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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

BROADCASTING SERVICES AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Bob Collins)



BROADCASTING SERVICES AMENDMENT BILL 1993

OUTLINE

This Bill amends the *Broadcasting Services Act 1992* to delay the allocation of licences for subscription television broadcasting services which use MDS as their means of transmission or part of their means of transmission until:

- . subscription television broadcasting licences A and B (which use satellite as the means of delivery) are allocated and a transmission system standard is declared under section 94 of the Act; or
- . a licence is allocated under subsection 96(1) for a service which:
 - uses cable (referred to as 'lines') as the ultimate means of delivery of the service to subscribers; and
 - is in a position to operate nationally;

whichever is sooner.

FINANCIAL IMPACT STATEMENT

The Bill is not expected to have a significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 - Short title etc.

Clause 1(1) provides for the citation of the *Broadcasting Services Amendment Act 1993*.

Clause 1(2) provides that in the amending Act, the term 'Principal Act' means the *Broadcasting Services Act 1992*.

Clause 2 - Commencement

This clause provides that the amending Act commences on Royal Assent.

Clause 3 - Interpretation

Subsection 6(1) of the *Broadcasting Services Act* contains definitions of terms used in the Act.

This clause amends subsection 6(1) to insert definitions of two new terms used in new subsection 96(3A) to be inserted by clause 4.

The new term 'line' is defined to have the same meaning as in the *Telecommunications Act 1991*. That definition includes wire, cable and optical fibre, amongst other things.

The new term 'MDS system' is explained in the notes on clause 4.

Clause 4 - Allocation of other subscription television broadcasting licences

Part 7 of the *Broadcasting Services Act 1992* provides for the regulation of subscription television broadcasting services.

The initial satellite licences

Section 93 enables the Minister to determine a price-based allocation system for allocating 2 licences ('A' and 'B'), each of which allows the delivery of 4 subscription television broadcasting services using a satellite operated by AUSSAT Pty Ltd (a subsidiary of Optus Communications Pty Limited).

Subsection 93(2) requires the Minister to allocate a further licence ('licence C') to a subsidiary of the ABC which allows the provision of up to 2 subscription television broadcasting services after licences A and B have been allocated.

Subsection 94(6) requires satellite subscription television broadcasting licensees to use a full digital transmission system determined under section 94.

The initial satellite licences will be subject to certain requirements that do not apply to other subscription television broadcasting licensees, in particular, the requirements for Australian industry involvement (subsection 100(4)) and ownership and cross media limits (sections 106, 107, 108 and 110).

Other subscription television broadcasting licences

Subsection 96(1) enables the ABA to allocate to a person, on application in writing, a subscription television broadcasting licence other than licences A, B and C.

Subsection 96(3) prohibits the allocation of such a licence that uses a satellite as a means of service delivery prior to 1 July 1997.

The Act does not currently prohibit the granting of a subscription television broadcasting licence where the proposed service is to use a means of technology other than satellite, for example cable or MDS (which uses a form of radiocommunications transmission in microwave frequencies).

The amendment

This clause amends section 96 of the Broadcasting Services Act to insert new subsections 96(3A) and (3B).

New subsection 96(3A) prevents the allocation under section 96 of a licence for a subscription television broadcasting service that is dependent on an MDS system as its means of transmission or as part of its means of transmission before one of 2 situations occurs.

Those situations are:

- . the allocation of licences A and B and the declaration of the transmission standard under section 94; or
- . a licence is allocated under subsection 96(1) for a service that uses lines as the ultimate means of delivery of the service to subscribers and is in a position to operate nationally.

A definition of the term 'MDS system' is to be included in subsection 6(1) of the Act by clause 3 of the Bill. An MDS system would be defined to mean a system for transmitting radiocommunications on frequencies within certain frequency bands. The frequency bands identified are those identified in the Multipoint Distribution System Band Plan (Statutory Rules 1988 No. 181 as amended by 1990 No. 449 and 1992 Nos. 156 and 305). That Band Plan was made under section 19 of the Radiocommunications Act 1983 for the purpose of detailed planning of the use of part of the radiocommunications spectrum.

The new subsection 96(3A) will prevent the granting of a licence under subsection 96(1) until one of the nominated situations occurs, irrespective of whether an application for that licence was lodged before or after the commencement of the new subsection. When the Government announced the policy on 29 January 1993 which this legislation reinforces, no such applications had been lodged with the Australian Broadcasting Authority.

New subsection 96(3B) sets out certain criteria that the ABA is to have regard to in considering whether a service is in a position to operate nationally. Those criteria are the geographic coverage of the service, the number of persons who can receive the service and such other matters as the ABA thinks fit.