



Pay TV Chronology - An Update

In October last year, *Communications Update* published a chronology of the long-running pay television saga, beginning from the origins of the issue in 1977, when the possibility of using a satellite for distributing television programs was first raised.

Our rationale for compiling the chronology was that the pay television issue provided an ideal - if somewhat extreme - illustration of the ad hoc nature of broadcasting policy development. At the time we compiled it, we did not imagine that there would be a great deal more to add. History should have taught us that we were wrong!

As a service to our readers, we have therefore put together an update which can be added to the previous chronology to provide the latest developments in all their inconclusive detail. The substance of some events have been revealed in documents tabled recently in Parliament and in the Federal Court, and these have been placed in their correct date order.

1992

2 November: Government announces that it will legislate for digital pay TV and will delay the introduction of satellite-delivered pay TV until digital compression technology is available.

10 November: A confidential cabinet minute on the use of MDS (microwave) for Pay TV prepared for Minister Collins by Chris North (Principal Advisor, Broadcasting Policy Division, DOTAC) among other things:

- accepts that there will be up to 19 MDS pay TV services in the capital cities, and at least 19 could be made available in 'each town and city in Australia';
- Concedes that MDS technology has its limitations but says that it is improving and some earlier difficulties are being addressed;
- says that unallocated channels have been frozen to allow satellite licensees to bid for them in order to use them where necessary for infill or retransmission.

The emphasis is on complexities involved with establishing an MDS network, though some of these apply equally to other forms of delivery.

Collins briefed for a meeting with Steve Cosser, whose companies already hold a large number of MDS licences. North's briefing paper for this meeting says:

- availability and use of other technologies such as MDS and cable for pay TV from the outset have been transparent features of each pay TV model..... It was a central plank of the Prime Minister's position in June, and is clearly understood by Caucus, the Opposition and the Democrats;
- each technology has its limitations compared to satellite but their emergence should not be impeded as they will add to diversity and choice in the market and provide some level of competition to satellite.

9 December: Government calls for tenders for six MDS licences by 29 January.

1993

19 January: Minister Collins signs a determination outlining the rules for the tender process for the satellite pay TV licences, which include the payment of an amount of \$500 to lodge a bid rather than the usual five per cent deposit.

21 January: Government calls for bids for these licences by 28 April.

During this period, Prime Minister Keating rings the acting head of DOTAC, Roger Beale, and says that Cabinet was 'notoriously misled' on the possible use of MDS for distributing pay TV.

28 January: Government announces that 'the integrity of pay TV is to be protected' by barring the allocation of broadcast pay TV licences using MDS technology.

Minister instructs the ABA not to issue any licences for MDS pay TV services.

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1993 (Cont.)

Steve Cosser launches a massive advertising campaign criticising the Government's handling of the issue, in the lead-up to the election on 13 March.

February: Cosser takes Federal Court action against Collins's decision and another aspiring MDS operator, Kerry Stokes, also initiates an action challenging the Government's right to terminate the tender process for MDS licences.

9 February: ABC launches its television service into Asia, Australia Television International, using Indonesia's Palapa satellite and a start-up allocation of \$5m from the Government. The service is to be advertiser-funded and at this stage, free to air.

18 March: Federal Court rules invalid the Government's termination of the MDS licence tendering process, pursuant to the Stokes' action.

22 April: Documents produced in the Cosser action in the Federal Court show that the Prime Minister was warned that legislative amendments would be required to ban the use of MDS technology for pay TV.

News Corporation, the Nine, Seven and Ten Networks and AOTC form a consortium to bid for a satellite pay TV licence. It is reported that the ABC may 'bundle' its channels with this consortium.

30 April: Communications Minister David Beddall announces that the winning bids for the A and B licences are two unknown companies, Ucom (\$177m) and HiVision (\$211m). Beddall welcomes 'the involvement of new Australian parties in the country's broadcasting industry'.

The media, taken by surprise, reacts in a frenzied fashion, using words like 'farce' 'fiasco' 'shambles' and 'imbroglio' to describe the outcome. Comment focusses on

- the amount required to lodge a bid (\$500) being too low;
- the amounts bid, which are claimed to be too high;
- the possible inability of the successful bidders to pay for the licences;
- the background of some of the principals involved in these bids; and
- the possibility that the whole process will be further protracted as these and possibly under-bidders are put through required ABA and TPC scrutiny.

One report (Fred Brenchley, AFR 4 May) suggests that the PMT (Packer, Murdoch, Telecom) bid was as low as \$30m.

10 May: The Government announces that former Commonwealth Ombudsman Professor Dennis Pearce will conduct an inquiry into the satellite pay TV tender process.

13 May: Democrats agree to back amendments to the Act barring the use of MDS for pay TV until a satellite service is in operation. As a trade-off, Democrats get agreement to other amendments requiring local manufacturing, ABA and TPC scrutiny of MDS and cable, and a review of Australian content provisions.

17 May: Cabinet decides to abort the MDS licence tender process after it is revealed that there are legal flaws in the documents. Prime Minister refuses to accept an offer of resignation from DOtAC head Graham Evans.

18 May: Kerry Stokes will seek a court injunction to prevent the MDS process from being aborted.

20 May: Pearce inquiry find no negligence on the part of Minister Collins and concludes that the failure to seek a deposit had been an 'error of judgment' on the part of unspecified officers of his Department.

21 May: Federal Court, on an injunction from Kerry Stokes, orders Government to complete the tender process for MDS licences.