

AUSTAR United Communications Limited

**Response to the Senate Standing Committee
On Environment, Communications and the Arts**

**The Provisions of the Broadcasting Legislation Amendment
(Digital Television) Bill 2010**



9 April 2010

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INTRODUCTION

AUSTAR United Communications Limited (**AUSTAR**) is regional Australia's leading subscription television provider, with more than 740,000 customers, or over 2.3 million regional Australians, enjoying our digital television service. Internet and mobile telephony complete AUSTAR's product offering.

AUSTAR is a major provider of subscription television services in its service area, using DTH digital satellite technology. AUSTAR's customers are based in regional and rural Australia.

The AUSTAR television service comprises more than 180 digital channels, including 13 High Definition channels which were launched in 2009. 23% of AUSTAR's customers subscribe to our MyStar product, which also gives them direct access to all of their local, digital free-to-air channels.

AUSTAR provides the national broadcasting services over satellite (via a retransmission) as part of its subscription television service. While the extensive number of regional terrestrial services has prevented AUSTAR from providing a retransmission of all of these services over satellite, AUSTAR's MyStar product provides direct access to each subscriber's local digital free-to-air channels. The MyStar has been recognised as a digitally capable product by the Government.

AUSTAR appreciates the opportunity to make this brief submission to the Senate Standing Committee on Environment, Communications and the Arts (**Senate Committee**) on the provisions of the Broadcasting Legislation Amendment (Digital Television) Bill 2010 (**the Bill**).

EXECUTIVE SUMMARY

AUSTAR has not commented on all aspects of the Bill but has focussed its attention on areas of particular interest. In summary, our submission comments on the following issues relating to the Bill:

1. Funding of the Satellite Service

2. The Digital Services Provided
3. Viewer Eligibility
4. Expanded Terrestrial Services
5. Technical Standards
6. Alternative providers

1. FUNDING ARRANGEMENTS

As noted in the Financial Impact Statement, the proposed amendments in this Bill will not of themselves result in any direct financial impact on the Government, however, the Government is currently in negotiations with commercial and national broadcasters to fund this service.

AUSTAR suggests that the detailed provisions of the Bill and the licensing conditions for satellite licensees cannot be appropriately scrutinised and debated without clarity on the Government's anticipated funding arrangements for these satellite services. AUSTAR supports the principle of enabling those in regional and remote Australia to receive equivalent services however the Government must first provide clarity on the funding arrangements.

The only financial details released to date have been the outline included in Minister Conroy's media release on 5 January 2010, which states that the final costs of the digital satellite broadcasting service are still to be determined based on negotiations between broadcasters and satellite service providers and that the Government will fully fund and build the new digital satellite broadcasting service. In the release, the financial commitment from the Government is estimated to be \$40 million per year on an ongoing basis "for the potential benefit of up to 247,000 households across Australia".

While AUSTAR fully supports enabling homes in regional and remote Australia to receive equivalence of services, as established providers of digital satellite television into regional and rural Australia we were surprised by preliminary funding estimates to support this project. AUSTAR is aware that a number of parties were involved in discussions with the Minister of

Broadband, Communications and the Digital Economy and the Digital Switchover Taskforce (DST) in determining the best approach to addressing digital free to air blackspots, and some of these parties including AUSTAR, provided financial proposals at their request. An overview of AUSTAR's proposal is attached as a confidential appendix, and demonstrates that alternative approaches to deliver the blackspot solution are available. As stated above, AUSTAR supports the intentions of the Government to deliver equivalent services into remote areas of Australia. It seems prudent, however, to ensure that the chosen solution is as cost effective as possible, particularly given the potentially small number of homes likely to benefit from the application. AUSTAR strongly encourages further scrutiny and transparency of the funding arrangements prior to the passage of the Bill to ensure that the most cost effective and appropriate solution is implemented.

In addition, other key details of the Government's proposal are yet to be clarified. For instance, AUSTAR understands that any subsidisation scheme for the set top boxes, satellite dishes and their associated installation will be in addition to the \$40 million annual commitment. No further details on this possible per household subsidy, or the magnitude of the Government investment required, have been released. Furthermore, to complement the Government's investment in the satellite solution, the commercial broadcasters have committed to upgrading more than 100 existing regional analog self-help transmission facilities to operate in digital. Again, further details of these upgrades are still to be announced and passing the proposed Bill amendments seems premature without a full picture of the upgrade plans, the total funding required including household subsidies and confirmation of the funding arrangements themselves.

2. DIGITAL SERVICES PROVIDED

AUSTAR notes that the intent of the Bill is to enable the new commercial satellite services to provide viewers in signal deficient areas with access to an equivalent range of digital television services to those received by metropolitan viewers. As a provider of communications services (including subscription television) to regional and rural Australia, we welcome initiatives to expand the availability of services to regional and rural consumers, and support the expansion of television services to viewers in signal deficient areas.

We do question, however, as referred to in section 1 above, the rationale for the approach adopted by Government to fund these additional services. The Broadcasting Services Act 1992 (**the Act**) sets out the policy objectives of the Commercial Television Conversion Scheme¹ and National Television Conversion Scheme². One of the clear objectives of conversion is that terrestrial licensees and national broadcasters should achieve the same level of coverage and potential reception quality with their standard definition digital television services as that achieved by their analog terrestrial television services. The policy objectives of digital conversion as set down under the Act clearly do not extend to achieving coverage of all terrestrial services provided by the broadcasters to all Australian households.

The Minister's media release on 5 January this year stated that the Government would commit \$40million a year to supporting the provision of the entire suite of "Freeview" services on the proposed satellite service. We do not disagree that the provision of a wider range of services to regional and rural Australians is a worthy objective however we remain firmly of the view that the additional "Freeview" services (i.e. the secondary SD multi-channels and HD multi-channels) should be made available on a commercial standalone basis, and that Government funding should only be allocated to the provision of the "analog equivalent" services. The extension to the entire suite of current services, funded by Government, appears to be going beyond the stated objective of digital conversion, and at a significant cost to Government.

As raised in section 1, we believe that there must be scrutiny and transparency of the funding for the satellite service prior to passage of the Bill to ensure that the most appropriate and cost effective solution for regional Australia is implemented. The Minister's January media release stated that the "Government will fully fund and build a new digital satellite broadcasting service for regional viewers who are unable to receive digital television from those [upgraded terrestrial] facilities". It is clear from the Bill that the Government will not be building the service and that this has now been passed into the hands of the remote terrestrial broadcasters, who are not subject to appropriate public scrutiny or Government procurement guidelines in relation to the funding.

¹ s6(3), Part 2 of Schedule 4

² S19(3), Part 3 of Schedule 4

An additional issue which we believe requires further consideration is the ongoing development of the metropolitan terrestrial services. The Bill provides that new multi-channels launched after the conclusion of the simulcast period are not required to be broadcast by the satellite licensees however they may choose to do so. In light of the fact that the Government is funding the existing suite of channels, what is the intention of Government (and policy justification) in relation to future funding of new terrestrial channels that are launched? If there is no intention for Government to fund future channels, how will this be distinguished on policy grounds from the Government's approach to fund the existing SD and HD multi-channels that are not the analog equivalent services?

3. VIEWER ELIGIBILITY

The Bill amendments propose that blackspot homes are classified into three categories; Category A includes all Australian viewers currently authorised to receive the current RABS service, Category B including viewers in known areas of signal deficiency and Category C includes viewers who are unable to receive all commercial terrestrial signals for their area and who will apply on a case by case basis and demonstrate their inability to access adequate signals.

AUSTAR foresees a number of issues with the definitions as proposed to date, and recommends that ACMA is required to issue clear and transparent guidelines to the scheme administrator clarifying the eligibility requirements for Category A, B and C viewers to receive access to the satellite services.

For instance, AUSTAR understands that there are potentially some viewers who receive the RABS service without necessarily still living in a blackspot region. If this is the case, automatic provision of the new satellite service to these homes as proposed will miss an opportunity to resolve outstanding entitlement issues. Furthermore, no detail is given as to how viewers in Category C would demonstrate their inability to access signals. Particularly given the commercial broadcasters themselves are establishing an association to administer the conditional access arrangements for the satellite services, to remove any potential conflicts of interest the precise mechanism for obtaining an independent assessment of a viewer's inability

to access the full suite of digital signals should be set out by the ACMA at this stage of the discussion.

4. EXPANDED TERRESTRIAL SERVICES

The proposed amendment to extend the terrestrial licences highlights the need for further scrutiny and debate around the satellite solution to be provided. The fact that a number of regional markets may potentially have fewer terrestrial services than the satellite service supports the view that in providing the full suite of metropolitan equivalent standard and high definition free to air commercial services is going beyond the stated objective of digital conversion at a significant cost to Government.

Again, some further clarification is required around these expanded services. Given there appears to be no commercial justification for a third licence in these markets today, nor for the full complement of multi-channels to be provided, will the Government make funding available to support the terrestrial expansion in these markets? Furthermore, if there is no funding available and no third licence taken up, will all viewers in these areas be entitled to ask for the satellite service and what are the implications for the existing licence holders?

5. TECHNICAL STANDARDS

We note that the ACMA's powers relating to determining technical standards in transmission and reception equipment is limited to commercial television services "provided under a licence allocated under section 38C" however there is no limitation with regard to the national broadcasting services since there are no licensing changes required for these services. For example the proposed section 130BB states that "the ACMA may determine technical standards that relate to equipment that is capable of receiving.... transmitted in digital mode.. national television broadcasting services provided with the use of a satellite". As noted earlier, AUSTAR retransmits the national broadcasting services, the ABC and SBS, over satellite as part of its satellite subscription television service.

We are concerned that as currently drafted, s130AC and s130BB could extend any ACMA issued standards to subscription television DTH satellite transmission and equipment. We

strongly recommend that a specific exemption is included in the Bill to clarify that such transmission and equipment would not be caught by any standard issued by ACMA under these sections.

6. SUPPLY OF SERVICES BY ALTERNATIVE PROVIDERS

AUSTAR has had a number of enquiries following the Minister's announcement of satellite solution, predominantly from local government representatives on behalf of constituents in 'blackspot areas' who subscribe to AUSTAR. There is concern that these constituents will be forced to add a separate satellite and set top box apparatus in order to receive the analogous services provided by the government's satellite proposal

It is AUSTAR's proposal that alternative satellite providers be entitled to provide the s38C licensed services to existing customers who are eligible under the ACMA approved conditional access scheme to avoid these customers having to acquire a duplicate satellite dish and set top box. Indeed, AUSTAR considers that there could even be an opportunity for the services to be provided on a wholesale pass through basis to alternative satellite providers in order to then make the product commercially available to all Australians should they choose.

CONCLUSION

AUSTAR appreciates the opportunity to contribute to the Senate committee's debate, and would welcome the opportunity to clarify any of these comments.

Deanne Weir