respondees in the report neither participated.

Now we have a second, more wide ranging review. This promotes lack of consistency of regulatory regimes (who is responsible, the PC or the DCITA/ACA?). Generates inefficient regulatory administration by having a second inquiry and a second agency/ department involved. By not participating in the first review the PC is promoting unnecessary duplication! It is also costing the community at large considerable time, effort and expense.

Scope- standards

In recent times the standards arrangements and the ability to enforce them has been a shambles. Equipment suitable for Freebanders (covering 3 plus MHz of HF with multiple modes) has been imported and sold as 'CB' equipment. It does not meet the mandatory standards for this class licence. however to import it and sell it is legal. A complaint to the ACCC that this was unfair competition produced the response that the mandatory standards were not "Standards Australia" standards and the ACCC was unable to act.

Signal quality when the operator has control over power, mode and depth of modulation is often very poor. Fixing some of these by standards, device registration or regulation definitely improves signal quality. Regulations, standards, device registration, EMC and human exposure to EMR all come back to human safety and interference prevention. These only work if there is effective enforcement !!

An extra possibility to encourage enforcement could be civil courts. Personal injury (accidents caused by interference or damage to health from EMR exposure) in full court with loss of amenity (interference to work or entertainment reception) in small claims court (without lawyers).

Scope - compliance costs

This opens another can of worms.

This comes in at least two parts:

The June 2001 Report recommended no new fee exempt licences. However in July the ACA made marine licences fee exempt. That is the ACA took no notice of the Report.

In terms of licensing and interference investigation, dealing with a single body (the ACA ?) is obviously easier than with possibly several organisations (where different fees or access agreements are likely) and several possible interference investigations are likely (many people have had much trouble getting a response out of the Electricity Transmission Authority over illegal transmissions from power lines).

Scope - efficient use of spectrum

Section 5 of the scope requires modification!

New technology is not the objective!

More efficient technology that increases "the benefits to the community as a whole" **is** the objective!

This requires a technical and public benefit test of any new technology. And probably a significant trial period where problems can come to light and various modifications be tried, before the community is locked into a less beneficial technology.

The Productivity Commission is not the best body to do this

The PC has a bad history of applying public benefit tests and little or no knowledge of the technology.

A contribution by the PC to the 4 year review that produced the June 2001 Report would have been much more relevant !

Scope - recent substantive studies

The June 2001 Report was produced after widespread consultation. Even then they may have been able to aim wider (75% of first round submissions came from people not on their initial mailout list). At least one group replied the cost and time involved was too great and they would not be responding. It was run by a taskforce from three government departments/agencies and overseen by an independent reference group. Much of the same scope was covered.

The June 2001 Report also failed to address one of its terms of reference, "efficient use of spectrum.....". Perhaps this shows a lack of technical capability in the ACA (or at least in its senior management?)

The PC ISSUES paper refers to "the amount of spectrum needed to support a single voice communication has fallen by a factor of ten since the 1970s." Reducing a 2.5 KHz single side band transmission to 250 Hz is certainly significant!

Applying this to the VHF FM broadcast band would be even more significant. Reducing the 200 kHz channel spacing down to 20 KHz could free up to 18 MHz between 88 and 108 MHz. Or even just save 16 MHz and licence twice as many broadcast stations!

ISSUES

2.1 Objectives

In the objectives of the RCA the first objective "maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum; " is achieved in part but not wholly by pursuing objectives (b), (c), (d), (e), (g) and (h).

There are other subsidiary objectives to help achieve objective (a), eg the Broadcasting Act. The odd one out is (f), which may aid (say by encouraging the installation of street and city wide infrastructure for very high speed broadband networks), or contradict the other objectives (eg by trying to maximise the immediate tax return from sale of the spectrum).

With (f) in place a change in government policy effectively changes the Act. Unless there are checks in place (requirements for consultation etc) this is much too easy!

Conversely the broad long term objective in (a) makes it easier for the overall public benefit to reserve significant parts of the spectrum for research use, space/satellite use, defence user, or emergency and community services. There certainly are trade offs between related technologies (eg fibre optic cable networks) and competing social economic and technical uses of spectrum and other networks. These need to be better articulated but not in the RCA objectives. Much more effort to understand these is wanted from both the ACA and PC.

2.2 Spectrum Allocation

Starting with section 2.2 of the PC issues paper it appears the PC has already redefined the objectives of the RCA.

Using the objectives on the facing page (10), the first sentence in 2.2 should read:

"The intent of the RCA is to facilitate the use of **public benefit assessments** to allocate spectrum, within a planning framework set by the ACA." and then: "The **maximum overall public benefit** argument for a manager or regulator of spectrum applies at both the domestic and international levels." The alternative objectives used by the PC raise two options:

1 The PC commenced this review (and has been instructed to?) with aims of using economic arguments to

a) maximise the tax take,

b) maximise the telecommunications company profits (with Telstra's profit at 25% of turnover it is really a 12% turnover tax to the government)

2 The PC is so unable to understand 'overall public benefit', and conduct appropriate assessments the review should not proceed.

Unfortunately once a major review, commission, inquiry etc sponsored by government departments, it is unstoppable.

Hence from this point all comments need to be aimed at minimising the damage to the overall public benefit from the PC pursuing the 'economic arguments'.

This becomes more complex. It will require more time and effort and involve trying to bring political influence in.

I will try to continue with some of this.

(signed)

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