Channels A and B: what are the rules?

EXTRACT FROM SESSION PRESENTED BY GILES TANNER, ACMA'S GENERAL MANAGER INPUTS TO INDUSTRY, TO A NETWORK INSIGHT SEMINAR, SYDNEY, 14 MARCH 2007

At ACMA's 2006 ICE conference, the Minister launched Ready, Get Set, Go Digital, a Digital Action Plan (DAP) for Australia, which outlined a series of initiatives aimed at enhancing the uptake of terrestrial digital television prior to a final switch-over from analog, outlining a role for ACMA in the plan. This includes research initiatives aimed at understanding both the technical impediments to digital television uptake, as well as a role monitoring the impact of digital television on consumers.

One initiative that will enhance the offering for digital television viewers is the allocation of two new digital channels—channel A and channel B. From their inception, the government has contemplated that these could include services that might be received on household television receivers, but might also be mobile services offering some innovative alternatives.

The two digital channels were originally designed for 'datacasting', but when offered to the market, the field was so small that the decision was taken to withdraw them. A 'datacasting service' is defined in the *Broadcasting Services Act 1992* to include a broadcasting service or a service providing any other content that could conceivably be included in a digital television transmission. However, in creating a licensing regime for datacasting, parliament imposed a series of limitations on that content, broadly designed to ensure that the service did not breach the letter or spirit of the then-current moratorium on more than three commercial television broadcasting services available in each area.

These limitations and prohibitions were set out in Schedule 6 to the Broadcasting Services Act and include the 'genre conditions'. Category A television programs were prohibited—this included drama, sports, music, infotainment or lifestyle, documentary, 'reality television,' children's entertainment, light entertainment or variety, compilation programs, a quiz or games program, a comedy program or a program that consists of a combination of any or all of the above, unless the program is an 'information-only program' or an 'educational program' so defined. These genre prohibitions were supported by a set of definitions.

Category B television programs included news or current affairs, a financial, market or business affairs bulletin, a weather bulletin or a bulletin consisting of a combination of any or all of the above programs. These were also prohibited, unless the program was information-only, educational or was a foreign language news or current affairs program, but the condition did not prevent transmission of a bulletin or bulletin in certain limited circumstances.

In effect, the law creates different regimes depending on whether the service is able to be received by domestic digital television receivers.

Parliament also made provision for an important relaxation of these rules after 2006. Section 34 is a planning power that enables ACMA to make spectrum available for specified periods for purposes that include datacasting. The effect of section 34(7) was that any spectrum made available for datacasting would, after 31 December 2006, be able to be used to provide any other service for which a licence could be obtained under the Broadcasting Services Act. This potentially includes a subscription television broadcasting service or an open or subscription narrowcasting service.

Meanwhile, there has been a second important set of developments around technical standards, in particular, the emergence of mobile television, with standards such as DVB-H, DMB, and Qualcomm's MediaFLO system all offering a broadcasting—point-to-multipoint—alternative to mobile telephony as a means of delivering high bandwidth content such as television to mobile devices. At least two of these standards, DVB-H and MediaFLO, are designed to make use of UHF channels such as those planned in Australia for datacasting.

This is the background against which parliament re-considered the two planned but unallocated television channels and the result was the *Broadcasting Legislation Amendment (Digital Television) Act 2006*. The new legislation provides for the allocation of two datacasting transmitter licences with different characteristics. Channel A can be used for transmission of free-to-air services that can be received on a standard digital in-home television receiver. The types of services that could be offered are open narrowcasting, datacasting and community television. Channel B can be used for a wider range of services, such as mobile television. Both channel A and channel B licensees will be required to operate in digital mode.

For channel A, licensees may only provide datacasting, open narrowcasting and community broadcasting services capable of being received by domestic digital television receivers. Commercial television broadcasting licensees or their controllers and national broadcasters may not control a channel A datacasting licence.

For channel B, licensees may provide any datacasting service that can be authorised under a datacasting licence or under another broadcasting licence authorising provision of that service (basically this means a subscription television broadcasting licence) or they may provide a service in accordance with a class licence, which might include an open narrowcasting television or radio service or a subscription television or radio service). However, channel B licensees cannot provide commercial broadcasting services, subscription television broadcasting services to domestic digital television receivers, services provided by commercial television broadcasting licensees or national broadcasters to domestic digital television receivers, or retransmission of an existing commercial television broadcasting or national broadcasting service to domestic digital television receivers.

In effect, the law creates different regimes depending on whether the service is able to be received by domestic digital television receivers. Commercial television broadcasting licensees and national broadcasters may control a channel B datacasting transmitter licence only if it is not used to provide services to domestic digital television receivers.

In December 2006, ACMA released a consultation paper, *Allocation of spectrum for new digital television services,* and invited comments on allocation and licence parameters for the two licences. ACMA is still considering the submissions. The paper included indicative timelines for allocating the two licences that would see release of sales documents in May, with allocation of channel A finalised in the third quarter of 2007 and B in the fourth quarter. The longer timeline for B was designed to accommodate the Australian Competition and Consumer Commission (ACCC) access undertaking process. It was proposed that the licences be offered via open outcry auctions.

The Minister has said that the participation criteria would relate to financial capability and willingness to roll out and maintain national services. ACMA may impose rollout conditions on channel A requiring a minimum level of coverage within a specified time and the Minister may

direct ACMA on those conditions. Channel B comes with an obligation to transmit a service within 18 months of the allocation of the licence or such longer period as ACMA allows where it is satisfied that there are exceptional circumstances.

Channels A and B are unique in that they will be issued for 10 years with the possibility of a five-year renewal, compared with spectrum licences (15 years, with renewal in some circumstances); ordinary apparatus licences (up to five years) or the special apparatus licences used by licensed broadcasters in the broadcasting services bands, where the entitlement to renewal is linked to renewal of the associated broadcasting licence. This much is fixed in legislation, but the design of the licences—how they are constructed out of the two unassigned, vacant channels in each area—is for ACMA to decide.

The two channels in each market were originally designed for fixed or DVB-T digital television transmissions, the same as the five channels now used by existing broadcasters to simulcast in digital. Mobile television emerged later as a potential application of the channels and requires a significantly different planning approach. Because hand-held devices typically operate at about chest height and with tiny antennas, much higher field strengths are required and a mobile operator may wish to deploy additional infill transmitters to achieve good levels of coverage throughout an area.

The existing unassigned channels vary in their utility for mobile television. In many areas, there is at least one channel that ACMA believes would be well-suited to mobile television, including use of additional infill transmitters. In many other areas, a limited re-planning exercise is possible that would increase the utility of a channel for mobile television. In a third group of areas—Sydney is the most significant example—limited re-planning appears not to be an option and, although the available channel can be used for mobile television, the need to avoid interference to other services would constrain deployment of any infill transmitters additional to those used by existing television services.

Key issues for what these channels can and cannot be used for include:

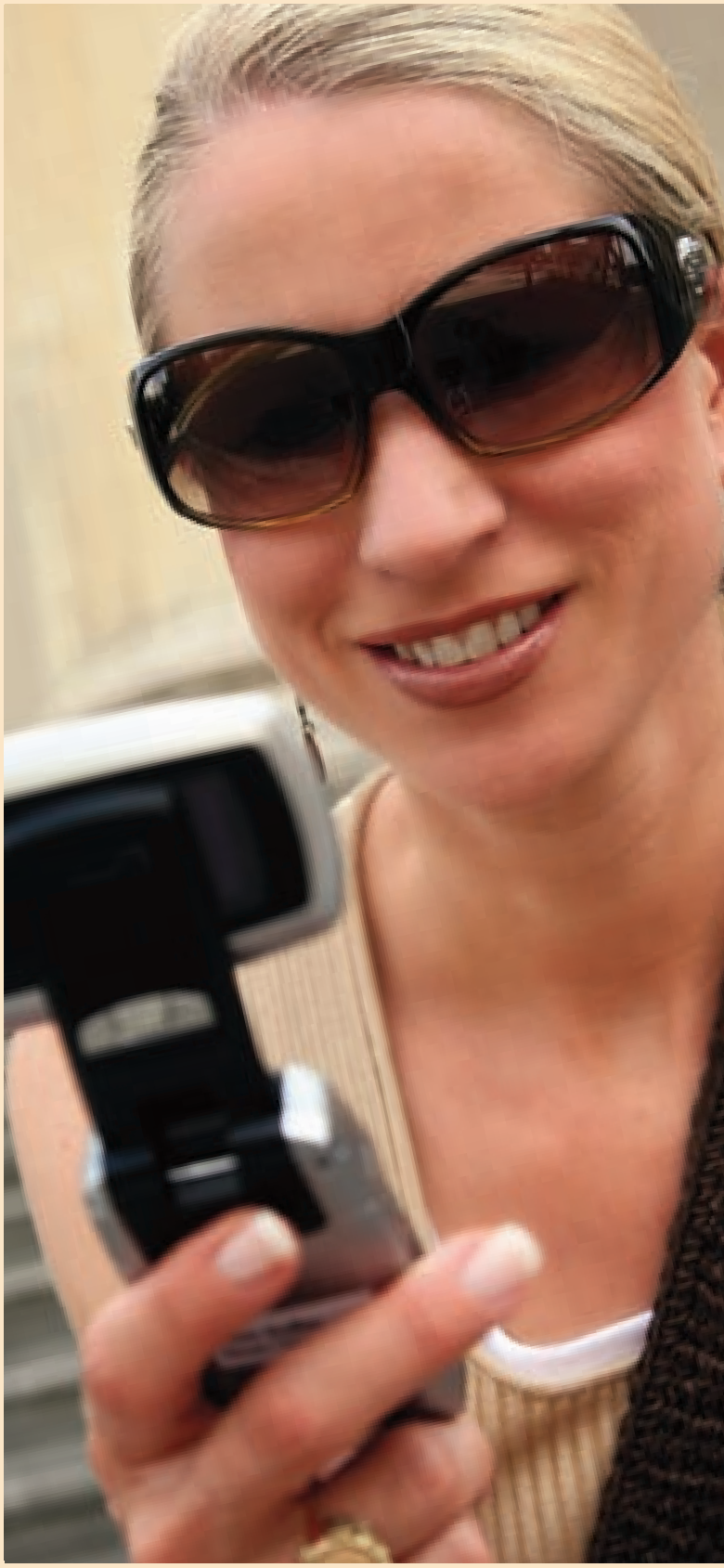
1. What kinds of datacasting are authorised under a datacasting licence?
2. What kinds of broadcasting are authorised under the narrowcasting class licences?
3. What is mobile television and what is a 'domestic digital television receiver'?

DATACASTING UNDER A DATACASTING LICENCE

The boundaries of what is permitted under a datacasting licence are supported by the legal definitions in Schedule 6 of the Broadcasting Services Act of each of the various genres. An 'infotainment or lifestyle' program means 'a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value'. It is difficult to define any programming genre and the regulator has been given discretion to make 'genre determinations' that a specified television program or specified matter is either a category A television program or a category B television program.

BROADCASTING UNDER THE NARROWCASTING CLASS LICENCES

The second key boundary issue is that between narrowcasting and broadcasting, or between open narrowcasting and commercial broadcasting (the former is permitted on both licences, but not the latter) and also, potentially, between subscription television narrowcasting and subscription television broadcasting. The categories of broadcasting service are defined in Part 2 of the Broadcasting Services Act. To be defined as narrowcasting, reception



of a service must be limited in some way—be targeted at a special interest group, have reception confined to specific venues or limited locations, operate for a limited period or to cover a special event, have programs of limited appeal or for some other reason.

Commercial broadcasting services are defined in section 14 of the Act, including that they provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public. These definitions are less detailed and prescriptive than the genre rules applying to datacasting services and there have been calls for greater clarity about what might or might not be regarded as a narrowcasting service.

In its December 2006 consultation paper, ACMA encouraged prospective purchasers of channel A or channel B to apply for section 21 opinions as soon as possible.

To assist ACMA or the Minister to provide appropriate levels of regulatory certainty, parliament has included additional powers in sections 19 and 21 of the Act. Under section 19, 'ACMA may determine additional criteria or clarify existing criteria'. Section 19 has been used extensively in the past to clarify aspects of the boundary between commercial radio broadcasting services and open narrowcasting radio.

Under section 21, 'Requests to ACMA to decide which category a broadcasting service falls into', a person can apply to ACMA for a binding opinion about the category of broadcasting service an existing or proposed service falls into. When providing such an opinion, ACMA must consider the geographic coverage of the service, the size of the potential audience, the accessibility of the service, including whether it is encrypted, and the cost of availability of receiving equipment, the duration and frequency of the service, the nature of the target audience, the nature of the programs provided by the service, including the level of interest in the subject matter, the intended audience, and the social and cultural impact, and any other matters it thinks fit.

ACMA recently published draft guidelines on the types of services that could be provided as narrowcasting television services and was keen to hear whether there are other matters requiring clarification and whether ACMA's proposed approach to categorisation of services was workable. The guidelines set out ACMA's approach to certain matters it must consider when deciding which category a broadcasting service falls into and encourage industry to seek formal opinions from ACMA on the categories of new services. The guidelines are intended to assist parties contemplating providing narrowcasting television services on the proposed new channel A or channel B.

ACMA considered whether to exercise its power in section 19, but anticipated that new digital television services would differ considerably in their look and feel from traditional analog services. It considered it unlikely that a section 19 notice could decisively and comprehensively cover the range of service formats that may emerge, at this early stage in the development of digital television services. As a clearer picture of the potential range of narrowcasting television services emerges, ACMA can consider whether it is necessary to further clarify any of the broadcasting service category definitions.

The draft guidelines are on ACMA's website and include a policy and legal framework followed by a detailed examination of matters to be considered by ACMA when providing an opinion under section 21 and considering the matters in section 22. The text of the draft guideline includes general observations about the circumstances in which a particular section 22 matter might incline the Authority towards finding a service to be narrowcasting. It also indicates the kinds of evidence or other material ACMA will find helpful in having regard to the section 22 matters. The draft guidelines say that consideration of the target audience for a service will be decisive in distinguishing 'programs of limited appeal' from those that 'appear to be intended to appeal to the general public' and continues:

'In general, defining a target audience with reference to age and gender alone is unlikely to limit the appeal and reception of a service to the extent that it is regarded as a narrowcasting service. In particular, and consistent with the approach to radio narrowcasting services, a service that is aimed at particular persons within an age range is unlikely to be a narrowcasting service on this basis, unless the service is targeted to persons of less than 10 years old.'

In its December 2006 consultation paper, ACMA encouraged prospective purchasers of channel A or channel B to apply for section 21 opinions as soon as possible. ACMA can, and must, consider section 21 applications at any time. On receipt of a valid and complete application, ACMA must provide an opinion within 45 days, though there is provision for it to seek additional information from the applicant. The opinion is binding for five years, provided that the circumstances relating to the service remain the same. Opinions provided under section 21 of the Broadcasting Services Act are published when the service to which the opinion relates commences operation.

WHAT IS MOBILE TELEVISION AND WHAT IS A 'DOMESTIC DIGITAL TELEVISION RECEIVER'?

A third key boundary is mobile television versus television to domestic digital television receivers (ordinary digital-enabled television set). A channel A service must be capable of being received by a domestic digital television receiver and the content permitted on a channel B service varies depending on whether the service is capable of being received by a domestic digital television receiver.

In particular, subscription television broadcasting services are not permitted on channel B if they are capable of being received on a domestic digital television receiver. It is also prohibited for a national broadcaster, a commercial television broadcasting licensee or the controller of such a licensee to operate, or permit the operation of, a channel B transmitter to provide a datacasting service, if the service is capable of being received on a domestic digital television receiver. These rules are in section 109A of the Radiocommunications Act.

'Domestic digital television receiver' is defined in section 5 of the Radiocommunications Act to mean 'domestic digital television equipment that:

a) is not a hand-held device; and
b) is capable of receiving television programs transmitted in:
   a. SDTV digital mode; or
   b. HDTV digital mode; and
c) has such other characteristics (if any) as are specified in a legislative instrument made by the ACMA under this paragraph.

The definition appears to rely on the fact that existing mobile television standards such as DVB-H do not carry television programs in standard definition or high definition television digital mode (as these formats would have unnecessarily high resolution for small hand-held screens). As a great deal may hang on whether your datacasting service is capable of being received by a domestic digital television receiver.

As both transmission standards and the choice of receiving devices can be expected to continue to evolve, ACMA may be asked to make or vary instruments under the paragraph. To date, it has not done so.

The full text of Mr Tanner's presentation is on the ACMA website at www.acma.gov.au (go to Home > About ACMA: News & media centre > Speeches).