

National Indigenous TV Limited (NITV)

**Submission to the Senate Environment, Communications, and the Arts
Committee Broadcasting Legislation Amendment (Digital Television) Bill 2010**

1. Introduction

This Bill alters the delivery of free to air television services in the regional and remote areas of Australia in fundamental ways.

Perhaps the Bill represents the biggest change in regional television since equalisation occurred in the late 1980s. Equalisation was the name given to the policy which attempted to replicate, in regional areas, the range of free to air TV services available in the 5 metropolitan TV markets.

In the remote areas the changes enunciated by the Bill create the biggest changes since direct to home (DTH) digital free to air TV satellite broadcasts began on the Aurora platform in 1997 (replacing the previous analog BMAC DTH free to air satellite services).

Despite this scale of change, the Bill before the Parliament is largely a construct developed by regional and remote commercial TV free to air broadcasters, DBCDE and the government.

It has not derived from an open consultative process. The Bill has not been guided in any way by the promised Discussion Paper and the range of community and other broadcaster views and ideas such an open process would have engendered.

As can be expected, given this gestation, the Bill may well cover the appropriate and understandable interests of regional and remote commercial free to air TV broadcasters and to a lesser extent the two National broadcasters, but it leaves virtually all questions relating to other free to air broadcasters and significant consumer issues up in the air.

NITV is aware that detailed and intense discussions have been held between DBCDE and commercial and national TV broadcasters ever since the Minister's first announcement of this new free to air satellite TV platform on 29 January 2009.

Despite numerous written and verbal attempts to be included in these discussions, NITV has never been consulted about any aspect of the matters covered in the Bill. This notwithstanding that NITV, along with the ABC, SBS and Westlink, is available all over Australia via the current free to air DTH digital satellite TV platform, called Aurora.

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When the Minister made his first statement in connection with the new DTH free to air television satellite platform in January 2009, NITV was told it could have appropriate input through responding to a Discussion Paper which would lead to whatever legislative change was necessary.

As time went by this undertaking to enable NITV to have appropriate input changed to one where NITV was told the government would make its overall decision and then issue a Discussion Paper to allow organisations like NITV to affect the detail of any resulting Bill and the implementation of the government in principle decision.

This undertaking was first made in June 2009 and most recently in November last year. However, failure to allow NITV to provide meaningful input has limited NITV to effectively have only 10 business days in which to examine an 80 page Explanatory Memorandum and a 118 page Bill and to provide its views to the Senate Committee by 6 April.

It may be that beneath and behind the Bill someone is looking after the interests of NITV and its current free to air viewers, but in the limited time NITV has had available to make this submission, we can find no mention of, or allowance for, existing Australia wide TV open narrowcast services (such as NITV) delivered on the current free to air TV DTH satellite platform, Aurora.

Such is the scale and range of questions raised by the Bill for NITV that we are not in a position to suggest detailed amendments to its clauses. Rather what follows **in Section 3 on page 4 of this submission** is a broad sweep of concerns dealing largely with what the Bill does not outline rather than what the Bill does say.

2. Background to NITV relevant to the Bill

National Indigenous Television (NITV) is a not for profit public company that provides a nationwide Indigenous television service by cable, satellite and terrestrial transmission means and selected on line audio visual content. The content for these services is primarily commissioned or acquired from the Indigenous production sector. NITV broadcasts 24 hours a day 7 days a week, year round.

Allowing for overlaps between free to air (FTA) and subscription TV homes, NITV reaches over 8 million Australians through its various platforms – making it currently Australia's 6th biggest TV broadcaster by potential audience reach.

NITV reaches its audiences through a variety of means.

Free-to-air

- Terrestrial digital Channel 40 in Sydney via transmissions on Broadcast Australia's trial datacasting transmitter (due to end as a result of a decision by ACMA on 30 April 2010);
- Terrestrial analog channel 35 Mt. Isa;
- Terrestrial analog channel 60 Bourke;
- Terrestrial analog channel 34 Alice Springs;

- Terrestrial analog in 147 Remote Indigenous communities in remote Australia; and
- Satellite digital DTH through the Optus Aurora C1 Satellite free to air nationwide satellite platform (to those that have such DTH reception facilities).

Subscription

- Channel 180 everywhere Foxtel, Austar and Optus;
- Channel 6 on the basic tier of Neighborhood Cable in Geelong, Ballarat and Mildura; and
- Channel 502 on the basic tier of TransACT's TransTV in Canberra.
- Austar Schools package for educational institutions and schools.

In house distribution

- Parliament House, Canberra

At current levels of digital uptake in Sydney, NITV's reaches approximately 2.5 million Australians free to air. NITV's number one objective in transmission is to increase the number of TV homes that can receive its full service free to air through the same reception equipment they use to receive the local commercial and National free to air TV services.

NITV reaches approximately 7 million Australians in the 2.3 million subscription TV homes.

Allowing for overlaps between the free to air and subscription TV homes all told NITV estimates that it now is available to over 8 million Australians. NITV has achieved this with annual direct distribution and transmission expenditure of less than 1% of the combined ABC and SBS TV distribution and transmission annual expenditure (and about 2.5% of the government's annual expenditure to support the new free to air DTH TV satellite platform, the subject of the Bill).

However the overwhelming majority of the over 8 million have to pay to watch the service. Indeed when the Sydney trial transmissions must cease on April 30 2010 something like 95% of TV homes that can access the service will have to pay for this access.

According to the Minister's statement of 5 January 2010 if NITV took its rightful place on the new free to air DTH TV satellite platform this would add at least 500,000 people that could receive NITV free to air through the same TV reception equipment used to watch the local commercial and National free to air TV services.

NITV has been on air since July 2007. We have earned the support and trust of Indigenous viewers and other Australians. Most of NITV's content is made, not bought.

NITV informs, entertains and educates its Indigenous and general audiences. We tell stories and showcase the rich diversity of culture, languages and creative talent from all over Australia. Programs like The Marngrook Footy Show, Barefoot Rugby League Show, Yaarnz, Living Strong, Grounded, NITV Nightly News and Milli Milli Nganka, just to name a few, have proven to be popular shows that send out positive messages about Indigenous Australia and speak primarily to Indigenous Australians.

NITV has actively developed the independent Indigenous production sector. NITV utilises and empowers the talents of Indigenous writers, directors, journalists and producers to create content for both linear television broadcast and non-linear distribution across all genres ranging from music to health, sport, news, current affairs, culture and children's programs.

Historically in Australian television, there has been an extremely limited range of programs made by Indigenous Australians broadcast. Moreover, most programs featuring Aboriginal and Torres Strait Islander people, culture, language and issues are rarely broadcast during prime time viewing hours.

Most significantly, the majority of content about Aboriginal and Torres Strait Islander people aired on Australian television usually portrays negative images and reinforces negative stereotypes.

By actively commissioning and broadcasting, prime time nationally, original, locally produced content made by Indigenous people, NITV fills a significant gap in the Australian television and media landscape. By doing so NITV assists reconciliation by growing the awareness of the wider community to the rich diversity of Australia's first peoples.

There are employment, enterprise sustainability and very substantial economic benefits delivered through our commissioning activity. The well documented and accepted Screen Australia economic multiplier indicates that each dollar invested into production delivers an additional \$1.80 outside of production activities. In NITV's case, the vast majority of this economic benefit is delivered directly to Aboriginal and Torres Strait Islander communities and enterprises.

NITV has commissioned in excess of 1,400 hours of first run Australian content since its inception, helping to make it the most Australian of any nation wide free to air TV broadcaster.

Unlike commercial broadcasters in Australia, who have a 55% local content obligation, NITV is required to comply to a 95% local content obligation. NITV is a foundation member of the World Indigenous Television Broadcasters Network (WITBN) alongside other broadcasters such as Maori TV in New Zealand, Canada's First Nations broadcaster, APTN (Aboriginal People's Television Network), amongst many others. We are working together, internationally, to not only share original content, but to promote Australian Indigenous people and issues to an international audience. By doing so, NITV actively contributes to Australia's national identity in the 21st Century global village.

The latest round of audience research carried out by McNair Ingenuity and Origin Communications confirms that approximately 262,000 Indigenous Australians have potential access to NITV via free to air or subscription means (i.e. they have to pay) at home (substantially less when the Sydney trial free-to-air transmissions cease in April as a result of a decision by ACMA).

Additionally, audience research also amply demonstrated that those Aboriginal and Torres Strait Islander people who can watch NITV value it highly:

- 93% agree that NITV makes them feel proud of Aboriginal and Torres Strait Islander culture, 59% strongly agree.
- 91% trust NITV as a source of news about Aboriginal and Torres Strait Islander people and issues.

The following responses were typical of qualitative participants' attitudes toward NITV –

- *“Having the NITV channel makes me feel very happy and proud to be Indigenous and to share our culture with the world.”*
- *“...we want to see blackfellas ... we are very important, we can act and do our own movies and documentaries just like white people; having NITV makes us have ownership and makes us proud to be Aboriginal...”*

NITV employs around 40 Australians. Over 70% of staff is Indigenous. Indigenous production and media companies create NITV's content. NITV is, and will continue to grow as, a training ground for young Indigenous Australians interested in a career in television and the emerging digital audio visual content industry.

NITV's fundamental aspiration is to be resourced to deliver the best possible content via free to air broadcasting means across the whole of Australia, with the NITV service to be available through the same TV reception equipment homes use to watch their local commercial and National free to air TV services.

Hence NITV taking its rightful place on the new free to air DTH TV satellite platform is a vital part of NITV's fundamental aspiration.

3. Specific NITV Questions to the Senate in relation to the Bill

This is a very complex and wide ranging Bill. There is little chance of Senators obtaining a more comprehensive and detailed grasp of it during the time of the Committee than NITV has developed in the 10 business days available to it to develop this submission.

In order to provide NITV related input in the most easily accessible way for the Committee, NITV has formatted this submission by setting out a simple indicative list of questions (far from an exhaustive list) that it would have sought answers to during the 14 months of discussions between DBCDE and commercial and National TV broadcasters had we had access to those discussions.

It is important to note that NITV's sphere of interest is not limited to its own transmissions and costs. We must also represent the interests of our current and future viewers and the cost to them of receiving NITV, including the range and cost of free to air domestic reception equipment.

NITV being on the new satellite platform

- i) Will the 100,000 plus fixed location domestic homes that currently access their free to air TV services DTH from the Aurora platform (and hence have DTH access to NITV) be able to access NITV DTH through the same set top box (STB) used to receive commercial and national TV services after they convert to the new free to air TV DTH satellite platform?
- ii) Is it true that the only way for this [the scenario outlined in (1) above] to happen is for NITV to purchase new transponder capacity on the new platform?
- iii) How much would such capacity cost and is that capacity available?
- iv) Given the government is paying for the satellite operations of the new free to air DTH platform, will the government pay the extra costs (and ensure transponder capacity is available) of ensuring the homes outlined in (1) above can continue to watch NITV and 'local' commercial and National free to air TV services through the same STB – starting on 1 July 2010 around Mildura?
- v) If not, why not, since the government is doing that for commercial and national free to air TV services?
- vi) If NITV has to pay (from its own or extra government funding) for extra satellite transponder capacity and ancillary services in order to be on the new DTH free to air TV satellite platform it is important it understands how the cost of this capacity and ancillary services it requires were developed (and whether it pays the same as the commercial and National free to air broadcasters). NITV is required to report to government on the way it ensures value for money for its procurements and no doubt will be asked such financial accountability questions when reporting on these types of expenditures. In respect of this matter NITV has the following questions:
 - a. With whom would it contract for the satellite capacity and other services such as multiplexing, uplinking and any electronic program guide (EPG) services provided?
 - b. What competitive process was used to determine this (or these) 'supplying' entity(ies)?
 - c. What competitive process was used to determine the supplier of satellite transponder capacity?

- d. How will the EPG developed for the new satellite platform work and what may be the licensing fees related to any associated software that organisations like NITV will have to pay should they be included in the EPG?
- vii) Where in the Bill are there any provisions that would ensure or even contemplate how:
 - a. NITV would be included on the new satellite platform if it sought to be and had the capacity to pay;
 - b. NITV would be included in the platform EPG if it sought to be and had the capacity to pay;
 - c. NITV would have access to the managers of the platform and would be treated as an equal service provider regarding inputs to platform technical developments, disaster recovery plans, order of restoration and recovery, access to equipment redundancy etc.

Reception equipment availability and cost

- viii) Exactly what diameter satellite dish and satellite STB will be required to receive services from the new platform?
- ix) Presumably for any STBs to be available in the timeframe for Mildura indicated by the Minister (on 23 March 2010) of around 1 June 2010, technical specifications and transmission parameters for STBs must exist.

Hence have the technical specifications and transmission parameters of free to air TV services to be available from the new satellite platform, including for the conditional access system and EPG, been established? If so have they been published? If not as at 6 April 2010 which entities have had access to them?
- x) How has the supply of STBs for the new satellite platform been arranged for the Mildura analog switch-off on 30 June 2010 and what level of competitive process was developed, and by whom for any such supply arrangements?
- xi) How many different manufacturers will market STBs for the new satellite platform, say over the next 6 months, and how many different STB models will be available in Mildura and the South Australian regional TV markets on 1 July 2010. What will they cost compared with:
 - a. the equivalent current Aurora free to air TV STB; and
 - b. the equivalent current digital terrestrial free to air TV STBs?

- xii) How does the Bill deal with engendering a vigorous pluralistic market place for the satellite STBs needed to access the new free to air DTH TV services, particularly if one, or a few suppliers are dealt an up front advantage by being 'mandated' for the initial analog switch-off markets of Mildura and South Australian regional areas? What role has Optus played, if any, in such mandating?
- xiii) When will viewers of the new free to air TV DTH satellite platform be able to purchase STBs with functionality such as twin high definition tuners and hard drive recording characteristics to enable them to reasonably replicate the equipment and viewing functionality that is available in digital terrestrial free to air TV homes?
- xiv) What will such hard drive recorder devices cost compared to their equivalent digital terrestrial free to air TV reception equipment?

**Consequences of NITV being available DTH
ONLY on the Aurora satellite platform from 1 July 2010**

It appears to NITV that all current commercial and National free to air TV services available DTH from the existing Aurora platform will be on the new satellite platform along with countless new commercial and National free to air TV services. Within a short time all current DTH free to air TV viewers will swap over to the new platform. Further Optus has already said that the Aurora platform will cease in the medium term.

This notwithstanding, whilst NITV is available on the Aurora platform people could suggest that there is no problem and say, for example, 'if homes wish to continue to access NITV after they have acquired reception equipment to watch the new free to air TV satellite platform, they will be able to'.

Lest Senators be misled by such statements, only people without TV industry experience or with a disingenuous view of the future of the NITV service and its Indigenous and other audiences could make such a suggestion.

Further, in case people may assert to the Senate that NITV is for Indigenous Australians and there is no compulsion for them to move from Aurora to the new satellite platform it is an established survey fact that generally Indigenous television viewers exhibit much the same characteristics as their other Australian socio/economic counterparts.

Hence, Indigenous Australians will wish to access the vast new range of free to air TV services available through the new free to air satellite platform just as much as other Australians.

- xv) In order to access NITV and the full range of commercial and National free to air TV services, is it true that if NITV is not included on the new DTH free to air TV platform that homes will need:
- a. Two different free to air DTH TV satellite reception systems in their house (i.e. decoders and in home distribution) for both NITV / Aurora and the new platform attached to each TV set and recording device?;
 - b. Two separate remote controls?; and
 - c. To manually switch platforms each time viewers wished to move between services (from say watching Seven Central to NITV)?;

(Noting that all of the above questions assume that Aurora and the new satellite platform are on the same satellite and use the same polarity – otherwise even a second satellite dish might be required as well).

- xvi) What is the government's intention for allowing services (like but not just including NITV) currently delivered to homes DTH via Aurora and watched / listened to via the same STB and satellite dish used to receive commercial and National free to air TV services, to migrate to the new satellite platform?
- xvii) Should homes now accessing free to air broadcasting and other services DTH via Aurora be forced to establish dual DTH satellite reception systems if some of the current Aurora services are denied access (because of policy, cost or technical reasons) to the new DTH free to air TV satellite platform?
- xviii) Is it true that normally if only one of a group of free to air TV services is left off the dominant platform and EPG (especially if those that are on the dominant platform account for at least 90% of all free to air TV viewing), the one left off is, in TV audience terms, 'dead'? Would that be a desirable position in which to leave NITV?
- xix) The government is anxious for NITV to earn as much external revenue through sponsorship and airtime sales as is consistent with NITV's Constitution and the TV open narrowcast Codes of Practice. How can NITV achieve this if it is denied access to the at least 700,000 people the Minister's satellite statement of 5 January 2010 said will be served by the new free to air TV satellite platform?

Aurora platform closure

- xx) What is the government's intention for services (like but not just including NITV) currently delivered to homes DTH via Aurora once the Aurora platform is closed down?
- xxi) If the government has an intention why is it not outlined in the Explanatory Memorandum or Bill? If the government has no intention yet formed is that not a sign that the design and implementation of the new satellite platform is yet to be comprehensively thought through?
- xxii) Given that individual DTH satellite homes actually pay for and own their free to air TV reception equipment what has the government done to assess the views of current and likely new satellite platform homes as to the range of free to air TV services – like NITV – they would like to receive via the STB required to access the new free to air DTH satellite platform?

To what extent will the government direct who ever is the manager of the new free to air TV satellite platform to allow non commercial and National free to air TV services (like NITV) to be included on it?

- xxiii) Exactly what control has the government retained in the management and control of the new satellite platform in view of its financial commitment of \$40 million dollars per annum on going (in 2010 dollar terms) to the platform (see Minister's release of 5 January 2010)? Where and how is this normal 'equity' / control interest expressed in the Bill?
- xxiv) For example is the government in a position to direct the managing entity of the new free to air TV DTH satellite platform to include a non commercial or National free to air TV service (such as NITV) to have access to the platform and its EPG? Where and how is this 'power' expressed in the Bill? If it is not expressed should it not be in view of the government's financial commitment of \$40 million dollars (in 2010 dollar terms) per annum on going to the platform?

More than just NITV in the predicament occasioned by 'the wall of silence'

It seems reasonable to NITV that other major users (apart from NITV) of the current digital free to air TV satellite platform (i.e. Aurora) such as Westlink, various community radio services and various part time users like the Rural Health Education Foundation will probably have many of the same questions as raised by NITV above?

- xxv) Is there any where in the nearly 200 pages of the Explanatory Memorandum and Bill that these other existing free to air broadcasters and business users of the Aurora platform, who all access customers through pre-existing Aurora free to air TV DTH reception facilities, have been mentioned and their future alluded to or accommodated?

General over riding question

- xxvi) How can all the above indicative, but not exhaustive list of NITV questions:
- a. Be appropriately investigated and answered to the Parliament's and public's satisfaction;
 - b. Be manifest in any required structural, commercial, operational and technical changes to the satellite platform and domestic DTH STBs; and,
 - c. Result in the Parliament having put before it, considering and passing relevant amendments to the Bill;

in time for the Minister's deadline for the platform's initial operation (around 1 June 2010 – see release of 23 March 2010) so that the people in Mildura who will need to access it do not lose free to air TV reception altogether on 1 July?

4. Conclusion

NITV is not in any way opposed to the development of a comprehensive new free to air TV DTH satellite platform to enable all Australians to benefit from the advantages of the digital free to air revolution. NITV has always felt a new satellite safety net platform would be required in order to meet reception black spots where homes could not adequately receive local digital terrestrial free to air TV services.

All the questions above do not go to whether or not the platform is needed. Rather NITV is unaware of key commercial and strategic aspects that have lead it to be developed in a closed environment.

As a result, and to the extent NITV has had an opportunity to examine and understand the Bill, it seems that with just 85 days left until the new platform has to actually provide services to its first customers (the period between April 6 – the time submissions to the Senate Committee close and 1 July – the first day after analog terrestrial TV transmissions cease in Mildura) there are just too many important public interest issues that are not clear.

Unfortunately, the discussions concerning the comprehensive and revolutionary new free to air DTH satellite platform have not included Australia's biggest and nationwide free to air DTH TV open narrowcaster - NITV. This despite the fact that by current potential audience reach it is Australia's 6th biggest TV broadcaster and, unlike any of the commercial TV broadcasters significantly involved in and behind the design of the new platform, is currently available everywhere in Australia free to air DTH from the existing DTH satellite platform, Aurora.

A final anomaly to relate is that some homes in Mildura who currently watch all their free to air TV services DTH through the Aurora platform will actually be paid to convert to the new satellite platform (under the Digital Switchover Household Assistance Scheme).

Hence, unless things rapidly alter the government will actually spend money to assist people to move from one satellite platform to another and at the same time facilitate such homes either losing their current access to the government paid for NITV service (or at the very least making such access impractical, expensive and unlikely (see questions xv to xviii above for explanation).

5. Closing Comments

We seek the support of the Committee to ensure that we have first-class policy solutions for NITV. As Australia's 'National Campfire', with a 24 hour a day national television service available to more than 8 million Australians, and a growing presence in the digital information sphere, National Indigenous Television:

1. Fills the gap Australia's media landscape with a unique, original content that is not available anywhere else in this country or the world;
2. Grows awareness in the wider community of Aboriginal and Torres Strait Islander people and culture, and highlights the primacy of place of First Australians in the national imagination to, and so by doing so, contributes to nation building and the national identity;
3. Contributes to self determination of Indigenous Australians by connecting Aboriginal and Torres Strait Islander people together and instilling pride and confidence, and sharing information crucial to issues affecting the lives of Indigenous people;
4. Delivers economic benefits, directly and indirectly to Indigenous people, through employment and commercial activity, and through assisting Aboriginal and Torres Strait Islander people to build sustainable enterprises across all sectors through sharing information
5. By helping to build the national identity, makes a positive contribution to Australia's reputation within the global village in the 21st Century information age.

NITV is now asking the Government of Australia to enter into a social partnership, embrace the full potential of this country's only fully Indigenous, national television service, and see a return on the investment already made by the Australian taxpayer, by fully committing to adequately fund what has grown to become an asset to all Australians.

Australia can make great strides toward a future that embraces all Australians in equal partnership, as so memorably foreshadowed in the Apology.

Patricia Turner
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National Indigenous TV Limited

1 April, 2010