



# Digital TV: policy row

## Cabinet leak reveals reform advice ignored

Steve Lewis

The Howard Government ignored high-level advice that its digital television reforms had "significant budgetary implications" and was an unwarranted "free gift" to the commercial television networks, Cabinet documents have revealed.

The confidential submission considered by Cabinet, and obtained by *The Australian Financial Review*, also reveals that the Government's main economic departments warned the reforms would restrict broadcasting competition for a decade and impede Australia's international competitiveness.

"The proposed approach would restrict the consumer benefits available from a wider range and flexibility of services and could have significant budgetary implications through foregone revenue from the sale of spectrum," the Department of the Prime Minister and Cabinet said in its co-ordination comments to the submission.

Despite the strongly worded warnings from the departments of PM&C, Treasury, Finance and Industry, Cabinet agreed in late March that the commercial television networks would be given an eight-year "loan" of spectrum to enable them to introduce digital services from January 2001.

Controversially, the Government also said the three commercial TV operators — Mr Kerry Stokes's Seven Network, Mr Kerry Packer's Nine Network and the Ten Network — would be able to use the digital spectrum to offer limited "data-casting" services.

These are the next generation of broadcasting services, allowing the networks to generate new revenues as they transform the TV receiver from a passive viewing device into an interactive vehicle for consumers.

The Government's digital TV reforms, introduced to the Parliament in legislation on April 8, are expected to be debated later this month or in June.

The Labor Opposition and the minor parties have expressed concern over key elements of the plan, although the Opposition has said it will not oppose the loan of spectrum, its central element.

Concerns have also been raised by a coalition of commercial and consumer groups, including newspaper groups News Ltd and John Fairfax, Telstra, Optus Communications and pay-TV companies, that the Government was giving the commercial

networks an unfair advantage in controlling the "gateway" to the next generation of digital services.

The submission reveals that Cabinet was strongly warned by the Government's own chief privatisation agency, the Office of Asset Sales, against the spectrum giveaway.

"By granting the [commercial] broadcasters significantly more spectrum than is needed simply for equivalent simulcasting of current analogue services, the proposals involve a significant reduction in the potential value of the remaining public spectrum assets that would be available for subsequent sale," the OSA said.

"The reduction would be reflected in a de facto further grant of a valuable public asset to existing commercial interests in the television entertainment industry. These interests already enjoy significant private benefits at public and community expense."

In his submission, the Minister for Communications, Senator Richard Alston, flagged a possible shake-up of media rules, citing the difficulty in regulating between "broadcasting and non-broadcasting services".

"It will be necessary to ensure that flexible and responsive regulatory arrangements are put in place which anticipate the new kinds of services which will be offered to viewers," Senator Alston said in his Cabinet submission.

The Cabinet submissions show the main economic departments were concerned at the haste with which the reform plan was considered. Senator Alston's submission was also criticised for bypassing an important part of the Cabinet process: failure to consult with the Office of Regulation Review in preparing a regulation impact statement.

The Finance Department suggested a new submission be prepared canvassing options which "minimise the degree of market regulation and provide for the competitive or other market-based allocation of broadcasting spectrum".

PM&C suggested an alternative approach.

"There are better ways of [introducing digital television] than by granting [seven megahertz] of spectrum to each of the five free-to-air broadcasters at no cost when a standard definition digital television (SDTV) service of a higher quality than the current analog service could be provided by the FTA's with around 2MHz of spectrum each," PM&C said.

This would leave 25MHz of valuable spectrum available for the Government to then sell to other communications operators.

PM&C described Senator Alston's model as an "inefficient use of valuable spectrum".

The Department of Finance said the digital TV plan was "inconsistent with the reforms which the Government has made in relation to telecommunications industry regulation and the non-interventionist approach which the Government has endorsed for developing the information economy".

In contrast to the prescriptive approach adopted by Cabinet, PM&C said television broadcasters and consumers should be "free to choose on a commercial basis whether they deliver digital broadcasts and purchase digital television receivers".

## DIGITAL TELEVISION THE DEPARTMENTAL REVOLT

### Prime Minister and Cabinet

‘The proposed approach would also restrict the consumer benefits available from a wider range and flexibility of services and could have significant budgetary implications through foregone revenue from the sale of spectrum.’

### Treasury

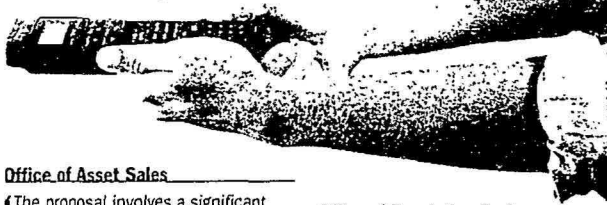
‘Competition in terrestrial transmission services may be unnecessarily restricted for the next decade and the range of services which can be offered to consumers could be unnecessarily restricted. There are also significant Budgetary implications arising from the proposed approach that have not been adequately addressed.’

### Finance and Administration

‘The approach proposed in the submission is inconsistent with the reforms which the Government has made in relation to telecommunications industry regulation and the non-interventionist approach which the Government has endorsed for developing the information economy.’

### Industry, Science and Tourism

‘The submission fails to adequately explain the issues involved in the introduction of digital broadcasting and fails to adequately explore the options for Government action.’



### Office of Asset Sales

‘The proposal involves a significant reduction in the potential value of the remaining public spectrum assets that would be available for subsequent sale. The reduction would be reflected in a de facto further grant of a valuable public asset to existing commercial interests in the television entertainment industry.’

### Office of Regulation Review

‘The [Regulation Impact Statement] inadequately deals with a complex and important new technology which could have far reaching implications for the future of Australia's communications sector and its impact on the community.’

— THE AUSTRALIAN —  
**FINANCIAL REVIEW** —  
**Senator Alston  
should resign**

**T**he Federal Minister for Communications, Senator Richard Alston, is astute and capable. But this newspaper's disclosure last Thursday of the Canberra bureaucracy's confidential attacks on his digital spectrum giveaway to the television broadcasting oligopoly surely makes the Minister's position untenable.

Senator Alston's position is made even more dire as he must know that his bandwidth banditry is indefensible. As revealed by Steve Lewis's report of Cabinet submissions, the Finance Department found it to be "inconsistent with the reforms which the Government has made in relation to telecommunications industry regulation and the non-interventionist approach which the Government has endorsed for developing the information economy". The Department of the Prime Minister and Cabinet (PM&C) saw it as "an inefficient use of valuable spectrum".

The only rationale for the spectrum giveaway is to appease the sectional interests of the broadcasting oligopoly so as to bring political benefits to the Government. As the Government's own Office of Asset Sales concluded, it grants a valuable public asset to commercial interests which "already enjoy significant private benefits at public and community expense".

Governments, not bureaucrats, are elected to govern. But the bureaucracy acts as an indispensable institutional check on the executive government's freedom to place its own political interests in front of the public's. Now the blanket bureaucratic discrediting of Senator Alston's giveaway has been exposed, he should resign. Otherwise, how can anyone be confident that he will regulate in ways which will help Australia enter the new information age, rather than merely reward political influence?

To recap, Senator Alston announced in March that the three commercial and two public free-to-air broadcasters each would be given an eight-year, interest-free "loan" of seven megahertz of publicly owned spectrum so they could migrate from analog to digital transmission. And he extended the government ban on new commercial free-to-air TV broadcasters until the end of 2008.

This robbing of the public to give to the privileged is too complicated for most of the media to mentally digest. It is

**Senator Alston  
surely knows what  
the bureaucrats say  
is true: that his  
bandwidth banditry is  
bad public policy.**

much easier to film burly wharfies on picket lines. The TV stations aren't much interested in the story because they hope to pocket Senator Alston's banditry. And, with the broadcasting oligopoly's political power seeming to exceed even that of the wharfie

monopoly, Labor won't keep the Government honest.

So, while the Government wants the elderly to pay for their nursing home services and requires many other people to take a Budget haircut, its bandwidth bandit is handing out many millions of dollars in public assets free of charge to the broadcasting club. The Office of Asset Sales went further, noting that the Alston giveaway "involves a significant reduction in the potential value of the remaining public spectrum assets that would be available for subsequent sale". That, says PM&C, "could have significant budgetary implications".

And, while the Government is breaking open the old economy bottlenecks on Australia's wharves, it is bottling up a critical gateway to the 21st century information age to benefit a handful of incumbents. Contrary to the Government's rhetoric about the need to promote competition, openness, diversity and innovation in the converging information technology industries, Senator Alston's plan will tightly micro-manage and restrict the ownership and operation of this core digital platform for the 21st century economy.

Private enterprise, not politicians, should decide the most valuable use for this critical national pipeline to the digital economy — whether to transmit high-definition TV, different sorts of data, to set up another national mobile phone network, or whatever. Senator Alston's over-regulation, noted PM&C, would result in an "inefficient use of valuable spectrum" which would "restrict consumer benefits from a wider range and flexibility of services".

While the Government touts the Productivity Commission's report on the wharfies' monopoly, Senator Alston's anti-competitive spectrum giveaway has bypassed due public policy process. Its own Office of Regulation Review complained that it "inadequately deals with a complex and important new technology which could have far-reaching implications for the future of Australia's communications sector and its impact on the community". Is that what Australia's Minister for Communications stands for?

# A digital dudding

Sunday Telegraph  
17/5/98



PIERS  
AKERMAN

**E**very Australian, whether they watch TV or not, is being duddled by the Coalition government's determination to plough ahead with its give-away of the digital television spectrum. As it stands, the three TV networks have been handed a monopoly, free from competition for the next 10 years, despite the Government's often stated commitment to competition and diversity.

That position runs counter to everything the Liberal Party claims to stand for — a fact which hasn't escaped Neil Brown QC, a former deputy leader of the party.

Mr Brown has noted in an open letter that Communications Minister Richard Alston should "stop groveling in such a supine and embarrassing way to the commercial television licensees."

"Entrenching their triopoly and protecting them from open competition is contrary to the most elementary Liberal Party principles, and is a subject more worthy for a Minister for Communications to be pursuing than alleged (ABC) bias," the former shadow communications minister has written.

But regardless of the political perspective, the decision to grant the nation's three commercial television networks monopoly access to the digital broadcasting spectrum is in decent and unprincipled.

Intellectually, a government-controlled Senate legislative committee will examine the Cabinet decision — but it has been given only until June 22 to call submissions, hear witnesses and report its findings. What a waste of money.

Senator Alston knows he has set the committee a near impossible task after definitively ruling out any broader investigation by a Senate

reference committee which could have been asked to examine the widespread implications of the introduction of digital TV and radio.

It's difficult to believe Senator Alston's push for an impossible deadline has any motive other than a desire to deliver the digital package to media megals Kerry Packer, Kerry Stokes and Izzy Asper before the federal election.

Independent senator Brian Harradine, who has argued that the Environment, Recreation, Communications and Arts Legislation Committee may need more time, poses the only possible danger to that deadline.

But Senator Alston has made it clear the Government places the highest priority on the Bill and expects it to be passed by the Senate before parliament rises on July 3.

The biggest beneficiary will be the Packer organisation, which is appar-

ently still smarting at the Government's decision to sit pat on cross-media rules and block a Packer takeover of the Fairfax newspapers.

Cabinet has agreed to this (Packer-pleasing) package despite advice from the Office of Asset Sales, the Finance Department, the Department of Prime Minister and Cabinet, the Treasury and the Office of Regulation Review.

**H**oping to be the other beneficiary is the Coalition, particularly Prime Minister John Howard, the puppet master who is pulling Senator Alston's strings.

For it's laughable to believe Senator Alston would have been able to roll Treasurer Peter Costello, Finance Minister John Fahey and Mr Howard, had Cabinet not decided it was more politically expedient to pander to the television networks at the expense of sound economic management.

According to the Cabinet Minute on Digital Broadcasting, dated March 17, the existing commercial networks will be "loaned" 7MHz of additional television spectrum free of upfront charges, and can use residual spectrum capacity to provide television datacasting services.

The minute also specifically bans the allocation of a fourth commercial licence until December 31, 2008.

Digital radio broadcasts will begin in concert with digital television in metropolitan areas from January 1, 2001, and in regional areas from then, so that all areas are covered by January 1, 2004.

The detailed advice given to Cabinet by the Office of Prime Minister and Cabinet makes it abundantly clear it's at odds with the Government in this matter.

In its opening paragraph, it says: "Broadcasters and consumers should be free to choose on a commercial basis whether they deliver digital broadcasts and purchase digital television receivers."

"Under this scenario, the currently unused spectrum should be auctioned to the highest bidder with no restrictions on who can bid, what services are provided using the spectrum, and which technologies are adopted."

It goes on to say that if the government is committed to ensuring the introduction of digital television, "there are better ways of achieving this than by granting 7MHz of spectrum, at no cost."

"The department considers this would represent an inefficient use of valuable spectrum."

"Prime Minister and Cabinet does not consider that (costs) justify the free gift of an increasingly valuable public asset."

The view from the Department of Finance and Administration is just as bleak.

It warns that Cabinet's position is inconsistent with the reforms the Government has made in relation to telecommunications and the "non-interventionist approach the Government has endorsed for developing the information economy."

Treasury warns that services may be "unnecessarily restricted".

Industry, Science and Tourism raises numerous concerns including the lack of discussion of options.

Taxpayers must ask whether a government which has so comprehensively ignored all advice in one important revenue area can be given any credibility when it asks for its reforms to be taken on trust in another.



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# Cabinet overruled digital TV warning

By political editor DENNIS SHANAHAN

FEDERAL Cabinet overruled strong warnings from all its economic departments about loss of revenue and competition when it granted the commercial television networks exclusive use of digital television until 2008 without extra fees.

Canberra's most powerful departments — Prime Minister and Cabinet, Treasury and Finance — all expressed concerns about making "a gift" of the "increasingly valuable" public spectrum to the free-to-air networks.

And the Office of Asset Sales warned the Government of a renaissance "in interventionist regulation", government sources have told *The Australian*.

The final decision last week to rule out any new entrants to television for 10 years and allow competition for data broadcasting was politically sensitive and aimed at finding a middle path between the competing media empires of Kerry Packer and Rupert Murdoch.

Mr Packer's Nine Network and data company ninemsn wanted a longer period of exclusive access and Mr Murdoch's News Limited wanted

more access to the spectrum and the option of greater media competition.

The Government defended the lack of competition and extra charges on the grounds that the networks would have to spend \$500 million to \$700 million on changes to digital broadcasting.

But John Howard's own department recommended a short period of spectrum "loan" to the networks to allow them to broadcast the existing analog TV signal while they converted to high-definition digital broadcast to be followed by an auction of the spectrum.

Some members of the Coalition backbench committee also believed the Government should have had a much shorter period than the decade allowed for the networks to "migrate" to the new spectrum.

The co-ordinating comments for Cabinet on digital television included the concern from the Department of Prime Minister and Cabinet that the Government was in danger of making

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## TV warning overruled

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a gift of an "increasingly valuable public asset".

PM and C also suggested there could be budgetary implications for the Government because of foregone revenue.

And in direct opposition to the final decision of the Cabinet, that is, to hold a review after five years' operation of the new regime, the department suggested there be a review before the decision was taken.

The Department of Finance suggested that the rapid rate of technological change should allow for a more deregulated regime.

Government sources confirmed yesterday that the departments had expressed concerns and that Peter Costello and Finance Minister John Fahey supported their departments' positions.

There were considerable differences over the policy of allowing the free-to-air networks exclusive use through to 2008 between Mr Fahey and Communications Minister Richard Alston.

The sources said the differences between Mr Fahey and Senator Alston were no secret within the Government.

On the night of the announcement of the handover of the digital spectrum to the free-to-air networks, Senator Alston said the Government recognised the special treatment for the networks and made no apologies.