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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING SERVICES AMENDMENT BILL (No. 2) 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Bob Collins)

BROADCASTING SERVICES AMENDMENT BILL (No. 2) 1993

OUTLINE

This Bill amends the *Broadcasting Services Act 1992* to modify certain aspects of the procedures for allocating satellite subscription television broadcasting licences A and B.

The tender process currently being carried out requires that notice must be given to each subsequent highest bidder if the previous highest bidder does not take up the licence, whether because of an adverse finding by the Australian Broadcasting Authority or the Trade Practices Commission, or for failure to pay the tendered amount. The process could be potentially protracted if applicants prove unable to take up the licences.

The proposed amendments will ensure that if the highest tenderers for Licence A or Licence B are unsuccessful, the tenderer who thereby has the opportunity to be assessed as a potential licensee would be required to provide a deposit of 5 percent of the amount bid by that tenderer within 3 days of being given that opportunity.

This is intended to avoid any unnecessary delay in finalising allocation of the licences. It does not reflect a judgement that either of the current highest bidders is unable to meet its bid, but will ensure that procedures are in place to meet such a contingency.

The amendments also provide for the refund of deposits in certain circumstances, the withdrawal of tenders without penalty and payment of compensation if the amendments would result in an acquisition of property on other than just terms.

FINANCIAL IMPACT STATEMENT

The amendment is not expected to have a significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 - Short title etc.

Clause 1(1) provides for the citation of the *Broadcasting Services Amendment Act (No. 2) 1993*.

Clause 1(2) provides that in the amending Act, the term 'Principal Act' means the *Broadcasting Services Act 1992*.

Clause 2 - Commencement

This clause provides that the amending Act commences on Royal Assent.

Clause 3 - Addition of new sections at end of Division 1 of Part 7

Division 1 of Part 7 of the Broadcasting Services Act provides for the allocation of subscription television broadcasting licences.

A tender process is currently being undertaken under the Broadcasting Services (Subscription Television Broadcasting Licences A and B Price-Based Allocation System) Determination made on 19 January 1993.

Concerns have been raised that the current tender process may become unduly protracted if any tenderers who are successful in the bidding process should subsequently prove unable to proceed to take up their licences.

This clause provides for the addition of 4 new sections at the end of Division 1 of Part 7 of the Act.

New section 98A will require any applicants for licences A and B, who are given notice after the commencement of the amendments that they will be allocated licence A or B on payment of the price bid, to pay a deposit of 5% within 3 business days after receiving the notice. The requirement for a deposit is not to apply to the offers already made to UCOM Pty Ltd and Hi-Vision Limited.

Where an applicant required to pay a deposit fails to do so, the applicant will be taken not to have lodged a tender and the tender procedures will apply to the applicant bidding the next highest price.

New section 98C will enable an applicant under section 93 for a subscription television broadcasting licence to withdraw the tender at any time before the payment of the deposit. Where an applicant who has been given notice that it is the successful tenderer withdraws a tender for licence A or B, the tender procedures will apply to the applicant bidding the next highest price.

New section 98B provides for the repayment of a deposit, with interest, to an applicant where the applicant is not allocated a licence due to a negative report from the Trade Practices Commission.

A deposit will not be repayable if the applicant is considered to be unsuitable by the ABA or the applicant fails to pay the balance of the price bid.

New section 98C will enable an applicant under section 93 for a subscription television broadcasting licence to withdraw the tender at any time before the payment of a deposit by the applicant. The application fee is to be repaid on the withdrawal of a tender under new subsection 98C(2).

New section 98D ensures that if the operation of the amendments would result in the acquisition of property otherwise than on just terms, a reasonable amount of compensation is payable to the person. If the amount of compensation is not agreed, action may be brought in the Federal Court.



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