

EXECUTIVE SUMMARY

Introduction

On 18 March 1998, the Australian Broadcasting Authority (ABA) decided to conduct an investigation into whether the legitimate needs of remote and regional viewers in Western Australia were adequately addressed during the change by Golden West Network (GWN) from an analog B-MAC commercial television broadcasting service to a digital service in its WAW licence area, and from the Optus satellite to the Telstra satellite, during the period December 1997 to March 1998.

Background

The ABA was concerned that the public interest issues, which arose as a result of GWN's transition to a digital platform, may not have been adequately addressed. The ability of broadcasters to shift from one satellite carrier to another is a new situation for broadcasters and has been brought about by de-regulation of satellite services. Similarly, the shift from analog to digital transmission is a new situation. This issue is, however, likely to arise in the future.

Until 1 July 1998, Optus was the sole satellite carrier for broadcasting in Western Australia, beaming in remote area broadcasting services (RABS) from its B3 satellite. Optus carried nine RABS services, including GWN, the ABC and SBS. With de-regulation of satellite broadcasting services, Telstra entered the market by leasing space on the PanAmSat PAS2 satellite and offering satellite transponder space to television broadcasters. GWN decided, after six years with Optus, to change its carrier at this time and contracted with Telstra. The ABC, on the other hand, decided to remain with Optus. At the time of GWN's transition to Telstra, it was the only commercial television service operating in the remote area of WA.

Legislative Framework for Exercising Investigation Powers

Under the *Broadcasting Services Act 1992* (the Act) there are two main heads of power available to the ABA for gathering information. They are the power under s170 to conduct an investigation and the power under s182 to conduct a hearing. Both powers are available to the ABA for the purpose of exercising any of its functions and powers under the Act. The ABA decided to undertake an investigation based on the general investigations power pursuant to s170 of the Act. The s170 power provides for an investigation to be carried out quickly and economically as required by s168(2) of the Act.

Facts and Findings

The ABA investigated a number of issues in trying to understand the causes of the disruptive effects on viewers during GWN's transition from analog to digital transmission. The following matters were specifically addressed during the investigation.

(a) The period set aside for simulcast of the WAW service on the analog B-MAC system and the digital system

The main issue of concern to the ABA in relation to the period set aside for simulcast of the analog and digital WAW service was the fact that many people in the licence area did not convert to the digital receiving equipment during the course of the simulcast period.

Conclusion

There were a number of factors contributing to the delay for large numbers of people in the licence area making the conversion to digital. However, taking those factors into account, it is nevertheless reasonable to conclude that the two months set aside by GWN for simulcast on analog and digital was an insufficient period of time for many viewers to make adequate arrangements for conversion. The fact that the two month period coincided with the vacation period and the 'wet season' served to exacerbate the problem.

b) The availability in Perth and the WAW licence area, and the progress of installation, of Scientific Atlanta digital decoders

Conclusion

GWN was aware that the commercial decoders were not available and should have known that this was having an adverse impact on the conversion process. It seems clear that the delays in obtaining the commercial decoders caused uncertainty among self-help communities and Shire Councils and contributed to the delays among these groups in placing orders for decoding equipment.

(c) The level of information provided to viewers (including direct-to-home viewers), self-help groups and decoder dealers by GWN during the period December 1997 and March 1998

Most remote area viewers who spoke directly to ABA officers during the course of this investigation indicated that they had received very little information from GWN about the changes that were occurring in the shift from analog to digital.

Conclusion

While it appears that GWN's information campaign may not have been particularly effective, there was nevertheless a concerted effort by Optus to persuade viewers to ignore GWN's advice.

(d) The level of monitoring by GWN of viewers' needs and their rates of conversion to digital receiving equipment during the period December 1997 and March 1998

GWN began monitoring the conversion process among DTH viewers, self-help sites and Shire Councils from December when the first digital decoder was enabled.¹

Conclusion

GWN effectively monitored viewers transition from analog to digital.

(e) The procedures adopted by GWN to ensure a continuity of service for remote and regional viewers during the process of changing from an analogue B-MAC service to a digital service

GWN submitted that, in addition to broadcasting over a two month simulcast period, GWN undertook to contact all viewers who had a registered decoder. These viewers received two information packs and if any packs were returned by Australia Post the decoder associated with that pack was contacted by B-MAC message.²

Conclusion

The procedures adopted may, in themselves, have been adequate to ensure continuity of service had the period of simulcast been for a longer period and not covering a vacation period.

(f) The negotiations between Optus and GWN which occurred during the period December 1997 and March 1998, including financial arrangements proposed for any additional simulcast period

Optus and GWN began negotiations over continuing the transmission of the analog, B-MAC service in July 1997.

Conclusion

In the ABA's view, the public interest in resolving this matter was significant and it is not clear from the correspondence between Optus and GWN why GWN was apparently reluctant to accept Optus's longer term offer to retransmit the WAW service free of charge.³

(g) The availability of the government subsidy forms and the administration of the \$750 subsidy during the period December 1997 and March 1998

¹ GWN/Prime, submission, p16.

² GWN/Prime, submission, p16.

³ Optus, submission on the ABA's preliminary view on whether to grant permission to Optus to retransmit the WAW signal, 9 March 1998, p5.

The RTIF (Regional Telecommunications Infrastructure Fund) rebate scheme was established with funding from both the RTIF fund and supplementary funding from the federal government.⁴

Conclusion

The scheme to assist remote and regional viewers to purchase the new digital equipment required to receive the digital signal represents substantial assistance to remote viewers. However, the scheme was complex to develop, requiring appropriate safeguards against misuse, and thus took some time to establish.

(h) GWN's obligations under Schedule 2, Part 3, clause 7(2)(a) of the *Broadcasting Services Act 1992*

Schedule 2, Part 3, sets out the standard conditions for commercial television broadcasting licences.

Conclusion

Under the test to be applied, GWN at all times provided an adequate signal to its licence area, or to a preponderance of its licence area in satisfaction of its licence conditions.

OTHER MATTERS CONSIDERED

- (i) The preference of viewers to receive all broadcasting services using one decoder
- (ii) Requirement for Two Decoders
- (iii) Lack of Choice of Decoders
- (iv) Lack of Access to Decoder Servicing and Repairs
- (v) Lack of Access to the PAS2 Satellite in Some Parts of the Licence Area
- (vi) Technical Problems with the Digital Signal

CONCLUSIONS

⁴ Mr RJ Badger, Department of Communications and the Arts, letter 4 May 1998, p2.

In the ABA's view, there were three major factors which influenced whether or not remote and regional viewers in the WAW licence area made the transition to GWN's digital service during the period of simulcast.

The first factor was the length of time set aside for simulcasting and the specific timing for that simulcast. The second was the belief among many viewers that Optus would continue providing the WAW service on the analog system until Optus also converted to digital. The third reason, and possibly the most important, is that most direct-to-home viewers and self-help viewers wanted to be able to receive all the broadcasting services that are available with the purchase of only one decoder.

The ABA believes that it is in general undesirable to allow any national or commercial television broadcaster to be able to choose a means of transmission that requires a large investment by viewers and that does not allow access by viewers to other national or commercial television broadcasting services licensed to serve that area. While this type of strategy is legitimate in the case of other categories of television broadcasting, such as subscription television and open narrowcasting television, free-to-air commercial television broadcasters, in recognition of their unique obligations to the community, enjoy special dispensations under the Act, including a degree of protection from competition.

The ABA is of the view that it is contrary to public interest for any provider of a free-to-air broadcasting service to require viewers to invest in expensive reception equipment in order to receive the service, if that equipment does not provide access to other free-to-air broadcasting services licensed to serve that area.

There are various ways in which access to the full suite of services could be achieved, depending on the circumstances. These include: (i) that all free-to-air broadcasters could use the one satellite; or (ii) that each satellite could carry the full range of free-to-air services for that area; or (iii) that all service providers could ensure, in some other way, that reception equipment is able to receive all services.

At present, there is no person or federal government agency with the power to ensure this outcome. This is because there is no single regulatory body to regulate all the broadcasters, satellite service providers and intermediaries involved, including commercial and national broadcasters, telecommunications carriers and satellite service providers.

The ABA believes that it is in the long term public interest of viewers that such power should reside in a single regulatory body and will be referring this matter to the Minister for Communications, Information Technology and the Arts pursuant to its function under s.158(n) of the *Broadcasting Services Act 1992* to report on the operation of the Act.

AN INVESTIGATION INTO WHETHER THE LEGITIMATE NEEDS OF REMOTE AND REGIONAL VIEWERS IN WESTERN AUSTRALIA WERE ADEQUATELY ADDRESSED IN THE TRANSITION FROM ANALOG TO DIGITAL TRANSMISSION OF THE GOLDEN WEST NETWORK'S WAW COMMERCIAL TELEVISION BROADCASTING SERVICE DURING THE PERIOD DECEMBER 1997 TO MARCH 1998.

Introduction

On 18 March 1998, the Australian Broadcasting Authority (ABA) decided to conduct an investigation into whether the legitimate needs of remote and regional viewers in Western Australia were adequately addressed during the change by Golden West Network (GWN) from an analog B-MAC commercial television broadcasting service to a digital service in its WAW licence area during the period December 1997 to March 1998.

The investigation arose after the ABA had been asked by Optus Networks Pty Ltd (Optus) to intervene in the matter and grant Optus permission to retransmit the GWN analog B-MAC service by satellite. The history of this matter is complex and it is convenient at this point to set out the background facts against which the decision to carry out the investigation took place.

Background

Since the mid-1980s, GWN operated the sole commercial television broadcasting service in the remote and regional areas of Western Australia (WA). This situation changed in April 1998, when WIN International Sales Pty Ltd (WIN International) acquired the second commercial television licence in remote and regional WA. The licence area for WIN International is a large area covering the same geographical area as the four GWN licence areas. WIN International intends to establish a service which will be carried by a mix of terrestrial transmission and satellite transmission. It has contracted with Optus to carry the satellite component of the service⁵ and has only recently commenced transmission in the WA licence area.

GWN has a total of four licence areas in WA, three of which are entirely served by terrestrial transmission. The fourth, which is the WAW licence area covering a very large area of remote and regional WA, is served by a combination of terrestrial and satellite transmission. All four of GWN's licence areas receive substantially the same television broadcasting service, with minor local differences such as local advertising content.

Although the majority of viewers in the WAW licence area receive their service terrestrially, a significant number can only receive the service direct from the satellite. These viewers are those who receive the service 'direct-to-home' (DTH) by means of a small individual satellite dish and decoder, and those who receive the service as members of 'self-help' communities. There are approximately 3,200 DTH home sites which translates into about 10,000 people. The self-help communities receive the signal direct from the satellite and retransmit the service to the rest of the community. Consequently, most self-help sites require a larger satellite dish and more powerful decoder. This service is provided by, among others, some remote and regional Shire Councils and some Aboriginal communities. There are approximately 114 self-help sites and the number of viewers who receive services in this way is estimated to be about 11,400 people.

⁵ Optus Media Release, 26 August 1998.

In total, an estimated 21,400 people rely on receiving their broadcasting services direct from the satellite out of a total licence area population of about 160,000.⁶

Viewers who obtain their broadcasting services direct from the satellite do so through the use of decoders which receive an 'encrypted' signal from the satellite (ie a signal that is only accessible by means of secret serial numbers) and which translate the encrypted signal into a normal television service. Only those decoders which are authorised to receive the signal are able to decode the encryption. This method ensures that the broadcasting service is only received within the boundaries of the authorised licence area for the service, even though the satellite signal itself is beamed across the whole of WA and into parts of South Australia and the Northern Territory.

Until 1 July 1998, Optus was the sole satellite carrier for broadcasting in Western Australia, beaming in remote area broadcasting services (RABS) from its B3 satellite. Optus carried nine RABS services, including GWN, the ABC and SBS. With de-regulation of satellite broadcasting services, Telstra entered the market by leasing space on the PanAmSat PAS2 satellite and offering satellite transponder space to television broadcasters. GWN decided, after six years with Optus, to change its carrier at this time and contracted with Telstra. The ABC, on the other hand, decided to remain with Optus. At the time of GWN's transition to Telstra, it was the only commercial television service operating in the remote area of WA.

Towards the end of 1997, GWN introduced digital transmission, carried by Telstra/PanAmSat, to replace the former analog, B-MAC transmission. The new digital service can only be received with an authorised Scientific Atlanta decoder. The change in carrier and, more importantly, the shift to digital, meant that viewers who had previously had access to GWN's WAW service could no longer receive it with their existing decoder once the analog service ceased transmission. New decoding equipment was required, with the attendant cost of replacement. To ease this financial burden on remote and regional viewers, the Commonwealth and WA governments, through the Regional Telecommunications Infrastructure Fund, established a system whereby viewers could replace their existing analog decoders with digital decoders with the assistance of a subsidy or rebate on the cost.

GWN began a period of simulcasting the WAW service in both analog and digital mode in December 1997 and proposed to continue the simulcast period until 31 January 1998.⁷ GWN later decided to extend the simulcast period until 28 February 1998 and negotiated the extra month with Optus for continuing transponder space for the period. During these negotiations, Optus proposed that GWN continue to allow Optus to retransmit the WAW analog B-MAC WAW service for a further six months or until Optus introduced its own digital Aurora platform. However, as is detailed in the body of the report, negotiations were unsuccessful. Optus subsequently made an application to the ABA on 26 February 1998 for permission under section 212(1)(b)(ii) of the *Broadcasting Services Act* 1992 (the BSA) to retransmit the analog B-MAC WAW service outside the licence area of that licence. Optus sought permission because the retransmission of the WAW service would have to be in test-key mode (i.e. with no conditional access)⁸ and would therefore involve spillage of the service outside the licence area into neighbouring licence areas.

⁶ These figures are based on the estimates provided by GWN. The GWN figures are based on a ratio of one decoder to three people in the direct-to-home sites. The Western Australian Government, on the other hand, has calculated that the number of viewers who receive the service direct from the satellite (either direct-to-home or through self-help communities) is closer to 35,000 people. This is partly because the WA Government calculations are based on a ratio of one decoder to seven people. See Department of Commerce and Trade, submission, 9 March 1998.

⁷ The term 'simulcast' is used throughout the report and refers to dual transmission of a broadcasting service in both analog and digital modes for a specified period.

⁸ 'Conditional access' in this context means that the broadcast is encrypted and is only accessible to viewers by means of a decoder programmed to receive the service. 'Test key mode' means that the broadcasting service is

By way of contrast, it is important to note that Telstra decided to retransmit the ABC service, which remained contracted to Optus. However, because the ABC is a national service and not bound by licence areas, retransmission of the ABC is authorised under section 212(1)(a) of the BSA and does not require ABA permission. This leads to an anomalous situation in that Telstra is able to provide a full suite of broadcasting services to viewers by virtue of contracting with the only (at that time) commercial broadcaster, while Optus is potentially constrained in the services it can offer since it has contracted with a national service, subject to whether it is able to obtain ABA permission under s.212.

During the ABA's consideration of Optus's application for permission to retransmit, the ABA received a number of submissions from remote and regional viewers, Shire Councils in the WAW licence area and other interested parties, which highlighted concerns about the loss of the analog B-MAC WAW service among viewers in the WAW licence area. **A list of all submitters is attached at appendix A.** The ABA initiated the present investigation after assessing these submissions and concluding that there were issues which warranted further investigation. **The terms of reference for the investigation are attached at appendix B.**

not encrypted. Although it may still require a decoder to obtain access to the service, the decoder does not need to be programmed to receive it.

Public Interest Issues

The regulatory policy of the *Broadcasting Services Act 1992* indicates that Parliament intends that broadcasting services in Australia be regulated in a manner that enables public interest considerations to be addressed in way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.⁹ In applying this regulatory policy, the ABA has been charged with responsibility for monitoring the broadcasting industry.¹⁰

The ABA was concerned that the public interest issues, which arose as a result of GWN's transition to a digital platform, may not have been adequately addressed. The ability of broadcasters to shift from one satellite carrier to another is a new situation for broadcasters and has been brought about by de-regulation of satellite services. Similarly, the shift from analog to digital transmission is a new situation. This issue is, however, likely to arise in the future. The ABA therefore initiated an investigation to ensure that the problems could be properly identified and, if possible, prevented from occurring in future analog to digital conversions. In considering the public interest, the ABA has had particular regard to the need for viewers in remote areas to purchase new reception equipment and the associated problems for viewers arising from the newly competitive satellite broadcasting environment.

Legislative Framework for Exercising Investigation Powers

Under the *Broadcasting Services Act 1992* (the Act) there are two main heads of power available to the ABA for gathering information. They are the power under s170 to conduct an investigation and the power under s182 to conduct a hearing. Both powers are available to the ABA for the purpose of exercising any of its functions and powers under the Act. The ABA decided to undertake an investigation based on the general investigations power pursuant to s170 of the Act. The s170 power provides for an investigation to be carried out quickly and economically as required by s168(2) of the Act.

Section 158 relevantly provides:

158. The primary functions of the ABA are:

...

(l) to monitor and investigate complaints concerning broadcasting services (including national broadcasting services); and

...

(n) to monitor, and to report to the Minister on, the operation of this Act.

⁹ *Broadcasting Services Act 1992*, s4.

¹⁰ *Broadcasting Services Act 1992*, s5.

Section 170 provides:

s170. The ABA may conduct investigations for the purposes of the performance or exercise of any of its functions and powers.

Section 168 provides:

168.(1) In informing itself on any matter relevant to its functions, the ABA:

- (a) may consult with such persons, bodies and groups as it thinks fit, and may form consultative committees for that purpose; and
- (b) may conduct investigations and hold hearings; and
- (c) may otherwise inform itself in any manner it thinks fit.

(2) Subject to any directions by the Minister under this Part, the procedure that the ABA adopts in informing itself on any matter relevant to its functions is to be that which the ABA considers:

- (a) will be the quickest and most economical in the circumstances; and
- (b) will also promote the due administration of this Act.

Section 172 provides:

172. The ABA may, in conducting an investigation for the purposes of the performance or exercise of any of its functions and powers, call for written submissions from members of the public.

Methodology

Information Gathering

The ABA can inform itself in any manner it thinks fit in undertaking an investigation.¹¹ In this case, the ABA decided to hold interviews or discussions with the people affected in WA, including members of the general public, football clubs, Shire Councils and local politicians. Secondly, the ABA sought written submissions from interested people, together with further submissions from the main parties and a request to produce relevant documents. The ABA also issued a news release on 28 April 1998, inviting submissions from members of the public.¹²

(i) Interviews/Discussions

¹¹ *Broadcasting Services Act 1992*, s168(1)(c).

¹² NR40/98.

Undertaking direct interviews with the people affected by GWN's shift to digital allowed the ABA to receive first hand information and to ask appropriately directed questions. The ABA had experienced difficulties in gathering information from the main parties, as well as direct from remote and regional viewers, given the need for quick decision making which had characterised the applications from Optus.

(ii) Written Submissions

The ABA invited both members of the public and the main parties to make written submissions to the investigation and made available the terms of reference. The main parties were also requested to answer specific questions in relation to particular issues which had arisen out of the direct interviews with viewers, Shire Councils and others. Ten public submissions were received as a direct response to the investigation, in addition to the submissions received prior to the commencement of the investigation and the information provided to ABA officers in discussions with viewers and self-help operators. All submissions have been taken into account in finalising this report.

Facts and Findings

The ABA investigated a number of issues in trying to understand the causes of the disruptive effects on viewers during GWN's transition from analog to digital transmission. The following matters were specifically addressed during the investigation.

(a) The period set aside for simulcast of the WAW service on the analog B-MAC system and the digital system

The main issue of concern to the ABA in relation to the period set aside for simulcast of the analog and digital WAW service was the fact that many people in the licence area did not convert to the digital receiving equipment during the course of the simulcast period. This meant that when GWN concluded its simulcast period on 28 February 1998 and ceased transmission of the analog service, a substantial number of people in the WAW licence area were left without access to their only commercial television service.

The ABA has identified a number of factors that appear to have contributed to this, including:

- the comparatively short simulcast period;
- the timing of the simulcast (the Christmas/New Year vacation period coinciding with the 'wet season' in northern WA);
- the delayed availability of commercial model digital decoders;¹³

¹³ See section (b) of this report for further discussion of this issue.

- the timing of the implementation of the Regional Telecommunications Infrastructure Fund (RTIF) rebate scheme for purchase of replacement digital decoders and the costs of purchasing new digital equipment;¹⁴ and
- the preference of viewers to receive all broadcasting services using one decoder. This preference led many viewers to wait until they could genuinely assess the merits of purchasing Scientific Atlanta equipment to receive GWN services carried by Telstra/PanAmSat or purchasing the, as yet unavailable, decoders for receiving services from the Optus digital platform.¹⁵ This was a critical issue for many viewers who believed that a real choice between carriers would mean that they should be able to obtain all the broadcasting services they wanted with the purchase of only one new decoder. This issue is discussed in the section of the report headed 'Other Matters'.

(i) the length of the simulcast period

There appears to have been some debate over the appropriate length for a period of simulcast for the shift from analog to digital satellite broadcasting, with a view emerging among the broadcaster, carriers and other members of the Remote Area Broadcasters Group (RABIG) that a two month period would be adequate.

According to GWN's submission, the National Transmission Agency (NTA) initially proposed a six month simulcast period. The NTA made the proposal as a member of RABIG. GWN also submitted that Optus was opposed to the suggested six month simulcast transmission time on the grounds that it would impose unreasonable pressures on transponder space, which would prevent it meeting contractual obligations.¹⁶ Telstra submitted that the two month proposed simulcast period was supported by Optus, which also proposed to simulcast for the same period. This accords with Optus's submission, in which Optus states that it is proposing to adopt a 60 working day simulcast period for the introduction of its Aurora digital platform.¹⁷ Optus also submitted that the question of capacity for simulcast had never been an issue. Optus had not ceased making capacity available to GWN for the purpose of simulcast. It intended to continue to do so until the ABC WA B-MAC service made the transition to the digital Aurora platform.¹⁸

The ABA is also aware that a long period of simulcast on satellite transmission would involve considerable cost. Neither GWN nor the carriers directly raised the matter of additional cost as an issue in their submissions. In response to questions from the ABA, however, Optus advised that it increased its charge to GWN for carriage of the WAW analog B-MAC signal in August 1997, on the grounds that the new rate was appropriate to a short term commitment from GWN.¹⁹ This may therefore have been a factor in GWN's decision to contain the simulcast period to two months.

¹⁴ See section (g) of this report for further discussion of this issue.

¹⁵ See section of this report headed 'Other Matters' for further discussion of this issue.

¹⁶ Prime Television Ltd and Golden West Network Ltd (Prime/GWN), submission, p3

¹⁷ Optus Communications Ltd (Optus), submission, paragraph (a).

¹⁸ Optus, submission, 30 April 1998, paragraph 3.

¹⁹ Optus submission, 30 April 1998, paragraph 1.

Ultimately, however, according to submissions, it was RABIG which settled on a two month timeframe for simulcast, based on previously successful implementation of transitions to half transponder (North East Zone) and low power transponder (WA Zone).²⁰ Nevertheless, this short timeframe for simulcasting the satellite services is in stark contrast to the arrangements which have traditionally been made for the migration of terrestrial television broadcasting services. For example, in the late 1980s and early 1990s, a number of terrestrial television services migrated from VHF to UHF.²¹ These television services simulcasted on both frequencies for a period of at least six months, with some continuing to simulcast for considerably longer.²² From the viewers' perspective, the implications of the television service shifting from VHF to UHF generally meant a requirement to purchase a new television aerial or, more rarely, a new television set. Thus there are some parallels for viewers with the shift from analog to digital mode.

(ii) simulcast over the Christmas/New Year vacation period and 'wet season'

According to Telstra's submission, GWN and Telstra determined on the simulcast period in July 1997 and intended to start the simulcast in September 1997. For reasons not identified in the submission, this starting date was revised. GWN's submission did not refer to the plan to commence simulcasting earlier. The simulcast period started in December 1997 and coincided with the Christmas/New Year holiday period.²³ As a result, many viewers may have experienced difficulty in making arrangements to purchase the new digital equipment in the timeframe.

The timing of the simulcast period coincided not only with the traditional vacation period, but also with the 'wet season' in the subtropical parts of northern WA.²⁴ This meant that impassable road conditions excluded the possibility of digital equipment suppliers reaching some of the remote communities during that time.

Conclusion

There were a number of factors contributing to the delay for large numbers of people in the licence area making the conversion to digital. However, taking those factors into account, it is nevertheless reasonable to conclude that the two months set aside by GWN for simulcast on analog and digital was an insufficient period of time for many viewers to make adequate arrangements for conversion. The fact that the two month period coincided with the vacation period and the 'wet season' served to exacerbate the problem.

GWN's conversion from analog to digital also involved a change of carrier. These two factors, the change of system and the change of carrier, meant that a significant public education campaign was required in order to persuade viewers of the benefits of making the shift. This was the first time in Australia that viewers had been faced with the realities

²⁰ Prime/GWN, submission, p11.

²¹ For example, in Bonalbo, Kyogle and Murwillumbah.

²² WIN (Wollongong), for example, continued simulcasting for almost three years.

²³ Telstra submission, 29 April 1998, p1.

²⁴ Mr Tony Dean, WA Department of Commerce & Trade, oral submission, 1 April 1997.

of having to convert from the analog system to the digital system for television reception and many were not convinced of the need to make that change. While this was partly the result of conflicting information [see section (c) of this report], there were genuine difficulties for many self-help communities and Shire Councils associated with the lack of availability of commercial or 'professional' decoders, which affected confidence in the conversion process, together with delays associated with receiving the RTIF rebate form [see sections (b) and (g) of this report].

Although GWN did try to address the problem of the simulcast period during the course of transmitting in both analog and digital modes, the failed negotiations between Optus and GWN meant that the simulcast period was not easily extended at that time [see section (f) of this report]. Given the magnitude of the change, GWN should have been prepared for teething problems during the change-over period and have planned sufficient time for these to be sorted out. Other changes to broadcasting services have generally employed a six month period of simulcast to enable viewers to adjust to the change. In this case, as the adjustment was considerable and the costs to consumers were significant, a six month period would seem to have been a far more appropriate timeframe. Even without the information campaign carried out by Optus, it was clear that viewers would need time to assess their needs and to make an informed decision.

(b) The availability in Perth and the WAW licence area, and the progress of installation, of Scientific Atlanta digital decoders, including the Model D9234 Business Satellite Receivers; the Model 9223 Commercial IRDs with additional audio outputs; and Model 9223 Commercial IRDs in the standard configuration

Scientific Atlanta confirmed in its submission that the commercial model digital decoders (model D9223) were not available in WA until late February 1998.²⁵ Scientific Atlanta submitted that these commercial decoders are only used in 'professional applications' (ie not for domestic reception) and are therefore supplied in response to specific orders. Many of the self-help communities, however, required a commercial standard decoder. These decoders arrived in Western Australia from late February, a short time before GWN ceased transmission of its analog B-MAC service.²⁶

According to submissions from both Scientific Atlanta and Telstra, the unavailability of these commercial decoders had no practical effect on equipment supply as Scientific Atlanta supplied D9225 model decoders as an interim measure.²⁷ The costs of these interim arrangements were not borne by the viewers. The ABA also spoke directly to the three authorised Scientific Atlanta suppliers, who commented on this issue.²⁸ Decoder suppliers had differing views on the effects of the delayed importation of decoders. However, the lack of availability of the decoders was widely known and appeared to have had an adverse affect on the confidence among many Shire Councils and self-help communities in making the change to digital. Correspondence from GWN to Scientific

²⁵ Scientific Atlanta, submission, 29 April 1998, p1.

²⁶ Scientific Atlanta, submission, 28 April 1998, p1.

²⁷ Scientific Atlanta, submission, 28 April 1998, p3; Telstra, submission, 29 April 1998, p2.

²⁸ Scientific Atlanta authorised distributors in Western Australia are Satellite Appliance Sales; Satellite Services Australia; and HomeSat TV Australia.

Atlanta on 23 February 1998 identified 145 self-help sites which had not converted to digital and which would normally require these decoders.²⁹

Scientific Atlanta was aware that GWN's analog B-MAC transmission was originally scheduled to cease on 31 January 1998. According to its submission, Scientific Atlanta had received only one order for the D9223 decoder by 15 January. As a result of this, GWN and Scientific Atlanta staff rang a number of self-help sites to try and ascertain why orders were so slow. According to the correspondence, this action elicited the information that many sites had taken Optus's stated intention to retransmit the WAW service as a guarantee of a continued analog service.

The proactive approach by Scientific Atlanta subsequently generated approximately 69 new orders in late January/February. The lead time for supply of the D9223 decoders was six to eight weeks.³⁰ On 27 February, Scientific Atlanta advised GWN that it was supplying 'Business Satellite Receivers' (D9234 decoders) and was finalising plans with Telstra to install these decoders on a temporary basis to ensure that self-help sites which had ordered decoders would be on air that week-end (ie the week-end of 28 February, which marked the cessation of GWN's analog transmission).³¹

According to the Telstra submission, there was a 'temporary shortage of commercial decoders due to the failure of one shipment from Canada which was due for delivery in mid February.'³² Meekatharra Shire Council understood from suppliers that there were problems in obtaining the Scientific Atlanta digital decoders. Meekatharra Shire waited some time before it placed an order for digital decoders but found that the community wanted access to the GWN service. The retransmission by Optus was of poor quality and eventually deteriorated to an unwatchable signal. Meekatharra waited approximately 3-4 weeks for its order to be filled.³³

Conclusion

GWN was aware that the commercial decoders were not available and should have known that this was having an adverse impact on the conversion process. It seems clear that the delays in obtaining the commercial decoders caused uncertainty among self-help communities and Shire Councils and contributed to the delays among these groups in placing orders for decoding equipment.

However, the amount and type of information being disseminated by the key players seems to have had a significant impact on the viewers', self-help communities' and Shire Councils' attitudes to the timing of their decision to install new reception and transmission equipment. This aspect is discussed in the next section.

²⁹ Fax from Kevin Molten, GWN to Andrew King, Scientific Atlanta, dated 23 February 1998.

³⁰ Fax from Andrew King, Scientific Atlanta to Shirley Brown, GWN, 5 March 1998.

³¹ Fax from Andrew King, Scientific Atlanta to Joy Sutton, GWN, dated 27 February 1998.

³² Telstra, submission, 29 April 1998, p2.

³³ Mr M Howieson, Meekatharra Shire Council, submission, 31 March 1998.

(c) The level of information provided to viewers (including direct-to-home viewers), self-help groups and decoder dealers by GWN during the period December 1997 and March 1998

Most remote area viewers who spoke directly to ABA officers during the course of this investigation indicated that they had received very little information from GWN about the changes that were occurring in the shift from analog to digital. Many viewers said that the information they relied on had been sent out by GWN, but consisted of a package of information put together with the assistance of WA Department of Commerce and Trade and which was sent out under the Department's logo.³⁴ This package contained, among other things, a comparison of services which were intended to be made available on the Optus B3 satellite and the PanAmSat PAS2 satellite. Shire Councillors also felt that they had not had sufficient information provided by GWN,³⁵ as did many decoder dealers.

However, according to GWN's submission, GWN pursued a direct mail campaign with all dealers, self-help transmitters and DTH viewers. In particular, in addition to a number of media releases, GWN lists seven occasions on which it sent letters directly to DTH viewers, self-help operators or decoder dealers. GWN also replied to letters from State and federal Members of Parliament.³⁶

The correspondence indicates that the first letter from GWN to customers was sent on 24 July 1997, advising them of the planned change to digital transmission. The next letter was sent on 1 August 1997 to self-help operators, providing advice on decoders, satellite dishes, low noise converters (LNC) and a list of possible equipment suppliers. A further letter was sent to this group on 27 November 1997 giving more advice about equipment and supply.³⁷ On 28 August 1997, GWN sent a letter to all DTH viewers of the satellite service.³⁸ On 9 December 1997, a letter was sent to all self-help operators informing them of the procedure for obtaining the RTIF rebate. GWN began to broadcast an on-screen message to viewers on 18 February 1998, advising viewers that the B-MAC service would cease on 28 February 1998.³⁹

In its letter of 25 August 1997, RABIG in a joint release, advised all WAW viewers that although they might hear differing accounts of what they needed to do during the conversion to digital, the remote area broadcaster for their area would provide official information.⁴⁰ The remote area broadcaster in this case was GWN. Both GWN and Telstra stressed in their submissions that Optus not only usurped this role, but allegedly supplied incorrect and misleading information to viewers.⁴¹

³⁴ Department of Commerce and Trade (WA), 'Conversion of Satellite Radio & Television Services to Digital Transmission', 3 December 1998.

³⁵ Remote and Regional Shire Councillors' Conference, Perth, 1 April 1998.

³⁶ GWN/Prime, submission, pp13-14.

³⁷ GWN, 'Change to Digital Transmission', 1 August 1997.

³⁸ GWN, 'Re: Change to Remote Area Broadcasting - WA' 28 August 1998; and GWN, 'GWN Change to Digital Transmission on PAS-2', 27 November 1997.

³⁹ GWN/Prime, submission, Part 3.6.

⁴⁰ GWN/Prime, submission, Appendix C3, Part 6.

⁴¹ GWN/Prime, submission, pp4-8; Telstra, submission, 29 April 1998, p2..

From the correspondence provided to the ABA and the comments from DTH remote area viewers, self-help groups and, in particular, decoder dealers, it is apparent that Optus undertook a concerted campaign to persuade viewers that they need not make any move to acquire digital equipment despite advice to the contrary by GWN. The campaign included regular letters to decoder dealers assuring them of Optus's intention to continue to transmit the analog B-MAC service after GWN ceased transmission.

Optus sent a fax to Satellite Services Australia on 5 January 1998, stating that:

Optus intends to continue with the GWN BMAC signal after January 31st 1998, until Optus own digital conversion in WA is complete. This is expected around May 1998. So far GWN has not agreed to cooperate with Optus in this initiative, but advice Optus has received is that there is nothing in the current legislation that prevents Optus from providing the GWN signal.⁴²

In addition, Optus sent a letter to equipment dealers on 23 December 1997, another on 8 January 1998 and an update on 23 February 1998 advising dealers in the following terms:

GWN has stated that they will terminate their uplink at the end of February 1998. As agreed previously Optus intends to continue with the GWN signal in BMAC until Optus digital transitions in WA have been completed (mid 1998).⁴³

Optus also provided oral advice to the ABA at about this time in February, that it would continue to transmit the BMAC analog signal and that it had received legal advice that it did not require permission from the ABA to do so. In addition, Mr Graeme Campbell, then Member for Kalgoorlie, told the ABA that he had been advised by Optus on 27 February 1998 that Optus was proposing to continue transmitting the analog service.⁴⁴ This was the day before the analog service ceased.

The conflicting information provided by GWN and Optus, and the large number of media releases and letters sent out by Optus, had the effect of creating considerable confusion among viewers. The evidence points to the fact that Optus was successful in persuading many viewers that there was no need for them to take any steps towards acquiring digital equipment before Optus itself introduced its digital Aurora platform some time in mid 1998. Although Optus submitted that the package sent out under the auspices of the WA Department of Commerce and Trade 'also advised people to do nothing',⁴⁵ this package actually suggested two possible options for viewers: convert to digital now or defer the decision until further information became available.⁴⁶

Whether Optus's campaign was misleading and inaccurate is not a matter for the ABA to determine, except insofar as it addresses the issue of the adequacy of GWN's attempts to the inform its viewers.

⁴² Facsimile from Jeff Davies, Optus Communications Pty Ltd to Geoff Watkins, Satellite Services Australia, 5 January 1998.

⁴³ Letter to dealers, 23 February 1998.

⁴⁴ Telephone advice from Mr Campbell to the ABA, 4 March 1998.

⁴⁵ Optus, submission. 30 April 1998, paragraph 4.

⁴⁶ Department of Commerce and Trade (WA), 'Conversion of Satellite Radio & Television Services to Digital Transmission', 3 December 1998, p2. However, the package also contained an information sheet from Optus, dated 26 November 1997, that suggested that viewers need not do anything about acquiring new equipment at that time.

The claims by GWN and Telstra that Optus's advice to viewers inhibited a more widespread conversion to digital during the simulcast period appear to have some basis. It seems that many viewers relied on Optus's stated intentions that it would continue to transmit the analog B-MAC service. However, there does not seem to have been any similarly well orchestrated information campaign carried out by GWN in relation to its migration from analog to digital. In addition to the written material referred to above, GWN operated a 24 hour telephone service to answer public inquiries. It also provided quarterly updates during the planning and conversion period to the Communications Advisory Committee (WA Government); the Graziers Association; the Isolated Parents and Childrens Association; and the public broadcast industry.⁴⁷ The minutes from the Remote Area Broadcasting Meeting⁴⁸ (12 August), reveal that the group was aware of the importance of a public awareness campaign around the issue of conversion to digital. The strategy outlined in these minutes indicates the responsibility for public awareness would be on the basis of broadcasting 'zones' and would be a co-operative effort between the broadcasters relevant in each 'zone'. In the case of remote WA, this involved GWN and the ABC.⁴⁹

GWN does not appear to have made any conscious attempt to refute the information being disseminated by Optus and did not, to the ABA's knowledge, engage with the position being put to viewers by Optus that viewers need 'do nothing' in preparation for the change. As a result, it seems that viewers were persuaded that nothing was going to change for them if they retained their analog equipment. Instead, the analog service ceased transmission on 28 February 1998, without warning from Optus that it would not be retransmitting the service immediately as it had led viewers to believe.

Conclusion

There was a widespread perception among viewers that GWN failed to disseminate adequate information about its transition to digital and the requirements for viewers who wished to continue to receive the WAW service in digital mode. On the other hand, viewers felt that Optus had made efforts to keep them informed and many viewers believed that Optus was addressing viewers' interests in a way that GWN was not.

Whether this perception was fair is not clear from the evidence. GWN did write to viewers and dealers during the lead up to the change in platform. However, when assessing the effectiveness of communications strategies, the perceptions of those with whom GWN was purporting to communicate must be given considerable weight. The general perception, as expressed to ABA officers, was that GWN had been largely silent in relation to viewers.

While it appears that GWN's information campaign may not have been particularly effective, there was nevertheless a concerted effort by Optus to persuade viewers to ignore GWN's advice. Furthermore, Optus actively encouraged viewers to do nothing about making the change to digital because Optus indicated that it would fill the void left by

⁴⁷ GWN/Prime, submission, p15.

⁴⁸ RABIG meeting.

⁴⁹ Remote Area Broadcasting Meeting, draft minutes, 12 August 1997, at Attachment B2(i) of GWN/Prime submission.

GWN by retransmitting the analog B-MAC service. Ultimately, Optus was not able to fulfil the expectations it created among viewers without the intervention of the ABA. In the ABA's view, had Optus not undertaken to neutralise GWN's information campaign and create an expectation among viewers that the analog B-MAC WAW service would continue, there is evidence to show that the steps taken by GWN to provide information to viewers would probably have been adequate to inform them of impending change.

(d) The level of monitoring by GWN of viewers' needs and their rates of conversion to digital receiving equipment during the period December 1997 and March 1998

According to GWN's submission, GWN began monitoring the conversion process among DTH viewers, self-help sites and Shire Councils from December when the first digital decoder was enabled.⁵⁰ This accords with the ABA's experience, which was that the ABA was provided on request with regular updates from GWN on the numbers of people who were converting to digital during this period.

In so far as it was possible to determine, the numbers provided by GWN on the rates of conversion among DTH viewers, self-help communities and Shire Councils seemed to be accurate and assisted GWN to maximise access to the digital system for those viewers who wanted to make the change.

Conclusion

GWN effectively monitored viewers transition from analog to digital.

(e) The procedures adopted by GWN to ensure a continuity of service for remote and regional viewers during the process of changing from an analogue B-MAC service to a digital service

GWN submitted that, in addition to broadcasting over a two month simulcast period, GWN undertook to contact all viewers who had a registered decoder. These viewers received two information packs and if any packs were returned by Australia Post the decoder associated with that pack was contacted by B-MAC message.⁵¹

GWN also negotiated an extra one month simulcast period on the analog system when it became clear that many viewers had not made the transition. The costs for GWN associated with the extra time for analog transmission on Optus's terms were apparently a deterrent to further extensions of the simulcast period (see section (f) of this report). In addition, GWN with Telstra, tried to ensure that Shire Councils, self-help and BRACS sites⁵² were not disadvantaged by the lack of stocks of commercial D9223 decoders.

⁵⁰ GWN/Prime, submission, p16.

⁵¹ GWN/Prime, submission, p16.

⁵² Broadcasting for Remote Aboriginal Communities Service.

Conclusion

Whether or not these measures were sufficient must be assessed in light of other factors, including the length of the simulcast period and its timing. The procedures adopted may, in themselves, have been adequate to ensure continuity of service had the period of simulcast been for a longer period and not covering a vacation period.

(f) The negotiations between Optus and GWN which occurred during the period December 1997 and March 1998, including financial arrangements proposed for any additional simulcast period

Optus and GWN began negotiations over continuing the transmission of the analog, B-MAC service in July 1997. In a letter dated 11 August, Optus acknowledges GWN's decision to contract with Telstra/PanAmSat.

In two letters to GWN, dated 22 July and 11 August 1997 respectively, Optus offered GWN continuing transponder space for a 12 month period only, commencing 31 August 1997. This offer was apparently made before Optus knew that GWN was contracting with Telstra for space on the PanAmSat satellite. When the 12 month offer was refused by GWN, Optus offered a minimum six month term at a monthly rate significantly higher than Optus had charged under the long term contract.⁵³ However, by December 1997, Optus was suggesting that it would carry the GWN service free of charge for a six month period, with GWN uplinking the service from Bunbury.⁵⁴ This offer was rejected, apparently in the belief that it would be in breach of the B-MAC Management Plan and/or the *Broadcasting Services Act 1992*.⁵⁵

The correspondence between GWN and Optus during this period discloses that negotiations stalled over the issue of whether GWN would extend the analog B-MAC transmission for one month, until 28 February, or whether GWN would accept Optus's offer to continue the analog service for free for an additional six month period. Optus was proposing to charge at a substantially higher rate for the monthly extension than GWN had paid previously.⁵⁶ Optus was also insisting on the higher payment starting from 1 October and the payment of 'arrears' from that date.⁵⁷

On 9 January 1998, GWN rejected as unacceptable Optus's 'proposed three alternatives for continuation of the GWN BMAC service beyond 28 February 1998'.⁵⁸ One of those

⁵³ GWN/Prime, submission, Attachments A6.

⁵⁴ Optus to GWN, letters, 22 and 29 December 1998, GWN/Prime, submission, Attachments A15(i) & A16.

⁵⁵ GWN/Prime, submission, letter to Optus Attachment A18.

⁵⁶ Optus, submission, 30 April 1998, question 1.

⁵⁷ Optus to GWN, fax dated 5 January 1998, GWN/Prime, submission, Attachment A19. Optus apparently did not pursue its request for arrears and submitted that, although GWN accepted the shorter term, it did not pay the higher charges: Optus, submission, 30 April 1998, questions 1 & 2.

⁵⁸ GWN to Optus, letter dated 9 January 1998, GWN/Prime, submission, Attachment A22.

alternatives included the option for GWN to continue uplinking the service from the Bunbury site, on the condition that any forced messages relating to the transition to digital would be agreed between the parties.⁵⁹

A series of letters and faxes appear to have passed between the two parties over the course of January 1998 and ultimately each party placed the matter in the hands of solicitors. By 23 February, the issue of the continuation of the analog B-MAC service had settled on whether or not GWN would allow Optus to carry the analog signal until Optus converted to digital. If so, the carriage would be free of charge to GWN. If GWN insisted that carriage of the analog signal should be for an additional one month only from 1 March to 31 March, then Optus would charge for it.⁶⁰ Following an ABA decision to permit Optus to continue to retransmit GWN's SSW service unencrypted from Bunbury into the WAW licence area, GWN and Optus reached an agreement that Prime/GWN would uplink an encrypted WAW signal until 15 May, in line with the ABA decision.⁶¹

The decisions by the ABA allowing Optus to retransmit the WAW and SSW services outside the licence areas were greeted with dismay by both Perth based Australian Football League (AFL) clubs, by the West Australian Football Commission⁶² and by Channel Seven Perth.⁶³ This was because the GWN services carry the AFL games to remote and regional viewers in 'real' time (that is, the games are broadcast live to air). Channel 7 Perth has the right to broadcast the AFL games into Perth, but on a delayed telecast basis. This means that the AFL games are generally broadcast later in the day and after the Perth based clubs have played their matches. The football clubs and the West Australian Football Commission argue that this practice assists them to maintain spectator numbers and gate takings.

With Optus retransmitting the GWN services unencrypted, including the live to air AFL games, Perth based clubs and Channel Seven Perth feared that Perth hotels would have a strong incentive to acquire decoding equipment that would enable them to receive the Optus retransmission in Perth and thereby undermine existing contract arrangements. The ABA understands that this concern spurred GWN to re-open negotiations with Optus and the agreement to uplink the encoded signal was subsequently extended to cover the period until Optus introduced its digital Aurora platform in mid 1998.

The protracted negotiations and correspondence between Optus and GWN do not readily disclose GWN's reasons for refusing Optus's offer to have GWN uplink its WAW signal on the analog B-MAC system. There do not appear to have been any contractual reasons, under GWN's new contract with Telstra, for GWN's rejection of the offer. Optus referred, in its correspondence, to the public interest in having the analog service extended into the DTH and self-help sites during the period leading up to Optus's digital conversion, but this was not a matter taken up by GWN in reply. Optus has acknowledged that it has both a commercial interest and a public interest concern in continuing to provide an analog B-MAC service in the WAW licence area. ABA officers formed the impression from

⁵⁹ Optus to GWN, letter dated 29 December 1997, GWN/Prime, submission, Attachment A17(ii).

⁶⁰ GWN/Prime, submission, Attachments A44-46.

⁶¹ GWN/Prime, submission, Attachments A50.

⁶² West Australian Football Commission, submission; West Coast Eagles, submission, 9 March 1998; Fremantle Dockers, submission, 9 March 1998.

⁶³ TVW Enterprises Pty Ltd, licensee of TVW Channel 7 Perth, submissions, 9 & 13 March 1998.

discussions with the parties that the initial negotiations may have taken place at too low a level in the respective organisations and that the negotiators did not have sufficient decision-making powers or flexibility to move forward. Consequently, negotiations may have stalled instead of being progressed earlier by senior management.

Conclusion

In the ABA's view, the public interest in resolving this matter was significant and it is not clear from the correspondence between Optus and GWN why GWN was apparently reluctant to accept Optus's longer term offer to retransmit the WAW service free of charge.⁶⁴ GWN's approach, in this regard, appears to have been a significant factor in the failure of the two parties to reach agreement, with the result that a substantial number of viewers were subject to uncertainty over their access to their commercial television service, and in some cases, lost access altogether for a period.

(g) The availability of the government subsidy forms and the administration of the \$750 subsidy during the period December 1997 and March 1998

The RTIF (Regional Telecommunications Infrastructure Fund) rebate scheme was established with funding from both the RTIF fund and supplementary funding from the federal government.⁶⁵ The funding provides a rebate (or subsidy) of \$750.00 for the replacement of a domestic analog decoder with a domestic digital decoder and a rebate of \$2,500.00 for the replacement of a commercial or 'professional' decoder. Subsequently, the RTIF granted approval for BRACS self-help sites to obtain a \$3,500.00 subsidy to replace existing decoders, reflecting their particular needs.⁶⁶

The principal elements of the scheme were agreed between the RTIF Secretariat, GWN and Scientific Atlanta during December 1997, but the scheme was not finalised until 14 January 1998 because of the intervention of the Christmas/New Year vacation period and the absence of some key stakeholders during that time.⁶⁷ This had the effect of delaying access to the rebate, especially for those in the remote parts of the licence area, and it slowed the digital decoder installation process unless the installer was prepared to install first and receive payment on a delayed basis.⁶⁸

The RTIF Secretariat, which was located in the federal Department of Communications and the Arts, took responsibility for the establishment of a scheme to provide a subsidy for

⁶⁴ Optus, submission on the ABA's preliminary view on whether to grant permission to Optus to retransmit the WAW signal, 9 March 1998, p5.

⁶⁵ Mr RJ Badger, Department of Communications and the Arts, letter 4 May 1998, p2.

⁶⁶ Broadcasting for Remote Aboriginal Communities Scheme (BRACS).

⁶⁷ Mr RJ Badger, Department of Communications and the Arts, letter 4 May 1998, p3.

⁶⁸ R Richardson, submission, 31 March 1998.

the purchase of replacement digital decoders. The RTIF has been in operation since 1 July 1997.

The use of the funds to assist the process of conversion to digital in the context of Remote Area Broadcasting Services (RABS) occurred after a series of meetings between the RTIF and the stakeholder interests. These consultation meetings culminated in separate applications for support from the two carriers, Telstra and Optus in November 1997.⁶⁹ Although the carriers themselves were not eligible applicants under the RTIF guidelines, the RTIF accepted the applications on the basis that these companies were acting collectively on behalf of the viewers in regional and remote Australia.⁷⁰

The RTIF contributed \$8 million towards the rebate scheme for RABS conversions and a further \$3.2 million was committed by the Commonwealth Government. This permitted a rebate of \$750 towards the cost of a replacement of an existing analog domestic decoder for DTH use and \$2,500 towards the cost of replacing existing analog 'professional' decoders for self-help communities (including BRACS sites).⁷¹ GWN owns the database of decoder users and administered the subsidy system on behalf of the Government. It was paid \$32,570.36 through the RTIF for doing so.

The key objectives for the implementation of the RTIF rebate were:

- (a) that it was workable and introduced quickly;
- (b) that it minimised administrative delays and costs;
- (c) that it was transparent, consistent, accountable and auditable; and
- (d) that it enabled eligible RABS viewers to avoid having to pay the full retail cost of decoders 'up front'.⁷²

The rebate system appears to have been formulated and put into practice in a relatively timely and organised way. The intervention of the traditional vacation period over Christmas/New Year interrupted the process and delayed the finalisation of the contracts until 14 January 1998. Vouchers for claiming the rebate were couriered to GWN the following day.⁷³

However, the implementation of the rebate scheme in mid January, only some two weeks before the original simulcast period was due to end, meant that many viewers delayed converting to the digital decoders until the scheme was in place and operational. Because of continuing problems with the transition, GWN arranged to extend the period of simulcast for a month until 28 February 1998.⁷⁴

⁶⁹ Mr RJ Badger, Dept of Communications and the Arts, letter to ABA, 4 May 1998.

⁷⁰ Mr RJ Badger, Dept of Communications and the Arts, letter to ABA, 4 May 1998.

⁷¹ Broadcasting for Remote Aboriginal Communities Service.

⁷² Mr RJ Badger, Dept of Communications and the Arts, letter to ABA, 4 May 1998.

⁷³ Mr RJ Badger, Dept of Communications and the Arts, letter to ABA, 4 May 1998.

⁷⁴ GWN/Prime, submission, p3.

(i) Cost of Purchasing New Digital Equipment

A number of viewers commented on the costs of purchasing the new digital equipment, which differed depending on various factors such as the remoteness of the property on which it was to be installed. Even with the RTIF subsidy, the additional costs can be substantial, with some suggesting they can be anything from \$500 to \$1,000 over the subsidy of \$750.⁷⁵ One viewer, who had made the transition to the digital equipment for DTH reception, paid an additional \$718 on top of the subsidy. She believed that cost was a factor in terms of viewers delaying their purchase of the new equipment.⁷⁶ Some decoder suppliers were selling the domestic decoders at a discount price of \$1,148, but this price did not include installation costs.⁷⁷

For Shire Councils and other self-help communities, the costs have been even greater despite the \$2,500 subsidy for the purchase of commercial (professional) decoders. While there were suggestions from some decoder suppliers that the cheaper 'business' decoders would be suitable for many self-help sites,⁷⁸ most Shire Councils and other self-help communities were encouraged to swap their commercial standard analog decoders for the commercial digital decoders.

Conclusion

The scheme to assist remote and regional viewers to purchase the new digital equipment required to receive the digital signal represents substantial assistance to remote viewers. However, the scheme was complex to develop, requiring appropriate safeguards against misuse, and thus took some time to establish.

GWN had responsibility for administering the scheme and was therefore aware that there were delays in finalising the scheme. The additional month's simulcast was of critical importance in ameliorating the effects of the delayed implementation, but was not, in the ABA's view, sufficient to address viewers' needs fully. While the scheme has been of benefit to viewers and eased the financial burden of making the transition, there has nevertheless been a significant cost associated with making the change and this has also affected the speed with which viewers have been willing to make the transition to the digital equipment.

⁷⁵ G. Walter, submission, 1 April 1998; J. Mitchell, submission, 1 April 1998; R. Richardson, submission, 1 April 1998.

⁷⁶ R. Richardson, submission, 1 April 1998.

⁷⁷ B. Warwick, Satellite Services, submission, 1 April 1998.

⁷⁸ B. Warwick, Satellite Services, submission, 1 April 1998.

(h) GWN's obligations under Schedule 2, Part 3, clause 7(2)(a) of the *Broadcasting Services Act 1992*

Schedule 2, Part 3, sets out the standard conditions for commercial television broadcasting licences.

Clause 7(2)(a) of the *Broadcasting Services Act 1992* provides:

(a) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area

As discussed above, during the change from the analog B-MAC service to a digital service, many of GWN's viewers lost access to their only commercial television service by virtue of the fact that they no longer had the correct equipment to obtain the signal. The loss of the service to significant sections of the viewing audience gave rise to a concern that GWN might be in breach of clause 2(a). GWN submitted that the clause imposes a requirement only to **provide** a service that is 'technically adequate', and that the obligation does not extend to ensuring that potential viewers of the service obtain and install the necessary equipment to receive it.⁷⁹

The issue of what constitutes a contribution to the provision of an adequate and comprehensive service in a licence area has not been widely canvassed under the *Broadcasting Services Act*. The test under the old *Broadcasting Act 1942* was significantly different and imposed a higher standard than does the present Act. As GWN was, at the time, the only commercial broadcaster operating in the WAW licence area, GWN's 'contribution' is all important. Whether this contribution was adequate at all times during the conversion process is a matter to be determined on the facts.

As GWN has argued, its only obligation is to contribute to the **provision** of an adequate and comprehensive service. GWN suggests that this means the provision of a technically adequate signal. Although, in the ABA's view, an 'adequate and comprehensive service' also includes programming in addition to the technical signal, that is not a matter relevant to the present issue as there is no suggestion that GWN's programming does not meet the requirements. The ABA considers that the test to be applied in this case is whether GWN provided an adequate and comprehensive service (including a technically adequate signal) to a preponderance of, or even a reasonable proportion of, the licence area during the period of its conversion to digital.

In simple terms, there is little doubt that GWN provided an adequate signal at all times, with its digital signal beaming continuously across the licence area from December 1997 and the analog signal continuing until 28 February 1998. If the test is interpreted as imposing only a minimal level of obligation on a broadcaster, that is the requirement to ensure a quality signal covers an adequate amount of the geographical area of the licence, then that test was met by GWN.

Alternatively, even if the test is interpreted as imposing a very high level of obligation and applied on the basis of the numbers of people who were able to receive the WAW service at all times, there is no evidence that GWN failed to meet this higher test. When the analog

⁷⁹ GWN/Prime, submission, p9.

signal ceased on 28 February, the ABA accepted Prime/GWN's estimate that there were about 5,817 direct-to-home (DTH) viewers unable to receive WAW (on the basis of a 1:3 ratio of receivers to people). In addition, approximately 2,250 people had placed orders and were awaiting installation; 1,322 people were waiting for Optus to go digital; and 2,235 people had not even applied for a voucher.

Further, Prime/GWN estimated that there were approximately 19 re-transmission sites where orders had been placed for decoders but where installation had not yet occurred. A further 33 sites had either indicated they were awaiting resolution of the matter, or could not be contacted or had chosen to do nothing. There were 3,346 people in these categories. As at 28 February 1998, approximately 7,000 people who had taken no action to convert would be unable to access the digital WAW signal.

In total, according to GWN, approximately 19,150 people were unable to receive the digital signal at the time of the decision. The State Government of Western Australia, on the other hand, assumed a different ratio of viewers at DTH sites and estimated the total number of viewers who lost the service at about 37,500. There are approximately 160,000 viewers in total in the WAW licence area.

The ABA accepted GWN's figures when making its decision to grant permission to Optus on 11 March 1998 to retransmit pursuant to s212(1)(b)(ii) of the *Broadcasting Services Act 1992*. However, for the sake of argument, even if the higher figure of 37,500 people were used, the numbers of people who were unable to gain access to the service were not sufficiently high, in the ABA's view, to support a conclusion that the licensee failed to contribute to the provision of an adequate and comprehensive range of broadcasting services in the licence area as required by clause 7(2)(a) of Schedule 2 of the BSA.

Conclusion

Under the test to be applied, GWN at all times provided an adequate signal to its licence area, or to a preponderance of its licence area in satisfaction of its licence conditions.

OTHER MATTERS

The ABA's investigation, while focussed predominantly on the matters covered by the terms of reference, also canvassed some other issues of interest to the viewers in the WAW licence area. These included the following matters.

The preference of viewers to receive all broadcasting services using one decoder and their decision to wait until they could genuinely assess the merits of both the Optus and Telstra services

ABA officers spoke to a number of remote and regional viewers in the WAW licence area. The ABA was particularly interested to know why viewers had, or had not, chosen to convert their decoding equipment to digital during the simulcast period. In addition, the ABA received a number of written submissions from viewers in the licence area, who commented on this issue. The critical issue for most viewers was the desire to know what would be available to them before making a choice.

In summary, many direct-to-home (DTH) viewers, who receive their television service directly from the satellite, informed the ABA that they intended to wait until they had reliable information about their options before proceeding to invest in costly new

equipment. In addition to the DTH viewers, a large number of self-help communities and Shire Councils have been affected by GWN's change to digital transmission. Many Shire Councils have responsibility for more than one township, with each township requiring its own decoding equipment to bring television services to the residents. The issues for all these viewers included:

- the uncertainty, at the time, over what services would be available from each satellite⁸⁰
- the possibility of lower, more competitive pricing for Optus decoders⁸¹
- the preference for receiving SBS and the educational Westlink and Horizon services (which are contracted to Optus)⁸²
- uncertainty, at the time, over which satellite service would carry the commercial services of the new licensee in WA (WIN International)⁸³
- concern that viewers would ultimately have to acquire more than one type of decoder

The desire to be able to make an informed choice in relation to satellite service providers and decoder type governed many viewers' approach to making the change to digital and meant that many people adopted a wait-and-see attitude during the simulcast period. Viewers were hoping that they would be able to choose a carrier that would provide all the available broadcasting services through one decoder. In addition, most people relied on the representations by Optus that Optus would continue to broadcast the WAW service on the analog B-MAC system, and they did not believe they would be deprived of their television service after the simulcast period ended.

Many viewers in the WAW licence area were angry about having to acquire two decoders in order to receive the same services on digital as they were receiving with one decoder through the analog system. During much of the simulcast period, there was a dearth of information provided in relation to this matter and many people believed that they would only ever need one decoder to continue receiving all their previous services. In fact, it may be that DTH viewers will require replacement decoding equipment in order to receive GWN from Telstra/PanAmSat and new decoding equipment, at a later stage, in order to receive the services contracted to Optus. Although each carrier is presently able to re-transmit the services contracted to the other, thus providing a full suite of services to viewers from either carrier, there is no certainty that this arrangement will operate indefinitely. The equipment costs, if they become necessary, will not be fully rebated, since the RTIF rebate scheme operates on a replacement basis only, and new additional equipment will be required under these circumstances. In addition, a number of viewers who converted early to digital reported that they were often also incurring costs for replacing their old Low Noise Converters, which added to the cost. Many viewers preferred to wait until it became clear what decoder purchases would best meet their needs before proceeding.

Many Shire Councils in the licence area are responsible for more than one township, so the costs associated with having to purchase two sets of decoding equipment for each

⁸⁰ I & C Longmire, submission, 27 April 1998.

⁸¹ B Symonds, submission, 31 March 1998; W Rogers, submission, 31 March 1998.

⁸² M McHayle, submission, 3 May 1998; I & C Longmire, submission, 27 April 1998.

⁸³ RA & PV Will, submission, 3 May 1998.

township was a significant factor in their decision making. Again, the rebate on new equipment is only on a replacement basis which does not cover the purchase of additional equipment. While some councils installed domestic decoders for their retransmissions, with the attendant reduction in cost, most seemed to require the commercial model decoders.

The ABA also spoke to remote area viewers who had converted to digital early. In many cases, these viewers did not want the services that Optus was promising or had recognised early that they would be likely to lose access to the GWN service if they did not convert.

Requirement for Two Decoders

Many regional and remote area viewers were dismayed to realise that they may need to acquire more than one decoder in order to obtain access to the full suite of services that they previously enjoyed with only one decoder. The present situation is that Telstra has contracted to carry GWN and is also retransmitting Optus's services. Optus has contracted to carry WIN, the ABC, SBS and the WA Government provided educational services. Optus also currently retransmits Telstra's services. This co-operation has ensured that the full suite of services are available, in practice, though one decoder.

Many viewers expressed the view that there should have been more regulation of the introduction of digital transmission, especially with regard to a legislative mandate for a single decoder system. Despite the fact that the commercial television services are 'free-to-air' in the cities, remote viewers argued that they are required to pay large sums of money for the equipment to receive the services and have significantly less choice than their city counterparts.⁸⁴ Consequently, remote viewers expect the various arms of government (or their agencies) to maintain a regulatory regime that serves their needs.

The ABA has certain powers under s212 of the BSA which might enable it to facilitate a situation in which both the telecommunications companies were able to carry the full suite of broadcasting services. This could help to mitigate the need for viewers to purchase more than one decoder. However, there are significant problems for the ABA and potential disadvantages for viewers in trying to use the s212 power for this purpose.

The first problem is that s212 was not designed to allow retransmission of services from outside the licence area and across the whole of another licence area,⁸⁵ as the explanatory memorandum (EM) makes clear. The EM says in part:

It is recognised that there are small communities, or pockets within licence areas which, because of distance from main transmitters or for reasons relating to the topography of their areas, are unable to receive adequate broadcast signals. It is intended that arrangements be permitted between such communities and broadcasters for broadcasting services to be re-transmitted, *unaltered*, to those communities. [emphasis in original]

If the ABA to used the s212 power to try to ensure that both telecommunications carriers are in a position to broadcast the major broadcasting services available in the licence area, it would push beyond the boundaries of the policy underlying the section. At present,

⁸⁴ R Richardson, submission, 31 March 1998.

⁸⁵ This would be the situation, for example, if the ABA continued to give permission to Optus to retransmit the SSW service across the whole of the WAW licence area.

providing that retransmitters do not retransmit services outside the licence area of the service licence, the retransmitters do not need the ABA's permission. This leaves it open to both Optus and Telstra to retransmit the services contracted to the other carrier, provided they pick up the service within the licence area and retransmit it within the licence area. The main difficulties for the carriers in taking advantage of this option appears to be cost, but there is no legal impediment.

Secondly, while there was, at that time, only one commercial television service available in the WAW licence area, this will change once the new commercial television service (WIN International) comes fully into operation. The WIN International licence area, unlike the GWN licence areas, is a single licence area covering the same geographical area as the four GWN licence areas combined. This anomaly is likely to give rise to new issues, as WIN International is carried by Optus and can legitimately broadcast across all GWN's licence areas. Similarly, the ABC has no defined licence area as it is a national service. This means that in the case of both the ABC and WIN International, the services can be retransmitted, without permission from the ABA, throughout the WAW licence area.

Thirdly, even if the ABA did attempt to mitigate the impact of the commercial arrangements made by the broadcasters and carriers, there could be no guarantee for viewers that these regulatory interventions would continue to be effective. It would always be open to the parties to change their commercial arrangements and create new issues for viewers.

Lack of Choice of Decoders

A number viewers indicated in discussions that GWN's choice of Scientific Atlanta Powervu conditional access meant that they were limited in their choice of decoder to those manufactured by Scientific Atlanta. By way of contrast, many viewers pointed to the fact that Optus was suggesting it would offer a choice of decoders at differing prices, for its digital platform.

According to its submission, Scientific Atlanta is prepared to licence the Powervu conditional access system to other manufacturers but states that there is no commercial benefit in this in Western Australia as the 'decoder-using' population is too low.⁸⁶ Scientific Atlanta also point to the fact that Optus has chosen the proprietary Irdetto conditional access system, which can also only be supplied under licence.⁸⁷ In recent discussions, Optus has also indicated that, although it is planning to have a choice of two decoders in some parts of Australia, it is proposing to have only one available in Western Australia. Optus's stated reasons for this are that the RTIF scheme does not facilitate making a choice of decoders available.⁸⁸

⁸⁶ Scientific Atlanta, submission, 28 April 1998, p2.

⁸⁷ Scientific Atlanta, submission, 28 April 1998, p2.

⁸⁸ Optus, submission, dated 30 April 1998, paragraph 7; also Mr R Nicholls & Dr M Harwood, Optus meeting with ABA, 7 May 1998.

Lack of Access to Decoder Servicing and Repairs

Some decoder suppliers expressed concern that viewers may be required to ship their decoders to Sydney for maintenance or repair, as there is no provision for this to occur in Western Australia. Scientific Atlanta submitted that it is not cost effective to train the Western Australian agents or distributors in the maintenance of the decoders because the customised software and highly integrated componentry require specialised training and tools. The digital decoders, according to this submission, represent a far greater technological sophistication than the old B-MAC models and all servicing will take place in the Asia-Pacific Service Centre in Sydney. However, Scientific Atlanta state that, in recognition of the distance involved, it has undertaken to pay the one way freight costs for shipping the decoder to Sydney, with the customer also paying one way costs. In the event that the decoder is 'dead on arrival', Scientific Atlanta will pay costs both ways.⁸⁹

Lack of Access to the PAS2 Satellite in Some Parts of the Licence Area

Parts of the WAW licence area, most notably in the South West of the State, are either unable to receive the signal from the PAS2 satellite or have to take unacceptable steps in order to do so. The problem stems from the fact that the PAS2 satellite beams into WA at a lower angle than the Optus satellite and those viewers who live in hilly or heavily wooded terrain in the South West are unable to receive it. The ABA was informed that, in at least one case, trees had to be cut down in order to receive the signal.

These problems of reception relate to the position of the satellite over the earth and are beyond the control of the broadcasters, except insofar as they make decisions as to which carrier to contract with. However, it means that some viewers in the licence area will not be able to gain access to GWN if it is not retransmitted on the Optus satellite.

Technical Problems with the Digital Signal

A number of remote viewers, in particular, advised ABA officers that the digital signal was more susceptible to interference than the analog and that this caused some problems with the signal dropping out. Although the analog signal was affected by rain, a number of viewers reported that the digital signal was affected by rain, wind and even heavy cloud cover. These problems seem to be at least partly caused by the fact that the PAS2 satellite beam is on a low angle in Western Australia, especially in the south west of the State, and the signal is therefore travelling through the atmosphere for longer.

In addition, viewers have advised officers of the WA Department of Commerce and Trade that Telstra's retransmission of the ABC service is technically variable and reception

⁸⁹ Scientific Atlanta recently advised the ABA that it has now established a service relationship with its distributors on a module replacement basis and supplied a stock of modules to service centres in Perth: Letter from Mr A King, Scientific Atlanta, dated 1 October 1999

quality varies. A further problem, which is not a widespread issue, relates to retransmission of the digital signal in some instances. The owner of a caravan park near Esperance, for example, advised ABA officers that he faced considerable expense in converting the digital signal from the PanAmSat satellite into a signal that he could continue to retransmit through cable around his caravan park.⁹⁰ This is because he will have to convert the UHF signal to the low band of the VHF in order to be able to put it through the cable. This requires the use of modulators and entails additional expense.

Conclusions

In the ABA's view, there were three major factors which influenced whether or not remote and regional viewers in the WAW licence area made the transition to GWN's digital service during the period of simulcast.

The first factor was the length of time set aside for simulcasting and the specific timing for that simulcast. The second was the belief among many viewers that Optus would continue providing the WAW service on the analog system until Optus also converted to digital. The third reason, and possibly the most important, is that most direct-to-home viewers and self-help viewers wanted to be able to receive all the broadcasting services that are available with the purchase of only one decoder. This meant that viewers wanted to wait to make an informed choice once Optus decoders became available and genuine comparisons between Optus and Telstra services could be made. This is because, ideally, remote and regional viewers wish to avoid the possibility of having to purchase more than one decoder.

Length of simulcasting period

In terms of the first issue, the ABA believes, on the basis of the evidence gathered in the course of the investigation, that GWN had a responsibility to its viewers to undertake a significantly longer period of simulcast than that which occurred. The two month period initially proposed was not, under the circumstances, ever likely to be sufficient. This was especially so given that it occurred over the vacation period and the 'wet season'. In addition, the fact that GWN's move to digital was the first introduction of digital satellite transmission, and that it involved a change of carrier, meant that GWN's responsibility to viewers was arguably even greater.

Further, the delay in the arrival of the commercial (D9223) decoders in Western Australia should have been apparent to GWN quite early. This, in conjunction with the delayed implementation of the RTIF scheme indicated in advance that there were at least some hitches likely during the transition period and the simulcast period should have been planned so as to accommodate such foreseeable difficulties.

⁹⁰ Mr R Rogers, telephone discussion, 1 April 1998.

While the RABIG was apparently responsible for determining the two month period for simulcast, this decision does not seem to have sufficiently considered the interests of the consumers. Both the two carriers involved, Optus and Telstra, and GWN as the broadcaster, had an interest in keeping costs down by curtailing the simulcast period. Telstra had an additional interest in gaining a commercial advantage by providing a digital service for GWN before Optus could effectively compete with its own digital platform. The outcome for many viewers was severe disruption to their television service. GWN, as the first broadcaster to begin a digital satellite service, had a responsibility to viewers to provide sufficient time to enable them to make the transition.

A minimum requirement for simulcasting?

The use of simulcasting when introducing major changes to transmission arrangements for broadcasting services is standard practice in relation to both terrestrial and satellite-delivered free-to-air television services. The minimum simulcasting period when terrestrial services change channels, eg. from a Band II VHF to a UHF channel, is typically six months. However, the ABA is concerned that different and much lower industry standards have developed over time in relation to simulcasting arrangements in the satellite sector. While these may be explicable in terms of the price of providing simulcasting from a satellite, short simulcasting periods increase the likelihood that remote area residents will lose services altogether for a period when transmission arrangements change.

When the changes involve both national and commercial broadcasting services, a further complicating factor is the different regulatory arrangements governing these two sectors. Commercial broadcasters are accountable to the ABA, which has the ultimate sanction of imposing additional licence conditions using its power in s.43 of the Broadcasting Services Act. National broadcasters are of course ultimately answerable to the federal government for the technical quality of their services but there is no equivalent ABA condition-making power. Thus, while it would appear the ABA is able to mandate minimum periods for simulcasting using its power in s.43 for a commercial television broadcasting service, it has no similar power in relation to a national service.

It is the ABA's view as a result of the present investigation that some of the disruption to remote television services would have been avoided, had RABIG members taken up the National Transmission Agency's initial suggestion of a six month simulcast period⁹¹.

⁹¹ Prime Television Ltd and Golden West Network Ltd (Prime/GWN), submission, p3

Conflicting information

The second factor arose out of Optus's proposal to retransmit the WAW service on the analog system and the expectations of viewers that they need do nothing in relation to converting to digital equipment. In the ABA's view, Optus's campaign to reassure viewers that nothing would change with GWN's shift to the Telstra/PanAmSat satellite and digital technology was ultimately misleading, however well-intentioned the motive. It may have been fruitful for GWN to have counteracted this message with a more public and high profile information campaign of its own, although whether this would have made an effective difference to viewers' decisions is not clear. Many viewers wanted to believe that the analog service would continue unchanged as they wished to await further information before investing in new equipment.

GWN, as the first broadcaster to begin digital satellite transmission of a commercial television service, had obligations to viewers to ensure that their legitimate needs were met during the transition process. However, the campaign by Optus made GWN's task of assisting viewers to convert to digital considerably more difficult. It is open to question as to how successful Optus's campaign would have been if viewers had had a longer simulcast period during which to make the conversion. This is particularly arguable given that GWN did not appear to use the period between July and November 1997, after it had signed with Telstra, to mount a strong information campaign for viewers at an early stage of the process.

A Single Receiver for Satellite Broadcasting Services

The third issue was the strong view expressed by remote and regional viewers using decoding equipment, that they wished to be able to receive all their broadcasting services through one decoder. The prospect of having to purchase more than one decoder in order to obtain the same television services that they had hitherto received through a single decoder was understandably galling for these viewers.

Most affected viewers in the WAW licence area wanted to be able to make an informed choice when deciding which equipment to purchase. A genuinely informed choice would have required knowledge of which services were to be provided by which carrier, including services contracted to the carrier and any additional services the carrier was retransmitting. This meant that viewers needed to have much more comprehensive information about services than was available at the time GWN was converting to digital.

The expectation among regional and remote viewers that they should have access to all relevant information before making a decision to buy new decoding equipment should not be under-estimated as a factor when considering the slow uptake of digital decoders. GWN was in the difficult position of being the first commercial television broadcaster to provide a digital satellite service and the conversion took place at a time when information was still scant. Many consumers in the remote and regional areas feel that 'free-to-air' commercial television services come at a very high price in the regional and remote areas. Most viewers who rely on decoders for their broadcasting services do not want to have to acquire two (or potentially even more) decoders in order to receive the same services that other viewers enjoy free or for the cost of a small VHF or UHF aerial.

It follows that much of the disruption caused by GWN's transition from analog to digital resulted from cumulative decisions by RABIG group members that saw existing national and commercial broadcasting services choose different satellite service providers in Western Australia during the leadup to competition in satellite services.

A more generous simulcasting period, better planning and greater co-operation between GWN, Telstra and Optus would have minimised the disruption. However, even if the transition had been handled optimally, the question needs to be asked whether migration of the broadcasting services available to Western Australians living in remote areas to two different satellites, requiring separate decoders and dishes pointing in different directions to receive, is in the public interest.

In general, the *Broadcasting Services Act 1992* is designed to encourage proliferation of the means to deliver broadcasting services. Section 4 of the Act (Regulatory policy) provides in part:

‘(2) The Parliament also intends that broadcasting services in Australia be regulated in a manner that, in the opinion of the ABA:

- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens of providers of broadcasting services; and
- (b) will readily accommodate technological change; and
- (c) encourages:
 - (i) the development of broadcasting technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.’

Acquisition of two satellite decoders rather than one might in theory permit remote viewers to choose from a larger range of broadcasting (and telecommunications) services than they might otherwise have available. In practice, however, the public interest with respect to the delivery of free-to-air national and commercial television broadcasting services clearly requires maximum accessibility of those services at minimum cost to viewers. In the special case of direct-to-home satellite delivery of national and commercial services, this public interest is all the greater in that reception equipment is unusually expensive and the population served, having less choice of alternatives than most other Australians, is unusually needy.

The ABA believes that it is in general undesirable to allow any national or commercial television broadcaster to be able to choose a means of transmission that requires a large investment by viewers and that does not allow access by viewers to other national or commercial television broadcasting services licensed to serve that area. While this type of strategy is legitimate in the case of other categories of television broadcasting, such as subscription television and open narrowcasting television, free-to-air commercial television broadcasters, in recognition of their unique obligations to the community, enjoy special dispensations under the Act, including a degree of protection from competition.

The ABA is of the view that it is contrary to public interest for any provider of a free-to-air broadcasting service to require viewers to invest in expensive reception equipment in order to receive the service, if that equipment does not provide access to other free-to-air broadcasting services licensed to serve that area.

There are various ways in which access to the full suite of services could be achieved, depending on the circumstances. These include: (i) that all free-to-air broadcasters could use the one satellite; or (ii) that each satellite could carry the full range of free-to-air services for that area; or (iii) that all service providers could ensure, in some other way, that reception equipment is able to receive all services.

At present, there is no person or federal government agency with the power to ensure this outcome. This is because there is no single regulatory body to regulate all the broadcasters, satellite service providers and intermediaries involved, including commercial and national broadcasters, telecommunications carriers and satellite service providers.

The ABA believes that it is in the long term public interest of viewers that such power should reside in a single regulatory body and will be referring this matter to the Minister for Communications, Information Technology and the Arts pursuant to its function under s.158(n) of the *Broadcasting Services Act 1992* to report on the operation of the Act.

APPENDIX A

List of Submitters***Written Submissions***

A.G. DOWDEN & CO.
 AUSTRALIAN BROADCASTING CORPORATION
 ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION
 SCIENTIFIC ATLANTA
 CHANNEL 7, PERTH
 CHANNEL 9, PERTH
 WA DEPARTMENT OF COMMERCE AND TRADE
 COMMUNICATIONS LAW CENTRE
 DEPARTMENT OF COMMUNICATIONS AND THE ARTS
 DEPUTY PREMIER OF WESTERN AUSTRALIA
 FEDERATION OF AUSTRALIAN TELEVISION STATIONS
 FREMANTLE DOCKERS
 GOLDEN WEST NETWORK PTY LTD
 GRAEME CAMPBELL, M. H. R. MEMBER FOR KALGOORLIE
 GREENGABLES PASTORAL COMPANY
 GREG SMITH, M. L. C. MEMBER FOR MINING & PASTORAL REGION
 IMPARJA TELEVISION
 JANE Mc PHEE
 NEW 10
 OPTUS COMMUNICATIONS PTY LTD
 PETER MOORE
 PROGRESSIVE GROWERS ASSOCIATION OF W. A. (INC)
 PRIME TELEVISION LIMITED
 R. J. SOUTHERN
 RA & PV WILL
 SHIRE OF CUE
 SHIRE OF KENT/NYABING - PINGRUP
 SHIRE OF MEEKATHARRA
 SHIRE OF YALGOO
 SOUTHERN CROSS BROADCASTING

TELSTRA CORPORATION LTD
TVW ENTERPRISES PTY LTD
WEST AUSTRALIAN FOOTBALL COMMISSION INC
WEST COAST EAGLES
WESTERN AUSTRALIAN MUNICIPAL ASSOCIATION

Oral Submissions

BOB SYMONDS
GREG WALTER
WENDY SUTHERLAND
WAYNE ROGERS
STAN HAZELDINE
JANO FOULKES-TAYLOR
ROBYN RICHARDSON
JENNY MITCHELL
DENNIS PEASE
GRAEME BUSHELL
BRETT WARWICK, SATELLITE SERVICES AUSTRALIA
RUSSELL CRAIG, HOMESAT

APPENDIX B

Terms of Reference

The ABA is carrying out an investigation pursuant to its powers and functions under sections 158(l) and 170 of the *Broadcasting Services Act 1992*.

The investigation is to establish whether GWN adequately fulfilled its obligations to remote and regional viewers in the WAW licence area in the course of GWN's shift from an analogue B-MAC television broadcasting service to a digital television broadcasting service during the period December 1997 to March 1998.

It is proposed that the following matters be investigated:

- (a) The period set aside for simulcast of the WAW service on the analogue B-MAC system and the digital system;
- (b) The availability in Perth and the WAW licence area, and the progress of installation, of Scientific Atlanta digital decoders, including the Model D9234 Business Satellite Receivers; the Model 9223 Commercial IRDs with additional audio outputs; and Model 9223 Commercial IRDs in the standard configuration;
- (c) The level of information provided to viewers (including direct-to-home viewers), self help groups and decoder dealers by GWN during the period December 1997 and March 1998;
- (d) The level of monitoring by GWN of viewers' needs and their rates of conversion to digital receiving equipment during the period December 1997 and March 1998;
- (e) The procedures adopted by GWN to ensure a continuity of service for remote and regional viewers during the process of changing from an analogue B-MAC service to a digital service;
- (f) The negotiations between Optus and GWN which occurred during the period December 1997 and March 1998, including financial arrangements proposed for any additional simulcast period;
- (g) The availability of the government subsidy forms and the administration of the \$750 subsidy during the period December 1997 and March 1998; and
- (h) GWN's obligations under Schedule 2, Part 3, clause 7(2)(a) of the *Broadcasting Services Act 1992*.