Submission

on

Content and access: The future of program standards and captioning requirements on digital television multi-channels

to

Review of Program Standards and Captioning Requirements on Digital Multi-channels

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1. Introduction

Schedule 4, Clause 60C of the *Broadcasting Services Act 1992* (the Act) requires the Minister for Broadband, Communications and the Digital Economy to cause to be conducted before 1 January 2010 a review of:

- Part 9 of the Act, which deals with program standards for children's program and Australian content and with codes of practice; and
- Schedule 4, Clause 38 of the Act, which deals with captioning

in so far as these provisions apply to digital multi-channels on commercial television.

On 4 December 2009 the Department of Broadband, Communications and the Digital Economy released a discussion paper, *Content and access: The future of program standards and captioning requirements on digital television multi-channels*, which canvasses these matters.[1]

Public submissions have been invited. They are due by 31 December 2009.

2. Children's programming

The *Children's Television Standards 2009*, which come into effect on 1 January 2010, require each commercial broadcaster to provide 390 hours of children's programming each year. Up until switchover the *Children's Television Standards 2009* only apply to a commercial broadcaster's core service. After switchover, unless changes to the standards are made, the total amount of hours of children's programming that a commercial broadcaster provides will remain unchanged, but a broadcaster will remain free to determine on which channel, or combination of channels, to meet this quota.

The switchover to digital multi-channels is going to significantly increase the total hours of commercial free-to-air television broadcast into the family home. It would seem reasonable to take this opportunity to require at least a modest increase in the total hours of children's programming required to be broadcast by each licence holder. Perhaps an increase of 30% to 520 hours per year would be appropriate. This would mean an increase from an average of 7.5 hours per week to 10 hours per week.

It seems fair to allow licence holders the freedom to decide how to spread these hours over the various multi-channels they offer. Some broadcasters may opt for a multi-channel that carries all their required children's programming. Others may spread the programming over two or more multi-channels.

The proposal for allowing trading of children's programming quotas is not acceptable. As noted in the discussion paper, if this scheme included national broadcasters it could marginalise children's programming.

More importantly, it is useful to have this inalienable obligation imposed on each commercial television licensee. It acts to remind them that a free-to-air commercial television licence is a privilege carrying with it a set of obligations to the community. The obligation to broadcast a substantial amount of children's programming is one of these obligations to the community. Allowing licensees to pay someone else to do this for them would not help foster this sense of obligation.

Recommendation 1:

That after switchover to multi-channels the number of hours of children's programming required to be broadcast by each licensee be increased from 390 hours per year to 520 hours per year.

Recommendation 2:

That each licensee be free to decide how to spread the children's programming requirements across the licensee's multi-channels.

Recommendation 3:

That no support be given to the proposal for making children's programming requirements tradable.

3. Commercial television code of practice

Section 123 of the Act provides for industry groups, including commercial television broadcasters, to prepare codes of practice. The section specifies certain matters that such a code should address. A code can only be registered by the Australian Communications and Media Authority (ACMA) if it is satisfied that the code of practice provides appropriate community safeguards for the matters covered by the code; the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and members of the public have been given an adequate opportunity to comment on the code.

Free TV Australia is in the process of reviewing the Commercial Television Code of Practice. A draft code was released for public comments which were due by 25 September 2009. Free TV Australia is reported to be in consultation with ACMA on the code.

Several proposals in the draft code directly touch on the application of Part 9 of the Act to digital multi-channels on commercial television and are therefore of relevance to this review.

3.1 Multi-Channel Appendix

The draft code contains a "Multi-Channel Appendix" which contains various provisions for treating multi-channels differently from other channels provided by commercial television broadcasters.

There is no discussion in the draft code about how these different provisions would operate after the switchover to digital is complete in various regions and in the whole country.

Neither the draft code nor the supporting material contain any definition of a multi-channel.

Presumably then the term is meant to refer to both SDTV [standard definition television] multi-channelled commercial television broadcasting service[2] and HDTV [high definition television] multi-channelled commercial television broadcasting service[3] as defined in the *Broadcasting Services Act 1992* (the Act).

The definition of a SDTV multi-channelled commercial television service in Clause 5A includes a criterion that "the service is not the core commercial television broadcasting service".[4] However, this criterion "ceases to have effect at the end of the simulcast period, or simulcast-equivalent period, for the licence area concerned".[5]

Section 41B of the Act authorises a licensee to provide a core commercial television broadcasting service and one or more SDTV multi-channelled commercial television services and one or more HDTV multi-channelled commercial television services. However, this section ceases to apply at the end of the simulcast period or simulcast equivalent period for each applicable licence area.

After this Section 41C of the Act applies. This section makes no provision for a core commercial television broadcasting service. Instead it only authorises the licensee to provide one or more SDTV multi-channelled commercial television services and one or more HDTV multi-channelled commercial television services.

This means that the proposed Multi-Channel Appendix in the Code would apply to *all* the services offered by a licensee from the end of the simulcast period.

The discussion paper confirms this conclusion:

> *After the switchover to digital television, the concept of a 'core' television broadcasting service falls away. Instead, television broadcasters will simply provide one or more digital multi-channels, with the number of channels limited only by the amount of available spectrum or the financial capacity of a broadcaster to provide them.*[6]

The simulcast period will end in Mildura/Sunraysia on 30 June 2010. At that point the provisions in the Multi-Channel Appendix would apply to *all* channels on commercial free-to-air television in that region.

This will apply progressively to each region of Australia as the simulcast periods come to an end. By 31 December 2013 when the last simulcast periods are scheduled to end this scenario could apply to the whole of Australia.

As detailed below, each of the proposed variations from the code of practice for multi-channels is of some significance. They would operate to lower the standards that are currently in place.

> ***Recommendation 4:***
>
> ***The review should recommend that ACMA be requested not to approve a commercial television code of practice that contains lower standards for multi-channels.***

3.2 Amending the Multi-Channel Appendix

The Multi-Channel Appendix proposes allowing more limited consultation with the public before changes are made to its provisions than is customarily undertaken before changes in the code of practice.

The proposal to allow only three weeks for public comment on changes to the multi-channel appendix is not acceptable.

During the lifespan of the revised code – say 2010-2012 – multi-channels are likely to become an increasingly significant component of commercial television broadcasting. The standards for this component of commercial television broadcasting are of as much importance and concern to members of the public as the current core services. There is no basis for distinguishing the period for adequate public consultation for code provisions dealing with multi-channels from other code provisions.

Three weeks is not a sufficient time period for interested community groups to analyse the proposed change and formulate a position; to inform their supporters and other members of the public of the proposal and the issues it raises; and for interested members of the public to prepare and submit their comments.

The recent review of the Commercial Television Code of Practice allowed six weeks for public comments. Even this period was quite tight to complete all the required tasks to ensure thoughtful, well-researched submissions were made.

Some community groups have decision making bodies which only meet monthly. Depending on when such meetings occur, a six week period for public consultation may not leave sufficient time for a submission to be prepared and then approved by the decision making body.

A minimum period of eight weeks for public comments would allow better for all these factors. It could be incorporated into the Act, not just for codes applicable to commercial television multi-channels but for all broadcasting codes. This would assist ACMA by setting a definitive minimum standard for "adequate" consultation with the public.

Recommendation 5:

Any code of practice for commercial television, including provisions that apply to multi-channels, needs to be subject to adequate consultation with the community.

A minimum period of eight weeks could be specified in Section 123(4)(b)(iii) as the standard for an "adequate opportunity" for members of the public to comment on a code by amending the provision to read as follows:

> ***"members of the public have been given an adequate opportunity, including a period of time not shorter than eight weeks, to comment on the code."***

3.3 Distinct classification time zones for multi-channels

Proposed new clause 2.6.1 in the draft code states that: "The time zones set out in Clause 3 of the Multi-Channel Appendix apply to all material required to be classified on a licensee's multi-channel."

Clause 3 of the proposed multi-channel appendix would, if implemented, mean that there would be no exclusive G classification time zone for multi-channels and that PG programming could be broadcast at any time.

This would be a significant erosion of the social compact between Australian families and broadcasters who enjoy the privilege of a licence to broadcast on the free-to-air spectrum.

The current exclusive G classification time zone is 6am - 8.30am and 4pm - 7pm on school weekdays. This recognises that these are times when primary school age children may well be watching television with minimal parental supervision, as parents prepare the family for the day or are preparing the evening meal or bathing younger children. The 4pm - 7pm period is also one in which the whole family, including primary school age children, watch television together. Parents should be able to have confidence that in this critical period of the day, only material suitable for children to watch unsupervised will be shown. This 4pm - 7pm period already includes news programs which are unclassified.

Similarly on weekends the 6am - 10am period is one when children may be watching television unsupervised while mum and dad enjoy a sleep-in.

Commercial free-to-air television enjoys the privilege of broadcast licences which give automatic access to every home in a broadcast area with a television. This applies equally to multi-channel services. Every child old enough to manage an "on-off" switch can access free-to-air television. It is reasonable for families to be able to have confidence that there will be no unsuitable viewing on any free-to-air station during the exclusive G classification time zone. It is not reasonable to expect

parents to be checking whether the child is watching Channel 9 or *Go!* at 6 am on a Saturday morning or at 5 pm on a school night while mum is cooking dinner and dad is bathing the baby.

PG stands for "parental guidance". This means that there are classification elements in the program that lead to it not being classified G because parents may decide that a particular PG program is in fact not suitable for their children to watch at all, due to age or other personal factors. Parents may also decide that a particular program is only suitable for their children to watch with their guidance on some aspects of the program. PG elements include "mild visual depiction of and restrained verbal reference to illegal drug use", "restrained visual depiction of nudity", "supernatural or mild horror themes", etc. There are many parents who do not want their younger children exposed to such viewing.

One of the matters that the Act proposes for codes of practice to address is "*methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority*".[7]

The attempt by commercial broadcasters to use the switchover to digital multi-channels as an excuse to abandon their responsibility for ensuring that only material suitable for children to watch unsupervised is broadcast during relevant time periods is not in accord with this provision of the Act.

Recommendation 6:

The same classification time zones should apply to all commercial free-to-air television broadcasting including multi-channels both during and after the simulcast period. There must be an exclusive G classification time zone that is at least as extensive as that in force under the current code.

3.4 Commercials during P and C programs on multi-channels

Proposed new section 5.10 of the draft code states: "For the avoidance of doubt, clauses 5.6 – 5.9 inclusive do not apply to non program matter on licensees' multi-channels." Section 5.9 provides that: "In P and C periods scheduled in accordance with the Children's Television Standards no commercials may be broadcast in any P period; [and] each 30 minutes of a C period may contain no more than 5 minutes of commercials and one minute of G program promotions or station identification."

The effect of proposed new section 5.10 would be that up to 15 minutes per hour of non-programming material, including commercials could be shown during P and C periods on multi-channels. This would be contrary to the interest of families and the well-being of children.

Section 122 (7) of the *Broadcasting Services Act 1992* provides that the standards for programs for children do not apply to multi-channels during the simulcast period. However, once the simulcast period ends, the standards for programs for children would apply to all multi-channels. In any case, the relevant provisions are rules for what may be broadcast during P and C periods not rules about the quota and scheduling of P and C periods.

Recommendation 7:

Rules for broadcast of non-program material during P and C periods should apply to all channels, including multi-channels.

4. Endnotes

1. *Content and access: The future of program standards and captioning requirements on digital television multi-channel*, Digital Switchover Policy and Regulation, Department of Broadband, Communications and the Digital Economy, December 2009; http://www.dbcde.gov.au/consultation_and_submissions/multichannels

2. *Broadcasting Services Act 1992*, Schedule 4, Clause 5A.

3. *Broadcasting Services Act 1992*, Schedule 4, Clause 5B.

4. *Broadcasting Services Act 1992*, Schedule 4, Clause 5A, (1) (d).

5. *Broadcasting Services Act 1992*, Schedule 4, Clause 5A, (2).

6. *Content and access: The future of program standards and captioning requirements on digital television multi-channel*, Digital Switchover Policy and Regulation, Department of Broadband, Communications and the Digital Economy, December 2009, p 4; http://www.dbcde.gov.au/consultation_and_submissions/multichannels

7. *Broadcasting Services Act 1992*, Section 123(2)(b).