

FUTURE LOOKING CLEARER FOR COMMUNITY TELEVISION

Shane Barber, Partner, Truman Hoyle Lawyers

4 April 2007

Over the last ten years, the phenomenon that is community television in Australia has seen some significant growth. Channel 31 in Melbourne, Perth, Brisbane and Adelaide, along with Television Sydney and stations established in regional centres like Lismore and Mt Gambia, continue to attract surprisingly strong audiences despite the proliferation of content on free to air TV, pay TV and the internet.

Despite growing acceptance of community television, the industry has been concerned for its future as the transition from analogue to digital television in Australia progresses. Despite promises, no clear plan for digitization has yet been implemented by the Australian Government. The industry has also been concerned to ensure that, when such plans do eventuate, it too receives the benefits of a simulcast period enjoyed by free to air television. The industry is also concerned about how it will fund these simulcasts and the transition to digital.

1. *House of Representatives Report*

In mid February 2007, the House of Representatives Standing Committee on Communications, Information Technology and the Arts ("**Committee**") delivered its report "*Community Television: Options for Digital Broadcasting*" ("**Report**") dealing with many of these concerns.

While the Committee is undertaking a broader enquiry into community broadcasting, it felt obliged to issue the Report on one aspect of its enquiry, being digital broadcasting, in order to ensure that some of its key recommendations could be actioned by the Government as part of its current process regarding the allocation of two additional television channels for new digital services being:

- a free to air digital only services that will be able to be received on ordinary home televisions, likely to have the capacity to broadcast up to eight new channels providing datacasting and narrowcasting services (known as **Channel A**); and
- a service which could include the delivery of television content over a hand held mobile television device, carrying as many as thirty new channel streams of mobile television (known as **Channel B**).

A detailed report covering the full range of issues being considered by the Committee is due to be released later in the year,

2. *Why Community Television?*

In an age when Australians are the beneficiaries of large amounts of visual content, including on free to air television, pay television, the internet, and 3G mobile services, the question arises as to why the Australian Government places importance on

accommodating the wishes of the community television industry and, more importantly, potentially allocating tax payer dollars to ensure its sustainability.

In its submissions to the Committee, the peak industry group the Community Broadcasting Association of Australia (“**CBAA**”), provided detailed information regarding the background of the community broadcasting industry in Australia and the benefits that it provides to the broadcasting industry and the community generally.

According to CBAA, the community television industry traces its origins to the early 1970’s with the establishment of video access production centres by the Australia Council. The first time community style television became mainstream in Australia was in the late 1980’s when the Impaja Television Network, based in Alice Springs, was established as an indigenous public television station operating under a commercial licence.

The now dominant community television station, C31 in Melbourne, undertook its first test transmissions in 1987.

In 1994 community television trial transmissions began on the last available analogue high powered television channel, the so called “sixth channel”, on the basis that that channel was made available until such time as a decision was made about the permanent use of the channel.

Community television services (“**CTV**”) were initially licensed under the open narrowcast “class licence” on a trial basis. These trials led to the establishment of a consortia of public television producers which together became known as channel 31 in the five metropolitan and the regional areas referred to above.

In 2002, the *Broadcasting Legislation Amendment Bill (No. 2)* was introduced to provide new licensing arrangements for these CTV services and provide for permanent CTV licences.

According to the foreword to the Report, Channel 31 in Melbourne has over three million viewers and, together with the other community television channels;

“...demonstrate the phenomenon of increasingly diverse media. This diversity is akin to that found online through sites such as You-Tube, which presents a wide range of content from the community”.

In its submissions to the Committee, CBAA discussed the role of CTV as follows:

“Community television is founded upon and governed upon the principles of open access, diversity, localism and independence. It has survived and strengthened over the past decade despite facing an uncertain regulatory future and receiving no regular government funding”.

CBAA further submitted that the significant benefits of CTV to the community as a whole include:

- providing much needed diversity in content;
- providing a platform for locally produced content focusing on local issues;

- acting as a significant training platform for both front of camera and behind camera talent (citing the likes of Rove McManus, Peter Hellier, Hamish Blake and Any Lee as graduates from CTV); and
- acting as an incubator for new programming for the commercial sector.

3. ***Why digitization is an issue?***

CTV currently only broadcasts in analogue. With twenty percent of Australians having purchased digital receivers, potentially twenty percent of the market has been closed to the community television sector.

As the Report forwardly observes,

“The logical conclusion of this scenario is that by the time ninety percent of Australians have bought digital receivers, and analogue is switched off, no-one will be watching community television. Without the opportunity to simulcast, the sector will have to start its growth again some time after 2012, when analogue Channel 31 – the only spectrum left, switches to digital.”

As the sector relies heavily on the sponsorship dollar, in addition to financial support from governments and philanthropic agencies, the industry is concerned that those sponsors will cease to support the industry if the audience reach is increasingly limited due to these technical constraints.

In its submissions to the Committee, C31 Melbourne observed that, while it had been a long standing commitment of the government that CTV would get free access to digital spectrum, no plan had yet been put in place to achieve this and no financial support had been offered. All this was occurring at a time when the commercial television sector had already begun its transition to digital television.

The Television Broadcasting Services (Digital Conversion) Act 1998 required that a review be conducted into the regulatory arrangements that should apply to the digital transmission of CTV using spectrum and the broadcasting services bands and how access to spectrum should be provided free of charge. However, when the Department of Communications and Technology and the Arts conducted a review of this situation in 2001 (producing its final report in June 2002), it concluded that an immediate or short term transition to digital transmission for the CTV sector was not necessary.

CTV finally received permanency of licence through the passing of the *Broadcasting Legislation Amendment Bill (No. 2) 2002*.

In its 2004 election policy, the Federal Coalition reaffirmed its commitment to the inclusion of community broadcasters in the digital environment. This policy was reaffirmed in November 2006 when the Australian Government released *“Ready, Get Set, Go Digital – A Digital Action Plan for Australia”*. While the plan reaffirmed the Government’s commitment to working with the CTV industry in its transition to digital it failed to give any definite series of steps to enable this to happen.

4. **Options Considered by the Committee**

As outlined in a submission to the Committee from Broadcast Australia, the Committee considered three principal options for the digitalisation of CTV, being:

“

- *conversion on the same basis as a free to air broadcaster, i.e. the allocation of a full digital channel (7 MHz) with a phasing simulcasting period of eight years (or until free to air analogue switch off, whichever is the sooner);*
- *conversion utilising a simulcasting period in conjunction with the allocation of part of a new digital/datacasting channel for community television use. In this situation the allocation of a datacasting channel would include a “must carry” obligation on the licensee; and*
- *direct conversion of the community analogue services to digital without the benefit of a simulcast period at an appropriate point in the overall digital television take-up cycle”*

While the Committee acknowledged that the community television sector wished to have its own full 7 MHz channel, it ultimately considered that the allocation of same following analogue switch off was unlikely to occur. This was notwithstanding the fact that the Australian Government had, in 1998, promised the CTV sector a dedicated standard definition digital channel.

The Committee did, however, feel that there was a need for an interim arrangement to ensure simulcast broadcasts for the CTV sector leading up to analogue switch off and secondly, there was a need for options for CTV digital broadcasts in the long term to be considered.

As a result, the Committee recommended the reservation of a 7 MHz spectrum band known as Channel 31 for CTV.

“A full 7 MHz channel would provide enough spectrum for current broadcasters, new aspirants, the NITV services [National Indigenous Television] and other community uses that will develop in the future”.

The Committee was also of the opinion that a direct switch from analogue to digital without the benefit of a simulcast period would substantially disadvantage CTV and should not be considered as an option. It accepted the industry’s view that the absence of a simulcast period would see a considerable loss of audience and revenue stream from CTV broadcasts given that, in the interim period, less and less audience participants would be able to see community television as they continued to switch to digital. It was noted that by September 2006 the estimated home take up or penetration of free to view digital television had reached a new mark of 1.8 million, or around twenty three percent of Australia’s 7.6 million homes.

The issue then arising is how the simulcasts would occur. The three options considered were:

- Either SBS or the ABC being required to carry CTV, however the Committee recognised that these national broadcasters had already developed their own additional content and multi-channelling plans and capabilities and placing such an obligation upon them would have a serious impact on same;

- Having CTV carried temporarily by subscription television providers such as Foxtel, however the Committee recognised the difficulties facing the sector in negotiating carriage agreements with subscription television providers. Further, the Committee was of the view that it would not be appropriate for the Government to attempt a “must carry” requirement on an already established commercial operation.
- The final option was that either the ultimate licensee of Licence A or Licence B be required to carry the simulcast.

This final option explains why the Committee felt it was important to issue this preliminary report regarding either digitisation of CTV now, rather than wait until the publication of the full community television report later in the year.

With the Government currently considering the process for the issue of License A and Licence B, it would be open to the Government to require a single standard definition channel carried by the Licence A licensee be made available as the most appropriate option for the simulcast carriage for digital television.

5. **Recommendations**

Ultimately the recommendations of the Committee in relation to the digitisation of CTV were as follows:

Recommendation 1: The Committee recommends that the Australian Government sell the unreserved channel known as Licence A, with an obligation to be placed on the new licensee to carry community television during the simulcast period.

Additionally the Committee recommends that:

- carriage would be at no cost to the community television sector during the simulcast period;
- the terms of licence for Licence A would include a condition to simulcast community television by 1 January 2008, otherwise penalties on the new licensee will apply; and
- such penalties must be sufficient to ensure that community television is carried by 1 January 2008.

Recommendation 2: The Committee recommends that, if Licence A does not sell before the end of 2007 with a “*must carry community television*” obligation, the Australian Government:

- temporarily allocates sufficient spectrum from Licence to a National Broadcaster in order for it to carry community television during the simulcast period; and

- allocate sufficient funding for that National Broadcaster to cover the costs of digital community television transmission during the simulcast period.

Recommendation 3: The Committee recommends that the Australian Government, at analogue switch off:

- convert the spectrum bands known as Channel 31 to digital; and
- permanently allocate it to current and future community broadcasters.

Recommendation 4: The Committee recommends that the Australian Government provide funding of \$6 million to the community television sector for the conversion of broadcast equipment to digital, and recommends that this funding be made available immediately after a simulcast arrangement has been made.

Recommendation 5: The Committee recommends that the Australian Government provides funding of \$1.7 million per year to the community television sector for each year of simulcast.

6. Industry response

On the same day that the Report was released, Anthony Bryan, CBAA's Vice President of community television said:

"The timing of community television's move to digital is crucial, so the Committee's recommendation for a must carry provision by 2008 is very encouraging. The other recommendations are also most welcome and will also provide a great benefit to the community television sector".

Shane Barber is a Partner in the Sydney office of corporate and communications law firm. Truman Hoyle