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COMMUNITY  
BROADCASTING  
ASSOCIATION OF  
AUSTRALIA

**April 2018**

## **Review of digital radio instruments**

### **Submission by the Community Broadcasting Association of Australia to the Australian Competition and Consumer Commission**

#### **1. Introduction**

1.1 The Community Broadcasting Association of Australia (CBAA) welcomes the opportunity to submit comments in relation to the ACCC's review of the continuing need for two digital broadcast radio facilities legislative instruments which are due to sunset on 1 October 2018 **(Instruments)**.

#### **2. Background**

- 2.1 The CBAA is the peak body for community broadcasting in Australia, representing over 350 licensed community broadcasters. It acts under agency arrangements as a single point of coordination for community broadcasting licensees eligible to be digital radio access seekers under the Radiocommunications Act 1992 (**Act**).
- 2.2 There are currently 36 community broadcasting licensees eligible to be access seekers and providing 40+ on-air digital radio services in Brisbane, Sydney, Melbourne, Adelaide and Perth, alongside commercial digital radio services.
- 2.3 Up to a further 13 eligible community broadcasting licensees are expected to commence operating digital radio services in Darwin, Canberra and Hobart in 2018, and other regional locations are under planning consideration.
- 2.4 The provision of community broadcasting services on digital radio is an important aspect of, and contribution to, locally produced content and free-to-air media diversity.
- 2.5 The legislative framework in the Act reserves two-ninths of the total capacity of each Foundation Category 1 digital radio multiplex for eligible licensed community broadcasting services.
- 2.6 The Act gives each digital community radio broadcasting representative company (**DRC**) the right to take up a shareholding in the joint venture company that holds the digital radio multiplex transmission licence (that is, each multiplex licensee). No DRC has elected to take up a shareholding in locations where digital radio services are currently operating.
- 2.7 Irrespective of shareholding status, the intention of the access undertakings and the access regime is to allow eligible broadcasters to obtain access to digital radio transmission services on terms and conditions that are reasonable, and not to discriminate between access seekers in terms of the technical and operational quality of the multiplex transmission service.

### **3. Changes to the Act**

- 3.1 A number of changes have been made to the legislative framework in the Act subsequent to the implementation of the Instruments.
- 3.2 In the main, changes have been developed through the Digital Radio Planning Committee, chaired by the ACMA and with membership including the national, commercial and community broadcasters, represented by the CBAA, and extending also to the ACCC.
- 3.3 Changes to date have included measures to shorten legislatively prescribed timeframes and remove steps in the process for digital radio rollout. Changes have also clarified the manner in which excess capacity allocations are determined.
- 3.4 During 2017 a number of proposals were circulated within the Digital Radio Planning Committee by the Department of Communications and the Arts (**DOCA**) relating to the allocation of capacity on Foundation Category 1 digital radio multiplex transmitters, including proposals to increase caps on multiplex capacity for commercial broadcasters in licence areas with a small number of commercial licensees and also to increase capacity reserved for community broadcasters.
- 3.5 DOCA also consulted with members of the Digital Radio Planning Committee on the possible removal of the non-discrimination clause in sub-section 44A(11) of the Act.
- 3.6 At the time of writing, there is no agreed position within the Committee on how to proceed in relation to either of these matters. DOCA is to continue to explore options to remove inefficiencies in the digital radio framework, taking account of the interests of relevant stakeholders.

### **4. Assessment of and comment on ACCC review of the Instruments**

- 4.1 CBAA supports the concept of having instruments setting out the decision making criteria and procedural rules. Such instruments have the potential to promote transparency and a better understanding of the procedure and basis for decisions, and thereby enhance the efficiency and effectiveness of the system.
- 4.2 CBAA also considers that, as a general proposition, the Instruments are fit for purpose and that, as the ACCC suggested in its submission of 5 February 2014 to the Department of Communications' review of digital radio, the access regime appears to be working effectively and efficiently in facilitating access to the DRMT service.
- 4.3 The expansion of digital radio to regional areas generates consideration of some factors less in focus at the time of the initial implementation of digital radio services in the five capital cities.
- 4.4 The CBAA has concerns about two aspects of the current Criteria which could usefully be addressed in revisions of the Criteria or, if more appropriate, in an Explanatory Statement.
- 4.5 The criteria in section 5(1) of the Decision Making Criteria do not raise any issue as to whether the access provider is offering an appropriate standard of transmission facilities or service.
- 4.6 For example, an access provider could under-invest so that the multiplex transmission infrastructure available to access seekers may not be reasonably adequate, in terms of quality of service or service coverage, for their purposes.
- 4.7 Historically, the ACCC has relied on patterns of commercial competition as being sufficient to ensure efficient pricing outcomes and the provision of adequate multiplex transmission facilities. While this may reasonably be assumed in the capital cities, with a high number of broadcast service licensees, there are different planning considerations for regional areas with a lower number of broadcast service licensees.
- 4.8 In regional areas there may be the situation where only one or a small number of licensees may consider operating multiplex transmission facilities with lower power than is called for by the published ACMA Digital Radio Channel Plan (DRCP).

- 4.9 Those licensees may decide to operate with lower transmission power and partially compensate for that, for their own services, by using more of overhead transmission capacity overheads to attempt to protect and mitigate against the effects of weaker coverage.
- 4.10 Operating with lower than the nominal maximum envelope of transmission power as specified in the published DRCP would be to the detriment of others making use of the transmission multiplex as Access Seekers.
- 4.11 Other Access Seekers would either have to accept sub-optimal coverage to the intended population of the Licence Area or otherwise use more than the usual and nominal overheads and, with there being an overall constraint on capacity (eg a total of two-ninths for community broadcasters), this would result in an overall lesser number of services.
- 4.12 Such a circumstance may raise competition issues that may be avoided by the Instrument requiring that that Access Undertaking make efficient use of radiocommunications spectrum allocated for the purposes of the DRMT service, and be in compliance with the nominal pattern and transmission power to the maximum extent possible and practical.
- 4.13 As a separate point, the criteria make no reference to the compatibility or inter-operability of the equipment and facilities of the access provider with those of the likely access seekers.
- 4.14 As a rule, the criteria should encourage compatibility, inter-operability and open standards to the extent reasonably possible because that helps promote competition and efficiency.
- 4.15 In its Notes to the Explanatory Statement for the 2008 Decision Making Criteria Determination, the ACCC noted in relation to criterion (c) that it may be reasonable for an access provider to require that access seekers demonstrate that they have the technical capabilities to provide their content stream in an appropriate format for multiplexing and broadcasting.
- 4.16 On face value that appears to be a reasonable approach, however the Notes do not refer to the reverse situation - the possibility that access providers might create barriers to access seekers in terms of out-dated, unusual or unreasonably costly compatibility requirements. To deal with that possibility it would be desirable for the criteria to require access providers to demonstrate that the access they offer will be reasonably compatible and inter-operable with access seekers facilities and technical capabilities.

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