

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**REPORT ON THE  
NATIONAL TRANSMISSION NETWORK SALE BILL  
1997 NATIONAL TRANSMISSION NETWORK SALE  
(CONSEQUENTIAL AMENDMENTS) BILL 1997**

Senate Environment, Recreation,  
Communications and the Arts Legislation Committee

March 1998

Commonwealth of Australia

ISSN 1326-933X

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Senator K Lundy (ALP, ACT)  
Senator R Lightfoot (LP, WA)

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Senator M Reynolds replaced Senator K Lundy for the consideration of this Bill.  
Senator J Tierney replaces Senator R Lightfoot for all matters relating to Communications.

### **PARTICIPATING MEMBERS:**

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## REPORT

### National Transmission Network Sale Bill 1997

### National Transmission Network Sale (Consequential Amendments) Bill 1997

#### 1. The Bill

##### *Background*

The National Transmission Network (NTN) is managed by the National Transmission Agency (NTA). The NTA was established as a separate cost centre and began operating on a commercial basis about 5 years ago. It is responsible for the technical planning, operation and maintenance of NTN facilities and has as its objective the cost effective management of broadcasting transmission facilities.<sup>1</sup> Late in 1996 the government announced that scoping studies of the National Transmission Agency were to be conducted. The studies were conducted by Arthur Andersen Corporate Finance and the communications law firm, Gilbert and Tobin in early 1997.

On 8 July 1997, Cabinet endorsed the sale of the NTN. The Bill was introduced into the House of Representatives on 30 October 1997.

##### *Purpose*

The purpose of the Bill is to facilitate the sale of the national transmission network and to set in place a regulatory framework for the provision of national broadcasting and other transmission services once the sale is completed.

#### 2. The Committee's Inquiry

The Bill was referred to the Senate Environment, Recreation, Communications and the Arts Committee on 19 November 1997 by the Selection of Bills Committee (Report No 18 of 1997). The Committee was required to report to the Senate by the 10 March 1998.

##### *Submissions*

The Committee received 12 submissions and these are listed at Appendix 1. Only three of the 12 submissions opposed the sale of the National Transmission Network (NTN).<sup>2</sup> A further three were critical of various aspects of the legislation: Community broadcasting groups were concerned at possible prohibitive cost increases under a private regime and wished to see provisions made in the legislation for all community broadcasters to be 'nominated customers' and to enjoy concessional rates for

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<sup>1</sup> Department of the Parliamentary Library, Bills Digest No.107, 1997-98

<sup>2</sup> Submissions Nos.1 (Stop Selling Australia), 7 (Mr P. Coleman) & 12 (Friends of the ABC)

transmission services from the new private owner.<sup>3</sup> The Australian Broadcasting Corporation (ABC) had some specific concerns and these are addressed later in this report.<sup>4</sup> Although stating that he did not 'have any problem with the government's approach in selling the network to retire public debt',<sup>5</sup> one other submission made a case against the sale.

### *Meetings*

The Committee considered the Bill at 3 private meetings and held a public hearing in Canberra on 5 February 1998. Details of witnesses who appeared at the public hearing are in Appendix 2.

### *Consultation*

The Committee notes that both the ABC and the Special Broadcasting Service (SBS) commented at the public hearing that the consultation process carried out by the Department of Communication and the Arts (DoCA) during the development of this legislation had been very thorough. They described the process as 'comprehensive' and 'exemplary' respectively.<sup>6</sup> The Committee commends the officers of the department on this consultative approach.

## **3. The Issues**

### *Commitment to regional areas and community service obligations*

In referring the bill to the Committee, the Selection of Bills Committee was particularly concerned that national coverage and the existing service commitments to rural and regional areas by the government funded broadcasters be maintained under the new legislation. The need to maintain existing community service obligations was also an important issue.

In his second reading speech, the Minister stated that the Government was mindful of the need to safeguard 'important broadcasting policy objectives':

We have made it clear that the maintenance of existing ABC and SBS coverage and service quality, particularly for regional and remote communities, is a prerequisite.

In addition, we will ensure that existing Community Service Obligations will be preserved, including those for network users such as Radio for the Print Handicapped, remote commercial satellite broadcasting services, self-help retransmission groups and emergency service operators.<sup>7</sup>

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<sup>3</sup> Submissions Nos. 6 (Community Broadcasting Association) & 11 (Ethnic Broadcasters Council)

<sup>4</sup> Submission No. 4 (ABC)

<sup>5</sup> Submission No 2 & 2a (Mr D. Fallow)

<sup>6</sup> Transcript of Evidence, pp.1 & 2 (Mr Mc Garrity & Ms Crowe)

<sup>7</sup> Senator the Hon. N. Minchin, Senate Hansard, 19 November 1997, p.9147

The Community Broadcasting Association of Australia (CBAA) acknowledged in its submission that the government has provided direct budget supplementation to Radio for the Print Handicapped groups to enable them to pay access fees and CBAA ‘commended’ the government on its approach.<sup>8</sup> Self-help retransmission services and remote commercial television services will also receive benefits such as concessional pricing arrangements and direct subsidy in order to meet their current obligations.<sup>9</sup>

Officers of the Department of Communications and the Arts also told the Committee at its public hearing that the access regime provisions in the legislation ensured that residents of remote areas would continue to receive the same level of broadcasting service after the NTN sale as they were receiving currently:

**Dr Stretton**—There are two sides to the answer to that question. Firstly, the access regime applies to all existing assets, so that the new owner must continue to provide access for those national broadcasting and other CSO<sup>10</sup> types of purpose, for both regional and metropolitan areas.

**CHAIR**—So that guarantees the same coverage?

**Dr Stretton**—Exactly. Secondly, the contracts which the various broadcasters and CSO users will have with the new NTC will also cover off, in detail, a level of service that is expected to be provided at each of the sites. Those contracts, as you are aware, are for five years initially, but with the option to renew for two additional five-year periods.

**CHAIR**—So if I am living in remote New South Wales or Tasmania or Victoria and I am able to get the service now, I still should be able to expect to get that under the new arrangement – ABC and SBS, that is?

**Dr Stretton**—Certainly, that is what the whole access regime and the development of the contracts is to achieve, yes.

#### *Greater autonomy over transmission services for the ABC and SBS*

The bill is giving more control over transmission services to the national broadcasters, the ABC and SBS and enables them to negotiate directly with a service provider to suit their needs. In its submission to the Committee, the ABC welcomed the Government’s approach. The ABC went on to state that it wished:

to replicate in the terrestrial environment the situation it enjoys in the satellite environment’ *and*

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<sup>8</sup> Submission no 6 (CBAA), p 1

<sup>9</sup> Submission no 6 (CBAA), p 1

<sup>10</sup> Note: CSO: Community Service Obligation, NTC: National Transmission Company



to be free to have a relationship with any new owner(s) of the national transmission facilities similar to that enjoyed by the majority of commercial broadcasters.<sup>11</sup>

In evidence to the Committee, representatives of the SBS supported the ABC's stance and stressed that the sale of the NTN facilities provided them with the 'more flexible delivery opportunity'<sup>12</sup> that they had been seeking for a number of years. Moreover, the SBS witness stated that:

SBS does not want to own its own equipment. We have no particular interest in doing that.<sup>13</sup>

The central issue for the government funded broadcasters is to ensure that they receive adequate funding to enable them to continue to provide the breadth and quality of services they provided currently. Representatives of both organisations were confident that the compact under negotiation with the government at the time of the public hearing would enable them to achieve this objective.

#### *Penalties for non- performance and the non-provision of services*

While there are currently no penalties for non-provision of services or non-performance by the NTA, the new contracts are expected to contain provisions for penalties to apply if the new provider (NTC) does not meet its contractual obligations to the ABC and SBS.<sup>14</sup> The national broadcasters will therefore have guarantees under the new regime that they did not have previously.

#### *Close captioning*

The ABC expressed a number of concerns with specific clauses in the legislation, one of which was with Clause 15(2) which, it argued, 'limits the scope of protected access to national broadcasting services'.<sup>15</sup> The ABC's view was that protected services included in the access regime should extend to open narrowcasting and ancillary services. SBS also supported the inclusion of ancillary services as part of the protected access regime.<sup>16</sup> At the Committee's public hearing into the Bill, representatives of the ABC gave the example of closed captioning for the hearing impaired as an ancillary service that it would like to see included but that is not in the access regime detailed in the legislation as it now stands.<sup>17</sup>

The Committee supports the inclusion of closed captioning as a protected service in the access regime.

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<sup>11</sup> Submission No.4 (ABC), p 2

<sup>12</sup> Transcript of Evidence, p.2 (Ms Crowe)

<sup>13</sup> Transcript of Evidence, p.3 (Ms Crowe)

<sup>14</sup> Transcript of Evidence, p.3 (Ms Crowe)

<sup>15</sup> Submission No.4 (ABC), p.3

<sup>16</sup> Submission No.10 (SBS), p.7

<sup>17</sup> Transcript of Evidence, p.8 (Ms Walker & Mr McGarrity)

## **Conclusion**

The Committee has considered the National Transmission Network Sale Bill 1997 and the National Transmission Network Sale (Consequential Amendments Bill 1997) and is in agreement with the basic thrust of the Bills and their intentions. Accordingly the Committee recommends:

### **Recommendation 1:**

**That the Bill proceed.**

### **Recommendation 2:**

**That Clause 15(2) of the Bill be amended so that the protected services included in the access regime extend to ancillary services such as closed captioning.**

**Senator Kay Patterson  
Chairman**



## **MINORITY REPORT BY AUSTRALIAN LABOR PARTY SENATORS**

### **Introduction**

The Opposition Senators dissent from the Chair's report on the National Transmission Network Sale Bill 1997 and the National Transmission Network Sale (Consequential Amendments) Bill 1997, and oppose the sale of the National Transmission Network.

We reject the proposed sale because we don't believe that it is in the national interest, and we do not accept that the sale will lead to any economic or social efficiencies. At the public hearing into the bill on 5 February 1998, the Office of Assets Sales and Information Technology Outsourcing (OASITO) and the Department of Communications and the Arts were unable to provide specific examples of any efficiencies that would occur.<sup>18</sup>

It is the view of the Australian Labor Party (ALP) Senators that those efficiencies which are suggested in a broader sense could come irrespective of whether it is a public or privately owned asset.<sup>19</sup> The National Transmission Agency (NTA) has achieved substantial efficiencies in the past few years. The Secretary of the Department of Communications and the Arts, Mr Neville Stevens confirmed to this Committee on 13 November 1997 that the NTA had expanded the transmission network by about 40% while reducing costs by about 30% over the last 5 years.

### **Community Service Obligations**

The ALP Senators are concerned that the community service obligations contained in the bill are much more limited than those currently in existence. This was recognised by OASITO in its submission:

With the exception of an obligation on the purchaser of NTC to provide sharing and maintenance of site facilities and infrastructure at pre-determined rates to some emergency service organisations and existing self-help operators, no community service obligations will be transferred.<sup>20</sup>

Whilst the legislation ensures access by community broadcasters and other nominated customers to national transmission network sites after the sale of the NTA, it does not provide any guarantees on the issue of charging and access price issues and community broadcasters are concerned that they will be forced to close down if they are charged market rates.<sup>21</sup>

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<sup>18</sup> Senate ERCA Hansard p36

<sup>19</sup> Senate ERCA Hansard p36 and House of Representatives Hansard, 18 November 1997, p10592

<sup>20</sup> Submission No 5, OASITO, p6

<sup>21</sup> Submission No 6, (CBAA) p2

## **Transmission services to rural areas and special interests**

The ALP Senators believe that the bill contains no guarantees regarding maintenance of services in rural and regional areas. The provision of transmission services to rural and isolated areas of Australia is not as profitable as to capital cities and metropolitan areas and as such must be protected against business decisions aimed at profit maximisation. The legislation as it stands does not protect the status of rural areas with respect to new services.

Also, as the majority report recognises, the legislation has ignored the needs of the hearing impaired.

## **National interest issues**

The Friends of the ABC (FABC) expressed concern in their submission that the ABC and SBS will not be able to fulfil their charter of operating in the national interest if their transmission facilities are owned by either a foreign company or a commercial interest operating in competition with them.<sup>22</sup> The Opposition Senators wish to ensure that no impediment stands in the way of the government funded broadcasters operating according to their charter and in the national interest and we do not believe that the sale of the National Transmission Network (NTN) will assist this process.

We are also concerned at the possible conflict of interest should a commercial broadcaster purchase the National Transmission Company (NTC). As one of the submissions pointed out, in the event of a transmission failure, the commercial service would be most likely restored ahead of the national broadcasters.<sup>23</sup>

## **Compact between Government and ABC and SBS regarding funding**

The compact between the Federal Government and the ABC and SBS covers terms and conditions (including obligations to maintain current transmission coverage and quality) relating to the transfer of sufficient funding to allow the ABC to purchase its terrestrial transmission services.

The ALP Senators are particularly concerned at the lack of information as to the terms of the compact since it is impossible in the circumstances for the Senate to determine whether the two national broadcasters will receive adequate funding in order to meet their current obligations. In particular, we cannot be confident that after the initial 5 year period the ABC and SBS will continue to receive sufficient funds to maintain and improve their services.

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<sup>22</sup> Submission No 12, (FABC) p5

<sup>23</sup> Submission No 2, (WD Fallows) p9

## **Retirement of public debt as a rationale for the sale of the NTN**

The ALP Senators doubt that a reasonable sale price will be realised, and therefore expect that the impact on the level of the public debt will be insignificant in comparison to the undermining of our national interest. The national transmission infrastructure should be recognised as an important element of our national sovereignty, and should not be sacrificed for the sake of a marginal debt reduction. It is also worth noting that the Government has not provided any indication as to how much of the National Transmission Network it is prepared to sell off to foreign owners.

### **Conclusion**

The bill is nothing more than a capricious effort to sell off public assets for outdated ideological reasons. There is no regard for the long-term future of national and community broadcasting, or the delivery of services to rural and regional areas. The Government has not provided sufficient information in relation to the compact with the national broadcasters; the anticipated sale price; or the benefits to the nation. Hence, our recommendation that the bill not be supported.

**Senator Chris Schacht**  
**Australian Labor Party**

**Senator Kate Lundy**  
**Australian Labor Party**



## **National Transmission Network Sale Bill 1997**

### **Statement by Australian Democrats' Senator Lyn Allison**

**9 March 1998**

#### *General Comment*

The Australian Democrats are not entirely happy with the Government's proposed sale of the National Transmission Network. The Democrats are not opposed to privatisation *per se*, but we do believe that the privatisation of any government agency must be done in the public interest. We do not necessarily believe that the sale of the NTN is in the public interest. While the Government maintains that the transfer of transmission facilities to the private sector will provide the scope for greater client focus and provide a greater degree of competition, particularly with the introduction of digital broadcasting, we remain to be convinced.

The Democrats believe that the main reason the Government is selling the NTN is to retire debt. Debt retirement can be achieved through other means.

We are, however, pleased that the national broadcasters – ABC and SBS – will be able to gain greater control over their transmission facilities and engage in a direct commercial relationship with transmission service providers. The national broadcasters have wanted such arrangements for a number of years. However, it is also true that the Government could have achieved this by directly funding the ABC and SBS for their transmission costs and providing them with the control of the radiocommunications spectrum used to broadcast their services, without selling the NTN to do so.

#### *The issues*

The Department did consult with the national broadcasters, as they stated in their submissions and in evidence to the Committee. However, the National Ethnic and Multicultural Broadcasters Council and the Community Broadcasting Association of Australia (CBAA) were critical of the lack of consultation by the Department. This should be acknowledged.

The Australian Democrats are concerned about national coverage and customer service obligations to rural, regional and remote areas. This is an issue for all broadcasters - national, commercial and community. The Democrats note that commercial broadcasters will be provided with a grant to operate in declared remote areas. The same grant scheme should be afforded to the national and community broadcasters.

While the CBAA applauded the Government's supplementation for the Print Handicapped groups, they were critical of not receiving a supplementation or any guarantee of access to transmission facilities. It is not Government policy to provide subsidies to the community sector. However, denying them access to transmission by



not embracing them within the definition of “nominated customer” does not acknowledge the importance of community broadcasters.

The Democrats are pleased that the ABC and SBS will gain more control over the purchase of their transmission facilities, albeit after a five year period. We are concerned that the national broadcasters are still dependent on the Government to adequately fund them for transmission purposes. Perhaps such funds should be guaranteed in the compact between the Government and the national broadcasters.

We are also pleased that the Committee has recommended that ancillary services be included as protected services in the access regime.

Should the National Transmission Network Sale Bill proceed, the Australian Democrats reserve their rights to amend the legislation in order to provide for their own policy outcomes, and to provide adequate protections for the national and community broadcasting sectors.

**Senator Lyn Allison**  
**Australian Democrat**

## **APPENDIX 1**

### **ORGANISATIONS AND INDIVIDUALS WHO PRESENTED WRITTEN SUBMISSIONS AND ADDITIONAL INFORMATION TO THE INQUIRY**

- 1 Stop Selling Australia
- 2 Mr WD (Darryl) Fallow
- 3 Australian Broadcasting Authority
- 4 Australian Broadcasting Corporation
- 5 Office of Asset Sales and Information Technology Outsourcing
- 6 Community Broadcasting Association of Australia
- 7 Mr Patrick Coleman
- 8 Department of Communications and the Arts
- 9 Australian Competition and Consumer Commission
- 10 Special Broadcasting Service
- 11 National Ethnic and Multicultural Broadcasters Council Inc
- 12 Friends of the ABC

## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Thursday 5 February 1998, Committee Room 2S1, Parliament House, Canberra**

#### **Australian Broadcasting Corporation**

Mr Ian McGarrity, Head of Development, ABC  
Ms Judith Walker, General Manager, ABC Legal and Copyright

#### **Special Broadcasting Service**

Mr David Soothill, Director, Communications and Planning  
Ms Maureen Crowe, Head of Resources, SBS

#### **Australian Broadcasting Authority**

Mr Bob Greeney, Director, Planning, ABA  
Mr John Corker, Manager, Legal Section, ABA

#### **Australian Competition and Consumer Commission**

Mr Ron Cameron, Director, Telecommunications Policy Coordination  
Mr Hank Spier, General Manager

#### **Mr WD (Darryl) Fallow**

#### **Community Broadcasting Association of Australia**

Mr Barry Melville, Policy Development Officer

#### **National Ethnic and Multicultural Broadcasters Council Inc**

Dr Heinrich Stefanik, Member of Executive

#### **Minister for Communications, the Information Economy and the Arts**

Senator the Hon. Richard Alston

#### **Department of Communications and the Arts**

Dr Alan Stretton, First Assistant Secretary, Film, Public Broadcasting and Intellectual Property Division

Mr Alan Edwards, A/g Assistant Secretary, Film, Public Broadcasting and Intellectual Property Division

Mr Rohan Buettel, Assistant Secretary, Legal, Parliamentary and Coordination Branch

Mr Vic Jones, General Manager, National Transmission Agency

**Office of Asset Sales and Information Technology Outsourcing**

Mr Michael Hutchinson, Chief Executive, OASITO