

# **PRIME TELEVISION LIMITED**

## **SUBMISSION**

to

---

### **The Productivity Commission inquiry into the Broadcasting Services Act**

---

#### **1.1 Introduction:**

1.1.1 This submission is made by Prime Television Limited, ACN 000 764 867 ("Prime").

1.1.2 Contact details are as follows:

Prime Television Limited  
Level 6, 1 Pacific Highway  
North Sydney, NSW 2060  
Telephone: (02) 9965 7700  
Facsimile: (02) 9965 7729  
Contact: Shirley Brown  
Manager - Corporate

1.1.3 Prime broadcasts a commercial television service throughout regional Victoria and New South Wales.

1.1.4 Through its wholly owned subsidiary, Golden West Network Pty Limited (GWN) Prime also provides a commercial television service to Remote and Regional Western Australia.

1.1.5 Prime recently acquired television broadcasting frequencies in New Zealand where

---

commercial television stations operate in a totally deregulated broadcasting market.

- 1.1.6 In October 1999 Prime acquired 50% of the controlling interest in Canal 9, one of four commercial television services operating in Buenos Aries, Argentina . The Argentinian market is lightly regulated and foreign ownership is not restricted though regulated along the lines of Australia's Foreign Investment Review Board regulation.
- 1.1.7 Prime has a long history of involvement in the regional television industry. Prime's involvement began as a sole commercial operator in the city of Wagga Wagga in New South Wales but has evolved over the years so that Prime is now one of the largest regional television broadcasters in Australia.
- 1.1.8 From its base in Wagga Wagga, Prime was a champion for and sponsor of the equalisation of commercial television services on the eastern seaboard through the process of aggregation. Prime's actions in electing to aggregate in the commercial television markets of Victoria, Southern New South Wales and Northern New South Wales helped trigger aggregation which proved to be one of the most successful broadcasting initiatives in recent Australian television history.
- 1.1.9 Through the process of aggregation, Prime gained considerable experience in both the establishment of new competitive services in large regional markets and meeting competition from newly established services in Prime's existing markets.
- 1.1.10 Contrary to claims by a number of deeply entrenched regional monopoly broadcasters, Prime has proven that the introduction of additional commercial television services into former monopoly television markets can result in significant benefits for viewers without destroying localism and the viability of those regional commercial television broadcasters.
- 1.1.11 Prime successfully bid for the second commercial television licence in Mildura. In that situation, Prime had the opportunity of examining the Mildura market and on the evidence available to it concluded that the Mildura market was capable of supporting two (but not three) competing commercial television services. Prime introduced that new service in Mildura in July 1997.
- 1.1.12 Not long after Prime acquired GWN, in 1996 the Australian Broadcasting Authority (ABA) determined to allocate a second commercial licence to serve the same regional and remote Western Australian market served by GWN through its licences.
- 1.1.13 The following submissions are based on Prime's considerable experience in regional and remote broadcasting in Australia as well as its experiences internationally.

<b>2.1 The changing nature of broadcasting:</b>
---

- 2.1.1 What major developments do you anticipate in the broadcasting industry in the short to medium term?

The regional commercial television free-to-air broadcasting industry has undergone significant change in the past 10 years. Prior to 1989, which saw the introduction of aggregation on the eastern seaboard of Australia, the regional industry was regarded as a monopoly business with no competition from other commercial free-to-air and subscription television services, and limited competition from radio and newspapers. In a significant number of cases, the regional television, radio and newspapers were all owned and controlled by the same organisation. Although these cross media links were “grandfathered” following the introduction of aggregation, in most instances, the artificially protected links have been removed by commercial decisions.

Regional television now faces yet another significant change with the introduction of digital television to commence from the year 2004.

- 2.1.2 What major developments do you expect in related areas including but not limited to telecommunications and Internet technology in the short to medium term?

Convergence of technologies is occurring rapidly with newspapers, television and radio being “broadcast” by means of the Internet. Internet technology provides a means of enhancing traditional broadcasting and print media. More recent developments have led to Internet technology being employed through standard television sets thus bringing the Internet into the lounge room and reversing the trend for television and radio to be accessed via the personal computer (PC). With the advent of digital television transmissions, TV-like and data casting services will provide additional opportunities for the dissemination of entertainment and information.

- 2.1.3 What implications does technological convergence have for you or your business, and what implications does it have for broadcasting policy?

The convergence of technologies will have significant consequences for Prime’s core commercial television business. If Prime’s views on the need for broadcasting regulation which are outlined at part 2.4 of this submission are accepted, the implications for broadcasting policy should be negligible.

2.1.4 *What are, or might be, the impacts of existing Australian broadcasting policy on the development of new broadcasting and related services?*

The most significant element of the existing Australian broadcasting policy that will limit the development of new broadcasting and related services is the rule against cross-media ownership. Prime submits that these rules were formulated for another time and that the broadcasting industry has sufficiently matured so that there is now little need for the heavy handed regulation that was once necessary in this area.

2.1.5 *What non broadcasting legislation is impinging on the development of new broadcasting and related services?*

Prime does not feel any non-broadcasting legislation is impinging on the development of new broadcasting and related services.

2.1.6 (a) *Is there sufficient co-ordination between the various regulatory instruments governing broadcasting and related industries to ensure that innovation is not stifled?*

Prime's recent experience is that the regulatory bodies governing broadcasting and related industries are working co-operatively to ensure that innovation is not stifled. Prime has participated in a number of industry specific enquiries and found the co-operative approach that exists between the various regulatory bodies refreshing and supportive of new developments.

(b) *Is a more comprehensive approach required?*

A more comprehensive approach would not appear necessary at this time, however may become necessary should the regulatory system be modified.

## **2.2 The public interest and the objectives of broadcasting policy:**

2.2.1 *Implicit in the objectives is the notion that in the absence of government intervention, Australia's broadcasting industry would not address these problems adequately. Do you agree or disagree? Please give reasons.*

Since the commencement of the Broadcasting Services Act in 1992 a number of aspects have been deregulated. In Prime's opinion, the commercial television industry has demonstrated an ability to deal with sensitive matters such as program standards, the degree of violence on television and viewers complaints in a responsible and reasonable manner. Prime submits that legislators should take comfort from this and, where possible, seek a greater degree of self regulation of the commercial television broadcasting industry.

- 2.2.2 *Does this list adequately describe the social, cultural and economic problems which broadcasting legislation should address? If not, please indicate what should be changed, added or removed.*

Prime submits that the list of objectives contained in the Broadcasting Services Act adequately describe the social, cultural and economic problems which broadcasting legislation should address. Notwithstanding, Prime believes that those matters can be appropriately managed by a self regulated television broadcasting industry.

- 2.2.3 *From the consumers' perspective which objectives are becoming more (or less) relevant and why?*

Prime submits that each of the objectives maintain relevance from a consumers perspective. However, Prime does not believe the method of regulation currently contained in the Broadcasting Services Act to be relevant today. The objectives can be maintained by a self regulated commercial television broadcasting industry.

### ***Social dimensions of the public interest***

- 2.2.4 *Does the current broadcasting policy framework support access to adequate broadcasting services throughout Australia, including regional or remote areas? What could be done to improve matters?*

The current broadcasting policy framework does support access to adequate broadcasting services throughout Australia including regional and remote areas. However, if equitable access is to be maintained within regional and remote areas it will be necessary to ensure that appropriate subsidies and support packages are implemented, particularly during the transition phase into digital television. Prime is participating in the review of government policy in that regard.

- 2.2.5 *Does the existing framework provide and ensure fair and accurate coverage of matters of national and local significance?*

Australia's broadcasting system is unique in its combination of national, commercial and public broadcasting sectors. This tripartite arrangement ensures fair and accurate coverage of matters of national and local significance and the dissemination of a diverse range of views.

- 2.2.6 *Does the current policy framework provide adequately for the use of different technologies and infrastructure to provide broadcasting services, including in regional or remote areas?*

The current policy framework is technology neutral enabling broadcasters to choose the most appropriate delivery systems for their particular market. Although current infrastructure arrangements are adequate, careful attention will need to be given to remote

and regional areas as a consequence of the introduction of digital television. Adequate subsidy packages will be essential if the equality of access to broadcasting services is to be preserved within the regional and remote areas as compared with the metropolitan areas.

2.2.7 *Are the current regulations on control and ownership, foreign investment and cross-media effective in promoting plurality of opinion and preventing concentration of political power in the hands of a few?*

Prime submits that the current regulations on control and ownership, foreign investment and cross-media do little to promote plurality of opinion and prevent concentration of political power in the hands of a few. Prime believes that a self regulated industry would be sufficiently mature enough to ensure the effective promotion of plurality of opinion and the prevention of concentration of political power in the hands of a few.

2.2.8 *Does existing regulation ensure diversity in news, current affairs and political commentary?*

The television broadcasting industry in Australia provides a diversity of news, current affairs and political commentary. This diversity is not as a consequence of the existing regulation but flows more from the responsible management of broadcasting services by broadcasters mindful of the need to maintain that diversity.

2.2.9 *Is existing regulation of political broadcasting appropriate and is it achieving its objectives?*

The existing regulation of political broadcasting achieves its objectives. However, similar results could be achieved through a self regulated system.

2.2.10 *Does the existing framework of broadcasting policy provide adequately for community standards to be upheld?*

Community standards are upheld under the existing framework of broadcasting policy. However, Prime submits that the experiences of the industry in those areas that have been deregulated sustain the argument for removal of unnecessary regulation in these areas. Public opinion and community standards drive commercial operators programming and planning decisions.

2.2.11 *Does the existing framework of broadcasting policy meet the needs of Australian children?*

The needs of Australian children are adequately met by the existing framework of broadcasting policy. However, Prime again submits that identical results could be achieved in a self regulated industry.

2.2.12 *How important are media other than television as either sources of potential benefit or*

---

*harm to children? Please explain and give examples.*

Any source of information, whether television or other media, offers potential benefits and the possibility of harm to children. Prime submits that it is incumbent on the members of the relevant industries to regulate their industries responsibly to minimise the risk of harm and maximise the potential benefits.

2.2.13 *Are there means other than content regulation for meeting the needs of children?*

Content regulation would appear to be most appropriate for meeting the needs of children. However, such regulation should be mindful of the need to entertain not just educate. Television has the potential to be a great educational resource but it must be remembered that it is also a significant source of low cost information and entertainment.

2.2.14 (a) *Are existing educational broadcasting service adequate, or do they take full advantage of the opportunities available with new technology?*

Educational institutions are working to take full advantage of opportunities available with both existing and new technology.

(b) *What should be done, if anything, to improve educational services?*

Increased funding of under-resourced educational facilities could improve the services provided by those facilities through television and other media outlets.

2.2.15 *Are existing arrangements adequate to meet the broadcasting needs of community groups, including indigenous and ethnic communities?*

Existing arrangements adequately meet the broadcasting needs of community groups including indigenous and ethnic communities.

2.2.16 *Do different regulatory regimes and spectrum availability for different types of broadcasting affect the ability of community groups to broadcast effectively?*

The major inhibiting factor to community groups broadcasting effectively is cost. Access to radio broadcasting services is relatively inexpensive when compared to television. If government wishes to see an expansion of these areas of service an effective funding mechanism will need to be developed.

2.2.17 *To what extent does availability of, or access to, physical infrastructure affect community broadcasting?*

The physical infrastructure is generally available to community broadcasting services. In a number of instances, commercial broadcasting services have made available their facilities to assist in the establishment of the community services.

2.2.18 *Are there social objectives that are ignored or treated inadequately by existing broadcasting policy?*

Prime is unaware of any social objectives that are ignored or treated inadequately by existing broadcasting policy.

2.2.19 *What challenges do the new broadcasting technologies pose for achieving Australian social objectives?*

The most serious challenge to achieving Australian social objectives arising out of the new broadcasting technologies is the ability to regulate a service which originates outside Australia (eg satellite TV or the Internet) but can be readily accessed from within Australia.

### ***Promoting Australian identity and culture***

2.2.20 *What do you perceive as being the Australian cultural objectives which can be promoted by broadcasting?*

Australia's culture is unique. From an historically European base, the culture has diversified to become an embracing and inclusive society. Broadcasting can promote and encourage the uniqueness of this Australian identity.

2.2.21 *Is broadcasting policy achieving Australian cultural objectives?*

Current broadcasting policy achieves Australian cultural objectives. The removal of the present form of regulation and the introduction of a self regulated environment would not alter this situation.

2.2.22 *What are the implications of new media types for the portrayal of Australian culture?*

The implications of new media types that may have an impact on the portrayal of Australian culture were mentioned briefly at **2.2.19**. Notwithstanding, Australians have demonstrated a desire to access information and material that is uniquely Australian. Prime submits that the desires of the Australian population will override the threat from exposure to new media types containing programming material emanating from outside the country.

2.2.23 *What are the strengths and weaknesses of the current broadcasting policy framework for the promotion of Australian culture in Australia and abroad?*



Although the current broadcasting policy framework contains mandatory regulation that promotes the Australian culture, it is the desire to watch Australian programs that sustains the Australian culture. Prime submits that a self regulated commercial television broadcasting industry will continue to respect the wishes of the Australian population and provide relevant, informative and entertaining programming that is uniquely Australian.

*2.2.24 What opportunities do new forms of broadcasting provide for promotion of Australian culture in Australia and abroad?*

The Internet and satellite broadcasting technologies provide a range of opportunities for the promotion of Australian culture, both in Australia and internationally. The removal of regulation, particularly cross-media restrictions will enhance broadcasters ability to participate in those opportunities.

***Economic dimensions of the public interest***

*2.2.25 How have restrictions on entry and competition affected the structure, conduct and performance of the broadcasting and related industries?*

The restrictions on entry and competition were necessary to enable the establishment of a strong and relevant broadcasting industry in Australia. With the establishment of strong and efficient broadcasters, other related industries were able to grow in a less regulated environment. The industry has now matured and the restrictions on entry and competition are less necessary.

*2.2.26 Have government controls on the number of licences and other regulation restricted or promoted more diverse or innovative programming, and facilitated or retarded growth of industry?*

The restrictions on the number of licences were, and remain necessary to ensure a strong and relevant broadcasting industry. In the absence of a commercially viable industry, diverse or innovative programming will not be possible. The need for the ongoing restriction on the number of licences was acknowledged by government when recently imposing a moratorium on the grant of new licences to assist the industry in transition from analogue to digital.

*2.2.27 What are the implications of such controls for the industry to compete globally?*

The control of the number of licences assists the industry in competing globally. By

ensuring a strong Australian base capable of creating diverse and innovative programming the Australian industry is placed in a strengthened competitive position in the international market.

2.2.28 *Can the cultural and social objectives be met with less regulation of competition? Or is more regulation or commercial broadcasting necessary to achieve them?*

Cultural and social objectives may fall victim of less regulation of competition. The present balance with the mix of three commercial and two national broadcasters across Australia provides a stable and commercially viable base which should be maintained if the industry is to continue to meet the social and cultural objectives, particularly through the costly transition from analogue to digital transmission.

2.2.29 *Are there alternative, better means by which to meet the objectives?*

Prime is unaware of any better alternate means of achieving the objectives.

### **2.3 The economics of broadcasting:**

Prime is a party to the FACTS submission to the Productivity Commission and supports the comments made by FACTS under these headings.

### **2.4 Australia's current broadcasting regulation:**

#### ***Ownership and control***

2.4.1 *What are the advantages and disadvantages of the current broadcasting ownership and control restrictions? Could the ownership and control provisions be improved to reflect better the social, cultural and economic dimensions of the public interest?*

Prime sees little advantage from the maintenance of the current Australian broadcasting ownership and control restrictions. The Australian broadcasting industry is a mature market. The perceived benefits of Australian ownership and control are overridden by the commercial imperatives which ensure that Australia's commercial free-to-air television operators meet the demands of the Australian market.

Prime submits that the ownership and control regulations are not the most effective method of maintaining services which appropriately reflect the social, cultural and economic dimensions of the public interest. If regulation is to occur, it should more appropriately be directed to programming related issues through self regulated codes of

---

practice and, as a last resort, imposed program standards.

- 2.4.2 *Will technological convergence and competition between the traditional broadcasting services and other newer services reduce or increase the need for special limitations on control and ownership? What form should they take?*

Prime sees little advantage in any special limitations on control and ownership of commercial broadcasting free-to-air services within Australia. The emergence of new technologies, technological convergence and competition between the traditional broadcasting services and other newer services will neither increase nor reduce any need for such limitations.

- 2.4.3 *Should there be different forms of regulation of control and ownership for different media?*

Prime submits that the regulation of control and ownership of commercial broadcasting free-to-air services should be treated no differently than any other business enterprise. There should be no different form of regulation for different media.

- 2.4.4 *If you are of the view that efficiency gains can be achieved through the relaxation of these provisions, can you quantify these gains?*

Prime has at times considered acquisition of other media interests, for example, radio interests which would have placed it in breach of the existing cross media restrictions. In examining some of these business opportunities, Prime was able to identify significant economies of scale that would have benefited both the continuing commercial television operations of Prime and the radio stations targeted for acquisition. Prime can provide the Commission with a separate commercial-in-confidence document quantifying the efficiency gains that could be achieved through the relaxation of the cross media restrictions if required.

- 2.4.5 *If you are advocating that the ownership and control provisions be relaxed, should the changes occur simultaneously or are there benefits from sequencing or phasing the changes? For example, would there be benefits from relaxing foreign ownership before amending the cross media rules?*

Prime believes that little would be gained from sequencing or phasing the changes to foreign ownership and cross media rules. However, companies should not be permitted to enter into transactions that would currently breach the rules in anticipation of any proposed changes. In that way, all industry participants will be treated equally once the appropriate new foreign ownership and cross media rules are in place and operative.

- 2.4.6 *Are limitations on control and ownership necessary to achieve the objective of diversity of opinion? Are there other policy instruments that should be considered?*

The limitation on control and ownership of commercial broadcasting free-to-air services does not achieve the objective of diversity of opinion. This is best achieved by the maintenance of the tripartite system of commercial, national and community broadcasting that exists within Australia. Maintenance of a strong and independent national broadcasting service provides an adequate foil for any perceived imbalance in the diversity of opinion within the commercial television sector.

2.4.7 *Should there be special limits on foreign ownership applying to television, radio and newspapers? If so, why? If you are of the view that special limits are appropriate, should they be extended to other platforms such as telecommunications or the Internet, and if so, how?*

Prime operates as a foreign company within the New Zealand and Argentinian markets. Prime submits that its Australian citizenship does not adversely impact the appropriateness of the service provided by it in those foreign markets. Prime submits there should be no special limits on foreign ownership applying to television, radio or newspapers within Australia. If ownership restrictions are to exist, they would be administered by the Foreign Investment Review Board in the manner that all other businesses operating in Australia are administered.

2.4.8 *Are foreign owners more or less likely than Australian owners to influence the editorial policy and/or content of their Australian media?*

Prime submits that the nationality of the owner is unlikely to be of significant influence on the editorial policy and/or content decisions of their Australia media.

2.4.9 *Are Australia's general policies on foreign investment inadequate for the broadcasting industry and, if so, in what way?*

Prime submits that the general policies on foreign investment are perfectly adequate for the broadcasting industry.

2.4.10 *If you are advocating the cross media rules be maintained, should their scope be broadened to reflect the effects of convergence in technologies, services and markets? If so, how?*

Prime is not advocating the maintenance of cross media rules.

2.4.11 *What are the implications of the restrictions for the Australian industry's ability to compete in global markets?*

The foreign ownership and cross media restrictions limit the available capital base for the Australian industry. With greater access to foreign markets, the Australian industry can be strengthened in its ability to compete in global markets.

2.4.12 *What lessons regarding ownership, control and diversity can we learn from other countries?*

Prime submits that its experience in New Zealand and Argentina demonstrates that foreign ownership and the absence of cross media controls does not adversely affect the quality and diversity of broadcasting services provided in those countries.

### **75% Reach Rule**

2.4.13 Although advocating the abolition of most regulations, Prime submits that the 75% reach rule must be maintained unless an alternative method of ensuring equity between networks and affiliates can be incorporated into the regulatory policy.

### **Program Standards**

2.4.14 *What are the advantages and disadvantages of Australian content regulation? Is it effectively implemented? How could it be improved?*

Australian content regulation is currently a mix of mandatory standards and self regulated codes. The provisions could be amended by removing the mandatory standards and allowing the industry to regulate all issues relating to program content.

2.4.15 *Should Australian content continue to be regulated? Do consumers want such regulation of content?*

Australian content should not be regulated. Consumers do not want regulation. Consumer demands will drive broadcasters in their programming decisions.

2.4.16 *How should Australian content be measured?*

It should be unnecessary to measure Australian content. Australian content will be provided by broadcasters in response to the demands by the audiences they seek to serve.

In some instances, a broadcaster may elect not to broadcast any significant degree of Australian content. If consumers require Australian content they will turn their attention to the broadcaster that is catering to their needs.

2.4.17 *Is some Australian content more important than others? If so, why?*

Prime submits that all Australian content is equally important. A sporting program may be of significant relevance to a section of the Australian population while others may seek access to high quality drama or news and current affairs. Prime submits that the industry, responding to the needs of the Australian community should be allowed to be the arbiter of what content is provided.

- 2.4.18 (a) *Different approaches to regulating Australian content re adopted for the different forms of broadcasting. Is this appropriate?*

There are currently different approaches to regulating Australian content for the different forms of broadcasting. Prime advocates the abolition of all regulations, which is consistent with the current approach.

- (b) *How could this issue be approached in the context of technological convergence?*

Technological convergence will make a number of forms of regulation of Australian content irrelevant. Prime submits that all regulations should be removed with appropriate codes of practice developed by the various industry sectors.

- 2.4.19 *Is there any need to impose Australian content standards on the commercial FTAs when the preservation of cultural and social values could be pursued through the national headquarters, in particular the ABC?*

Prime submits that there is no need to impose Australian content standards on commercial free-to-air broadcasters. Prime does not believe that it is the exclusive role of the ABC to promote cultural and social values. Commercial free-to-air broadcasters will be responsive to community needs.

- 2.4.20 (a) *To what extent do the national broadcasters (the ABC and SBS) provide services that are competitive with, rather than complimentary to, other media sectors?*

Prime does not believe that it is the role of the ABC and SBS to simply compliment the other media sectors. Each of these broadcasters should respond to the needs of all Australians subject to any specific charters directed at the preservation of Australian cultural and social values.

- (b) *What are the implications of any such competition generally, and for content requirements and other regulations on other broadcasting sectors in particular?*

Although opposing regulation, Prime submits that all broadcasters should be

subject to the same requirements, whether mandatory or self regulated codes of practice.

2.4.21 *What are the effects on competition between broadcasting sectors such as FTA and subscription television of the current regulatory framework?*

Prime submits that the current regulatory framework does not impose any adverse effects on competition between the broadcasting sectors such as free-to-air and subscription television.

2.4.22 *Alternatively, should there be universal content standards applicable to all broadcasters of a particular type, such as FTA television?*

Prime submits that there should be no contents standards applicable to broadcasters.

**Prime supports the FACTS submissions in answer to questions 2.4.23 to 2.4.35**

2.4.23 *What lessons can we learn from experience with content regulation in other countries?*

2.4.24 *What are the advantages and disadvantages of regulating children's television?*

2.4.25 *How relevant is regulating the commercial FTA channels when children can switch to other less regulated communications services such as subscription TV, the Internet or radio?*

2.4.26 *What evidence is there of the reach and impact of children's television in Australia or in other countries?*

2.4.27 *What are the strengths and weaknesses of a self regulatory approach to program standards through the development of codes of practice? Please provide examples and evidence, if available?*

2.4.28 *Are there inconsistencies in the codes of practice applying to different forms of broadcasting?*

2.4.29 *What are the strengths and weaknesses of codes of practice for regulating advertising?*

2.4.30 *Do the codes achieve the Government's objectives as expressed in the BSA. Do they adequately reflect community attitudes towards broadcasting?*

2.4.31 *How binding are the various forms of Australian content requirements on choices made by television programmers? Are they ever exceeded? If so, why?*

2.4.32 *Are the maintenance of Australian content requirements the best way of supporting Australian content providers? Could the same objectives be achieved by other means?*

2.4.33 *Do the current provisions hamper the production of programs suitable for international sale?*

2.4.34 *Is regulation an appropriate way to address the issue of quality in programming? How should quality be assessed.*

2.4.35 *What should be the appropriate balance between legislation, standards and codes of practice?*

### ***Digital conversion***

2.4.35 (a) *What are the advantages and disadvantages of requiring conversion to digital transmission technology according to the schedule prescribed from 1 January 2001?*

#### Advantages:

- \* Forcing a start date will jump-start the chicken and egg situation that exists when there are no transmitters to encourage receiver purchases and no receivers to encourage transmitter installation and service commencement.
- \* Encourages the development of receiver, studio and transmitter technologies.

#### Disadvantages:

- \* Will force the use of the very first generation of 50Hz High Definition Equipment at a high cost and with the likelihood of considerable early problems.
- \* May result in less than optimal system configurations.
- \* Will force broadcasters to act against sound business principles and invest in new infrastructure with little likelihood of short-term increase in revenue.

(b) *Is this timetable achievable or realistic?*

It is achievable but only for a limited number of areas.

The recent sale of the NTA to NTL is likely to impede negotiations for site sharing of sites for the introduction of Digital Services. This may significantly delay the timetable.



While kick starting the sale of receivers in metropolitan areas is probably wise, such a forced introduction in regional areas, where the infrastructure costs per capita can be as much as 1000 times that in the metropolitan areas, would pose an unreasonable burden on regional broadcasters. Any regulation of the roll out should take into account the cost per capita at each site.

- 2.4.36 (a) *What are the costs and benefits of simulcasting analogue and digital signals for eight years?*

Costs:

The operating and maintenance costs of two transmitters for no additional revenue.

Viewers have no incentive to purchase digital receivers until the end of the simulcast period. This will reduce the demand for digital receivers and may leave enough viewers relying on analogue transmissions at the end of the simulcast period to effectively lobby for an extension of analogue transmissions.

Benefits:

Viewers are assured that they will not be deprived of existing services for at least 8 years. They have time to save for digital receivers.

- (b) *Are there efficient measures that could be adopted to ensure that households continue to receive television broadcasts on their existing sets?*

A more effective approach is the gradual weaning of the programming from the analogue service. Initially full simulcasting would occur but then special programs would only be transmitted on the digital service with alternative programming on the analogue service. By the end of the transition period the more popular programming would be on the digital service and the hours of the analogue service may be reduced.

High Definition Digital Services is not simply the transmission of sharper picture but rather the transmission of different pictures. For example in HD with an aspect ratio of 16:9, it is practical to show a shot of a cricket match with the bowler at one end of the crease and the batter at the other end in the one shot and still see the ball.

There is no practical way to convert this shot to an aspect ratio of 4:3 in standard definition. Forcing a simulcast of such a match will compromise the HD advantage.

- 2.4.37 *What are the advantages and disadvantages of restricting FTA television broadcasting to the existing operators until 2006?*

Advantage:

The FTA broadcasters are given the opportunity to make the expensive transition without further erosion of revenue from additional FTA competition. As it is, the proposed introduction of data-casting will result in some erosion of revenue.

Disadvantage:

Additional services might be denied or delayed in more lucrative markets.

**Prime supports the FACTS submissions in answer to questions 2.4.38- 2.4.43**

- 2.4.38 *What are the advantages and disadvantages of preventing multi-channelling?*
- 2.4.39 *What are “enhanced” service and “data casting”?*
- 2.4.40 *What are the likely costs and benefits of digital conversion to community and indigenous broadcasters?*
- 2.4.41 *Are you aware of any studies in Australia or elsewhere, of consumer demand for digital television in general and high definition television in particular? Please specify.*
- 2.4.42 *How readily available are digital television sets likely to be, and at what prices? What is the expected time for households to acquire digital television sets? What sort of service (such as interactive services) are Australian households likely to demand?*
- 2.4.43 *Is digital television likely to become an important medium for business transactions? If so, please amplify.*

<p><b>2.5 The role of the Australian Broadcasting Authority:</b></p>
--

- 2.5.1 *What are the costs and benefits of the current regulatory structure?*

The costs of the current regulatory structure are fundamentally borne by government. As such, Prime is unable to comment on any detail on that aspect. There are few benefits from the current regulatory structure. It lacks transparency and clarity in the decision making process which is inappropriate for such a strictly regulated industry.

2.5.2 *What have been the strengths and weaknesses of the division of responsibilities between the ACA and the ABA?*

The division of responsibilities between the ACA and the ABA has led to a greater deal of efficiency within the ABA when dealing with broadcasting related issues. Incidental issues related to spectrum licensing are dealt with by the ACA and as such remove unnecessary administrative burdens from the ABA.

2.5.3 *What implications does the current regulatory structure have for the ability of the regulators to respond efficiently and effectively to technological change?*

The current regulatory structure contains many impediments to an efficient and effective response to technological change. The processes the ABA was required to go through in licence area planning has meant that timetables have rarely been achieved. The regulatory regime in that regard commenced in 1992 and yet, seven years after its commencement there still remain areas of Australia that have not been planned in accordance with the ABA's statutory responsibilities.

***Co-regulation***

2.5.4 *Has this been achieved?*

In Prime's view, co-regulation through a series of mandatory standards and self-regulated codes of practice has been successful.

2.5.5 (a) *What are the strengths and weaknesses of the current system?*

The self regulated aspects of the codes of practice appear to work effectively and efficiently at minimal cost to all involved. Administration of the mandatory standards at time can prove costly and the regulatory environment encourages inefficiencies.

(b) *What are the administrative and compliance costs of separate codes of practice for each type of broadcaster?*

Prime is unable to quantify the current administrative and compliance costs of the separate codes of practice.

2.5.6 (a) *What are the costs and benefits of the current system?*

The costs of the current system of self regulation are shared by the industry players through contributions to the relevant industry body responsible for the particular division of the industry. Benefits that flow from the current system include the

flexibility to change regulations responsive to changing community standards.

(b) *Is it excessively legalistic?*

The self regulatory codes of practice are in no way legalistic. Unfortunately, administration of the mandatory standards can at times be legalistic.

2.5.7 *Are there alternative approaches to achieve the government's objectives which are less legalistic?*

Prime submits that it would be more appropriate for all aspects of regulation to be the subject of self regulatory codes of practice which would achieve the government's objectives in a less legalistic manner.

***Planning and licensing new services***

2.5.8 *What are the strengths and weaknesses of the ABA's planning processes?*

Prime submits that the ABA's planning processes are too bureaucratic and cumbersome. For this reason, the ABA has been unable to achieve its timetables developed following the commencement of the Broadcasting Services Act.

2.5.9 *What is the role of industry peak bodies in the planning process?*

The industry's peak bodies participate in the planning process, however when dealing with issues dealing with regional or remote areas it has been necessary for the affected licensees to take a greater role. There is often divergence of opinion between metropolitan and regional broadcasters when dealing with planning issues.

2.5.10 *What progress has been made in spectrum planning by the ABA?*

ABA spectrum planning has been more time consuming than initially anticipated. The complex public consultation requirements have often led to unusually lengthy delays in achieving results.

2.5.11 *What is the appropriate balance between raising revenue from the sale of commercial licences for purposes such as data casting and promoting competition in broadcasting when allocating broadcasting licences?*

Prime submits that appropriate spectrum should be maintained to enable the continuation of the quality broadcasting system that Australians currently experience. Because of uncertainties with the extent of digital coverage, frequencies should not be set aside and

---

allocated for data casting until all the requirements of broadcasters are appropriately met. Otherwise, there may be pockets of population that are unable to achieve appropriate coverage following the introduction of digital transmission.

2.5.12 *What progress has the ABA made in detailed planning for digital conversion?*

Prime's observations are that the ABA is making considerable progress in its detailed planning for digital conversion. The ABA is devoting resources to those areas where conversion is to commence first. The ABA is responsive to the requirements of broadcasters. Prime supports the continuation of the co-operative approach to planning that has been occurring since the announcement of digital conversion.

2.5.13 *How do provisions of the BSA affect the planning process? (For example, providing for merit based community licence allocations versus price based commercial licence allocations).*

The differential methods of licence allocation do not, in Prime's opinion, affect the planning process.

2.5.14 *Are ABA planning processes fair and efficient? How could they be improved?*

The ABA's planning processes are fair however the need for widespread public consultation often leads to otherwise unnecessary delays.

2.5.15 *Has the ABA adopted relevant principles of good decision making (for example transparency, consultation, natural justice and assessing the impacts (costs and benefits) of different options)?*

Unfortunately, resource constraints have led to the ABA adopting decision making processes that lack transparency, allow inadequate time for consultation and fail to assess the impacts (costs and benefits) of different options.

2.5.16 *What are the administration and compliance costs associated with ABA planning processes?*

The administration and compliance costs of broadcasters associated with ABA planning processes are high. Often considerable resources will be devoted by a number of companies or individuals making submissions to the ABA which could have been minimised had the ABA provided submitters with appropriate cost analyses. The lack of relevant financial material in the planning process often leads to a waste of resources.

2.5.17 *Are these criteria consistent with the objectives of the Act as a whole?*

The planning criteria are consistent with the objectives of the Act as a whole but fail to recognise the relevance of commercial viability or financial feasibility that is critical to the sustainability of a vibrant and relevant broadcasting system.

2.5.18 (a) *How should these criteria be interpreted and applied?*

Interpretation and application of the criteria is difficult because of conflicts between some of the criteria. Underlying the sustainability of a relevant broadcasting system is the financial viability of the system as a whole. A decision to allocate a licence when material before the ABA demonstrates that the market is unable to sustain all players is fundamentally wrong.

(b) *How should the ABA deal with internal consistencies between criteria?*

When dealing with internal consistencies, the ABA should give greater weight to those aspects that affect the ability of broadcasters to survive financially in order to maintain the provision of the services.

***Licensing and fees***

2.5.19 (a) *How scarce is the radiofrequency spectrum in Australia?*

The radio frequency spectrum in Australia which is allocated for broadcasting is scarce.

(b) *How will its supply be affected by digital conversion?*

Digital conversion will mean, for a period of time there will be little opportunity for introduction of additional broadcasting services.

(c) *Do the current licensing arrangements create scarcity artificially?*

The current licensing arrangements do not create artificial scarcity. The arrangements are relevant to the efficient use of the resource.

2.5.20 *To what extent do current licence fees reflect the level of scarcity of the radiofrequency spectrum?*

The current licence fees appropriately reflect the level of scarcity of the radio frequency spectrum.

2.5.21 (a) *What principles should govern the levying of licence fees?*

Licence fees for use of the radio frequency spectrum should be governed by principles of fairness and equity. The users of the radio frequency spectrum should not be taxed disproportionately to other users of government and/or controlled assets.

(b) *Should the same principles apply to all forms of broadcasting, regardless of*

*platform?*

The same principles should apply to all forms of broadcasting regardless of platform.

2.5.22 *Should licence fee revenue be earmarked for specific broadcasting purposes?*

Licence fee revenue should be earmarked for specific broadcasting purposes and, where appropriate, for the development of an Australian production industry.

2.5.23 *What are the advantages and disadvantages of the current licence fee structure as it applies to different classes of broadcasting and within specific broadcasting types?*

As differing classes of broadcasting services come closer together, licence fee structures can be inappropriate. For instance, the fees paid by a narrowcast free-to-air service are significantly less than those paid by a commercial free-to-air service.

2.5.24 *Should consumers as well as producers directly pay licence fees?*

The costs associated with consumers paying licence fees would far outweigh the benefits gained. Imposition of licence fees on consumers may also discourage industry growth.

**2.5.25 - 2.5.44 - Prime supports the submissions made by FACTS on these issues.**

***Ownership and control***

2.5.25 *Is the ABA the appropriate body to deal with ownership and control issues? Is the relationship between the ABA and bodies such as the ACCC clear and consistent?*

2.5.26 *Are ACCC and Trade Practices Act concepts and tests of markets and competition consistent with BSA concepts of influence, diversity and plurality?*

2.5.27 *Are the mechanisms for determining control (set out in Schedule 1 to the Act) appropriate?*

2.5.28 *What are the strengths and weaknesses of current mechanisms for dealing with breaches of ownership and control provisions, particularly foreign ownership?*

2.5.29 *Is the ABA administration of ownership and control provisions fair and efficient?*

2.5.30 *Has the ABA adopted relevant principles of good decision making (for example, transparency, consultation, natural justice and assessing the impacts (costs and benefits) of different options)?*

2.5.31 *What are the administration and compliance costs associated with ABA administration of ownership and control provisions?*

***Program standards and content regulation***

2.5.32 *What are the strengths and weaknesses of the public consultation processes in the development of codes of practice?*

2.5.33 *What are the administration and compliance costs associated with self regulation of content regulation?*

2.5.34 *Do the codes achieve the objectives of the BSA? Do they adequately reflect community attitudes toward appropriate broadcasting?*

2.5.35 *Is there a better approach to achieving the objectives of the BSA?*

***Complaints***

2.5.36 *Is the service provider the appropriate first contact for complaints about program content and codes of practice?*

2.5.37 *Are codes of practice dealing with complaints consistent for different categories of broadcaster? Should they be?*

2.5.38 *Is there sufficient transparency in the handling of complaints? Should complainants be notified of reasons as well as results of ABA investigations?*

2.5.39 *Are complainants adequately aware of their rights under the Act and codes of practice?*

2.5.40 *Is there a better approach to dealing with complaints?*

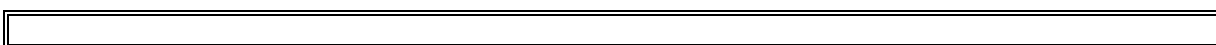
***Appeals***

2.5.41 *What are the advantages and disadvantages of current appeals arrangements?*

2.5.42 *Is the list of reviewable decisions and eligible applicants appropriate?*

2.5.43 *Does this approach have implications for the consistency, transparency, certainty and effectiveness of ABA administration?*

2.5.44 *What are the administration and compliance costs of this method of review?*





<b>2.6 International agreements:</b>
--------------------------------------

**2.6.1 - 2.6.13 Prime supports the submissions of FACTS on these issues.**

2.6.1 *What is the effect of the ITU Radio Regulations on Australian broadcasting?*

***Closer Economic Relations Agreement***

2.6.2 *Do you anticipate that there will be a significant increase in New Zealand content broadcast in Australia as a result of this decision?*

2.6.3 *In what manner does New Zealand content compromise the objectives of “developing and reflecting a sense of Australian identity, character and cultural diversity”? (BSA Act 3(e)) Does this matter?*

2.6.4 *What effects have the recent redrafting of local content rules had on the Australian broadcasting services sector?*

2.6.5 *What opportunities are opened by this ruling for Australian programming in the New Zealand market?*

2.6.6 *Should the relevant terms of the CER agreement be reconsidered?*

***General Agreement on Trade in Services***

2.6.7 *What are the potential implications for the local industry and the Australian community more generally of a broad market opening commitment of the audiovisual sector in future GATS negotiations?*

2.6.8 *What threats and opportunities for Australian service providers would be created by more liberal world trade in audiovisual services?*

***Agreement on Trade Related Aspects of Intellectual Property***

2.6.9 *What implications would revision of TRIPS (for example, prohibiting parallel importing of relevant material) have for the broadcasting and related industries and consumers?*

2.6.10 *What other implications for the industries and consumers arise from the TRIPS Agreement or its revision - in particular, its coverage of copyright (the Berne Convention)?*

***The Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (The Florence Agreement)***

2.6.11 *What implications, if any, are there for the broadcasting and related industries arising*

*from the Florence Agreement?*

2.6.12 *What implications for the industries would arise from the ratification of other provisions of the Florence Agreement?*

***Other international agreements***

2.6.13 *What other international agreements are relevant?*

**Dated:14 May 1999.**

**Submission prepared and lodged  
for and on behalf of  
PRIME TELEVISION LIMITED by**

.....  
**David Carr - Solicitor**