

## Australian Greens' Additional Comments

The Australian Greens support the effort to ensure that up to 247,000 households in remote areas have access to a similar variety of television programming as their counterparts in metropolitan areas. It is always more difficult to provide equitable access to services in the more distant corners of our country, and it is good to see that this has been given due attention in the context of the switchover to digital television.

Unfortunately, unlike the Senators in the majority, we are not reassured that the concerns of National Indigenous Television (NITV), the Rural Health Education Foundation (RHEF), The Western Australian Government's Westlink service, and other narrowcasters and community broadcasters in a similar position, have been adequately addressed. As reflected in the majority report, the primary concern of these organisations is that the Bill does not make any provision for them to have access on non-discriminatory terms to the new satellite service, and hence to the set top boxes that will be used to receive the commercial and national free to air television services, nor does it provide for open access such that any who seek it may secure access subject only to capacity constraints.

The Department of Broadband, Communication and the Digital Economy (DBCDE) does not quite put the issue to rest by pointing out that the Bill does not exclude narrowcasters and community broadcasters. By leaving their fate to the vagaries of commercial negotiations with the licensees, the Bill leaves open the possibility that they may ultimately be excluded, or they may have to pay for access on terms and conditions which are not equivalent to those applying to commercial and national free-to-air television services. This would be a very peculiar state of affairs—publicly-funded narrowcasters unable to get fair access to publicly-funded satellite transmission so that they can be received for free by the public.

DBCDE points out that the Bill leaves the narrowcasters and community broadcasters in the same situation that they are presently in with respect to their transmission on the Aurora platform. That is, they must negotiate access independently on a commercial basis. However, this response overlooks some important differences between Aurora and the new platform. Namely:

- The new platform is being funded by the public to the tune of \$40 million per year, so the government is perfectly justified dictating a few terms to guarantee access by the narrowcasters it has funded to provide important services to the community. Aurora, on the other hand, is a private business owned and paid for by Optus.
- Optus is in the business of selling access to Aurora, so it has a clear commercial imperative to grant access to whoever can pay. The commercial incentives of the licensees of the new platform are not so straightforward, especially given that they will themselves often be affiliated with broadcasters that may see some current or future access seekers as competition.

As acknowledged in the majority report, the fact that Optus will continue to operate Aurora until 2013 also provides scant comfort to NITV, Westlink and others in their position. With at least four times more commercial and national free-to-air television services available on the new platform than on Aurora, and a need to establish duplicated direct to home satellite reception facilities to all TV sets and recording devices from the satellite dish onwards to view the few channels remaining on Aurora, it is reasonable to assume that NITV et al will lose a significant share of their audiences.

DBCDE advised that:

...it is a condition of the grant deed entered into with commercial broadcasters to deliver the satellite service that the broadcasters must not do anything that would restrict any providers of: national broadcasting services; commercial radio broadcasting services; community broadcasting services; or open narrowcasting broadcasting services from negotiating with the satellite platform provider to achieve access to the satellite service.<sup>1</sup>

This is welcome, but an obligation not to do anything that restricts negotiation leaves open the possibility that negotiation will involve the licensee setting unreasonable terms to prevent the access seeker from gaining access or to exploit its gatekeeper role to extract undue profits.

Further, if it is considered a wise precaution to put the above provision into the grant deed with the licensee, why not put an equivalent provision into the Bill? The grant deed is a confidential, commercial document, it is time-limited, and it only applies to one licensee. By contrast, addressing this issue in the Bill itself would promote greater transparency, reassure the sector, and settle the issue in a more comprehensive and enduring manner.

There is no reason to believe that the government has any interest in precluding narrowcasters or community broadcasters from gaining access to the new satellite platform. They simply appear not to have been considered. This may be due to deficiencies in the consultation process, as suggested by NITV, Westlink and others.<sup>2</sup> Whatever the case, their concerns seem reasonable and the Australian Greens urge the government to look at amendments to ensure that publicly-funded narrowcasters and community broadcasters are able to gain access to the new platform, subject only to satellite capacity constraints.

**Senator Scott Ludlam**  
**Australian Greens**

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- 1 Department of Broadband, Communications and the Digital Economy, answers to questions on notice (final page of response to Senator Ludlam's questions on notice).
  - 2 NITV, *Submission 1*, p. 1; Department of Regional Development and Lands, Government of Western Australia, *Submission 10*, p. 1.