

29 November 1999

Prof Richard Snape
Chairman
Productivity Commission

by email

Dear Professor Snape

The ABC considers the draft report on Broadcasting to be a detailed and comprehensive overview of the current debate about media and communications policy in Australia. In particular, the ABC welcomes the recognition by the Productivity Commission of the national public broadcasters as being important components of Australia's broadcasting system and the statement that the proposed recommendations are premised on the national public broadcasters continuing their current roles.

The ABC is submitting its response to the report which addresses a number of the recommendations and issues raised by the Commission as well as commenting on other aspects of the draft.

The ABC is scheduled to appear before the Commission on 8 December, and will be able to answer questions on these matters should the Commission seek further clarification

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AUSTRALIAN BROADCASTING CORPORATION'S RESPONSE TO PRODUCTIVITY COMMISSION'S DRAFT REPORT

1. CHAPTER 4- Broadcasting licences and spectrum allocation

Recommendation 4.1 Broadcasting licences should be separated into licences granting access to spectrum, and content related broadcast licences granting permission to broadcast

Whilst this is a matter for Government policy-making, the ABC makes the following points:

The force of current licensing scheme for content regulation is underpinned by the spectrum that goes with it. The long standing rationale for public obligations in broadcasting has been that access to a scarce public resource has established a framework for reciprocal obligations. As a result conditions relating to content have been attached to broadcasting licences in most countries.

If the licences are separated it would be possible that a former licensee, whose licence had been revoked could still hold on to the spectrum. If the spectrum was unable to be recovered, consumers could miss out on other services which could make use of the spectrum.

The other issue regarding separating technical regulation of content and carriage is that it may be difficult to ensure an appropriate mix and diversity of services. Where the content regulator is deciding a category of service, diversity of services and equitable distribution of access to spectrum is more certain. If a completely free-market approach is taken, commercial considerations may override equity concerns in the allocation of services.

From the perspective of a national public broadcaster the capacity to both produce and transmit is essential to the maintenance of sufficient scale and scope to compensate for the market failure which the ABC has previously demonstrated is present in the broadcasting industry. If the ABC were simply either a production house, or a transmission agency it would not be able to attain such scale and scope, nor achieve the levels of efficiency and effectiveness demonstrated in other studies.¹

In the longer term, limits on spectrum may not remain the principle rationale of a regulatory mechanism. As cable, satellite and broadband distribution systems capable of providing hundreds of channels may become the norm, the regulatory nexus between access to spectrum and content may be weakened.

2. Recommendations 4.5 The ACA should estimate and report publicly on the value of broadcasting services bands spectrum reserved for national, community and Indigenous broadcasting services.

This recommendation raises the question as to what purpose is the spectrum to be valued, other than to determine its market value for possible purchase by other bodies.

¹ Gavyn Davies, Report of the Independent Review Panel on the future funding of the BBC

Is this the best way in which to assess whether or not we have the best broadcasting mix? How do you value the spectrum? Should it be valued against commercial or community television spectrum, or for an alternative use, such as mobile phones, for example.

It is also difficult to put price on spectrum as market conditions are subject to fluctuate considerably over time (depending on demand, status of other services, demographic changes and so on). Another issue is that such an exercise would be quite labor-intensive and potentially of little long-term value.

As McKinsey & Co conclude in their report “Public Service Broadcasters around the World”² the value to the entire broadcasting industry of a strong, efficient and effective public broadcaster with sufficient scale, scope and capacity to produce and transmit is considerable. The task therefore of ascribing the value of the spectrum would need to take into account these indirect benefits. Other factors beyond the broadcasting of particular programs would need to be factored in to such a valuation. These may include the capacity of public broadcasters to compensate for market failure, to create a “virtuous circle” in the broadcasting industry and provide social and other benefits to the community as a whole.

3. Recommendation 4.6 Simplified processes for reserving sufficient spectrum for national, community and Indigenous broadcasters should be adopted. All unreserved broadcasting spectrum should be made available for commercial broadcasting uses.

The ABC understands the Productivity Commission’s objective of simplifying procedures and removing duplication where it arises. However, it is possible that a simplified template may in fact create a more complicated, lengthy process because service areas can vary so greatly. What may constitute an ideal theoretical mix may create difficulty when a particular blueprint is applied across a range of areas with different requirements. The ABC suggests instead that a series of templates may instead be developed.

With respect to recommendation that unreserved broadcasting spectrum being made available for commercial broadcasting uses, the ABC considers that such a blanket arrangement would not be ideal. There may be communities in regional Australia, for example, who would not conform to a template, particularly where there is little demand for services, either by the community, or by commercial operators. The current ABA process addresses these issues and finds the balance between community and commercial needs.

Finally, it may be also be useful to ask that government seriously consider the future, medium to longer term needs of national and other broadcasters when reserving spectrum, so as to avoid having to buy it back from commercial operators at a future stage. The ABC therefore suggests that it may be better to retain the unreserved spectrum than to offer it to commercial operators

4. Recommendation 4.7 Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the Australian Communications Authority and managed under the provisions of the Radiocommunications Act 1992

² McKinsey & Co, 1999

This issue was addressed by Government at the time the Broadcasting Services Act was created. Broadcast services planning currently requires to take into account a number of public interest issues, such as diversity of services which are currently not addressed in the market planning based approach of the Radiocommunications Act.

If such a transfer were to occur, public interest criteria similarly to those in the BSA be incorporated into any relevant legislation (such as the RadCom Act). This would also involve changing the ways in which licence fees are calculated.

5. Recommendation 4.8 *The ABA should retain responsibility for issuing licences to broadcast*

On the grounds outlined in previous comments, such as the need for proper public interest criteria to be considered in determining issues of content regulation, ownership and control of the media, the ABC supports this recommendation.

6. CHAPTER 5 - Australia's diverse broadcasting services

Aboriginal/Indigenous issues

The ABC has met with NIMAA and ATSIC to discuss the proposals that have been developed by the Indigenous representative bodies. As outlined in the original NIMAA submission, the ABC supports in principle the establishment of a national communications service for Indigenous media, and believes that such a service would represent an important acknowledgment of the oral culture tradition of Indigenous Australians.

Moreover, the ABC broadly supports the establishment of a new licence category of Indigenous Broadcasting along with ministerial reservation of spectrum for Indigenous Broadcasters, as outlined in Recommendations 5.2 and 5.3.

“It has been suggested that one of the ABC multichannels could be used for a national Indigenous television network. Such a channel could use the existing regional infrastructure of the ABC, requiring little additional funding (NIMAA sub. 164)

An alternative mechanism would be to allow Indigenous Broadcasters access to SBS multichannel capacity, although as mentioned above, current SBS infrastructure is mainly limited to metropolitan areas.”

The Commission invites comments on this proposal and other means to facilitate the development of Indigenous media in the digital age.

The ABC does not support the suggestion that ‘one of the ABC multichannels be used for a national Indigenous television network’. The ABC requires all the spectrum allocated to it to provide a package of digital services that meets anticipated audience needs and enables the ABC to leverage content across its networks to achieve appropriate audience reach, efficiency and effectiveness. The ABC has no capacity to provide a multiplex ‘piggy-back’ style arrangement to third parties. Its plans to use the digital spectrum allocated and will absorb all the available spectrum.

Allocation to third parties of our spectrum would jeopardise the ABC's blueprint for digital broadcasting by curtailing programming flexibility and capacity, impeding switching between program streams, and preventing the ABC from being able to provide a comprehensive broadcasting service alongside commercial free-to-air broadcasters.

As already outlined to the Commission the ABC plans to use the 7 MHz of spectrum allocated be used to provide a combination of high definition programming, a multichannel service, ABC Plus and an enhanced service, ABCi, as well as the simulcast of the analog service. These services have been developed with the public interest in mind. Children's, educational, specialised, state and regional programming have been identified as particular areas of audience need. Pilots for these services have also been created and some have already commenced trial.

The ABC's digital blueprint has been comprehensively developed involving wide consultation with Government, Parliament, industry and community. The ABC also considers that its unique package of multichannel and datacasting services will provide a significant incentive for audiences to take up digital services, particularly in the early stages.

The ABC also considers that if an autonomous Indigenous service is created, it should be provided with its own spectrum and funded adequately to cover content production and transmission costs.

The ABC has written to ATSIC confirming that it cannot support an Indigenous multichannel within its allocation. However it will continue discussions about possible programming, training and development options when the digital framework is established.

7. Chapter 9: Content regulation, consumers and competition

Second part of 9.2

The role of national broadcasters and subscription broadcaster in providing children's programs which meet government social and cultural objectives should be further examined in the context of future digital and convergent technologies.

Children and the digital environment

Children, like the rest of the audience, will be confronted by an increasing number and range of channels, services and programming in the digital broadcasting environment. This provides enormous opportunities for gaining access to the best entertainment and information from around the world. It also underlines the need to ensure that children have access to the best of locally made programming.

The Australian community has consistently indicated that it believes that it is important that there is local programming in general and local children's programming in particular. Australian children should expect to see and hear places and voices that are familiar to them on their television; to feel that where they live and the familiar things they see and do, are valuable and valued. In the absence of children's content requirements there is unlikely to be a significant level of Australian's children's programs broadcast. Analysis of Australian Broadcasting Authority (ABA) compliance data shows that the children's programming schedule barely meets and in some years does not meet ABA/CTS requirements.

Consequently, the need for a diversity of high quality Australian's children programming will increase in a digital environment. The ABC believes it is important to meet children's education, information and entertainment needs through the provision of a range of Australian programs. Locally developed, produced and broadcast programs not only provide the Australian child audience with a sense of their own place in an increasingly complex media landscape, but ensure that programs are developed with the interest, perspectives and views of Australian children in mind.

A crucial area for children's programming will remain how to ensure opportunities for children to view higher budget programs, especially live action and animated drama. Because of their high production costs, it has always been difficult for Australia to produce a large number these programs. Nonetheless, Australia has established an international reputation for high quality children's drama.

ABC Children's Programming in The Digital Environment

The ABC believes that its role in providing children's programs is an essential part of its overall role in contributing to a sense of national identity and community, and informing, educating and entertaining and reflecting the cultural diversity of the Australian community.

As ABC Editorial Policies state: "Children's programs should be relevant to children rather than imposing adult concerns and expectations about children's behavioural standards".³

The National Broadcaster has a role to maintain and build Australian produced television programming made especially for children.

The ABC will continue to be Australia's leading children's broadcaster, providing a national service that satisfies a diversity of audience interests and reflects the real world. Material for young audiences will continue to be designed "to reach different target audiences at times best suited to their needs, age and level of maturity" In each of the next three years, ABC Television aims to broadcast just under 2,000 hours of children's television programs, including over 500 hours of Australian programs.

Given the ongoing importance of these objectives in a digital environment, that is, being local in a global environment, the national broadcaster's future children's program role becomes increasingly important. For that reason, the ABC has proposed a children's and learning stream as part of its multichannel proposal with programming to complement its primary television output. This will deliver pre-school children's programs and educational programs.

Children's programming is also being developed in the online environment, both as an extension of ABC programming and its own right. The ABC is committed to the development of more interactive and educational multimedia programs, and recognises that new forms of technology may open up new ways of learning for future generations.

8. Section 9.4 Social and cultural effects of content regulation - program diversity

³ ABC Editorial Policies

At page 222, Table 9.4, the Productivity Commission use the breakdown by genre provided by the ABC. The ABC would draw to the attention for the Commission the ABC's further submission that diversity cannot be assessed by comparison on genre alone.

Diversity is to be found in the differing treatments within genres. The ABC observed that the treatment of a program genre may be radically different between broadcasters (see ABC submission Section 2.1) For example, viewers would perceive the ABC's "Foreign Correspondent" to be a very different form of current affairs from Network Ten's "Good Morning Australia" or the ABC's "Wildside" to be a markedly different style of police drama from the Seven Network's "Blue Heelers".

9. Section 9.5 Assistance to the production industry - Assistance from Australian content quotas

The Commission welcomes future comment on the desirability of allowing any broadcasting content quotas which are retained to be traded now or in the future.

Tradeable quotas

It has been suggested that one way of improving transparency and reducing the costs to broadcasters of quotas is to allow them to be traded, and that quota trading could occur either between digital multichannels within each television network or between separate broadcasters.

The ABC's Managing Director provided a preliminary response to this suggestion at the ABC's presentation to the Productivity Commission's hearings earlier this year, suggesting that it could 'ghettoise' certain forms of content (transcript of proceedings, p.621 B.Johns & others).

Whilst quota trading could appear attractive to the commercials by allowing them to dispense with their obligations to show a certain category of program, the Commission rightly points out that the overall effect could also lead to less overall content being produced, by networks paying others to take the obligations of their hands. Additionally, if the content was limited in its ability to appear across a range of services, it could also result in lesser exposure, and therefore deprive the community of seeing certain categories of material.

In a digital environment, this situation could be exacerbated, as the takeup of digital services is expected to be uneven within different cross-sections of the Australian community. As well, current timetables for digital commencement means that regional Australians could miss out on certain categories of programming if it was to be relegated to a digital multichannel which wasn't available to all sections of the community

The ABC reiterates the view that the promotion of Australian content remains a critical objective, particularly in an increasingly globalised market. This objective is best achieved if material is broadcast across a range of services and channels, so that exposure to the community remains as high as possible, as opposed to limiting audiences, which would occur if the material was confined to a single channel.

10. Section 9.7 Adapting content regulation to the digital broadcasting environment

The Commission has rightly raised the issue of how to regulate content within either a more liberalised digital television system or a future converged media environment, and provides a useful overview (throughout the report) of the current state of the industry as well as acknowledgment of the difficulties in predicting how the industry may develop.

Whilst the perceived influence of free-to-air broadcasting currently continues to drive Government's approach when developing their regulatory framework, it is useful to consider what happens if this influence is lessened by the growth of other services, such as cable, for example.

If the production and distribution of Australian content continues to be an important objective for Government policy, then the current content regulations for commercial broadcasters may need to be complemented by other measures. Datacasting services, for example, may appear to be like broadcast services. However, simple quota systems won't work for datacasting because it is not time-based, but stored on a hard disk and replayed (even if transmitted in real time).

Similar problems arise with developing a content regime in the online environment: Should the production side or the distribution side be addressed? How can prominent distributors be engaged to promote Australian content?

From the ABC's perspective, it is able to deliver both ends of the equation, being able to both produce and distribute such material to its audiences by maintaining a dual production house and content distribution service.

However, the ABC considers that pursuit of such objectives should not be the responsibility of the national broadcasters alone. The overall impact of the Australian content policy objective will be far more effective as a series of industry measures, where production companies and other media organisations are given incentives to fulfil these objectives. Rather than dismantle content regulation for broadcasters, the ABC recommends that incentives be created for increasing Australian content, and that these be extended to datacasters and internet services.

The ABC proposes that a program which incorporates a range of incentives for developing and distributing Australian content should be developed once the digital framework is established.

11. Further observations

(i) At page 38 the Report states that the ABC receives 81% of its total revenues from Government. The ABC adds that the gross revenue received other than from Government is not all available for expenditure on programming, as a proportion needs to be offset against the cost of sales. Additionally, co-production revenues have an equal and offsetting cost associated with them. A more accurate figure of revenue proportion from Government is therefore around 90%.

(ii) On page 233 there is a reference to the anti-hoarding provisions s being 'recently added to the BSA'. These provisions have been put forward as amendments to the BSA and are yet to be passed by Parliament.

(iii) As a final observation, the ABC would like to stress to the Commission that it has been established as a body which is independent. The ABC operates according to its Charter, and

the ABC Act makes the ABC independent of Government direction. In this regard, the ABC is not simply a vehicle to further the policy objectives of the government of the day.

The ABC therefore requests that the second part of Commission's draft Recommendation 9.2 (*the role of the national broadcasters...in providing children's programs which meet government social and cultural objectives* should be further examined in the context of future digital and convergent technologies) as well as the references on pages 93 and 240 be understood in the context of the ABC's statutory independence.