AUSTAR Entertainment Pty Limited

Declaring the Start Date of Licences under Section 38C of the
Broadcasting Services Act 1992: South Eastern Australia TV3 and
Northern Australia TV3 Licence Areas

12 November 2010
To:  Australian Communications and Media Authority (ACMA)

By email: DTRAS@acma.gov.au
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1. Introduction

AUSTAR Entertainment Pty Limited (AUSTAR) welcomes the opportunity to comment on the ACMA consultation paper relating to declaring the start date for licences allocated under section 38C of the Broadcasting Services Act 1992 (the Act) for south eastern Australia and Northern Australia TV3 licence areas (Paper).

While AUSTAR understands the legal requirement that the ACMA declare a start date for the South Eastern Australia TV3 licence area on or before 15 December 2010 (i.e. within 90 days after the date on which Eastern Australia Satellite Broadcasters Pty Limited (EASB) was allocated its licence under section 38C of the Act), we are very concerned that a number of issues critical to the implementation of the Viewer Access Satellite Television (VAST) service have not yet been addressed by the ACMA or the television industry generally. As a result, we think there is a strong likelihood that the commencement of the VAST service in the SE Australia TV3 and Northern Australia TV3 licence areas on 15 December 2010 will simply confuse television households in affected States about the digital switchover, what it means for them and what to do if they can’t receive their local digital free to air channels.

AUSTAR believes that it is imperative that these issues are resolved before the VAST service is made available to the Australian public and that the ACMA, the Digital Switchover Team and industry work together to ensure that the launch, implementation and management of the VAST service is clear, efficient and in the best interests of the Australian public.

If the ACMA is unable to postpone the start date for the SE Australia TV3 licence area beyond 15 December 2010, it should at least postpone the start date for the Northern Australia TV3 licence until it has time to properly assess that service’s compliance with legislative requirements.

2. Background on AUSTAR

AUSTAR is Australia’s leading subscription television provider in regional Australia, supplying digital television services to more than 760,000 customers in regional and rural areas, approximately 30% of regional homes nationally.

AUSTAR provides subscription television services to consumers in regional areas of NSW, Victoria, Queensland, and South Australia and to all areas of the Northern Territory and Tasmania. We also offer internet and mobile telephone services to regional customers.

We estimate that more than 50% of regional homes in digital blackspot areas are AUSTAR subscription television customers who do not receive adequate reception of a suite of metropolitan-equivalent commercial television services and will therefore be eligible to receive
the VAST service. As such, the implementation of the VAST service is of great importance to AUSTAR and its customers.

3. Executive Summary

AUSTAR strongly recommends that the declaration of a start date for the Northern Australia TV3 licence area is postponed until the ACMA, the Government, industry stakeholders and the public have had sufficient time to fully understand the nature of the VAST services to be launched, who is eligible to receive them and how and when the services will be promoted and made available to Australian viewers.

In particular, under the VAST legislation, the ACMA has certain rights to direct a licensee or the commercial television industry generally to address deficiencies if the ACMA does not consider that a proposed Section 38C service will satisfy the objectives of the legislation. We are very concerned that the ACMA has not had enough time to determine whether and how it should exercise those rights.

Our particular concerns are that, before declaring start dates for the VAST licences, the ACMA should:

1. Ensure that the Commercial Television Industry Code of Practice is appropriate for the VAST services. In particular, we are concerned that (a) VAST viewers should be made aware of how a difference in time zones may affect when programs of different classifications are broadcast on the VAST service they receive, (b) complaint handling issues arising from the broadcast of programs over multiple time zones are properly thought out and (c) the local news service to be provided by the VAST licensees will comply with news and current affairs requirements under the Code of Practice.

2. Ensure that an appropriate conditional access system has been registered with respect to the licences held by EASB;

3. Ensure that appropriate technical standards relating to domestic reception equipment capable of receiving the VAST services have been determined (so as to allow VAST viewers a choice of equipment through which they can access the VAST services); and

4. Ensure that the term ‘adequate reception’ has been defined pursuant to a determination by the ACMA.

We acknowledge that the start date for the South Eastern Australia TV3 licence is mandated to occur on 15 December 2010 by reason of Section 7H (2) of Division 2 of Schedule 2 of the BSA, however there is no requirement that the start date for the Northern Australia TV3 licence is 15 December 2010. AUSTAR recommends that declaring the start date for the Northern Australia TV3 licence be delayed until the ACMA has had an opportunity to formally assess the matters raised in this submission.
4. Codes of Practice

Section 123B of the Act permits the ACMA to conduct a review of the Commercial Television Industry Code of Practice developed by the commercial television broadcasting licensees to determine whether it is appropriate in its application to the broadcasting operations of EASB as the licensee under the South Eastern Australia TV3 and Northern Australia TV3 licences.

The Code of Practice developed by the commercial television broadcasters includes detailed provisions relating to the classification of programs, the availability of children’s programming and the broadcasting of programs at particular times depending on their classification. Further, the commercial television broadcasters must meet the Australian Content Standard, which requires an annual minimum transmission quota of at least 55% of Australian programming between 6.00am and midnight. Minimum captioning obligations also apply to commercial television broadcasters between 6.00am and midnight.

To date, commercial television broadcasters have met these Code and Australian Content Standard requirements by terrestrially broadcasting signals that are unique to each licence area. However, while there is only one licence area for each of the South Eastern Australia TV3 Northern Australia TV3 licences, these licence areas cover multiple time zones. This could mean that EASB’s transmission of a commercial television broadcast results in a breach of the codes of practice or the Australian Content Standard, due to broadcasts occurring outside the periods permitted under the classification requirements or required under the Australian Content Standard to meet the minimum Australian content obligations.

The VAST legislation requires EASB to nominate specified places in either licence area for all purposes relating to its services’ compliance with the Code of Practice and classification requirements. While these provisions address the issue of EASB unintentionally contravening the classification requirements in different time zones, they do not deal with the issue of how viewers will be notified of the new classification regime applying to the television channels they receive through VAST, how classification complaints will be dealt with under the Code or what recourse viewers may have in relation to programming broadcast outside classification time zones.

AUSTAR believes that, before the start dates of the licences allocated to EASB are declared, the ACMA should conduct a review of the Commercial Television Industry Code of Practice in accordance with section 123B(2) of the Act, to determine whether the Code is appropriate to the broadcasting operations of EASB. If, as a result of this review, the ACMA determines that the Code is not appropriate in its application to the VAST services, the ACMA should exercise its rights to require EASB to develop a new Code of Practice that addresses issues raised by reason EASB’s broadcast of commercial television services across multiple time zones.
5. Implementation of a Conditional Access System

Part 9C of the Act sets out the terms of access to commercial television broadcasting services provided through use of a satellite. In particular, the purpose of Part 9C is to explain the conditional access scheme to be used as part of the VAST service to ensure that only eligible people in Category A, Category B and Category C reception areas are entitled to access the VAST service within the permitted timeframes.

As of the date of this submission, no conditional access scheme has been registered by the ACMA. AUSTAR understands that EA SB submitted a description of its proposed conditional access scheme to the ACMA within the time prescribed in the legislation. However, as far as we are aware, no information about the proposed scheme has been made public.

In order to ensure that only qualified viewers in Category A, Category B and Category C are entitled to view the VAST services at the prescribed time, it is imperative that a conditional access scheme that complies with the requirements of section 130ZB is registered by the ACMA on or before the commencement of the VAST services being provided by AESB. Although the Act does not expressly require the registration of a conditional access scheme, it is clearly the intention of Part 9C of the Act that such a scheme be developed and registered in order that the objectives set out in that Part are met.

AUSTAR notes that switchover in parts of regional South Australia and Broken Hill (being areas covered by the South Eastern Australia TV3 licence area) will occur on 15 December 2010, the proposed start date for the South Eastern Australia TV3 licence. While AUSTAR realises that there is no scope to object to the declaration of the start date for this licence on this date, we are gravely concerned that a conditional access scheme may not be registered by then.

As mentioned previously, we estimate that more than 50% of television households in VAST licence areas are AUSTAR subscribers, many of whom are likely to fall within the Category A and Category B reception areas or are otherwise located in a digital black spot areas. In order to be able to communicate properly with our customers – particularly with respect to their use of AUSTAR’s satellite dish for the dual purpose of receiving both the VAST service and their AUSTAR channels – we need to know how the VAST conditional access schemes will work.

Given the importance to the VAST regime that access to the service is limited to viewers in eligible viewers in Category A, B and C reception areas, AUSTAR requests clarification from the ACMA as to what is proposed with respect to registration of an approved conditional access scheme and the timing of its registration.

In light of the uncertainty surrounding the conditional access arrangements for the VAST services, it is our view that declaration of the start date for the Northern Australia TV3 licence should be delayed until there is clarity on this issue.
6. Technical Standard for Domestic Reception Equipment

Section 130BB of the Act grants to the ACMA a right to determine technical standards that relate to domestic reception equipment capable of receiving the VAST services.

To date, only one set top box, manufactured by UEC, has been chosen by the VAST broadcasters for use by television households in digital black spot areas to receive the VAST signals. We understand that a technical standard that will allow other set top box manufacturers to enter the VAST equipment market is unlikely to be made available until the end of the first quarter of 2011. In our view, this will be too late to stop UEC establishing a de facto monopoly over the VAST receiver-equipment market throughout Australia, particularly if the start date for the VAST services covering all States and Territories in Australia other than Western Australia is 15 December 2010.

AUSTAR, like other set top box manufacturers, is anxious to deploy a set top box that is capable of receiving the VAST services and offers consumers an alternative to the UEC box. Unless the AUSTAR box is able to access VAST encrypted signals, AUSTAR customers in digital blackspot areas who want to receive free to air channels will have no alternative but to purchase two set-top-boxes: one for AUSTAR and one for VAST. However, in order for AUSTAR or anyone else other than UEC to deploy a VAST-compatible set top box, we need to know what technical standards our equipment must meet.

In AUSTAR’s view, it is critical to the user experience of 30%, and up to 50% of television households, that they be offered the most convenient access to the VAST channels without disrupting their normal viewing habits or forcing them to incur extra cost or inconvenience by having two separate sets of equipment.

Section 130BB provides that the ACMA is the appropriate body to mandate the technical standards needed in order to allow AUSTAR and others to deploy VAST-capable equipment. While there is no legislative requirement for the ACMA to determine these technical standards unless the Minister directs it to so, we consider that the only way to avoid UEC establishing a de facto monopoly in VAST receive equipment and the need for subscription television subscribers in blackspot areas in regional Australia to acquire a second set top box in order to receive free to air television, will be for the ACMA to exercise its right to determine these technical standards as soon as possible.
Any technical standard determined by the ACMA should involve industry consultation and ensure that the standard does not inadvertently favor some set top box manufacturers or some television providers over others. We would recommend a consultative approach similar to the approach the ACMA recently adopted with respect to parental locks for domestic digital television reception equipment.

Given the delay in the likely availability of the technical standard that set box manufacturers (other than UEC) will need in order to be able to supply VAST receive equipment to affected Australians, it is our view that the start date for the Northern Australia TV3 licence area should be as late as possible - to allow the technical standards to catch up with the promotion and availability of the VAST service in the eastern States.

7. Defining ‘adequate reception’

The term ‘adequate reception’ is used throughout the VAST legislation. It is of particular importance in determining who, in category C reception areas, are unable to receive ‘adequate reception of all of the applicable terrestrial digital commercial television broadcasting services’ and are therefore eligible to receive the VAST service.

So far as we are aware, there has been no substantive analysis of how many Australian television households in Category C reception areas will be eligible to receive the VAST service. Obviously, that number will be largely determined by the meaning given to ‘adequate reception’ for the purposes of the legislation and, however it is defined, it will have a significant impact on pre-VAST planning by set top box manufacturers, VAST installers and participants in the television industry generally. For example, without knowing how many people will be eligible for VAST in Category C reception areas, how will commercial television broadcasters delivering their signals terrestrially be able to determine how many of their viewers are missing out on local advertising because they are watching the VAST service rather than their local terrestrial broadcast? How many set top boxes will manufacturers know to manufacture? How many installations will master installers anticipate doing in any licence area prior to digital switchover?

From AUSTAR’s perspective, we would like to be in a position to tell our subscribers located in digital black spot areas how to obtain the VAST service through use of their existing AUSTAR satellite dishes. However, we are not currently able to provide this information or have any meaningful discussion with our customers in Category C reception areas about the VAST service. We will only be able to do this once we understand what ‘adequate reception’ means and how the conditional access scheme that runs off it will be managed.

As a consequence, our customers face having to erect two satellite dishes and operate two different set top boxes, rather than being able to access a seamless service through the use of one set of TV receiver equipment.
Section 130ZFA of the Act provides that the ACMA may, by legislative instrument, determine what ‘adequate reception’ means for the purposes of the Act. However, as at the date of this submission, the ACMA has not made any such a determination. For the reasons described above, we believe that the integrity of the VAST regime will only be assured if the ACMA does so.

In order to give the ACMA time in which to determine the appropriate meaning to be given to the words ‘adequate reception’ pursuant to section 130ZFA, we repeat our request that the start date for the Northern Australia TV3 licence be delayed.

8 Conclusion

AUSTAR appreciates the difficulties faced by the ACMA in its role in implementing the VAST service regime within the allotted timeframe. However, the amendments to the Act that establish and govern the VAST service raise significant regulatory, commercial and consumer issues that the ACMA needs to address.

Given the complexity of the issues posed by the VAST service amendments to the Act and the need to ensure that broadcasting licence conditions are being met by EASB in its delivery of the VAST services, AUSTAR believes that the ACMA should postpone the start date of the Northern Australia TV3 licence until it has fully investigated and review all aspects of the VAST services over which it has regulatory authority. Failure to undertake this review is likely to have an adverse impact on Australian television viewers and their comprehension of how the digital switchover is going to affect them, as well as on AUSTAR and other subscription content providers trying to help their customers understand and manage the introduction of digital free to air television in their licence areas.

If the ACMA would like to discuss any of the issues raised in this submission in more detail or require any further information, please do not hesitate to contact me on 02 9295 0153 or at phenty@austar.com.au.

Yours sincerely,

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