



Sub No. 25

12 May 1999

The Broadcasting Inquiry  
Productivity Commission  
Locked Bag 2  
Collins Street East Post Office  
Melbourne Vic 8003



The Seven Network is pleased to make a submission to the Commission's Inquiry into the Broadcasting Services Act, 1992.

In this submission we will address only the major benefits attaching to the existing regulatory system and some benefits that may attach to change. This is in response to the Issues Paper issued by the Commission in March. In a later, more substantial submission the Seven Network will address further issues of the public interest objectives of broadcasting policy, the economics of broadcasting and the market for Australian television product.

In doing so, Seven acknowledges the continuing nature of the debate about broadcasting, its productivity, efficiency, competitiveness, technological change and relevance to consumers. We are pleased to be part of the ideas formation process of the Commission and will appear before the Commission at its September hearings once all Seven submissions are complete.

***The Seven Network endorses the FACTS' Submission***

In making its submission the Seven Network notes that a substantive submission is to be placed before the Commission by the Federation of Australian Commercial Television Stations ("FACTS"), the representative of the common interests of the industry. The Seven Network endorses that FACTS' submission.

***Foreign Ownership and Cross-media Policies***

It is clear to the Seven Network that the Commission's Inquiry will be an evolving process. Much of the material that the Commission initially seeks will be provided through various industry bodies and no doubt through the Commission's own enquiries. At this stage of the Inquiry the Seven Network notes that the Federal

SEVEN NETWORK LIMITED

ACN 052 816 789

CORPORATE OFFICE, LEVEL 13, 1 PACIFIC HIGHWAY, NORTH SYDNEY, NSW 2060 TELEPHONE (02) 9967 7903 FACSIMILE (02) 9967 7972

Treasurer, when announcing the Inquiry, indicated that the review did not signal any change to the government's foreign and cross media ownership policies. Should the Commission in the course of its Inquiry, examine and make recommendations to change these policies Seven Network reserves its right to make detailed specific submissions dealing with those issues

### ***The Benefits of the Existing Legislative Structure***

#### **1. Quality Services**

As the Commission is aware the present commercial television broadcasting industry operates within a comprehensive and complex regulatory structure. The existing structure has evolved over five decades and has encouraged the development of a strong public broadcasting sector complementing a strong and competitive commercial free-to-air television sector. This has resulted in a free to air broadcast sector that delivers the viewers diversity, quality and local relevance.

Importantly, one foundation of this strong broadcasting sector is the legislative restriction limiting the number of commercial free-to-air television licenses in each broadcast area. That restriction has over the years enabled the existing commercial free-to-air television broadcast licensees to attract advertising revenues that permit investment in quality local product and extensive transmission infrastructure.

The Broadcasting Services Act has three different sets of objectives – social, cultural and economic. The social objectives include diversity in the supply of news and current affairs, censorship of unsuitable material, the provision of safeguards for the protection of children and the availability of free quality television services to both city and rural viewers. The cultural objectives include the development and maintenance of the Australian culture and the export of programming that showcases Australian culture internationally. The economic objectives include the delivery of a range of quality free-to-air television services and the development of an efficient television advertising industry. The Seven Network believes that the existing free-to-air commercial television industry satisfies all of these social, cultural and economic objectives and delivers a service that above all entertains the viewers for free.

#### **2. Serving a Small and Widespread Population**

The Australian terrestrial broadcast landscape is particularly challenging – Australia is different from most other countries in that a relatively small population is spread out across a huge land mass. This makes Australia a difficult operating environment for terrestrial broadcasters. In such an environment the Seven Network believes that if market forces alone were left to shape the Australian television broadcast industry (without the regulatory restrictions on the number of commercial free-to-air television broadcast licenses) the result may well have been a plethora of low cost and low quality commercial stations in the large capital cities and the rest of the country would perhaps be the domain of the public broadcasters. Instead, the regulatory environment has enabled the free-to-air television broadcasters to deliver to viewers quality and comprehensive services at no charge and which feature:

- ☐ Local news and current affairs
- ☐ Premium sport
- ☐ Quality Australian drama
- ☐ Local quiz, entertainment and information programs
- ☐ The best of overseas programming

### 3. *Benefiting from Strong Competition*

In its review of the competitive aspects of this environment, it should be clear to the Commission that within the broadcasting industry in Australia there is a highly competitive attitude. There is vigorous competition both at a network and a local station level for advertising and programming. The present structure is firmly based on providing quality 'free to air' broadcasting to the Australian population and the present structure has achieved this goal. When evaluating the competition and efficiency aspects of the Broadcasting Services Act the Commission must take into account the present benefits to Australian consumers under the existing legislation.

#### ***The System Must Facilitate Change***

All broadcasters in Australia operate within the framework of the existing regulatory structure however most broadcasters are nonetheless actively exploring opportunities which are provided by the development of technology and the growing convergence of delivery systems within the broadcasting industry. The inter-relationships between all of these various industries and the capacity for growth need to be understood and encouraged whilst maintaining the present high quality commercial free to air television broadcast system which exists in Australia.

The Seven Network is well advanced in developing its digital platforms for the future and also has explored many of the opportunities available through the internet, datacasting and other related services.

At this point in the history of the broadcasting industry in Australia the industry is poised for significant changes as a result of technological development. As the Commission well knows, the commercial free-to-air television broadcasters are currently in the process of investing very significant amounts to enable the transition to digital broadcasting. Also, as the Commission knows this expenditure and indeed the transmission to digital broadcasting, is mandated by the Broadcasting Services Act.

At such a time of great change and great cost the Seven Network cautions the Commission that if any of the key fundamentals in the Broadcasting Services Act are changed (for example: if new commercial television broadcast licensees are permitted before 1 January 2007) the free-to-air television broadcasters may not be able to complete or survive the extraordinary costs in the transmission to digital. As the Commission knows, many of the free-to-air television broadcasters are listed public companies or they are owned and controlled by listed public companies. Shareholders require these companies to operate efficiently and to provide a return; this may prove impossible if the "ground rules" are changed at this time.

### ***Some Aspects of the Existing Structure that may Benefit from Change***

Whilst the Seven Network believes that the key regulatory provisions in the Broadcasting Services Act should remain the Seven Network acknowledges that some minor aspects of the regulation are not best achieving the objectives of the Act. The Seven Network suggests that the Commission may wish to consider variations or other forms of regulation in these areas to produce the desired public policy outcomes.

#### **1. Children's Programming**

Under the Broadcasting Services Act free-to-air commercial television licensees are required to broadcast each year many hours of first release, Australian children's programming. This includes a minimum of thirty-two hours of first release Australian children's drama. Australian children's drama programming is expensive – even with funding assistance from the Film Finance Corporation, the license fees for such programming are around \$55,000 per half hour. Australian children's drama programming is produced to certain criteria set by the Australian Broadcasting Authority with respect to entertainment and educational values. Accordingly, the Australian children's drama programming broadcast by commercial television licensees is of a high standard. Nonetheless, few children actually watch these expensive and educational dramas. The Seven Network suggests that the Commission may wish to explore other ways of ensuring that Australian children's drama is both attractive to children and broadcast free to air. This could include the establishment of a production fund (with contributions from free-to-air television, pay television and even video distributors) or it may involve a reassessment of the functions of the public broadcasters.

#### **2. Australian Context**

The Seven Network does also not believe that the only way to meet the objectives for the development of Australian content lies in the current regulations. In the range of material produced and the various outlets for production material and the possibilities for financing such product, the Seven Network believes that there should be greater flexibility within the context of the existing regulations or alternately that the Commission should investigate a more flexible and commercially orientated approach to meeting these objectives and one that is more geared to market realities.

The Seven Network believes that one of the greatest challenges faced by all broadcasters at this point in time is the financing of local product. This is particularly so with respect to local drama product because it is the most expensive programming to produce. American television product dominates the English speaking world. This is a market reality – the size of the American market allows programming to be produced and sold within the market on a cost recoupment basis. Consequently, American product can be sold very cheaply outside America; the producer does not require export sales to recover production costs.

Unfortunately the market realities in smaller markets are very different and particularly so in Australia where the market is much smaller. In Australia the

high cost of making series drama or one off drama programs (such as telemovies and mini-series) cannot be recovered from local sales. Consequently the Australian production industry is very dependent on production investment and export opportunities (so that investors can achieve a return on their investment). The existing regulations prescribing quite narrowly what is permitted to qualify as an "Australian" production make it even harder to attract export sales and investment.

The Seven Network suggests that the Commission may wish to explore ways of encouraging the financing and export of programs. For example, perhaps the "Australian" criteria can be slightly relaxed with a view to increasing the export potential of local production. Or perhaps the various funding bodies can be required to channel more funding into productions for commercial television broadcast where, after all, the greatest audiences are delivered.

### 3. Disparity in Regulation - Pay Television

The Seven Network believes that a disproportionate amount of the regulatory burden falls on commercial free-to-air television broadcasters and accordingly the Seven Network urges the Commission, when looking at these issues to consider the responsibility of all the participants in the broadcasting industry.

The Seven Network believes that there is a regulatory disparity between the commercial free-to-air broadcasters and pay television and that these disparities are anti-competitive and not justified by the public benefit. For example, whilst the commercial free-to-air broadcasters pay large amounts each year by way of licence fees the pay television broadcasters are only required to pay a token amount for their licences. Furthermore, whilst commercial free-to-air television broadcasters are required to meet complex and expensive local content quotas, pay television licensees are only required to meet a simple and very low requirement.

There appears to be no compelling reason in a public policy sense for this disparity. Certainly pay television invested enormous amounts in establishing a cable infrastructure in parts of some capital cities but that investment was a commercial decision made by the pay television operators. The government did not require cable duplication; the government should not be expected to assist the pay television industry in relieving or recouping those costs. But there is surprising little regulation of cable pay television in the Broadcasting Services Act 1992.

The Seven Network does however stress that the one existing restriction on pay television - the "anti-siphoning" regulations in Section 115 of the Broadcasting Services Act - must be retained. The "anti-siphoning" provisions operate so as to ensure that all Australians can view events of national importance, not just those who can afford pay television. Because the sport events on the "anti-siphoning" list are so popular and because such events have proved in foreign markets to be strong "drivers" for subscription television, the Seven Network believes that without the "anti-siphoning" regulations much, if not most, premium sport may not be available to the Australian public without charge. If the "anti-siphoning" regulations are removed from the Broadcasting Services Act the Seven Network is convinced that pay television will exclusively acquire and exclusively broadcast the pick of these sports. The Seven Network believes that those who cannot afford pay

television in their home should nonetheless be able to continue to enjoy watching premium sport on commercial television free of charge.

4. *Datacasters Becoming "Defacto" Broadcasters*

As mentioned above, the Seven Network is convinced that if any of the current keystones in the Broadcasting Services Act are changed (for example: if new commercial television broadcast licensees are permitted before 1 January 2007) the free-to-air television broadcasters may not be able to complete or survive the extraordinary costs in the transition to digital transmission. In this context the Seven Network is particularly anxious that the current Review by the Department of Information Technology and Communications into datacasting does not allow datacasters to become "defacto" broadcasters. The Seven Network cautions the Commission that this will happen if datacasters are not legislatively prevented from delivering services that "look and feel" like broadcast television. As technology is changing so rapidly it is equally important that any such legislative restriction is technology neutral; there is little point in restricting real time delivery of data that "looks and feels" like broadcast television if a consumer is permitted to record and play back data so that the consumer to all intents experiences "broadcast television". If datacasters are permitted to be "defacto" broadcasters, revenue and viewers will be spread across a very different broadcast landscape and free to air commercial television will not be financially able to provide viewers with the same quality free to air services as they currently enjoy.

**Conclusion**

It is clear that the Issues Paper distributed by the Commission touches on almost all of the matters which are the subject of broadcasting regulation in Australia. The Seven Network is, of course, interested in all the questions posed in that Issues Paper however the Seven Network believes that this brief and more narrowly focussed submission is most appropriate at this stage of the Commission's Inquiry.

The Seven Network will of course continue to be involved with the Commission's Inquiry and looks forward to receiving advice from the Commission regarding the procedure for the next stage of the process in May/June this year.

Yours truly,



Peter Manning  
Director of Corporate Affairs & Planning