

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY
REGARDING
ALLOCATION OF SPECTRUM FOR NEW DIGITAL TELEVISION
SERVICES
FEBRUARY 2007



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media, Entertainment and Arts Alliance (the Alliance) welcomes the opportunity to make a submission to the Australian Communications and Media Authority (ACMA) in response to the consultation paper, *Allocation of spectrum for new digital television services*.

In April 2006, the Alliance made a submission to the Department of Communications, Information Technology and the Arts (DCITA) Inquiry, *Meeting the Digital Challenge – Reforming Australia’s Media in the Digital Age* and to ACMA in response to the discussion paper, *Future use of unassigned television channels*.

In September 2006, the Alliance made a submission to the Senate Environment, Communications, Information Technology and the Arts Committee’s Inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and Related Bills.

These submissions commented on the proposed allocation of spectrum for new digital television services, including Channel A and Channel B, the subject of the current Australian Communications and Media Authority Inquiry.¹

The Alliance welcomed the announcement that two unassigned television channels would be assigned for new digital services but not in the manner proposed.

Channel A will be able to be used for the transmission of free to air services which can be received on a SDTV receiver. The services that could be offered include datacasting, open narrowcasting and community broadcasting but not commercial broadcasting. Incumbent free to air commercial and national broadcasters will be prohibited from controlling this channel. It will be subject to an annual licence fee based on revenue.

Channel B will be able to be used for a wider range of uses than Channel A. However, like Channel A, it can be used only for services that do not mirror traditional free to air commercial broadcasting. Services provided on Channel B can include open narrowcasting and subscription narrowcasting providing the subscriptions services are not available to fixed in-home receivers. Channel B could include digital services like mobile television, integrated with 3G mobile phone services and made available on a subscription basis. Incumbent free to air commercial and national broadcasters would be eligible to bid for control of Channel B datacasting licence providing services are not offered to domestic digital television receivers. An annual licence fee based on revenue, rather an upfront licence fee alone, will apply to Channel B.

The Alliance considers that datacasting has been a failure. It is a concept that has found neither users nor consumers. It has effectively simply protected the incumbent free to air commercial broadcasters from competition. It has not assisted in the take-up of digital services. It is therefore difficult to see how it might now.

By allowing the Channel B to offer subscription services and allowing it to be integrated with 3G phone services, Channel B is more likely to generate revenue than Channel A. So it is curious that the licence will be granted on the basis of a one-off upfront fee. Conversely, given the limited uses to which Channel A can be put and given that one is community broadcasting and none can be subscription or commercial broadcasting, it is difficult to see why an annual licence fee based on revenue should apply to the Channel A licence holder.

In the event a viable model is developed for Channel A narrowcast services, it seems unreasonable that community television broadcasters should then need to compete on the same basis as commercial entities bidding for the Channel A licence. Given that those interested in a Channel A licence might on the one hand be from the not-for-profit community broadcasting sector and on the other from the for-profit business sector, differential licence fees would seem to be appropriate and open outcry auctions might not be appropriate.

The Alliance has previously said it is concerned that the current incumbent commercial free to air broadcasters will be able to bid for Channel B. This hardly introduces greater competition into the

¹ All three submissions are available online at http://www.alliance.org.au/component/option,com_docman/Itemid,28/task,cat_view/gid,117/

broadcast sector. The restrictions surrounding the uses to which Channel B can be put by a commercial free to air broadcaster are so restrictive – including not being able to use a Channel B licence to provide in-home services – it is difficult to see to what use it might be put, a fact pointed out in the Consultation Paper.

However, a Channel B licence can be used for subscription services delivered to mobile telephony. This may well prove attractive to a commercial free to air broadcaster and the end result might simply be to enable a broadcaster to expand into mobile telephony. The fact that they have considerable back catalogues of programming and could use such a licence to cross promote their free to air programming might make a Channel B licence attractive. Using the spectrum to grow an incumbent broadcaster hardly seems in the national interest nor is it serving the principles of competition policy and adds little to the diversity of voices available to the public.

In an environment where content providers greatly outnumber acquirers, terms of trade are dictated to rather than negotiated with the providers.

To ensure that the local content production industry is able to grow – along with the licence holders – in an environment where programming from overseas will always be cheaper than indigenous content, terms of trade need to be addressed at the time the licence is granted. Along with terms of trade, content regulation needs to be determined prior to the auctioning of licences to ensure that these two new channels will deliver new Australian content for Australian audiences.

Australian content obligations currently apply to the free to air commercial broadcasters and to predominantly drama subscription television channels. In the interests of fair competition it is only reasonable that new entrants also be required to deliver appropriate levels of Australian content. As cost imperatives drive decision making in respect of acquisition and commissioning of programming, and as overseas content will always be available at lower costs than will apply to the creation of new Australian programming, content regulation is necessary to alleviate the disparity between primary and secondary broadcasting markets.

Finally, the Alliance remains of the view that allocation of unassigned channels would be best used – in the interests of audiences and driving take-up of digital services – by allowing a broad range of programming free to air. The two channels could effectively be used for digital community broadcasting and for the establishment of a national digital Indigenous broadcasting service.