



'Fourthly, where an applicant proposes to serve a particular community interest, for example a Christian or an Aboriginal interest, the applicant should demonstrate that the greater part of that community interest will be served. And fifthly, where there is more than one applicant competing to represent a similar community interest, the ABA would prefer them to try to find a cooperative arrangement, particularly where public resources will be required to ensure the success of the application.'

The ABA is currently engaged in allocating new community radio licences in Albury, Bathurst, Bendigo, Bourke, Cairns, Esperance, Hervey Bay, Maryborough and Shepparton. (See p.xxx for the community licence allocation workplan.)

'Allocating licences is a time consuming exercise—as it should be. It takes much more of the ABA's time and skills than, say, allocating a commercial radio licence, because allocating community radio licences is done on merit rather than price.'

'To ensure not only an efficient but especially a fair allocation of community radio licences, in 1998 the ABA held the first public hearings in its six year existence—one in Darwin and one more recently in Bathurst. As a result of the Darwin hearing the members of the ABA were much better informed in making their allocation decisions.'

The principles indicating how the ABA will allocate licences arose out of the Darwin hearing.

'The Australian media is enriched by community broadcasting. The community broadcasting sector is typically about concern for people, generosity in offering time and skills and ingenuity,' Professor Flint said.

FM licences in capital cities

'The ABA has never set a timetable under which there would be four new FM stations in Sydney and Melbourne, two or three in Brisbane and two each in Adelaide and Perth, running by now,' Professor David Flint, ABA Chairman said.

Professor Flint was responding to press articles quoting Mr Paul Thompson of UK-based DMG Radio Australia.

'The ABA has been planning the allocation of the radio spectrum for a whole continent,' Professor Flint said. 'We decided those areas with the least number of services, regional and remote Australia, deserved the highest priority. Finally we would complete those areas with the most services, the capital cities. Our engineers now also have to plan for the introduction of digital broadcasting.'

'The Government has been most sympathetic to our problem and has recently given us the necessary funds to complete both tasks.'

The result is that the draft licence area plans for radio in Sydney and Melbourne should be available in 1999. In fact, we hope to have them out closer to the middle of 1999. This would represent a slippage of just six months from what we were saying earlier this year, before digital planning began.'

More pay TV licences for Foxtel and Optus

The ABA has allocated 20 subscription television broadcasting licences to Foxtel Cable Television Pty Limited and 98 subscription television broadcasting licences to Optus Vision Media Pty Ltd.

'The ABA has become aware in recent times that some people wishing to subscribe to pay TV have not been able to do in some parts of the country,' said Professor David Flint, ABA Chairman. 'While the ABA cannot compel any subscription television broadcaster to provide its services in any place, I am pleased to be





able to announce that between them Optus Vision Media and Foxtel now have access to more than one hundred and fifty licences that allow for the delivery of services direct to the home via satellite, anywhere in Australia.'

Foxtel has indicated that the program mix of 20 broadcasting services will include news, sport, movies, television drama, music, documentaries and general entertainment.

Optus Vision has indicated that once it begins satellite transmission, it will progressively introduce subscription broadcasting services that will contain a program mix including news, sport, general entertainment and infotainment.

Pay TV licences

Section 96 of the *Broadcasting Services Act 1992* allows the ABA to allocate subscription television broadcasting licences. Licences allocated under section 96 since 1 July 1997 allow delivery by any means, including satellite.

Under section 96, the ABA must also request a report from the Trade Practices Commission on whether the allocation of a licence would be anti-competitive. Under section 109, a foreign person may not have company interests of more than twenty per cent in a

subscription television broadcasting licence, nor may two or more foreign persons hold such interests that, total more than thirty-five per cent in aggregate.

Unlike transmitter licences or other service delivery permits, these licences do not have geographical limitations. Therefore, a service licence is valid throughout Australia as long as the programming on that service is the same in all areas of reception. Where the service differs in a location, a separate service licence is required.

Most pay TV licence conditions relate to programming e.g. anti-siphoning rules and no R-rated material until and unless Parliament approves its transmission.

Once a licence has been allocated, there is a requirement for the licensee to remain a suitable person. This means if any time after the licence is allocated the ABA decides there is a significant risk of an offence against the Act or a breach of the conditions of the licence occurring, it may take action to remove the risk of such an offence or breach taking place.

Existing licences

Foxtel now holds 90 section 96 licences. These include 20 licences allocated to it by the ABA on 28 June 1996, 30 licences allocated on

Programs granted P or C classification

Programs granted C or P classification between 10 November 1998 and 8 January 1999.
Producers interested in submitting programs for classification should contact Liz Gilchrist, Manager,
ABA Children's Television on (02) 9334 7840.

Program Title	Origin	Class	New/ Renewal	Decision Date	Applicant
PICK YOUR FACE	Australia	C	new	16-11-98	Banksia Productions
HIGH FLYERS	Australia	PRC	new	18-11-98	Southern Star Entertainment Pty Ltd
FIRST CHRISTMAS; THE	Australia	CAD	new	18-11-98	Burbank Animation Studios Pty Ltd
BUSH BEAT	Australia	PRC	new	27-11-98	Queensland Television Ltd (QTQ 9)
FAST TRACKS (SERIES 2)	Australia	CAD	new	2-12-98	Barron Television Ltd
GOODSPORTS (SERIES 8)	Australia	C	new	8-12-98	WIN Television
FLIPPER AND LOPAKA	Australia	PRC	new	7-12-98	Yoram Gross—Village Roadshow Pty Ltd
ENCHANTED BILLABONG; THE	Australia	CAD	new	7-12-98	Imagine If Pty Ltd
NO WORRIES	Australia	CAD	new	11-12-98	The Seven Network
THUNDERSTONE 2	Australia	CAD	new	11-12-98	Jonathon M Shiff Productions
GYM JAM CLUB	Australia	C	new	8-1-99	Fit TV Pty Ltd

C - children's program, CAD - C Australian drama, P - preschool, PRC - provisional C



25 November 1997, the 20 licences allocated on 10 December 1998 and 20 licences acquired from Cable Television Services Pty Ltd on 23 June 1995. The 40 licences allocated before 1 July 1997 may not be used to provide services via satellite. Before that date the ABA could not allocate subscription television broadcasting licences under section 96(1) that used a satellite as a means of delivery.

Optus Vision Media now holds 198 section 96 licences. The ABA allocated 100 of these licences to it on 24 June 1996. These 100 licences may not be used to provide services via satellite, as they were allocated before 1 July 1997.

In recent months, both the ABA and the Department of Communication, the Information Economy and the Arts have received complaints from persons on the fringes of metropolitan areas and in some regional areas that they are being denied access to subscription television services. Some of these areas were formerly able to receive the Galaxy pay television services via microwave, or are very close to areas served by regional satellite pay TV provider Austar, which is apparently prevented from connecting homes in certain areas due to commercial agreements relating to program supply.

While the picture is not entirely clear, a perception appears to have arisen that the problems of these consumers may have been due to a lack of subscription television licences in the hands of pay TV service providers.

Section 100 conditions

The ABA is obliged under subsection 100(3) of the Act to impose special conditions on licences that are regarded as satellite subscription television broadcasting licences. These conditions must be designed to ensure that:

- (a) the domestic reception equipment used by each satellite subscription television broadcasting licensee is accessible by other satellite broadcasting services; and
- (b) each satellite subscription television broadcasting licensee that has a subscriber management system provides access to that system to other satellite subscription television broadcasting licensees at a fair price.

Under subsection 100(5) the ABA must impose a condition on all subscription television broadcasting licences requiring each licensee to make available, as an option,

domestic reception equipment on a rental basis.

Under subsection 100(6) the ABA must impose a condition on all non-satellite subscription television broadcasting licences requiring that, if a licensee rents domestic reception equipment to a consumer, the rental agreement must allow the consumer to terminate the agreement on giving one month's written notice to the licensee.

Section 100 conditions came into effect from 3 September 1997.



FXF Trust and Fairfax

The ABA is considering the sale of John Fairfax Holdings shares currently held by Brierley Investments Ltd announced on 10 December, including Fairfax's proposed buy-back of 10 per cent of its own stock.

'The ABA is investigating whether a breach of the cross-media rules in relation to Fairfax occurred in the period 17 May-24 August 1998. The ABA has no intention of extending the present investigation to include consideration of the buy-back scheme. This of course does not mean the sale of Brierley's Fairfax shares will not be examined by the ABA to ensure compliance with the cross-media rules,' said Professor Flint.

Under section 60(b) of the Broadcasting Services Act, CPH, and Publishing and Broadcasting Limited (PBL) (and others) are prohibited from being in a position to exercise control of newspapers which are associated with the licence area of the Nine network licences.

John Fairfax Holdings Ltd publishes newspapers (the *Sydney Morning Herald* and the *Age*) which are associated with the licence areas of the Sydney and Melbourne television licences of the Nine network. CPH and PBL are therefore prohibited from being in a position to exercise control of Fairfax, either alone or together with an associate.

Section 67 of the Broadcasting Services Act allows the ABA, on application, to grant approval for temporary breaches of the cross-media provisions of Act for periods of six months, one year or two years. The ABA must be satisfied that the breach was incidental to the objectives of the transaction that caused it and that the person would take action to ensure the breach would cease.