



Australian Government
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Digital Action, Licence A and Licence B

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The Digital Action Plan

I might start out by saying something about the digital action plan.

At ACMA's 2006 ICE conference the Minister launched "**Ready, Get Set, Go Digital**" a Digital Action Plan for Australia which outlined a series of initiatives aimed at enhancing the uptake of terrestrial digital television prior to a final switchover from analogue.

As part of the announcement of **Ready, Get Set, Go Digital**, the Minister outlined a role for ACMA in the Digital Action Plan.

This includes a broad range of research initiatives aimed at understanding both the technical impediments to digital television uptake, as well as a role monitoring the impact of digital television on consumers.

In addition to a continuation of the demographic research on digital television uptake that has been conducted in recent years, ACMA will conduct research into:

- The retail experience of consumers considering purchasing digital TV;
- The state of existing household reception equipment including antenna and cabling and its suitability for digital reception;
- The availability and utility of new antenna and cabling equipment; and
- a study of STB and iDTV capability and performance.

ACMA will be intensifying its program of field strength measurement over the next two or three years to progressively develop and refine its information base on how digital television reception works in the Australian landscape. Some long held suppositions will be tested, such as the idea that digital transmission will provide many viewers with better services due to lack of ghosting and other multi-path effects, and potential reception problem areas will be identified well in advance of switchover.

ACMA has also been given powers to endorse industry codes relating to digital services and to mandate standards where necessary. There already appears to be some momentum for a code that allows identification and labelling of receiving equipment and ACMA will be working with the organisations that are interested in developing such a code.

ACMA has created a Digital Action Plan (DAP) Task Force, with responsibility for coordinating DAP activities across the agency. The Task Force will be working closely with Digital Australia to ensure that information about the digital landscape is both accurate and current.

One initiative that will enhance the offering for digital television viewers are the two new digital channels to be allocated by ACMA later this year – the channels that have become known as Channel A and Channel B. From their inception the Government has contemplated that these could include services that might be received on household television receivers, but might also be mobile services offering some innovative alternatives.

Programming, planning and technical issues for licences A and B

The two digital channels in question already have quite a long history. They were originally designed for 'datacasting' but when offered to the market the field was so small that the decision was taken to withdraw them from offer, though it is a myth that the auction attracted no bidders.

A 'datacasting service' is a concept defined in s.6 of the BSA 1992 to include a broadcasting service or a service providing any other content that could conceivably be included in a digital television transmission, however, in creating a licensing regime for datacasting, the Parliament imposed a series of limitations on that content broadly designed to ensure that the service did not breach the letter or spirit of the then-current moratorium on more than three commercial television broadcasting services available in each area. These limitations and prohibitions were set out in Schedule 6 of the BSA and include the 'genre conditions' in Division 1 of Part 3 of Schedule 6. Category A television programs were prohibited – this included drama, sports, music, infotainment or lifestyle, documentary, 'reality television,' children's entertainment, light entertainment or variety, compilation programs, a quiz or games program, a comedy program or a program that consists of a combination of any or all of the above, unless the program is an 'information-only program' or an 'educational program' so defined. These genre prohibitions were supported by a fairly comprehensive set of definitions.

Category B television programs included news or current affairs, a financial, market or business affairs bulletin, a weather bulletin or a bulletin consisting of a combination of any or all of the above programs. These were also prohibited, unless the program was information-only, educational or unless the program was a foreign language news or current affairs program, but the condition did not prevent transmission of a bulletin or bulletin in certain limited circumstances, notably if it did not exceed ten minutes and – I paraphrase very loosely here – was not run together with other bulletins or programs to create a single longer program.

Parliament also made provision for an important relaxation of these rules after 2006. Section 34 is a planning power that enables ACMA to make spectrum available for specified periods for a range of purposes that include datacasting. Section 34(7) provided that for the purpose of the application of this section to the availability of spectrum on or after 1 January 2007, a datacasting service is a service provided under and in accordance with the conditions of a datacasting licence; or

- (b) a datacasting service provided under any other licence allocated by the regulator under this Act, or
- (c) a datacasting service provided in accordance with a class licence.

The effect of this provision was that any spectrum made available for datacasting would, after 31 December 2006, be able to be used to provide any other service for which a licence could be obtained under the BSA. This potentially includes a subscription television broadcasting service or an open or subscription narrowcasting service.

Meanwhile, there has been a second important set of developments around technical standards, in particular the emergence of mobile television, with standards such as DVB-H, DMB, and Qualcomm's MediaFLO system all offering a broadcasting - that is, a point-to-multipoint - alternative to mobile telephony as a means of delivering high bandwidth content such as television to mobile devices, which, like the child does in that wonderful Telstra advertisement, we should really find a better name for than telephones. At least two of these

standards, DVB-H and MediaFLO, are designed to make use of UHF channels such as those planned in Australia for datacasting¹.

This is the background against which Parliament re-considered the fate of the two planned but unallocated television channels and the result was the Broadcasting Legislation Amendment (Digital Television) Act 2006. The new legislation provides for the allocation of two datacasting transmitter licences with somewhat different characteristics.

Channel A will be permitted to be used for the transmission of free-to-air services which can be received on a standard digital in-home television receiver. The types of services that could be offered are open narrowcasting, datacasting and community television.

Channel B could be used for a wider range of services such as mobile television.

Both channel A and channel B licensees will be required to operate in digital mode.

In relation to the channel A licences:

- Licensees may only provide datacasting, open narrowcasting and community broadcasting services which are capable of being received by domestic digital television receivers;
- Commercial television broadcasting licensees or their controllers and national broadcasters may not control a channel A datacasting transmitter licence;

In relation to the channel B licences:

- Licensees may provide any datacasting service under the *Broadcasting Services Act 1992* that can be authorised under a datacasting licence or under another licence allocated by ACMA under the Broadcasting Services Act authorising provision of that service (basically this means a subscription television broadcasting licence) or they may provide a service in accordance with a class licence under the Broadcasting Services Act (this might include an open narrowcasting television or radio service or a subscription television or radio service).
- However, licensees cannot provide commercial broadcasting services, subscription television broadcasting services to domestic digital television receivers, services provided by commercial television broadcasting licensees or national broadcasters to domestic digital television receivers, or retransmission of an existing commercial television broadcasting or national broadcasting service to domestic digital television receivers. In effect, the law creates different regimes depending on whether the service is able to be received by domestic digital television receivers.
- Commercial television broadcasting licensees and national broadcasters may control a channel B datacasting transmitter licence only if it is not used to provide services to domestic digital television receivers.

¹ This is an interesting sidelight to a dispute we are watching emerge in Europe about the ‘digital dividend’ – is it suitable only for broadcast-type applications such as DVB-H, or can European countries coordinate their dividends sufficiently to make UHF spectrum available that is suitable for advanced mobile telephony standards such as IMT-2000? At a face value a dispute that pits broadcasting against telecommunications, it may be better seen as competition between different ways of delivering similar, high bandwidth data to similar types of hybrid device.

Licence allocation, auction and regulation

In December 2006, the ACMA released a Consultation Paper, *Allocation of spectrum for new digital television services*, in which it invited comments on the allocation and licence parameters for the two licences. Around thirty submissions were received and these have been placed on the ACMA website except where a case for confidentiality has been accepted. I have to tell you that in relation to every issue canvassed in the December consultation paper ACMA is still considering those submissions; this means that as of today I have nothing newer to tell you than what is in the consultation paper. Watch this space!

Highlights of the consultation paper include:

Indicative timelines for allocation of the two licences

These would see release of sales documents in May, with allocation of licence A finalised in August/September and B in October/November. The longer timeline for B was designed to accommodate the ACCC access undertaking process, which another speaker will be covering.

Allocation processes

The paper proposes that the licences be offered via an English open outcry auction, something you've probably all seen or even participated in on your own street.

Participation criteria for channel A

ACMA is required to determine 'participation criteria' for the allocation of channel A². The Minister, who has the power to direct ACMA in relation to the exercise of this power, has said that the criteria would relate to financial capability and willingness to roll out and maintain national services³. You could say that this imports an element of merit into the price-based allocation process for licence A. The consultation paper merely calls for views.

Competition limits

As with any allocation of an apparatus licence under the Radiocommunications Act, ACMA or the Minister may limit the number of licences that can be obtained by any one person or specified person – these are referred to as 'competition limits'. This is in addition to the general powers of the ACCC in relation to substantial lessening of competition in a market. ACMA takes a starting position that competition limits may be unnecessary in this case.

Narrowcasting and category boundary issues

I will deal with this later in the presentation.

Rollout obligations

ACMA may impose rollout conditions on licence A designed to mandate a minimum level of coverage within a specified time and the Minister may direct ACMA in relation to the nature of those conditions.

Licence B comes with an obligation to commence to transmit a service within 18 months of the allocation of the licence or such longer period as ACMA allows.

Licence characteristics and design of the licences

Licences A and B are unique in that they will be issued for ten years with the possibility of a further 5-year renewal. This can be contrasted with spectrum licences (15 years, with

² Section 106(5A), Radiocommunications Act.

³ Media release, 12 September 2006.

renewal in some circumstances); ordinary apparatus licences (up to 5 years) or the special apparatus licences used by licensed broadcasters in the broadcasting services bands, where the entitlement to renewal is linked to renewal of the associated broadcasting licence. This much is fixed in legislation but the design of the licences – how they are constructed out of the two unassigned, vacant channels in each area – is for ACMA to decide.

The consultation paper raises the issue of whether the licences would be issued as one or as multiple discrete sets transmitter licences. Multiple licences might facilitate subsequent trading (although sub-lease or authorised third-party use of apparatus licences is also available under the Radiocommunications Act). Multiple apparatus licences would require any rollout obligation to be carefully designed so that a national obligation could be imposed and if necessary enforced across multiple transmitter licences under potentially a fragmented ownership.

Technical arrangements

Technical issues relating to the allocation process have attracted considerable interest over recent months, including some media commentary, not all of it well-informed. Probably the major issue is that the two channels in each market were originally designed for fixed or DVB-T digital television transmissions, the same as the five channels now used by existing broadcasters to simulcast in digital. Mobile television emerged later as a potential application of the channels and requires a significantly different planning approach. Because hand-held devices typically operate at about chest height (rather than on top of a chimney) and with tiny antennas, much higher field strengths are required and a mobile operator may wish to deploy additional infill transmitters to achieve good levels of coverage throughout an area.

The existing unassigned channels vary in their utility for mobile television. In many areas, there is at least one channel that ACMA believes would be well-suited to mobile television, including use of additional infill transmitters. In many other areas, a limited re-planning exercise is possible that would increase the utility of a channel for mobile television. In a third group of areas – and yes, Sydney is the most significant example - limited re-planning appears not to be an option and – although the available channel can be used for mobile television - the need to avoid interference to other services would constrain deployment of any infill transmitters additional to those used by existing television services.

The paper gives a lot of detail on these issues. It also canvasses an approach by which a limited re-planning exercise would be foreshadowed at the time of the sale. In the event the successful applicant for Licence B wishes to deploy mobile television, ACMA would undertake that re-planning on request and subject to the processes set out in legislation for that re-planning. So as not to constrain future planning, such an offer could be expected to be time-limited.

Once again, I regret that I am not able to offer you any advance on ACMA's thinking today so my apologies to those of you that are familiar with the December consultation paper and perhaps keen to hear about what we have learned from the process.

Boundaries and definitions of narrowcasting, datacasting, mobile and other key concepts

I will close with some general remarks about the boundaries of what these channels can and cannot be used for. Other speakers will drill down deeper into some of these boundary

definitions so I will just set the scene and give you an account of what ACMA has done to date.

From what I have said already about the intended characteristics of licences A and B, key boundary issues include:

1. What kinds of datacasting are authorised under a datacasting licence?
2. What kinds of broadcasting are authorised under the narrowcasting class licences?
3. What is mobile television and what is a ‘domestic digital television receiver’?

Datacasting under a datacasting licence

This does not have to detain us for long. I have already made the point that the boundaries of what is permitted under a datacasting licence are supported by the legal definitions in Schedule 6 of the BSA of each of the various genres. So, for example, we learn that an ‘infotainment or lifestyle’ program means ‘a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value’ (clause 2 of Schedule 6, BSA). It is notoriously difficult to define any programming genre with complete confidence and to the extent these definitions still require judgment calls about what is in or out the regulator has been given discretion to make ‘genre determinations’ that a specified television program or specified matter is either a category A television program (clause 13 relates) or a category B television program (clause 15). The genre determination needs to identify which of the various types of category A or B program the television program belongs to. The power has never been used but could in theory give certainty as to the application of the genre rules to particular television programs or other matter.

Broadcasting under the narrowcasting class licences

The second key boundary issue is that between narrowcasting and broadcasting, or to be more specific, between open narrowcasting and commercial broadcasting (the former is permitted on both licences, the latter forbidden) and also, potentially, between subscription television narrowcasting and subscription television broadcasting.

The categories of broadcasting service are defined in Part 2 of the BSA. Subscription narrowcasting and open narrowcasting services are defined in sections 17 and 18. To be defined as narrowcasting, reception of a service must be limited in one of the following ways:

- the service is targeted to a special interest group
- reception of the service is confined to specific venues, or other limited locations
- the service operates for a limited period or to cover a special event
- the programs are of limited appeal; or
- for some other reason.

Commercial broadcasting services are defined in section 14. Their defining characteristics include:

- they provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public.

These definitions are less detailed and prescriptive than the genre rules applying to datacasting services and there have been calls for greater clarity about what might or might not be regarded as a narrowcasting service. To assist ACMA or the Minister to provide appropriate levels of regulatory certainty, Parliament has included in Part 2 the powers in section 19 and section 21.

Section 19 (**ACMA may determine additional criteria or clarify existing criteria**) permits ACMA to make legislative instruments called determinations that determine additional criteria to those specified in the definitions in Part 2 or to clarify the existing criteria for the purpose of distinguishing between categories of broadcasting service. The section also empowers the Minister to give specific directions to ACMA as to the making of determinations and clarifications. Section 19 has been used extensively in the past to clarify aspects of the boundary between commercial radio broadcasting services and open narrowcasting radio.

Section 21 (**Requests to ACMA to decide which category a broadcasting service falls into**) allows a person to apply to ACMA for a binding opinion about the category of broadcasting service an existing or proposed service falls into. ACMA must consider certain matters set out in section 22 of the BSA when providing such an opinion:

- the geographic coverage of the service
- the size of the potential audience
- the accessibility of the service, including whether it is encrypted and the cost of availability of receiving equipment
- the duration and frequency of the service
- the nature of the target audience
- the nature of the programs provided by the service, including the level of interest in the subject matter, the intended audience, and the social and cultural impact, and
- other matters, as ACMA thinks fit.

On 15 February 2007 ACMA published for consultation a set of draft guidelines on the types of services that could be provided as narrowcasting television services. The ACMA endeavoured to identify and address the key issues and concerns around which guidelines may be needed. However, it was keen to hear whether there are other matters requiring clarification and whether ACMA's proposed approach to categorisation of services was workable before the guidelines are finalised. Submissions on the draft guidelines were due on 9 March although I understand an extension may have been granted. Eight submissions have been received to date and a further submission is expected shortly. These submissions are not yet on the ACMA website but will be posted soon unless ACMA accepts a claim for confidentiality in relation to all or part of a submission.

ACMA intends to finalise and publish the guidelines by mid-April 2007. Once finalised the guidelines will set out ACMA's approach to certain matters it must consider when deciding which category a broadcasting service falls into and encourage industry to seek formal opinions from ACMA under section 21 on the categories of new services. The guidelines are intended to assist parties who are contemplating providing narrowcasting television services on the proposed new Channel A or Channel B.

ACMA gave some thought to whether to exercise its power in section 19 but anticipated that new digital television services would differ considerably in their look and feel from traditional analogue services. It considered it unlikely that a section 19 notice could decisively and comprehensively cover the range of service formats that may emerge, at this early stage in the development of digital television services. At a later stage, as a clearer picture of the potential range of narrowcasting television services emerges, ACMA can consider whether it is necessary to further clarify any of the broadcasting service category definitions, using section 19.

Meanwhile the draft guidelines⁴ are on ACMA's website. They include a policy and legal framework followed by a detailed examination of matters to be considered by ACMA when providing an opinion under section 21 and considering the matters in section 22. The text of the draft guideline includes general observations about the circumstances in which a particular section 22 matter might incline the Authority towards finding a service to be narrowcasting. It also indicates the kinds of evidence or other material ACMA will find helpful in having regard to the section 22 matters. To give you a flavour, in relation to 'audience characteristics' section 22(e), the draft guidelines say that 'Consideration of the target audience for a service will be decisive in distinguishing 'programs of limited appeal' from those that 'appear to be intended to appeal to the general public' and continues:

In general, defining a target audience with reference to age and gender alone is unlikely to limit the appeal and reception of a service to the extent that it is regarded as a narrowcasting service. In particular, and consistent with the approach to radio narrowcasting services, a service that is aimed at particular persons within an age range is unlikely to be a narrowcasting service on this basis, unless the service is targeted to persons of less than 10 years old.'

In its December 2006 consultation paper on allocation of spectrum for new digital television services, ACMA encouraged prospective purchasers of Licence A or Licence B to apply for section 21 opinions as soon as possible. ACMA can, and must, consider section 21 applications at any time. Upon receipt of a valid and complete application, ACMA must provide an opinion within 45 days, though there is provision for it to seek additional information from the applicant. The opinion is binding for a period of five years, provided that the circumstances relating to the service remain the same as those advised to ACMA when the application for the opinion was made.

Opinions provided under section 21 of the BSA are published when the service to which the opinion relates commences operation.

What is mobile television and what is a 'domestic digital television receiver'

A third key regulatory boundary is mobile television versus television to domestic digital television receivers, by which the Parliament means an ordinary digital-enabled television set. Its importance is twofold: licence A services must be capable of being received by a domestic digital television receiver. Conversely, the content that is permitted on licence B service varies depending on whether the service is capable of being received by a domestic digital television receiver. In particular, subscription television broadcasting services are not permitted on licence B if they are capable of being received on a domestic digital television receiver. Also it is prohibited for a national broadcasting service, a commercial television

⁴ Narrowcasting services on television / Guidelines and Information about open narrowcasting television and subscription television narrowcasting

broadcasting licensee or the controller of such a licensee to operate, or permit the operation of, a licence B transmitter to provide a datacasting service, if the service is capable of being received on a domestic digital television receiver.

These rules are set out in section 109A of the Radiocommunications Act, which I understand will be examined in more depth by another speaker.

‘Domestic digital television receiver’ is defined in section 5 of the Radiocommunications Act to mean ‘domestic digital television equipment that:

- (a) is not a hand-held device; and
- (b) is capable of receiving television programs transmitted in:
 - a. SDTV digital mode; or
 - b. HDTV digital mode; and
- (c) has such other characteristics (if any) as are specified in a legislative instrument made by the ACMA under this paragraph.

The definition would appear to rely on the fact that existing mobile television standards such as DVB-H do not carry television programs in SDTV or HDTV digital mode (as these formats would have unnecessarily high resolution for small hand-held screens). As a great deal may hang on whether your datacasting service is capable of being received by a domestic digital television receiver and as both transmission standards and the choice of receiving devices can be expected to continue to evolve, it is quite likely that from time to time ACMA will be asked to make or vary instruments under the paragraph. To date ACMA has not done so. I might leave it to a later speaker to focus in a bit more depth on this provision.