Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Purpose

The Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009 (the Determination) is made by the Minister for Broadband, Communications and the Digital Economy (the Minister) under subclause 6A(1) of Schedule 4 to the Broadcasting Services Act 1992 (the BSA). The Determination is a legislative instrument for the purposes of section 5 of the Legislative Instruments Act 2003.

The purpose of the Determination is to set the end of the simulcast period for the metropolitan licence areas.

Background

Legislative background

The Broadcasting Legislation Amendment (Digital Television Switch-over) Act 2008 amended the BSA to enable the Government to implement a phased, region-by-region digital television switch-over timetable.

The dates for switchover are set through a transitional period, known as the ‘simulcast period’, during which national and commercial television broadcasters are required to transmit simultaneously in analog and standard definition digital mode. At the end of the simulcast period, analog transmissions will cease and digital-only transmissions will commence.

Clauses 6 and 19 of Schedule 4 to the BSA set out the framework for the making by the Australian Communications and Media Authority (ACMA) of a scheme for the conversion of commercial television broadcasting services and national television broadcasting services, respectively, from analog to digital mode. The ACMA has made the schemes as required. These are the Commercial Television Conversion Scheme 1999 and the National Television Conversion Scheme 1999.

Subclauses 6(3) and 19(3) of Schedule 4 to the BSA set out the policy objectives to which the schemes must be directed. One objective, specified in paragraphs 6(3)(c) and 19(3)(c), is that there should be a transitional period known as the simulcast period for metropolitan and regional licence areas. Under subclauses 6(7A) and 19(7A) of Schedule 4 to the BSA, the ACMA is responsible for determining the simulcast period for the remote licence areas (Remote and Regional Western Australia and Remote Central and Eastern Australia).

In the case of a holder of a commercial television broadcasting licence in a metropolitan licence area, subparagraph 6(3)(c)(ii) provides that the simulcast period should run for nine years or for such longer period as is determined by the Minister under subclause 6A(1). Currently, the end of the simulcast period for all five metropolitan licence areas – that is, Adelaide, Brisbane, Melbourne, Perth and Sydney - is 31 December 2009.
In the case of national broadcasters, subparagraph 19(3)(c)(iii) of Schedule 4 provides that the simulcast period for a coverage area will end at the end of the simulcast period (within the meaning of paragraph 6(3)(c) of Schedule 4) for the licence area that corresponds to that coverage area.

Subclause 6A(1) of Schedule 4 to the BSA gives the Minister the power to make determinations for the length of the simulcast period in specific metropolitan television licence areas (determine a period for the purposes of the application of subparagraph 6(3)(c)(ii)). Subclause 6A(3) of Schedule 4 provides that a period determined under subclause 6A(1) of Schedule 4 must end before the end of 31 December 2013.

Subclauses 6A(7)-(10) of Schedule 4 provide for the Minister to subsequently vary, by up to three months earlier or three months later, the determined date.

A phased, region-by-region digital switchover timetable

On 19 October 2008, the Minister announced a phased, region-by-region timetable for the switchover to digital television. The timetable proposes to progress switchover through regional areas on a State basis, then metropolitan areas and remote Australia in 2013.

Criteria for prioritisation of particular switchover areas

The digital television switchover timetable has been developed by identifying six key criteria for prioritisation and applying them to the identified switchover areas. The prioritisation operates such that the areas which require more time to prepare for switchover are later in the timetable. The key criteria are:

- **Population**: The number of households and other dwellings in a particular switchover area impacts on the level of resources required by industry and Government to facilitate switchover in that area.

- **Number of multi dwelling units and communal aerial systems**: The added complexity of converting multi dwelling units (MDUs) may impact on planning and preparation for digital switchover in a particular area. MDUs include apartment and townhouse complexes, boarding houses and hostels in both private and public ownership. A significant proportion of these MDUs have communal television aerial systems. Communal aerial systems are also used in public buildings such as hospitals and schools, as well as commercial properties such as hotels. A proportion of these aerial systems will require upgrading or reconfiguration to adequately receive digital free-to-air transmissions. MDUs are more common in urban and metropolitan areas.

- **The number of sites of potential digital signal deficiency**: The number of sites of potential digital signal deficiency in an area and the measures required to address signal deficiency may impact on planning and preparation for digital switchover. Also, there are approximately 650 analog television self-help retransmission facilities currently serving communities which otherwise have insufficient access to free-to-air television reception. The majority of these facilities are located in regional and remote areas of Australia.

- **Ongoing cost of the analog-digital simulcast**: The requirement to provide analog and digital transmissions until the end of the simulcast period represents an ongoing cost for commercial television broadcasters, and for the Government in relation to the transmission costs for national broadcasters. Although the cost impact is particularly significant for broadcasters operating in regional areas, these costs are being incurred by all broadcasters.
• **Digital conversion:** The digital take-up rate in a particular area may reflect the preparedness of a particular area to switch to digital. The Government’s information campaign is designed to educate consumers, and increase community awareness, about the switch to digital television.

• **Instances of VHF to UHF transition for digital transmitters:** Digital signals transmitted in the Ultra High Frequency (UHF) band of spectrum may have potentially less digital coverage than the existing analog service transmitted in the Very High Frequency (VHF) band. There may be some reception issues in some switchover areas where VHF analog signals are replaced by UHF digital signals.

Currently, paragraphs 6(3)(c)(ii) and (iii) of Schedule 4 to the BSA would have the simulcast period in the metropolitan licence areas end on 31 December 2009. Should broadcasters not switch-off their analog television transmission on this date then they may potentially breach their obligations under the BSA from 1 January 2010.

The current simulcast end date is now inappropriate. It is inconsistent with the Government’s announced switchover timetable and inconsistent with the preferred phased, region-by-region approach, which avoids significant strain on retailers, equipment suppliers, antenna technicians and the technical and engineering resources of broadcasters.

Metropolitan licence areas will not be ready to switchover to digital-only television by 31 December 2009. The broadcasters have not converted their entire transmission infrastructure in these areas and the conversion rate among viewers in metropolitan licence areas is not yet high enough to justify them switching over by this date. For example, according to the *Digital Tracker* report released by the Digital Switchover Taskforce in the Department of Broadband, Communications and the Digital Economy on 28 August 2009, only 55 per cent of Melbourne households had a main television set with either an integrated digital tuner or a digital set top box. Switching off analog television in metropolitan licence areas on 31 December 2009 would therefore leave many viewers in metropolitan licence areas without access to free-to-air television services.

Deferring switchover until 2013 would allow a greater amount of time to prepare for digital switchover in these markets. For these reasons, the Determination extends the simulcast periods in each of the five metropolitan licence areas.

**Notes on Clauses**

**Clause 1** provides that the name of the Determination is the Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009 (the Determination).

**Clause 2** provides that the Determination takes effect from the day after it is registered on the Federal Register of Legislative Instruments.

**Clause 3** is a definitions clause.

**Clause 4** is the main operative clause.

Subclause 6A(1) of Schedule 4 to the BSA gives the Minister the power to make determinations for the length of the simulcast period in specific metropolitan television licence areas (determine a period for the purposes of the application of subparagraph 6(3)(c)(ii)).

Clause 2 of Schedule 4 to the BSA defines ‘metropolitan licence area’ as a licence area in which is situated the General Post Office of the capital city of New South Wales, or Victoria, or Queensland, or Western Australia or South Australia. Pursuant to s 26(1) of the BSA, the ACMA has prepared
licence area plans for each of the metropolitan licence areas described above. The metropolitan licence areas are described in the relevant licence area plans as Adelaide TV1, Brisbane TV1, Melbourne TV1, Perth TV1 and Sydney TV1.

The purpose of this Determination is to set the end of the simulcast period for the Brisbane TV1 and Perth TV1 metropolitan licence areas at 30 June 2013, and the Adelaide TV1, Melbourne TV1 and Sydney TV1 metropolitan licence areas at 31 December 2013.

Consultation

In accordance with subclause 6A(13) of Schedule 4 to the BSA, the Minister consulted with the ACMA before making this determination.