



A REVIEW INTO HIGH DEFINITION TELEVISION QUOTA ARRANGEMENTS

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AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION

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1. Introduction

The Australian Subscription Television and Radio Association (**ASTRA**) appreciates the opportunity to respond to the matters raised in the paper titled *A Review Into High Definition Television Quota Arrangements* (the **Issues Paper**) prepared by the Department of Communications, Information Technology and the Arts (**DCITA**).

ASTRA provides this submission on behalf of its members. ASTRA's members include the subscription television platforms and individual channels encompassing over 50 separate Australian and international businesses. A full list of ASTRA's members can be found at www.astra.org.au/members.asp.

2. Subscription Television Industry Overview

The subscription television sector has spent more than \$8 billion in the development of Australian television.

The most recent large investment has been the provision of new digital services from March 2004 on both the AUSTAR and FOXTEL platforms with a total investment of over \$1 billion. In addition, OPTUS in mid-2003 launched the C1 satellite that is largely used to deliver these new digital subscription television services. In April 2005, OPTUS also committed to upgrade its existing cable network allowing it to carry a digital service.

ASTRA's members have been, and continue to be, the drivers of digital television innovation in Australia.

In its submission to The House of Representatives Standing Committee on Communications, Information Technology and the Arts' inquiry into the uptake of digital television in Australia, ASTRA reported:

“When AUSTAR launched its services in 1997¹ it offered Australian's their first taste of digital television. This has continued, with AUSTAR services being offered predominantly in regional and rural Australia. AUSTAR launched an enhanced television offering branded 'New AUSTAR Digital' in March 2004 with extensive publicity and marketing drives (coinciding with the launch of 'FOXTEL Digital'). As of March 2005, approximately 440,000 Australian homes are connected to AUSTAR's digital services.

FOXTEL launched its first digital television service in March 1999 – this being a digital satellite offering. Five years later FOXTEL launched its 'FOXTEL Digital' product which converted its existing analogue service to digital, relaunched its digital satellite services, as well as providing a raft of new content and interactive digital features. The service targeted Australian consumers in mostly metropolitan areas. As part of its launch, FOXTEL embarked on an ambitious and extensive promotion of the benefits of digital television. A year on,

¹ Corrected information from ASTRA's original submission.

approximately 63% of the more than 1 million homes connected to FOXTEL receive FOXTEL Digital services.

Collectively, there are more than 1 million Australian households that are subscribers to digital subscription television services, representing approximately 65% of subscription television homes. With an estimated total of 7 million households in Australia¹, approximately 14% of Australian homes receive digital television through subscription television providers. There are on average 3.2 residents in subscription television households². Consequently approximately 3.2 million Australians currently receive digital television through subscription television services. This is set to increase given the recent announcement that OPTUS will soon be providing digital television to both current and potential subscribers in metropolitan areas.

It should be noted that currently, digital services provided by ABC, SBS and Channel Nine are available on (sometimes multiple) subscription television platforms.

The aggressive promotion of digital television by subscription television operators has had the effect of dramatically growing the awareness of digital television and its benefits and opportunities to consumers.”

It is estimated that the commercial broadcasters have invested approximately \$600 million on digital conversion.² To assist the digital conversion for commercial broadcasters, the Government placed a moratorium on additional commercial television broadcasting licences until 31 December 2006, imposed restrictions on the services that can be provided by datacasters so as to prevent any competition against commercial broadcasters and paid \$255 million worth of direct financial assistance to regional broadcasters by way of rebates on licence fees and grants to assist in the conversion to digital.

Subscription television has received no such assistance from Government.

Subscription television is a relatively new but increasingly important competitor in the Australian television entertainment market. It has introduced new voices, new players and new outlets for Australian and international content. ASTRA's membership totals 58 entities, including platforms and channels, representing 50 different media and communications businesses, 20 of which are Australian owned or based in Australia.

Across the subscription television sector and the many suppliers which provide services from technology, to sales, to installations, to programming enterprises – the direct employment that our sector generates exceeds more than 5,000 jobs.

Subscription television is also the major investor in Australian broadcasting in the past decade – in cable and satellite infrastructure, broadcasting systems and programming investment, in new and acquired programming from a range of local, independent and overseas sources.

² Ian McGarrity, DBA, 8/6/04

ASTRA's members together provide at least seven independent news and information channels along with an extensive range of movie, documentary, children's, sports, arts, general entertainment, games, music video, audio and language channels.

All participants in subscription television have invested heavily and substantial losses have been incurred by many in order to bring new and innovative services, diversity and choice to Australian consumers.

Significant continued investment, competition and the evolution of new consumer services and employment cannot be robust if legislative advantage continues to be given to the dominant commercial television broadcasters. Investment will only continue with a stable and balanced regulatory environment.

3. Regulatory Background to High Definition Television

ASTRA entered the digital debate with a submission to Government in December 1997 to provide an alternate view for Australia's transition to digital terrestrial television broadcasting.

ASTRA was concerned at the free loan of valuable public spectrum; the opportunities to exploit the spectrum for new services including subscription TV; multi-channelling and non-broadcast services; the assumptions made about what the Australian consumer wanted and was prepared to pay to participate in Australia's digital future; and the conversion costs for broadcasters.

ASTRA acknowledged the need for a conversion path into digital for the current terrestrial broadcasters and therefore proposed the multiplex model which would create greater spectrum efficiency and leave available channels for possible auction to other entrants that could carry a number of programming, communication and data streams. This model would substantially reduce the costs of conversion especially for regional commercial stations and the national broadcasters and free up public spectrum for 'other' uses.

From the outset, ASTRA believed there should be equal opportunity for others to access the spectrum for digital terrestrial broadcasting, on-line services and other emerging communications to promote diversity and provide substantial Government revenue.

At the time, the commercial TV broadcasters successfully argued that they should each be given a 7 MHz channel, to broadcast digital terrestrial television. Their argument was predicated on the notion that the spectrum would be used for high definition television (**HDTV**). Given overseas experience, ASTRA found this to be a highly dubious proposition.

This strategy locked up large amounts of public spectrum and prevented any developed debate about the potential for additional commercial television licences from being allocated given the absence of spectrum availability.

However, the importance of HDTV as advocated by the commercial networks was accepted by Parliament. The legislation was passed in 1998 with subsequent

amendments in 2000. As such the basis for the grant of the valuable 7 MHz of spectrum to incumbent broadcasters is for the provision of HDTV services – to walk away from HDTV and the other provisions is to breach the express and implied commitments which the commercial television broadcasters made to Government and the very purpose for which the spectrum was allocated. These commitments were the basis of the framework agreed to and passed by Parliament.

It was on the basis of the legislative HDTV mandate that many businesses and consumers made significant financial investments in rolling out both services to facilitate HDTV, as well as the associated infrastructure and training, in both regional and metropolitan Australia.

Finally, the policy framework for HDTV and the restrictions placed upon commercial television multi-channelling are clearly connected. The expectations raised by Government and broadcasters in providing HDTV and the implications for dismantling this policy platform are significant. Given the limited options of use for valuable publicly owned spectrum, HDTV must not be sacrificed for the sake of commercial television multi-channelling.

ASTRA not only opposes any trade off between HDTV and multi-channelling but also vigorously opposes any subscription multi-channelling using public spectrum. Commercial television networks have been loaned a scarce public asset – broadcasting spectrum and given a unique legislatively enshrined protection to provide “free” digital television services. There can be no public benefit in allowing these same networks to provide “pay” television services using a public asset given to them for the opposite purpose. Any form of subscription multi-channelling on the public spectrum loaned to the commercial networks to provide “free-to-air” digital services is unacceptable and would be a complete subversion of the purpose for which the public asset was loaned.

ASTRA’s consistently held position is to recommend that if any relaxation of the prohibition on commercial TV free-to-air multi-channelling is to occur then this should not occur unless the anti-siphoning regime has been completely removed first. If it is to happen then it should be phased in and only occur after 2008. This then allows at least a four year period from service launch to bed down the digital investment made by ASTRA’s members and is consistent with the assistance already provided to the commercial and radio broadcasters for their own digital investments. At no time should the provision of HDTV by national or commercial broadcasters be sacrificed in this process.

4. Mandating an HDTV Quota on Commercial Television

Mandating a quota of the number of hours of HDTV broadcast on commercial television ensures that minimum levels of HDTV are broadcast by commercial television broadcasters. This is important for a number of reasons:

1. Commercial television broadcasters can be held to account in providing minimum levels of HDTV broadcasting to consumers. This is an important obligation that must be met as part of the quid-pro-quo of the provision to

commercial television broadcasters of the large valuable public asset of 7 MHz of publicly owned spectrum.

2. Consumers who have purchased HD-compatible digital receiver equipment, can be confident that at least 1040 hours of HDTV transmissions are provided by each commercial broadcaster each year. This ensures that these investments made in this equipment can be realised through the type of programming being broadcast.
3. Manufacturers who have made substantive investments in HDTV, have certainty in deciding the type of HDTV equipment to be brought to the Australian market.
4. Local producers who have invested in equipment for the production of HDTV, have potential markets for HDTV programs.
5. Both internationally and in Australia, HDTV has provided incentives for consumer take up of digital television services. As HDTV is not available through analogue broadcasts, the viewing advantages of HDTV have encouraged people to purchase equipment to enable them to receive digital television. This is particularly true in the United States but similar experiences are to be found in Canada, Korea, Japan, United Kingdom and other parts of Europe.

Meeting the quota

Commercial television broadcasters enjoy considerable flexibilities offered to them as part of their requirement to provide a minimum level of HDTV programming. These include:

- A relatively small amount of total broadcast time is mandated to be broadcast as HDTV – approximately 20 hours per week or 1040 hours per year amounting to just 12% of a broadcaster's schedule;
- The commencement of the requirement to provide a minimum quota of HDTV broadcasts was delayed from 1 January 2003 to 1 July 2003;³
- The HDTV quota was amended from being a weekly quota to an annual amount allowing broadcasters considerable programming flexibilities but exposing consumers to the potential for uneven HDTV program scheduling;⁴
- The ability to include advertising and sponsorship, community service announcements, station or program promotions, news breaks or weather bulletins or similar material towards the quota;⁵

³ Second Reading Speech Broadcasting Legislation Amendment Bill (no.3) 2002.

⁴ *ibid*

⁵ *ibid*

- The ability to include insubstantial amounts of non HDTV material (ie archival material) in HDTV programs towards the HDTV quota;⁶
- The increased availability of overseas and domestic HDTV programming. Many Australian television series and programs now being produced in HDTV format. The United States has also increased its HDTV programming output. As a consequence HDTV programming is increasingly available at reduced costs to Australian broadcasters – all assisting to ensure that HDTV quotas are easily able to be met.⁷
- All metropolitan commercial broadcasters now meet or exceed their HDTV quota requirements.⁸

Variations between metropolitan and regional licence areas

Significant concessions have been made for regional commercial broadcasters to encourage their conversion from analogue to digital terrestrial services in recognition of ‘cost’ pressures for such licensees. These include a delayed digital start-up and delayed analogue switch off date (currently scheduled in metropolitan areas for 2008); financial assistance from Government (as described above); and limited ability to vary simulcast requirements.

The principles of an HDTV quota should apply equally to metropolitan and regional areas.

What the HDTV quota should be

It is ASTRA’s view that the same or similar quota as is applied now to commercial television broadcasters be continued and be administered in the same manner as is currently occurring.

Should the current regulatory framework change and commercial broadcasters be permitted to multi-channel, this quota should be applied to each channel that the commercial broadcaster broadcasts. Both HDTV and any additional flexibility provided to the simulcast regulations are complementary drivers of digital television take up and as a consequence both strategies should be adopted by Government.

It is ASTRA’s view that the national broadcasters should continue to meet their HDTV quotas within the current flexibility to upconvert SDTV (or analog programming) to HDTV video format.

⁶ ibid

⁷ For a current listing of HDTV programming available on Australian commercial television please refer to listings on <http://www.widescreentv.com.au/>.

⁸ ABA news release NR 37/2004 *Television Broadcasters Meet High Definition Broadcasting Requirements*, 22 April 2004.

5. Conclusion

The commercial broadcasters are uniquely competitively advantaged in comparison with other participants in the television entertainment market. They:

- need not compete for spectrum on the open market;
- have free and exclusive loan of public spectrum to provide digital services;
- have continued protection against any new commercial broadcasters until at least 2007;
- have financial assistance for digital conversion in regional Australia (despite their continued profitability);
- have established infrastructure upon which to build;
- have a dominant market base, and consistently profitable businesses;
- have first mover advantage for datacasting;
- have limits on the content of any multi-channelling by the national broadcasters, ABC and SBS;
- have an opportunity for 'backdoor' multi-channelling via enhanced programming; and
- are protected from competition from subscription television through the anti-siphoning regime.

The regulation requiring commercial broadcasters to provide 1040 hours of HDTV transmissions each year is a small obligation in the context of such advantages. Furthermore it has become a fundamental plank of digital television policy designed to encourage digital conversion that is inextricably linked to other policy issues such as multi-channelling, the removal of the anti-siphoning scheme and the possible provision of licences for additional commercial networks. As a consequence any policy decision regarding mandated HDTV cannot be made in isolation.

Any move away from HDTV at this time would be detrimental to the growth of digital television. Should an HDTV quota not be maintained or priority given by Government to other digital service offerings, viewers would be unlikely to purchase HDTV equipment and it will be increasingly difficult to introduce HDTV services at a later point.

ASTRA recommends continuing similar levels of mandated HDTV for commercial television broadcasters along with a similar framework to administrate the regulation. This should be applied to any future additional service that commercial television operators may be permitted to provide.

Given the limited options of use for valuable publicly owned spectrum, the expectations raised by Government and broadcasters in providing HDTV and the implications for dismantling this policy platform, HDTV must not be sacrificed for the sake of commercial television multi-channelling.

ASTRA's view is that any relaxation of the prohibition on commercial TV free-to-air multi-channelling must not involve any subscription multi-channelling using public spectrum; be combined with the complete removal of the anti-siphoning regime; and occur only after 2008 (permitting industry to bed down the digital investments made and provide a consistent approach to the assistance provided to commercial TV and radio broadcasters).

At no time should the provision of HDTV by national or commercial broadcasters be sacrificed in this process.