

Coalition for Better Broadcasting

Submission - 20 October 2012

Radio Spectrum 5 – Year Outlook

Radio Spectrum Policy and Planning

Ministry of Business Innovation and Employment

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1 Introduction

This submission is made by the Coalition for Better Broadcasting (CBB) in response to the Radio Spectrum 5 Year Outlook 2012-2016 Consultation Draft.

The CBB is an organisation established to promote non-commercial broadcasting and media in New Zealand. Unlike most other democracies around the world, NZ lacks any public service television channels, with a small amount of public service programming available in commercial off-peak or online. NZ has a need for television channels that serve the audience rather than advertisers. The CBB is born out of *Save TVNZ 7* which was a group of 36,000 New Zealanders who signed a petition earlier this year to preserve NZ's last non-commercial TV station. We aim to represent the many New Zealanders who want non-commercial, public service television channels in NZ.

The spectrum management policies and proposals under review have a huge impact upon the aims of the CBB and the future ability of New Zealanders to watch public service television. We welcome this opportunity to provide our input to the Ministry of Business, Innovation and Enterprise (MBIE) as it shapes its plans for the 2012-2016 period.

2 Feedback regarding this consultation

The Coalition for Better Broadcasting is particularly concerned about the general focus of the consultation draft towards industrial and corporate use of broadcasting frequencies, with very little consideration for the end users – the NZ public. As is noted on page 6 of the consultation draft, “The Ministry’s role in allocating spectrum is to enable and facilitate business use, and to support the public policy outcomes sought by government”. This suggests that business use is paramount regardless of government’s public policy. This is reaffirmed throughout the document, with scant regard for public needs or preferences.

At times the lack of focus on audiences at the expense of commercial interests is especially pronounced, eg. Section 5.2.2 solely discusses advertising revenues as an indicator for commercial radio. It ignores NZ’s top ranking radio station, Radio NZ National (*Nielsen April 2012*) which is non-commercial and public service.

NZ audiences may not have much opportunity to watch public-service television but that does not mean they don’t want to watch it. Non-commercial TV channels play a significant role in countries similar to NZ – Australia, Canada, UK etc – where they are hugely popular. Viewer dissatisfaction with TVNZ’s commercial output remains high (*TVNZ Annual Report 2012*) and before it closed down, the monthly viewership of non-commercial TVNZ 7 was rising at an exponential rate to over a third of all New Zealanders (*Nielsen July 2012*) despite lack of promotion and published listings. The popularity of NZ’s only full public service broadcaster, shows that NZ audiences appreciate and utilise public-service broadcasting when it is available and easily accessible.

The CBB believes broadcast frequencies should be managed to provide a balanced mix between commercial and public use.

3 Provision for Public Service Broadcasting

The provision for public service television channels within the digital broadcasting spectrum is inadequate. 11 sets of licences, each holding 8-10 SD or 3 HD channels, have been allocated mostly to existing licence holders. It is understandable that this was done to retain the status quo and achieve a smooth transition to digital. But one important element of the status quo has not been continued – non-commercial television. While each TV broadcaster received spectrum space for ten times as many channels as they had under the analogue system, non-commercial broadcasting was left with space for just one channel. This lack of expansion is especially poor given the widely acknowledged diversification of TV broadcasting into niche channels which applies equally to public service television. And this is proven by the number of small television channels springing up in Auckland, Rotorua and elsewhere.

Limiting public service television to one channel, was exacerbated by moving the management of that channel from the Ministry of Culture and Heritage to Kordia, an organisation with limited cultural, non-commercial or public-policy capability. As a result, Kordia allocated Auckland's only dedicated public service television frequency to a commercial television broadcaster playing programmes funded by the Chinese Government. It is hard to imagine MCH allowing such a decision to be made, but it also demonstrates the need for more than one space be available for public service broadcasting in the larger cities. Demand for frequency space will increase at a greater rate for non-commercial space than for commercial space, as most new television broadcasters begin with little certainty of commercial success.

Perhaps it's understandable that inadequate space was set aside in the early planning stages because at that time TVNZ provided public service channels in the form of TVNZ6 & 7, and that there was little likelihood of such channels being provided by other broadcasters. Yet elsewhere within the government, TVNZ was told to focus entirely on revenue returns and no longer required by government to provide public service television. This effectively removed TVNZ 6 & 7 from existence and created a gap in the range of programming

available to New Zealanders – public service television of the likes of BBC, ABC and SBS in Australia, NHK in Japan, RTM in Malaysia, RTE in Ireland and other similar public broadcasters in every developed country. The chances of a non-commercial broadcaster filling that gap have become less likely with lack of frequency space available.

It's interesting to note that Australia has set aside one of its six frequency 'sets' for future television usage, without yet knowing what that will be. New Zealand has 11 sets and not one of them has been set aside for future television needs (such as a new public service television broadcaster). This lack of foresight in allocating new digital spectrum will severely impede the ability of new developments in broadcasting and long-term growth of the commercial sector, as well as new non-commercial broadcasters attempting to fill the gap left by TVNZ.

The expectation that a secondary market will form for unused frequencies supposes that the commercial broadcasters – TVNZ, TV3, SKY – will be willing to sell frequencies to other channels which could decrease their own audience share. It is even less likely that a non-commercial broadcaster could convince any of these mainstream broadcasters to subsidise the licence fee for the sake of the public good. Unused frequencies owned by World TV (having bought the Racing Board's licences) or set aside for MTS (or its new governing body) are considered a source of revenue so the price for these are unlikely to be subsidised.

This leaves the set of frequencies managed by Kordia/JDA and the 11th set, the proposed use of which is unclear.

The Coalition for Better Broadcasting recommends that a 'set' of licences be set aside for public service and non-commercial television use, free of charge.

This is in addition to any frequency space reserved for commercial regional television. Recent changes to NZ's television landscape have been substantial if not radical, and more changes are likely as commercial competition heats up and channels change ownership.

There needs to be, within the spectrum, capacity for future television projects including public service broadcasting independent of commercial pressures.

A full 'set' (with capacity for 8-10 SD or 3 HD channels) is likely to be needed for non-commercial use as broadcasters seek to provide more content for more niche audiences. The CBB sees this as a desirable outcome provided that all niches are catered for rather than only those with substantial financial resources as is happening with the arrival in Auckland of several competing Asian broadcasters while other ethnicities aren't catered for. This only emphasises the need to set aside spectrum rather than rely on secondary markets.

If availability of a full 'set' is limited by contracts already entered into, the CBB recommends 'use or lose' clauses be applied to rights holders of the television frequency 'sets' to encourage use and to provide space for new ventures and growth of the sector.

The allocation responsibility for public service channels should be removed from Kordia/JDA and returned to MCH to manage alongside its existing management of public service AM and FM frequencies.

4 Broadband and UltraFast Broadband

The government has at times referred to UFB as the future of free-to-air television. While the consultation draft doesn't go this far, it does point to UFB as easing the demand on radio spectrum. The CBB disagrees with this notion for the following reasons:

- When last measured in 2011 (*WorldInternetProjectNZ 2011, research by ICDC/AUT*), 78% of the population had access to broadband. This means that more than a fifth of NZ cannot stream video on their computers, phones or other devices, and therefore rely on TV broadcasts for video content. The bulk of government funded content, as found on the mainstream national channels, is widely expected to be accessible by all

New Zealand taxpayers so until this ‘digital divide’ is remedied, broadband and UFB cannot be considered a replacement for VHF and/or UHF broadcasting.

- UFB will not be free of charge to viewers as customers will have to pay for data use, daily standing charges, and to lease modems and other peripherals. These costs will limit the amount of New Zealanders using UFB for television content.
- The current UFB roll-out is scheduled to provide accessibility to only 75% of the population by 2020.

UFB should be seen as a complement to broadcast delivery but cannot be seen as a substitute for broadcasting for many decades yet. This is recognised by existing broadcasters who seek to retain radio spectrum and gain more.

5 Management rights vs radio licences

The CBB disagrees with the assertion on page 16, para 2 that market participants have the best information and can be relied on to make the best decisions for the use of a frequency. Market participants can only be relied on to attempt to raise profits, which in a small market like NZ means providing content for the largest audience while leaving smaller yet still significant audiences uncatered for. This provides little benefit to the general public of New Zealand.

Commercial reality encourages the creation of monopolies, limits expansion into niche audiences, discourages future investment in infrastructure and disregards the public good. Growth, accessibility and a balanced broadcasting landscape are at stake. The government is far better suited to balancing the needs and rights of all users and stakeholders, including the audiences, and shouldn’t shirk that responsibility.

Expansion of management rights will encourage further profiteering and speculation from what is a publicly held resource. The result could destabilise the frequency markets, both

secondary and primary. Broadcasting in NZ is already a tenuous business with companies like MediaWorks struggling to pay debts and relying on government assistance to pay licence fees. Further uncertainties around spectrum can only make it harder for struggling broadcasters. New broadcasters have potential to bring innovation and opportunities for audiences but may find it even harder to get established when frequencies are traded as management rights rather than licences.

Further use of management rights in the television spectrum could allow rights owners to use frequencies for non-television applications, further limiting the availability of broadcasting frequencies for what they were intended. This could also disrupt the Ministry's attempts to manage frequency allocation in an orderly manner and comply with international standards. Rights holders could undercut licence fees determined by the Ministry to cover costs of management, and could disorganise or even skew planning for frequency usage.

The CBB cannot see any benefits from management rights that would outweigh these potential disadvantages, quite apart from the potential loss of spectrum set aside for television. Any secondary market is likely to be unfair and dysfunctional, unless managed in a clear and open way by the Ministry.

6 'Must Carry' and 'Use or Lose'

In the absence of the availability of the 11th frequency set for non-commercial use, CBB recommends the continuation beyond the transition phase, of 'must carry' provisions requiring TVNZ, MediaWorks and Kordia (in the first instance) to provide a regional television channel in each region. Though this provision has been proven inadequate for regional broadcasters' needs in areas where more than one regional broadcaster is operating such as Auckland and Christchurch.

The CBB applauds the motivation behind the ‘must-carry’ clause to encourage subsidisation of regional and non-commercial television channels and recommends that the scheme be taken further so that holders of all licence ‘sets’ be required to provide space for regional and/or non-commercial television at wholesale or rates that recoup costs only.

In addition, the introduction of a ‘use or lose’ clause for all existing licence, rights and option holders of no more than 2 years will minimise wastage of unused frequencies. This clause should trigger automatically rather than being at the discretion of the Ministry. Spectrum capacity removed from licensees who do not meet the ‘use or lose’ deadline can then be used to create a regional and non-commercial TV broadcasting spectrum reserve.

The creation of a non-commercial TV broadcasting spectrum reserve would support the Ministry’s stated goal of harmonising with international markets. Australia and many other developed countries have adopted policies to reserve spectrum for non-commercial television broadcasting.

7 Concerns over Freeview

In the outlook period, if not before, Freeview’s founding partners will control NZ’s only free-to-air broadcasting outlet. This privately managed conglomerate will control the fees for other channels to be included in Freeview, with potential to severely limit newcomers’ ability to reach an audience. They will also control channels’ inclusion in the nationwide electronic guide for free-to-air TV broadcast programmes. These powers are open to subtle or not so subtle abuse, and need to be monitored and regulated to allow new ventures to compete on a level playing field within Freeview.

8 Summary

CBB recognises the Ministry’s success in producing the consultation draft providing many stakeholders with increased certainty about its future plans for allocation and management of radio spectrum in New Zealand. We feel that the biggest stakeholder – the NZ public – is under-represented in this process. We hope that our suggestions and recommendations are helpful in formulating a thorough and successful future strategy.

Recommendation 1

Extend the consultation draft’s focus to include audiences.

Recommendation 2

Reserve a ‘set’ of frequencies for non-commercial television.

Recommendation 3

Remove responsibility to allocate non-commercial licences from Kordia/JDA and return to MCH.

Recommendation 4

Don’t use the Management Rights model for broadcast frequencies.

Recommendation 5

Ministry to establish and maintain the secondary market in frequencies.

Recommendation 6

Retain ‘must carry’ and ‘use or lose’ clauses in licences for commercial broadcasters.

Recommendation 7

Regulate Freeview to allow free access and ECG for non-shareholding broadcasters.

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