Cable Access: Big Questionmark

Back in December we remarked, perhaps too optimistically, that Minister Lee's statement of 24 November on open access to cable networks looked like a good beginning (CU 106, page 4).

Then, just as everyone was winding down for the holidays, the department circulated for comment a Draft Ministerial Direction to AUSTEL, to give effect to the policy through the service providers class licence.

At first, second and tenth readings the draft direction is opaque almost to the point of obscurity. Whatever it means, and we'll try to explain, it seems to have comforted Optus, which had lost Kerry Packer as a major partner and announced that it couldn't do cable business on the government's terms in the wake of the 24 November policy statement. On 10 January Optus Vision announced it was back in business with an ambitious cable roll-out timetable, fabulous programming deals, and a shareholding structure with Publishing and Broadcasting Limited (PBL - owned by Packer) at only 5 per cent, with US based Continental Cablevision and Optus equal partners in the rest.

What has brought about Optus Vision's renewed enthusiasm to roll out cable on the government's terms?

In order to allow cable operators to benefit from the scope of their infrastructure, and hence give them greater incentive to roll out the cable faster and more extensively, the policy allows a maximum 5 year window of exclusivity to cable operators who themselves provide pay tv. That is, they will be permitted to refuse access to rival pay tv service providers, and refuse interconnect to rival carriers who wish to access their pay tv customers with their own services.

This is how the policy is translated into practice:

- Anyone seeking access to networks operated by carrier associates* must be given access on non-discriminatory terms; except where the service provider/carrier seeking access wishes to provide a pay TV service which would compete with the carrier associate's own pay TV service. This protection for the carrier associate expires on 1 July 1997. (*Carrier associates are companies in which telecommunications carriers have an interest. This covers company structures like Optus Vision and Telstra's Vision Stream, which is a joint venture between Telecom and News Ltd.)
- *Carriers* can be refused interconnect [video dial tone] access to cable networks for the purposes of supplying pay TV services, if the cable operator itself supplies pay TV. Again, this protection for the cable operator expires in 1997.
- *Service providers* may also be denied access if it would reduce the capacity of the network to meet 'reasonably anticipated requirements', including demands for new kinds of services; or require the carrier associate to supply a telecommunications service it has not previously separately supplied to itself or third parties.

So access can be refused on grounds of scarcity, as well as the period of exclusivity for the cable operator's own pay TV services.

On pay TV, the draft produces some odd results. Its definition of pay TV is the one in the Broadcasting Services Act, with the addition of movies on demand available on a dial-up basis (which by definition cannot be broadcasting services). While fairly broad, this definition probably doesn't include some services normally classed as pay TV, such as pay per view services which are not movies - eg boxing matches, live concerts. Service providers wanting access to provide these programs would be able to insist on access. On the other hand, community organisations wanting access to offer a pay TV service could be denied, as could public education service providers offering a subscription narrowcast service, along with straight-out commercial pay TV operators offering entertainment services.

This result seems perverse. Community and education service providers should be given guaranteed access by cable operators, preferably at greatly reduced tariffs or free of charge.

Allowing cable operators to refuse access on grounds of scarcity is such a broad let-out that there is almost no need to make any other exceptions. All a cable operator would have to show is that it was already negotiating with another service provider, or that it had plans for all sorts of new services it wanted to provide itself.

So why is OptusVision back in business? Probably because their fears about video dial tone access have been allayed. There may be a deeper reason, too.

The combined effect of the pay TV and scarcity provisions will encourage the creation of oligopoly or even duopoly in cable-delivered pay TV. Allowing two such deep-pocketed players as the Telecom/News joint venture, and the US-backed Optus Vision consortium, to freeze out pay TV rivals on cable for 2-5 years will add impetus to the tendency for rivals such as Australis to merge operations with one of them. The Minister's policy on open access needs revisiting.

Helen Mills