

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

**BROADCASTING SERVICES (SUBSCRIPTION TELEVISION
BROADCASTING) AMENDMENT BILL 1992**

TABLE OF PROVISIONS

Section

1. Short title etc.
2. Commencement
3. Insertion of new Part:

PART 7—SUBSCRIPTION TELEVISION BROADCASTING SERVICES

Division 1—Allocation of subscription television broadcasting licences

93. Minister to determine allocation system for satellite licences allocated before 1 July 1997
94. Transmission system standards
95. When subscription television broadcasting licence must not be allocated
96. Allocation of other subscription television broadcasting licences
97. Requests to Trade Practices Commission
98. Suitability for allocation of licence

Division 2—Conditions of subscription television broadcasting licence

99. Conditions applicable to subscription television broadcasting licence
100. Matters to which conditions may relate
101. Special condition relating to advertising
102. Special condition relating to Australian content
103. Special condition applicable to licences A and B

TABLE OF PROVISIONS—*continued*

Section

*Division 3—Ownership and cross-media rules**Subdivision A—Preliminary*

- 104. Application of Division
- 105. Large circulation newspapers

Subdivision B—Ownership and control restrictions

- 106. Person in control of newspaper not to control, or hold company interests in, licence A
- 107. Commercial television licensees not to control, or hold company interests in, licence A
- 108. Telecommunications carriers not to control, or hold company interests in, licence A
- 109. Foreign ownership limits for subscription television broadcasting licences
- 110. Limits between satellite subscription television broadcasting licences

Division 4—Offences for breaches

- 111. Offences for breaches

Division 5—Notification provisions

- 112. Notification provisions

Division 6—Miscellaneous

- 113. Transfer of subscription television broadcasting licence
- 114. Surrender of subscription television broadcasting licence
- 115. Minister may protect the free availability of certain types of programs
- 116. Certain arrangements do not result in persons being associates
- 116A. Use of additional capacity
- 116B. Application of section 51 of the Trade Practices Act
- 116C. Interpretation

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 4 November 1992)

(MINISTER FOR TRANSPORT AND COMMUNICATIONS, SENATOR COLLINS)

A BILL

FOR

An Act to amend the *Broadcasting Services Act 1992* to include provisions relating to subscription television broadcasting services

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Broadcasting Services (Subscription Television Broadcasting) Amendment Act 1992*.

5 (2) In this Act, "Principal Act" means the *Broadcasting Services Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

10 3. After Part 6 of the Principal Act the following Part is inserted:

“PART 7—SUBSCRIPTION TELEVISION BROADCASTING SERVICES

“Division 1—Allocation of subscription television broadcasting licences

Minister to determine allocation system for satellite licences allocated before 1 July 1997

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“93.(1) The Minister is to determine in writing a price-based allocation system for allocating 2 licences (**‘licence A’** and **‘licence B’**) each of which allows the provision of up to 4 subscription television broadcasting services with the use of a subscription television satellite.

“(2) After licence A and licence B have been allocated, the Minister is to allocate to a subsidiary of the Australian Broadcasting Corporation nominated by that corporation a licence (**‘licence C’**) which allows the provision of up to 2 subscription television broadcasting services with the use of a subscription television satellite. 10

“(3) The allocation of licence C is subject to such terms and conditions as the Minister determines in writing, and those conditions are to include a condition requiring the establishment of a corporate structure separate to the Australian Broadcasting Corporation to manage and operate services under the licence. 15

“(4) Conditions determined under subsection (3) are to be conditions of licence C. 20

“(5) The price-based allocation system may provide that the ABA is to allocate the licences, and may require an application fee.

“(6) If the Minister decides, in accordance with the price-based allocation system, that a licence referred to in subsection (1) is to be allocated to a particular person, the Minister may direct the ABA to allocate that licence to that person and, subject to section 98, the ABA must allocate that licence to that person. 25

“(7) When licence A or licence B is allocated, the Minister must publish in the *Gazette* the name of the successful applicant and the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence. 30

Transmission system standards

“94.(1) If, after licence A and licence B have been allocated, both licensee A and licensee B agree as to a standard for a full digital transmission system, the Minister must, subject to subsection (2), declare by notice in the *Gazette* that standard to be the standard that must be used by all satellite subscription television broadcasting licensees. 35

“(2) Before declaring a standard under subsection (1), the Minister must consult with the operator of the subscription television satellite in relation to the efficient use of the satellite. 40

“(3) If licensee A and licensee B do not agree, the Minister must declare, by notice in the *Gazette*, a standard chosen by the Minister for a full digital transmission system to be the standard that must be used by all satellite subscription television broadcasting licensees.

5 “(4) Before declaring a standard under subsection (3), the Minister must:

(a) consult with licensee A and licensee B; and

(b) consult with the operator of the subscription television satellite in relation to the efficient use of the satellite.

10 “(5) The standard must employ reception equipment that is capable of being manufactured in Australia, whether under licence or otherwise.

15 “(6) Each satellite subscription television broadcasting licence is subject to the condition that the licensee will provide services using a transmission system in accordance with the standard determined under this section.

When subscription television broadcasting licence must not be allocated

“95.(1) A subscription television broadcasting licence is not to be allocated to an applicant if:

20 (a) the applicant is not a company that is formed in Australia or in an external Territory and has a share capital; or

(b) the ABA decides that subsection 98(2) applies to the applicant.

“(2) Paragraph (1)(b) does not require the ABA to consider the application of subsection 98(2) in relation to an applicant before a subscription television broadcasting licence is allocated to the applicant.

25 **Allocation of other subscription television broadcasting licences**

“96.(1) The ABA may allocate to a person, on application in writing by the person, a subscription television broadcasting licence other than a licence referred to in section 93.

30 “(2) Licences under subsection (1) are to be allocated on the basis of one licence per service.

“(3) The ABA must not, before 1 July 1997, allocate a licence under subsection (1) that uses a satellite as a means of service delivery.

“(4) Applications must:

35 (a) be in accordance with a form approved in writing by the ABA; and

(b) be accompanied by the application fee determined by the ABA.

“(5) The ABA must not allocate a subscription television broadcasting licence under this section if the Trade Practices Commission has reported, within 30 days after being requested for a

report under section 97, that, in the opinion of the Trade Practices Commission, the allocation of the licence to the applicant:

- (a) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the allocation of the licence were the acquisition by the applicant of an asset of a body corporate; and 5
- (b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.

“(6) If a licence is allocated under this section, the ABA must publish in the *Gazette* the name of the successful applicant. 10

Requests to Trade Practices Commission

“97.(1) Before a subscription television broadcasting licence is allocated to a person under section 96, the ABA must request the Trade Practices Commission to provide a report under this section.

“(2) The report is to advise whether, in the opinion of the Trade Practices Commission, the allocation of the licence to the applicant: 15

- (a) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the allocation of the licence were the acquisition by the applicant of an asset of a body corporate; and 20
- (b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.

“(3) For the purposes of the consideration of a request by the Trade Practices Commission, section 155 of the *Trade Practices Act 1974* applies as if the allocation of a licence under this Part were a matter referred to in subsection (1) of that section. 25

Suitability for allocation of licence

“98.(1) For the purposes of this Part, a company is a suitable subscription television broadcasting licensee or a suitable applicant for a subscription television broadcasting licence if the ABA has not decided that subsection (2) applies to the person. 30

“(2) The ABA may, if it is satisfied that allocating a subscription television broadcasting licence to a particular company or allowing a particular company to continue to hold a subscription television broadcasting licence would lead to a significant risk of: 35

- (a) an offence against this Act or the regulations being committed; or
 - (b) a breach of the conditions of the licence occurring;
- decide that this subsection applies to the company.

“(3) In deciding whether such a risk exists, the ABA is to take into account: 40

- (a) the business record of the company; and

- (b) the company's record in situations requiring trust and candour;
and
- 5 (c) the business record of each person who is, or would be, if a
subscription television broadcasting licence were allocated to
the applicant, in a position to exercise control of the licence;
and
- (d) the record in situations requiring trust and candour of each
such person; and
- 10 (e) whether the company, or a person referred to in paragraph (c)
or (d), has been convicted of an offence against this Act or the
regulations.

“Division 2—Conditions of subscription television broadcasting licence

Conditions applicable to subscription television broadcasting licence

15 “99.(1) The conditions set out in Part 6 of Schedule 2 apply to the
provision by a subscription television broadcasting licensee of a
subscription television broadcasting service.

20 “(2) The ABA may, by notice in writing given to a subscription
television broadcasting licensee, specify additional conditions to which
the licence is subject or vary or revoke a condition imposed under this
subsection.

“(3) The Minister may give the ABA a notice in writing to take
action under subsection (2) specified in the notice in relation to licence
C, and the ABA must comply with the notice.

25 “(4) If the ABA proposes to impose a new condition or to vary or
revoke a condition otherwise than as a result of a direction under
subsection (3), the ABA must:

- (a) give to the licensee written notice of its intention; and
- (b) give to the licensee a reasonable opportunity to make
representations to the ABA in relation to the proposed action;
30 and
- (c) publish the proposed changes in the *Gazette*.

“(5) This section does not allow the ABA to vary or revoke a
condition set out in Part 6 of Schedule 2.

35 “(6) If the ABA varies or revokes a condition or imposes a new
condition, the ABA must publish the variation, the fact of the revocation
or the new condition, as the case may be, in the *Gazette*.

- “(7) Action taken under this section must not be inconsistent with:
- (a) determinations and clarifications under section 19; or
- (b) conditions set out in Part 6 of Schedule 2.

Matters to which conditions may relate

“100.(1) Conditions of a subscription television broadcasting licence must be relevant to subscription television broadcasting services.

“(2) Without limiting the range of conditions that may be imposed, the ABA may impose a condition: 5

- (a) requiring a licensee to comply with a code of practice that is applicable to the licensee; or
- (b) designed to ensure that a breach of a condition by a subscription television broadcasting licensee does not recur; or
- (c) designed to ensure compliance with the film classification system administered by the Office of Film and Literature Classification. 10

“(3) The ABA must impose conditions on satellite subscription television broadcasting licences:

- (a) designed to ensure that the domestic reception equipment used by each satellite subscription television broadcasting licensee is accessible by other satellite broadcasting services; and 15
- (b) designed to ensure that each satellite subscription television broadcasting licensee that has a subscriber management system provides access to that system to other satellite subscription television broadcasting licensees at a fair price. 20

“(4) The Minister may direct the ABA to impose a condition under this section designed to ensure that licensee A, licensee B and licensee C adequately involve Australian industry in the provision of services under those licences.

Special condition relating to advertising 25

“101.(1) Each subscription television broadcasting licence is subject to the condition that the licensee will not, before 1 July 1997, broadcast advertisements or sponsorship announcements.

“(2) For the purposes of this section, a person is not taken to broadcast an advertisement if: 30

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter. 35

“(3) For the purposes of this section, a person is not taken to broadcast an advertisement if the person broadcasts matter that promotes subscription television broadcasting services being provided by that or another person.

Special condition relating to Australian content

5 “102. Each satellite subscription television broadcasting licence is subject to the condition that, if the licensee provides a satellite service devoted predominantly to drama programs, the licensee will, for each year of operation, ensure that at least 10% of the licensee’s program expenditure for that year in relation to that service is spent on new Australian drama programs.

Special condition applicable to licences A and B

“103.(1) If:

- 10 (a) the Minister has declared a standard under section 94; and
(b) the Minister is satisfied that transmission and domestic reception equipment for broadcasting in accordance with that standard is commercially available;

15 the Minister may notify licensee A and licensee B in writing that the licensees must commence to provide broadcasting services under those licences within 6 months after the notification is given.

20 “(2) The licences referred to in subsection (1) are subject to the condition that, if a notification is given under that subsection, the licensee will commence to provide broadcasting services under the licence within 6 months after the notification is given.

“Division 3—Ownership and cross-media rules

“Subdivision A—Preliminary

Application of Division

25 “104. This Division, other than section 109, ceases to have effect on 1 July 1997.

Large circulation newspapers

“105.(1) The ABA is to maintain a Large Circulation Newspaper Register.

30 “(2) If the ABA is satisfied that the average daily circulation in Australia of a newspaper for the days on which the newspaper was published during the preceding financial year exceeds 100,000, the ABA is to enter the name of the newspaper in the Register.

35 “(3) If the ABA is satisfied that the average daily circulation in Australia of a newspaper that is entered in the Register has fallen below 100,000 on a long-term basis, the ABA is to remove the name of the newspaper from the Register.

“(4) The Register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.

“(5) The ABA may charge fees for inspections of the Register or for the provision of copies of or extracts from the Register.

“(6) The ABA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original. 5

“Subdivision B—Ownership and control restrictions

Person in control of newspaper not to control, or hold company interests in, licence A

“106. A person who is in a position to exercise control of a newspaper that is entered in the Register kept under section 105 must not have company interests exceeding 2% in, or be in a position to exercise control of, licence A. 10

Commercial television licensees not to control, or hold company interests in, licence A 15

“107. A person who is in a position to exercise control of a commercial television broadcasting licence must not have company interests exceeding 2% in, or be in position to exercise control of, licence A.

Telecommunications carriers not to control, or hold company interests in, licence A 20

“108. A person who is in a position to exercise control of a telecommunications carrier must not have company interests exceeding 2% in, or be in a position to exercise control of, licence A.

Foreign ownership limits for subscription television broadcasting licences 25

“109.(1) A foreign person must not have company interests of more than 20% in a subscription television broadcasting licence.

“(2) A foreign person must not have company interests in a subscription television broadcasting licence that, when added to the company interests in that licence held by other foreign persons, exceed 35%. 30

Limits between satellite subscription television broadcasting licences

“110.(1) A person who is in a position to exercise control of licence A must not, before 1 July 1997, have company interests exceeding 2% in, or be in a position to exercise control of, licence B. 35

“(2) A person who is in a position to exercise control of licence B must not, before 1 July 1997, have company interests exceeding 2% in, or be in a position to exercise control of, licence A.

“Division 4—Offences for breaches

Offences for breaches

“111. Divisions 7 and 8 of Part 5 apply to Division 3 of this Part as if:

- 5 (a) references in Division 7 of Part 5 to a provision of Division 2, 3, 4 or 5 of Part 5 were references to a provision of Division 3 of this Part; and
- 10 (b) references in Division 7 of Part 5 to a provision of Division 2, 3 or 5 of Part 5 were references to a provision of Division 3 of this Part (other than section 109); and
- (c) references in Division 7 or 8 of Part 5 to a commercial television broadcasting licence were references to licence A or licence B.

“Division 5—Notification provisions

Notification provisions

15 “112.(1) For the purposes of this Division, if a director, the chief executive or a secretary of a company has knowledge of a matter, the company is taken to have knowledge of the matter.

“ (2) Subsection (1) does not limit the ways in which knowledge of a company can be established.

20 “ (3) Each satellite subscription television broadcasting licensee must, within 3 months after the end of each financial year, give to the ABA in writing details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the end of that financial year.

25 “ (4) If a satellite subscription television broadcasting licensee becomes aware that:

- (a) a person who was not in a position to exercise control of the licence has become in a position to exercise control of the licence; or
- 30 (b) a person who was in a position to control the licence has ceased to be in that position;

the licensee must, within 7 days after becoming so aware, notify the ABA in writing of that event.

35 “ (5) If a person who was not in a position to exercise control of a satellite subscription television broadcasting licence becomes aware that that person is in a position to exercise control of the licence, the person must, within 7 days after becoming so aware, notify the ABA in writing of that position.

40 “ (6) Each subscription television broadcasting licensee must, within 3 months after the end of each financial year, give to the ABA in

writing details of each foreign person who, to the knowledge of the licensee, had company interests exceeding 20% in the licence at the end of that financial year.

“(7) The details are to be provided in a form approved in writing by the ABA.

Penalty: \$50,000.

“(8) This section, other than subsections (6) and (7), ceases to have effect on 1 July 1997.

“Division 6—Miscellaneous

Transfer of subscription television broadcasting licence

“113.(1) Subject to subsection (2), a subscription television broadcasting licensee may transfer the subscription television broadcasting licence to another person.

“(2) Licensee C must not transfer licence C without the written approval of the Minister.

Surrender of subscription television broadcasting licence

“114. A subscription television broadcasting licensee may, by notice in writing given to the ABA, surrender the licence.

Minister may protect the free availability of certain types of programs

“115.(1) The Minister may, by notice published in the *Gazette*, specify an event, or events of a kind, the televising of which, or the live televising of which, should, in the opinion of the Minister, be available free to the general public.

“(2) The Minister may, by notice published in the *Gazette*, amend a notice under subsection (1) to remove an event from the notice if the Minister is satisfied that:

- (a) the national broadcasters and the commercial television broadcasting licensees have had a real opportunity to acquire, on a fair commercial basis, the right to televise the event, or to televise the event live, as the case may be; and
- (b) none of those persons has acquired that right within a reasonable time.

“(3) A notice under subsection (1) or (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Certain arrangements do not result in persons being associates

“116.(1) A satellite subscription television broadcasting licensee is not an associate of another satellite subscription television broadcasting licensee only because of a provision of a contract, arrangement or understanding between them under which:

- 5
- (a) a subscriber management system is provided for subscribing to either or both of the subscription television broadcasting services being provided by them; or
 - (b) the subscription television broadcasting services being provided by them are marketed on a joint basis; or
 - (c) joint use is made of facilities for:
 - (i) transmitting programs; or
 - (ii) the operation of disabling devices for restricting access to certain programs; or
 - 10 (d) such other things as are prescribed are done.

“(2) Subsection (1) does not apply to a contract, arrangement or understanding under or as a result of which one satellite subscription television broadcasting licensee becomes in a position to exercise (whether directly or indirectly) control of:

- 15
- (a) the selection or provision of a significant proportion of the programs broadcast by another satellite subscription television broadcasting licensee; or
 - (b) a significant proportion of the operations of another satellite subscription television broadcasting licensee in providing
 - 20 broadcasting services.

“(3) For the purposes of Part 5, a person who is in a position to exercise control of a commercial television broadcasting licence is not an associate of another person who is in a position to exercise control of another commercial television broadcasting licence only because of an association between them in relation to their participation in a

25 venture that operates licence B.

Use of additional capacity

“116A. Services under a satellite subscription television broadcasting licence may use capacity other than high performance beams on a subscription television satellite for the purpose of ensuring that as much of Australia as possible is covered by those services.

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Application of section 51 of the Trade Practices Act

“116B. Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

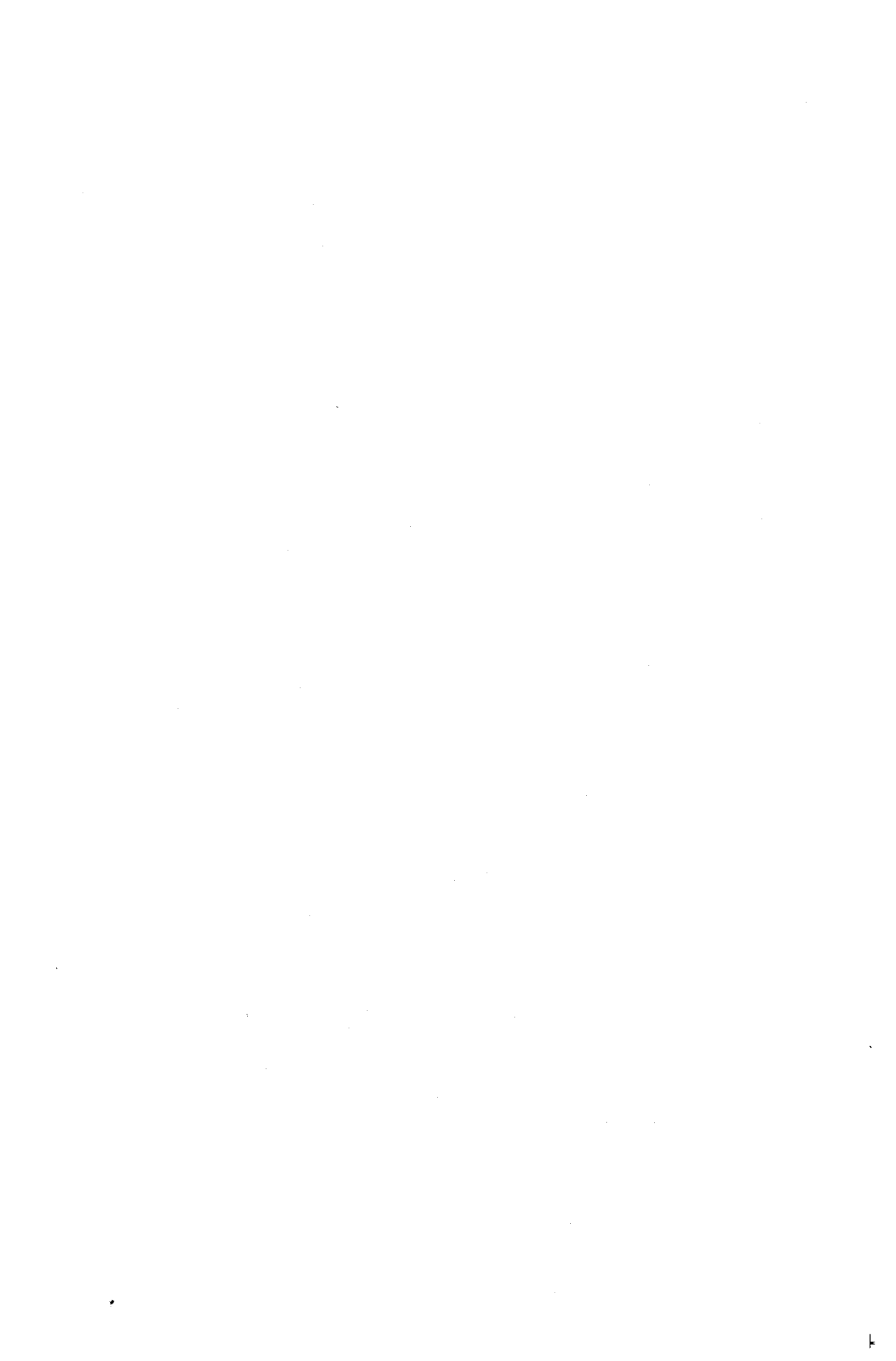
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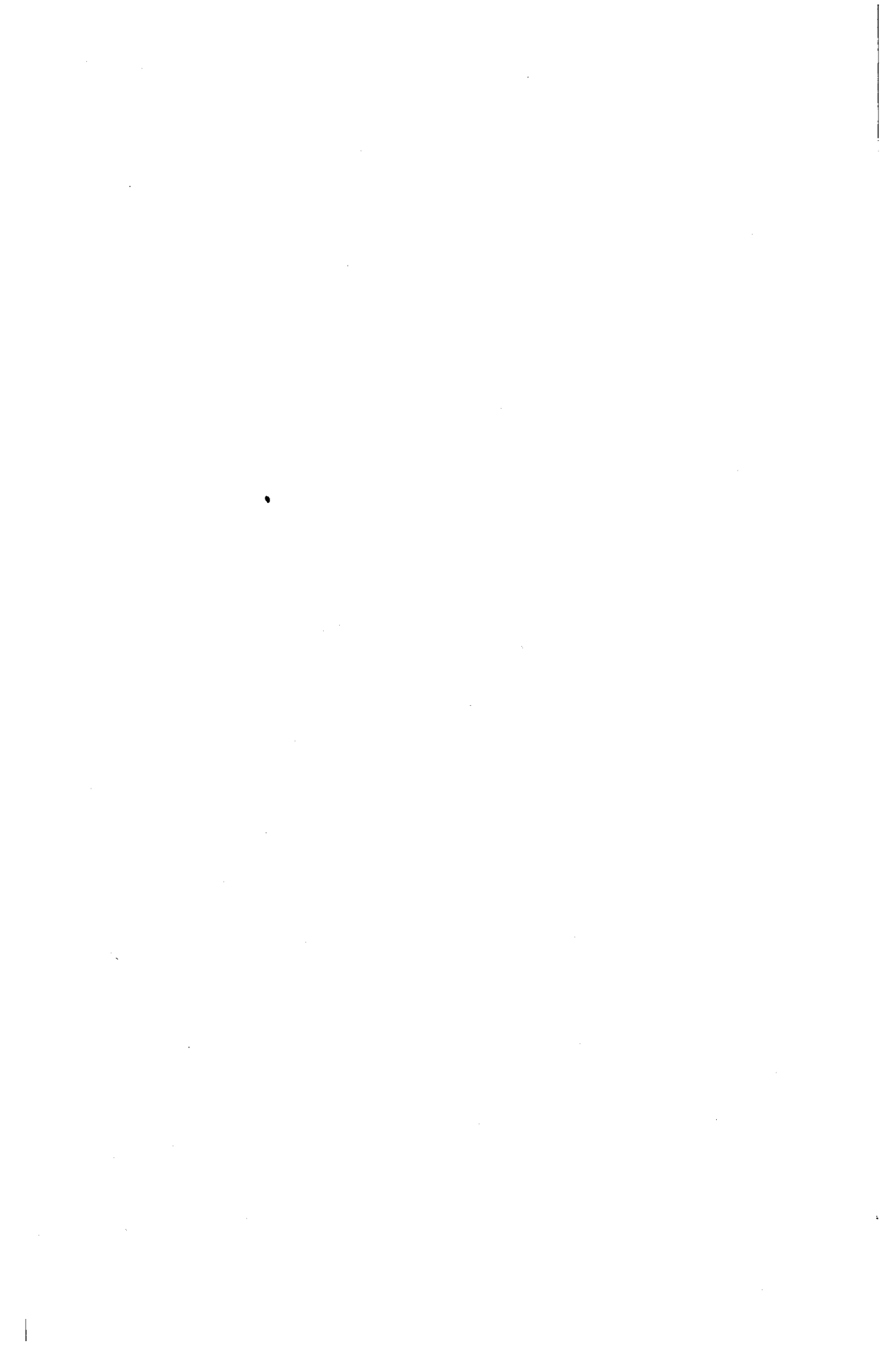
Interpretation

“116C.(1) In this Part:

‘licensee A’ means the holder of licence A;

‘licensee B’ means the holder of licence B.”.







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