

A Cheat's Guide to the Multichannelling Review

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Carolyn Lidgerwood distils some of the diverging views emerging from the Federal Government's review of the prohibition on commercial broadcaster multichannelling on their existing digital spectrum

If there's one thing that broadcasting policy makers can't get enough of, it's statutory reviews. The *Broadcasting Services Act 1992 (BSA)* contains many review requirements, including a long list of digital television broadcasting reviews that must be conducted before 1 January 2005. At the time of writing, the website of the Department of Communications, Information Technology and the Arts contained:

- 14 submissions in response to the "6th network review" (also known as the "Review of the provision of commercial television broadcasting services after 31 December 2006");
- 45 submissions in response to the "Indigenous TV broadcasting service review";
- 39 submissions in response to the "multichannelling review" (also known as the "Review of restrictions on multichannelling and other services"); and
- 15 submissions in response to the "Review of the regulation of content delivered over mobile communications devices" (although this is not a review required by the BSA).

Absorbing all these submissions is no small task. To make life a little easier, this is a "cheat's guide" to some of the arguments made in response one of the most controversial issues under review, that is, whether the current prohibition of multichannelling by commercial

television broadcasters should be removed from the BSA¹. Of course, those readers who have been around broadcasting for a while can usually predict who will be arguing what. To some extent, this is the case here – but there are a few surprises.

THE COMMERCIAL TELEVISION BROADCASTERS

The absence of a submission from Free TV Australia signals that there are diverging views among the commercial television broadcasters. Quite different positions have been adopted by each of the Seven, Nine and Ten networks, and there are also divergences of opinion among the regional television broadcasters.

In the red corner, Seven strongly supports multichannelling by commercial television broadcasters, and is of the view that multichannelling should be permitted at the earliest possible opportunity. Seven considers multichannelling to be an essential "consumer driver" to ensure conversion to digital television. Seven's position is that there is strong consumer demand for multichannelling, and that commercial television broadcasters should be permitted (but not required) to provide a mix of free and subscription multichannel services. The reason that Seven supports subscription multichannelling is that it considers without it, multichannel platforms will not be viable.

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Digital Rights Management

On 13 October 2004, the Network Insight Institute held a seminar entitled 'Digital Rights: Management & Co-operation' centred on issues concerning the distribution and cataloguing of digital goods and co-operation in their management. Katherine Sainty and Clare Cuncliffe consider some of the issues discussed in the seminar.

"I'll Have Two Playmates and an Emoticon Please"

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Other arguments made by Seven in support of multichannelling include that the subscription television industry no longer needs protection from the competition posed by multichannelling, and that international trends support multichannelling. While its position is that both free and subscription multichannel services should be permitted on the spectrum already allocated to the free to air broadcasters, it also suggests that subscription multichannel services should be made available on the spectrum (in the broadcasting services bands) that has been reserved for the provision of datacasting services.

By contrast, over in the blue corner, Nine is strongly opposed to multichannelling. Nine considers that the key policy question to be answered is whether the current policy of restricting the number of digital services remains consistent with the regulatory framework for free to air television, or whether removing the restriction would deliver greater benefit to viewers. Accordingly, in response to the issue of digital conversion, Nine considers that it is important to balance the desire to drive "take-up" of digital with the effect that policy changes designed to achieve that end would have on the policy objectives underpinning the existing regulatory regime, including the objective of providing high quality programming.

In this context, Nine's key points include that multichannelling will be

detrimental to the quality of free to air television, as additional channels will generate little, if any, additional revenue. Its position is that to fill the additional channels with programming, resources will need to be diverted away from the primary service. Nine also considers that multichannelling will exacerbate the current fragmentation of the advertising market (as audiences would be split across a larger number of channels). Nine also rejects the position that multichannelling could be optional (as suggested by Seven), as it considers that once one commercial television broadcaster starts multichannelling, the others will be required to follow (for competitive reasons).

Somewhere between Nine's blue corner and Seven's red corner sits Ten. While it argues against free to air multichannelling (on similar grounds to Nine, for example that it would threaten the quality of programming without any discernable consumer benefit), it argues in support of subscription multichannelling in the broadcasting services bands (like Seven). In particular, Ten argues that there is a need for "more competition and diversity" in the subscription broadcasting sector. Ten considers that subscription multichannelling is "the only way to introduce quality programming and competition without downgrading current free to air services". Ten supports the establishment of a new digital terrestrial subscription platform in that spectrum which is currently set aside for free to

air datacasting in the broadcasting services bands, however its view is that such spectrum should only be available to new entrants in the subscription market, and that allocation (and payment) methods in relation to such spectrum should be explored.

It should be noted that the datacasting spectrum identified by Seven and Ten for subscription multichannelling is currently being used for datacasting trials².

Different views about multichannelling are also held between the regional commercial television broadcasters. For example, Prime supports multichannelling as a means to encourage digital conversion, and considers that multichannelling will allow commercial broadcasters to offer an expanded platform of mass appeal and niche targeted programming, which will make the commercial television offering "more viable and relevant".

However, Southern Cross Broadcasting opposes multichannelling, for reasons including that it will result in fragmentation of the television audience, the decline of free to air television as a mass marketing mechanism, increased program costs (without increased advertising revenue), and adverse effects on local production. Southern Cross notes that a weakening in the advertising market (as a result of further fragmentation) and increased programming costs would be particularly felt by regional broadcasters.

WIN's submission raises technical concerns about changing the regulatory regime, noting that investments in digital technology have been based on the existing regulatory regime. On this basis, WIN states that it would be difficult for it to change to multichannelling at this time. It also expresses concern about the further fragmentation of the television market.

It is clear from the submissions that multichannelling is one of the more divisive issues to be faced by the commercial television industry in recent times. However, as the following discussion indicates, more consensus is apparent in the subscription television industry and in the local production industry.

THE SUBSCRIPTION TELEVISION INDUSTRY

The Australian Subscription Television and Radio Association (ASTRA) is opposed to subscription multichannelling by the commercial television broadcasters. This was easy to predict. However, less predictable was ASTRA's statement that it is "not opposed to permitting the commercial networks to multi-channel per se." ASTRA qualified this by stating that free to air multichannelling should only occur "at a point in the future and in a way that will not unfairly harm competition in the television entertainment market or investment in the subscription television sector", but even so, on its face it is a conciliatory position.

Having said that, ASTRA considers that the issue of multichannelling should not be considered in isolation from other policy issues (such as the removal of the anti-siphoning regime). For this reason, ASTRA's view is that any relaxation of the rules about commercial television broadcasters undertaking free to air multichannelling should not occur unless the anti-siphoning regime is completely removed, and not before 2008 (so as to allow the digital investment of ASTRA's members to be consolidated). ASTRA's position is that if the commercial networks are allowed to multichannel (using "public spectrum"), they should be subjected to the same sorts of regulatory obligations in respect of each individual



channel as currently apply to existing commercial television services.

In relation to its opposition to the commercial networks being permitted to undertake subscription multichannelling, ASTRA's key argument is that there would be no public benefit in allowing the networks to provide "pay" services using a public asset given to them for the opposite purpose.

Similarly, Foxtel does not oppose digital terrestrial free to air multichannelling by the commercial broadcasters after 2008, so long as it is introduced as part of what it describes as a "balanced deregulation of the television broadcasting regime". It argues that the 2008 commencement date for free to air multichannelling would provide subscription television "an equitable opportunity to that given to the commercial broadcasters to establish their digital investments". Auster also requests that the subscription television industry be given the opportunity to "establish its large-scale investment in digital services". While Auster also states that it is "not against

multichannelling per se", it echoed ASTRA's arguments about this occurring at an appropriate time and in a way that would not unfairly harm competition.

Each of Auster and Foxtel have voiced strong opposition to the commercial networks providing subscription multichannels, with Auster stating that

"any use of public spectrum for the provision of subscription multichannelling is a complete subversion of the purpose for which the public asset was loaned".

Premier Media Group (supplier of the Fox Sports channels) argues that the commercial networks should not be permitted to multichannel before the "expiry of the anti-siphoning scheme" on 31 December 2010, and News Limited also makes the point that "to allow the free to airs to multichannel without scrapping the restrictive anti-siphoning system would deal a severe blow to the future of pay TV in this country". It is worth noting that Telstra has argued

that allowing broadcasters to create new digital multichannels would also unfairly prejudice the interests of the emerging broadband content sector, in almost an identical way as multichannelling was seen to prejudice the interests of the subscription television industry when the digital conversion scheme was introduced. This example may illustrate the increasing convergence in the audio visual sector.

THE PRODUCTION INDUSTRY

The general position of the production industry can be summarised as a belief that multichannelling should result in greater opportunities for local producers, so long as the provision of multichannelling is supported by an interventionist scheme of content regulation.

For example, the Screen Producers Association of Australia (SPAA) wants strong regulation of Australian content in a digital environment. It does not oppose the relaxation of the current prohibitions on multichannelling, so long as the current content quotas in the Australian Content Standard are applied to digital multichannelling channels (to the extent permitted under the Australia-US Free Trade Agreement (FTA)). Similarly, the Australian Film Commission argues that Australian content must have a significant presence from the beginning of any new (multichannelling) services – up to the maximum level permissible under the FTA. To achieve this, regulation is required.

It is worth noting that this is diametrically opposed to the views put by Nine and Seven, which have argued that if multichannelling is permitted, Australian content requirements would be inappropriate.

The Australian Children's Television Foundation (ACTF) repeat SPAA's arguments, as well as suggesting that commercial television broadcasters shouldn't be operated like other businesses. As the spectrum is a public resource, ACTF argues that licensees should conduct their activities in the public interest and in a way which is culturally constructive rather than in a manner motivated purely by maximising financial returns. Shareholders of

publicly-listed broadcasters may take a different view.

THE ADVERTISERS

The Australian Association of National Advertisers (AANA) argues that there is public demand for increased choice in television programming, and that the provision of:

“advertiser-supported terrestrial free to air multichannelling would allow advertisers to take a more targeted approach to reach the 75% of the population not willing to pay for subscription multichannelling”.

The AANA considers that the Government's current digital policy has failed, and that multichannelling would provide “the better driver to convert Australian homes to digital”. It is not surprising that the AANA's submission has been quoted with approval by Seven.

THE REGULATORS

The Australian Competition and Consumer Commission (ACCC) has previously commented on the regulation of multichannelling in its “Emerging Markets” report³ and in submissions to the Productivity Commission. Therefore, its view that removing the prohibition on multichannelling is likely to lead to a more competitive and efficient free to air television sector (which is better able to meet the needs of Australian audiences) is not new. The ACCC considers that commercial television broadcasters should have the choice about whether or not to multi-channel, and that the benefits of this would include:

- a potential for increased competition between the free to air sector and subscription broadcasting sectors;
- an ability for commercial television broadcasters to offer new services to consumers;
- increased consumer choice, which will promote digital conversion (which it considers is important in light of the opportunity costs associated with the delay of digital conversion); and
- assisting the commercial viability of commercial television broadcasters

over the longer term. The ACCC suggests that the inability to multi-channel restricts the free to air sector from being able to compete with other electronic media to retain its share of a fragmenting audience.

In taking this position, it should be noted that the ACCC has acknowledged that multichannelling should not be considered in isolation, and that other regulatory issues affecting the free to air television industry also need to be considered before any legislative amendments occur.

By contrast, the submission from the Australian Broadcasting Authority (ABA) does not discuss the policy issues at the heart of the multichannelling debate. While the ABA's submission makes some useful comments about how the digital environment affects the regulatory assumptions upon which broadcasting regulation is based (i.e. given that the “one licence, one service” approach makes less sense in a digital environment, where more than a “single stream of programming” is provided), it does not comment on any policy issues of substance. Presumably, the reason for this is that the ABA wants to remain neutral (and free from accusations of bias). However, by not getting involved in the policy debate, the ACCC, and not the ABA, has assumed the (agency) role of publicly commenting on what policy approach may best meets the needs of audiences.

(Endnotes)

¹ Note that this “Cheat's Guide” aims to identify some of the key arguments raised in submissions, but it does not purport to identify all arguments or refer to all submissions, nor does it address all issues raised in the multichannelling review (ie simulcasting issues and national broadcaster issues are not included). All submissions are available from: http://www.dcita.gov.au/broad/policy_reviews/digital_broadcasting_policy_reviews/review_of_restrictions_on_multichannelling_and_other_services

² Broadcast Australia is presently conducting trials on behalf of a number of content providers (eg in Sydney), and supports the permanent allocation of spectrum for datacasting services or other innovative broadcasting related services – such as the provision of audio-visual content to handheld devices.

³ ACCC, Emerging market structures in the communications sector, A report to Senator Alston the Minister for Communications, Information Technology and the Arts (June 2003)

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