

Datacasting Defined, or "Data is data is bits is bits is bits"

Holly Raiche analyses the new digital conversion legislation

Datacasting is a new term in the lexicon of broadcasting. For the current free to air television broadcasters, datacasting could be an additional revenue raising service they deliver when broadcasting in digital mode. For pay television licensees and providers of on-line services, it represents potential competition to services they provide or plan to provide. For Parliamentarians debating the term, it represented a source of both technological and semantic confusion.

Datacasting services are provided for in the recent legislative package² covering the migration of terrestrial television from analog to digital transmission. The main provisions of the legislative package include, relevantly:

- plans developed by the ABA for the conversion from analog to digital transmission for existing commercial and national broadcasters, in accordance with listed policy objectives;³
- implementation plans for individual broadcasters which are either drawn up by commercial broadcasters for approval by the ABA or by national broadcasters for approval by the Minister;⁴
- a simulcast period of eight years⁵ during which:
 - the ACA will allocate an additional 7 Megahertz channel, free of charge, to the free to air television broadcasters to provide digital terrestrial television services;⁶
 - the free to air broadcasters must not broadcast programs in digital mode unless the program is also broadcast in analog mode;⁷
 - the free to air broadcasters, when broadcasting in digital mode, must meet specified goals or targets on the extent to which programs are transmitted in accordance with high definition standards which will be set by regulation;⁸
- at the end of the simulcast period, the return by free to air broadcasters of one of their two 7 Mhz transmitter

licences (used for analog or digital broadcasting);⁹

- a further moratorium on the allocation of any new commercial television licences until after 31 December 2006;¹⁰
- two series of Ministerial reviews, one to be completed by 1 January 2000 and one to be completed before 31 December 2005.¹¹

Datacasting comes into this legislative framework in two ways.

The transmitter licences which the ACA must issue to the free to air broadcasters for digital transmission must authorise the transmission of datacasting as well as broadcasting services.¹² This provision is legislative recognition that, even when broadcasting a high definition television program, there may be spare capacity in the digital 'channel' for the transmission of other matter - datacasting. Indeed, when broadcasting a standard digital television signal, there will be enough spare capacity for additional full program streams.¹³ While broadcasters will not be permitted to provide additional programming streams during the simulcast period, the legislation will permit broadcaster use of spare capacity for datacasting, or presumably the sublease of spare capacity to others for datacasting purposes.¹⁴

The legislation also provides for datacasting by organisations other than free to air broadcasters using broadcasting service bands capacity not part of the digital 'channels' allocated to the current broadcasters. This was the policy response to very strong protests made by ASTRA and other information providers including Fairfax, News and the Internet Industry Association that the broadcasters were being given free transmission capacity - capacity which anyone else would have to purchase in the marketplace.¹⁵

Evidence given to the Senate Committee suggested there is some capacity in the broadcasting services bands which might be available for allocation.¹⁶ Therefore, one of the tasks of the ABA in its planning is to identify such capacity which might be allocated for datacasting

- capacity which must not be allocated to the existing broadcasters.¹⁷ Amendments to the *Radiocommunications Act* therefore also authorise the ACA to issue transmitter licences for the transmission of datacasting services to non-broadcasters.¹⁸

All of which begs the critical question: what is datacasting?

DEFINITION OF DATACASTING

The components of the datacasting definition are that:

- it is a service - *other than a broadcasting service*;
- it delivers *information* (whether in the form of data, text, speech, images or in any other form) to a person having equipment appropriate for receiving that information;
- delivery of the service *uses the broadcasting services bands*.¹⁹

In other words, services which are defined as *not* broadcasting services are, by definition, potentially datacasting services - as long as they are delivered using the broadcasting services bands.

DEFINITION OF BROADCASTING

The definition of 'broadcasting service' is:

a service that delivers television programs or radio programs to person having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means.

It then excludes from the definition services which are:

- a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- a service that makes programs available on demand on a point-to-point basis, including a dial up service; or

- a service or class of services that the Minister determines, by notice in the Gazette, not to fall within this definition.²⁰

And 'program' is defined to be either 'matter the primary purpose of which is to entertain, to educate or to inform an audience' or advertising or sponsorship matter.²¹

PROBLEMS WITH THE DEFINITIONS

The definitions of broadcasting services and datacasting services do not sit well together.

The exceptions to the definition of broadcasting service would confine non-broadcast services (therefore, potentially datacast services) to those which provide *no more than data or no more than text (with or without still images)*. Yet the datacasting definition assumes such services can be in the form of *data, text, speech, images or in any other form*. Those words suggest a far broader concept of datacasting than the 'exception' to the definition of broadcasting service permits.

Further, the other stated type of non-broadcast service is *a service that makes programs available on demand on a point-to-point basis, including a dial up service*. Yet datacast services are defined as services *delivered by broadcasting service bands* - not generally considered as delivering point-to-point services.

PARLIAMENTARIAN CONFUSION

The Parliamentary debates and Senate Committee hearings showcase the confusion all participants displayed on the exact boundaries of what is or is not a datacast service.

One Member of Parliament thought datacasting charges would apply to 'advanced information services linked to programming'.²² Another thought he was defining datacasting in calling it a service by which one can watch football, but 'use the computer icon control' to 'come up with the player's home page' and then 'buy boots from Rocca'.²³

One Senate Committee Member said a datacasting service 'helps deliver such things as home banking, home shopping and a whole range of computing activities - services that are normally delivered on a computer through the Internet....'²⁴ Another Committee Member said that the broadcasters' view of datacasting is that

'they would be moving into some form of broadcasting.'²⁵

Evidence before the Committee suggested a wider definition. The Committee Report noted particularly submissions from the Internet Industry Association and John Fairfax Holdings Limited which defined datacasting as anything that can currently be done on the Internet. And those services go way beyond text and data, to include high quality video and audio.²⁶

As ABA General Manager Giles Tanner told the Senate Committee, datacasting 'is really any data - we are only talking about noughts and ones - other than data that can be reassembled as a broadcasting service'.²⁷

As the Senate Committee Report acknowledged, in the face of such confusion, there are mechanisms within the legislation to clarify what datacasting does or does not mean.

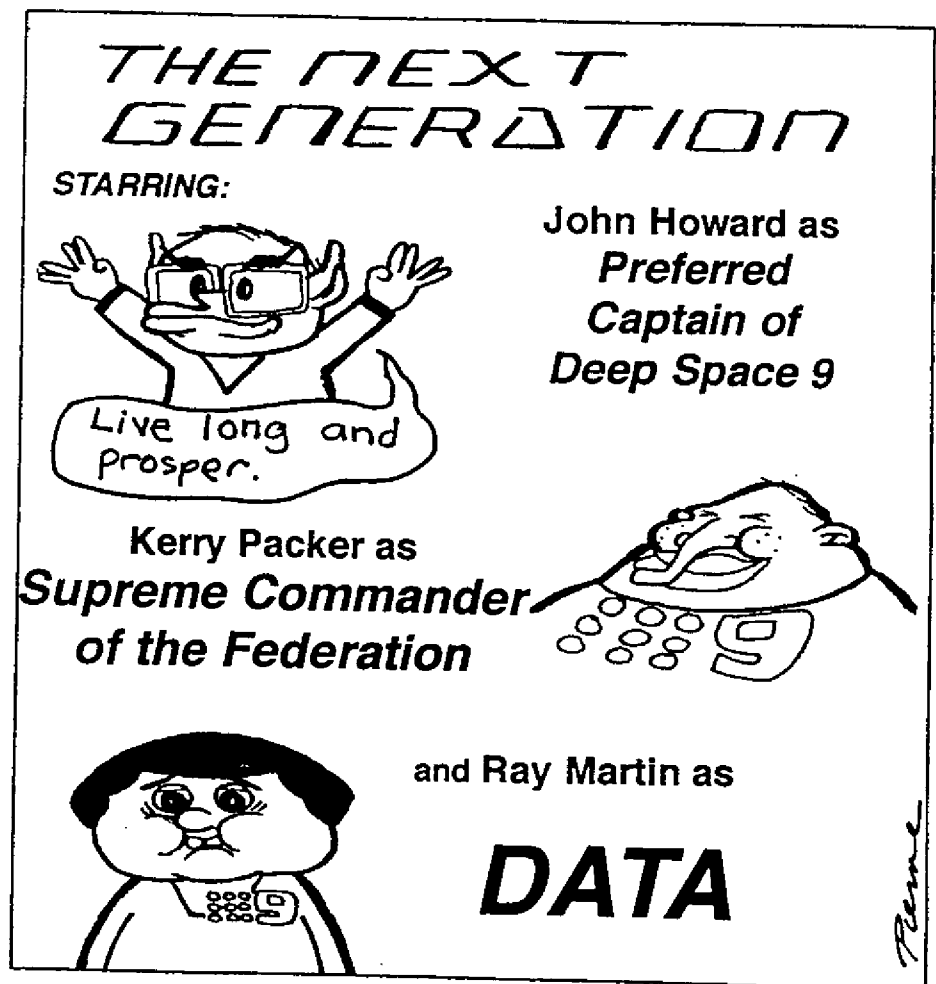
Under the BSA definition of broadcasting services, the Minister has the power to further define a service or services which fall *outside* of the definition of broadcasting services - and therefore *inside* the definition of what are possible datacasting services.²⁸ Further, one of the

Ministerial reviews to be held before 1 January 2000 will examine whether any amendments to Commonwealth legislation should be made 'to deal with the scope of the services that are categorised as datacasting services'.²⁹

The structure of this legislation allows time for both mechanisms to be fully canvassed.

Senate opposition members, in debates on the legislation, voiced their concern at the very short time in which legislation of such importance was being debated. As a result of Senate amendments, therefore, the only provisions of the Act that can proceed are those relating to the development of conversion and implementation plans. Other parts of the Act await the outcome of the Ministerial Reviews to be conducted by the year 2000 and approval of both Houses of Parliament.³⁰

For example, Part 4 of the Act provides for regulations which set 'goals and targets' for HDTV broadcasting, set captioning standards, determine technical standards relating to transmission in digital mode, and set datacasting standards. However, that Part has no effect until a day fixed by Proclamation, which cannot be made except by a



resolution of both Houses of Parliament and not before a copy of a report on the relevant review has been laid before each House of Parliament.³¹

Further, while amendments to the *Radiocommunications Act* require the ACA to issue transmitter licences to commercial and national television broadcasters for both broadcasting and datacasting purposes, those amendments have no effect until a date fixed by Proclamation, which again cannot be made except by a resolution of both Houses of Parliament and not before a copy of a report on the relevant review has been laid before each House of Parliament.³²

Similarly, the ACA cannot allocate transmitter licences authorising the transmission of datacasting services to non-broadcasters until a Proclamation has been made after a resolution of both Houses and after the tabling in both Houses of the result of the review report.³³

THE DATACASTING CHARGE

One final issue on datacasting: the imposition of a datacasting charge.

Again, protests were made that the free to airs would be given capacity to transmit not only a digital television program being broadcast in analog mode, but also to use any spare capacity to gain additional revenue through the provision of subscription services, the provision of information services from which additional advertising revenue could be earned, or to sublease the capacity to another for profit.

The policy response was twofold. There is a blanket prohibition on the free to air broadcasters providing any other category of broadcasting service with their transmission capacity.³⁴ There will also be a 'Datacasting Charge' if the 'digital' transmitter licence is used to provide datacasting services.³⁵

At present, there is no guidance as to the basis on which a datacharge will be levied. Will, for example, the charge relate to the actual capacity used for transmission of datacast services, or will it relate to the revenue gained from the provision of capacity or services?

The Digital Act does allow the ACA to determine principles upon which the datacast charge will be levied.³⁶ However, when those principles are set, and how, has not yet been determined.

Clearly those principles must spell out the basis for a charge. They should also consider whether exemptions from the

charge should be made for the provision of some services. For example, if the national broadcasters provide datacast services which are within their respective Charters and from which they derive no revenue, there is an argument that they are doing no more than providing services to the public for which they are funded and should be exempt from paying a charge. Further, all broadcasters will be subject to requirements to provide captioning for the hearing impaired. While captioning would fit within the definition of datacasting, there must be an argument that broadcasters should be exempt from paying a charge for a service which they are required to provide under legislation and from which they derive no revenue.

Industry and the Government have at least a year to complete the year 2000 reviews, not only on the issues surrounding datacasting, but on the larger issues it raises on the convergence between services we used to think of as broadcasting or telecommunications. The short answer to the reviews may have been provided in reply to a challenge about confusing broadcasting and telecommunications issues: 'data is data is bits is bit is bits'.³⁷

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1 Quote by Bruce Meagher, Acting Director Government and Public Affairs, Optus Communications, in evidence before the Senate Environment, Recreation, Communications and the Arts Legislation Committee's Inquiry into the *Television Broadcasting Services (Digital Conversion) Bill 1998* and the *Datacasting Charge Imposition Bill 1998*, (Senate Inquiry) on 1 June 1998.

2 *Television Broadcasting Services (Digital Conversion) Act 1998* (Digital Conversion Act) and the *Datacasting Charge (Imposition) Act 1998*, which passed through Parliament in July and have received Royal Assent. The Digital Conversion Act amends both the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* (RA).

3 BSA, Schedule 4, Clauses 6 and 19

4 BSA Schedule 4, Clauses 9 and 20

5 For commercial broadcasters, under the BSA, Schedule 4, Clause 6(3)(c) the simulcast period will begin on 1 January 2001 in metropolitan areas and no later than 1 January 2004 in regional areas. Provision may also be made for a simulcast period in remote areas for commercial broadcasters under Clause 6(7). Similar provisions apply to national broadcasters under Clause 19(3)(c) and 19(7).

6 BSA, Schedule 4, Clause 8(1) for commercial broadcasters and Clause 23 for national Broadcasters.

7 BSA, Schedule 2, Clause 7(1)(m) and Clause 35(1). However, reviews required to be held before 1 January 2000 may allow both commercial and national broadcasters to provide programming which is 'incidental and directly linked' to the analog programming, and may also allow national broadcasters to use multi-channel capacity. BSA, Schedule 4, Clause 59(da-dc).

8 BSA Schedule 4, Clause 37(1)

9 BSA Schedule 4, Clauses 6(3)(h), 8(4-6), 19(h) and 23(4-6)

10 BSA, Section 28 (as amended).

11 BSA Schedule 4, Clauses 59-60.

12 RA, Sections 100A(1), 100B(2), 102(3) and 102A(3).

13 See Parliamentary Library, Bills Digest No. 178 1997-8, *Television Broadcasting Services (Digital Conversion) Bill 1998*, pp 1-2.

14 Objectives for the conversion scheme for both commercial and national broadcasters include provision for the use of 'spare transmission capacity' on digital channels for transmission of datacasting services. BSA, Schedule 4, Clauses 6(3)(k) and 19(3)(k). The legislation suggests, however, that some additional programming will be permitted. Reviews required to be held before 1 January 2000 may allow both commercial and national broadcasters to provide programming which is 'incidental and directly linked' to the analog programming, and may also allow national broadcasters to use multi-channel capacity. BSA, Schedule 4, Clause 59 (da-dc).

15 Submissions to the Senate Environment, Recreation, Communication and the Arts Legislation Committee, May 1998, from the Australian Subscription Television and Radio Association, Attachment 6: Principles for DTTB, - a summary of ASTRA's position and reasons, p. 5, Submission from News Limited, pp 9-10, from John Fairfax Holdings Limited, pp 2-3, from Internet Industry Association, p. 5.

16 ABA General Manager Giles Tanner, in evidence before the Senate Inquiry hearing on 1 June 1998.

17 BSA Section 34(3) allows the ABA to determine that a part or parts of the broadcasting services band spectrum is or are available for allocation for the transmission of datacasting services.

18 RA, Section 131AD.

19 BSA Schedule 4, Clause 2. The *Explanatory Memorandum Television Broadcasting Services (Digital Conversion) Bill 1998*, Clause 2, p. 25 adds nothing to the definition.

20 BSA Section 6.

21 BSA Section 6.

22 Mr. Billson, Member for Dunkley in House of Representatives debate on the legislation for 3 June 1998.

23 Member for North Sydney Mr. Hockey in House of Representatives debate on the legislation for 3 June 1998.

24 Senate adjournment debate on the legislation for 1 April 1998

25 Senator Tierney (NSW) in Senate Inquiry debate on 26 June 1998.

26 Senator Schacht, in Senate Standing Committee on Environment, Recreation, Communications and the Arts Legislation Committee, *Television Broadcasting Services (Digital Conversion) Bill 1998 and Datacasting Charge (Imposition) Bill 1998*, June, 1998, Paragraph 4.7 to 4.10.

27 ABA General Manager Giles Tanner, in evidence before the Senate Inquiry, on 1 June 1998.

28 BSA Section 6

29 BSA Schedule 4, Clause 59(dd)

30 Listed in BSA Schedule 4, Clause 59.

31 BSA Schedule 4, Clause 41A.

32 RA, Sections 100A(1A), 100b(2A), and 102(3A)

33 RA Section 131AD(2)

34 BSA Schedule, 2, Clause 7(t)(p) and Schedule 4, Clause 36(1).

35 *Datacasting Charge (Imposition) Act 1998*, Section 6.

36 BSA Schedule 4, Clause 53.

37 See fn 1.