Area Inquiries and Local Origination of Programmes

I have comments to make on two subjects for which provision was made in the legislation recently passed: area inquiries and local origination of programmes.

Area Inquiries:

The Public Broadcasting Association of Australia ("PBAA") has always believed area inquiries are necessary if broadcasters are to be publicly accountable, and it still does. It regards a licence as having the qualities both of property and of a public trust. The licence is the public's investment in the broadcasting operation, and the public requires an adequate dividend to be paid or withdrawal of the investment may be considered. When the legislation of 1977, on which today's procedures are still based, was first put in place, the Minister's second reading speech was eloquent on the Government's intention that broadcasters should be publicly accountable. Among other things, the Government sought

> "... industry and public involvement in broadcasting administration, particularly in the licensing area."

and also the following:

> " Firstly, we believe that the broadcasting frequency spectrum is a valuable public resource.
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> ... the planning and administration of broadcasting should be designed in a manner which will enable it to be responsive to the needs of the community.
>
> ... the public will have substantial access to the inquiry and deliberative activities of the Tribunal.
>
> ... broadcasters will be made to account, at renewal hearings, and in public, for their programming performance."

It was the joint misfortune of the public and of the Tribunal chairman, Bruce Gyngell, that they believed Eric Robinson's rhetoric, and thought the new legislation really had provided for 'substantial access', and for broadcasters to 'account, at renewal hearings ... for their programming performance'.

After the Sydney television renewal hearings of March/April 1979, both were sadder and wiser. There was no rush to change the Act; that was wise, because hasty action would probably have been bungled. The trouble with the 1977 amendments was that the Green Inquiry, though recommending public accountability, never thought that the Fraser Government would have a bar of it. That is the reason for the marked discrepancy between the imaginative philosophies spelt out in the first part of the Green Report and the uninspiring proposals at the back end. When the Government said, 'Yes, give us public accountability, and we want a Bill in six weeks' the Department was shocked and amazed; they had nothing prepared, and had to improvise. The result we know.

The Present Process:

What we eventually got by way of improvement was the Undertaking, in the 1981 legislation. The primary mechanism for assessing the adequacy of the public dividend has been the Tribunal's review at renewal time of the licensee's compliance with the Undertaking - in particular, 'adequacy and comprehensiveness' in the service.

But this has not rectified the situation created in the 1979 Sydney hearings, and maintained since, whereby 'the public' has virtually no meaningful part to play in the total licensing process. The ability to write letters to the Tribunal and read about its decisions in the newspapers does not constitute public participation; nor does squirming around for a week in the Tribunal's inquiry room on the most uncomfortable chairs in Sydney, keeping your ears open and your mouth shut.

The PBAA regards the area inquiry as essential. In its view, the purpose is to provide a forum where the public can recover its right to speak, without having to fight duels with QCs to sustain that right, and without being constrained within very narrow concepts of relevance. The area inquiry has also been credited with a role in streamlining and simplifying the renewal process, enabling the Tribunal to dispense with many of the public hearings

it finds necessary today. We accepted that secondary role at first; now, we do not believe that the two can be combined without fatal damage to the working of the whole process.

Finding the Right Procedure:

The challenge is to make the area inquiry work - and a starting-point is to look at the lessons of the past seven years. Whenever a commercial licence is at risk, the licensee will always bring in his lawyers to use every available means to limit the debate to the matters stated as relevant in the Act. Everyone (including us) complained vociferously about that in 1979; but I think they were being unrealistic (encouraged by the Minister's exaggerated claims for his legislation). Sam Simon, the American communications and public interest lawyer who was in Australia in 1979, commented that we were trying to do too many things with our renewal inquiries, a view that impressed many of us who heard him, who had been complaining too.

There is a risk now that we will make the same mistake again and ruin the area inquiry by trying to make it do too many things. The idea that it will be held between the receipt of renewal applications and Tribunal decisions on them, and will be one of the factors in the decision whether to hold a public hearing on a particular renewal, presumably came from the Tribunal, in the hope it could eliminate many of its present individual renewal hearings. But if an area enquiry is held in that way, at that time, it will confirm the view of James Malone of FACTS, stated in another place, that an area inquiry seemed to him to be a form of committal hearing for a licence renewal. If that view comes to be taken by commercial licensees, the lawyers will be in and - for all practical purposes - the public will be out.

If an area inquiry is held well away from the time when licence renewals are due - ideally, midway between renewals - it will be relatively free of that risk. There may be some lawyers around, but the connection between what is said and done in the area inquiry and the next renewal will be far less significant, and licensees will not have the same need to be on the defensive. If specific complaints are made about a licensee, there is time for a station either to rebut the criticism or to take action to remedy the matter complained of. The Tribunal will be in a better position, one would think, to deal firmly with any attempt to restrict the scope of debate unreasonably, and the basic purpose of the area inquiry will be attainable. If the lawyers tried to narrow the area inquiry as they did the renewal inquiry in 1979, the Tribunal could probably be helped with specific legislation which - with area and renewal inquiries separated in time - would be unlikely to be disallowed as contrary to natural justice.

The Benefits:

The Tribunal will still benefit in many ways from area inquiries. Apart from the gains in terms of hearing from the public, and giving the public, broadcasters and the Tribunal a chance to interact in a relatively informal situation, it should still he possible to diminish the number of public renewal hearings. They will no longer have to carry alone the role of providing the public element in 'public accountability'. With public area inquiries, it will only be necessary to hold a public renewal hearing when a quasi-judicial rather than an administrative matter has to be dealt with, one which as a matter of equity and public policy ought to be conducted in public.

The effect of holding area inquiries midway between renewals is that some degree of review is conducted more frequently. The present three-year period for licence renewals would put that at every 18 months; arguably, that is burdensome and too often to be really fruitful. If licence renewals were for four or five years, the interval between reviews would become two years or two-and-a-half. The Tribunal still has powers (such as imposition of a licence condition) which could be exercised, in case of real need, between renewals.

Perhaps the greatest potential benefit, if unquantifiable at this stage, is the creation of a kind of occasion when broadcasters can meet their public in a situation which is not structured so that it is bound to become confrontational. It will be possible for a licensee to admit that something is not right or could be improved; we all know that such things happen to all of us - we are just not about to say so when our licence is on the table. Over time, more temperate review of broadcasters' performances could do as much to improve broadcasting as throwing

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the book at licensees.

We therefore propose that, first, area inquiries be held as nearly as possible midway between licence renewals, and, secondly, that the term of a renewal be increased to four or five years. The Tribunal could be expected normally to grant licences initially for five years, unless for special reasons that was too long, when two-and-a-half years would not be unreasonably short.

Local Origination of Programmes:

The new provisions in s99A of the revised B&T Act allow for local origination of programmes on subsidiary transmitters. They are probably traceable to concerns expressed some years ago by Aboriginal communities that the sudden arrival of metropolitan-style television, when many of them had not even been used to radio services, would be extremely disruptive of traditional culture and mores. The first reaction was increased pressure for Aboriginal radio services; some progress has been made, including the establishing of CAAMA in Alice Springs as a capable Aboriginal broadcaster and production house.

With provision proposed (and now made) for local origination of programmes, commercial broadcasters especially began to observe the possible problems. FACTS was concerned at the commercial implications of interruption of delivery of advertisements. FARB raised a possibility that limited 'local origination' could expand until effectively a new station had come into being, without the operation of any of the normal processes of ministerial planning and Tribunal licensing.

The PBAA supports the provision for local origination, but acknowledges that there is some reality in these problems for the commercial sectors. The concern of FARB about the bypassing of normal procedures is one requiring thought; the argument (if we understand FARB correctly) is not that the development ought not to occur, but that it should occur subject to properly determined processes.

Because its stations are not normally competitive with each other in the way commercial stations are, the public sector is inherently more easily able to accommodate concepts such as local origination without strain. For this reason, the PBAA asked that provision be made (and it has been) to proclaim the introduction of local origination separately for each type of licence, allowing the process to begin on public stations even if there are still unsolved problems for other sectors.

An idea canvassed by FARB would allow local origination with minimal restriction and regulation in remote areas, but not on translators in currently-served rural or regional areas (or, anyway, not without considerably more 'process'). At least one public radio service - that to Bathurst, currently being extended to Orange with a translator, with an understanding that a local Orange community station may in the future supersede the translator - makes FARB's proposal of interest to the public sector too.

It can be said that public broadcasters firmly support local origination; further, the idea should not be confined in its implementation to remote areas. For some time the merits of channel sharing have been argued by the PBAA, to lukewarm or cold reactions from other sectors. We maintain our view that, with suitable arrangements, diversity of choice and comprehensiveness can be well served in some circumstances by less rigid separation than has been customary of the various kinds of service - in both radio and television.

Michael Law

Federal Court Judgement...

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olish the individual cases of applicants. Those with less financial capability will be disadvantaged.

His Honour's conclusion was that the ABT, in its reasons issued on 3 April, 185, denied natural justice to the encumbant licensees. If this decision stands it will substantially reduce the ABT's discretion in the conduct of inquiries.

ACLA APOLOGY

Apologies are extended for the recall of Volume 5 No. 2. Unfortunately an error appeared in this edition.
