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Professor Richard Snape  
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Productivity Commission  
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Dear Professor Snape,

I enclose Telstra's submission in response to the Broadcasting Inquiry Draft Report.

I would like to commend the Commission on the draft report. Telstra supports the bold vision the Commission has employed to develop their recommendations for a competitive broadcasting industry in the future. Clearly the management of broadcasting spectrum is a key issue in this regard and Telstra's submission seeks to offer guidance on both the long term vision and migration path for the management of broadcasting spectrum in Australia.

Telstra acknowledges that the Government has made a policy announcement on key digital TV issues such as datacasting definition, HDTV quotas, enhanced programming, multichannelling by commercial FTAs since the public hearings of this Inquiry. Nevertheless, Telstra considers that the Productivity Commission should advocate an ideal framework for broadcasting in the final report as there is value in articulating such a long term vision. In addition to this the final report should also set out a migration path, or at least trigger point/sign posts, to move forward towards the Commission's pro-competition principles, which takes account of the recent policy announcement.

Telstra's comments in this submission accord with its recommendations for a generic regulatory framework for convergent industries as articulated in the Telstra submission into the Convergence Review. This policy framework is based on winding back industry specific regulation and moving towards generic regulation for convergent industries - including the telecommunications, broadcasting and IT industries.

If you would like further information regarding this submission please contact Sasha Carrel on 02 8255 2718.

Regards

Deena Shiff  
Director Regulatory



**Productivity Commission  
Broadcasting Inquiry**

**Submission by  
Telstra Corporation Limited**

**31 January 2000**

**PRODUCTIVITY COMMISSION BROADCASTING INQUIRY**

**TELSTRA CORPORATION SUBMISSION**

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## **Executive Summary**

Telstra welcomes the recommendations made in the Productivity Commission's draft report. The report rightly recognises that there is a window of opportunity to facilitate the adoption of digital TV and other digital services in Australia. The following submission is a response to the draft report and comments made in submissions and the most recent public hearings of this Inquiry. The submission also takes account of the Government's digital TV announcement.

Clearly this recent policy announcement on digital TV has implications for many of the recommendations outlined in the draft report. Telstra considers however that in the final report there is value in outlining a long term vision for future regulation of converging markets, in spite of the shortcomings of the current regime. In this light Telstra would recommend the Commission include in its final report both a long-term strategic position and a short-term migration path that takes account of the recent digital TV decision. A migration path to this long term strategic position will need to carefully balance the negative impacts on segments of the industry as regulation is progressively modified over time.

## **Convergence**

Telstra has also developed a generic policy framework for convergent industries that it would like to see the Commission consider applying to broadcasting services. The aim of such a framework is to articulate the terms of engagement for regulatory intervention in converged and converging markets. This framework is designed as a generic framework that could be applied to the broadcasting and telecommunications and information technology industries, that is, looking ahead rather than to the regulatory legacies of the past.

## **Broadcasting Licences and Spectrum**

In line with Telstra's regulatory principles for convergent industries, Telstra proposes that spectrum licences in the broadcasting services bands be allocated by competitive auctions, similar to the process in use by the ACA for telecommunications spectrum licence allocations. Access to broadcasting spectrum is currently allocated by means of apparatus licensing. This is an inefficient method of spectrum allocation and usage, and on this basis Telstra contends that all broadcasting spectrum should be put up for auction in about 2003/4.

## **The road to digital television**

Telstra largely supports the recommendations made in the Draft Report in *Chapter 6*.

## **Regulatory restriction on the entry into broadcasting**

Telstra strongly supports the arguments in favour of the anti-siphoning regime being either modified or removed to create a level playing field for the acquisition of broadcast sporting rights. This is in accordance with the draft report and comments made by the pay TV industry and sports rights owners during this Inquiry.

## **Conclusion**

In Telstra's view, regulatory reform in the Broadcasting/new media industry should be a staged migration path which balances impacts on industry segments which are currently regulated differently. In Telstra's view, the key implementation task is to create a migration path from current regulation towards generic regulatory treatment across FTA TV, pay TV and datacasting. Regulation should be determined by services/activities rather than technology or industry, and it should foster competition in the future.

## **Introduction**

Telstra welcomes the recommendations made in the Productivity Commission's draft report. Telstra is pleased that the report sets a policy framework that would increase competition, benefit consumers and encourage innovation in new digital services. The report rightly recognises that there is a window of opportunity to facilitate the adoption of digital TV and other digital services in Australia that should not be stifled by regulation.

This submission builds on the first submission Telstra made to this Inquiry, as well as drawing from material contained in the Telstra submission into the Convergence Review (administered by the Department of Communication, Information Technology and the Arts –DCITA).

Telstra considers it a valuable exercise for the final report to articulate a vision for the future regulatory environment, in spite of the shortcomings of the current regime. By articulating sound principles for regulating converging industries, goals will be set for the modification of existing anomalous regulation. In this light, Telstra would recommend the Commission seek to fulfil two objectives in its final report. The first would be to outline a long-term strategic vision for broadcasting services in the future (in line with the Inquiry terms of reference) without compromising this to reflect the recent digital TV announcement. Secondly, the Commission would outline a migration path from the scenario painted by the recent digital TV decision to this long-term position. There may not be another opportunity for some time to provide a strategic view on the broadcasting/new media market so that is why it is important that it is included in the final report of this Inquiry.

Telstra has recommended regulatory principles for converged services in its submission to the Convergence Review, and reiterates these in this submission. These principles reflect the fact that along with the opportunities created by convergence it is also likely to increase uncertainty about consumer demand, technology choice and structure of value chains, and accordingly to increase the risks of industry-based regulatory interventions.

## **Section 1 - Convergence**

As is pointed out in the draft report, the wide range of organisations that have made submissions into this Inquiry covering the telecommunications, print media, Internet service providers, information suppliers industries and many others, show that the media industry is broadening. This has been facilitated by digitisation and the development of new technology platforms to carry digital services. In terms of the regulatory implications of convergence the draft report states that:

*...the directions and speed of convergence is unclear, but the fact of continuing change in the media and telecommunications industries is certain...*



However Telstra considers it important that the phenomenon of convergence has clear impacts on the structure of industries, particularly the services sector. This is in line with the concept of convergence used in DCITA's recent Convergence Review Discussion Paper. To this way of thinking, regulation that is based on traditional industry boundaries of the telecommunications, media and IT sectors requires reform and reassessment, as newly created convergent markets may have characteristics (such as greater competition) which make specific industry regulation unnecessary, undesirable and potentially harmful.

Telstra has also developed a policy framework for convergent industries that it would like the Commission consider applying to broadcasting services. The aim of such a framework is to outline the terms of engagement for regulatory intervention in converged markets. This framework is designed as a generic framework that could be applied to the broadcasting and telecommunications and information technology industries. The framework is forward looking rather than being encumbered by legacy regulatory concepts:

1. A clearly articulated process for progressively winding back regulation of existing markets and transitioning to a neutral, generic (competitively neutral, technology neutral, minimalist) regulatory framework;
2. Regulatory forbearance - a requirement that the regulatory agencies (ie those with responsibility for administering legislation, in this case the ABA and ACA) have clearly articulated criteria/policies establishing the circumstances in which they will impose regulation and review that regulation;
3. Regulation by reference to function or service, not industry category or firm type (a fundamental of competitive neutrality) or technology (technology neutrality);
4. A rebuttable presumption in favour of the ability of new markets to achieve social policy objectives. To the extent that social obligations such as local and other content regulation must be imposed, they are funded on a broad base to minimise the costs of regulation and maximise competitive neutrality; and
5. Regulatory intervention is clearly targeted and limited to clear instances of market failure (ie. efficient prices are absent) and where there is no likelihood of competition emerging to remedy this, (continued content regulation could be tested in this light).

## **Section 2 – Broadcasting Licences and Spectrum**

On page 53 of the draft report, the important issue of the substitutability of digital platforms in a convergent environment is raised. While Telstra agrees with the Commission that digital platforms are generally substitutable and that regulation should not be based on access to particular platforms but to delivery mechanisms, the issue of spectrum scarcity means that spectrum needs to be managed. This is because spectrum is a limited public resource.

The regulation and management of spectrum is necessary for technical reasons – that is, to manage problems of interference. Spectrum is a common resource with benefits available to the community at large. If there is no authority charged with managing spectrum usage then there is a natural tendency for people to over-use the finite spectrum resource and technical efficiency may not be maximised (due to a lack of coordination). For example, technically inefficient use of spectrum can create interference between applications, subsequently resulting in diminished utility for all spectrum users. In that sense, managing usage of the radio spectrum is a rational solution that directly maximises the utility deriving from the spectrum and the wider benefits for the community. Spectrum management regulation is therefore widely acknowledged to be essential, even in an otherwise “light-handed” regulatory environment.

Clearly spectrum management is a pivotal issue in relation to regulation for convergence in that both traditional and new services can use this delivery mechanism to deliver the full range of services from voice to video. As the draft report acknowledges, the importance of the regulatory approach to broadcasting spectrum is heightened by the current ubiquity of FTA television services.

The draft report rightly recognises that the licensing of spectrum should be aimed at the efficient allocation and technical management of this scarce public resource. However unlike the case for other services, currently FTA spectrum licences have unique criteria which include:

- a right to broadcast content subject only to a variety of conditions on the behaviour of licensees;
- licence fees are based on a percentage of annual revenue rather than infrastructure cost; and
- a specific amount of spectrum is allocated.

### **Separating content and infrastructure for broadcasting**

In addition to the points raised by the draft report in relation to recommendation 4.1, Telstra suggests that there are clear long-term economic and technical benefits associated with separating the licensing of access to radio spectrum from the licensing of broadcast content. These benefits are generated by the following:

- Allocating the spectrum access rights to the most economically efficient purpose in order to obtain the highest economic value. This can be achieved in principle by allocating spectrum to those who place the highest commercial value on it – usually through spectrum auctions.
- Allowing the broader market dynamics to determine the sustainable number and technical quality of services to be supported within the constraints of spectrum availability. Such an approach means that regulators do not need to ‘pick winners’, guess at market viabilities, and/or try to pre-empt future consumer preferences - to avoid excessive fragmentation of spectrum which could threaten the viability of some services minimum spectrum lot sizes should be set.
- Applying consistent technical planning, allocation and usage rules that are aimed at maximising the overall utility of the spectrum without compromises introduced by non-technical considerations.

As was pointed out in the ABA’s second submission to the Inquiry (page 4) if a licensee were to lose their licence to broadcast but not their licence to use spectrum, then there would be a loss of service to audiences without the option of making the spectrum available to another service provider (that is licensed). However, it should be noted that currently licences for subscription broadcasters are separated between content and distribution technology. It may also be that there needs to be a change in expectations of the longevity of broadcasting service provision and of ABA’s policies in this regard.

This raises the issue of universal service in relation to the current ubiquity of FTA broadcasting services. It may be that in an environment where the licensing of content and infrastructure for broadcasting is separated that the Government may need to develop an approach to issues of service termination in particular areas. This is most likely to be a problem in regional/rural areas where service provision may not be as viable as in metropolitan areas. Telstra would recommend that if there is a need for Government to intervene on this issue (that is, where market forces do not provide a desirable outcome) then it should be regulation which meets equity considerations in the least distortionary way.

### **Spectrum Licence Allocation**

As suggested above, Telstra proposes that spectrum licences in the broadcasting services bands be allocated by competitive auctions, similar to the process in use by the ACA for telecommunications spectrum licence allocations. Telstra contends that all broadcasting spectrum should be put up for auction in 2003/4. FTA broadcasting licences granted after this time will be comprised of separate content and infrastructure licences (in line with recommendation 4.1 of the draft report).

Under this proposed scenario, existing commercial FTA broadcasters would bid for spectrum and would pay a market-rate fee for their spectrum access. Where existing commercial FTA broadcasters were unsuccessful in the auction, they ought to be afforded a 2-year period to clear the spectrum. This timeframe is consistent with procedures for telecommunications spectrum allocations and therefore accords with the regulatory principles outlined above.

The spectrum clearance timeframe would also meet the timeframe for Government's review of the entry of new commercial FTA broadcasters in 2006.

### **Spectrum Licence Structure**

Recommendation 4.1, - the separation of licensing of spectrum access rights and broadcasting content as discussed above, raises the question of the most appropriate form of spectrum licensing. And further, the question of what would be a reasonable term of renewal for broadcasting spectrum access rights is relevant.

In accordance with the principles of equal regulatory treatment across convergent industries advocated in *Section 1*, Telstra recommends the structure of spectrum licensing for FTA digital broadcasting and datacasting should be based on similar 15-year licence periods as for telecommunications spectrum allocations. This basic structure should also include reviews of spectrum allocations by the ACA every 5 years to determine whether public benefit is best met by the prevailing spectrum allocations (noting that spectrum is heterogenous and there are international standards on which bands should be used for particular services).

This recommendation for a 15-year licence period is contingent upon broadcasting spectrum being auctioned in 2003/4. This would mean that firstly, new players will have had the opportunity to enter the broadcasting market and secondly, existing FTAs who have successfully obtained spectrum for the future will pay market rates for their spectrum access.

### **Pricing commercial broadcast spectrum**

Telstra supports the Commission's suggestion (page 72 of the draft report) made in recommendations 4.2 and 4.3 that the value of broadcasting spectrum should be reflected in its price and that this may be achieved by auctioning the right to use broadcasting spectrum. However, Telstra also suggests that the 'price' of spectrum derived through spectrum auctions be a competitively bid *annual* fee amount to avoid the unnecessary financial barrier of a large single up-front spectrum investment cost on new service providers which would disadvantage potential new entrants.

### **Technical planning considerations**

Telstra supports recommendation 4.4. as spectrum design is in Telstra's view the most significant factor in determining the highest value spectrum use. This is because those users who propose to provide a service compatible with the technical specifications can expect fewer technical obstacles and can thus budget more funds toward spectrum acquisition rather than accommodating expensive technical solutions to overcome difficulties caused by the spectrum design.

### **Consistent Management of Spectrum**

In line with recommendation 4.7, Telstra agrees with the reasons identified in the draft report supporting the restructuring of regulatory responsibilities between the ACA and the ABA to reflect the separation of spectrum and content licensing components. In addition to this Telstra suggests that the ACA should be given responsibility for achieving the following specific objectives (applicable to all convergent services including broadcasting, datacasting, and telecommunications services):

- Maximising the utility of spectrum—through planning for most efficient usage and minimising interference;
- Setting an appropriate economic rent for use of spectrum; and
- Maintaining a centralised public database of all spectrum allocations.

To compliment the ACA's role, and in line with the draft report, Telstra agrees that the ABA should focus on the regulation of content services, with the primary objectives of achieving social and cultural policy outcomes. The broadening of existing markets might mean that lighter-handed content regulation is appropriate.

A further point is raised by the separate forward planning processes that are undertaken by the ABA for the broadcasting services bands on the one hand, and all other radio spectrum bands on the other. In an environment where services are converging this would enable holistic planning for services across all spectrum to take account of competing demands and underpin the regulatory principles for convergent industries.

### **Section 3 - The road to digital television**

Telstra largely supports the recommendations made in the draft report in *Chapter 6*. The following comments are provided on the key issues raised in this chapter.

## **SDTV/ HDTV**

Telstra sees an SDTV transmission mandate as bringing benefits to consumers in two ways: firstly, by providing more affordable set top boxes (STBs) for consumers and secondly, by using less spectrum and therefore enabling new entrants to use spectrum in the future. The decision to have an effective “triple cast” for the 20 hours per week means that a lot of spectrum will be needed by the FTAs until the end of the simulcast period (which does not yet have a firm end date).

To facilitate the conversion to digital TV Telstra supports the Fairfax proposal to supply all Australian households with an STB (funded through the proceeds from the auction of the vacated analogue spectrum) is a viable solution to this problem. An extra five 7Mhz channels would be likely to kick start new digital services in Australia. This would be a win-win situation for consumers, the Government, manufacturers of STBs, aspirant datacasters and television retailers.

## **Datacasting Definition**

Telstra has consistently argued throughout this Inquiry and the concurrent Digital TV Reviews, that datacasting should be defined as liberally as possible to promote the growth of this new industry through maximising the flexibility of datacasters to provide innovative digital interactive services and develop a profitable business model. Due to the prescriptive definition announced by the Government recently, the potential for the datacasting industry to kick start the take-up of digital television may not be realised for many years.

Telstra argued during the Digital TV Reviews that there should not be a separate definition for “enhanced programming” and “datacasting”. This is because the difference between them is arbitrary and it would seem that enhanced services could be a subset of datacasting services. As there is a legislated charge for datacasting services provided by FTA broadcasters but not for providing enhanced services, the separate definitions could have the potential to distort the market for datacasting services.

The Government’s recent digital TV decision that announced FTAs would be permitted to provide enhanced programming services supports a somewhat unbalanced policy of broadening the scope of traditional television programming to include new digital services without a similar a broadening of new digital services to include traditional television programming. Achieving a balance here is important for developing a migration path which does not provide advantages for either established or new market entrants. This accords with regulatory objectives 1 and 4 outlined above in *Section 1*.

### **Multi-channelling by FTA broadcasters**

Telstra can see the benefits of permitting multichannelling by commercial FTA broadcasters (as per recommendation 6.2) in the long term. However in the short term this would disadvantage the pay TV industry to a significant extent as FTAs would have the opportunity to earn additional advertising revenue without paying additional licence fees for the right to provide extra services. In contrast, pay TV operators must incur the cost of additional capacity to provide new services.

As argued above, it is important that the short term migration path balances the impacts on key players so that gradually the “quid pro quos” (as they are referred to on page 142 of the draft report) can be removed without imposing negative impacts on viability and investment. Similarly the recommendations made in the draft report create a framework which would increase competition in the broadcasting industry. Implementing elements of this framework in isolation (such as permitting FTA multichannelling) may not achieve the desired benefits of the framework as a whole.

### **Simulcast Period End Date**

As outlined above, Telstra has a preference for the model proposed by Fairfax to supply the Australian population with STBs to ensure that Australians are provided with a set top box (STB) to receive digital signals and the analogue spectrum can be freed up quickly.

Failing this, Telstra strongly agrees with recommendation 6.3 – that a termination should be set for ending analog broadcasting. It appears from the recent Government announcement on digital TV that this date will not be set in legislation but will have provisos on it (the media release on the policy states “ for at least eight years”). As the Commission would be aware, several commentators have predicted that the take-up of digital TV will take longer than eight years. The policy aim should then be to create incentives for a speedy take up of digital TV that can meet a firm end date for the simulcast period. Without an end date there is no imperative to increase take up. A shorter simulcast period would make more spectrum available for new services/market entrants.

### **Re-allocation of analog spectrum**

Telstra strongly agrees with the proposal included in recommendation 6.3, that analog spectrum be reallocated 2 years prior to the termination date as this would set the path for a competitively neutral broadcasting policy framework. The maximum amount of notice for existing FTA broadcasters would be desirable to ensure it has the least negative impact, so an announcement would be required at the earliest possible time. In relation to the proposal (also in recommendation 6.3), that spectrum should be released progressively during the simulcast period as it becomes available, for this to be workable the ACA would need to have a mechanism for monitoring the usage of spectrum for this to be effective.

## **Interoperability of Set Top Boxes**

The issue of the interoperability and functionality of digital STBs is important in the context of this Inquiry. Telstra is closely involved with the work of the *Standards Australia CT/2 Broadcasting and related services, interoperability sub-committee* and supports the principle of interoperability between pay TV services, FTA services, datacasting and potentially interactive television services. It is likely that within two to three years multi-front-end STBs would be economical. Along the lines of the CT2 working group on this issue, Telstra supports providing choices for consumers between STBs with basic functionality and more sophisticated STBs which can accommodate additional services. This approach should solve the “pizza box” issue raised in the draft report.

## **Section 4 - Regulatory restriction on the entry into broadcasting**

Telstra supports recommendation 7.1 - repeal of the prohibition on new commercial television licences being allocated before 31 December 2006, as this would open up the broadcasting industry to competition and in doing so create benefits for consumers through the provision of new services. Telstra strongly supports the arguments raised in this Inquiry in favour of the anti-siphoning regime being removed. As is highlighted in the draft report, in its current form the anti-siphoning regime not only is anti-competitive but does not meet parliament’s objective to ensure major sporting events are available on FTA television as outlined in the draft report (page 234).

Telstra supports the non-exclusive or dual rights scheme for events on the anti-siphoning list proposed in the draft report in *Chapter 9* (page 234) as it would be more beneficial to consumers, to the pay TV industry and sporting organisations than the existing regime.

The issue of whether online sporting rights fit into the anti-siphoning policy has been raised during this Inquiry in AUSTAR’s second submission (page 13). Clearly online rights are part of new media whereas the anti-siphoning regime was designed to affect traditional broadcasting services. The anti-siphoning regime is concerned specifically with the rights to “televise” events. While online rights could be incorporated into a reformed anti-siphoning regime it is important to note that online rights would be different in their nature from both subscription broadcasting TV and FTA rights which are essentially to provide traditional video services.

## **Section 5 – Conclusion – Implementation**

In Telstra’s view, regulatory reform in the Broadcasting/new media industry should consist of a migration path which balances the impacts on industry segments which currently are regulated differently. In Telstra’s view, the key implementation task is to move from existing regulation towards generic regulatory treatment of the FTA TV, pay TV and datacasting. Regulation



should be determined by services/activities rather than technology or industry, and it should foster competition in the future.

## Proposed Migration Path (taking into account recent Government decision on digital TV)

Target	Recommendation	Benefit
2000	<ul style="list-style-type: none"> <li>Removal/modification of the anti-siphoning regime</li> </ul>	<ul style="list-style-type: none"> <li>Remove/reduce the artificial competitive advantage the FTA's currently have in obtaining broadcast sporting rights.</li> </ul>
2001	<ul style="list-style-type: none"> <li>Provide the Australian population with interoperable STBs for FTA TV, pay TV and datacasting.</li> </ul>	<ul style="list-style-type: none"> <li>Free-up spectrum used for analogue transmission.</li> <li>Promote the take-up of digital TV and datacasting services.</li> <li>Technological spin-offs and economic benefits.</li> </ul>
2003/4	<ul style="list-style-type: none"> <li>Separate content and infrastructure licences for FTA broadcasting</li> <li>Introduce market based licence fees for commercial FTA broadcasters (based on competitive auction of spectrum)</li> <li>Provide clearance timeframe for unsuccessful or non-bidder of 2 years.</li> </ul>	<ul style="list-style-type: none"> <li>Brings licence structure in line with subscription broadcasting (which separates broadcasting licence from spectrum licence).</li> <li>Greater return to the Government for use of broadcasting spectrum.</li> <li>Potential for better quality services on FTA television due to greater competition.</li> <li>Spectrum will be cleared that is not needed for FTA broadcasting services and freed up for other services.</li> </ul>
2004	<ul style="list-style-type: none"> <li>Remove the genre distinctions for datacasting.</li> <li>Remove restriction that subscription broadcasters must have the majority of their revenue from subscriptions.</li> <li>Review content regulation in light of whether effects of convergence are achieving social and cultural objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Prepare for competition in FTA broadcasting to be introduced in 2006</li> <li>Further level the playing field as between FTA's and Pay TV to remove current regulatory distortion and permit greater flexibility to adopt market-driven business models.</li> <li>Remove any regulation that is unnecessary and introduce greater efficiencies in the ABA's resources.</li> </ul>
2006	<ul style="list-style-type: none"> <li>Allow the introduction of new FTA broadcasters</li> <li>Allow multi-channelling by commercial FTAs (provided anti-siphoning completely removed)</li> </ul>	<ul style="list-style-type: none"> <li>Open up the FTA industry to greater competition to provide benefits to consumers.</li> <li>Provide opportunity for new services for Australian consumers.</li> </ul>
2008	<ul style="list-style-type: none"> <li>Set firm end of the simulcast period at 2008.</li> </ul>	<ul style="list-style-type: none"> <li>Provide certainty for the media industry for new innovation and investment and for consumers in replacing their reception equipment. If the date is not definite spectrum may be tied up after this time.</li> </ul>