

# The politics of pay

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**George Frame, General Manager of Independent Television Newcastle, argues that the Saunderson Report should have endorsed satellite delivery**

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Telecom regulatory decisions in relation to the various government networks. The government agencies category and the "unfair commercial advantage" exception to the category may not be important in practice, as government agencies are perhaps uniquely placed to fully exploit AUSTEL's "capacity sharing" category B.

**C**apacity sharing is joint leasing of carrier capacity for carriage of communications other than interchange traffic: A to A, B to B, and so on. Capacity sharing will be subject to a number of proposed conditions. Firstly, each person whose traffic is carried on the private network service, together with the person directly connected to the service, must be jointly and severally liable for all charges payable to the carrier. Secondly, a person sharing capacity on the service must not enter into joint insurance or other joint risk avoidance measures that would have the effect of negating the person's joint and several liability. Thirdly, a person sharing capacity on the service must be connected to the service by a fixed link (that is, not via the public network). Fourthly, except where persons sharing the service are co-tenants in a building, exchange lines connected to the service must not be shared.

The joint and several liability requirement is no doubt primarily intended to discourage larger scale bypass of the public network by smaller entities jointly leasing guide band capacity: the cost of a Megalink (\$205,000 p.a.) may well make the risk of liability unattractive to the average business man. The requirement is, of course, entirely artificial and devised solely as a means to deter growth of capacity sharing arrangements. The scheme can be criticized for working to the advantage of larger users and corporate groups but providing no real benefit to small and medium sized businesses.

AUSTEL's report is refreshingly devoid of the obfuscation which has characterised private networks policy to date. The proposals are, on the whole, a balanced and constructive new initiative in Australian telecommunications regulation. Its recommendations may be seen as a holding operation pending further Telecom tariff rebalancing and a more complete examination of whether full resale of leased capacity should be permitted. It is unfortunate that AUSTEL did not choose to substantiate its conclusion that unrestricted capacity sharing (and resale) of wideband private network services would lead to a significant monetary loss to Telecom. No doubt telecommunications economists will now seek to demolish this conclusion as the pressure for unrestricted resale continues to mount.

*Peter Leonard is a partner in the Sydney firm of Gilbert & Tobin, Lawyers*

**H**aving attended several pay TV Hearings, given evidence and presented seven submissions on behalf of our company, it has become evident to me that the issue of what benefits pay TV could bring Australia has been eclipsed by the politics being played in the arena. But, as in all electronic media in this country, politics are the axle which governs motion and direction according to the amount of friction applied, rather than being the spokes that should support the medium and its direction. Pay TV has been affected for over a decade by lack of movement due to various frictions of internal and external forces.

On November 30 1988 the House of Representatives Committee Report To Pay or Not to Pay (known as the Saunderson Report after its Chairman, John Saunderson) made one small adventurous turn, by favouring the introduction of pay TV. Of course the Report is just that, a Report. The Minister can accept or reject all or part of the Committee's recommendations. But once again, this will be determined by the hand of politics.

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## Australia lags

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The Saunderson Report made 16 major recommendations on pay TV in Australia, however there were many other issues raised in the Saunderson Report and space will allow, at this stage, only one major issue to be put under the microscope.

Australia already lags behind much of the world in pay TV services and is the largest English speaking country not provided with this service. The Committee Report could be better titled "Pay TV in Australia, A Lost Continent."

Australia was foremost in the introduction of radio in the 20's and followed closely the international trend by introducing television in the mid 50's.

However pay TV is only now gaining any motion after a decade of debate. In fact if the Federation of Australian Commercial Television Stations submissions are adopted, the turn of the next century would be too early to introduce Pay TV.

Why are we out of step with the rest of the world? Is our current television industry that fragile? Corporately the television industry has been on a self destruct track, however, the core of the industry (high corporate flyers aside) is very strong and capable of making

solid profits. An evaluation of industry balance sheets prior to 1988 testifies to this.

Pay TV, if it has any effect on current free-to-air operators, would take 5 to 6 years to make any appreciable penetration of the Australian television viewing market.

The lack of a decision to introduce pay TV has afforded the existing free-to-air television industry one of the greatest shields to competition ever enjoyed in this country. Other Australian industries would welcome the kind of protection that this pseudo import tariff awarded the broadcast industry represents.

The Saunderson Report proposed a cable/MDS delivery system for pay TV in Australia.

Cable (or fibre optics) can carry up to 40 channels, while multipoint distribution system (MDS), a microwave delivery system, can provide up to six channels in selected areas for "localised" services. MDS is a line-of-sight technology with 30 to 50 kilometres transmission coverage.

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## Satellite vs cable

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**A**ussat's national direct broadcast service (DBS) was not only not recommended, but completely dismissed as a pay TV service. One only has to look at a map of Australia to realise the immensity of the technological task in providing a service to potential viewers on a national basis in the next 10 years.

Only satellite DBS can provide an immediate service when the scheduled Series B satellites are launched and commissioned in early 1992 with MDS providing re-transmission of the national six channels with localised programs inserted into local windows of the national service. The Saunderson Report recommends 40 national local franchises (e.g. for instance four franchises for Sydney).

Cable will commence to have penetration in major metropolitan markets by 1994/95 and eventually over the years cable will have the greater penetration, but only a DBS pay TV service can provide initially a co-ordinated national service associated with cable and MDS.

The moratorium on pay TV ends in September of this year and following the Federal election will rise again as a decision for the government of the day.

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It will be interesting to see whether Australia has the opportunity to have one of the best pay TV services in the world or is left with a "second best" system due to the lack of utilisation of all available technologies.

Let's hope that more than ever before, economic viability will play a vital part in the correct political decisions being made. A DBS/MDS cable system would be seen as being the best decision for the delivery of pay TV in Australia.

*(Ed: Darling Downs Television and Northern Rivers Television are currently seeking injunctions before the Federal Court to prevent the Minister from proceeding with aggregation, the ABT from renewing the Seven Network's licence and Quintex, Prime Television and Riverina and North East Victoria Television from proceeding with their affiliation).*

## Contributions

From members and non-members of the Association in the form of features, articles, extracts, case notes, etc. are appreciated. Members are also welcome to make suggestions on the content and format of the Bulletin.

Contributions and comments should be forwarded to:

**Grantly Brown**  
Editor  
Communications Law  
Bulletin

c/ Gilbert & Tobin  
Lawyers

GPO Box 3810  
SYDNEY NSW 2001

New Zealand contributions and comments should be forwarded to:

**Bruce Slane**  
Assistant Editor  
Communications Law  
Bulletin  
c/ Cairns Slane  
Barristers & Solicitors  
PO Box 6849  
Auckland 1

## Communications and Media Law Association

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In order to debate and discuss these issues CAMLA organises a range of seminars and lunches featuring speakers prominent in communications and media law and policy.

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