

MEGAN HUTCHISON

PUBLIC SERVICE BROADCASTING: CAN
NZ EDUCATE, ENTERTAIN AND
INFORM ITS PEOPLE BETTER?

LLB (HONS) RESEARCH PAPER
LAWS 533: MEDIA LAW

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*Te Whare Wananga
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LAW FACULTY
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ABSTRACT

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ABSTRACT

The broad aim of this paper is to examine the concept, principles and methods of delivery of public service broadcasting. The current New Zealand broadcasting regime is outlined and evaluated in light of these principles and an assessment is made of the effectiveness of the modes of delivery we have adopted in fulfilling the aims of public service broadcasting. Policy tools for delivering public service broadcasting are examined and a preferred model is put forward. It is concluded that New Zealand's current minimal intervention in the broadcasting arena is insufficient to adequately serve the public service broadcasting needs of the country.

The text of this paper (excluding contents page and footnotes) comprises approximately 14637 words.

I INTRODUCTION

Broadcasting has always been one of those issues on which political parties can never seem to agree. The debate about public service broadcasting, and the role of the State in the broadcasting arena has been brought to the fore in recent years with rumours of the sale of Television New Zealand (TVNZ) under the previous National Government, the promises of the incoming Labour-led coalition Government to bring in local content quotas for television broadcasting in New Zealand and a charter for TVNZ, and the abolition of the Public Broadcasting Fee from July 2000.

New Zealand's poor showing in the NZ on Air commissioned report *Local Content and Diversity*¹ has also fuelled debate about whether New Zealand's broadcasting structure is serving the country as well as it should.

The broad aim of this paper is to examine the concept, principles and methods of delivery of public service broadcasting. The current New Zealand broadcasting regime is outlined and evaluated in light of these principles and an assessment is made of the effectiveness of the modes of delivery we have adopted in fulfilling the aims of public service broadcasting.

This paper focuses on television broadcasting, as that is the area of particular concern in New Zealand – public service broadcasting in the radio arena is arguably well catered for with National Radio. It is acknowledged that when formulating broadcasting policy in New Zealand, regard must also be had to issues arising out of Treaty of Waitangi obligation and protection of the taonga of te reo. These issues are too complex to be adequately dealt with within the confines of this paper.

Part II examines the concept of public service broadcasting. It is in this section that the principles and benefits of a good public service broadcasting regime are introduced and examined, as is the appropriateness of government involvement in this area. Part II outlines the New Zealand broadcasting framework - from its historical roots to the current regime and possibilities for the future. In Part IV, New Zealand's regime is evaluated in light of the public service principles, and Parts V, VI and VIII examine options for improving New Zealand's performance in the broadcasting arena. The paper concludes by examining the reform proposals of the current Labour government and outlining the writer's preferred model.

II PUBLIC SERVICE BROADCASTING

A Concept

The notion of public service broadcasting embodies three core concepts - to educate, inform and entertain². The first two of these were very much the focus of the early BBC, whose 'founding father' John Reith saw broadcasting as a 'cultural, social and educative force for the improvement of society'³. There was essentially a desire by the middle and upper classes to educate the lower classes through broadcasting. This desire was also evident at times in New Zealand broadcasting, as this quote from former Director of New Zealand Broadcasting James Shelly indicates⁴:

¹ NZ on Air *Local Content and Diversity: Television in Ten Countries* (NZ on Air, June 1999). [*Local Content and Diversity*].

² Paul Smith *Revolution in the Air!* (Longman, 1996), 15. [*Revolution*].

³ Alan Cocker 'Broadcasting Myths and Political Realities: New Zealand's Experience in Comparative Perspective' *Political Science* 46 (2) (Victoria University Department of Politics, Victoria University Press, New Zealand Political Studies Association, December 1994), 234, 236. [*Myths*].

⁴ Cocker *Myths*, see above n3, 244.

'There was once a wicked lady called Circe, who was reputed to turn human beings into swine. The object of broadcasting should be the exact opposite'.

Later years saw a move away from the 'what shall we give them?' mentality to a focus on what the people wanted to see – this is arguably when the 'entertainment' concept came much more to the fore.

Related to these three fundamentals are a further eight principles, which are:

- (1) Geographic universality/universality of availability.
- (2) Universality of appeal/serving the whole audience.
- (3) Provision for minorities
- (4) Universality of payment
- (5) Recognition by broadcasters of their special relationship to the sense of national identity/fostering national identity.
- (6) Distance from vested interests.
- (7) Broadcasting should encourage competition in good programming, not competition in numbers.
- (8) The rules of broadcasting should liberate rather than restrict programme makers.

The United Kingdom Broadcasting Research Unit, based on its observations of the BBC public service tradition expounded these principles⁵. They have been carried through with varying emphasis to

⁵ The principles as stated here, are a combination of the descriptions of the Broadcasting Research Unit's principles found in: Paul Smith *Revolution*, see above n2, 15; Michael D Higgins 'Active Citizens or Passive Consumers: Culture, Democracy and Public Service Broadcasting in the Era of an Unaccountable Market' in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat: Culture, Democracy and Broadcasting* (Victoria University of Wellington Institute of Policy Studies, Wellington, IPS Policy Paper No.4, 1999), 2 [*Counting the Beat*]; Laurie Cameron 'Financing Public Service Broadcasting' in Gary Hawke (ed) *Access to the Airwaves: Issues in Public Sector Broadcasting* (Victoria University Press for the Victoria University Institute of Policy Studies, Wellington, 1990), 37 [*Access to the Airwaves*].

other countries, in light of different local historical, political and social contexts.

The BBC model is one of autonomy. The service acts in accordance with a Royal Seal or Royal Charter that enshrines its objectives and it aims to educate, inform and entertain the whole nation, free from political and commercial pressure⁶. It is a non-commercial broadcaster. The BBC model, and the fundamental concepts and principles were transported to New Zealand, and other dominions like Canada and Australia.

After some time with an entirely commercial radio broadcasting system, a 'broad consensus' emerged in Canadian society 'around the view that only a public broadcasting service could serve all communities, providing an "equality of service" across the nation'⁷. So a public broadcasting authority was established in 1932 with responsibility for national broadcasting⁸. Public ownership was used as a defence against domination by the neighbouring United States⁹. The CBC was established in 1936, but there was still a high degree of government control of day-to-day operations¹⁰.

Television in Canada was also a partly private, partly public system – with the CBC never having a monopoly and being increasingly caught between fulfilling public service objectives and maximising commercial revenue¹¹. Today, CBC is still funded by a government

⁶ Cocker *Myths*, see above n3, 234-239;

<<http://www.bbc.co.uk/thenandnow/history.htm>> (last accessed 6 August 2000).

⁷ Cocker *Myths*, see above n3, 242.

⁸ Cocker *Myths*, see above n3, 242.

⁹ Cocker *Myths*, see above n3, 242.

¹⁰ Cocker *Myths*, see above n3, 246.

¹¹ Cocker *Myths*, see above n3, 248-249.

grant and advertising revenue¹². There is a local content quota applied to all channels¹³.

In Australia, the state was seen as an instrument to further the public economic good, and direct state involvement in broadcasting was sanctioned to a much greater degree than would ever have been acceptable under the pure BBC model¹⁴. As was the case in New Zealand, there was a push for universal coverage to link outlying areas of the country¹⁵.

When the ABC radio stations began, there were already commercial stations in existence, so it never enjoyed the sole monopoly position of the BBC¹⁶. There was also direct political interference, with the Postmaster General retaining the right to prohibit broadcasting of any matter and to veto projects involving expenditure of more than 5000 pounds¹⁷. It has been said that in Australia the public service vision was 'distorted by local peculiarities, especially the more censorious approach to controversy in broadcasting imposed by a close political eye'¹⁸.

The predominance of commercial stations in Australia partly relieved the ABC of the BBC's task of appealing to the whole audience, and its non-commercial focus allowed it to concentrate on its cultural and social educative role¹⁹. The ABC structure that existed for radio broadcasting largely remained when television services were introduced.

¹² NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

¹³ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

¹⁴ Cocker *Myths*, see above n3, 237.

¹⁵ Cocker *Myths*, see above n3, 241.

¹⁶ Cocker *Myths*, see above n3, 241.

¹⁷ Cocker *Myths*, see above n3, 241.

¹⁸ Cocker *Myths*, see above n3, 242.

¹⁹ Cocker *Myths*, see above n3, 245-246.

Currently, Australian has two public service broadcasters. ABC, operated in accordance with a charter, is funded partly by government grant and partly by commercial activities²⁰. The SBS network focuses on providing multicultural and multilingual broadcasting services that 'inform, educate and entertain all Australians, and in doing so, reflect Australia's multicultural society'²¹. It too is operated in accordance with a charter and is partly funded by government grant and partly from advertising (which runs for five minutes per hour)²². A genre-specific quota is applied to all commercial broadcasters in Australia²³.

In New Zealand, a more utilitarian test was applied in the initial adoption of public service principles. The benefit of linking geographically isolated communities was quickly recognised and the state was used to advance this public good of broadcasting and provide it to the greatest number possible²⁴. Thus, the universality of availability principle prevailed, not because of high-minded ideals, but because of practical necessity.

Historically, broadcasting in New Zealand has always been subject to a great degree of political control – often being a ministerial portfolio in which there was direct government involvement in day-to-day decisions²⁵. It was felt that broadcasting was too powerful and too big an asset to be in the control of anyone but the State²⁶. Consequently, broadcasting in New Zealand did not develop the protection from political pressure (distance from vested interests) that was so fundamental to the BBC.

²⁰ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia.

²¹ <<http://www.sbs.com.au.corpint.html>> (last accessed 2 August 2000).

²² The Charter is contained in section 6 of the Special Broadcasting Service Act 1991 (Australia); <<http://www.sbs.com.au.corpint.html>> (last accessed 2 August 2000); 'TVNZ must stop being so arrogant' NZ Herald, Auckland, New Zealand, 16 February 2000.

²³ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia.

²⁴ Cocker *Myths*, see above n3, 237.

²⁵ Cocker *Myths*, see above n3, 239-249.

²⁶ Cocker *Myths*, see above n3, 244.

New Zealand broadcasters were not shielded from commercial pressure either. They were forced by financial pressures to rely increasingly on advertising revenue. This in turn created a need for commercial programming decisions to maximise this revenue, and it was seen to be at the expense of the public service principles²⁷. The non-commercial model of the BBC could not realistically be carried out in New Zealand, simply because our small population could not sustain the cost. A detailed outline of New Zealand's current broadcasting regime is given in part III.

B Benefits of Public Service Broadcasting

'The benefits of a broadcasting service that reflects and explores what is going on in a country are not limited to its impact on those watching or listening. It has effects external to their experience, affecting the quality of discourse in the nation at large²⁸.'

The existence of educative and informative programmes on television helps to fuel political debate and give citizens the information they need to make choices in a democratic society. As illustrated above, it creates positive externalities – the social benefit attached to screening the programme exceeds the individual benefit that a broadcaster receives by showing the relevant material, and it exceeds the individual benefit the viewer obtains by watching it²⁹.

²⁷ Cocker *Myths*, see above n3, 251.

²⁸ Ministry for Culture and Heritage *Post-Election Briefing to the Minister of Broadcasting: Hon Marian Hobbs* (Wellington, December 1999) *Appendix B: Local Content in New Zealand Broadcasting*, 8 [*Briefing papers: Appendix B*].

²⁹ James Hamilton 'Private Interests in "Public Interest" Programming: An Economic Assessment of Broadcaster Incentives' 45 *Duke LJ* 1177, 1179 [*Economic Assessment*]; Arthur Grimes 'Counting the Beat: broadcasting policy in New Zealand' in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat*, see above n5, 21.

Local content productions in particular help to foster national identity and promote cultural activities. There are flow-on effects to other industries (such as theatre, film, performing arts and literature) from a strong portrayal of national culture and a strong national broadcasting production industry³⁰. When programmes are sold overseas, there can also be tourism benefits by projecting images of New Zealand to the rest of the world³¹.

A strong local television industry can also contribute to New Zealand's development of a knowledge economy³². The knowledge economy 'is an economy with people at the centre, it is an economy where creativity and new ideas are highly valued, and it is an economy where knowledge is power³³'. By creating avenues for local production, we create opportunities for the technological innovation that is so important in the knowledge economy and emphasise our national culture and environment as a point of differentiation between us and others competing in the global marketplace.

Examination of the history of the country and its people can also help the nation's citizens come to terms with their own identities and their place in the scheme of things. Conversely, quality documentaries examining other aspects of life in our country and around the world can help foster greater respect for other cultures and lifestyles through greater understanding.

³⁰ 'Irish quotas produced a cultural success story' *National Business Review*, New Zealand, 30 October 1998.

³¹ 'Cultural conundrums dictate debate' *National Business Review*, New Zealand, 12 November 1999.

³² Arthur Grimes and Jo Tyndall 'Foreword' in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat*, see above n5, vi.

³³ James Buwalda 'Television and the Knowledge Economy' (*Counting the Cultural Beat*, Broadcasting Symposium, 31 August 1999). Paper available at http://www.nzonair.govt.nz/noa_symposium/symposium.html [*Broadcasting Symposium*].

Moreover, public service broadcasting also encourages innovations in broadcasting that would not be attempted by commercial broadcasters – enriching the choices and experiences of viewers³⁴.

There are those who argue that educating and informing are not legitimate aims of television. People, it is said, only watch television to be entertained – they just want to ‘blob out’ and watch - if they wanted to be informed they would read the newspaper; if they wanted to experience culture they would go to a play or a concert.

However, it needs to be appreciated that not everyone has the funds to access events such as plays and concerts, and also that newspapers often do not have the time or space to do in-depth stories about subjects which are not ‘hot topics’ at that point in time. Television provides an opportunity for a look into topics that are interesting and informative that cannot or would not be adequately covered by other media. Magazines, while also fulfilling this informative role, do not have the potential to reach such a wide audience as television (or even newspapers) because the cost of them is a prohibitive barrier to many.

A quality public service broadcasting regime does involve a cost. Because it is socially rather than commercially driven, a state-run public service broadcaster will require significant financial investment for little economic return. Regulatory bodies or other mechanisms for enforcing public service ideals also require funding, and do not return a profit. It is submitted however, that culture and national identity are more important than money, and that public service broadcasting is something that society should endeavour to achieve to the highest possible degree. The real issue, of how to achieve this aim, will be discussed in later parts of this paper.

³⁴ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, 8.

C *Should Government Be Involved?*

The New Zealand government has adopted a very non-interventionist regime for broadcasting, preferring to leave almost everything up to the market. The appropriateness of such a position, and the arguments for and against government intervention in broadcasting must be examined in further detail.

Television has been described simply as a 'toaster with pictures', and that being so, it is argued that television should be operated according to the ordinary market principles that are applied to other toasters³⁵. Some argue that the free exchange of ideas and creativity is even more desirable than the free exchange of goods between countries, and that there should be no regulation or restriction on such competition. This position is justified by Imre Salusinsky, Associate Professor of English at Newcastle University by pointing to the material prosperity of Australia after removing trade restrictions and arguing that 'if the reformist spirit could be carried into the cultural domain, the imaginative and intellectual prosperity of Australians would be similarly enhanced'³⁶.

New Zealand has accepted, to a limited extent, the fact that a purely commercial market will not provide all the things that are considered socially beneficial and consequently we have NZ on Air to attempt to remedy some of this market failure.

There are those who stress the importance of television in shaping a nation's identity, and who claim the need for protection of local production to allow local voices to be heard. Imagination and

³⁵ The description was by Mark Fowler, past Chairman of the Federal Communications Commission. See James Hamilton *Economic Assessment*, see above n29, 1177.

³⁶ 'NZ cited as bad local-quota example' *The Dominion*, Wellington, New Zealand, 2 July 1999,23.

creativity are not suited to the marketplace³⁷. Because of the desire to capture the biggest and most profitable audience there will be tendency to mainstream and retain proven formats, at the expense of innovation and minority programming³⁸.

Television is also very pervasive – much more so than print media – because television viewers are much more like passive receptors of information³⁹. It is submitted that people are more accepting of information received from broadcasters and are involved in a less critical analysis of things – because they ‘see it’ they believe it. Consequently, there is a need for adequate and accurate information on television, because of its profound ability to shape and influence national identity and opinion⁴⁰. Often what people see on television is, for example, all they really know about politics in the lead up to an election. Indeed, one political commentator has stated that television news and current affairs are second only to Parliament in order of importance in the democratic process⁴¹. Television has a responsibility to create adequately informed citizens yet in a free market there may not be adequate demand to justify covering political parties’ policies, even though society generally values such things as important. This is why government regulation is necessary to ensure socially desirable programmes are broadcast.

³⁷ Desmond Bell ‘The Corporate State and Broadcasting in Ireland: A National-Popular Programme’, 1993 *Cardozo Arts & Ent LJ* 337,339.

³⁸ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 42, para 81; Arthur Grimes ‘Counting the Beat: broadcasting policy in New Zealand’ in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat*, see above n5, 22-23.

³⁹ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, 3; but see: Thomas Krattenmaker and Lucas Powe *Regulating Broadcast Programming* (1994) 219-221.

⁴⁰ Hon Marian Hobbs *Broadcasting Policy: Objectives and Delivery Mechanisms* (6 July 2000) para 8. Available at <<http://www.executive.govt.nz/minister/hobbs/broadcasting/objectives.htm>> [*Broadcasting Policy: Objectives*].

⁴¹ Richard Mulgan ‘Public Sector Broadcasting: Our Political Culture and the Policy Community’ in Gary Hawke (ed) *Access to the Airwaves*, see above n5, 89.

Conflicting arguments are also founded on the scarcity of broadcasting frequencies (although these claims can arguably be undermined with the advent of new technologies)⁴².

On one view, it is argued that due to the scarcity of the spectrum rights they should be opened up to full competition to allow maximisation of the commercial benefits and efficient use of the scarce resource. This is essentially what occurs now, with the spectrum rights auctioned off to the highest bidder, with no conditions attached.

Proponents of the other view submit that the frequencies are a public resource, that should be maximised to the public benefit (which is not necessarily economic benefit). It is claimed that for this to occur it requires government intervention because the market mechanisms only work to maximise economic benefit.

The overriding argument against government intervention is freedom of choice⁴³. Broadcasters should have the freedom to choose to maximise their profits. Viewers should have complete freedom to watch what they choose. It is submitted that government intervention restricts this choice by requiring certain programmes to be broadcast which are not profitable for the advertiser, and restricting the choice for viewers by limiting the programmes available.

Counter to this, it is claimed that without government intervention viewers have no real choice⁴⁴, as a significant proportion of programmes will be homogenised west-coast -of -the-USA productions obtained cheaply in this country and with proven ratings which minimise the risk to the broadcaster. There will be no option of

⁴² Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, 3.

⁴³ 'Quotas cross the line of freedom' *National Business Review*, New Zealand, 6 November 1998.

⁴⁴ 'Cultural conundrums dictate debate' *National Business Review*, New Zealand, 12 November 1999.

watching a quality local drama or in-depth documentary without government intervention in some form that ensures that these types of programmes are broadcast.

It is submitted that the benefits of public service broadcasting discussed previously in part II cannot be adequately achieved without some form of government intervention, because the goods that are created are not suited to the marketplace. New Zealand has minimal intervention and where our regime really falls down (leaving the issue of inadequate funding aside) is that the funders (New Zealand on Air and Te Mangai Paho) have no real power to get things broadcast, and the publicly owned broadcaster has no obligation to carry socially beneficial programmes.

Our current minimal intervention is proving inadequate to uphold the public service broadcasting principles. For example, there is difficulty in serving minority audiences, with programming made predominantly for Maori audiences (whether in te reo or English) making up only 287 hours of broadcasting on the free-to-air channels in 1999⁴⁵. Almost all of these were off-peak hours, even though most of the productions were at least part-funded by Te Mangai Paho or NZ on Air⁴⁶. Local children's programmes - which help fulfil the education principle of public service broadcasting and are important for showing children the identity, culture and lifestyles of their country - comprised only 620 hours on the free-to-air national channels in 1999⁴⁷. There were no new children's dramas aired in that year⁴⁸.

It is submitted that more government intervention is required in the New Zealand broadcasting regime to enable us to meet the objectives of public service broadcasting.

⁴⁵ NZ on Air *New Zealand Television Local Content 1999* (NZ on Air, March 2000), 19 [*Local Content 1999*].

⁴⁶ NZ on Air *Local Content 1999*, see above n45, 19.

⁴⁷ NZ on Air *Local Content 1999*, see above n45, 18.

⁴⁸ NZ on Air *Local Content 1999*, see above n45, 5.

III NEW ZEALAND BROADCASTING FRAMEWORK

A History

New Zealand's television broadcasting regime has been subject to a high degree of change and instability over the years. The Broadcasting Act 1962 established the New Zealand Broadcasting Corporation, a state corporation with a monopoly on television services funded by a combination of commercial advertising and a licence fee⁴⁹.

In 1975, the NZBC was split into a Broadcasting Council, an independent engineering body, Radio New Zealand, Television One, and Television Two⁵⁰. Just a year later, the new National Government passed the Broadcasting Act 1976 which abolished the Broadcasting Council, placed all state-owned broadcasting services under the control of the Broadcasting Corporation of New Zealand (BCNZ) and established a regulatory body known as the Broadcasting Tribunal⁵¹.

The 1980s brought a Royal Commission of Inquiry into Broadcasting and Related Communications. Its recommendations were heavily interventionist and received little support from the Labour Government who at the time favoured deregulation and market economics⁵². However, the recommendation of a minority report by Laurie Cameron formed the basis of the government's later broadcasting policy, which was enshrined in the Broadcasting Act 1989⁵³.

⁴⁹ Barry Spicer, Michael Powell, David Emanuel *The remaking of Television New Zealand: 1984-1992* (Auckland University Press, Auckland 1996) 7 [*Remaking of TVNZ*].

⁵⁰ Spicer et al *Remaking of TVNZ*, see above n49, 8.

⁵¹ Spicer et al *Remaking of TVNZ*, see above n49, 8.

⁵² Spicer et al *Remaking of TVNZ*, see above n49, 9.

⁵³ Spicer et al *Remaking of TVNZ*, see above n49, 9-10.

The regime established at this time has remained substantially the same until now, with the major changes being the establishment of a specific Maori broadcasting funding agency (Te Mangai Paho) in the early 1990s, the removal of restrictions on asset ownership in 1991, and the abolition of the public broadcasting fee from July 2000⁵⁴.

3 Regulation

B Current Framework

The Broadcasting Standards Authority (BSA), a crown entity, was

1 Ownership of broadcasting assets

Prior to the 1988/89 restructuring of the broadcasting sector under the Fourth Labour Government, overseas ownership of broadcasting companies was restricted to 5% (although the Broadcasting Tribunal could give approval for up to 15% in special circumstances)⁵⁵. In 1989, the level was increased to a flat 15%⁵⁶. All limits on foreign ownership of New Zealand broadcasting assets were removed by the National government in 1991⁵⁷.

2 Spectrum access rights

Since early 1995, spectrum access rights in New Zealand have been allocated as licences by auction. Prior to this they were allocated on a tender basis. Registration of licences creates a tradeable right, and where technically possible additional licences are created and auctioned on demand. There are no broadcasting conditions attached to the licences – they are simply allocated to the highest bidder, who pays an annual administration fee to the Ministry of Economic Development⁵⁸.

⁵⁴ Statistics New Zealand *New Zealand Official Yearbook 2000* (David Bateman Ltd, 2000) 264 [*Yearbook 2000*].

⁵⁵ Spicer et al *Remaking of TVNZ*, see above n49, 17.

⁵⁶ Spicer et al *Remaking of TVNZ*, see above n49, 17.

⁵⁷ Spicer et al *Remaking of TVNZ*, see above n49, 17.

⁵⁸ Statistics New Zealand *Yearbook 2000*, see above n54, 268.

Parts of the spectrum have been reserved to meet specified social and cultural objectives, in particular to meet Treaty of Waitangi obligations to promote Maori language and culture through broadcasting⁵⁹.

3 Regulation

The Broadcasting Standards Authority (BSA), a crown entity, was established under the Broadcasting Act 1989. It encourages broadcasters to develop and observe codes of broadcasting on certain issues (such as the protection of children, and the portrayal of violence). The BSA may also create its own codes which broadcasters are bound to follow⁶⁰.

The Broadcasting Standards Authority also hears complaints against broadcasters that have not been resolved internally by the broadcaster to the complainant's satisfaction, and can impose penalties on broadcasters. In the year to June 1999, the Authority issued 184 decisions on formal complaints (about 83% relating to television)⁶¹.

The Advertising Complaints Board and the Advertising Standards Authority handle complaints and standards relating to advertising on television and radio⁶². In the year to December 1998 \$473m was spent on television advertising in New Zealand⁶³.

4 Institutions

(a) Broadcasting Commission (NZ on Air)

⁵⁹ Hon Marian Hobbs *Broadcasting Policy: Objectives*, see above n39, para 12.

⁶⁰ Statistics New Zealand *Yearbook 2000*, see above n54, 265.

⁶¹ Statistics New Zealand *Yearbook 2000*, see above n54, 265.

⁶² Statistics New Zealand *Yearbook 2000*, see above n54, 265.

⁶³ Statistics New Zealand *Yearbook 2000*, see above n54, Table 11.3 Media Advertising, 272.

The Broadcasting Commission (NZ on Air) was established by the Broadcasting Act 1989. The Governor General appoints the Commission's members. Its role is to promote cultural and social objectives in broadcasting and other activities that are unlikely to be provided for by a fully commercial system⁶⁴.

NZ on Air has four broad statutory objectives. They are to⁶⁵:

- Reflect and develop New Zealand identity and culture by promoting programmes about New Zealand and New Zealand interests and promoting Maori language and culture.
- Maintain and where appropriate extend television and radio coverage to New Zealand communities that otherwise would not receive a commercially viable signal.
- Ensure that a range of programmes is available to provide for the interests of women, children, people with disabilities and other minorities.
- Encourage the establishment and operation of archives of programmes that are likely to be of historical interest in New Zealand.

When considering proposals for the production of programmes, NZ on Air must have regard to such factors as the availability of other funding sources for the project, the potential audience size, the extent that the project contributes to the Commission meeting its objectives of reflecting New Zealand culture and catering for minorities, and it must also take into account the likelihood of the programme being broadcast⁶⁶.

⁶⁴ Statistics New Zealand *Yearbook 2000*, see above n54, 264.

⁶⁵ Broadcasting Act 1989, s36.

⁶⁶ Broadcasting Act 1989, s39.

Editorial discretion is protected for any project that NZ on Air funds – it does not have the right to dictate particular content once funds have been allocated, except in accordance with any terms that have been specified in the contract between NZ on Air and the programme maker⁶⁷.

NZ on Air also funds Radio New Zealand's public radio networks, National Radio and Concert FM, and Access radio stations around the country⁶⁸.

In 1998-99, NZ on Air spent \$42.8m on the production of television programmes and \$12.4m on Maori broadcasting. National Radio, Concert FM and the Access radio services collectively received \$23.7m in funding⁶⁹. These figures show the enormous cost of television, compared to radio broadcasting - almost all National Radio's funds came from NZ on Air and less than 10% of television broadcaster's funds did, yet the amount spent on television by NZ on Air was almost \$20m greater than the amount it spent on radio.

(b) Te Mangai Paho

Te Reo Whakapauki Reo Irirangi (commonly known as Te Mangai Paho) is the Maori broadcasting funding agency established by the Broadcasting Amendment Act 1993. Its purpose is to promote Maori language and culture by providing funding for the production and broadcast of Maori programmes. Its members are appointed by the Minister of Communications, in consultation with the Minister of Maori Affairs⁷⁰.

⁶⁷ Broadcasting Act 1989, ss 42,43.

⁶⁸ <<http://www.nzonair.govt.nz/purpose/nzonair.html>> (last accessed 15 July 2000).

⁶⁹ Statistics New Zealand *Yearbook 2000*, see above n54, 265.

Te Mangai Paho's funding decisions are aimed at revitalising the Maori language, particularly in those under 25 (as this is essential for the long-term maintenance of the language). In general, programmes must be at least 60% in te reo to receive funding⁷¹.

(d) TV3 Network Services

Funding used to be from the public broadcasting fee, topped up by a government grant. Now it is funded solely by the government. For the year ending 30 June 1999, Te Mangai Paho allocated \$8.6m to Maori television⁷².

(c) Television New Zealand

As a state-owned enterprise, established under the State-Owned Enterprises Act 1989, Television New Zealand (TVNZ) is charged with being a commercially successful business. However, it also endeavours to present some programmes that reflect and develop New Zealand's identity and culture (although this is not a legislative requirement).

(d) Prime Television

TVNZ has almost 100% coverage of the New Zealand population, and its two national channels have a combined audience share of approximately 70%. TV1 aims to provide quality drama, news and sport while TV2 appeals to a younger audience, with its focus on movies and entertainment. The two channels provide largely complementary programming options⁷³.

⁷⁰ Statistics New Zealand *Yearbook 2000*, see above n54, 265.

⁷¹ Te Mangai Paho *Statement of Intent 1999/2000* Output 1:2 – Television Production: 1.2.1 Maori Language Television Production.

⁷² Statistics New Zealand *Yearbook 2000*, see above n54, 265.

⁷³ Statistics New Zealand *Yearbook 2000*, see above n54, 266.

The company's main source of revenue is advertising (around 60%) and it receives only about 5% of its revenue from NZ on Air⁷⁴. Advertising revenue in 1998 was \$270m (total revenue \$426m).

(d) TV3 Network Services

TV3 was New Zealand's first privately owned free-to-air national television network. It has been on air since November 1989 and since November 1997 has been 100% owned by Canadian Communications company CanWest⁷⁵.

TV3 target the 18-49 demographic and the network's second channel (TV4) targets the younger 'hipper' 15-39 age group. TV3 has approximately 98% coverage of New Zealand, and TV4 reaches approximately 75%⁷⁶. Both channels are now carried on SKY TV's digital platform as part of a larger commercial agreement between the two companies, and so have a wider potential audience⁷⁷.

(e) Prime Television

Prime Television began broadcasting in August 1998 as a free-to-air network targeting the 30+ audience. Its focus is on drama, classic comedies, sports and lifestyle programmes. Prime Television's terrestrial coverage broadcasts to about 65% of the population, but can reach a wider audience through the SKY digital service⁷⁸. Prime Television is a wholly owned subsidiary of Prime Television Australia PTY Limited⁷⁹.

(f) SKY

⁷⁴ < <http://www.tvnz.co.nz/links/faq.htm#ads> > (last accessed 20 August 2000).

⁷⁵ Statistics New Zealand *Yearbook 2000*, see above n54, 266.

⁷⁶ < <http://www.tv3.co.nz/lite/corporate/> > (last accessed 20 August 2000).

⁷⁷ < <http://www.tv3.co.nz/lite/corporate/> > (last accessed 20 August 2000).

⁷⁸ < <http://www.primetv.co.nz/profile.html> > (last accessed 20 August 2000).

SKY TV is New Zealand's first pay TV network and it began broadcasting via scrambled UHF frequencies in May 1990⁸⁰. It currently offers more than 26 channels via SKY Digital and UHF services⁸¹.

It carries Concert FM and National Radio, as well as TV3, TV4 and Prime on its digital network, in addition to having movie, sport and news channels, Asian channels, dedicated kids channels and others⁸².

SKY works mostly on a monthly subscription system, but it does also have selected pay-per-view events. As at 30 June 2000, it had 377,000 subscribers across New Zealand (with 162,000 on the digital network)⁸³.

SKY recorded a net loss of \$27.0 million in the fiscal year ended 30 June 2000, but this was mainly due to increased depreciation and interest costs incurred developing its digital network. SKY's revenue was \$263m for this period⁸⁴.

(g) Others

Other smaller players in the New Zealand broadcasting arena include cable TV companies (such as Saturn), regional television services broadcasting to small portions of the country, and Trackside (the TAB racing channel which broadcasts live racing and results across the North Island on the UHF frequency)⁸⁵.

⁷⁹ Statistics New Zealand *Yearbook 2000*, see above n54, 267.

⁸⁰ Statistics New Zealand *Yearbook 2000*, see above n54, 267.

⁸¹ < http://www.sky.co.nz/sky_invest/faq.cfm > (last accessed 20 August 2000).

⁸² < http://www.sky.co.nz/sky_invest/corphist.cfm > (last accessed 20 August 2000).

⁸³ 'Sky Television releases June 30, 2000 year end results' Sky Television Media Release, Monday 14 August 2000.

⁸⁴ 'Sky Television releases June 30, 2000 year end results' Sky Television Media Release, Monday 14 August 2000.

⁸⁵ Statistics New Zealand *Yearbook 2000*, see above n54, 267.

C Future

1 Technological implications

With the very real possibility of an influx of satellite, cable and digital broadcasting services into New Zealand in the not-to-distant future there will no doubt be an impact on the achievement of public service objectives.

With a proliferation of channels, audiences could fragment into small groups of viewers watching niche channels – this would make it difficult for many advertisers to effectively and efficiently reach their target audiences (because they would all be watching different channels) and may see a greater shift to promotion rather than advertising⁸⁶. Conversely, some advertisers would enjoy increased efficiency by targeting niche audiences on specialty channels – drawing revenue away from the traditional terrestrial broadcasters.

The loss of key advertising revenue would see TVNZ with less money for local production, and less scope for making socially beneficial programming decisions, being restrained to maximise commercial revenue to meet its dividend target.

However, while digital programming and other technological advances create the possibility of hundreds of channels, it does not create the content to fill those channels. It is thought that much of any new channels would be used for purposes other than conventional broadcasting – such as pay-per-view movie channels, broadband communications for Internet and data delivery, home shopping and educational services. Other viewing options are likely to consist

⁸⁶ NZ on Air *New Zealand Television and the Future of Local Content* (NZ on Air, March 1998), Part 3.1: The future multichannel environment [*Future of Local Content*].

mainly of sport, music, cartoons and repeats of other channel line-ups⁸⁷.

With this sort of programming, it is more likely that the New Zealand audience will segment – that is, watch a small amount of programming on other channels but still do their viewing primarily on the free-to-air channels⁸⁸. This has been the experience in Britain since the arrival of satellite and cable TV, with free-to-air television retaining approximately a 60% share across all major demographics⁸⁹.

The digital environment does provide an opportunity for more public service niche channels, but funding for programme production is still the crucial issue. It is likely that more channels will just provide more choice of the types of foreign programmes that are already seen on the free-to-air channels, or simply repeat show already seen on other channels.

‘No matter how many channels we can provide, no matter how many delivery systems we create, viewers want to watch something that interests, entertains, educates or stimulates them’⁹⁰. As such, technological implications are only part of the equation for the future of public service broadcasting.

2 Labour’s proposals

In July 2000, Cabinet agreed to a set of objectives to guide the development of the Government’s broadcasting policies⁹¹. These are⁹²:

⁸⁷ NZ on Air *Future of Local Content*, see above n86, Part 3.1: The future multichannel environment.

⁸⁸ NZ on Air *Future of Local Content*, see above n86, Part 3.1: The future multichannel environment.

⁸⁹ NZ on Air *Future of Local Content*, see above n86, Part 3.1: The future multichannel environment.

⁹⁰ John Barnett ‘The future of broadcasting’ (*Broadcasting Symposium*, see above n33).

⁹¹ Hon Marian Hobbs *Broadcasting Policy: Objectives*, see above n39, introduction.

IV HOW NEW ZEALAND MEASURES UP

(1) Ensuring all New Zealanders have reasonable and regular access to broadcasting representing the uniqueness and diversity of New Zealand life, recognising that the histories and stories of whanau, hapu and iwi are integral to any description of that life;

(2) Meeting the information and entertainment needs of as many interests as reasonably possible, including those that cannot be met by commercial broadcasting;

a. The Principles

(3) Contributing to public awareness of and participation in the political and social debates of the day;

(4) Encouraging innovation and creativity in broadcasting while aiming to continually increase audience satisfaction with the quality of content.

These objectives are essentially an amalgamation of the eight principles outlined at the beginning of this paper, with the notable exception of any aim to distance vested interest from the broadcasting regime.

The primary mechanisms that Labour has proposed so far for achieving these objectives are to introduce a local content quota for television⁹² and a charter for TVNZ. Other policy options include a levy on advertisers to fund public service broadcasting, and decreased levels of advertising during children's programmes⁹³. These proposals will be further discussed in part VIII.

⁹² Hon Marian Hobbs *Broadcasting Policy: Objectives*, see above n39, introduction.

⁹³ New Zealand Labour Party 'Broadcasting - its about us' (September 1999) available at < <http://www.labour.org.nz.infocentre1/policies/broadcastingpol> > (last accessed 14 September 2000) ['Broadcasting - Sept 1999']; <

IV HOW NEW ZEALAND MEASURES UP

New Zealand has a publicly owned broadcaster (TVNZ) and funding agencies (NZ on Air and Te Mangai Paho) to try and fulfil public service objectives. An assessment of New Zealand's performance in relation to the eight principles does reveal a degree of compliance with the objectives. However, the issue is not whether our system embodies a sprinkling of each of the principles, but rather the extent to which they are upheld.

A The Principles

TVNZ has almost 100% penetration throughout the country, thanks in part to NZ on Air's statutory requirement to extend television signals to areas that it would otherwise be unprofitable to do so. In addition to this, TVNZ's two channels provide complementary programming, which provides a wide range of viewer choice. Therefore there is universality of access and a degree of universality of appeal.

Part of NZ on Air's tasks is to ensure programmes are made that promote the interests of minorities. However, where the New Zealand regime falls down is in getting these programmes broadcast. NZ on Air and Te Mangai Paho have no real power over which programmes will be picked up by the broadcasters. The decision is left up to the broadcaster themselves and is often a commercial programming decision rather than a socially beneficial decision⁹⁴.

Most of the minority programmes are relegated to off peak timeslots, if they are run at all. Indeed, in 1999 almost all Maori programmes were screened in off-peak timeslots (with the exceptions being special Maori focussed episodes of documentary programmes like 'Inside

<http://www.labour.org.nz/infocentre1/policies/broadcasting.htm> > (last accessed 14 September 2000) ['Broadcasting 2000'].

⁹⁴ 'Future vision' *Listener* New Zealand, 5 February 2000, 20 ['Future vision'].

NZ')⁹⁵. Admittedly with TVNZ required to return a specified amount of profit to the government it is really forced to make primarily commercial programming decisions to enable it to reach this profit target.

There is to some extent a conflict between being universally appealing and at the same time providing for minorities. It is arguable that a public service broadcaster should focus more on the latter of these two principles (as the ABC does), allowing the commercial channels to cater for the majority audience. In this way the entire regime lives up to the principles⁹⁶.

In terms of universality of payment, NZ on Air and Te Mangai Paho are funded through general taxation. TVNZ gets most of its revenue from advertising (60%), so everyone who buys products that are advertised on television is indirectly contributing to TVNZ (and the other broadcasters). Viewers do not pay any subscription fees and generally don't pay anything (other than buying a television set and aerial) for reception

Principle 5 requires the broadcaster to foster national identity. Local content is an important means of doing this, and the lack of local content on New Zealand television is a particular issue of concern.

Local content is inherently linked to many of the principles of public service broadcasting and is an important indicator of a broadcaster's commitment to the public service ideals. Yet commercial programming decisions don't always cater for this aspect of our viewing. Hence, it is claimed, the need for some sort of Government

⁹⁵ NZ on Air *Local Content 1999*, see above n45, 19.

⁹⁶ See for example: Monroe E Price 'Public Broadcasting and the Crisis of Corporate Governance', 1999 17 *Cardozo Arts & Ent LJ*, 417.

intervention or regulation to ensure such public service broadcasting is provided⁹⁷.

In New Zealand, local content is popular, but it is extremely expensive to make, and can (in economic terms) hardly compete against overseas shows that are 'dumped' on our market at a fraction of the amount it cost to make them⁹⁸. For example, a programmes that cost over US\$1m per hour to produce in the USA will typically be sold to the New Zealand market for between \$1,000 and \$15,000 per hour⁹⁹. Even with high rating New Zealand programmes, such as sport, broadcasters can expect at best a breakeven result, because advertising revenue during the show airing time does not cover the cost of production¹⁰⁰. Faring even worse are those programmes shown in time slots that do not carry advertising (such as some children's programmes) and those appealing only to a minority audience (outside most advertisers target demographic).

The provision of local content is not an issue for countries with a large population base (such as America and the United Kingdom)¹⁰¹. Smaller countries that speak a language other than English have a natural barrier to stop a proliferation of overseas shows on their market¹⁰². Some other English-speaking countries (such as Canada and Australia) use methods such as quotas to protect their broadcasting from being 'taken over' by programmes from larger

⁹⁷ See for example: Andrew Graham and Gavyn Davies *Broadcasting, Society and Policy in the Multimedia Age* (University of Luton Press, 1997), 2-3. Some however argue that TVNZ is doing just fine in relation to other broadcasters and claim that calls for more public service broadcasting are only from the cultural elit who cannot handle the preferences of popular society. See for example: Max Suich *Benchmarking Public Broadcasters* (1997) [Benchmarking].

⁹⁸ NZ on Air 'Broadcasting and Cultural Issues at the Start of the New Millenium' in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat*, see above n5, 16.

⁹⁹ NZ on Air *Future of Local Content*, see above n86, para 2.3.3.

¹⁰⁰ NZ on Air *Future of Local Content*, see above n86, para 2.5.2.

¹⁰¹ NZ on Air *Local Content and Diversity*, see above n1, Executive Summary, Part 2.

¹⁰² NZ on Air *Local Content and Diversity*, see above n1, Executive Summary, Part 2.

countries¹⁰³. New Zealand, however, remains at the lowest end of the intervention spectrum – our publicly owned broadcaster is effectively a commercial broadcaster, with no public service remit; we sell our broadcasting spectrum off to the highest bidder with no programming conditions attached; we have no quotas for local content and no restrictions of foreign ownership of broadcasting assets¹⁰⁴.

Local content, in terms of New Zealand, has been classified as material that is both predominantly made in New Zealand and which reflects New Zealand identity and culture¹⁰⁵. Programmes made in New Zealand with no real local flavour (like Hercules) and programmes about New Zealand but made elsewhere (such as Michael Palin's Full Circle New Zealand episode) are not included as local content¹⁰⁶. Therefore, local content, in terms of the surveys, is really concerned with national content. For those countries who have no difficulty with local content levels as defined (such as the USA and Britain), a separate issue is perhaps the level of regional content that is broadcast. The small size of our country means that a lot of issues will be relevant to the entire nation, but TVNZ has moved to address the lack of regional context in some areas by the planned reinstatement of its regional news services in centres around the country.

Programmes do not have to be locally made to entertain, educate and inform the viewers. Indeed, it is arguable that maintenance of quality and diversity require a certain degree of programming sourced from other cultures to promote greater understanding of the lifestyles and issues facing other parts of the world. However in order to promote national culture and foster identity, as well as provide for minority

¹⁰³ NZ on Air *Local Content and Diversity*, see above n1, Executive Summary, Part 2.

¹⁰⁴ NZ on Air *Local Content and Diversity*, see above n1, Executive Summary, Part 2; Spicer et al *Remaking of TVNZ*, see above n49, Chapter 2.

¹⁰⁵ NZ on Air *Future of Local Content*, see above n86, para 2.2.2.

¹⁰⁶ NZ on Air *Future of Local Content*, see above n86, para 2.2.2.

groups (especially those specific to our country) there is a need for local programmes to be available for viewers.

TVNZ does play more local content than other broadcasters in New Zealand and it also provides 'shared experiences' of important events, which are not always commercially viable, such as sports events and the opening of Parliament. However, TVNZ's rates are still significantly below that of public service broadcasters in other countries. For example, the BBC in the UK carries 78% local content, compared with TV1's 40% and TV2's 15%¹⁰⁷. Whilst we have a low quantity of local content, we also have a lack of diversity in this content, with most of the 24% over the three channels consisting of news, sport and information programmes¹⁰⁸.

NZ on Air is charged with funding programmes that promote national identity and culture, but as previously mentioned, can have difficulty getting the programmes shown (even if offered at no cost to the broadcaster)¹⁰⁹. Programmes cannot foster national identity if they are not broadcast.

Distance from vested interests is an important feature of the public service broadcasting model. NZ on Air is wholly dependant on the government for its funding – it therefore might be wary of financing projects which, although possibly airing legitimate concerns, would be too critical of the government (for fear of a funding cut in the next budget as punishment for being too outspoken). This can impact on the effectiveness of television as a mechanism for promoting political discussion, and for informing the citizens.

¹⁰⁷ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 9 The United Kingdom; NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: New Zealand.

¹⁰⁸ NZ on Air *Local Content 1999*, see above n45, 9.

¹⁰⁹ Ian Duncan and John Yeabsley *Television Programmes – A Review of Funding Methods: Report for NZ on Air* (NZ Institute of Economic Research, 1997) 14.

TVNZ is primarily dependant on advertisers. It is this dependency that creates a certain degree of homogenisation in some types of production. The reliance on advertising revenue does impact on the provision for less-profitable minorities, as mentioned above, and may also make broadcasters wary of criticising advertisers.

The NZ on Air funding system tries to promote competition in good programming by creating competition for funds. However, as NZ on Air also has to consider the potential audience of the programmes when making funding decisions¹¹⁰, there is still an element of competition for numbers in the process. TVNZ's reliance on advertising means that it has to attract the numbers to its channels to retain the advertisers, so inevitably there is a lowest common denominator competition for numbers.

Our only restrictions on broadcasting are in the form of Broadcasting Standards Authority regulation – covering things such as balance, good taste, privacy and decency. Without genre-specific quotas, programmes makers are free to produce and broadcaster whatever programmes they wish. However, the broadcaster's reliance on advertising revenue tends to lead to a preference for proven formats that rate well with the advertiser's target demographic. It could be argued that in this way, programmes makers are restricted in their innovations.

B Other Measures of Quality

There are other measures of the quality of a public service broadcasting system. The benchmarks of a good public broadcaster suggested by the CBC are¹¹¹:

¹¹⁰ Broadcasting Act 1989 s39.

- (1) Share of viewing for locally made programmes (that is, how successful the public broadcaster is in developing local programmes in the face of competition from other broadcasters).
- (2) Time spent by viewers over a period of a week (or preferably a month) with the public broadcaster.
- (3) Value for money in the eyes of the public.
- (4) Diversity in supply of programmes and types of programmes.

Alternatively, NZ on Air considers that a good broadcasting system is one which¹¹²:

- Is accessible to a wide range of people in society (with opportunities both to create and receive a wide range of programmes).
- Reflects the diversity of the nation but at the same time encourages social cohesion
- Helps to develop local culture through innovative local programmes
- Enables citizens to develop informed opinions.
- Is responsive and accountable to the audience.
- Provides viewers with a range of choice.
- Has the editorial freedom to present more than one view.
- Is affordable to the society and the audience it serves.

¹¹¹ Max Suich *Benchmarking*, see above n95, 6.

¹¹² NZ on Air *Future of Local Content*, see above n86, para 1.13.

How does New Zealand stand up against these kinds of criteria?

The local content programmes broadcast on New Zealand television are often high rating and popular – proven formats tend to be used, that stand up against competing overseas programmes on other channels. At present, the most popular of these proven formats include ‘A day in the life’ type shows (such as ‘Towies’, ‘Motorway Patrol’ and ‘Life on Tape’) and gameshow-type programmes (like ‘Treasure Island’, ‘Mitre 10 Dream Home’ and ‘Can you Hackett?’). Not all local programmes are successful (‘McCormick Rips’ for example, was pulled after two weeks because of low ratings) but not all overseas programmes are successful either.

TVNZ’s channels combine to capture around 70% of the viewing audience¹¹³. The difficulty faced by TV3 in attracting audiences when it entered the market suggests a high degree of viewer loyalty to the publicly-owned channels¹¹⁴. Perceived value for money is a harder thing to measure because viewers don’t pay directly for their broadcasting service. The outcry surrounding newsreader John Hawkesby’s salary and severance package perhaps suggests that the public feel TVNZ could better spend some of its income, but in terms of efficiency TVNZ is actually better value for money than the BBC¹¹⁵.

The funding model we operate under creates opportunities to make programmes – it is not just limited to the broadcasters themselves. Yet in reality, our local content is not very diverse – even if it is produced by different organisations, the types of programmes being shown are fairly standard.

¹¹³ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: New Zealand.

¹¹⁴ NZ on Air *Future of Local Content*, see above n86, para 4.2.8.

¹¹⁵ Max Suich *Benchmarking*, see above n95, 5.

Under a public ownership model, one channel (or perhaps an entire New Zealand broadcasters do not perform too badly against these principles, given the limitations of our regime and our small population base. The main difficulties are the lack of quality local content to assist in fostering national identity, and the lack of distance from vested interests (which can place limitations on programme makers). A change in the broadcasting framework which emphasises a commitment to public service broadcasting may help to improve performance overall.

V MODELS FOR DELIVERING PUBLIC SERVICE BROADCASTING

There are various policy tools available to Governments attempting to create a viable and vibrant public service broadcasting regime. The three main mechanisms are the public ownership model, the funding model, and the regulation model. Combinations of the models can be utilised to meet the particular needs of New Zealand

A Public Ownership Model

It must first be noted that public ownership does not guarantee public service broadcasting. Indeed, '[g]ood programming is not about ownership, or the presence or absence of advertising. It is about what goes to air'¹¹⁶. However, there is a general prevailing belief that a publicly owned broadcaster may be much more receptive to public opinion than a commercially motivated privately owned broadcaster. Arguably ratings make all broadcasters receptive to public opinion, but perhaps it is felt that values which are not expressed in ratings will also be taken into account by a publicly owned broadcaster.

Under a public ownership model, one channel (or perhaps an entire network) is designated as the public service channel, its aim is to fulfil the public service objectives outlined in part II. There are variations on the public ownership model - some operate to a charter or legislative remit, and most are non-commercial or semi-commercial. The BBC for example, is non-commercial and operates under a charter¹¹⁷. This is the same for the ABC¹¹⁸. In Canada, the CBC is semi-commercial (receiving part of its income from advertising) but it still operates under a charter¹¹⁹.

Funding methods also vary. Some broadcasters are funded by licence fees, some by direct government grant, and some by commercial activities or a mixture of these different funding methods. In Finland, the public broadcaster is funded by a levy on commercial broadcasters¹²⁰. The PBS in America is also financed via sponsorship and fundraising drives¹²¹.

B Funding Model

Under a funding model, producers compete to win funding from an agency to make particular types of programmes. The agency funds are used to partially or wholly subsidise production of 'at risk' genre programmes that would not otherwise be commercially viable to make. Drama, documentaries and children's programmes are examples of particular 'at risk' genres.

¹¹⁶ Hugh Rennie 'Public Sector Broadcasting' in Gary Hawke (ed) *Access to the Airwaves*, see above n5, 19.

¹¹⁷ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 9 United Kingdom.

¹¹⁸ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia.

¹¹⁹ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

¹²⁰ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 3 Finland.

¹²¹ < <http://www.pbs.org/insidepbs/facts/faq1.html> > (last accessed 2 August 2000).

Such a model creates competition for good programming and innovative ideas are needed to win funding. It also means that producers other than the large broadcasters themselves have the opportunity to make such programmes, when they would previously have been inhibited by the sheer expense of production, thereby contributing to diversity of programming with different views being expressed.

The funding agency can be funded by a licence fee, direct government grant, or by a levy on broadcasters or advertisers. The agency can also have statutory objectives to fulfil through its funding decisions.

New Zealand is almost unique in its funder/provider split¹²². NZ on Air was created in a move to separate the commercial and social objectives of broadcasting, which was intended to promote greater efficiency.

C Regulation Model

Regulation can take a variety of forms, for example, conditions could be imposed on broadcast licences for a certain amount of local programming or that there should be a certain amount of 'public interest' programming. Alternatively, quotas can be legislatively applied to various types of broadcasters to ensure diversity in programming.

Monitoring of conditions of quotas would be carried out by a tribunal or ombudsman-type authority, as ensuring compliance with such regulation is essential to its effectiveness. The cost of such regulation (and how it is to be funded) must be considered when establishing a quota regime.

¹²² Singapore has a funder/provider split, but the model is different to that applied in New Zealand because all the broadcasters are publicly owned. NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 7 Singapore.

Another issue to be considered is who the quota is to be applied to – all free-to-air broadcasters? All national broadcasters? All channels including Pay TV? Quotas can impose significant cost barriers to market entry, especially for small non-national broadcasters. Pay TV and specialty channels may also pose difficulties for quota application, because of the lack of relevant local content material available in some genres.

In America, broadcasting is supposed to be carried out in with ‘public interest, convenience and necessity’ in mind¹²³. Broadcasters must serve local needs and interests, contribute to an informed electorate through information and political broadcasts, and serve the education needs of children through specifically targeted programmes¹²⁴. The system is governed by the Federal Communication Commission (FCC), although it does not monitor the industry generally or randomly inspect files to ensure that the public interest obligation is being met¹²⁵. The FCC relies on the public to notify it if broadcasters are not fulfilling their obligations¹²⁶.

Australia has a genre-specific local content quota of 55% applied to commercial networks (the ABC and SBS are exempted) and a 10% quota on satellite drama channels¹²⁷. In Canada all free-to-air channels are required to achieve 60% local content and specific local content requirements are imposed on pay TV channels¹²⁸.

¹²³ 47 USC 309 (a) 1988; See James Hamilton *Economic Assessment*, see above n29, 1179.

¹²⁴ Communication Act of 1934, 47 USC 307 (b); Children’s Television Act of 1990, USC 303b (a) (2) (1994); Henry Geller ‘Public Interest Regulation in the Digital TV Era’ 16 *Cardozo Arts & Ent LJ* 341 [‘Regulation in the Digital Era’].

¹²⁵ Henry Geller ‘Regulation in the Digital Era’, see above n123, 344.

¹²⁶ Henry Geller ‘Regulation in the Digital Era’, see above n123, 344.

¹²⁷ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia.

¹²⁸ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

A quota regime with dramatic impact is that of the European Union (EU). It has imposed a 50% European origin quota (for which news and sport do not count) and a 10% independent production quota, binding on all member countries. The quota applies to free-to-air and pay TV channels (except for 'ethnic channels' such as an Asian channel)¹²⁹. It is quite unusual to treat pay TV in the same manner as free-to-air channels.

VI APPLICATION OF THE MODELS IN NEW ZEALAND

A Publicly Owned Broadcaster

New Zealand currently has a publicly owned broadcaster (TVNZ) but its position as a commercially motivated state-owned enterprise (SOE) undermines its effectiveness as a public service broadcaster. There are some options for reform to remedy this fact, focusing on the particular difficulties (identified in part IV) of lack of local content to foster national identity and lack of distance from vested interests.

1 TVNZ as a public service broadcaster

There is provision within the SOE Act for the government to specify certain social objectives ahead of the requirement to operate as a commercial business¹³⁰. An example of social objectives being imposed on a state-owned enterprise can be seen in the Deed of Understanding between the Government and NZ Post, which (among other things) requires NZ Post to maintain six days-a-week delivery to 95% of delivery points and contains an agreement not to

¹²⁹ Council Directive No. 89/552, OJ L298/23 Article 4 (as discussed in Michael Landsman 'Restricting Foreign Television Programming in Europe: The European Community's Television Quota Reappraised' 8 Media L & Pol'y 29,36 ['Reappraising European Quota']. "Member states shall ensure where practicable and by appropriate means, that broadcasters reserve for European Works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports event, games, advertising and teletext services".

¹³⁰ State Owned Enterprises Act 1989 s7.

reintroduce rural delivery fees¹³¹. The dividend required from TVNZ by the government would have to be reduced accordingly, in recognition of the fact that such social objectives may not be commercially beneficial.

The Government also has the ability to direct the activities of TVNZ through the development of its annual Statement of Intent¹³². Up until now however, the government has not used its ownership of TVNZ to promote social objectives, preferring instead to let it perform in a purely commercial fashion so as to achieve a large dividend payment for the Government. The Government relies on TVNZ's profits to finance other social spending¹³³.

The difficulty with social charters is enforceability – they tend to be big on ideals and small on measures to assess the achievement of the ideals. The Radio New Zealand Act 1995 established a charter for Radio New Zealand. Compliance is monitored by NZ on Air through its annual funding contracts with Radio New Zealand¹³⁴. This method of monitoring is not as applicable or effective in TVNZ's situation, as unlike Radio NZ only a small amount of TVNZ's funding is from NZ on Air.

Decreasing TVNZ's reliance on advertising revenue may enable it to make more socially beneficial programming decisions, however the viability of such a venture is doubtful. New Zealand's first regional TV station in the 1960s (AKTV1) began carrying commercials just six months after its launch¹³⁵. Aside from this, TVNZ would become reliant on the government in some form for income (either through a licence fee or direct grant from taxation) and may become wary of

¹³¹ NZ on Air *Future of Local Content*, see above n86, para 2.5.12.

¹³² Hon Marian Hobbs *Broadcasting Policy: Objectives*, see above n39, para 25.

¹³³ 'Future vision', see above n93, 20.

¹³⁴ Hon Marian Hobbs *Broadcasting Policy: Objectives*, see above n39, Appendix I: Current New Zealand Model for Achieving Desired Content.

¹³⁵ TVNZ Planning Department *New Zealand and the International Television Industry* (TVNZ, Jan 1991), 40.

criticising government action. The reduction in funding levels from government grants is an issue for other public service broadcasters around the world¹³⁶.

By removing TVNZ from the SOE list and making it a crown entity (like Radio NZ) that is not required to return a dividend to the government, TVNZ would not be forced to make commercial programming decisions all the time¹³⁷. It will still have to carry advertising in order to cover operating costs (as there is arguably not enough money received by the government through taxation alone to adequately fund a non-commercial television network), but with it not having to make so much money it will not be so restrained by reliance on the advertisers. Any profit made could be reinvested.

2 TV1 as a public service broadcaster

TV1, as the longest running channel in New Zealand, has a certain place as the 'national channel' in the minds of many. It would therefore be ideally suited to becoming the public service broadcaster – especially to foster the national identity and provide shared experiences. This channel already plays the greatest amount of local content of our free-to-air networks, and also carries quality drama programmes catering primarily for older viewers¹³⁸. Children and youth may not be as well served on this channel if it were to become the public service broadcaster; or alternatively catering for youth and children may need to be at the expense of older viewers who may not be catered for on any channel at various times of the day¹³⁹.

¹³⁶ NZ on Air *Local Content and Diversity*, see above n1, Executive Summary: 5 Local Content: Funding; NZ on Air *Local Content and Diversity*, see above n1, Executive Summary: 7 The Role of Public Broadcasters.

¹³⁷ See Paul Norris 'The Future of Broadcasting' (*Broadcasting Symposium*, see above n33).

¹³⁸ NZ on Air *Future of Local Content*, see above n86, para 4.2.12-4.2.13.

¹³⁹ NZ on Air *Future of Local Content*, see above n86, para 4.2.12-4.2.13.

A fully commercially motivated TV2 could subsidise TV1 (which it already does to some extent). If TV1 was semicommercial or non-commercial, more funds would be required from elsewhere, or TVNZ would have to be allowed to reduce its dividend to the government.

An alternative option would be for TV2 to be sold. The money from the sale of TV2 could be banked, and the interest used to help support TV1¹⁴⁰. The fewer advertisements allowed, the more money the channel would need from the government.

3 UHF channel

Another suggested option is to sell TVNZ and set up a public service broadcaster on the UHF frequency¹⁴¹. This would allow the channel to establish its own identity, without hangovers from previous regimes (as is an issue with converting an existing channel into a public service broadcaster).

However, there is great difficulty in establishing an audience for new channels (as TV3's experience indicates). Also, the UHF frequency does not currently have the same penetration as the VHF band, undermining the principle of universality of availability¹⁴².

The UHF channel could just turn into a cultural ghetto where all the minority interest and high cost local shows are 'dumped'. If the channel is not being watched, then it cannot educate, inform and entertain.

B Funding Model

¹⁴⁰ Paul Norris 'The Future of Broadcasting' (*Broadcasting Symposium*, see above n33).

¹⁴¹ NZ on Air *Future of Local Content*, see above n86, para 6.4.

The main advantage of funding models is that they create a certain amount of competition for funds to produce local productions. It encourages diversity much more than if production were only made by the broadcasters themselves. There are two main problems with how New Zealand's funding system is set up at the moment – lack of funds and lack of ability to get programmes shown by broadcasters. There are some options to remedy this situation.

One option is to sell TVNZ, invest the sale money and use the interest to increase the finances of NZ on Air. This option would increase funding for NZ on Air, to allow a greater number and range of programmes to be subsidised. This would however not be enough in itself to get broadcasters to show more programmes. Broadcasters may still refuse programmes offered free of charge on the basis of opportunity cost (of advertising) when the audience is not a profitable target demographic¹⁴³.

Another option is to increase funding to NZ on Air by a levy on advertisers. This option is discussed in part VII and is included in the preferred model in part IX.

C Regulation Model

1 Conditions on broadcast licences

Currently, an administration fee is paid each year to the Ministry of Economic Development – this is not really a renewal fee, as the licences are sold rather than leased. It would be politically difficult to apply conditions to current broadcasters because of this fact, although in theory legislation could be passed. Conditions just on new licences would have limited effect because there are not many newcomers, and would restrict entry into the market.

¹⁴² NZ on Air *Future of Local Content*, see above n86, para 6.4.

A regulatory regime in New Zealand would be easier to monitor than in America, because of the smaller number of broadcasters that would be involved, but to be proactive rather than reactive would take an enormous amount of money. The BSA currently only acts on public complaints – it seems hard to justify having different systems for both regulations, as both are in the public interest.

2 Quotas

A quota could be used to ensure certain types of public service programmes were broadcast. Quotas most commonly ensure that local content receives adequate airtime, but genre specific quotas also ensure different varieties of programmes are shown.

Quotas in New Zealand, if applied to all channels (including TV4 and Prime) are likely to severely restrict competition because it will immensely increase the cost of broadcasting in this country. It has been suggested that even TV3 would struggle to remain profitable in the face of a genre-specific quota¹⁴⁴.

Quotas could well be suited to the New Zealand environment, but there are two major difficulties to their effective introduction.

First, under the Closer Economic Relations agreement with Australia, Australian-made programmes would have to be included in any local content quota, because for broadcasting purposes the countries are one nation¹⁴⁵. This may defeat the purpose of the quota, as it could be

¹⁴³ NZ on Air *Future of Local Content*, see above n86, para 2.6.1.

¹⁴⁴ 'The renaissance will not be televised' *Listener*, New Zealand, 22 April 2000, 26, 27 ['Renaissance']; 'Quotas could spell disaster for TV3' *Sunday Star Times*, 9 April 2000, 12 ['Quota disaster'].

¹⁴⁵ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 86. New Zealand has already won inclusion into the Australian quota system through the Project Blue Sky litigation < <http://www.spada.co.nz/mediaReleases/1998/blueSky.htm> > (last accessed 3 October 2000).

filled with cheaper Australian programmes – many in the ‘at risk’ genres are already well rating on our screens¹⁴⁶.

Secondly, when New Zealand signed the General Agreement on Trade in Services (GATS) provisions were only made (in terms of broadcasting) that would allow Maori broadcasting and NZ films to be protected from competition¹⁴⁷. Most other member countries made provisions also protecting their local broadcast industries. The Ministry of Foreign Affairs and Trade has stated that introducing quotas would be a breach of New Zealand’s obligations under the GATS and may open the country up to claims for compensation or withdrawal of equivalent trade benefits from other member countries¹⁴⁸. Indeed, it appears that even a voluntary industry-negotiated quota (with no Government involvement) would also be against the GATS, as the Government has a duty to eradicate any business practices that restrict competition¹⁴⁹.

The Labour Government may be prepared to risk backlash from the GATS countries to instigate its election-promised quotas¹⁵⁰. But ultimately it will probably be a political decision, rather than a policy decision. If quotas were introduced, there would be a significant reduction in profits of all broadcasters, as more money would have to be put into production.

¹⁴⁶ For example: ‘Water Rats’, ‘Home and Away’, ‘Hi 5’, and ‘Bananas in Pyjamas’.

¹⁴⁷ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 86; ‘Renaissance’, see above n144, 26.

¹⁴⁸ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 87; see generally: Sandrine Cahn and Daniel Schimmel ‘The cultural exception: does it exist in GATT and GATS frameworks?’ 1997 15 *Cardozo Arts & Ent LJ*, 281.

¹⁴⁹ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 87; ‘Ministry says quotas breach trade treaty’ *Evening Post*, Wellington, New Zealand, 17 August 1999, 2.

¹⁵⁰ In ‘Local Content Quota Problems Outlined’ *The Dominion*, Wellington, New Zealand, 21 January 2000, 2, Marian Hobbs was said to be planning to ‘press ahead with the quota moves’, saying ‘New Zealand’s culture was more important than the agreements’.

Labour has suggested setting quotas at a level of 10%, rising to 20% in consultation with broadcasters¹⁵¹. The Screen Producers and Directors Association (SPADA) has recommended a quota of 31% initially, rising to 50% in 3 years, operating under a points system where channels get points for their quantity of local cots, and separately for screening 'at risk genres'¹⁵². Most overseas quotas are higher – Australia's is 55%, Canada's is 60%¹⁵³.

Genre-specific quotas usually only have a small number of categories specified, Australia has separate targets for drama, children's programmes and documentaries¹⁵⁴, the proposed SPADA quota has six - drama and comedy, children's drama and animation, children's programmes, documentary, Maori and Maori language programmes, and performance shows¹⁵⁵. Interestingly enough, programmes such as news, sport and current affairs are usually not included in quotas – despite their public service value – this is because producers will generally make these types of programmes anyway (albeit somewhat sensationally¹⁵⁶) and use them as 'loss leaders' to draw viewers to their channels from the hope that they will stay for the rest of the night¹⁵⁷.

D Publicly Owned Broadcaster Plus Funding

There are a few variations on this option, based on the various possibilities for a public service broadcaster. The two main ones are: have TVNZ with a social charter (either as an SOE or a Crown Entity) plus NZ on Air/Te Mangai Paho funded solely by licence fee or

¹⁵¹ 'Broadcasting – Sept 1999', see above n93.

¹⁵² 'Renaissance', see above n144, 27.

¹⁵³ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia; NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

¹⁵⁴ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 67.

¹⁵⁵ 'Renaissance', see above n144, 27; 'Quota disaster', see above n144.

¹⁵⁶ 'Strong public television service vital to our future' *NZ Herald*, Auckland, New Zealand, 1 June 1998, A:13; Peter Thompson '“Igor – Go Fetch Brains!” Can Television New Zealand be resurrected?' *New Zealand Political Review*, August/September 2000, 24, 26.

government grant; or have TV1 as the public service broadcaster, TV2 sold and NZ on Air/Te Mangai Paho funded by licence fee or government grant and interest on TV2 sale money.

The combination of a public service broadcaster and funding model still has the advantage of creating diversity and competition in programme production but increases the likelihood of programmes being aired because there is a broadcaster with an obligation to show such programmes.

E Regulation Plus Funding

Such an option would involve a quota applied to (at least) the free-to-air national channels and a funding agency to help produce some of the most expensive types of programmes. This would perhaps lessen the blow of quotas on the finance of the broadcasters, and encourage quality programmes to be made, rather than just the cheapest programmes in each particular genre.

If a quota was applied to pay TV channels as well, it may be beneficial to have an opt out payment scheme, whereby the broadcaster could pay a specified sum each year to opt out of the quota¹⁵⁸. This money could then be used by the funding agency to invest in local production. It would probably be unwise to allow all channels to opt out of the quota, as then you may simply be left with a lot of money to put into local production but no broadcaster who want to show at-risk local content genres.

¹⁵⁷ NZ on Air *Future of Local Content*, see above n86, para 2.5.2.

¹⁵⁸ Paul Norris 'The Future of Broadcasting' (*Broadcasting Symposium*, see above n33).

Australia and Canada have quotas, and also small funding agencies. The Canada Television and Cable Production Fund (CTCPF), a public/private funding partnership, will part-fund Canadian productions for both public and private broadcasters¹⁵⁹. Australia Film Finance Corporation (FFC) uses money from government and private sources to fund producers for specific Australian programmes¹⁶⁰.

VII FUNDING METHODS

The method of funding the public service broadcaster or funding agency can impact on the achievement of quality programming. The adequacy of funding also severely influences the effectiveness of the public service broadcasting models.

Each funding method outlined below has both its advantages and disadvantages and not all are realistic options in the New Zealand context. It seems inevitable that a mix of funding methods will be applied in New Zealand, in order to best achieve the public service objectives. This is primarily because our small population is insufficient to sustain many of the methods on their own.

A Licence Fee

A licence fee is levied across almost the entire population. Households usually pay it annually. New Zealand's licence fee, the public broadcasting fee, was abolished as of July 2000. Depending on the public service broadcasting model adopted, the licence fee can be used to support a public broadcaster or (as is the case in New Zealand since 1989) a funding agency.

¹⁵⁹ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 2 Canada.

The benefit of a licence fee is that it distances the broadcaster or funding agency from the Government slightly. The licence fee recipient has an opportunity to maximise revenue by aggressively pursuing debtors and so has more control over the level of income than with a direct government grant. It is also beneficial to have a specific appropriation for broadcasting, as there is always potential with direct government grants for broadcasting to be relegated down the priority list for funds in favour of more 'politically beneficial' causes.

However, the effectiveness of a licence fee is still dependent on the government setting it at a realistic level. The licence fee in New Zealand remained frozen for some years, resulting in a loss of 'real' value¹⁶¹. Also, the licence fee recipient may have to expend large amounts of time and money collecting the fee – which cuts down on the amount available for broadcasting and/or programme production.

Conversely, this separate appropriation also makes the licence fee an easy political target. Lobbyists are able to point to the productions and services the licence fee supports, and highlight any they consider to be substandard as justification for abolishing the fee. Citizens are reluctant to pay for things which they do not believe are quality products and so don't pay their licence fee (resulting in more collection costs for the recipient).

Licence fees can be seen as unfair, because they impose the same cost on households regardless of size or income¹⁶². However licence fees can also be seen as a method to keep broadcasters or funding agencies more accountable to the public – the public are to a limited extent

¹⁶⁰ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 1 Australia;

¹⁶¹ 'Future vision', see above n94, 20; Arthur Grimes and Jo Tyndall 'Foreword' in Arthur Grimes and Jo Tyndall (eds) *Counting the Beat*, see above n5,

¹⁶² Peter Thompson ' "Igor – Go Fetch Brains!" Can Television New Zealand be resurrected?' *New Zealand Political Review*, August/September 2000, 24, 28.

purchasing goods and services from them, and they want to see that their money goes to quality products.

B Direct Government Grant

A direct government grant has the advantage of being a guaranteed source of income for a particular year. It is however hard to predict what future appropriations will be, as such things are often subject to political factors beyond the grant recipient's control.

Politically beneficial votes such as health and welfare are likely to receive increased funding at the expense of broadcasting, because the public do not often fully appreciate the benefit of a well-funded public service broadcasting regime. When compared with free hospital visits or other such things that directly impact on their pocket, citizens will rarely call for more money to be spent on broadcasting.

The main disadvantage of funding by a direct government grant is that the government then has a high degree of covert control on broadcasters (or at least there is a perception of such a level of control). If broadcasters don't toe the line, then their appropriation could be reduced for the next year – this could severely limit political comment and make broadcaster wary of criticising government initiatives. This could lead to a stifling of legitimate political discussion and may result in the public being deprived of information they need to make informed choices as part of the democratic process. It must be noted however, that this punishment (by not raising grants) can also occur with the licence fee. An example of this in New Zealand was in 1975, when Prime Minister Robert Muldoon refused to raise the level of the public broadcasting fee, despite an extremely high level of inflation decreasing the 'real' worth of the fee. This was

¹⁴⁷ Ian Fraser 'Television and Cultural Identity' (*Broadcasting Spectrum*, vol. 20, no. 33).

seen to be a punishment for broadcasters showing independent or dissenting views from Muldoon's own.¹⁶³

With a direct government grant, the agency would not have to spend money on collection of a fee, and so therefore more of their income could go towards programme production and/or broadcasting.

C Advertising

Broadcasters receive money for delivering audiences to the advertisers. Advertisers want as many people as possible to see their product, so the larger the potential audience, the more advertisers will pay for a 'slot' in which to place their advertisements.

Reliance on advertising revenue can often lead to a homogenisation of programmes, all aimed at the most profitable demographic (18-49), at the expense of quality programming for other groups. This is because if the programmes are not appealing to a broad audience with a lot of disposable income to spend on the advertised products, then the advertisers will not be prepared to pay for that time slot – they will shift to a time slot where there are more target viewers in order to get a better return on their investment in advertising. Broadcasters dependent on advertising revenue cannot afford to show programmes that advertisers do not want to purchase slots for.

The power of advertisers may also restrict editorial comment, as companies may not wish to be associated with unpopular views and so will move their advertising to another channel. This intense competition for advertising revenue can restrict diversity in programming and the expression of opinion.

¹⁶³ Ian Fraser 'Television and Cultural Identity' (*Broadcasting Symposium*, see above n33).

A lack of advertising does not ensure quality programmes. But it can provide for a greater diversity of programmes. This is partly because of the way the audience is differently identified in commercial and non-commercial environments¹⁶⁴. An advertising driven system sees the audience as consumers, who need information to make purchasing decision; non-commercial broadcasters categorise the audience as citizens who need information to function adequately as productive members of society¹⁶⁵. We are all citizens and consumers, but the particular emphasis given by the broadcaster will impact on the content of what is produced and broadcast.

Funding by advertising revenue is not so applicable when a pure funding model is considered. This is because the funding agency does not itself have any airtime to sell to advertisers. A funding agency could however be supported by a levy on the advertising revenue obtained by the broadcasters.

There is also support for the idea that public service broadcasters should not carry advertisements, as they disrupt the programming¹⁶⁶. Especially with news and current affairs, it is argued, issues are broken down into sound bites and 'between ad-break pieces' which do not allow full discussion and examination of important topics¹⁶⁷. It is stated in reply, that advertisements do not hinder the news-they merely force the broadcaster to be direct and concise¹⁶⁸ - and given the diminishing capacity for attention in today's society this is a good thing, as it ensures important messages are communicated to the viewers.

¹⁶⁴ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 35-44.

¹⁶⁵ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, para 35-44.

¹⁶⁶ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, footnote 28.

¹⁶⁷ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, footnote 28.

¹⁶⁸ Ministry for Culture and Heritage *Briefing papers: Appendix B*, see above n28, footnote 28.

Depending on the delivery mechanism adopted, other funding options

D Commercial Activities

Other activities, such as the hiring out of production facilities or the selling of videotapes of popular shows can also provide revenue for a broadcaster. A funding agency could also receive revenue to a limited extent if they retained the rights to programmes they had funded. Programmes can also be sold to overseas broadcasters to help cover production costs.

New technology appears to increase the potential of this revenue source, including pay-per-view options on digital networks, and programme viewing and purchase over the Internet.

E Levies

A public service broadcaster or funding agency could be funded by a levy on commercial broadcasters, or on advertising revenue. Such a levy would restrict new players entering the broadcast market or could force a price increase on advertised products to pay for the levy.

The effectiveness of a levy really depends on the size of the market; it would have to be large enough to sustain such a levy at a reasonable level for all participants. In Finland, an 'operating licence fee' must be paid to the public broadcaster (YLE) by commercial broadcasters earning more than 20 million FIM (\$NZ 6.7m)¹⁶⁹. But this only account for 20% of YLE's income (76% is from a public licence fee and 4% is from government grant)¹⁷⁰.

F Other Options

¹⁶⁹ NZ on Air *Local Content and Diversity*, see above n1, Executive Summary: 5 Local Content: Funding.

Depending on the delivery mechanism adopted, other funding options include: using opt out payment from a quota regime to fund programme production; using the interest from the profits of asset sales to support a public service broadcaster or to fund programmes production; sponsorship of programme production or broadcasting.

G Funding in the New Zealand Context

New Zealand's population is too small to adequately fund a public service broadcaster by licence fee or government grant alone¹⁷¹. Our market is not large enough for a levy on broadcasters or advertisers to be the sole method of funding, and sponsorship is unlikely to raise sufficient funds. Commercial activities usually involve significant outlay costs but small profits, so are unsuited to entirely support any regime. Complete funding from advertisers would necessitate more advertisements – a move that would be extremely unpopular. A mixture of funding methods is required to sustain a viable public service broadcasting regime in New Zealand.

VIII LABOUR'S PROPOSALS

The current Labour government has set some parameters effecting how the broadcasting regime might change under its leadership. It has stated that it will not sell TVNZ, TV1 or TV2 and it will not reintroduce a broadcasting licence fee¹⁷². Labour has promised to introduce a charter for TVNZ and genre-specific quotas on free-to-air television¹⁷³. It has also promised to investigate the appropriate funding mix for public service broadcasting in New Zealand in an effort to ensure that the broadcasting institutions and the commissioning of television programmes are not subject to political

¹⁷⁰ NZ on Air *Local Content and Diversity*, see above n1, Country Summaries: 3 Finland.

¹⁷¹ Laurie Cameron 'Financing Public Sector Broadcasting' in Gary Hawke (ed) *Access to the Airwaves*, see above n5, 40.

¹⁷² 'Broadcasting 2000', see above n93.

interference¹⁷⁴. The draft charter for TVNZ was released in September 2000¹⁷⁵, but the details of how the quota system might work have not been released yet, so comment cannot be directed at this aspect of the policy.

*A The Charter*¹⁷⁶

The stated purpose of the draft TVNZ charter is that 'TVNZ will contribute to a sense of national purpose and identity and a pride in New Zealand's diversity and extend the range of ideas and experiences available to New Zealander's'¹⁷⁷.

To achieve this, there are stated ideals for TVNZ to fulfill – such as to 'strive always to maintain the highest standards of programmes quality and integrity'¹⁷⁸. In general, the statements are broad and idealistic (some are downright waffly¹⁷⁹) – the draft charter does not really provide anything concrete to measure TVNZ up against. The effectiveness of the charter really lies in its interpretation.

Interestingly enough, the charter is in many respects similar to Radio NZ's charter (and in some regards almost identical). Although the Radio NZ charter appears to be working well in providing for public service ideals in the radio arena, the executives of TVNZ (who unlike Radio NZ's executives are entrenched in a commercial mindset) will still be required to return a profit – making it doubtful whether the TVNZ charter will prevail in the spirit in which it was intended.

¹⁷³ 'Broadcasting 2000', see above n93.

¹⁷⁴ 'Broadcasting 2000', see above n93.

¹⁷⁵ Hon Marian Hobbs 'TVNZ Draft Charter Released', Media Release, 19 September 2000, available from <
<http://www.executive.govt.nz/minister/hobbs/tvzn/new.htm> > (last accessed 25 September 2000).

¹⁷⁶ Draft TVNZ Charter is available at <
<http://www.executive.govt.nz/minister/hobbs/tvzn/charter.htm> > (last accessed 25 September 2000).

¹⁷⁷ Draft TVNZ Charter, see above n176, Introduction.

¹⁷⁸ Draft TVNZ Charter, see above n176, General.

Compliance will not be able to be monitored in the same way as the Radio NZ charter is monitored, as TVNZ is not reliant on NZ on Air for the majority of its funding (as Radio NZ is), so NZ on Air has little weight with the broadcaster. Until the public service ethos is restored to TVNZ the effectiveness of the charter in fulfilling the government's policies is limited.

Actually, it can be argued that TVNZ already fulfills most of the charter requirements. For example, it does 'feature programmes about New Zealand's natural history and heritage' and it does 'feature programmes that serve the varied interests within New Zealand society'. Why then do we still see TVNZ as a commercial broadcaster? It is because although they can point to a sprinkling of public service programmes, which fulfill the charter requirements, when looked at overall, their programming is not committed to the public service ideals. It is not just a matter of showing programmes that cater for minorities, for example, it is about showing quality programmes and it is about showing them at a time when they are accessible to the target audience. Reliance on advertising revenue makes TVNZ less willing to place minority programmes in anything other than extremely off-peak slots, so we end up with programmes like *Tagata Pasifika* being shown at 9.30am on a Sunday morning, when most of its target audience is at church.

Minister of Broadcasting Marian Hobbs does not expect viewers to notice a huge change to programming on TVNZ after the introduction of the charter¹⁸⁰. One must surely ask what is the point of the charter then, if there is going to be no significant change for the audience? If viewers are not going to be any more educated, informed or entertained, then how does the charter help to fulfill the public service objectives?

¹⁷⁹ Such as 'celebrate in its programming the diversity of cultures...' Draft TVNZ Charter, see above n176, Representation of Diversity.

The charter has high-minded ideals, but without people in TVNZ who are going to run with them, and without effective measures to evaluate compliance then it will founder.

IX CONCLUSION: A PREFERRED MODEL

The model preferred by the writer involves mixtures of the mechanisms and funding sources discussed in this paper. It differs from the regime proposed by the current Labour government.

It is proposed that TVNZ should operate in accordance with a charter. The ideals of the draft charter can be incorporated with some concrete directions to TVNZ established by agreement with the Crown at 5-yearly intervals. Such directions would include a specific amount of local content, genre targets, and setting levels of advertising and sponsorship. An independent authority would monitor compliance.

Having the review at 5-yearly intervals would allow for future planning, and give time for funding productions to meet targets. It also insulates the directions slightly from the whims of a new government and gives TVNZ security in the knowledge that things won't be changing dramatically every election year.

A quota set by the government for TVNZ would probably avoid the GATS issues surrounding an industry-wide quota. This is because the government would be acting more in its shareholding capacity in determining the conduct of a single business – not reducing competition in the industry overall, because the other broadcasters would be free to screen whatever programmes they wished from whatever country.

¹⁸⁰Hobbs unveils "Auntie" TVNZ charter' *Dominion*, Wellington, New Zealand, 20

Genre targets should be separate from the local content quota – providing guidelines for the kind of mix of programmes the government feels is necessary to fulfil its broadcasting policy objectives. Industry officials would need to be involved in the target setting process, in consultation with TVNZ, so that appropriate attainable levels were set. These targets would ensure diversity of genres, but they would not be absolute like quotas – they are simply guidelines. Programmes to meet genre targets need not necessarily be local – the quest is for quality broadcasting that educates, informs and entertains. To encourage compliance, a possibility would be to provide ‘bonus’ money for TVNZ if it met these genre targets, with the eligibility for this bonus assessed by the independent authority.

Maximum levels of advertising and sponsorship could be set to maintain a balance between funding sources. The levels would be in terms of advertisements per hour or income percentage, rather than dollar value, because many external factors can affect the ‘real’ value of dollars. The intention would not be to restrict the amount of money TVNZ could make, but rather to restrict its reliance on any particular funding source (and so distance it from vested interests).

Under this preferred model, TVNZ would not be required to return a profit to the Government. It would be re-constructed as a crown entity, as the SOE framework is not really appropriate for an organisation with social objectives such as those proposed in the charter. Funding would be by way of a mixture of methods: government grant; advertising; sponsorship; commercial activities; and subsidised funding for productions via NZ on Air. None of these sources on its own should make up more than 50% of TVNZ’s income – the key is having a balance which will allow sufficient editorial independence to adequately fulfill the spirit of the charter.

NZ on Air would remain as a funding agency (as would Te Mangai Paho). The main reason for this is that it helps the commercial networks to show some local content as well – providing more outlets for local production and increasing local content overall. Competition in good programming is still encouraged, but with a broadcaster required to show a certain amount of local content then there is a better chance of such programmes getting broadcast.

A levy on advertisers would be used to increase NZ on Air's funding, with other income provided by a direct government grant and money received from the sale overseas of New Zealand productions it has supported. Although the advertiser levy would inevitably be passed on to the consumers of advertised products, the costs would be spread across a large percentage of society and is arguably more preferable than re-introducing a licence fee. This is because not everybody who received the broadcasting service paid their licence fee – this way everybody pays (there is universality of payment). The counter to this is that it is unfair for those who do not receive a broadcasting service to be forced to pay for it – the response is that even if one does not own a television set, one receives benefit from a quality public service broadcasting regime because of the increased knowledge of society and the elevated standard of public debate that is inspired by such a system. Because public service broadcasting has positive effects external to those watching, and as the benefits are for all society, it is not unfair for all of society to contribute a little towards the cost of the service.

As far as local content quotas are concerned, without an accompanying commitment to the public service principles, the writer feels that they will only serve to encourage a larger quantity of low-cost local production or will simply be filled with Australian productions (because of the CER) being shown by broadcasters focused on profits. It is felt that this would be true even of a genre

specific quota. It does not appear that quotas would be worth the restriction on broadcasters freedom to maximise revenue and on the viewer's freedom of choice, nor would the results outweigh the potential detriment of withdrawal of equivalent trade benefits from GATS countries or the costs of monitoring industry wide compliance.

This preferred model is aimed at addressing the particular difficulties of New Zealand's broadcasting regime as identified earlier in this paper. Admittedly, it involves a high degree of intervention in TVNZ's programming, but it is submitted that the lack of a public service culture within TVNZ necessitates such intervention. It is hoped that by spreading funding sources and investing TVNZ with specific public service goals will limit the influence of vested interests and provide for a greater amount of local content on our television screens.

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