in a reasonably short period.

The Sound Channels

The omission of any general policy for the employment of the four sound channels, which (with a data channel) are technically parcelled up as a package with the B-MAC television signal, was strongly questioned by educationists as well as public broadcasters. The Department of Communications' response to the prwas some options for Remote Commercial Radio Services (RCRS); these have been criticised by both public and national broadcasters for their failure to address the needs of remote areas for non-commercial radio services. To develop remote-area broadcasting policy by biting off a piece at a time of the fields still undefined may be bureaucratically convenient, but it progressively closes off options for those kinds of service left unconsidered - which are likely to be the non-commercial ones.

Potential providers of public radio services are arguing for separate licensing of radio channels for remote areas, with full regard for the Government's expressed concern for avoiding concentration of ownership or control; that is, RCTS licensees should not themselves be operators or controllers or radio services as well. The legal prohibition of third-party traffic through subleasing of satellite capacity should enable AUSSAT Pty Ltd to hold, through leasing-back, all the necessary resources for the provision of radio services and avoid putting RCTS licensees into a monopoly position which they could be tempted to use exploitively.

Further developments will be reported in future Communications Law Bulletins.

Michael Law

Children's Television Standards

On 14 December, 1984 the Full Federal Court handed down its decision in the case of Herald-Sun T.V. Pty. Limited v The Australian Broadcasting Tribunal (unreported, G241 of 1984). The decision followed the hearing of an appeal on the application by 15 commercial television stations pursuant to the Administrative Decisions (Judicial Review) Act 1977 (the "ADJR Act") in relation to the amended Children's Television Standards, the Pre-School Children's Television Standards and the amended Television Program Standards. Each of these had come into force from 1 July, 1984. The particular standards which were the subject matter of the proceedings were Children's Television Standards (CTS 3(2)(b), CTS 8, CTS 9(2), CTS 9(3), CTS 10, CTS 13(1), CTS 13(4), CTS 13(5), CTS 33).

CTS 2 laid down the criteria for a "C" or children's programs. CTS 3 provided that a licensee might not transmit programs except "C" programs during "C" time (4 pm to 5 pm Monday to Friday). The appellants took particular objection to CTS 3(2)(b). CTS 3(2) provided that during "C" time a licensee might only transmit programs which were "C" programs as defined in accordance with CTS 2(a) and representative samples of which had been classified by the Tribunal as complying with those criteria CTS 8 related to the duration of a "C" classification, CTS 9 to the classification of programs as "State of Origin 'C' and", CTS 10 to provisional "C" classifications. CTS 13 dealt with Australian children's drama. Its effect was that each licensee was to transmit recently made Australian children's drama which fulfilled certain criteria. CTS 33 related to reviews of "C" classification decisions.

The matter was heard at first instance by Wilcox J, who dismissed the application. He said that the primary issue in the application was the meaning of the word "standard" in paragraph (d) of s16(1) of the Broadcasting & Television Act 1942 ("the B&T Act"). That section provides, inter alia, as follows:-

> "(1) The functions of the Tribunal are ...
> (d) to determine the standards to be observed by licensees in respect of the broadcasting or televising of programs;
> ...
> (f) to determine the hours during which programs may be broadcast or televised by licensees; ..."

The Full Federal Court upheld his decision, although Morling J dissented in relation to the validity of CTS 3(2). Morling J said that that provision was not properly described as a standard, either the context of, or separately to, the B&T Act. It was more in the nature of censorship. He said that in substance the effect of the paragraph was that a program was only a "C" program if the Tribunal said it was. Accordingly, it gave an overriding power of censorship to the Tribunal in respect of programs transmitted between 4 and 5 pm on weekdays. If it were valid the Tribunal could determine what would be transmitted in times other than "C" time.

McGregor J took as the meaning of "standard" a "determined means of comparison or evaluation" (derived from the little known Ballentine's Law Dictionary). He said that this was supported by the decision of Beaumont J in Saatchi and Saatichi Compton (Vic.) Pty. Limited v Australian Broadcasting Tribunal (unreported, 23 November, 1984). On page 11 of His judgment in that case Beaumont J said:-

> "... the ordinary meaning of "standards" and its context suggest that it is the quality of the product, rather than its quantity, that is the subject matter of the Tribunal's power of determination under s100(4)."

Unfortunately, despite referring to the Saatchi & Saatchi case, no member of the Court dealt with the relationship between sections 16 and 17 of the B&T Act and s100 - a result of the piecemeal amendment of the Act. Section 100(4) provides as follows:

> "A licensee shall comply with such standards as the Tribunal determines in relation to the broadcasting or televising of advertisements."

That is a regulatory provision but there would appear to be no reason in principle why the Tribunal should deal separately with programs and advertisements.

McGregor J in his judgment went on to say that the provisions of CTS 3 assisted the Tribunal to ensure that, in accordance with its responsiblity under the Act, licensees were providing programs in accordance with the Tribunal's standards. A failure to evaluate programs prior to transmission might well be thought to be inconsistent with this policy. What CTS 3 was doing was to allow an evaluation or an assessment to be made as to whether the program as indicated Davies J in relation to CTS 3 and 33 said that if s16(1)(d) stood on its own, he may have been inclined to say that the determination strained the authority of the Tribunal. However, he said that the power in s16(1)(f) gave the Tribunal the right to determine more than the opening and closing hours of television transmission. In fact it enabled the Tribunal to determine the hours during which particular types of programs might or might not be telecast.

This decision has not put to an end the debate on Children's Television Standards. The appeal in the Saatchi & Saatchi case is still pending. Its outcome will

be decided later this month by the Full Court. The High Court has granted special leave to appeal to the appellants in the Herald-Sun case. The appeal will be heard later this year. It is hoped that one of the appeal Courts will rule definitively on the correct meaning of that word within s16 and s100 of the B&T Act.

Robyn Durie

Commercial Broadcasting Future

Con'd from PAGE 2

Mr Duffy said industry and the Government must work together, so that commercial broadcasters could come to terms with technological change while maintaining their current levels of performance.

> "It will be necessary, particularly, to think creatively about the role of local broadcasters. Their roles may be subject to major change."

The Minister said employees of broadcasting organisations, consumers of broadcasting services and others who had legitimate concerns about the future of commercial broadcasting, would also have opportunities to contribute to the study, as well as the broadcasters.

> "This study is only the first phase in a process of public debate; the Department will report quickly, and the report will be made available to the public for comment before the Government makes decisions," he said.

The Government recognised that, despite some blemishes, the commercial broadcasting system had performed well.

The Minister said:

> "It is our intention to build upon this solid foundation to make the system work even better; by seeking the full co-operation of existing licensees we expect to identify options which maximise the opportunities now available to us without threatening what has been a very successful system."

Terms of reference of the study are as follows:

Draft Terms of Reference for the Study on the Future Direction of Commercial Broadcasting in Australia

A study on the Future Direction of Commercial Broadcasting will be undertaken within the Department of Communications (DOC), by the Forward Development Unit in consultation with industry, unions, consumer groups and other interested organisations, culminating in a report to the Minister by 30 June, 1985 which will:

1. study possible impacts of new technologies upon the commercial radio and television broadcasting system; and
2. identify long term options for structural change in the commercial broadcasting industry; in the context of the Government's long term objective of equalising broadcasting services. It is intended that future planning should:

- continue existing broadcasting policies while the Study proceeds;
- make available three commercial television channels and adequate commercial radio services to all communities;
- provide adequate opportunities for commercial television licensees in the smaller capital cities and regional centres to participate in programming decisions;
- discourage any further concentration of media ownership and control.

The study to be prepared by Forward Development Unit will:

- determine the technologies for study on the basis of its own expertise, but include satellite delivery systems and those systems currently described as enhanced, improved, extended and high definition television;