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# ACE TV licence cancelled

The ABA has decided to cancel the licence of Adelaide Community and Educational Television Inc. ACE TV was licensed to provide a service in Adelaide under the community television trial.

The ABA's decision follows its investigation into ACE TV. The investigation considered whether ACE TV had complied with the condition on its licence to provide an open narrowcasting television service for community and educational non-profit purposes.

The decision to cancel a licence is not one that the ABA makes lightly. The ABA acknowledges the efforts of volunteers who have been attempting to get the service back on air. But as regulator of the community television trial, the ABA felt it had no option but to take the action it has taken.

ACE TV has lodged an application with the Australian Communications Authority for reconsideration of the ABA's decision to cancel its transmitter licence. The ABA's current intention is to defer the continuation of the community television trial in Adelaide until

the ACA's reconsideration process is completed.

On 14 November 2002, Parliament passed legislation to provide a new framework for community television services. Under the new regime, the spectrum used for analog community television transmissions will be available until 31 December 2006. The legislation will come into effect 28 days after Royal Assent, received on 2 December 2002. The ABA will conduct the process of allocating community television licences under the new regime in 2003.

ACE TV has indicated to the ABA that it is intending to improve governance and management. If the proposed changes are made, a reconstituted ACE TV, or another group including current members and volunteers of ACE TV may well be a credible contender for another licence, either under the community television trial or for any permanent community television licence in Adelaide.

## **ACE TV**

Adelaide Community and Educational Television Inc (ACE TV) has been the provider of a television service using UHF

channel 31 in Adelaide since the commencement of the nationwide community television trial in September 1993. The trial has been extended until 31 December 2002.

The ABA has made spectrum available for the service in Adelaide by a series of determinations pursuant to section 34(1)(f) of the *Broadcasting Services Act 1992*. This process is commonly called 'the drop through'. The determinations have stipulated that the spectrum be used 'for an open narrowcasting service for community and educational non-profit purposes'.

ACE TV has also been issued with apparatus licences under section 100 of the *Radiocommunications Act 1992*. Each of those licences has contained a condition that the licence can, 'only be used to provide an open narrowcasting service for community and educational non-profit purposes'.

On 31 January 2002, as a result of concerns about the operation of ACE TV, the ABA commenced an investigation. The investigation has focused on whether ACE TV has complied with the requirement that its service be 'for community

and educational non-profit purposes'.

In June 2002, during this investigation, the ABA learned that ACE TV had ceased to broadcast its service, because of problems with its transmission equipment that it was unable to repair. The ABA understands that ACE TV has been unable to obtain access to the transmitter site because of a dispute with ntl: Australia Pty Limited (now known as Broadcast Australia Pty Ltd). ACE TV has not returned to air, and it is not known when or whether it will do so, although ACE TV has indicated an intention to recommence transmissions after the conclusion of the investigation.

## **Key findings**

The ABA's key factual findings are as follows.

1. Until recently, ACE TV's constitution provided for open membership, although a long-standing moratorium meant that membership was not open to members of the local community generally or to community groups. However, ACE TV made changes to its constitution at a special general meeting on



16 March 2002, the effect of which was to introduce constitutional restrictions on the opportunities for the community to participate in the management and operation of the service.

2. ACE TV currently has only 17 individual members and no group members. ACE TV had a moratorium on membership from at least May 1994 (shortly after its initial transmitter licence was granted) until March 2002, and this has significantly affected the ability of the community to be involved in the operation and management of the service.
3. The records of ACE TV suggest that one individual creditor has been a significant influence at ACE TV from 1994 to 2002, even when not a member of the board. The ABA is particularly concerned by the terms of a debenture to that creditor that provide that the memorandum and articles of association of ACE TV may not be amended except with the individual's consent.
4. Having regard to the fact that ACE TV is intended to operate for community purposes, the extent to which ACE TV appears to be influenced by one individual creditor appears to be inappropriate. The records of ACE TV tend to suggest a real risk that ACE TV could be operated to protect the interests of that individual,

rather than for the benefit of the community.

5. ACE TV has provisions in its amended constitution for dispute resolution. No such provisions existed in its previous constitution. Although there appear to be some grievance mechanisms, it is not clear that they have been adequately implemented for the resolution of disputes.
6. ACE TV has involved volunteers in a range of activities at the station, including attending to the library, reception and previewing programs. It also appears to have been actively involved in the 'work for the dole' scheme. Opportunities for volunteers to participate in the service have diminished since the service stopped transmitting its signal in May 2002. Further, there is no satisfactory evidence that, apart from the small group of persons who are members of ACE TV Inc, volunteers have had any significant opportunity to be involved in the decision making or management of ACE TV.
7. While submissions from ACE TV show an intention to improve community access and participation in the service, the ABA is not satisfied at this stage that members of the community are active stakeholders.
8. There does not appear to have been any systematic approach to encouraging community participation in program production or selection.
9. ACE TV has not broadcast any programming since 25 May 2002 because of an ongoing dispute with ntl: Australia Pty Limited (now called Broadcast Australia Pty Lim-

ited), the freehold owner of the Mt Lofty transmission site.

10. While there has continued to be some community involvement since May 2002, for example, through volunteers, the failure to broadcast any programming means that ACE TV is effectively no longer providing a service for community purposes.
  11. Despite ACE TV's claim that it will be able to return to air once the ABA's investigation is completed, the ABA is not satisfied that ACE TV will be able to return to air in the foreseeable future.
- On the available evidence, ACE TV appears to have such inadequate and inappropriate governance arrangements that it is not possible to be satisfied that the organisation has been operated for 'community' purposes. This is principally because it is managed by such a small group of individuals, and in such a way that there is little opportunity for community participation in the service.

In October 2002, ACE TV advised the ABA of changes it intends to implement that may have the effect of altering this situation. The ABA is also aware that ACE TV has been required by the South Australian Office of Business and Consumer Affairs to reconstitute itself as a company limited by guarantee by the end of December 2002.

ACE TV has not broadcast any programming for six months, and although ACE TV has expressed an intention to return to air after the completion of the ABA's investigation, there is no firm basis for believing that ACE TV will return to service in the period to 31 December 2002, or in the foreseeable future. The section 34 determination and the apparatus li-

cence pursuant to which ACE TV operates its service will both expire on that date. Having regard to this situation, as well as the seriousness of ACE TV's failures of governance and management, the ABA has decided to cancel ACE TV's licence.

Any other potential providers of open narrowcasting services for community and educational non-profit purposes in Adelaide will be practically unable to start such a service in the period until 31 December 2002 because of the need to establish their capacity to provide a suitable service. Having cancelled ACE TV's apparatus licence, there is no reason to keep the spectrum covered by the current section 34 determination available for allocation. The ABA has the power to make a fresh section 34 determination to make spectrum available at such time as a group is identified that meets the criteria for allocation of a licence under the community television trial.

Having regard to these matters, as well as the inadequacies in the overall service that has been provided by ACE TV and the ABA's conclusion that ACE TV is manifestly failing to comply with the purposes of the drop through determination, that is 'for community and educational non-profit purposes', the ABA has revoked the determination pursuant to which ACE TV's service is provided.

ACE TV has lodged an application with the ACA for reconsideration of the ABA's decision to cancel its transmitter licence. The ABA's current intention is to defer the continuation of the community television trial in Adelaide until the ACA's reconsideration process is completed.



**The ABA's investigation report, *Investigation into Adelaide Community and Educational Television Inc.*, is available on its web site at [www.aba.gov.au/tv/investigations/projects/ACE/index.htm](http://www.aba.gov.au/tv/investigations/projects/ACE/index.htm)**