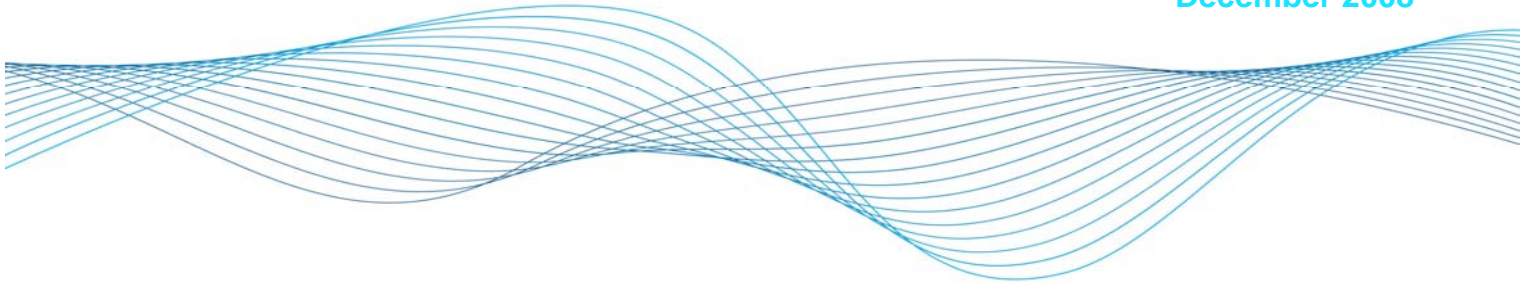




**ABC and SBS: Towards a digital future**  
**Submission to DBCDE Discussion Paper**  
**December 2008**



## 1. Introduction

This paper is written in response to the Department of Broadband, Communications and the Digital Economy's (DBCDE) discussion paper, *ABC and SBS: Towards a digital future (Discussion Paper)*.

The Discussion Paper outlines the proposed vision for 2020 of both the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS). This 'vision' according to both the ABC and SBS, includes the provision of an increased number of channels and on-line services in light of the switch off of the analogue television signal and the rise of the digital economy.

The ABC has said that its vision is to provide another four (digital) channels; a children's channel (ABC3), a news and public information channel (ABC4), an education channel (ABC5), and a 'best-of-overseas' channel (ABC 6). The SBS has also said that its vision is to provide two additional channels (SBS3 and SBS4).<sup>1</sup> Both broadcasters also envisage providing more content on-line.

The Discussion Paper asks respondents to comment on any changes to the ABC charter and the SBS charter in light of the national broadcasters' vision for the future, the planned role-out of the National Broadband Network (NBN) and the rise of the digital economy. The Discussion Paper also notes that the outcomes of the review of the future of the ABC and SBS will be considered as part of the Government's consideration of the ABC and SBS triennium funding round.

As a general comment, the Discussion Paper contains extensive data and information sourced directly by the ABC and SBS and presented as fact, without any clear analysis. At the same time, the Discussion Paper rightly highlights the need for independent data and information about the ABC and SBS to be provided to Government to guide what will amount to crucial policy decisions. These policy decisions will have huge ramifications for the Australian media community and the Australian public for years to come. As such ASTRA is greatly concerned that any arguments put forward by the national broadcasters for additional funds and channel proposals be thoroughly considered and rigorously assessed.

## 2. Overview

ASTRA's response makes the following key points:

- The ABC and SBS have a valuable role to play as national broadcasters in providing Australians with a common and universally available media service funded by all Australians through their taxes. However, the future planning and therefore tax funding of the national broadcasters in a multi-channel digital age should be determined through a process that is carefully considered to avoid duplication, public resource waste and the introduction of services that replicate existing services and create unintended anti-competitive consequences;
- There is no evidence to demonstrate that there is any 'market failure' that would support the rationale for providing the national broadcasters with additional public funds for the six new channels they propose. Each new channel proposal should be carefully and independently assessed to ensure there is clear market failure before proceeding with any additional funding;
- The Discussion Paper does not give sufficient weight to contestability in the provision of new channels and services (which the market will not provide). There should be greater

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<sup>1</sup> DBCDE, *ABC and SBS Towards a digital future*, page 9

contestability around the provision of such services to ensure improved efficiency, better quality services and increased incentives for innovation;

- There is insufficient attention paid to the most appropriate method of distributing content in a digital economy. In some cases what is proposed is expensive terrestrial delivery when broadband delivery would be a better option, especially in light of the Federal Government's NBN plan to provide broadband to 98% of homes. ASTRA believes there should be much greater clarity around what channels should be delivered and on what distribution platforms;
- There is insufficient detail on the spectrum requirements for these proposed additional channels or the method by which spectrum could be allocated to the national broadcasters. The provision of new channels by the national broadcasters cannot be considered in isolation from other spectrum requirements, alternative uses for that spectrum and method of allocation. ASTRA believes that the best way to allocate spectrum is via a competitive auction;
- The ABC Charter in particular contains core responsibilities that should be preserved in the public interest – such as independence from commercial influence, and the delivery of services that are different to that of the commercial media. ASTRA is concerned that the ABC may not be delivering on these core responsibilities particularly in relation to independence from commercial influence, examples of which are discussed later in this submission; and
- The ABC Charter, established in 1983 is now considerably out of date and does not reflect even the changes made to the Broadcasting Services Act 1992 (**BSA**), which itself is arguably well beyond its use by date, or changes to the broader media landscape. The ABC charter (and where relevant the SBS charter) should be updated to reflect the 2008 and beyond communications landscape.

### **3. Background: ASTRA and the Subscription Television Industry**

ASTRA was formed in 1997 to underpin and propel the new era in competition and consumer choice that new services such as subscription broadcasting and narrowcasting have brought to broadcasting, communications and entertainment in Australia.

These were new categories of broadcasting services introduced by the BSA. These new services added to the mix of existing categories of service, those being the national broadcasting services; commercial broadcasting services (commercial television and radio); and community broadcasting services.

ASTRA's membership includes the major subscription television platforms as well as the many channels that provide programming to these platforms. Other members include communications companies such as OPTUS and Telstra. A complete list of ASTRA members can be found at [www.astra.org.au/members.asp](http://www.astra.org.au/members.asp).

Subscription television channels provided by ASTRA members are broadcast on the FOXTEL, AUSTAR and OPTUS subscription television platforms. These channels are available to well over two million residential subscribers and are directly accessible by more than seven million people.

Since its inception, over \$A9 billion dollars has been invested in infrastructure, capital, facilities, productions, programs and services in order to establish and develop the subscription television industry. ASTRA's members are responsible for the bulk of this investment which has been distributed throughout metropolitan, regional and remote Australia. Consequently, the sector has created an

enormous number of jobs, investment, infrastructure and production content throughout Australia and has made substantial contribution to Australia's digital economy.

The industry continues to invest heavily in its own growth and the growth of the Australian digital economy and the communications and broadcast sectors through its continuing investment in content and delivery.

#### **4. The Rise of the Digital Economy**

The ABC and SBS have a valuable role to play as national broadcasters in providing Australians with a common and universally available media service funded by all Australians through their taxes.

That role however does require careful examination in the current and evolving media landscape where Australians are served by many and varied services. In the current landscape it is important to consider what the focus of the broadcaster should be. By way of example, when each of the ABC and SBS commenced broadcasting there were no subscription television (broadcast or narrowcast), open narrowcast or community television services for Australians.

The current charters of both organisations remain instructive. Fundamental to the ABC Charter is a focus upon broadcasting programs that achieve the following:

- a contribution to a sense of national identity
- a reflection of cultural diversity
- an educational quality
- promote the musical, dramatic and other performing arts
- a balance between wide appeal and specialisation

Fundamental to the SBS Charter is a focus upon broadcasting programs that achieve the following principal function – to inform, educate and entertain Australians via the provision of multilingual and multicultural services.

The Discussion Paper includes an overview of the ABC and SBS at its Appendix B and Appendix A to this submission contains the charters of both organisations.

Importantly the ABC must take account of the commercial and public (now referred to as community) sectors<sup>2</sup> of the Australian broadcasting system in the provision of its services and the SBS must contribute to the overall diversity of Australian television and radio services by extending the range of these services.

There is obviously little point in the Australian Government dedicating the collective resources of its people via taxation towards services that are already provided by the market place. There is instead a valid and valuable cultural contribution to be made by Government when market failure of one form or other has occurred.

ASTRA believes that neither the Discussion Paper nor the national broadcasters have established the case of 'market failure' in the areas where the ABC and SBS are seeking additional public funding for six new channels.

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<sup>2</sup> The ABC Charter predates the advent of many current broadcast services explaining the absence of reference to subscription television, narrowcast or 'community' services.

It is important to establish such market failure because the rise of the digital economy means there is less likely to be ‘market failure’ in areas traditionally seen to be the preserve of public broadcasters – which removes the accepted rationale for such additional public funding to the ABC and SBS.

### **Traditional rationale for public funding – ‘market failure’**

A key rationale for public funding of much of the programming and operations of the national broadcasters is that there is ‘market failure’ and that without such public funding certain services would not be provided by the market.

This rationale has been put forward by the national broadcasters to argue their case for additional funding for the six new channels they want to provide by 2020. For instance, the ABC’s Managing Director, Mark Scott told the National Press Club that *market failure* in the areas of *localism, children, Australian stories and cultural expression, quality news and current affairs and education* mean the need for more funding to the ABC<sup>3</sup>.

In relation to news and current affairs, Mr Scott suggested, the ABC could provide a news channels similar to C-SPAN in the US. Mr Scott said:

*“I include in that category Parliament from Canberra and the State chambers; press conferences and Parliamentary hearings; major fora like the annual ABARE conference; key annual general meetings; public addresses at places like the Lowy Institute, the Melbourne Press Club or the Centre for Independent Studies. Again, there is not a dollar to be made from this for a commercial operator – but given the level of investment in the ABC, we could do it better and for less additional money than anyone else in the country.”<sup>4</sup>*

Further, the ABC Charter<sup>5</sup> also makes it clear that the ABC should not simply replicate the services of the commercial sector. Section 6(2)(a) states that in the provision of its broadcasting services, the (ABC) *shall take account of... (i) the broadcasting services provided by the commercial and community (public) sectors of the Australian broadcasting system.*

### **Rationale for such public funding less applicable in a digital economy**

Neither the national broadcasters nor the Discussion Paper establish the case that such ‘market failure’ has, or will have, occurred by 2020. In fact, increasing digitisation, the more efficient use of spectrum, the increased capacity of new digital networks and the high penetration of personal computers all mean that the private sector is much more able to provide many of the new channels the ABC and SBS say they want to provide.

This point is supported by The Social Market Foundation in a recent report commissioned by the BBC to scope out a vision for the BBC in 2018. The authors of the report found that the rise of the digital economy will support the expansion of the commercial provision of ‘diverse and innovative new content services’. They conclude that the rise of the digital economy means:

*“The potential of the market to deliver more than it can in the conventional broadcast world will be unlocked, reducing some of the market failures that prompted public intervention in broadcasting in the past.”<sup>6</sup>*

This applies in Australia as much as in the United Kingdom. FOXTEL and AUSTAR’s digitisation of their platforms, their increased bandwidth, the significantly expanded choice of channels on their

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<sup>3</sup> Mr Mark Scott, *The ABC of the Digital Media*, National Press Club, September 2008

<sup>4</sup> *ibid*

<sup>5</sup> Appendix A

<sup>6</sup> Social Market Foundation, *Public Service Broadcasting in the United Kingdom*, Nov. 2008, p 14

platform and sizable customer base mean that it makes increasing sense for these platforms to provide some services that some people may believe could be provided by the ABC. Further, it is not just the subscription broadcasters who are in a position to provide diverse and innovative content services. Already today we can see numerous examples of such content being offered to consumers via sites such as YouTube or the many video podcasts available, much of it advertiser supported rather than subscription based. The Government's NBN initiative will extend the ease of access to such services to even more Australians.

#### **A-SPAN and the proposal for ABC4**

The provision by FOXTEL, AUSTAR and the Australian News Channel of A-SPAN is a case in point. Notwithstanding the comments by the ABC about market failure in the provision of news and current affairs programs and the need for the ABC to provide an Australian version of C-SPAN, the launch of A-SPAN, by FOXTEL, AUSTAR and the Australian News Channel has been announced and it makes economic sense for subscription television to provide this channel, just as subscription television does for C-SPAN in the United States.

A-SPAN is a dedicated news and current affairs channel which will include (but not be limited to): coverage from sittings in the House of Representatives and Senate, critical Senate Estimates hearings and question time in both houses; coverage of proceeding in the New South Wales, Victorian and Queensland Parliaments; coverage from the US Senate and House of Representatives, and the United Kingdom and New Zealand Parliaments. See Appendix B for more detail.

A-SPAN will be launched on 20 January and be carried in the FOXTEL and AUSTAR's basic packages at no additional charge to around 2.2 million households. Further, FOXTEL, AUSTAR and the Australian News Channel will also make this channel widely and freely accessible by making it available on-line and over free to air transmission via the digital television trial which is being conducted by Broadcast Australia in Sydney. ASTRA members also propose to provide this channel over Channel A, subject to spectrum decisions yet to be made by Government.

A-SPAN like C-CPAN will be independent of editorial intrusion. A-SPAN will always and only convey parliamentary and other policy discussion directly to its audience in its original delivery without judgement or comment. The provision of A-SPAN by the Australian News Channel builds on the excellent reputation and skill of the SKY NEWS Channels providing extensive coverage of Australian politics and business and already available throughout all of Australia.

ASTRA believes that A-SPAN will make a genuine contribution towards informing Australians of key policy and political issues as well as allowing Government to hear directly from Australians and thereby enhance our democracy. As the Prime Minister the Hon Kevin Rudd MP said in announcing A-SPAN:

*"Today's announcement on behalf of A-Span is I think a good thing for our democracy. It's a superb initiative, it's 100 per cent industry funded."*<sup>7</sup>

#### **Children's Television and the proposal for ABC3**

Another area where the ABC in particular has sought to demonstrate 'market failure' is in the area of children's television. The ABC has undertaken an extensive campaign to convince Government and others to support its desire to receive additional taxation funding to resume the broadcast of a dedicated children's content channel as a supplementary service to ABC1 and ABC2. Active in partnering this campaign has been the Australian Children's Television Foundation (ACTF), itself a body which

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<sup>7</sup> Transcript of Prime Minister's remarks at Launch of A-SPAN, 8 December 2008, Parliament House, Canberra.

receives significant Government funding. Unfortunately the approach and rhetoric of both organizations has been to denigrate other sectors of the broadcast industry such as subscription television.

As is evident in research produced for the Australian Communications and Media Authority's (ACMA) current review of the Children's Television Standards (for commercial television), children's television viewing has substantially shifted to subscription television where up to seven channels of programming specifically made for children is available. These channels include Nickelodeon, Nick Jr, The Disney Channel, Playhouse Disney, Cartoon Network, Boomerang and the newly launched CBeebies (from the BBC), as well as general viewing for children available across specific documentary, movie, news, sport, music, arts, knowledge and general entertainment channels.

Children also have access to specific community programs through the subscription TV platforms. For example, AUSTAR provides a specifically selected set of channels, supported by a web-based set of teaching materials, free of charge to over 2000 schools in regional Australia. The Weather Channel provides specific teaching materials designed to suit the secondary school curriculum and both AUSTAR and FOXTEL, with the assistance of many of the channels, provide community outreach initiatives of benefit to children and their communities.

Subscription TV children's channels deliver high quality Australian made and exceptional overseas content specifically made for children which is entertaining, informative and adds something to a child's experience of the world. Further, these channels are in addition to the substantial amount of child specific and Australian made content produced, commissioned and broadcast by the commercial networks and indeed the national broadcasters themselves.

The ABC has previously created a channel for children. Known as FlyTV, the ABC made its own decision to stop producing this specific children's channel on 30 June 2003, and subsequently devoted resources to creating a more 'general themed' channel called ABC2, while at the time re-branding its original channel as ABC1.

Both the ABC and ACTF have expended considerable resources to try and demonstrate that children are 'underserved' in terms of television content and particularly Australian television content, and as such will require additional funding from Government to meet this perceived underserved area. This is not withstanding the previous and current opportunities for the ABC to prioritise children's content over other programs and projects that it has developed.

The fact is there is no evidence of market failure for the provision of child specific, quality Australian and international children's programming available across the range of delivery platforms across Australia.

Extraordinarily, subscription television has been particularly targeted in the claims repeatedly made in a variety of forums by both organizations:

- *"the subscription television platform remains virtually unregulated"*<sup>8</sup>
- *"what children see in a paytv world is even more startling"*<sup>9</sup>

Contrary to these claims, as the ABC well knows and understands, Australian subscription television services are in fact among the most technologically advanced and regulated in the world. The provision of digital television has allowed greater control of viewing experiences for all viewers. Parents, for example, can access and record particular programs by genre focusing a child's viewing upon content that has been pre-selected and re-played on personal video recorders

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<sup>8</sup> Kim Dalton – CCI International Conference: Creating Value (26 June 2008)

<sup>9</sup> Mark Scott at Australia: You're Watching It – Screen Content in the 21<sup>st</sup> Century Conference; 1,2 December 2008.

such as FOXTEL's IQ or AUSTAR's Myster. This same technology allows all subscribers to block certain types of content from being viewed at the touch of a button (parental lock-out system). Subscription television is therefore well equipped to assist parents and children to navigate their way through suitable content choices.

Furthermore, children's subscription television is comprehensively regulated. In addition to being regulated by trade practices legislation, state food acts and generally under the Broadcasting Services Act, ASTRA's codes of practice focus on specific aspects of children's television. These codes go through a process of public comment and consultation and must be approved by the ACMA for registration, unlike the ABC and SBS codes which are 'noted' by the ACMA. Consequently, children's programming on subscription television (essentially delivered via the seven dedicated children's channels) must meet all the requirements of the subscription television codes as well as the special provisions relating to children.

### **The Australian television production sector**

Further to this argument, the ABC along with the SBS have pursued a course of assumptions to imply market failure in the area of Australian Content on television and have continued to publicly argue this case for additional funding. For example as reported at the recent annual conference of the Screen Producers' Association of Australia:

*"The ABC and SBS are the TV industry's only options for production growth in the near future, according to ABC director of TV Kim Dalton and SBS director of content and online, Matt Campbell.*

*Mr Dalton said in an environment in which government appropriations to Screen Australia would fall in 2009-2010 and in which revenue for commercial broadcasters shrink, producers must look to the public broadcasters for future opportunities if they were to win funding increases from the federal Government in the next round of tri-ennial funding.*

*Mr Campbell told the Screen Producer's Association of Australia Conference: "We are the most important thing for you, and the most important thing that can happen for you in the next three years. We need you as much as you need us. If we muck up, you are in the shit, and we really, really need your support."<sup>10</sup>*

It is important to note that independent sources of information about the production of Australian content such as Screen Australia's 2007/08 National Feature Film and TV Drama Production Survey<sup>11</sup> do not support the concerns raised by the ABC and the SBS and instead demonstrate a healthy and buoyant film and television production sector supplying Australian content to Australians, including the child audience.

### **Education and proposed ABC5; Foreign Content and proposed ABC6**

Other specific areas of programming canvassed by the ABC and noted in the Discussion Paper include education, foreign content and Indigenous programming. The proposed ABC5 would be for education programming and the proposed ABC6 would be a foreign content channel. Again these proposals must be rigorously assessed and scrutinized and only considered for additional funding where there is clear market failure.

The fact is foreign content is available via a number of sources (online and broadcast – radio and TV), not the least being the multicultural and multilingual television programming provided by SBS and SBS

<sup>10</sup> 'ABC, SBS 'last hope for new TV shows''; Michael Bodey, The Australian, 17 Nov 2008

<sup>11</sup> [http://www.screenaustralia.gov.au/documents/SA\\_publications/nps.pdf](http://www.screenaustralia.gov.au/documents/SA_publications/nps.pdf)

World News or the numerous subscription television channels which provide overseas content (news and all other genres), foreign language content (news, drama et al), and single channel foreign language content (RAI, Antenna, ART et al). Australians choose to subscribe to subscription television services so as to allow access to programming that is not necessarily Australian. For example there are at least nine news channels available on subscription television (plus SBS World news via retransmission) and include the best of international content such as BBC World, CNN, FOX News, CNBC, Bloomberg and Eurosport News. Subscription television's drama and documentary services also broadcast the best of internationally produced content. There is clearly no market failure in the delivery of foreign content.

Similarly educational programming (including educational curriculum units) is also available via a number of sources, such as educational institutions online, arrangements with community television broadcasters, arrangements with subscription television channels and platforms and expected benefits from the rollout of broadband discussed further below.

### **Indigenous programming and NITV**

NITV is the National Indigenous television service specifically set up with government funding to deliver a range of indigenous content as widely as possible throughout Australia. To this end NITV is retransmitted on both AUSTAR and FOXTEL subscription television digital platforms and is available in metropolitan and regional Australia and is transmitted via the Imparja commercial television service to regional and remote Australia. As noted in the Discussion Paper, indigenous programming provided by NITV is in addition to the indigenous community radio stations operating across Australia and the specific indigenous programming delivered by the ABC and SBS. The current retransmission arrangements with NITV have enabled a wide distribution of content which is not possible under current terrestrial spectrum arrangements, discussed further below.

ASTRA proposes that the ABC and SBS should only receive additional funding for new channels where there is clear market failure.

## **5. Contestability**

If the Government clearly establishes there is market failure and a need to publicly fund new channels, ASTRA believes that there should be greater emphasis given to contestability for the provision of these services.

ASTRA believes that a problem in the approach in the Discussion Paper is that it contains no serious discussion around contestable funding of the proposed channels. Its discussion on contestability is brief and, other than for the provision of the Australia Network (pp32-35), limits contestability to individual programs or *specialist forms of public broadcasting content, particularly content primarily delivered on-line* (e.g. educational content).<sup>12</sup>

The benefits of making services contestable is that it usually ensures improved efficiency (i.e. less cost to the tax payer), better quality services and increased incentives for the provision of innovative new services.

The benefit of such contestability is illustrated by looking at the ABC's proposal to provide a new public affairs network. The ABC said: "*We could do it (an Australian C-SPAN) better and for less*

<sup>12</sup> DBCDE, ABC and SBS Towards a digital future, page 40.

*additional money than anyone else in the country.*<sup>13</sup> There is no way to know whether this statement is correct, without some form of contestability. Given that the private sector is able to provide this service – without Government funding – it is very likely that if the Government had put to contract the provision of this service, it would have been provided at a high quality and lower cost than the ABC could provide it.

Our point then is not that the Government should use a contestable model for a C-SPAN style channel (which the private sector is already providing) but that if the Government's default is to fund the channels proposed by the ABC and SBS there is no way of establishing whether other providers could provide such a service and ensuring the efficient and effective delivery of the service.

The Prime Minister the Hon Kevin Rudd MP has supported the idea of such contestability in the provision of public services. In an address to the heads of commonwealth agencies and members of the senior executive service in April 2008 Mr Rudd said,

*“Service delivery should be contestable, and decisions about the mix of public and private sectors should be based on the available evidence on how to deliver services efficiently and effectively.”*<sup>14</sup>

It is unclear to ASTRA why the ABC is ‘natural or default’ recipient of public money for any of the channels that it proposes to provide. For instance, there are multiple training institutions and universities that might be better placed than the ABC to provide an education channel. Similarly our sector – with subscription television's expertise in producing seven children's channels and thousands of hours of Australian content - is as well placed as the ABC to tender for the provision of a new children's channel, should the Government wish to fund this new channel.

## **Competition for Content**

### **Online**

ASTRA notes and applauds the innovative work the ABC in particular has done with its online content. Through cutting edge new content and the leveraging of existing content, the ABC and SBS have great opportunities to fulfil their charter obligations by expanding delivery of content via different platforms. However, it is absolutely critical that when using taxpayer funds to create or invest in content which is programmed on linear channels or is specially created for online, that the ABC does not then seek to commercialise that content in direct competition with other providers who are not funded by taxpayers.

Content downloads and ‘catch up’ television, are growing services being provided by the private sectors on the back of significant commercial investment. The ABC is not able to generate advertising or subscription revenue for its television services; this is a trade-off under the Charter for its taxpayer funds. It is totally unjust for the ABC to breach this fundamental rule by leveraging taxpayer funded content to earn transactional revenue just because it is a different delivery mechanism, as this places the commercial sector at a significant disadvantage.

If it is argued that the ABC needs to commercialise its online offering in order to fund online infrastructure, then attention should be focussed on ensuring that infrastructure funding and delivery for both the ABC and SBS is as efficient as possible. Given the considerable infrastructure duplication between the two organisations, reallocation of significant funds could be achieved by combining the infrastructure operations of the two organisations. While there was clearly a rationale for two different organisations when SBS was born, the creation of a truly multi-channel world suggests that it may be

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<sup>13</sup> Mr Mark Scott, *The ABC of the Digital Media*, National Press Club, September 2008

<sup>14</sup> The Hon Kevin Rudd MP, Address to Heads of Agencies and Member of the Senior Executive Service, 30 April 2008

timely to revisit this rationale and whether the charter objectives of content delivery could be achieved by a hybrid of the two organizations.

### **Broadcast**

There is clear evidence of an increasingly aggressive attitude from the ABC and SBS towards ‘competition’ with the subscription television sector. Despite the subscription sector having been strong supporters of both organisations, the rhetoric and behaviour of both the ABC and SBS has included pursuit of commercial terms which seek to ensure longer than industry standard ‘hold back’ clauses in production and acquisition deals, and in some instances the ABC in particular has been willing to pay more for content to ensure this happens. The clear intent of these deals is to block programming being made available to subscription television for as long as possible. This seems inconsistent with the charter goal of making content as widely available as possible.

Programming investments made by the ABC and SBS, funded as they are by public money, should not include clauses such as subscription television rights “holdbacks”, which prevent the broadcast of that content on subscription television. The public broadcasters should not be entitled to use public money to acquire rights solely for the purpose of retarding competitive offerings.

ASTRA proposes that there should be greater contestability in the provision of any new publicly funded channels.

On the matter of content contestability, ASTRA recommends that Public broadcasters should not be allowed to use tax-payer funds to acquire rights solely to retard competitive offerings.

## **6. The Digital Economy and Distribution**

The distribution implications of the Government’s NBN have not been clearly worked through in the Discussion Paper nor understood by the ABC.

For example, the ABC has said that it wants to create an ‘education channel’ (ABC5). The Discussion Paper is unclear on whether such a channel should be provided terrestrially and on-line, or only on-line. ASTRA agrees that there is ABC (and SBS) library content that provides extremely useful educational material for teaching, however it is clear that the best way of distributing such content to schools around the nation (by 2020) is via broadband not broadcast.

As the Discussion Paper points out, the Government policy is to support the roll-out of an NBN to provide at least 12 megabits per second to 98 per cent of Australian homes and businesses. As ASTRA understands this policy, its aim is to have this new network roll-out over a five year period (i.e. to be completed by around 2016).

In addition to this policy, the Government has also recently announced that it will invest \$2 billion in its National Secondary Schools Computer Fund to fund new computers in Australian schools. This \$2 billion fund includes \$807 million to cover the on-costs in installing computers in schools.<sup>15</sup>

The combination of these two policies and the way in which teachers use teaching materials (i.e. they want to access relevant material when they want) means that it makes far more sense to provide the vast

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<sup>15</sup> The Hon Julia Gillard, Media Release, Additional \$807 million for computers in schools, 30 November 2008

library of ABC and SBS educational content on-line (which can be accessed at any time) rather than providing a linear terrestrial broadcast of such material.

ASTRA proposes that the national broadcasters be much clearer about what channels are appropriate for what distribution platforms.

## 7. Spectrum

The Discussion Paper is unclear about the spectrum requirements of the national broadcasters for their proposed new channels and the method by which the Government proposes to allocate any additional spectrum. ASTRA supports the competitive auction of unencumbered spectrum.

The Discussion Paper says that: *In the longer term, any expansion of the number of television channels as envisaged by the broadcasters would also create spectrum demands.* In ASTRA's view the 'vision' for the new channels that the ABC and SBS want to provide cannot be considered in isolation from the spectrum requirements for those channels, the possible alternative uses for that spectrum and the best method of allocating such spectrum.

The Productivity Commission has made the point in its inquiry into radiocommunications "*that economy wide efficiency is usually best achieved through a decentralised, competitive market rather than by administrative means.*" It therefore supports the auctioning of spectrum licences rather than the allocation of such licences by administrative means<sup>16</sup>.

Both the commercial and the national broadcasters have been gifted 7Mhz of spectrum to assist in their transition from analogue to digital. The gifting of such spectrum to these broadcasters provides them with a significant competitive advantage to competitors in the television entertainment market. As the Productivity Commission said, *the privileged access to spectrum coupled with the bar on new entry has given the incumbent commercial broadcasters a significant competitive advantage over new media players.*<sup>17</sup>

Broadcast spectrum can be used for a vast array of potentially new services including things such as a fourth digital commercial television network, open narrowcast services, mobile television, and wireless broadband. Given the increasingly broad range of possible uses of such spectrum, it is beyond the ability of one central authority to determine the best use of such spectrum - such as via an administrative allocation of such spectrum to one party. Spectrum should be allocated to its most highly valued use in the economy – which means that it is used to provide services people most value. The best way of ensuring this occurs is by competitive auction of spectrum.

The other advantage of such competitive auctions is it contributes to the Government's consolidated revenue.

ASTRA proposes that the DBCDE clearly outline the ABC's future spectrum needs to accommodate its proposed new channels. ASTRA proposes that the allocation of future broadcasting spectrum be by competitive auction and not be done administratively.

<sup>16</sup> Productivity Commission, Inquiry into Radiocommunications, 1 June 2002

<sup>17</sup> Productivity Commission, Inquiry into Broadcasting, March 2000, p 10

## 8. The ABC Charter

The ABC Charter in particular contains core responsibilities that should be preserved in the public interest – such as independence from commercial influence, and the delivery of services that are different to that of the commercial media. The ABC Charter, included at Appendix A, is seriously out of date and needs at the very least to reflect changes to the broadcasting legislation such as the BSA and to reflect changes to the broadcast landscape in general.

At a minimum the following changes should be made to the ABC Charter, (and where relevant to the SBS Charter):

- The Charters should be updated to reflect the general objectives for our broadcast system as set out in the BSA (s. 3). For example one of the objectives of the Act, *to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive, and responsive to audience needs.*

In ASTRA's view it is important that the activities undertaken by and funding of, the ABC and SBS should have regard to objectives such as efficiency, competitiveness and responsiveness to audience needs.

- While the ABC is bound to consider the services provided by subscription television so that it does not replicate services already provided, the ABC Charter does not recognise the subscription television sector. For instance, the Charter requires the ABC to provide *innovative and comprehensive broadcasting services...as part of the Australian broadcasting system consisting of national, commercial and community sectors.* This reference – and other such references – should include the 'subscription television sector'.
- The ABC Charter currently solely refers to *broadcasting services* and *broadcasting programs*. It needs to be updated to contemplate and deal with the digital environment and the obligations and objectives surrounding on-line content. The Charter should impose an obligation on the ABC to provide content over the most efficient and appropriate delivery platform, so that the ABC's Charter does not permit it to misuse valuable public spectrum for services better provided on-line. It should also be clear that provisions concerning 'commercialism' of the ABC also apply to any form of delivery, including on-line.

In addition to these specific recommendations, ASTRA is concerned as to the evidence of creeping commercialism in the ABC that clearly appears contrary to its Charter and its own editorial policies. Take for example the story highlighted by the ABC's own Media Watch program. Media Watch reported on 8 September that ABC management was developing ABC mobile phone services that carry advertising, in conflict with the ABC's Editorial Policies.

The Media Watch report was denied by ABC's Managing Director, Mr Mark Scott:

*"There's been no change in the ABC's position around this. We've indicated that there is no advertising on ABC radio, ABC television, or abc.net.au. And abc.net.au not only includes the sites that you can access from a computer but if you're accessing abc.net.au on a mobile platform there are no advertising on that also."*<sup>18</sup>

But the host of Media Watch, Jonathon Holmes said on air a week later:

*"So where do the ads come in? Well, according to Ian Carroll (Director, ABC Innovation, email to Media Watch 12 September 2008) - "ABC Commercial is developing commercial sites*

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<sup>18</sup> Mark Scott (Managing Director, ABC), National Press Club address, 10th September 2008

*in partnership with third party companies (in this case Cadability and Weatherzone) separate from the commercial-free m.abc.net.au sites.*<sup>19</sup>

Further evidence of a 'flexible' approach to the core values of the ABC is demonstrated in the ABC's move into internet television. Mark Scott told the National Press Club:

*"Our most recent innovation is iView, Australia's first internet television service – developed totally in house and at low cost by the ABC. With 45 programs - and more available in future - for our audiences to watch free of charge, full screen, online. The best of our most recent programming and some shows not yet aired on ABC Television."*<sup>20</sup>

In August 2008 Mr Kim Dalton, Director of Television for the ABC spoke to ABC 702 radio's Adam Spencer live on-air about *iView*. Spencer raised concerns that *iView* might use a lot of bandwidth and come at a high price for the broadband bills of ABC viewers. Mr Dalton told Spencer:

*"Well, we're in discussions at the moment with a number of ISPs, a number of internet service providers, with the idea that the service would be provided by them outside of their customer's cap. We've got one on board, iiNet, which is a reasonably substantialised (sic) provider, so anybody who's a customer of that particular ISP provider, if they're watching iView, the material they download will actually be outside their net, outside their cap, I should say."*<sup>21</sup>

This amounts to powerful advertising for *iiNet*, provided unreservedly by the ABC's senior management, to an audience unreachable to any other commercial organization. This seems in direct contradiction to Part 16.2.1 of the ABC's Editorial Policies which states, "*Publicity for individuals, organizations or products should not be given, and the presentation of identifiable or clearly labelled brand products or services should be avoided.*" And to Part 16.2.4 which states that "*ABC presenters must avoid any endorsement of any commercial organization, product or service by themselves, their guests or contributors in ABC broadcasts or on ABC Online.*"

The ABC's independence from commercial influence is also questionable with its involvement with Freeview, which is a commercial branded 'product' marketed by both the commercial and national broadcasters with the ABC's Director of Television as its Chair. While ASTRA accepts that both the ABC and SBS have a legitimate and important role in promoting the Government's analogue switch-off plan and digital switchover timetable, the promotion of Freeview which according to Mr Dalton "*will provide an attractive alternate to pay TV for viewers...*"<sup>22</sup> is clearly about promoting the commercial interests of one sector above another.

ASTRA recommends the ABC Charter (and where relevant the SBS Charter) be updated to reflect the communications landscape of 2008 and beyond.

The ABC should address any discrepancies between its own rules as governed by its Charter and its behaviour in relation to commercial influence.

<sup>19</sup> Media Watch, ABC 15 September 2008

<sup>20</sup> Mark Scott (Managing Director, ABC), National Press Club address, 10th September 2008

<sup>21</sup> ABC 702 [DATE] August 2008

<sup>22</sup> Article "Channel choice multiplies – digital push by free networks", Daryl Passmore, Sunday Mail (9/11/08)

## 9. Conclusion

ASTRA remains a strong supporter of the role and significance of public broadcasting in Australia and in particular the core responsibilities undertaken and delivered by our national broadcasters, ABC and SBS.

However these core responsibilities should not be expanded to duplicate services that the market will create, generate and support by on its own, without any necessary Government funding. Any proposals for funding to enable additional services or channels must be rigorously assessed and scrutinized and only considered where there is clear market failure. The national broadcasters are in a unique position to make core contributions to the community without generating any new replicated services already or likely to be provided by the market and which may create unintended anti-competitive consequences.

In addition there should be:

- greater contestability around the provision of any new services to ensure improved efficiency, better quality services and increased incentives for innovation;
- a more thorough investigation into the most appropriate method of distributing content in a digital economy, particularly in light of Federal Government's NBN; and
- more detail and understanding of the spectrum requirements for any proposed new services given any further allocation of spectrum cannot be considered in isolation from other spectrum requirements and alternative uses for that spectrum.

Finally ASTRA recommends that the relevant Charters be updated to reflect the communications landscape of 2008 and beyond.

Please do not hesitate to contact ASTRA if you require further information or clarification of the matters raised.

**AUSTRALIAN BROADCASTING CORPORATION ACT 1983 - SECTION 6**

**Charter of the Corporation**

(1) The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and public sectors and, without limiting the generality of the foregoing, to provide:

(i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

(ii) broadcasting programs of an educational nature;

(b) to transmit to countries outside Australia broadcasting programs of news, current affairs, entertainment and cultural enrichment that will:

(i) encourage awareness of Australia and an international understanding of Australian attitudes on world affairs; and

(ii) enable Australian citizens living or travelling outside Australia to obtain information about Australian affairs and Australian attitudes on world affairs; and

(c) to encourage and promote the musical, dramatic and other performing arts in Australia.

(2) In the provision by the Corporation of its broadcasting services within Australia:

(a) the Corporation shall take account of:

(i) the broadcasting services provided by the commercial and public sectors of the Australian broadcasting system;

(ii) the standards from time to time determined by the Australian Broadcasting Authority in respect of broadcasting services;

(iii) the responsibility of the Corporation as the provider of an independent national broadcasting service to provide a balance between broadcasting programs of wide appeal and specialized broadcasting programs;

(iv) the multicultural character of the Australian community; and

(v) in connection with the provision of broadcasting programs of an educational nature—the responsibilities of the States in relation to education; and

(b) the Corporation shall take all such measures, being measures consistent with the obligations of the Corporation under paragraph (a), as, in the opinion of the Board, will be conducive to the full development by the Corporation of suitable broadcasting programs.

(3) The functions of the Corporation under subsection (1) and the duties imposed on the Corporation under subsection (2) constitute the Charter of the Corporation.

(4) Nothing in this section shall be taken to impose on the Corporation a duty that is enforceable by proceedings in a court.

## **SPECIAL BROADCASTING SERVICES ACT 1991 - SECTION 6**

### **SBS Charter**

- (1)** The principal function of SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.
- (2)** SBS, in performing its principal function, must:
  - (a)** contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and
  - (b)** increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and
  - (c)** promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and
  - (d)** contribute to the retention and continuing development of language and other cultural skills; and
  - (e)** as far as practicable, inform, educate and entertain Australians in their preferred languages; and
  - (f)** make use of Australia's diverse creative resources; and
  - (g)** contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and
  - (h)** contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

A-SPAN release attached