

carries on a "credit reporting business" which is defined as:

"... a business or undertaking ... that involves the preparation or maintenance of records containing personal information relating to individuals ... for the purpose, or for purposes that include the purpose, of providing to other persons (whether for profit or reward or otherwise) information on an individual's:

- (a) eligibility to be provided with credit; or
- (b) history in relation to credit; or
- (c) capacity to repay credit, whether or not the information is provided or intended to be provided for the purposes of assessing applications for credit."

It would seem that certain of the potential activities of interactive television operators in Australia would bring them within the definition of "credit reporting agency" for the purposes of the *Privacy Act*. If so, interactive television operators would be prohibited from holding personal information on an individual's credit information file unless the information is restricted to "credit type" information, for example:

- (a) information which is reasonably necessary in order to identify the individual;
- (b) a record of a credit provider who has sought a credit report in relation to the individual who has made an

- application for consumer credit to that credit provider and the amount of credit sought in that application;
- (c) a record of credit provided by a credit provider to an individual, being credit in respect of which the individual is at least 60 days overdue in making a payment and the credit provider has taken steps to recover any part of the debt;
- (d) a record of court judgments against the individual;
- (e) a record of the opinion of a credit provider that the individual has committed a serious credit infringement.

In addition, an interactive television operator would be prohibited from including in an individual's credit information file certain information including personal information recording the individual's political, social or religious beliefs or lifestyle, character or reputation.

Various provisions of the *Privacy Act* regulate the accuracy and security of credit information files and credit reports, the disclosure of personal information by credit reporting agencies and credit providers and the use of personal information contained in credit reports by credit providers. With few exceptions, only businesses which are credit providers are permitted access to the credit reporting system. Fines of up to \$75,000 may be imposed on credit reporting agencies and

credit providers for offences committed under the *Privacy Act*.

Accordingly, many of the potential activities of interactive television operators will be subject to the detailed and complex provisions of the *Privacy Act*. In addition to the *Privacy Act*, there is specific State legislation dealing with the regulation of credit reporting agencies and invasion of privacy in general which will be relevant to the operations of interactive television in Australia.

## Conclusion

**W**ithin the next decade or so, it is probable that interactive television will be an integral mode of multi-faceted communication.

Whilst the convenience, efficiency and reduced costs of doing business which result from using some of the aspects of interactive television are evident, interactive television may also lead to an increase in the extent to which information about individuals, businesses and organisations will become susceptible to interception and misuse. It is this risk of interception and misuse against which the benefits of interactive television will need to be weighed.

*John Mackay is a solicitor in the Sydney office of Blake Dawson Waldron.*

# C·O·M·M·U·N·I·C·A·T·I·O·N·S N·E·W·S

## Radio New Zealand

The New Zealand Government has agreed to inject capital into Radio New Zealand Ltd, a State Owned Enterprise, to avert a loss of confidence by its bankers. The amount which will be required to be paid has not yet been determined but it was reported that Radio New Zealand had sought \$3m last year and current speculation that \$10m may be needed has not been denied.

Radio New Zealand has been caught up in litigation brought by the New Zealand Maori Council against both Television New Zealand Ltd and Radio New Zealand Ltd which has prevented the sale of assets. Matters required to be determined by the Court of Appeal largely concern Television New Zealand Ltd. However, until the Court of Appeal's decision is available the assets of Radio New Zealand Ltd cannot be dealt with freely by its Board. This constraint has existed since the creation of the two media companies from the old Broadcasting Corporation of New Zealand.

Radio New Zealand's problems have been exacerbated by the purchase of a major Auckland radio station which went into loss just after the purchase and has not yet recovered market share sufficiently to contribute positively to Radio New Zealand's income. Radio New Zealand also reported a loss of \$2m endeavouring to develop in-store radio.

Radio New Zealand Ltd will produce a plan for restructuring

which may include the sale of stations. But it is intended first to set up a business plan for defined business units such as news and engineering services.

Independent broadcasters protested vigorously at Government "subsidies" but the Government said it had made it clear there would be no subsidisation and the funds would be repatriated to the Government.

## Ongoing tensions continue among communications companies and N.Z. Government

The shareholders of Telecom New Zealand, Bell Atlantic and Ameritech, have expressed the view that the restrictions imposed by the "Kiwi share" on the sale of the Government's shareholding are impeding the earning of reasonable profits. In particular it appears that low inflation has limited the increases possible for residential telephone subscribers which must not exceed the rate of inflation. Toll charges have been said to subsidise residential rentals. At the same time Clear Communications has built up a larger proportion of the tolls business than expected.

Bell South, which won the Tacs A band tender with a NZ\$25m bid about 18 months ago, intends to follow the Groupe Speciale Mobile digital standard as adopted in Europe and plans to invest \$150m in this New Zealand operation over five years. Bell South is asking for some regulation but Clear and the Telecommunication

Users Association are not. They are nevertheless publicly critical of extended High Court litigation and delays in inter-connect arrangements.

The Minister of Communications, Maurice Williamson, described his role as being similar to that of a marriage guidance counsellor. The Government examined the issues but could not dictate to the players. TUANZ's president, Don Wallace, said he hoped Mr Williamson as a counsellor would not lose sight of the children, or in this case, the users.

In the meantime the Commerce Commission has delayed completion of its inquiry into the industry to enable N.Z. Telecom to participate. Earlier the High Court refused to grant an interim injunction which had been sought by Telecom to stop the inquiry on the grounds that it would prejudice outstanding litigation and exceeded the Commission's powers. Telecom has now agreed to participate in the inquiry, but it has not withdrawn its proceedings for an injunction.

### **Children's TV in New Zealand**

The New Zealand Broadcasting Standards Authority has issued a discussion paper on children's television viewing.

The paper favours:

- less advertising, especially of war toys
- less violence, especially in cartoons
- more New Zealand culture and less American influence
- a new "C" rating for programmes aimed at children aged between 5 and 14
- a start to adult programmes half an hour later, at 9 pm.

### **Telecom and OTC Merger**

Telecom and OTC formally merged on 1 February 1992 to form the Australian and Overseas Telecommunications Corporation (AOTC). The Federal Government claimed that the merger should not proceed until Telecom and OTC had implemented the necessary arrangements which would allow for an equitable access to the networks for the second carrier, OPTUS. AUSTEL has now certified that these arrangements are either in place or sufficiently advanced to enable OPTUS to compete on an equal basis.

The merger is the culmination of a sequence of decisions which the Government claims have placed AOTC on a fully commercial footing from day one of operation. These include the establishment of a commercial capital structure through conversion of \$2 billion in Commonwealth loans to equity.

### **Other Telecommunications Reform**

#### **Intelsat and Inmarsat**

Australia is making progress in pursuing policy reform in the INTELSAT and INMARSAT international satellite communications organisations to lift their efficiency and responsiveness to commercial competition. INTELSAT provides about 60% of Australia's international telecommunication links and INMARSAT provides global maritime, aeronautical and land mobile satellite services. Australia argues that provisions in the INTELSAT Agreement requiring lengthy consultation act as regulatory impediments to the establishment of commercially based competitive systems. Australia further argues that these provisions remove incentive for INTELSAT to become more commercial, innovative and efficient. A formal report will be submitted to a meeting of the 120 member Governments of INTELSAT in Sydney in November 1992. Australia has also actively promoted wide ranging reform with respect to INMARSAT, its Convention having similar regulatory provisions to the INTELSAT Agreement.

### **MOBILESAT Standard**

A proposed new Australian communications standard is expected to lead to a system which will be adopted in other countries. The draft "Private Earth Stations for MOBILESAT Mobile Communications Service" covers terminals which are to be manufactured commercially and will be owned by the users of MOBILESAT service. It is envisaged that this mobile satellite service will provide complete coverage of Australia and its surrounding ocean areas. It will provide for services such as phone, fax and data via the public networks or closed user groups, and may be adapted in other countries using similar satellite techniques.

### **AUSTEL Ready for PACTS Enrolments**

AUSTEL has put in place the necessary standards and licensing arrangements for commercial operators to provide PACTS in Australia. PACTS enables subscribers to use comparatively inexpensive "pocket phones" to make telephone calls in public places where PACTS base stations have been installed. The same pocket phones may be used for other purposes, such as in the home or as part of a wireless PABX system in an office. PACTS operators are required to enrol with AUSTEL and comply with the terms of the AUSTEL Class Licence.

### **Telephone Numbering**

AUSTEL has recently released a discussion paper on Changing Telecommunications Numbering in Australia. This paper argues that a new numbering plan is essential because of number "run-out", the greater number of players in the telecommunications market after 1997 and technological pressures placed on the existing system by new services such as mobile phone, PACTS, pagers, electronic mail, video conferencing and broad band ISDN. AUSTEL basically favours a numbering option whereby all national numbers will have a two digit area code and an 8 digit directory number, as opposed to the current 7 digit directory number.

### **900 MHz Band Plan**

The specific segment of radio frequency spectrum allocated to PACTS noted above is part of a new radio frequency spectrum band plan announced in February. The purpose of this band plan is primarily to facilitate the extension of public mobile telecommunications competition in Australia. In particular, it provides spectrum allocations for cordless telecommunication services including the setting of dates for the progressive closedown of the AMPS system (the current analogue cellular mobile phone system upon which AOTC's Mobile Net is based). It therefore caters for the transition to digital cellular mobile telephone services utilising the European GSM technology. This requirement stems from the acceptance by the Government of AUSTEL's recommendations in regard to these services. It also provides for more flexible arrangements for the trunked land mobile service.

### **Pay Television**

As noted in the last issue of "Communications News" the Federal Government has announced the lifting of the moratorium on pay television in Australia from 1 October, 1992. Although the Government has announced that it will grant a five year 4 channel satellite delivered pay TV service the Government has had discussions about expanding the proposed national pay TV service to a 12 channel service, rising to a possible 60 channel service in three years time. This is proposed to be done with the 6 pay TV channels already allocated on the OPTUS "B" satellites.

## Print Media Inquiry

The House of Representatives Select Committee on the Print Media has released its report. The report has rejected proposals to reduce the level of concentration in Australia's newspaper industry on the grounds that it would threaten the viability of proprietors. Instead it claims that its recommendations will prevent further concentration and lead to greater diversity in the long term.

Some ALP Caucus members are apparently unhappy that the Committee did not deal with the issue of diversity and develop a plan for requiring divestiture. In particular, some have argued that the Trade Practices Commission should have been given divestiture powers. But Mr Michael Lee, Chairman of the Committee, said divestiture powers were unfair, difficult to implement and a threat to the viability of units that would be left as a result. By rejecting proposals of divestiture, the present nature of the industry will remain for the short term.

Two dissenting reports by coalition members on the Committee were also tabled.

## TRIBUNAL INQUIRIES

### Sale of Ten Network

The Australian Broadcasting Tribunal has approved the acquisition of the licensee companies of TEN Sydney, ATV Melbourne and TVQ Brisbane (the Ten network) by a wholly owned subsidiary of Westpac Banking Corporation. Despite claims from unsecured creditors to the Ten Network that Westpac was not a fit and proper person to hold a licence, the Tribunal also approved Westpac's application for a prescribed interest in the licences. An application challenging the Tribunal's decision has been lodged with the Federal Court.

## 8DN Darwin Inquiry

The Tribunal has accepted the surrender of the licence for commercial AM radio service 8DN Darwin.

The Tribunal had begun an inquiry into a breach of the *Broadcasting Act* by Northern Territory FM Limited through its holding of prescribed interests in licences for commercial radio stations 8DN and 8HOT Darwin. The Act prohibits the holding of a prescribed interest in more than one commercial radio licence in the same market.

## Children's TV Classification

In a departure from existing practice, the Tribunal will offer to accredit producers who have a proven record of making high quality children's TV. Accredited producers may then pre-sell their work to TV networks without further Tribunal involvement.

If a program meets the required standard, the Tribunal staff will recommend immediate children's (C) or pre-school (P) classification to a Tribunal member. If the member has doubts about a program, it can be referred to specialist consultants for advice. A sunset clause provides for automatic classification if the member has not decided within a specified time.

These changes occur in the context of public outcry over the Tribunal supposedly banning certain episodes of *The New Adventures of Skippy* on the Nine Network and *Fat Cat* on the Seven Network. However, the Tribunal has pointed out (correctly) that it never banned these episodes. They can still be shown but they cannot count towards the annual children's TV quota.

*Communications News is prepared by Ian McGill of Allen Allen and Hensley and Bruce Slane of Cairns Slane.*

*Continued from p28*

very obvious interest in educational, documentary and drama programs, suggests that Australia is well placed to make an additional impact.

Importantly, I believe Australia must begin to have a presence in the regional satellite television marketplace I described earlier. Satellite broadcasting at present is overwhelmingly delivering program made outside the region. There is an enormous amount of European and, of course, American material. It is time for Australian broadcasters both public and private to develop services to be delivered by satellite in the Asia/Pacific region. Fortunately there is work underway in both sectors with that objective in mind.

In the ABC we are developing a project to mount initially, a South East Asia Television service. We are currently planning a service which will take the best of our news, current affairs, educational, children's, drama and entertainment material and project it as an attractive package of Australian television into the region via satellite.

Secondly, the amount of structural change and programming development that is underway in the broadcasting systems of the countries of the region offers opportunities for Australian

expertise. The sectoral diversity of Australian broadcasting — the fact that we have had national, commercial, and, at least in radio, community broadcasting operating together in this country — has built a store of policy experience which is particularly valuable in a region where traditionally broadcasting has been a much narrower and constrained activity. Our program making and technical skills are also respected. The opportunity is therefore there to use those skills, in consultancies, project management arrangements and training and development roles as many of the countries of the region remake their broadcasting institutions.

Finally, there remains a fundamental responsibility for Australia to assist those countries where the potential of broadcasting to actually help build a society and assist its material prospects is still largely unrealised. It is in no one's interest for the gap between the broadcasting rich and poor to remain as wide as it currently is.

Again Australia's national broadcaster has recognised a special responsibility in this regard. Currently the ABC is just completing a two year program with the National Broadcasting Commission of Papua New Guinea. During the life of the program, funded by the Australian

International Development Assistance Bureau, more than thirty ABC staff have worked with PNG broadcasters in production, technical and management areas to increase the effectiveness of broadcasting in Papua New Guinea — a country where, because of terrain and cultural diversity, broadcasting is a key element in bringing the nation together.

The ABC has currently before government a major program of cooperation and assistance to be carried out in association with radio and television broadcasters of Indochina.

Let me conclude with a brief wish. The potential of broadcasting to do good is enormous. Let's hope that as the revolution in the Asia-Pacific region — our part of the world — continues, that this potential is indeed realised, for the benefit of all of us who live here.

*Malcolm Long is Assistant Managing Director of the Australian Broadcasting Corporation. This is the edited version of a speech he delivered to CAMLA on 30 March 1992.*