

TEL: +61 2 9200 1486
FAX: +61 2 9200 1966
MOBILE: 0418 236 174
EMAIL: richardd@astra.org.au

Wharf 8, Pyrmont
NSW Australia 2009

13 December 1999

Professor Richard Snape
Presiding Commissioner
Productivity Commission
Level 28, Telstra Tower
35 Collins Street
MELBOURNE VIC 3000

Dear Professor Snape

Thank you for the opportunity to provide a further submission to the Productivity Commission's Broadcasting Inquiry. Please find attached ASTRA's submission on the Commission's draft report. This final version builds on the draft submissions provided to the Commissioners prior to ASTRA's appearance before the Commission on Thursday 9 December 1999.

Again ASTRA apologises for the lateness of its submission and appreciates the Commission's understanding in this matter.

Yours sincerely

Debra Richards
Executive Director

**THE AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION (ASTRA)
RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON
BROADCASTING**

1. EXECUTIVE SUMMARY

- 1.1 In the *Draft Report into Broadcasting (the Draft Report)*, the Productivity Commission (**the Commission**) has rejected the most significant details of the Government's digital television policy, which are now contained in Schedule 4 to the Broadcasting Services Act 1992 (**BSA**). The subscription multi-channel television sector has continued to make substantial investment in its businesses and subsequent services based on these legislated decisions, including the limited prohibition on multi-channelling.
- 1.2 In the Draft Report, the Commission has rejected the key policy that High Definition Television Broadcasting (**HDTV**) be mandated as a condition of the free to air broadcasters (**FTA**) being "loaned" 7MHz of digital spectrum each, free of charge (draft recommendation 6.1). The Commission has also rejected the policy and legislative provision that the commercial FTA is prohibited from multi-channelling (draft recommendation 6.2).
- 1.3 The Commission's preferred conversion path to digital terrestrial television must be considered, as a matter of practicality, in the context of the Government's response on the possibility of agreeing to both lift the embargo on the allocation of new commercial television broadcasting licences, which is contained in section 28 of the BSA; and reconsider the "handover" of 7MHz of spectrum to the FTAs free of charge.
- 1.4 The Government has already rejected these possibilities.
- 1.5 In these circumstances, if the Commission's recommendations in relation to digital television (in Chapter 6 of the Draft Report) were adopted, the outcome would expose the subscription television industry to overwhelming and potentially fatal competition, while the FTAs continue to be protected by the existing regulatory regime with the flexibility to exclusively exploit the digital spectrum.
- 1.6 Given this, ASTRA strongly oppose the Commission's recommendations in relation to HDTV and multi-channelling.
- 1.7 ASTRA is disappointed that the Commission has rejected ASTRA's call for the abolition of the anti-siphoning regime. While the discussion in relation to anti-siphoning suggests a replacement scheme which is an improvement on the current system, ongoing restrictions on the acquisition of sporting rights by subscription television

broadcasters is another example of how the regulatory balance continues to be tilted toward protection of the commercial interests of FTA. ASTRA's preference would be for its members to be able to trade freely in rights to broadcast sporting events.

- 1.8 ASTRA requests that the Commission have adequate regard to the contribution which the subscription television industry and narrowcast sector is making to the Australian production industry in terms of training and job creation, and to Australian audiences in offering hitherto unprecedented levels of choice (particularly in regional areas). This does not appear to have been adequately taken into account in the preparation of the Draft Report.
- 1.9 The most positive recommendations in the Draft Report are contained in Chapter 4 in relation to spectrum licensing. ASTRA's view is that the regulatory separation of spectrum and content would assist in a more economic and efficient approach to spectrum allocation and the use of the broadcasting services bands (**BSB**). In particular, ASTRA supports draft recommendations 4.1 to 4.3.
2. **CHAPTER 7: REGULATORY RESTRICTIONS ON ENTRY INTO BROADCASTING**
- 2.1 One of the key recommendations in the Draft Report is that section 28 of the BSA should immediately be repealed (draft recommendation 7.1). Section 28 prevents any new commercial television licences being allocated before 31 December 2006.
- 2.2 In making this recommendation, the Commission recognised that the restriction on a fourth commercial channel is of considerable benefit to the incumbent commercial FTA in that it restricts competition and increases the value of their broadcasting licences.
- 2.3 While ASTRA would support the Commission's draft recommendation 7.1 on the basis that the ban on a fourth commercial channel provides a legislated competitive advantage for the FTAs that cannot withstand close scrutiny and analysis, ASTRA notes that the Government has clearly indicated that the embargo on a fourth commercial channel will not be lifted before 2006.¹
- 2.4 Given these clear statements of intent by the Government that this key recommendation of the Commission will not be implemented, ASTRA believes that the Productivity Commission must carefully review the flow-on effects of the rejection of this draft recommendation on other draft recommendations within the Draft Report. To fail to do so would illustrate a failure to adequately consider the practical realities of broadcasting regulation in Australia.
- 2.5 In particular, ASTRA believes that the Productivity Commission must consider the impact of the retention on the embargo in section 28 of the BSA on the Commission's draft recommendation with respect to HDTV and its draft recommendation on datacasting and multi-channelling (draft recommendations 6.1 & 6.2).

¹ See Senator Alston's press releases 19 August 1999 and 6 October 1999.

3. **CHAPTER 6: THE ROAD TO DIGITAL TELEVISION - HDTV, MULTI-CHANNELLING AND DATACASTING**

- 3.1 The Productivity Commission's draft recommendation with respect to HDTV proposes that HDTV should be permitted but should no longer be mandated (draft recommendation 6.1). An accompanying recommendation is that datacasting should be defined liberally and that multi-channelling and interactive services by the commercial and national broadcasters should be permitted (recommendation 6.2).
- 3.2 ASTRA has grave concerns over the impact of these recommendations on the subscription multi-channel broadcasting sector of the industry. These concerns are heightened by the fact that, as outlined above, if these draft recommendations are accepted by Government they will be almost certainly be implemented in an environment where the FTAs are protected from competition by the continued prohibition on new commercial television services pursuant to section 28 of the BSA and with no price-based re-allocation of the 'gifted' spectrum.
- 3.3 The Commission states in its Draft Report that the Regulation Impact Statement concerning digital conversion set out a range of objectives for the legislation but that none of the stated objectives specifically related to HDTV. The Commission goes on to say that the stated objective of improving the technical quality of the Australian television system in line with intentional technology advances can be satisfied by the move to standard definition digital services.
- 3.4 ASTRA and others made this point during the digital TV debate. Indeed ASTRA advocated a loan of 2MHz of spectrum to each of the FTAs to enable a seamless conversion to digital (ie simulcast of existing analogue signal). The remaining spectrum could then be auctioned to obtain a true market price for the most valuable and sought after section of the BSB. The resulting windfall to Government (and the public) could then be used, for among other things, to fund the digital conversion for the national broadcasters.
- 3.5 This option for digital television conversion was not accepted, with the decision to give 7MHz to each of the FTA broadcasters and in the case of commercial networks to continue to exclusively exploit that spectrum together with additional streams of revenue available through 'enhanced programming' and 'datacasting'.
- 3.6 ASTRA would argue that the move to HDTV has always been the **key** stated objective of the Government in introducing digital television in Australia. Indeed in the second reading speech to the *Television Broadcasting Services (Digital Conversion) Bill 1998*, it was stated:

*"The digital television era provides a quantum leap in television technology. Viewers will have the option of viewing high definition pictures of startling clarity with CD quality surround sound."*²

² *Television Broadcasting Services (Digital Conversion) Bill 1998* House of Representatives Hansard Wednesday 8 April 1998, 2830

- 3.7 The move to HDTV was clearly a cornerstone behind the Government's decision to give each FTA a 7MHz channel of spectrum in order to allow the provision of prescribed amounts of HDTV, while continuing to broadcast in analog during the simulcast period. This principle has frequently been relied on by the FTA to justify the fact that they should not be required to pay for the relevant BSB spectrum. In the absence of some mandated level of HDTV, there is no discernible policy rationale to support the Government's digital television scheme, including the "gift" of spectrum to FTA.
- 3.8 It is clear that at the time the digital television policy was announced, HDTV was seen to be a driver for consumer take up of digital television by the Government. The Government recognised the transitional costs that would be involved in the move to HDTV, particularly in the context of developing HDTV programming or upgrading programming to HDTV standard. The loan of the extra spectrum was therefore designed to ease the cost pressures on the FTAs during the conversion process so as to encourage them to rapidly develop HDTV and thereby drive the acceptance of the technology by consumers.
- 3.9 The removal of the obligation to broadcast in HDTV will therefore remove the only apparent justification for the Government's loan of the free spectrum.
- 3.10 ASTRA's view is that the ability of the FTAs to choose when and in what quantity they will broadcast in HDTV (if at all) will allow the FTAs far more control over, and will significantly reduce their costs during, the transition to digital. If HDTV is only permitted and not mandated, it is clear that there can no longer be any justification for the "gifting" of such a valuable piece of a finite public resource.
- 3.11 The need for the "gifting" of the 7MHz of spectrum to be reviewed is highlighted by the fact that in tandem with the removal of the HDTV obligation and the retention of the protection offered by section 28 of the BSA, the FTA's may also receive the ability to multi-channel and to provide interactive services by use of that spectrum (draft recommendation 6.2). This is in addition to the already guaranteed streams of new revenue through 'enhanced programming' and datacasting.
- 3.12 The Commission has recommended that the FTAs should be allowed to provide multi-channelling and interactive services, and has argued for a liberalisation of the definition of datacasting. In making these recommendations the Commission has failed to recognise the practical impact of these recommendations on the subscription television broadcasting industry.
- 3.13 ASTRA rejects the Productivity Commission's assessment that merely preventing existing broadcasters from offering subscription or pay per use services during the simulcast period will meet the need for competitive neutrality between free to air and existing subscription broadcasters. The reality is that if FTAs are permitted to multi-channel and to provide (broadly defined) datacasting services, this will inevitably

AUSTRALIAN SUBSCRIPTION
TELEVISION AND RADIO ASSOCIATION



strengthen the FTA's competitive advantage and cannibalise the customer base of existing subscription broadcasting services.

- 3.14 It is clear that if the FTAs have the ability to choose if and when to broadcast in HDTV, while at the same time being permitted to multi-channel and datacast, then they will clearly choose to do the latter. While the nature and extent of enhanced programming and datacasting are to still be determined, the Productivity Commission has clearly indicated that there should be as few regulatory restrictions as possible on these matters. ASTRA may accept these recommendations if the FTAs were to pay market value (ie by auction) for the spectrum as the subscription multi-channel broadcasters have had to pay for access, and the FTAs are not continued to be protected and thus have an exclusive right to exploit the spectrum.
- 3.15 Accordingly ASTRA foresees that if accepted by the Government, the combined effects of the Commission's draft recommendations 6.1 and 6.2 would be to enable FTA to aggressively target multichannelling and enhanced programming as more economic way of attracting new audiences and, where relevant, different types of advertising revenue than the development of HDTV.
- 3.16 ASTRA foresees an environment where you would have numerous broadcasters offering niche channel programming in addition to their general programming. The ABC for example could certainly be expected to develop an arts channel and education channel while SBS is likely to provide a number of different language channels. Further, it is assumed Seven is likely to develop specialist news channels and sports channels and perhaps also a movie channel.
- 3.17 It is obvious that the effect of this is to replicate what subscription multi-channel television is currently providing but to offer this on a free to air basis. The effect of such a recommendation would clearly be catastrophic to the subscription television industry, as there would be no incentive for viewers to subscribe to 'pay TV' when the FTAs would be offering similar services free of charge.
- 3.18 While the Commission early in its report recognises that broadband subscription services have greatly increased programming diversity by offering material which is aimed at small interest groups in a way that is not possible for commercial free to airs in the current environment, it clearly has not considered the economic impact of its digital television recommendations with respect to the subscription television industry.
- 3.19 The cumulative effects of enabling the FTAs to choose when to broadcast in HDTV, allowing them to multi-channel, preserving the "gift" of spectrum to them and preserving their protection from competition from a fourth network will only serve to entrench the oligopoly position of the FTAs within the Australian media and provide them with significant competitive advantages over subscription broadcasters. This is not good competition policy.
- 3.20 This is particularly significant given the fact that subscription television broadcasting in Australia can still be regarded as being in its start up phase having only been operating

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION



since 1995. As the Commission in its Draft Report notes, take-up rates for pay TV, while fairly rapid over that period, will never reach the penetration rate of free to air TV or radio.

- 3.21 The Commission also notes that while a survey reveals penetration rates for subscription broadcasting of 17% in June 1999, only 8 percent of those surveyed thought they would definitely take up a subscription in the future. It is important to note that these figures are based on the current division of program rights between FTA and subscription broadcasting.
- 3.22 The radical changes suggested by the Productivity Commission in its Draft Report which would allow FTAs to become de facto subscription broadcasters (but without subscription charges) are likely to spell the death knell for subscription broadcasting in the Australian environment, including the loss of diversity and choice now available.
- 3.23 ASTRA is concerned that throughout its Draft Report the Commission has failed to devote sufficient scrutiny and analysis to the effects of its decisions on the subscription broadcasting industry. This is particularly relevant given the fact that subscription television broadcasters do not receive anything like the level of regulatory protection currently given to FTA.
- 3.24 While FTA are given regulatory protection from competition in the form of a fourth commercial network, no such protection is offered to the subscription multi-channel broadcasting industry and they are subject to a number of regulatory regimes. As the ACCC's declaration in respect of analogue cable services illustrates subscription television is subject both to the telecommunications regime and to the broadcasting regime. The impact of this regulatory environment is also effectively illustrated by the difference in the mechanisms by which the infrastructure and spectrum over which subscription broadcasting and free to air broadcasting are distributed and valued.
- 3.25 While subscription broadcast industry has been required to invest vast amounts in the infrastructure and (non broadcasting services bands) spectrum over which various subscription broadcasters provide their services, the FTAs have historically been sheltered from a regulatory environment which requires them to pay the full commercial value of the spectrum assets which they utilise.
- 3.26 While FTA broadcasters have traditionally paid a fee based on gross earnings the Commission recognises that if broadcasting spectrum were to be regarded as at least as valuable as spectrum used for mobile telephony, this implies that commercial television broadcasters would be currently paying **close to the minimum value** of the spectrum they hold (emphasis added).
- 3.27 ASTRA would argue that this comment by the Productivity Commission does not take into account the value of the 7MHz of spectrum which has effectively been "gifted" to the FTAs by the Government. If this spectrum were to be valued commercially then it is likely that the FTAs are paying far less than the minimum value of the spectrum they hold.

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION



3.28 ASTRA would argue that these regulatory mechanisms therefore give the FTAs an extraordinary and undeniable commercial advantage over subscription broadcasters who have invested large amounts in both infrastructure and spectrum. Combined with the natural advantages that the FTAs have developed over time in the form of branding, customer loyalty and economies of scale if allowed to offer multi-channelling, the subscription broadcasting industry would cease to exist.

3.29 Given these arguments, ASTRA's submission is that the Productivity Commission must revisit its draft recommendations in relation to digital television (chapter 6 of the Draft Report).

4. SPECTRUM LICENSING

4.1 Having regard to the comments above, ASTRA strongly supports the Productivity Commission's decisions with respect to broadcasting licences and spectrum particularly recommendations 4.2 and 4.3. Taken together, these recommendations provide a regime whereby the fees for commercial broadcasting spectrum will reflect the true value of the spectrum held. This approach will bring commercial broadcasting spectrum users into line with other spectrum users.

4.2 ASTRA also believes that the decision to separate broadcasting licences into a licence granting access to spectrum and a licence granting the right to broadcast is a sensible decision. Introduction of the recommended licensing mechanism should reflect the principles that the broadcasting service bands in the radiofrequency spectrum are a scarce resource which must be efficiently managed.

4.3 ASTRA would submit however that the draft recommendation of the Productivity Commission with respect to adopting a "user pays" approach reflecting the real commercial value of commercial broadcasting spectrum (draft recommendation 4.3) should not be "watered down" in the transition between the existing and the proposed regime.

4.4 To that end, ASTRA is concerned that the "gifting" of the 7MHz of spectrum should not be excluded from this drive for more appropriate payment methods for spectrum usage. ASTRA repeats its earlier views to the Productivity Commission that the allocation of the spectrum to the FTAs must not be viewed as an entrenched right and argues that if as proposed by the Productivity Commission the FTAs are released from the obligation to provide HDTV then the decision to loan that spectrum to the FTAs must be immediately reviewed in the interests of efficiency and competitive neutrality.

5. ANTI SIPHONING

5.1 ASTRA is disappointed that the Productivity Commission has rejected ASTRA's submission for the abolition of the anti-siphoning regime. While ASTRA welcomes the Commission's suggestion that a "dual rights" scheme be established which would allow neither free to air nor subscription broadcasters to negotiate contracts that exclude the

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION



other form of broadcasting, ASTRA does not believe that suggestion goes far enough. However any improvement to the anti-siphoning is a step in the right direction.

- 5.2 As the Commission notes in its Draft Report the current provisions have not encouraged FTA broadcasters to exercise their rights. The Productivity Commission also notes that there has been industry criticism of the anti hoarding provisions as ineffective.
- 5.3 Ideally, ASTRA would prefer for its members to be able to trade freely in rights to broadcast sporting events.
- 5.4 However, if the Productivity Commission fails to abolish the anti-siphoning list then ASTRA would refer the Commission to the arguments in its earlier submission. In such circumstances, ASTRA submits that the list must be amended to ensure that it only provides for the sports and major events which are currently shown on free to air television. A **reduction** in the number of events on the **list** is essential.
- 5.5 As stated in its earlier submission, ASTRA recognises that there are some sporting events of national significance where the public interest may be served by ensuring that a FTA has an opportunity to acquire the FTA television rights but in conjunction with the opportunity for a subscription broadcaster to also obtain these rights, thereby maximising the possibility that all Australians who wish to view that event may do so. However, the events which fit within this category are far fewer than those currently subject to the anti-siphoning rules. ASTRA would argue that these events would be limited to such events, for example, as the Melbourne Cup, the Grand Final of certain major football codes and test cricket matches involving Australian teams.
- 5.6 ASTRA would support the Productivity Commission in so far as it does not believe that there are any grounds for prohibiting any live event from being simulcast on both the FTA networks and the pay television networks. Dual rights do not in any way impact detrimentally on the policy underlying the anti-siphoning rules, which is to ensure that all Australians have access to events of national significance.

6. AUSTRALIAN CONTENT ON PAY TV

- 6.1 While the Productivity Commission states that it is not convinced that Australian programming or other content regulation should apply to subscription television, (which implies that it may support the removal of the licence condition in section 102 of the BSA), ASTRA understands that such a view is unlikely to attract government support.
- 6.2 ASTRA's members are committed to producing and acquiring new Australian programming. Market demand means that subscription television broadcasters need to and do acquire Australian programming to provide a service Australians are willing to pay for. It is recognised that Australian content has an important role to play in promoting and developing a sense of Australian identity, character and cultural diversity.

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION



- 6.3 In contrast to the Commission's view, the Government intends to make enforceable the requirement that subscription broadcasters undertake expenditure on new Australian drama. Indeed this intention may well have been passed into law by the end of the current parliamentary sitting period and will apply retrospectively from 1 July 1999.
- 6.4 While ASTRA accepts the enforceability of its condition, it has expressed its disappointment that the legislation will be retrospective. This is a unique Government position, to ASTRA's knowledge no broadcast legislation has ever been made retrospective for any other sector of the broadcasting industry.
- 6.5 ASTRA submits that this once again illustrates the gap between the ways in which the Australian commercial broadcasting and subscription broadcasting sectors are regulated. Adoption of such a retrospective requirement would be at odds with a competitively neutral and fair regulatory system.
- 6.6 ASTRA has previously given examples of specific new Australian drama productions which have attracted pay TV investment, apart from investment in employment and development in the Australian film and production sector. These include *Kiss or Kill*, *Family Crackers*, *Two Hands*, *The Boys*, *Radiance*, *In the Winter Dark*, *In a Savage Land* and *Siam Sunset*. In addition the pay TV sector has made and continues to provide substantial support for the production industry through sponsorships of major film and television events, forums and festivals eg Tropfest, the AFI awards and the annual SPAA conference.
- 6.7 ASTRA members aim to provide their subscribers with new, innovative and high quality programming and a variety of choices across the vast array of channels. The subscription television industry offers real choice to Australians in a way which was unknown before the services were permitted to commence.
- 6.8 While ASTRA is committed to local content and realises that it is essential to attract subscribers, it would argue that any extra mandated burden at this time will seriously hinder the ability of subscription broadcasting to grow as an industry and continue its contribution.

7. CONTRIBUTION OF SUBSCRIPTION BROADCASTING

- 7.1 While the Productivity Commission in its Draft Report recognises that the subscription broadcasting industry has created a diversity of viewing that commercial broadcasters would not, in the current environment be able to offer, ASTRA believes that the Draft Report fails to adequately scrutinise the contribution of subscription broadcasting and narrowcasting to the Australian community, and to reflect that contribution in its draft recommendations.
- 7.2 ASTRA would argue that the subscription broadcasting industry has not only offered a diversity of programs but more importantly has offered those programs to sections of the community which would otherwise have lacked the ability to exercise a level of consumer choice in their viewing and listening.

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION



- 7.3 In particular, subscription broadcasting and narrowcasting has offered consumers in regional and remote areas greater choice in viewing while it has also effectively offered particular ethnic communities within Australia a more extensive range of viewing and listening than would otherwise have been available to them.
- 7.4 The subscription broadcasting industry has invested significant resources in the development of the necessary infrastructure to deliver these services. The industry itself took the initiative and invested resources in order to offer consumers new and innovative services.
- 7.5 Unlike the FTA broadcasters, subscription broadcasters have not received any government assistance in order to ensure that these services can be offered to the public. Although subscription broadcasters will be required to offer digital services and 'convert' to digital in order to compete with digital television they will not receive any government subsidies to do so. This is despite the fact that unlike the FTAs who are returning healthy profits no subscription television broadcast operator is yet to realise a profit on its investment.
- 7.6 The investment that subscription broadcasters have made extends beyond their capital outlays on infrastructure and extends to their investment in human resources. Subscription television broadcasters and narrowcasters are responsible for the creation of over 3,500 jobs since 1995. In addition the industry has also invested heavily in industry training, and has created business opportunities in other industries, including advertising, publicity and marketing.
- 7.7 If the Government adopted the recommendations in the Draft Report in relation to digital television, these benefits will disappear. The seriousness of this cannot be understated.
- 7.8 In these circumstances, ASTRA urges the Productivity Commission to revisit its draft recommendations in relation to HDTV and multi-channelling, and to consider an abolition of the anti-siphoning list.

8. CODES, COMPLAINTS & CONSULTATION

- 8.1 ASTRA makes the following comment in respect of recommendations in chapter 10 relating to Codes of practice and compliance.
- 8.2 With regard to Draft Recommendation 10.2, mechanisms for consultation on the development of Codes of practice, ASTRA agrees with the proposal to replace the criteria for *majority of broadcasters to endorse* the relevant proposed code, with a requirement for *general support* within the relevant industry sector.
- 8.3 ASTRA has developed Codes of practice for five broadcast sectors ie subscription television broadcasting, subscription television narrowcasting, open television narrowcasting, subscription radio narrowcasting and open radio narrowcasting. While the number of broadcasters within the subscription television broadcast sector for

example, can easily be determined, determining the number of broadcasters in say the radio narrowcast sector is not as simple. There is no requirement to register change of ownership for radio narrowcasters so the number of and contact details for active broadcasters can be difficult to determine at any one time. The essential objective is for the Codes to be supported and implemented by the relevant sector, not that a majority of broadcasters have endorsed the code.

- 8.4 On the question of the ABA developing guidelines on how it will ‘assess general support’ and ‘adequate opportunity to comment’, ASTRA notes that the ABA currently gives direction and guidance to broadcasters in developing Codes of practice. Such guidance includes method for consultation, matters to be covered in the relevant Codes and matters to be considered by the ABA in registering the Codes
- 8.5 On the specific question of ‘adequate opportunity to comment’ the ABA has provided guidance by example through its own public consultation practices. ASTRA followed this example with public consultation on its various Codes. This included notices in national papers, a press release announcing the draft code for comment, a reasonable period for submissions (at least six weeks considering many submitters may be community groups who only meet once a month), and some flexibility in granting extensions of time for submissions.
- 8.6 ASTRA notes that the recommendation to provide ‘on-air broadcasts’ announcing code development and review may be appropriate for the free to air single channel environment but not for subscription multi-channel television, with a multitude of channels and no ‘peak time’. Subscription television providers have a direct relationship with their viewers with a monthly magazine provided to each and every subscriber. ASTRA members have used the monthly magazine as a more appropriate avenue to provide notification of the Codes. Codes are also included on relevant operator and channel web-sites. Information on the Codes and any review will also be included on ASTRA’s website when launched.
- 8.7 With regard to Draft recommendation 10.3 on the co-regulatory scheme, ASTRA notes that recommendations which may be appropriate for the free to air paradigm cannot necessarily be applied to the subscription television environment, for example ‘on air broadcasts’ as noted above. However recommendations relating to complaints systems also need to take into account the different arrangements and practices within the subscription multi-channel television sector.
- 8.8 For example ASTRA members already accept e-mail complaints, and the recommendation relating to ‘a telephone complaints system’ fails to recognise that subscription television platforms already have established ‘call centres’ which deal with a number of subscriber issues including complaints, via telephone.
- 8.9 On the question of ‘on air’ announcements for breaches, ASTRA submits that sanctions regarding breaches should depend on the seriousness of the breach and be determined by the ABA as per s 5 (2) of the BSA.
- 8.10 Of particular concern is the draft recommendation that relevant Codes of practice, once registered, automatically become conditions of a broadcaster’ licence. Such a

recommendation seems to negate the policy of 'self regulation' as provided by the BSA and overrides one of the major sanctions in relation to breaches, which is to impose a code as a condition of licence.

- 8.11 The BSA sets out a hierarchy of matters in relation to a broadcaster's license. Some matters are 'not negotiable' and these are listed as conditions of licence, and others, while important are deemed to be matters that in the first instance should be a matter for the broadcaster to resolve, these are matters to be covered by Codes of practice. Implementing a regime of Codes as conditions is a reversion to the 'content' regime of the Broadcasting Act, 1942, which had the regulator setting standards (conditions of licence) covering matters now covered by Codes. There seems to be no case to revert to the 'old' regime

9. NARROWCASTING ISSUES

- 9.1 ASTRA radio narrowcast members are greatly concerned that they be seen and treated as 'legitimate' broadcasters who provide a range of niche services to audiences long overlooked by the commercial and community broadcast sectors. These licences, precisely because of their accessibility and affordability, enable and encourage media diversity. The very introduction of narrowcasting has provided a range of new specific services and formats such as dance music, tourist information, business information, single language ethnic programming, sport and country music, to name a few, to audiences largely ignored by traditional broadcasters.
- 9.2 Of particular concern for radio narrowcasters is that they not be omitted from the digital conversion plan for radio. Having only been included as part of the broadcasting environment since 1992 and given the competition provided by narrowcasting - this vital and diverse sector should not be excluded.
- 9.3 The purchase and operation of a narrowcast licence whether high powered, low powered or off band requires significant investment by the licence holder. Operators of many low powered and off band licences are small business people who are developing and improving the services for their local communities. Like all small businesses, they are restricted by financial constraints which can limit opportunities for immediate future growth, and hence usage of their purchased licences.
- 9.4 In light of the above, a concern for narrowcasters is licence tenure. For example, ABA policy currently indicates that tenure for low powered open narrowcast licences will only be guaranteed until the end of 2003. This obviously impacts upon the services that are being provided, and common sense would suggest that few people would be considering an investment in such licence with perhaps only 3 years left in which to operate.
- 9.5 Narrowcasting creates a competitive environment, which improves and expands the overall service to the community. That competition can potentially be stifled by the regulator's conservative view of narrowcasting, lack of license tenure and uncertainty about radio digital conversion.