

will probably continue to generate reasonable profits. In the early years of equalisation, I believe there will be one station in each regional market operating at a profit, perhaps one other in the black and one operating at a loss.

#### **Network/Affiliate Relations Under National Networking**

Finally, I'd like to make a couple of other comments about network/affiliate relations under a system of national networking.

I do not agree with the predictions of media commentators that national networking will immediately lead to all national advertising being sold by the Sydney networks and being relayed to their affiliate stations. The experience of the Ten Network and the Olympic Games in 1984, demonstrated that that proposition is much harder to put into practice than it is in theory. Many products and brands do not have the same level of distribution in all states and there are only a limited number of advertisers currently placing national schedules across all stations. Admittedly, that may change when the opportunity to buy a national schedule is made available to advertisers on a permanent basis but I believe those changes will occur later, rather than sooner.

I do not believe that the network stations will take unreasonable advantage of the program buying power that they will have over their regional affiliates. There will be no advantage to the networks in sending their affiliates broke by charging more for programs than they can afford. In fact, given the enormous additional operating costs that regional licensees will have to absorb, it is likely that in the early years of equalisation, the lower rating networks may end up having to subsidise the cost of some programs to their affiliates.

#### **David Astley**

David Astley is General Manager of Telecasters North Queensland Limited, Townsville, and Far Northern Television Limited, Cairns, and a Director of Queensland Satellite Television and

Television Australia-Satellite Systems Pty Ltd. He is currently Chairman of Regional Television Australia Pty Ltd and one of two regional representatives on the Federal Council of the Federation of Australian Commercial Television Stations.

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#### **MEDIA OWNERSHIP AND CONTROL POLICY IN AUSTRALIA**

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#### **Speech by Ian MacPhee, Former Shadow Minister for Communications**

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It is a great pleasure to be here today to speak at this seminar which has been organised by the Australian Communications Law Association. Seminars such as these are an excellent vehicle for discussing most important issues facing Australians and the issue of the ownership and control of the media is of fundamental importance to our society.

Today I intend to make some observations about the Labor Government's record in this area - particularly its handling of its media ownership and control legislation - and the Coalition's views in regard to the broad intentions announced by the Government last year in respect of those proposed legislative changes.

Over recent months Australians have witnessed a dramatic but deliberate restructuring and rationalisation of the media industry. This process is not finished and one would expect it to continue well towards the end of this year, if not the next. Unfortunately, up to this stage the media's coverage of the issues involved has been rather disappointing. It has chosen to concentrate more on the exciting aspects of takeovers themselves, the vast inflated sums paid for media acquisitions, and the personalities and politics involved. Left well behind has been any thoughtful analysis of the effects such changes will have on a number of vitally important issues which are often forgotten in the frenzied scramble for newspapers and television stations. They include freedom of speech, diversity and choice, quality of programming and print. I noted in Parliament

recently that I agree with Professor Mayer that we have lost sight of our democratic culture. We take for granted our liberties and that is something we cannot afford to do. Like all periods of economic crisis the current climate shows signs of greed, rising lawlessness, racism and totalitarianism. Unfortunately most of the media outlets have at some stage or another had some form of vested interest in the outcome of policy. This is understandable but the press and media generally must not continue to run the risk of malfunctioning in the sense of not exploring and questioning the complex social as well as economic issues involved just because of the industry they are in. In short, the media must be able to examine itself.

The questions that could be asked include for instance: what does the Australian viewer want in the regional areas of Australia in terms of programming? Are the present regulatory structures such as the Trade Practices Act, the Australian Broadcasting Tribunal, and the Foreign Takeovers Act sufficient or effective? Are there sufficient safeguards to prevent the potential of those who have wider commercial interests yet own a sizable proportion of the media to compromise the supply of the information and opinion? Should a foreign citizen be allowed to own 60% of Australia's print media? Is this in the national interest and if so, why? Should we be encouraging the speedy introduction of new services and granting more licences in our capital cities on the basis that the more channels there are, the less open to abuse the ownership and control of the media might be? Should we care that a number of employees within the media industry face retrenchment as a result of mergers and acquisitions even if these acquisitions are technically in breach of existing laws?

There are many important questions which deserve great attention in public debate on this matter.

The Government's record on media policy is a rather spotty one punctuated with what appear to be a number of arbitrary, expedient political favours and compromises, a blinkered

determination to pursue its own shaky broadcasting policy in spite of overwhelming evidence highlighting the weaknesses in its plans, and a legislative schedule based on a flimsy press release almost five months ago. Its handling of the media issue can best be described as unfortunate; at worst it has been irresponsible. Yet if we look at the Government's aims and objectives in the area of the media which are enunciated in the Labor Party Platform their broad lofty principles are, with some exceptions, relatively laudable:

- Diversity in choice of programming
- Optimum guaranteed levels of Australian content
- A reduction in the concentration of their ownership and control in private hands both within and between the various forms of the media
- Protect the commercial sector against foreign penetration of ownership and control
- Encourage the development of additional new commercial broadcasting services to ensure more diversity of ownership and programme choice
- To develop proper and responsible planning mechanisms.

So much for these objectives, especially the latter one of planning. Its handling of its media legislation certainly leaves a lot to be desired. On November 27th last year the Government announced its broad intentions in regard to the reform of Australia's media ownership and control laws. This resulted, and is continuing to result, in major commercial decisions being made on the basis of a mere Government press release and has precipitated a major shake out of Australia's media industry on the basis of Government intentions, rather than on the present law or what the law as decided by the elected Parliament might one day become.

The Government embarked on this course despite the fact that it does

not control the Senate. There is no certainty at all that what the Government wants will in fact become law. The Government cannot seek to lay the blame at the feet of media operators for their ignorance of parliamentary procedures or the opposition and democrats if they decide on the balance of information before them that the Government's legislation should not be passed. It is the Government which has induced media management and shareholders to commit funds at their peril, it is the Government which has caused the current state of uncertainty and delay of additional services to regional Australia, it is the Government which has caused some operators to be technically in breach of existing law, and it is the Government's fault that media management and shareholders will not know the true state of media law in Australia until at least October this year. Liberal Party Senator for New South Wales, Chris Puplick, one of the eight members of the Senate Select Committee on TV Equalisation said when the report was released: "These major decisions about the future of broadcasting in Australia belong to the elected Parliament itself and not just to individual ministers ... government by press release is subversive of our democracy and our parliamentary system. It must be stopped". I agree wholeheartedly with those sentiments.

The manner in which the Hawke Government arrived at its decisions in regard to the proposed changes to the two station rule and the introduction of cross-media ownership restrictions also deserve comment for they provide the background to the illogical decision making which has occurred. The arrival at the percentage of 75% maximum viewing access limit for one TV licensee was not based on any technical, social or economic criteria. It went against all the rational arguments of the Australian Broadcasting Tribunal and other enquiries which recommended the abolition of the 2 station rule but said that persons or corporations be allowed to hold a prescribed interest in only one mainland capital city (25%-30% maximum viewing access). As most commentators have noted it was a purely arbitrary polit-

ical compromise between the Treasurer, Mr Keating and the Prime Minister, Mr Hawke and the Minister for Communications, Mr Duffy. Mr Keating and Mr Hawke proposed a level of 100% access to Australia's population whereas Mr Duffy proposed 43% (the existing level); the result was a compromise of 75%. Most people know that it was reported that at one meeting of Labor Cabinet John Button asked Mr Hawke in desperation "What do your mates want? Apparently not the Duffy proposals". This is a most worrying aspect of the Labor Party's decision-making in this area.

Mr Duffy, it should be stressed, fought hard to meet the needs of metropolitan and regional Australia including the commitments of his own Labor Party platform but his strategy ran counter to expedient elements within the Labor Party seeking to look after their Party "mates". In this instance, the dictates of Labor Party media cronyism outweighed the need for a sensible rational broadcasting policy blueprint. Senator Puplick in his report to the Senate said, and I agree with him, "It will turn out to be ironic if the final form of this regional TV legislation goes back to something akin to the original Duffy proposals rolled by Hawke and Keating ... There is a great deal of evidence before the Committee which suggested that many of the original proposals advanced by Michael Duffy would have found much wider public and political support if they had been proceeded with".

The Government's continuing blinkered, predetermined, and inflexible attitude toward media ownership and control issues was exemplified again recently by its handling of the Senate Committee's report on TV Equalisation. No sooner than four or five days after its release the Government had mysteriously and speedily produced, albeit inadvertently, its response to the report in question time in the Senate. Such behaviour indicated contempt for the Senate Committee process and was an insult to those non-Labor members who sat on it and endeavoured to reach a balanced judgment on the merits of the Government's legislation. I think that it is a

great pity that the Government was not prepared to even consider the strong dissenting judgments and accompanying suggestions of Senators Puplick, Lewis, Sheil, and Powell in detail and begin to seriously address the problems to employment, programming, localism, advertising rates which aggregation by the Government's method will cause. One must remember also that while the Government likes to refer to the TV Equalisation Report as a "majority" report, the Committee was split 4-4 with only the Chairman's casting vote making the difference. It is most regrettable that viewers in regional areas of Australia still do not have the same choice as metropolitan viewers. The Government when it came to office had embraced the supplementary licences scheme which had been initiated under the Fraser Government which would have given regional viewers a range of programmes similar to that open to those living in metropolitan areas. If this scheme had been continued the overwhelming majority of regional viewers would have had an additional service 18 months ago and another early this year. They chose not to continue with supplementary licences and instead opted for forced amalgamation of services, with its accompanying delays, vast costs, and disregard of the wishes of regional viewers. People in regional areas, because of this Government's mismanagement, have been deprived of equal television services which is their right.

The coalition has viewed the Government's handling of its legislation and its priorities with some alarm. It has been disposed to the view that regional TV operators and viewers should not be disadvantaged by either the Government's plans for regional TV or by changes to the ownership and control laws. Whilst the provisional position of January 30, 1987 has been that the Coalition was disposed to support the abolition of the two station rule and the 75% maximum viewing access limit proposed by the Government it was determined to grant as many commercial television and radio licences as was technically feasible to prevent undue concentration and encourage choice and real

competition in commercial television. The licensing procedures would be made as flexible as possible to enable new players to enter the broadcasting field. Innovative technologies which have the capacity to provide additional but a varied array of services would also be given priority. In all probability the uses to which these technologies will be put will be to fill market niches rather than operating competitively on a large scale with commercial television operators.

The Coalition is examining the Senate Select Committee's Report on TV Equalisation and will make known its final position on ownership and control as soon as the Government's actual legislation is presented to Parliament. For the time being, the Coalition is studying whether the Trade Practices Commission can handle the problems of undue concentration of media ownership flowing from cross-media ownership. There have been a number of problems which have been highlighted in the U.S. (where strict cross-media rules are in existence) that these rules have the potential to destroy some newspapers. For instance, in Washington D.C. "The Washington Star" was forced to close down when its new owner was not allowed simultaneously to own a TV station in the same city. The newspaper was losing money and it needed the cash flow of a very profitable TV station to stay afloat. Indeed, this type of question and many others must still be answered by the Government including the ones I mentioned earlier in this speech. There are a number of matters which the opposition and Australian public should take into account such as: in this new climate of media reform how will Australian content and standards of programming be maintained? Will there be growth of overseas content and fewer programmes reflecting local community and national interests? Does the Trade Practices Commission have a role to play even if the Government intends to pursue its intentions to restrict cross-media holdings? Will there be sufficient protection against foreign ownership of the electronic media comprising the supply of information and opinion? Should new services such as video

audio entertainment services supplied direct to the public for instance in hotels and clubs be deemed to be "broadcasting" under the Broadcasting Act rather than being registered on a less clear basis under the Radio Communications Act? What criteria, and on what basis should cable TV or pay TV be introduced? Will regional viewers and TV operators be disadvantaged by forced aggregation?

As I mentioned before, the Coalition is determined to remove the barriers to entry to enable new players to enter the market in commercial radio and television. One can ask the Government, apart from technical considerations and the fact that the Tribunal has the power to approve the granting of new licences, what other barriers to entry exist? Are the barriers principally economic? Does the 75% rule retard or enhance the prospects of new players entering the commercial television field? Should the 75% rule be introduced in stages so that all players are on an equal footing to be able to reach the 75% figure? As yet the opposition and the Australian public has been given no comprehensive justification for the 75% rule. Why isn't it 100%? 43% or 25%-30% - the preferred option of the Australian Broadcasting Tribunal? Is it true that there may be some economies of scale but not real competition because there isn't any cost competition between the networks? In other words, as some economists have pointed out, is it a fact that the reduced costs for the networks will not necessarily lead to reduced prices in terms of advertising rates or quality of programming? Will the Government establish rules which govern the terms and conditions of financial and programming dealings between networks and affiliated stations on similar lines which exist in other countries such as the United States? If not, why not? As you can see there are many questions which the Government has not answered and probably does not intend to answer. The Parliament deserves to know these things before any legislation is introduced.

In the remaining minutes I would like to make some observations about the recent Trade Practices Commis-

sion's findings following its practical completion of the Herald and Weekly Times takeover. They are even more important now in light of recent reports in The Financial Review which have cast some doubt on the independence of Northern Star's newspaper operations and its ability to operate competitively against News Limited in the markets of South Australia and Queensland. The Trade Practices Commission announced some weeks ago that undue concentration of newspaper ownership had been averted and that ownership had become more wide spread. The Prime Minister and others have seized on this report as evidence and some newspapers gave its findings front page priority. I would argue in the strongest terms possible that this is not the case at all. The available documentation indicates that as a nation now we have the least competitive, most highly concentrated privately owned newspaper ownership in the world. A number of points can be made.

The Trade Practices Commission said that it recognised that News Limited has become a "prominent publisher" and that "HWT itself had formerly held such a position". So what? It fails to say that HWT had captured an already excessive 50% of the newspaper market before the HWT takeover; News Limited now has 60% of the market. Does this mean concentration of ownership has been averted? I doubt it. Moreover, whilst it is true that the Trade Practices Commission has used its limited powers to prevent total "market dominance" in one area and that News Limited has been forced to divest some of its (weaker) newspapers such as The Brisbane Daily Sun, the so-called competitors not only reside in the less populous states (particularly Western Australia) but their presence in terms of titles and circulation is tiny, if not irrelevant in comparison. For instance in the total metropolitan dailies market the ownership and circulation figures demonstrated that News Limited has 10 titles with a circulation of 2,101,198; Fairfax 5 titles with a circulation of 857,664; Northern Star possesses 2 titles (which are closely linked with the operations of News

Limited) with a total circulation of 201,530 in South Australia and Queensland combined; Bell Group which only has one major title and exists only in Western Australia has 237,673; and United Media which also exists in Western Australia and has one title has the tiny total of 97,651. To suggest that these so-called "competitors" are in a position or are challenging the overriding market dominance of News Limited is quite astounding. What is perhaps most convincing is that in the Sydney and Melbourne markets where the majority of the population resides, only News Limited and Fairfax exist (now 2 owners instead of 3) and this duopoly is uneven. These important markets effectively represent where the political agenda is often determined and the mainstream political debate is conducted. It is mainly from where the proprietors syndicate their news stories to other states.

Moreover, in terms of the ownership of newsprint mills themselves, distribution outlets, and news sources such as AAP and Reuters it is the two major players who have a stranglehold over the Australian newspaper market. Following the Herald and Weekly Times takeover, News Limited owns the majority shareholding in Australian Newsprint Mills.

The Trade Practices Commission performed its duties accordingly to its obligations under statute but it is deluding itself if it believes that its merger and acquisition provisions have prevented undue concentration of newspaper ownership in Australia.

Some people often claim that those who are concerned with concentration of media ownership are advocating Government interference in the content of newspapers or that licensing should be introduced. This distorts the true position of those who feel that stricter measures are required. As I said in January: "It is rather silly to equate Government intervention with Government control over what the press might say compared to Government intervention aimed at ensuring a diversity of opinions, attitudes and information from independent outlets".

It is not an exaggeration to say that the potential for abuse of managing news is always present and that abuses do in fact occur but are hard to prove. Recently in the Parliament I warned about the dangers posed by media proprietors being involved in commercial areas other than the media industry and their capacity to change Government policy in order to meet their commercial concerns. If a combination of pressures of media proprietors appears to have stopped Dick Smith's anti-cigarette advertisement campaign from getting off the ground, what is to say a political viewpoint will not be aired if it runs contrary to the proprietor's vested interest? Thus, what is at issue is not merely the ownership and control of a business group but the fundamental dissemination of information and opinion crucial to the effective functioning of Australia's democratic institutions.

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