

Study to Examine Future Direction of Commercial Broadcasting

On 18 February, 1985 the Minister for Communications, Mr Michael Duffy, announced that his Department would undertake a special study into the future direction of commercial radio and television services in Australia.

Mr Duffy said the study would be undertaken by the newly formed Forward Development Unit of the Department of Communications in co-operation with the broadcasting industry, unions, consumers and other interested parties. He said he would approach interested organisations to discuss what form consultations might take.

Mr Duffy said:

"The study will examine major questions relating to the development of the industry, which have not been fully addressed since the introduction of television almost thirty years ago,

...

The industry is again on the brink of a new era in communications. During the last twelve months the Government has made major decisions on the expansion and extension of commercial radio and television services through the Supplementary Licence Scheme and Remote Commercial Television Services (RCTS)."

The Minister referred to his statement to Federal Parliament on 10 October, 1984, in which he announced the Government's decision to introduce RCTS using AUSSAT's satellite system to provide commercial services to remote communities and isolated homesteads -

"At the time I foreshadowed the need to review the development of commercial broadcasting in the next decade in

the light of the new generation of technology involving such concepts as full direct broadcasting to homes and high definition television.

The new technology promises great benefits - among them the possibility of equalising radio and television services throughout Australia. We are determined to provide as wide a range of services to all Australians as we can possibly achieve.

The main thrust of our policy is to equalise services by making available, in the long term, three commercial television services and adequate commercial radio services to all communities. We need to identify scenarios for change which will eventually provide a basic level of service to all Australians, wherever they live and work. We hope that this will be even better than the package of two television services and six radio services potentially available to remote Australians after the launch of the AUSSAT satellites in the second half of 1985."

Mr Duffy said that new developments would provide the potential to upgrade commercial broadcasting. However, the basic question was, how to do this without damaging the existing system?

"The broadcasting system is a dynamic entity which cannot be frozen while we take time out to examine its future. Existing broadcasting policies are to continue during the period of the study and planning and licensing processes under way, such as supplementary licences, will not be halted."

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be decided later this month by the Full Court. The High Court has granted special leave to appeal to the appellants in the Herald-Sun case. The appeal will be heard later this year. It is hoped that one of the appeal Courts will rule definitively on the correct meaning of that word within s16 and s100 of the B&T Act.

Robyn Durie

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Mr Duffy said industry and the Government must work together, so that commercial broadcasters could come to terms with technological change while maintaining their current levels of performance.

"It will be necessary, particularly, to think creatively about the role of local broadcasters. Their roles may be subject to major change."

The Minister said employees of broadcasting organisations, consumers of broadcasting services and others who had legitimate concerns about the future of commercial broadcasting, would also have opportunities to contribute to the study, as well as the broadcasters.

"This study is only the first phase in a process of public debate; the Department will report quickly, and the report will be made available to the public for comment before the Government makes decisions," he said.

The Government recognised that, despite some blemishes, the commercial broadcasting system had performed well.

The Minister said:

"It is our intention to build upon this solid foundation to make the system work even better; by seeking the full co-operation of existing licensees we expect to identify

options which maximise the opportunities now available to us without threatening what has been a very successful system."

Terms of reference of the study are as follows:

Draft Terms of Reference for the Study on the Future Direction of Commercial Broadcasting in Australia

A study on the Future Direction of Commercial Broadcasting will be undertaken within the Department of Communications (DOC), by the Forward Development Unit in consultation with industry, unions, consumer groups and other interested organisations, culminating in a report to the Minister by 30 June, 1985 which will:

1. study possible impacts of new technologies upon the commercial radio and television broadcasting system; and
2. identify long term options for structural change in the commercial broadcasting industry; in the context of the Government's long term objective of equalising broadcasting services. It is intended that future planning should:

- continue existing broadcasting policies while the Study proceeds;
- make available three commercial television channels and adequate commercial radio services to all communities;
- provide adequate opportunities for commercial television licensees in the smaller capital cities and regional centres to participate in programming decisions;
- discourage any further concentration of media ownership and control.

The study to be prepared by Forward Development Unit will:

- determine the technologies for study on the basis of its own expertise, but include satellite delivery systems and those systems currently described as enhanced, improved, extended and high definition television;

- pay particular attention to technological convergence and the possibility of multi-channel re-transmission facilities involving both radio and television services;
- concentrate on two time frames
 - medium term future (1988 to 1997)
 - long term future (1997 onwards)
- not recommend options or ar-

gue for particular policies, but identify the implications of adopting particular systems for Government policy; and

- not operate as an inquiry and not seek submissions from interested parties.

The Unit, which is headed by Mr Peter Westerway, is to report by 30 June, 1985.

Robyn Durie

CASE NOTES

Saatchi & Saatchi Compton (Vic.) Pty. Limited v Australian Broadcasting Tribunal and Actors Equity 23 November, 1984.

Young & Rubican Cowdrey Pty. Limited v Australian Broadcasting Tribunal 8 February, 1985.

These two cases both concern the power of the Australian Broadcasting Tribunal ("ABT") to determine "standards" in connection with television advertisements.

The ABT purports to determine standards pursuant to s100(4) of the Broadcasting & Television Act, which provides:

"(4) A licensee shall comply with such standards as the Board determines in relation to the televising of advertisements".

The ABT has published Television Standards and, in paragraph 39 of those Standards, requires that all television advertisements must be produced in Australia, but may include a proportion not exceeding 20% of the duration of the advertisement of pictorial matter photographed outside Australia or sound recorded outside Australia with various provisos and conditions.

The ABT sought to investigate an advertisement prepared by Saatchi & Saatch (the advertising agency) which included foreign produced material. The agency sought a review of that decision under the Administrative Decisions (Judicial Review) Act.

Beaumont J held that the reference to "standards" in s100(4) only permitted standards relating to the quality of the product, rather than its quantity. In his Honour's view, in the exercise of its powers under s100(4), the ABT may regulate the content what is regarded as socially desirable or acceptable, but may not restrict the location at which television advertisements may be produced to sites within Australia, because that restriction does not purport to deal in any way with the quality of what may be televised.

Accordingly, the ABT had no power to enforce a determination of standards pursuant to s100(4).

Interestingly, his Honour apparently conceded that the ABT could impose conditions in terms of paragraph 39 of the Television Standards to any relevant licence which it may issue, pursuant to the ABT's powers under s16(1)(e). In the present case, it appears that no such condition was imposed by the ABT on any licensee.

In the Young & Rubican case, the advertising agency unsuccessfully sought interlocutory orders against the ABT, restraining it from seeking to prevent the broadcasting by television stations of a foreign made advertisement for Volvo motor vehicles. The Volvo advertisement did not comply with the ABT's standards since it contained more than 20% overseas content.

The ABT had sent a telex to
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