

staff functions headquartered in Sydney. If the ABC were, like its commercial colleagues, responsible for its operation to the ABT, then a question - would the Tribunal have similar concerns? Would the ABT be the triggering point for change in its system of operation also? The Distribution/Exhibitor mix are inherent in the ABC. Is it pertinent that the Dix Report into the ABC did not single-out this issue in its consideration of ABC affairs? Certainly, the analogy is worthy of consideration.

I believe it appropriate that consideration of the future direction of broadcasting take place at a time of technological change. However, changes in the system, without good reason, clearly don't make sense.

A satisfactory, yet unregulated, system of distribution has been operating in the four 'network' cities of Sydney, Melbourne, Adelaide and Brisbane for almost 30 years. Multiple television services will progressively be introduced in regional Australia. We should respond only to the real problems that will occur and not regulate against imaginary ones. We should ensure that we don't start with a solution and then look for a problem.

Most importantly, and finally, television is all about programming. Television is all about what we see on the screen. Television is not about regulation, bureaucracy, legislation and politics. When programming is threatened by bureaucracy, legislation and politics, then the medium itself is at risk. In the continuing public debates to which television is prone, we must remember that program producers, distributors and even the would be 'new players' will not thank us for getting our priorities wrong. Of all the dangers to our television future, given currently determined policies and the status quo, I consider the potential of distribution licensing singularity prejudicial to programming excellence, investment in local production and effective broadcast practice.

THE ABT'S WEST AUSTRALIAN REMOTE AREA LICENCE REPORT

The Australian Broadcasting Tribunal ("ABT") has released its report in relation to the West Australian remote area licence.

As previously announced the successful applicant was Regional Television Western Australia Pty Limited ("RTWA"). At the date of that application the applicant was a wholly owned subsidiary of Golden West Network Limited ("GWN"). The term of the grant of the licence will be the maximum period the Act permits, five years.

The ABT took the opportunity in its report to make general comments about remote area licences and the procedures to be followed in inquiries for the grant of remote area licences.

These comments are summarised and discussed below.

1. General Recommendations of the Tribunal

The ABT expressed its concern at the possible implications of s29(e) of the Broadcasting and Television Amendment Act 1985, which required equality of shareholding in a consortium holding a remote licence. It recommended that before that Act came into force on 1 January, 1986 consideration be given to the removal of remote area or "RCTS" licences from the ambit of s81(6)(a) of the Broadcasting and Television Act 1942 ("B&T Act").

The Tribunal also recommended that the Administrative Review Council examine the possibility of a review of the Minister of Communication's power to determine both the technical conditions attached to a licence (or soon to be in a licence warrant) and service areas, in the context of its re-examination of the review of administrative and Tribunal decisions under the B&T Act.

It also recommended that the initial grant of an RCTS licence be for a maximum period of seven years, in view of the financial characteristics of the service.

Again, as in its SPS report, the ABT stressed that the existing ownership and control provisions in the B&T Act had serious deficiencies; they did not address concentration which arose from cross ownership or control of different media. It also recommended that educational broadcasts of an RCTS licensee be accessible by

educational institutions outside the service area of remote licensees.

The ABT foreshadowed a policy statement on ownership and control limitations for RCTS licences. The facts which they suggested be taken into account to determine the extent of concentration were:-

- (a) the structure of the applicant, particularly people with an interest of more than 15% in the applicant;
- (b) the nature, extent and relative size of the existing media interests of the applicant, including any 15% shareholder, in the:-
 - (i) proposed service area of the RCTS licence;
 - (ii) the regions covered by the RCTS footprint; and
 - (iii) nationally;
- (c) the effect that the grant of the RCTS licence would have on the nature extent and relative size of the applicant's media interests; and
- (d) the extent of any interests held by a foreign person, particularly one holding any interest of more than 15%.

2. Comments relating to RCTS licensees

As far as licensees were concerned, the ABT noted a number of areas which it would review during the initial grant of the licence, and at the time of the first licence renewal.

The first was financial information of the licensee. The RTWA proposal was to draw on the staff and other resources of GWN. The ABT was concerned that this might result in the information given to the ABT not properly reflecting the financial operations of the terrestrial and the RCTS stations, respectively. In addition, the RCTS station might drain sufficient resources away from the terrestrial station to adversely affect its performance. The ABT was particularly keen that there be proper allocation of costs between companies to adequately reflect the trading results of each licensee.

As far as localism was concerned, the ABT said that the provision of news stories for remote areas and the provision of local programs with local access windows,

were relevant to the question of the provision of an adequate and comprehensive service. Accordingly, it would wish to see that the licensee had taken all practical steps to assist with equipment and training to facilitate the provision of news stories for remote areas and local programming. In particular, it was important that aboriginals were trained for creative and technical production so that they could be responsible for their own programs.

The ABT had considered the provisions of the Broadcasting and Television Act 1985 (and the amending Act). It thought that perhaps s89(a) needed to be amended to facilitate local origination. It referred to the option of the licensee being responsible for local origination, rather than the local community.

As far as the ABT's favourite subject of ascertainment was concerned, it felt that liaison with representatives of other service providers and special interests groups within the service area of a remote licensee would form an ongoing part of ascertainment. To do so it felt that the establishment of two advisory committees would be necessary; one to liaise with educational bodies and the other with aboriginal groups.

In its application RTWA included a program schedule providing for windows of fourteen hours per week for educational and other special interest programming. The ABT thought that there should be a condition on the licence providing for such windows, as such a condition would make it easier for educational and other organisations to obtain funds to provide such programming. However, it did not consider the final form of such condition at this stage. The ABT also considered that the financial criteria which justified the extension of the period of the initial grant also supported a longer renewal term.

On a policy point the ABT interpreted Government policy as being that it was desirable for RCTS operators to also operate programme delivery services as well, and agreed with this, which followed its recommendations in the 1984 Report on Satellite Program Services.

3. Consideration of the Applicants

3.1 Characteristics of an RCTS Licence

In looking at remote area dwellers the ABT noted that their lifestyle was

quite different those of other Australians. They identified the problems of maintaining a stable workforce, the extra costs of living and access to particular goods and services, the effect of geographic isolation, the effect of climatic differences and seasonal variations and time differences across the four RCTS regions. Population within each of the four RCTS regions was extremely diverse, with substantial special interests groups including aboriginal and islander groups, ethnic groups, the disabled, women and children. It identified the major difference between the remote licence and other commercial television services as that relating to the obligation to provide an adequate technical coverage of the service area. It considered that the holder of a remote licence would generally discharge its obligations with respect to the coverage of its community by providing the facilities nominated in the licence warrant, notwithstanding that a substantial portion of a community to be served might need to install additional reception facilities at its own expense to obtain that service. It considered relevant to the question of financial viability the strategic motivation of the applicants at a time of technological change in the television industry. Also relevant was the B-MAC capability of the satellite and of RCTS, which opened up cost opportunities for licensees, by way of back-to-back agreements with AUSSAT. For example, a licensee could sell back to AUSSAT radio, data and teletext capacity, or alternatively, develop these themselves.

There was some doubt in the report as to the number of people to be covered by remote commercial television services throughout Australia. The estimates given differed between 650,000 and 350,000. This, and the size of the television receiver only ("TVRO") dish market created uncertainty. However, the Tribunal found that this applied equally to all of the applicants, thus none were disadvantaged.

3.2 Financial Capability

The ABT stressed that the B&T Act did not require commercial viability. Rather it required that applicants for a licence had the financial capacity to operate it (Coffs Harbour decision). It amended the factors referred to in its Coffs Harbour report to include the strategic value of RCTS in the further development of the broadcasting system in Australia. The two

most important factors taken from the Coffs Harbour report were prospective profitability (the anticipation of future operating surpluses of the magnitude to produce adequate returns measured over a period) and prospective capital appreciation. It referred to the distinctive features of the RCTS market being its size, thinly scattered population, means of reception and problems of distribution and availability of consumer goods.

3.3 Programming

In relation to programming the ABT clearly contemplated RCTS licensees becoming SPS suppliers. It made it clear that there was an expectation of RCTS licensees providing some level of commitment to educational broadcast services. It formed a view that an RCTS licensee would not be satisfying its undertaking to provide an adequate and comprehensive service unless it provided some programs which were specifically made for both the region covered by the RCTS and for minority interests within that region. It was not prepared to set down separate standards for RCTS licensees, but did say that it saw merit in the US Federal Communications Commission approach of guaranteeing access to air time for specific minority interests.

3.4 Method of Evaluation of the Application

The ABT evaluated the two applicants by the following criteria:-

- (a) fit and proper person;
- (b) financial, technical and management capabilities;
- (c) capabilities to:-
 - (i) provide an adequate and comprehensive service; and
 - (ii) encourage the provision of programs wholly or substantially produced in Australia or by Australians;
- (d) whether the applicants were otherwise capable of complying with the conditions of the licence;
- (e) the need for commercial viability of other stations in the service area;
- (f) the need to avoid undue concentration

of media ownership;

- (g) the need to avoid control by foreign persons;
- (h) the need to ensure the availability of at least one commercial television service to all Australians;
- (i) whether an RCTS licence as contemplated by the terms of reference was the appropriate licence to be granted; and
- (j) in the event of more than one applicant qualifying for the grant of licence, which was the most appropriate or suitable applicant to be granted the licence.

It did consider that both applicants fulfilled these criteria. The only area in which it expressed any doubt was in relation to production. Both proposals appeared to the ABT to be under resourced. Both applicants had relied on regional news services to provide the major local production component in their schedules. It doubted whether sufficient research had gone into the availability of personnel for this.

RTWA was preferred, in view of a number of factors, which are listed in no particular order of importance:-

- (a) doubt about the financial capability of Mid Western Television, one of the members of the RTS consortium;
- (b) limitations in the RTS technical proposals; and
- (c) GWN's established record as an operator of a regional commercial television service and the greater depth of preparation and commitment to RCTS by that company.

3.5 West Australian Government

The Tribunal referred to the assistance which the West Australian Government had agreed to provide to both applicants. As the Government made it clear that it did not intend to exercise any control over the successful licensee, the ABT did not consider that the arrangement be caught by s91A of the B&T Act. However, it wished examine the final document prior to the grant of the licence.

3.6 Type of Licence to be Granted

In considering the type of licence to be granted the ABT referred to the submission by Calpurnicus opposing the grant of an RCTS licence on the grounds of commercial viability. Calpurnicus wished to establish a terrestrial commercial television service in the Pilbara region of Western Australia. The ABT considered that it was not necessary that the commercial viability of an RCTS service had to be established before it granted a licence. Factors relating to the viability of the service had been taken into account by it and a fundamental criterion was the Government's desire that at least one commercial television service be provided to all remote area residents as soon as possible.

4. Deferral

As was widely reported in the press, four parties to the general RCTS hearing, including the three television networks, applied for a deferral because of the announcement of the establishment by the Minister of Communications of a Forward Development Unit within his department. The ABT did not see any shift or change in policy which warranted the deferral of the inquiry until the FDU process was completed, or to request a change in the terms of reference of its inquiry. In this regard the ABT was critical of the networks and considered that they were attempting to revive the issues considered in the Satellite Program Services inquiry. In this regard it referred to s111C (1) of the B&T Act, which set out the responsibility of the Minister in the planning and development of broadcasting and television services in Australia. It said that clear and compelling reasons must exist to justify the ABT not acting on a planning decision of the Minister and such reasons did not exist in this case.

Robyn Durie
