



UK's brave new world

In anticipation of the forthcoming report of the Digital Radio Advisory Committee (DRAC) into digital radio broadcasting in Australia, CU commences a two-part analysis of proposed regulatory regimes in other countries

The UK government is introducing digital radio. According to the Department of National Heritage's 1995 report, *Digital Broadcasting: the Government's Proposals* (the Report), the government regards digital radio as a mandated technology and intends to close analogue radio frequencies at an unspecified time, when 'the vast majority of people have digital radios and can receive digital broadcasts in their areas'. Present plans are for digital radio broadcasting (DRB) to be simulcast with FM stations until 2010, after which it will replace them in the 87.5-108 MHz band. To date, the BBC has commenced pilot transmissions of Radio 1-4 and 5 Live and live coverage of the House of Commons, and plans to roll out these services to 60% of the population over the next three to four years.

The government intends there to be seven 'radio frequency channels', each with the capacity to offer at least six digital stereo radio services. Of these, one is to be reserved for the BBC for its national services and one for independent national radio, with the remaining four reserved for local services. The seventh channel has not yet been allocated.

Existing licensing regime

The present licensing regime operates under a two-tier system, whereby 'national' and local radio services are licensed on different bases. The term 'national' refers to any broadcaster, independent (private) or public, having national coverage of its service. National independent licences are

allocated using a price-based system; while local licences (which comprise public, community and commercial services) are allocated by the Authority on the basis of merit. The selection process for local licences involves assessing which service would best broaden choice and cater for listeners' tastes and interests in the particular licence area. The Authority is concerned only with the financial viability, rather than profitability, of an aspirant service. The Authority also issues Restricted Service Licences (RSLs), akin to low power narrow-casting services.

Proposed regime

Under present DRB proposals, the Authority is to be responsible for planning and licensing of multiplex providers, broadcasters and providers of data services. Individual broadcasters will require service licences from the Authority. Multiplexer providers will be decided by competitive tender organised by the Authority, and will be licensed for twelve year terms pursuant to both the Broadcasting Act and the Telecommunications Act. In addition, providers of conditional access systems (subscription services) will require licences issued by the Department of Trade and Industry and will also be regulated by the Office of Telecommunications (OfTel).

Existing national and commercial analogue radio broadcasters will be offered guaranteed places on a multiplexer, for the stated purpose of expediting audience migration to digital frequencies. If a broadcaster takes

up a guaranteed place, it will be required to simulcast its analogue programming for at least 80% of the time. If a station wishes to use transmit alternative or additional programming, it will be required to contract with the multiplex provider on the same basis as other prospective broadcasters. A maximum of 10% of the available digital terrestrial capacity will be allowed for non-broadcast, additional telecommunications or interactive services.

Multiplexer provider to plan local services

The government intends to devolve responsibility for the planning of local radio services to multiplexer providers. Under the regime, an aspirant multiplex provider will submit, as part of its tender bid, a business plan which includes the local radio services proposed to be transmitted over the multiplexer. Tenders will be assessed on the basis of the speed and geographical spread by which digital services will be made available across the UK, on the support provided to encourage early consumer take up of digital services, and on the variety of radio stations on offer. To date, the only required 'variety' is that, of the six available channels on each multiplexer, 'one should consist largely of spoken material; one largely of music which is not pop music; and no more than two should...be aimed at predominantly the same section of the radio audience' (Report, p 17).

Under this arrangement, community radio stations will be especially vulnerable; for while local BBC serv-



ices will have access to their organisation's own multiplexer, community stations will be forced to compete financially with commercial services for access. This accords fully with the government's intention, with the Department of National Heritage's publication *Digital Terrestrial Broadcasting: Q&A*, stating: 'the Government values the role of community radio and wants it to have access to digital capacity in the same way as other radio stations. Community stations can therefore be part of any local multiplex bid'.

Other access issues

Although the Authority will continue to allocate RSLs, it will be up to the licensee to make contractual arrangements with the service provider, who is required only to allocate capacity at 'reasonable cost, provided that capacity can be made available with the agreement of the other broadcasters and with no significant effect on the technical quality of other services'. This approach is inadequate. Aside from the fact that the requirement of other broadcasters' consent would, in itself, be fatal to any aspirant whose programming might be attractive to existing audiences, it spotlights significant problems faced by all aspirant broadcasters wishing access to privately controlled carriage facilities.

First, the 'reasonable cost' of access will be, at best, a non-discriminatory charge based upon the legitimate expectations of a profit-making venture involving high up-front capital outlays and a business plan based on only a twelve year assured term of operations.

Second, these expectations may impact not only the issue of the price of access, but also on whether the multiplexer should be required to provide non-discriminatory access. If the multiplexer's commercial viability depends on the success of

programs (or package of programs) transmitted over its facilities, then it may claim a legitimacy to further discriminate on the bases of a service's perceived quality as well as whether it comprises a desired element in an ensemble's mix of services. Even in the cable television industry, which enjoys far greater transmission capacity, carriage providers worldwide have expressed resistance to providing carriage to services unsuited to their business plans. In that industry, the issue could feasibly be modified to accommodate other interests: facility owner could, for instance, be allowed to discriminate for the first twenty channels of a programming package but not for remaining capacity, and could be subject to 'must carry' requirements for community and other appropriate channels. However, the lesser channel capacity of DRB facilities compared to cable makes the adoption of such a scheme more problematic.

Further problems of access will arise if an aspirant multiplex provider is also an aspirant broadcaster in the same licence area, as it will seek to discriminate in favour of itself in the allocation of capacity. The aspirant multiplexer operator would be likely even to argue for the *right* to so do, on the grounds of enhanced profitability - or, more likely, necessary recoupment of investment - by economies of scale arising from vertical integration (witness the Carrier Associates Direction in the Australian pay television industry). Given that one of the government's criteria for assessing tender bids is the speed and reach of digital radio availability, such arguments, if couched correctly, could find favour.

Public interest abandoned

As the Authority has noted, this would modify the direct relationship between the regulator and pro-

gram provider in the selection and regulation of licence conditions. The government's proposals would lead to the abolition of public consultation in the process of awarding radio licences, as well as the Authority's present impartial assessment based on public interest considerations.

The government's devolution of planning responsibility to private interests controlling access to carriage facilities is inconsistent with the broadcasting objectives of the promotion and maintenance of diversity of voice. Because multiplexer operators' licence fees (payable to the Exchequer) are proposed to be based on a percentage of their revenues, the government is also placed in a conflict of interest - to the extent that it has not already abdicated its duty to serve the public.

The falsity of the assumption that the introduction of DRB will necessarily end spectrum scarcity and increase diversity is nowhere better demonstrated than in the UK. As the proposed regime demonstrates, not only is there no guarantee that additional spectrum will be available to new or even all existing content providers, but access can be prevented in further ways. The preparedness of infrastructure owners to resist the obligations imposed on common carriers by refusing to carry services that can not meet access charges based on the carrier's business plans, that do not conform to a desired pastiche of programming, or that compete for spectrum or audience appeal with content provided by a vertically integrated multiplex provider, creates new impediments to aspirant broadcasters. By these means, spectrum scarcity could be joined by more, and perhaps more imposing, economic and anti-competitive barriers to entry. □

In the May issue, CU will examine the proposed Canadian regime.