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The Secretary  
Senate Environment, Communications, IT and the Arts Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

***Via email: [Ecita.sen@aph.gov.au](mailto:Ecita.sen@aph.gov.au)***

Dear Sir/Madam

### **Inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and related bills**

We appreciate the opportunity to provide comments in relation to these Bills and the associated discussion paper on the two channels of spectrum for new digital services.

#### **1. Summary of Broadcast Australia's Position on the Bills**

Broadcast Australia (BA) is in broad agreement with the provisions contained in the Broadcasting Services Amendment (Digital Television) Bill 2006 ('DTV Bill') and the approach announced by the Minister in relation to the allocation of two channels of spectrum for new digital services. BA does not seek to make any input to the Committee in relation to the other bills that are part of the suite of media reform bills or in relation to those elements of the DTV Bill dealing with anti-siphoning.

BA believes that it is important and timely for the various elements of Australia's digital television (DTV) conversion process to be re-examined and as appropriate, amended. We have long held the view that DTV provides a means of delivering greater choice and better content services to Australian consumers. While many of the fundamental building blocks for the introduction of DTV into Australia remain valid (e.g. national and commercial TV conversion schemes, High Definition requirement), there are a number of important new initiatives that should be progressed in the short-term to stimulate consumer take-up of DTV, some of which require legislative changes. BA endorses those provisions in the DTV Bill and discussion paper on allocation of the two digital channels relating to:

- The allocation of the two reserved digital channels as soon as possible for the provision of innovative digital services. Choice and innovation are the drivers of digital service take-up by consumers. In the absence of a new digital only commercial television license being allocated, BA believes the Government's proposals will have a very positive impact on consumer interest and behaviour. Based on its experience in the trialling of new digital services, BA believes these channels are capable of providing a suite of viable services that will significantly stimulate the interest of consumers in the digital terrestrial platform (and digital services more generally) and that there are currently no impediments to their allocation.

- Removal of current multichannelling restrictions for national broadcasters. Again, this important measure has the potential to significantly stimulate the interest of consumers in DTV, assuming that the national broadcasters have funding for this purpose.
- Retention of the High Definition TV (HDTV) quota until the end of the simulcast period, which BA agrees is an important cornerstone of Australia's DTV conversion process and appropriate in light of international and Australian transitional developments.
- Removal of the requirement that HDTV programming be a simulcast of the Standard Definition (SDTV) service. This provision, which effectively permits limited multichannelling by all FTA broadcasters in HD, offers the prospect of greater content choice and will also drive the take-up of HD receivers.
- Allowing, from 1 January 2009, commercial free-to-air (FTA) broadcasters to provide a single multi-channel in SDTV mode. As part of a range of initiatives to stimulate new digital content, this should assist in promoting consumer interest and DTV uptake.
- Removal of the restrictions on the number of multichannels that may be provided by commercial FTA broadcasters at the end of the simulcast period.
- Providing minimal requirements in relation to the regulation of content on multichannels and for a review of this regulation before the end of the simulcast period.

Our specific comments follow and have been kept brief and do not include substantial technical detail (which has been provided to support BA's submissions to the various enquiries/papers issued by DCITA and the Minister over the past 2 years) given the time constraints on this Committee inquiry process. BA would be happy to make further information available to the Committee if this would be helpful and would also be pleased to participate in the Committee's public hearings if required to do so.

## **2. Introduction to Broadcast Australia**

BA is Australia's leading broadcast transmission provider, and plays a critical role in the Australian FTA sector. Our core business is the provision of services for the transmission of television and radio broadcasts to audiences across Australia. BA is a wholly-owned business of Macquarie Communications Infrastructure Group (MCIG), an entity listed on the Australian Stock Exchange (ASX code: MCG). MCIG's major shareholders include a broad range of institutional and retail investors.

BA and its predecessor organisations have many decades of broadcast transmission experience with its current activities including the provision of both analogue and digital broadcasting services. Its aim is to harness the full benefits of new digital communications technology to provide its customers with world-class broadcasting solutions, both now and in the future. To this end, BA has worked with a range of partners to establish trial services for Datacasting (Sydney, launched March 2004), Mobile TV (Sydney, commenced July 2005) and Digital Radio (Melbourne, commenced November 2003) – further details on the first two of these trials is provided below.

BA owns and operates an extensive broadcast transmission infrastructure network in Australia. The company provides transmission services from approximately 600 strategically located transmission sites across metropolitan, regional and rural Australia and reaches over 99% of the country's population. BA's principal customers are the ABC and SBS to whom it delivers television and radio managed transmission services. The company also provides services and/or co-hosting for commercial FTA broadcasters, the community broadcasting sector, telecommunications companies and radio-communications users (such as emergency services organisations).

### 3. Allocation of Two Channels for New Digital Services

BA has long held the view that the two unallocated national digital channels earmarked for datacasting present a major opportunity to generate consumer interest in digital services. This view is informed by overseas experience for the introduction of both digital television and radio which clearly indicates that most consumers will require digital TV to offer 'existing services plus' in order to generate interest and investment in digital reception equipment (i.e. a higher quality simulcast of what they already receive in analogue plus new, digital-only services).

BA strongly endorses the proposal to allocate these two digital channels in the short-term for new digital services, as proposed in the Minister's paper. Clearly, our comments reflect only the principles set out in the paper, rather than specific legislative provisions.

BA notes the Government's position that it does not propose to allocate any new terrestrial commercial FTA television licences between the end of the moratorium on new licences on 31 December 2006 and digital switchover. The allocation of new licences will be reviewed in accordance with the Digital Action Plan prior to the end of the simulcast period. BA also notes that the conversion of community television to digital may, wholly or substantially, free up channel 31 for the provision of new digital services at some point prior to analogue switch-off. Channel 31 provides a further significant lever for Government to influence the digital switch-over strategy and timeline.

#### *(i) Background on Datacasting and Mobile TV Trials*

BA has taken a primary role in the establishment of trials of Datacasting and Mobile TV (using a DVB-H system) services over recent times. An important aim of these trials has been to determine the likely level of interest from both content providers and consumers for a range of new digital services and to demonstrate the potential 'look and feel' of these services.

In relation to the Datacasting Trial in Sydney, BA's 'DIGITAL **FORTY FOUR**' trial has provided a mix of programming, including:

- The first industry-based FTA video programme guide (i.e. program information on **all** Sydney digital FTA television and datacasting channels in the one place, channel 4);
- Federal Parliament – televising of parliamentary sessions both from the Senate and House of Representatives and seven simultaneous live audio channels, including the House of Representatives and Senate and Committee rooms;
- NSW Government – health information; water restriction updates; traffic conditions (including traffic cameras on major routes); 'What's on at The Rocks and Darling Harbour'; coastal conditions (including surf cameras); cameras showing ski conditions in major resorts and other public information services;
- News, Weather and Sport headlines (provided by ABC) with live election results provided during the last Federal election;
- Home shopping;
- Sports betting odds (this section of the trial completed December 2004);
- Financial markets round-up; and
- Religious instruction/education channel.

In late 2005, BA moved the Sydney Datacasting Trial into its second phase, with the introduction of some interactive services (DIGITAL **FORTY FOUR** Home Page, ABC News, Sport and Weather, The Christian Channel and selected NSW Government services) which improve the attractiveness and usability of the services by allowing the viewer to 'self select' information of interest via the remote control. Consumers can access the interactive functionality of the Datacasting service via an interactive 'MHP' digital set-top box – MHP being the global interactive DTV standard that Australia has decided to adopt.

Stage 1 of a Mobile TV Trial using digital broadcasting (DVB-H) technology, commenced by Broadcast Australia, Telstra and a range of content partners in mid-2005, has provided an example of a suite of services that could be provided to small screen mobile devices, most likely on a subscription basis. Mobile TV using digital broadcasting technology is substantially different to similar content being delivered via 3G mobile technology, the latter being a cellular, point-to-point delivery system (using different spectrum) that lacks the bandwidth and wide coverage benefits of broadcast technology. Mobile TV delivered over broadcast networks is therefore highly complementary to 3G as it will free up capacity on the 3G networks for voice and data services and can be seamlessly provided to the same handset.

Stage 1 of the Mobile TV Trial has provided the following suite of services to a panel of existing Telstra mobile telephony subscribers utilising a single 7MHz UHF digital TV channel in the Sydney region:

- ABC2
- Boomerang
- Channel Nine
- Channel V
- CNN International
- E!
- Fox Football
- Fox Sports News
- Nickelodeon
- SBS
- Sky News
- Sky News Business
- Sky Racing
- The History Channel
- The Lifestyle Channel
- The Weather Channel

BA has now moved this Mobile TV trial into Stage 2 which involves utilising more efficient digital compression technology (MPEG-4 H.264) and therefore, providing a larger number of services on the channel at higher resolution.

### ***(ii) Principles for Allocation and Service Provision***

The Minister's discussion paper describes the allocation of Channels A and B as separate, national licences via an auction process.

#### ***(a) Channel A***

In relation to Channel A, BA endorses the specification of this channel for the provision of FTA services which can be received through an in-home digital TV receiver. BA believes that provision of these (genre-restricted) services will act as one of a number of new drivers for digital terrestrial uptake by consumers. Other potential drivers include proposed modifications to the HDTV and multichanneling rules as well as potential non-legislative measures that might form part of a Digital Action Plan which has been foreshadowed by the Government.

BA clearly understands that it is not intended to permit services akin to traditional commercial FTA TV services; equally, we believe that the flexibility to provide both datacasting and narrowcasting services (as defined by the legislation) will be critical to the future viability of an in-home service of this type. This appears to have been recognised in the Minister's discussion paper and is strongly supported by BA. While the types of services that can be provided as 'datacasting' is relatively clear under Schedule 6 of the Act, we understand that the meaning of 'narrowcasting' in a television context will be the subject of

further discussion with the Australian Communications and Media Authority, ACMA, which already has experience in defining such services in the radio domain. As noted above, it is important the final guidance provided on what constitutes “narrowcasting” is wide enough to create the incentive for the significant investment required to fund the network infrastructure which will be needed to transmit “datacasting” services.

BA broadly agrees with the proposed allocation process for Channel A, to the extent that this has been described in the Minister’s paper. Obviously significantly more detail in relation to the allocation process and timetable is required to be definitive. We understand the use of participation criteria is intended to make sure that the party who obtains the licence is capable of, and focused on, the actual delivery of quality new services (rather than simply hoarding spectrum). BA also supports the proposal that the financial return to government from spectrum utilisation be based upon a revenue model, rather than a substantial up-front capital sum, as the latter would place unrealistic pressures on what is already a challenging business model (given the genre limitations).

BA raises the issue of “competitive neutrality” in relation to the Channel A licence. It is important that the Channel A license operates on a competitive “level playing field” with incumbent digital multiplex owners (on which datacasting is already permitted) both in relation to the term of the licence and the cost of spectrum. BA suggests that a 10+5 year term for the Channel A licence may not be significant for a return to be generated on the network investment required to establish and operate viable services which, by their limited genre, are likely to be relatively marginal at least until substantial digital receiver take-up is achieved.

### ***(b) Channel B***

BA believes that a ‘highest and best use’ approach to Channel B is appropriate. Our experience with the Mobile TV trial leads us to believe that this is at least one usage that is likely to attract market interest in this spectrum block. We also concur that Channel B ought not be dedicated to the provision of in-home subscription TV services, given the alternative that is available through existing cable and satellite offerings and would not add to the mix of platforms available to the public.

The allocation methodology proposed for Channel B, through an auction with an up-front licence fee, seems to BA to be in accordance with spectrum allocation processes in similar contexts (e.g. mobile telephony). The proposed requirement for service commencement within 18 months of allocation is considered appropriate – BA believes it is important that an acquirer of a channel not be permitted to hoard the spectrum, but further consideration will be required in relation to the geographic definition of the service at commencement (ie how much rollout/coverage is required on commencement and thereafter?).

### ***(c) Control and Other Issues***

In relation to the in-home context (Channel A), BA believes that it is important that new players are provided with the opportunity to develop new digital services. The exclusion of commercial FTA incumbents on controlling the Channel A licence is further reinforced by the fact that these broadcasters already have access to substantial digital spectrum and the ability to provide datacasting services on this spectrum (albeit that none has developed significant offerings in this regard to date).

BA agrees that incumbent FTA operators should be permitted (subject to the Channel A or Channel B licensee’s requirements) to provide content to Channels A or B and that this is a separate issue to licence control. Given this, BA believes that consistent with the Government’s intention to facilitate new entrants and diversity, there is an argument that there may be greater public benefit in the Channel B licence being controlled by party/parties who are not yet licence holders or substantial players in the provision of broadcasting services.

From a timing perspective, BA welcomes the proposal to settle the allocation process in the short-term with a view to allocation in early to mid-2007.

#### **4. Multichannelling**

BA endorses the provisions in the draft legislation for the removal of the genre restrictions on multichannelling by national broadcasters. By facilitating the provision of mainstream programming such as national news broadcasts, drama, movies and sports broadcasts, this measure should represent an important addition to the range of digital-only services that consumers can expect to receive by investing in a digital reception device. BA's close observation of the UK market (where digital conversion is proceeding apace) verifies that the national broadcaster is playing a centrally important role in providing the consumer value proposition to invest in a digital receiver. This measure requires the national broadcasters to have sufficient funding to acquire or develop the additional content required for these multi-channels.

BA has long held the view that there could be considerable public benefit in the relaxation of the multichannelling prohibition on commercial FTA broadcasters. We believe that the digital conversion process would be enhanced by the ability of commercial broadcasters to multichannel as the additional diversity of programming would provide an important incentive for consumers to invest in digital receivers (assuming these broadcasters chose to offer multichannel services) – accordingly, we support the limited relaxation proposed in the legislation from 1 January 2009 and the full relaxation from the end of the analogue simulcast period. While there has been some incumbent industry participant opposition to removing the multichannelling prohibition, we would agree that gradual introduction of multichannelling is likely to increase competition between commercial FTA broadcasters and also with subscription broadcasters, which in turn can be expected to benefit consumers. The fact multi-channelling is to be at the discretion of the broadcaster (i.e. not an obligation) diffuses any argument that it imposes substantial new costs on the broadcaster.

As a subsidiary point on commercial FTA multichannelling, BA understands that the proposition has been advanced that multichannelling and provision of the highest quality HDTV (known as 1080i) is mutually exclusive. This does not correspond with our technical understanding of what can be achieved with efficient spectrum management techniques by broadcasters; again, it is important to remember that the provision of HDTV in 1080i format is a choice (i.e. it is not a mandatory requirement) for broadcasters and that lower standards (720p as utilised by the ABC; or 576p) can be used.

BA further agrees with the approach in the legislation that only minimal content regulation be imposed on FTA multichannels (i.e. in the nature of consumer protection regulation) in order to minimise the commercial hurdles on establishing these new services.

#### **5. High Definition**

Over recent years, BA has consistently expressed the view that HDTV is an important differentiator for the terrestrial TV platform in Australia and that global developments are confirming the correctness of the choice that Australia made in establishing HDTV as a cornerstone element of its digital TV conversion model. BA supports the retention of the HDTV quota for the period of the simulcast as set out in the legislation. The continuation of this measure will ensure that Australia gains the benefit from a rapidly emerging global trend towards HD production of television programming, particularly in the US and now also in the UK and elsewhere in Europe. In addition, it is important to recognise that both broadcasters and consumers in Australia have already invested significant sums in HD and HD-capable equipment and that it would be both oppressive and premature for this to be jeopardised while the international television production environment is still in a transitional stage – the Digital Broadcasting Australia (DBA) report on digital free-to-view television sales for 2Q2006 highlights that 40% of the receivers sold to retailers and installers were HD devices. A further consideration in weighing up the public policy balance in favour of retaining the HD quota is that it is not excessive in quantum, relating to only 20 hours of programming per week (a total of 168 hours).

The legislation as currently drafted will remove the HDTV quota at the end of the simulcast period. BA believes there is a case to consider altering this to a review of the quota at the relevant time, taking into account Australian and international developments then prevailing. This would be consistent with the findings of the recent House of Representatives Committee inquiry into DTV.

The legislation removes the HDTV simulcast requirement such that from the beginning of 2007 this service can be differentiated from the SDTV service. BA believes this is a sound initiative as it is likely to result in an increased range of content on the DTV platform per se, and also a wider range of HD content. Both possibilities would function to encourage viewer interest in DTV.

Thank you for the opportunity to provide comments on this legislative package. As noted above, we have sought to keep our response succinct due to the timing constraints under which the current Inquiry is operating. We would be happy to participate in the Committee's public hearings if this is of interest. Should you or the Committee have any questions relating to our submission please don't hesitate to contact me or Linda Andersen, BA's Regulatory and Policy Manager on (02) 8113 4666 or email [Graeme.Barclay@broadcastaustralia.com.au](mailto:Graeme.Barclay@broadcastaustralia.com.au) or [Linda.Andersen@broadcastaustralia.com.au](mailto:Linda.Andersen@broadcastaustralia.com.au).

Yours sincerely

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