

The Tribunal's RCTS Licensing Inquiry

Direct broadcasting by satellite (DBS), when it comes, will be able to serve individual homes directly from a satellite without any retransmission from a ground station, as well as communities by local retransmission. DBS is potentially valuable for Australia because of its geography. But it would create problems for existing commercial services by threatening the present separation of service areas into distinct markets. The Government has made it clear that no generally available commercial DBS will be permitted until its effects have been studied and decisions reached on policies to deal with them.

When the first-generation Australian satellite system was designed, a form of 'grade 2 DBS' was decided upon to deliver ABC services to remote areas, called the Homestead and Community Broadcast Satellite Service (HACBSS). It will not meet the international specifications for a DBS service, which require higher power than the Australia satellite can provide; but, even with a second-grade picture, it will give services to the outback, which, to people who have never had any, will be much better than nothing: ABC television and three radio services to remote communities and individual isolated homesteads; at costs reckoned to be quite affordable.

But with the satellites each carrying four high-power transponders (30 watts) as well as 11 of low power (12 watts), there is the technical capacity in two satellites to provide for a second HACBSS; each HACBSS requires four of them, concentrated onto four zones (western, central, north-east and south-east Australia). How a second HACBSS should be used has been a matter of contention for several years. The major east coast networks proposed instead to use one 30W transponder each to deliver networked television to

all Australia; to do this, a national beam would have had to be used instead of a zone beam, substantially increasing the costs of ground receiving terminals.

Government policy on RCTS

In a statement in the Parliament on 10 October, 1984 the Minister for Communications, Mr Duffy, announced that the Government had decided not to approve the provision of network-based remote-area services, but to license Remote Commercial Television Services (RCTS) on a zonal basis as a second HACBSS. The networks would still, of course, be able to use the satellite for programme distribution; they could do this with 12W transponders, but it would be a matter for the satellite company, AUSSAT, to decide on a commercial basis to whom it would lease the 30W transponders not required by the ABC. It is in fact expected that the networks will lease one 30W transponder each, leaving only one immediately available for an RCTS in one of the four zones. However, AUSSAT now expects to launch the third Australia satellite in mid-1986 instead of 1988, which will increase the total number available to 12.

Because the present licensing provisions of the Broadcasting and Television Act are not suitable for licensing the RCTS services, the Minister announced that he was directing the Australian Broadcasting Tribunal under s18 of the Act to inquire into applications for RCTS licences and recommend which applicants should be licensed. Legislation to be introduced in the current parliamentary session will empower the Minister to grant licences to the applicants it recommends.

Other major changes to the Act will soon alter its basis from technical (the licensing of individual transmitters) to a service

base, so that it will licence broadcasting services and treat transmitters as just delivery tools. As part of the technical operating conditions, the transmitter arrangements (including translators) will become routine matters for the Minister under his planning powers, not licensing matters for inquiry by the Tribunal. Then, licensing of satellite services will be possible using the same basic licensing procedures as terrestrial services (and in the future cable, subscription TV and other kinds of delivery-process, if decided upon).

Though the RCTS inquiry is not being conducted under ss 81-84 of the Act, the Minister's announcement said that 'the Tribunal will, of course, follow procedures similar to those for the grant of existing licences'. The service areas are defined to include the whole of the zones covered by the satellite spot beams, but excluding the service areas of existing commercial television stations; transmissions will be encoded to limit their availability to the areas intended. The services are to be fully commercial and 'free-to-air'; no subscription is to be charged, and the Minister was specific in excluding any possibility of modifying that requirement later. The licences will authorise operators to establish ground retransmission facilities; the invitation to apply for licences nominated 37 places where their provision is to be obligatory, and elsewhere provision by communities of self-help retransmission facilities will be facilitated by the Government.

The existing ownership and control provisions of the Act will not apply, though its other provisions will. The Tribunal will be able 'to determine such ownership or control restrictions in regard to RCTS licences as it believes desirable in the public interest'; it may also refuse to recommend the grant of an RCTS licence if it considers that advisable in the public interest. Both existing licensees and new interests are eligible to apply,

or join consortiums; however, the Minister's announcement said that 'the Tribunal should reject any application for an RCTS licence which clearly exacerbated concentration of ownership or control in the service area', and that 'licensees which already hold dominant positions ... might be well advised to concentrate upon zones where they do not already have a licence'.

The Minister's statement singled out for attention the needs of Aboriginal communities, often a large part of the potential audience.

The advanced B-MAC transmission standard, recently adopted for the ABC's HABCSS, is to be used for RCTS services, and consequently four independent sound channels and a data channel will be available as well as the television and its stereo sound. The Minister's statement made no reference to any Government policy for the use of the sound channels, other than to observe that RCTS licensees could 'negotiate arrangements with AUSSAT for the sale of radio Satellite Program Services (SPS) to existing commercial licensees'.

The Tribunal's Inquiry: the West First

The inquiry is in progress as this is written mid-March, with the Division constituted by the Chairman, David Jones, and Members Julie James-Bailey and Russel Perry. The Tribunal received nine applications for RCTS licences: two for the Western Zone, three for the Central Zone (South Australia and the Northern Territory), one for the North East Zone (Queensland), and three for the South East Zone (NSW, Victoria and Tasmania). It also received 41 submissions, some general and others relevant to particular applications. Seven of the applicants comprise or include in consortiums existing commercial television licensees. The Tribunal is to report on the Western Zone applications by May 1, on the others by August 1; the timing reflects the

success of Western Australia in securing the allocation of the one remaining 30W transponder on the first pair of satellites (after the networks have taken one each, as is anticipated).

Following a preliminary hearing in Sydney on February 1, the Tribunal announced it would hold a general hearing commencing in Sydney on March 19 to receive evidence and submissions not related to a particular application or zone RCTS. Thirteen bodies were given leave to give evidence and make submissions relating to their written submissions. Because this hearing will be relevant to the Western Zone hearing but could not practicably precede it, the Tribunal reserved the two final positions in the order of proceedings for the Western Zone applicants.

In the Western Zone hearing which opened in Perth on February 20, the Tribunal accepted evidence and submissions from Calpurnicus Pty Ltd on why a licence of the type contemplated should not be granted (cf the Act's procedures for existing licences in s83(6) (d)). Calpurnicus maintained that the proposed RCTS service cannot be viable and that a licence should not be granted; that its own proposals for the provision of services for some locations by normal terrestrial means have been dismissed as unviable, but that the proposed RCTS service, which would encompass the same locations among others, would itself be unviable. This is, so far, the only submission by an existing licensee against the granting of an RCTS licence. The Tribunal also sought evidence from CAAMA, a central zone applicant, on the needs of Aboriginal communities.

Both Western Zone applicants have acknowledged that they are relying on an undertaking by the State Government to underwrite the transponder costs with \$2 million annually; one applicant has stated that its application is dependent upon that support. In his statement on October 10 the Minister said that the RCTSs were a step towards equalisation of services and that 'RCTS licences will

therefore attract those entrepreneurs who wish to take a strategic position in the broadcasting system. However, they are unlikely to be highly profitable in the short term ...'. Evidence in other applications of dependence upon State or other governmental help, whether with transponder costs or through provision of large amounts of costly educational or other programming, has created a cloud of doubt on viability over much of the RCTS project. Further Tribunal hearings will either dissipate the cloud or confirm its gloomy presence, with uncertain results.

Further Hearings

The Tribunal expects to hear the North East Zone application in April and the Central and South East Zone applications in May. In the North East an RCTS consortium of existing regional operators with one Brisbane station proposes to rely heavily for viability on Brisbane-originated programming for the RCTS, and on substantial use of RCTS programming by the existing regional stations as a kind of Queensland SPS (Satellite Program Service).

In the Central Zone, there have been discussions which could lead to the consolidation of the three applicants into a single consortium. With the smallest unserved population of any zone, this seems the best hope of viability; even so, it may depend largely on the federal Government's apparent willingness, still not quantified, to give substantial financial support to the development of Aboriginal radio and television services. A high proportion of the potential audiences in the Central Zone are Aboriginal; the Central Australian Aboriginal Media Association (CAAMA), already an effective radio broadcaster, has been making television programming in Alice Springs, at present distributed on video cassettes with no other outlets available.

The South East Zone is the one most likely, on the face of it, to have prospects of viability

in a reasonably short period.

The Sound Channels

The omission of any general policy for the employment of the four sound channels, which (with a data channel) are technically parcelled up as a package with the B-MAC television signal, was strongly questioned by educationists as well as public broadcasters. The Department of Communications' response to the prwas some options for Remote Commercial Radio Services (RCRS); these have been criticised by both public and national broadcasters for their failure to address the needs of remote areas for non-commercial radio services. To develop remote-area broadcasting policy by biting off a piece at a time of the fields still undefined may be bureaucratically convenient, but it progressively closes off options for those kinds of service left unconsidered - which are likely to be the non-commercial ones.

Potential providers of public radio services are arguing for separate licensing of radio channels for remote areas, with full regard for the Government's expressed concern for avoiding concentration of ownership or control; that is, RCTS licensees should not themselves be operators or controllers or radio services as well. The legal prohibition of third-party traffic through sub-leasing of satellite capacity should enable AUSSAT Pty Ltd to hold, through leasing-back, all the necessary resources for the provision of radio services and avoid putting RCTS licensees into a monopoly position which they could be tempted to use exploitively.

Further developments will be reported in future Communications Law Bulletins.

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Children's Television Standards

On 14 December, 1984 the Full Federal Court handed down its decision in the case of Herald-Sun T.V. Pty. Limited v The Australian Broadcasting Tribunal (unreported, G241 of 1984). The decision followed the hearing of an appeal on the application by 15 commercial television stations pursuant to the Administrative Decisions (Judicial Review) Act 1977 (the "ADJR Act") in relation to the amended Children's Television Standards, the Pre-School Children's Television Standards and the amended Television Program Standards. Each of these had come into force from 1 July, 1984. The particular standards which were the subject matter of the proceedings were Children's Television Standards (CTS 3(2)(b), CTS 8, CTS 9(2), CTS 9(3), CTS 10, CTS 13(1), CTS 13(4), CTS 13(5), CTS 33).

CTS 2 laid down the criteria for a "C" or children's programs.

CTS 3 provided that a licensee might not transmit programs except "C" programs during "C" time (4 pm to 5 pm Monday to Friday). The appellants took particular objection to CTS 3(2)(b). CTS 3(2) provided that during "C" time a licensee might only transmit programs which were "C" programs as defined in accordance with CTS 2(a) and representative samples of which had been classified by the Tribunal as complying with those criteria CTS 8 related to the duration of a "C" classification, CTS 9 to the classification of programs as "State of Origin 'C' and", CTS 10 to provisional "C" classifications. CTS 13 dealt with Australian children's drama. Its effect was that each licensee was to transmit recently made Australian children's drama which fulfilled certain criteria. CTS 33 related to reviews of "C" classification decisions.