

Coalition for Better Broadcasting

Submission – 30 June 2014

Nicky Andrew

NZ on Air

This submission is made by the Coalition for Better Broadcasting (CBB) in response to a request for feedback of June 2014.

Thank you for the opportunity to submit to the NZoA decision-making process. The CBB were made aware of this consultation only days before the deadline. We suggest future consultation should include approaches to known stakeholders such as the CBB.

The CBB is a charitable trust established to promote public service broadcasting and media in New Zealand. Since publicly launching in April the CBB has over 1100 members.

Introduction

The New Zealand television broadcasting sector is notable for being heavily commercialised and weakly regulated while public service television broadcasting provisions are minimal compared with other OECD countries. In recent years there has been a significant erosion of public service media services, most notably the removal of the TVNZ Charter, and the discontinuation of TVNZ6, TVNZ7, UTV, Triangle TV and other regional broadcasters.

This impacts directly on NZoA because public service broadcasting values are almost exactly what NZoA was established to protect and support. When the 1989 Broadcasting Act was written, all of the *Primary Functions of the Commission* (s36) and *Provisions* (s37.c) were considered protections against the commercial broadcasting environment. Those protections are even more necessary today as broadcasting has become more commercialised.

These *Functions and Provisions* are tempered by s39 which offers a range of provisos including the 'potential size of audiences likely to benefit from the project'. This single clause has been given undue weight by NZoA in recent years at the expense of its *Primary Functions*. This has led to NZoA being unable to ensure an adequate range of programming for youth, people with disabilities and all minorities (except 'household shoppers aged 18-49').

NZoA has also failed to ensure the *reasonable provision* of documentaries. The CBB regards a *reasonable provision* as being at least weekly, consistent with standard television schedules in other countries.

NZoA is an important part of the NZ media ecology and vital to the sustainability of the independent production sector, and by extension the free-to-air television sector.

However, it is structurally limited by its need to ensure the agreement of a free-to-air channel to schedule and air the content it funds. This means its content is subject to commercial gatekeepers and schedulers, effectively subordinating its *Functions* to the very commercial pressures and market failures it was set up to avoid.

Even with the Platinum Fund money (derived from the TVNZ Charter funding), NZoA has not been able to maintain a full range of programme genres. It doesn't receive funding applications for potentially valuable content because the commercial channels will not agree to air those programmes.

It is telling that TVNZ's recent statements of intent reveal quite explicitly the desire to encourage NZoA to allocate more funding to commercially viable genres. Unfortunately, NZoA is prone to bureaucratic capture by its client base. That is, the organisations it provides money to rather than receives money from. Too often it has celebrated its commercial successes as evidence of public money well spent, and naturally it is applauded by the segments of the local production industry that benefit (especially the larger production studios).

The NZoA Channel Preference Policy Proposal seems to be motivated by these circumstances and the intention to solve the current malaise is applauded by the CBB. But we believe the proposals do not go far enough.

To successfully resolve the significant structural issues causing NZoA's failure to perform all its statutory functions, the Coalition for Better Broadcasting makes 10 recommendations.

Recommendations

1 Apply weighting to the four Channel Preference Principles

The Coalition for Better Broadcasting agrees with the four principles though they are not all of equal value. If NZoA were to consider all four principles as equals, it would only weaken its ability to achieve its *Functions* as per the Act and *strategic content goals* (see recommendation 2).

We believe Principle 4 should have 60% weighting to the final score of a channel and its funding applications. This is because Principle 4, to assist NZoA's strategic content goals, is practically NZoA's founding principle. It relates to the vast majority of the Broadcasting Act clauses. It also relates to the primary reason why NZoA exists – to balance the effects of commercial television.

Of the other principles, we consider Risk Management and Potential Audience Size to be of equal importance, 20% and the Fairness Principle to be worth 10%. Each of these principles are mentioned only once or twice in the Broadcasting Act and none of them relate to the over-arching *raison d'être* of NZoA.

Giving all four principles 100% weighting, ie requiring all four principles to be present for a channel to be preferred, is not workable. It will either result in a weak interpretation of the principles or the inevitable trading off of some principles against others. This would lead to the least quantifiable principle being sacrificed – Principle 4, NZoA's founding principle.

2 NZoA's strategic content goals must be defined

There is no explanation of NZoA's strategic content goals apart from some unspecific phrases on page 7. Yet these goals theoretically underpin Principle 4.

We note that in describing NZoA's current practice for television content, s39 of the Broadcasting Act is the only part of the Broadcasting Act quoted. This is despite s36 and s37 giving specific guidance on content, (described above). Why does NZoA ignore these parts of its own Act, which define broadcasting policy?

The lack of certainty around these strategic content goals means any outcome has no certainty and can therefore be a success or not depending on one's point of view.

3 All NZoA strategic content goals are important

There needs to be recognition of the need to achieve all of the strategic content goals rather than just the easy ones. Getting more documentaries into prime-time is much harder than just buying more local content, therefore the least likely outcomes should be given far greater priority by NZoA.

This consultation is an important part of that effort but NZoA proposals are not strong enough to achieve any type of change.

4 Risk Management can be assessed in many ways

Principle 1 Risk Management is certainly important, especially considering the limited funds NZoA has to distribute. NZoA is correct that the age of a channel is one useful measure of reliability, but it should be one of many. Using just the channel age rules out any new channel that starts up, no matter how secure its funding, its management or its broadcast platform. New channels may be resourced via a regional council, an existing commercial broadcaster or even the government and these would all be considered a 'safe bet' from the outset. Channels that might seem less secure also deserve the

opportunity to prove themselves worthy of funding without having to wait at least three years.

New channels have greater need for NZoA assistance to offset the extraordinary costs of starting up, and this proposal would favour the existing channels. Given the lack of viewing options in NZ, which also limits the options for NZoA to achieve its goals, favouring the existing channels is a strategic error.

The CBB recommends that where a channel is younger than the required age for *viable service*, NZoA should allow channels to prove themselves via proof of resources/funds, the track record of key staff or other methods.

It's worth noting that previously, when NZoA funds have been written off, it is through the failure of independent production companies. It is up to the channels to ensure their suppliers don't fail to deliver, but sadly this has happened on all channels, irrespective of how long they have been broadcasting.

The CBB suggests that a better way to ensure content is completed is by looking at the systems in place within the channel's commissioning section around monitoring progress and delivery. This is preferable to disadvantaging newly established channels.

5 Scheduling changes should be added to Risk Management

Often a channel will alter the agreed scheduling proposed at the time of funding. This is the channel's right and it is understandable that after a project is realised, there might be a change in its suitability for an audience. However there are occasionally times when the scheduling seems to be in bad faith, either because a new scheduler has taken over or a demographic need has changed. The programme may be finished as it was proposed but the channel has a change of heart and clearly NZoA might be disappointed with the scheduling.

If NZoA cannot build guaranteed schedules into its contracts with channels, it can at least note these *schedule dishonours* and consider them in the context of Risk Management for the channel.

We therefore propose an added risk management objective of *Scheduling reliability*. The core channel requirements could be ‘has not altered scheduling of previous projects without NZoA agreement more than once in previous two years’ for Type 1 and ‘has not altered scheduling of previous projects without NZoA agreement in previous two years’ for Type 2 and Type 4.

Obviously scheduling doesn’t apply to Type 3. Position on a website homepage or promotion within popular pages, is the equivalent of prime-time so there could be a requirement along the lines of ‘has not altered promotion and position without NZoA agreement in previous two years’.

6 Cost versus potential audience

Principle 2 Potential Audience Size is important to manage the costs of a project versus the benefits to the general public as an audience. As mentioned above, too much importance has been placed on this sub clause at the expense of NZoA’s *Primary Functions* and *Provisions*.

7 Type 2 channel allowances

The CBB believe some of the objectives are overly harsh for Type 2 channels.

As noted in the proposals document, national coverage on both Freeview systems is expensive. Allocation space on Freeview Satellite is limited with new spaces no longer

available, therefore it is impossible for a channel to get onto the satellite without another coming off. We believe this requirement should be changed for Type 2 channels to allow for national coverage on either Freeview network.

Availability on a second screen is important. But establishing a usable on-demand website is expensive and complex. It requires extensive libraries and bandwidth access to avoid overloads. We have often experienced problems with on-demand services from Type 2 channels and occasionally the Type 1 channels. Therefore we believe that embedded YouTube/Vimeo links would suffice for Type 2 channels and below.

TARP ratings are too expensive for Type 2 channels to afford, hence the late uptake of them. The Peoplemeters' sample is so small that ratings on these channels are often arbitrary blips without meaningful value. We would therefore recommend a less expensive method of survey from a recognised research company, that provides viewership for a series or one-off programme without the need for quarter-hour breakdowns.

8 Co-investment

The co-investment requirement seems potentially onerous to a Type 3 or Type 4 channel. As noted later in the proposals document, there are no online service providers likely to provide NZ-made content. Therefore we believe greater encouragement should be provided and co-investment be negotiated on a case-by-case basis rather than a blanket requirement.

9 Funding levels for each Channel Type

We note in Figure 1 the massive difference in funding allocation between channel types. Even though Type 2 has doubled in two years to \$16m it is still only a quarter of Type 1.

The CBB requests that significantly more funding be applied to Type 2 channels and significantly less to Type 1 channels. Especially as some of the larger funding recipients on Type 1 channels have subsequently been funded without NZoA funding. The commission of My Kitchen Rules NZ by TVNZ shows that these large reality projects can get off the ground without public funding. We sincerely hope there are no more wasteful splurges from NZoA and in its place we see more funding of diverse programming on the Type 2 channels.

It's true that audiences on Type 2 channels are smaller and this is an important problem for NZoA that could be offset with a suitable marketing budget. The CBB therefore suggests NZoA consider additional funding for marketing of commissions on Type 2, 3 and 4 channels. This would strengthen its initial funding and strengthen the channels that are willing to work within NZoA funding goals.

Promotional activity is not disallowed by the Broadcasting Act. Indeed the first *primary function* of the Commission (s36.1.a.i) is to 'reflect and develop NZ identity by promoting programmes about NZ culture and NZ interests'.

The Type 4 channels (what's left of them after DSO) are hopelessly underfunded. If they are to improve to a professional level they need greater support, not weaker support. We would like to see better funding of existing Type 4 channels and for new channels that will inevitably emerge.

10 Channel Preference Criteria

The CBB believes Figure 5 should read as follows (changes in yellow):

Principles	Objectives	Core channel requirements			
		Type 1	Type 2	Type 3	Type 4
		Free to Air Broadcaster	Free to Air Broadcaster	Online Content Aggregator	Regional Free to Air Broadcaster
Risk management 20% of decision weighting	Viable service	Transmitting continuously from NZ for a minimum of seven years. Otherwise subject to other tests as per CBB recommendation 4	Transmitting continuously from NZ for a minimum of four years. Otherwise subject to other tests as per CBB recommendation 4	NZ-based business operating a website/portal running continuously for a minimum of three years. Otherwise subject to other tests as per CBB recommendation 4	Transmitting continuously from NZ for a minimum of three years. Otherwise subject to other tests as per CBB recommendation 4
	Scheduling reliability (as per recommendation 5)	Has not altered scheduling of previous projects without NZoA agreement more than once in previous two years	Has not altered scheduling of previous projects without NZoA agreement in previous two years	Has not altered promotion and position without NZoA agreement in previous two years	Has not altered scheduling of previous projects without NZoA agreement in previous two years
Potential audience size 20% of decision weighting	National coverage	Full access on both Freeview platforms	Full access on either Freeview platform	Funded content to be available free. 100% free-access environment encouraged	Clearly defined coverage to a region/audience of significance
	Availability on a second screen	On-demand free access website	On-demand free access website allowing embedded YouTube/Vimeo links as option.	Mobile functionality ('second screen')	On-demand free access website allowing embedded YouTube/Vimeo links as option.
	Measureable audience	TARP ratings are released by Nielsen for at least a period of 12 months	Recent reliable actual audience figures that show viewership for a programme or series as a whole (not broken down to 15 minute blocks) Or survey by reputable agency via less expensive method	Verifiable site analytics available for a minimum of 12 months	Recent reliable actual audience figures.
	Audience quantified	Minimum monthly average primetime audience measured over minimum of 6 months should be 5%	Minimum expected audience around 10,000	Minimum average monthly New Zealand site users 30,000	Minimum regional population 50,000
	Potential audience maximised	A combination of prime-time and off-peak programming. Some promotion guaranteed in prime time	Prime time scheduling (except where off-peak suitable for target audience e.g. Children). Some promotion guaranteed in prime time	Content available on demand or via live streaming channel. Strong promotional plan	Prime time scheduling (except where off-peak suitable for target audience e.g. Children). Some promotion guaranteed in prime time
Fairness 10% of decision weighting	Commitment	Demonstrated investment in local content	Demonstrated investment in local content	Demonstrated investment in local content	Demonstrated ability to serve regional audience
	Co- investment	Payment of a licence fee for funded content expected	Payment of a licence fee for funded content expected	Co-investment negotiated on a case-by-case basis.	Co-investment negotiated on a case-by-case basis.
Assist NZ On Air strategic content goals 50% of decision weighting	Diversity of local content on appropriate screens	All NZOA genres considered with a combination of prime-time and off-peak programming.	Content of a type important to NZ On Air but difficult to achieve on Type 1 channels	Content of a type important to NZ On Air but difficult to achieve on broadcast channels. Likely lower-cost	Funded through a dedicated funding pool. Not eligible for general TV funding.

Summary

In general the CBB would like to see NZoA strike a stronger stance in defence of its *Primary Functions*. Those *Functions*, and presumably the *Strategic Content Goals*, mirror traditional public service broadcasting goals, and that makes sense as NZoA was created primarily to defend public service values in a commercial television environment.

But sometimes it seems that NZoA has forgotten what they are. The only mention of public service broadcasting in the NZoA proposal document is in an international context seemingly not relevant in NZ. Certainly public service principles are not popular with the current government but that does not take away the legislation that requires NZoA to adhere to fundamental public service broadcasting principles.

As mentioned in the introduction, we recognise that NZoA is hamstrung by its inability to force channels to screen certain programmes. But we would like NZoA to fight harder with the commercial broadcasters to achieve its roll as a stalwart of public service broadcasting in the commercial environment. Our recommendations in this submission are all essentially asking NZoA to push harder in that direction.

We are glad that there is no mention of channels behind paywalls in this review. We strongly believe that public money should only be spent on programmes that are available freely to the public. That said, the time has come when more leeway is given to regional broadcasters, and especially any non-commercial broadcasters still left in this hostile environment.

NZoA missed an opportunity to foster a great television channel that would likely have fulfilled many of its goals when Stratos TV applied for funding. No doubt there were

plenty of reasons not to fund it at the time, but if foresight and a long-term strategy had been used, NZoA's lack of options to achieve its funding goals would not exist.

With this in mind the CBB suggests that this Channel Preference Proposal is the best chance to create that long-term strategy. One that can be applied if not immediately, then in future when a non-commercial or public service television channel is established for a national or significant regional audience.

NZoA is also encouraged to re-evaluate its decision not to fund channels themselves. The Broadcasting Act allows for such in s36.1.e and s36.2.a so the decision not to is merely a policy, that can be changed if necessary. We would suggest that it is necessary now to reconsider that policy as so many programme genres have disappeared from NZ television screens.

And what of new genres, new formats, new programme styles? The proposal summary suggests that content innovation springs from contestability. This is quite simply not the case. NZ has had contestability for decades and yet innovation on NZ television screens does not exist. Innovation springs from a lack of commercial imperatives and the ability to trial new ideas without the need to achieve certain ratings. Take a look at SBS for innovation, not Channel 7, 9 or 10.

Thank you again for the opportunity to provide feedback regarding Channel Preferences. We hope it is of some use, and would be happy to make further submissions and explanation of the points made.

Please contact:

Myles Thomas

Coalition for Better Broadcasting

betterbroadcasting@gmail.com