

## HOW SHOULD DIGITAL AREA BROADCASTING SERVICES BE PLANNED AND REGULATED IN AUSTRALIA?

THE FOLLOWING IS A CONTRIBUTION BY PETER WEBB, DEPUTY CHAIRMAN OF THE ABA, TO A PANEL DISCUSSION AT A ONE DAY RADIO BROADCASTING INDUSTRY CONFERENCE, 'DIGITAL AUDIO BROADCASTING IN AUSTRALIA', ON 27 JULY 1994.

If there is one thing that history tells us about the regulation of broadcasting, it is that the most effective regulation is contemporary.

Regulation must move with the times and be appropriate to the times. But we cannot independently of the present predict the future shape of the broadcasting industry.

We can not get there from here without taking account of our present circumstances, and those circumstances will undeniably influence the course we take and the destination we reach. So the digital revolution cannot bring about a greenfields outcome for the radio sector.

Those allocating, facilitating, occupying and regulating the AM and FM bands, whether the Commonwealth Government, the Spectrum Management Agency, the National Transmission Agency, national broadcaster, commercial broadcaster, community broadcaster, narrowcaster or the ABA, will each carry with them, in their approach to digital sound broadcasting (DSB), some baggage from the past.

### WHAT IS THE PLANNING AND REGULATORY BAGGAGE?

Until the advent of the Broadcasting Services Act, the planning baggage consisted of three elements. Planning for new broadcasting services was ad hoc, politically administered, and done behind closed doors.

That system has now gone and we cannot revert to it.

Incidentally, the surrender of such a high degree of administrative control runs counter to many bureaucratic instincts. It is to the great credit of the Commonwealth Government and the Department of Communications and the Arts that the very significant power that once was wielded over broadcasting planning was so seamlessly relin-

quished in favour of a new system for planning that is:

- methodical and structured, where once it was ad hoc;
- independent of political administration; and
- transparent, where once it was opaque.

We now have an entirely new system for planning.

### PLANNING

For the first time in Australia's national history, the planning of broadcasting services is being conducted in a completely open and widely consultative manner.

All premises and assumptions made by the planner are public. Public interest planning criteria are spelled out in the Broadcasting Services Act. The Minister's role is defined and Ministerial discretion is exercised within a known framework.

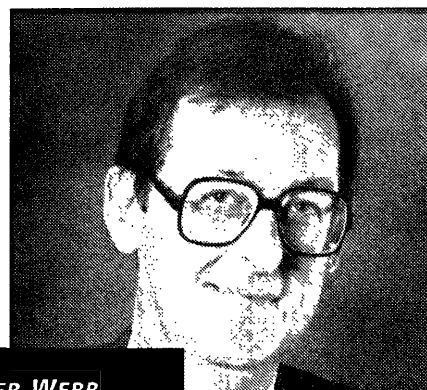
Because it has never been done before, the task is a new one for the ABA to design. The design stage occupied a considerable amount of consultation between the ABA and the people of Australia, but it is complete and the designation of the ABA's planning priorities, when dropped in the broadcasting pond, created barely a ripple. We think that is because our consultation helped us get it right.

Given that we received around nine hundred submissions from individual Australians, incumbent broadcasters, and civic and private organisations, all telling us of their aspirations for new services, and given the vested interests keenly involved, this was no mean achievement.

Clearly, our initial focus on the remote and regional areas of Australia, where Australians are substantially underserved with broadcasting services, is the correct focus. That priority has not

been even faintly challenged.

A moment's reflection on this outcome should provide any reassurance that is necessary. For the first time in Australia's history its people have been consulted about their aspirations for



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new radio and television services, and their response makes it clear that the benevolent paternalism of the past is a thing of the past. There can be no going back to the old ad hoc approach.

As the ABA works through its planning priorities, it will do so in a consistently open and consultative manner.

As licence area plans for Group One of the national planning priorities are fashioned by the ABA, they will be released in draft form initially, and submissions on their merits will be sought and objectively assessed before they are finalised and promulgated. The ABA has already received something in the region of two thousand written submissions in relation to Group One licence area plans.

As well, the ABA has conducted more than forty public meetings in remote and regional Australia, from Thursday Island to Mt Isa, from the Spencer Gulf to Bunbury, Mildura to Mandurah, Berri to Busselton. People from all walks of life have written to us and attended these meetings and had their say about

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commercial radio and television licences. Earlier this year, the section got some practice with the successful price-based allocation of temporary radio licences for high-power open narrow-casting. The frequencies were all AM frequencies lying idle pending the completion of planning.

The section is also responsible for the allocation of so called 'section 39' commercial radio licences—second licences allocated on application to eligible licensees in single commercial radio markets.

## **COMMUNITY LICENCE ALLOCATION**

The section is preparing for the progressive allocation of community radio licences as licence area plans are determined later this year. The procedures to be employed to allocate such licences will depend on whether there is more than one applicant.

## **LICENCE RENEWALS**

The licence renewal process has been vastly simplified in comparison to the former Australian Broadcasting Tribunal's requirements. This is because any difficulties that arise with a licensee, such as programming complaints or alleged breaches of licence conditions, can be dealt with at the time rather than at renewal time. In most cases licence renewal is a simple administrative process, there being a presumption of a licensee's continued suitability.

Other current projects include:

- developing and implementing temporary transmissions policy for aspirant community broadcasters;
- developing policy guidelines concerning the ABA's power to give permission for retransmission outside a licence area; and
- handling general inquiries about the types of broadcasting services available and how to apply for licences.



## **DSB**

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the nature and number of services they would like to receive.

We are now approaching the business end of our planning task, and although the anxiety level among incumbents in the commercial radio industry is naturally rising, they do appreciate, we believe, that they are as well informed as the ABA can make them about the future. They appreciate that everyone in particular markets will start from the same knowledge base.

They are less appreciative, it must be said, about other matters, the roll-out of national radio services in the form of JJJ and SBS possibly foremost among them.

The position of the national broadcasters in the present regulatory regime is something of a continuing concern to the commercial radio industry, so their place in a DSB future is one I imagine they would be keen to see clearly articulated, and one about which they would very probably like a say.

## **BENEFITS OF DSB**

Consumers will certainly want to know what implications this new radio band will have for them. The prospect that every radio receiver in the country, whether in the home, at work, in the car or portable, will be unable to receive the better quality services, and that the benefits of digital will not be available without buying a new receiver, will galvanise every radio listener in the country into action.

They will want answers to questions like these:

- Will service diversity eventuate?
- Will CD quality radio be theirs?
- What information services will we get as an adjunct to sound services?
- How in-step will Australia be with the rest of the world?
- How will transition to the new services be managed?
- What industry and infrastructural arrangements will be necessary?

These matters can only be determined inclusively of all legitimate interests if they are exposed and discussed in an open and consultative way.

We can already envisage that current

legislation of relevance to DSB, the Broadcasting Services Act and the Radiocommunications Act, might need Parliamentary attention, even if only for technical purposes. Policy issues might also be thought sufficiently important for determination by the Federal Parliament.

The rights of existing broadcasters to migrate to the new technology will almost certainly be affected and constrained by the ownership and control limits and the retransmission provisions in the Broadcasting Services Act.

DSB, via the Eureka 147 route, would appear to pose major preliminary questions about the size of areas to be served by services. The statutory limit on two commercial radio licences in the same licence area may be compromised. Because the Broadcasting Services Act appears to contemplate that a 'broadcasting service' is a single stream of programming, the accommodation of a technology that allows multiple, discrete broadcasting services using a single channel would challenge that interpretation and might require some legislative fine-tuning.

If the Federal Parliament and the community are to participate fully in Australia's preparations for the advent of DSB, it seems clear that there can be no going back from a policy process that is open, independent and structured.

Whatever might be the future of DSB in Australia, the regulation of DSB and planning for its introduction must carry no less a degree of contemporaneity than is borne by the present planning process.

The planning of new services, the transition period that will inevitably impact on all service providers, and the allocation of services will each of them need to be socially, economically and commercially acceptable.

The ABA is participating, along with many other bodies, in the Department's work on DSB and looks forward to a continuously increasing involvement by policy-makers and stake-holders, and an increasing interaction between them and the broader community in forums such as this.

