



ACMA proposal to revise the TCBL guidelines for radio

CBAA Submission

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COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

Introduction

The Community Broadcasting Association of Australia (CBAA) welcomes the opportunity to comment on the ACMA's proposal to revise the Temporary Community Broadcasting Licence Guidelines for Radio.

The CBAA is the peak body for community broadcasting in Australia. At time of writing, 354 permanent community radio broadcasting licences (CBLs) and 94 temporary community radio broadcasting licences (TCBLs) operate across Australia. Within its membership, the CBAA represents 89% of permanently licensed community radio broadcasters, and 77% of TCBLs.

The provision of TCBLs can meet genuine community need by contributing to the availability of diverse broadcasting services. This offers listeners greater choice and positively contributes to media diversity.

TCBLs are also a necessary first step for new community broadcasting organisations—providing access to spectrum on a responsive basis to support the provision of broadcasting services where there is clear and demonstrated need, as an alternative and pending the ACMA making decisions on permanent licensing. By holding a TCBL, community organisations then invest in broadcast infrastructure, train personnel, and develop capacity and organisational capability.

The provision of TCBLs prior to the allocation of a CBL also provides a framework to develop and enhance the content and service in line with community participation and expectation, while building community support. This in turn contributes to the viability and sustainability of a service.

The provision of TCBL services meets multiple public policy outcomes, as outlined in the Objects of the *Broadcasting Services Act 1992* (BSA); promotes the availability of a diverse range of services; and supports the efficient and timely provision of services that are responsive to community needs.

In this submission, the CBAA provides specific views on the proposed Guidelines and several related aspects of TCBL regulation, including:

- Current TCBLs and length of licences, as well as ensuring certainty for long-term allocations;
- Priorities for radio licence area planning, including AM to FM conversion; and
- Coverage and channel planning.

Current TCBLs and length of licences

In most cases, TCBLs have been allocated for a twelve-month licence period.

Typically, where the applicant has provided the service without genuine concern and complaint, and there is no genuine alternative use for the spectrum identified, the ACMA has re-issued a corresponding TCBL for a further twelve-month period, and on an ongoing basis.

This process of re-issue has resulted in many TCBL holders providing services on a long-term (e.g., 10-20 year) basis, and so becoming part of the cultural fabric of their respective communities, in a manner akin to that of a permanently licensed service.

In the absence of adequate resources for the ACMA to (re)assess relevant radio licence area plans (LAP) in a timely manner, this situation has been an appropriate stop-gap regulatory response.

Even so, the CBAA's preference would be for TCBL holders to transition in a more reasonable timeframe to a permanent licence (where the applicant meets the merit criteria), as it provides greater service surety for listeners, as well as for the licensee and other broadcasters in the region.

Currently, ACMA's resources have allowed for the planning of only a very limited number of radio licence area plans, although AM to FM conversions of commercial broadcasters has been a recent focus.

The CBAA does not agree that radio planning should have such limited priority and calls for a greater allocation of resources to the ACMA's planning sections in order to increase the responsiveness and service outcomes for radio licence area planning, for both analogue and digital.

The CBAA works closely with First Nations Media Australia, and we support their submission to this consultation. Expediting a conversion of remote TCBLs previously operating as BRACS licences to CBLs, particularly as they operate in areas where there is little to no competition for spectrum, would reduce administrative processes for both licensees and the ACMA.

The large number of historic and long-term TCBLs would not have accumulated if sufficient resources were applied to process radio LAP considerations. Provided it sits alongside a commitment to increase permanent outcomes, the CBAA welcomes enhanced discipline and strategic assessment regarding additional and further TCBL allocations.

Certainty for long-term allocations—additional policies to be included in TCBL Guidelines

To provide certainty for all parties and to encourage a timely planning and allocation process, the CBAA proposes the following, or similar, text be inserted and included as part of revised proposed guidelines and policies relevant to TCBLs.

Where a TCBL has been re-allocated two or more times, or for a period greater than two years, the ACMA shall:

(a) advise the licensee that the ACMA will continue to re-issue a TCBL on a rolling twelve-monthly basis, ongoing, acknowledging there has been:

(i) no genuine concern or complaint being expressed in regard to the licensed service;

and

(ii) no alternative use of the spectrum identified as an outcome of a radio licence area plan (LAP).

or

(b) undertake to enter a radio licence area plan (LAP) consultation process in order to provide for a (further) service to be allocated for community broadcasting purposes on a permanently licensed basis;

or

(c) where a long-term community broadcasting service is planned, open a consultation process to allocate a community broadcasting service on a permanently licensed basis.

Priorities for radio licence area planning

The ACMA has identified several priorities for radio licence area planning in the 2021-22 year as part of its proposed five-year plan for the period 2021-26.

The CBAA notes that these include the Remote Central and Eastern Radio LAP, and the Remote Western Australia Radio LAP.

It is pleasing to see the remote radio licence areas being in near-term prospect, and this will be an opportunity to address whether many of the long-standing remote area TCBL services shift to permanent licence status, or else continue with a rolling TCBL status.

The ACMA has identified that other priorities for radio planning in the 2021-22 year include variations on some regional radio LAPs to facilitate AM to FM conversions for commercial radio broadcasters. The areas identified align with solus regional licence areas, or where the circumstances do not put existing FM commercial radio broadcasting services at a competitive disadvantage.

The CBAA reiterates that, while the ACMA has this focus on commercial AM to FM conversion, the ACMA also has limited resources, and that this focus may mean that the genuine need for the ACMA to consult on radio LAPs to address long-term TCBLs shifting to permanent licensing continues to be diminished. This lack of resources to plan all types of radio services in a timely manner should not disadvantage long-term TCBL holders.

To resolve this, we refer to the above-mentioned proposal for additional policies to be included in TCBL guidelines, i.e., that for long-term TCBL situations there be a rolling TCBL re-issue or otherwise a LAP consultation to allocate a permanent licence.

AM-FM conversion

The planning of AM to FM conversion for commercial broadcasters may strike a situation where a community broadcasting service is making use of a channel allocation that may also be suitable for wide-area commercial RA1 use. In some cases that channel allocation will be in use by a permanently licensed community broadcaster, and, sometimes, a TCBL.

It is possible that to facilitate a wide-area allocation for a commercial broadcaster, a proposal is made to reallocate the community broadcaster to an alternative channel, which might not be suitable for wide-area use.

The CBAA is pleased that ACMA's existing policy is that AM to FM conversion for a commercial broadcaster should not result in any (other) existing service being adversely impacted in terms of their use of spectrum and the technical parameters of their radio transmissions.

Given that many long-term TCBL radio licensees have TCBL status due to there being—to this point in time—no (re)assessment by the ACMA of the relevant radio LAP, the CBAA would strenuously maintain that a long-term TCBL service, as well as permanently licensed community radio broadcasting services, should be regarded as an *existing* service in this context.

There should not be a presumption that a channel used by a long-term TCBL can be set aside in favour of enabling AM to FM conversion, simply by not re-issuing the TCBL licence. While this presumption might be accepted for short-term TCBL allocations, it is not for long-term TCBL allocations.

AM to FM conversion—additional policies to be included in TCBL guidelines

To take account of the case of VHF-FM spectrum hitherto being available and in long-term use by a TCBL, where that spectrum is proposed to be no longer available because of commercial radio AM to FM conversion, the CBAA proposes the following, or similar, text be included in the revised proposed guidelines and policies relevant to TCBLs.

Where a TCBL has been re-allocated two or more times, or for a period greater than two years, the ACMA shall:

- (a) advise the licensee that they will be considered as would an existing service, and not be disadvantaged in any consideration of channel allocations or re-allocations as a result of AM to FM conversion of a commercial radio broadcasting service, or otherwise;*

and

- (b) advise the licensee that the ACMA will continue to re-issue a TCBL on a rolling twelve-monthly basis, ongoing, acknowledging there has been:*

(iii) *no genuine concern or complaint being expressed in regard to the licensed service;*

and

(iv) *no alternative use of the spectrum identified as an outcome of a radio licence area plan (LAP).*

or

(c) *undertake, as part of entering a radio licence area plan (LAP) consultation process to facilitate AM to FM conversion of a commercial broadcasting service or otherwise, to provide for a (further) service to be allocated for community broadcasting purposes on a permanently licensed basis;*

or

(d) *where a long-term community broadcasting service is planned, open a consultation process to allocate a community broadcasting service on a permanently licensed basis.*

Coverage and channel planning

Regarding AM to FM conversion, it is noted that the line-of-sight nature of FM (using VHF) means that the ACMA and the commercial broadcaster are required to consider strategies to ensure that the majority of existing AM listeners can continue to listen on FM.

The differences may impact on main-site VHF-FM power, and require additional VHF-FM infill transmit sites to substantially match previous coverage using MF-AM. In turn, that may require further VHF channel allocations to be found in the licence area.

It is relevant to note that DAB digital radio services also operate on VHF and would have much the same coverage outcomes as VHF-FM services, and likely use the same transmit sites.

A few key points:

1. A VHF-DAB transmitter installation, while roughly the same cost point as a VHF-FM transmitter facility, can provide multiple radio services, rather than just the one. If appropriate, DAB can be operated with heavily increased protection overheads to ensure best coverage, and still provide multiple radio services.
2. The implementation of infill sites for VHF-FM (almost always) will require extra VHF-FM channel allocations, potentially denying those channels for use for other purposes, which may include community radio services. By comparison, infill for VHF-DAB services (almost always) will operate on the exact same VHF-DAB channel as does the main site, yielding even further spectrum efficiency by comparison.
3. Reinforced by initiatives in Europe, the increasing trend is for consumer radio receivers to include DAB alongside FM as standard, and for most new cars to also include DAB as standard.
4. The ACMA may take into account other free-to-air broadcast technology in considering options for radio services and planning, including in regard to TCBL allocation.

Related policy

Taking the above matters into account, the CBAA submits that:

Any AM to FM conversion that has been sought by commercial radio broadcasters and that affects the continuation, spectrum availability, channel allocation or transmission parameters of existing permanent or existing long-term temporary community radio broadcasters should trigger:

(a) *ACMA's creation and publication of a Digital Radio Channel Plan for the relevant licence area;*

(b) the declaration of a digital radio multiplex transmitter (DRMT) licence to be a foundation licence; and

(c) the invitation of applications for that DRMT licence.

In agreeing to a request from a commercial broadcaster for AM to FM conversion, the ACMA should also enable and encourage that commercial broadcaster to take up its legislated opportunity to implement DAB digital radio. In that way, infrastructure and service investment by that commercial broadcaster, or if it is not interested, then by other parties, can be enabled and/or coordinated.

This would also provide for community broadcasters to consider alternative free-to-air broadcast technology options for existing and future services, which might otherwise be curtailed.

Specific feedback on proposed TCBL Guidelines

The CBAA is broadly supportive of proposed changes to ACMA Guidelines and material that provides greater clarity for community broadcasting licensees and aspirant broadcast groups. The CBAA also supports ACMA making strategic assessment of requests by aspirant groups wanting to commence a TCBL service, ensuring that new TCBL services meet genuine community need, and provide the best service outcome for listeners.

While we are grateful for the level of additional clarity brought to these proposed Guidelines, the CBAA is concerned that several proposed changes now unduly limit access to spectrum and reduce the likelihood for increased diversity in broadcasting services.

We make comment on specific aspects of the draft Guidelines below.

Proposed changes to when a temporary licence may be made available

A proposed change has been made regarding the situations where spectrum may be made available for TCBL usage, particularly in unplanned areas.

Under the existing Guidelines, a frequency may be made available for a temporary community broadcasting licence if there is spectrum available, including where:

- *a long-term community radio broadcasting service has been planned in a LAP, but has not yet been allocated*
- *a long-term community radio licence has been cancelled, not renewed, surrendered or lapsed (and the frequency has not been 'replanned' by the ACMA for use for some other purpose).*

Outside these circumstances, the existing Guidelines state that temporary licences will only be allocated in exceptional cases, such as where the ACMA receives an application for a temporary licence in a remote area, where spectrum is not scarce and where community need is demonstrated.

In the proposed guidelines, the ACMA will make frequency available for temporary community purposes where a long-term community radio broadcasting service has not yet been planned in a LAP, and several conditions are met (the proposed service is in a remote commercial radio licence area, community need is demonstrated, and spectrum is not scarce).

Outside of a remote commercial radio licence area spectrum will only be allocated in exceptional circumstances. The guidance as to what constitutes exceptional cases now reads as:

An exceptional circumstance may be found where all the following conditions are met:

- *a community need is demonstrated*
- *spectrum is not scarce*
- *there are no or limited other radio broadcasting services in the area, including commercial and national radio services, which provide local content.*

The third bullet point is a new addition and requires there to be no, or limited, other radio broadcasting services in the area, including commercial and national radio services, which provide local content. The applicant must also now meet all conditions.

This third dot point seems to contradict the broad intent of the BSA to promote diverse broadcasting services being available to the public.

It also seems to ignore that, after a geographic community radio service, there may be a legitimate need for a First Nations service, or an RPH radio reading service or specialist community interest service on a case-by-case basis.

The third dot point also contradicts the BSA sub-section 92E(2)(c), which requires that, in deciding whether to allocate a TCBL, the ACMA is not to have regard to the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area.

In conclusion, this new criterion should be deleted.

Changes to wording around subsequent temporary licences

The guidance on subsequent temporary licences has changed. Current guidelines are rather simple:

Temporary licences are allocated for a maximum of 12 months and cannot be renewed. However, a temporary licence holder can apply for a further temporary licence and it may be allocated where:

- *if the spectrum is planned, it is not about to be allocated for long-term use*
- *if the spectrum is unplanned, it is not needed for an alternative use.*

The topic in the guidelines now begins with words to the effect that there is no assumption that spectrum will be made available again for a TCBL, and that there should be no assumption that subsequent licences will be granted automatically for an existing TCBL holder.

The following has also then been added:

Before making spectrum available for a subsequent licence, we will consider the application in light of the individual circumstances of the applicants (including their record of compliance with the community broadcasting licence conditions) and will also need, in all cases, to be satisfied that:

- *the frequency has not been identified for use for another possible purpose (for example, AM to FM conversion)*
- *use of the frequency has not and is not likely to cause interference with other services.*

In all cases, our published broadcast spectrum planning priorities may affect the availability of spectrum for community broadcasting purposes, as well as the priority given to them from a broadcast spectrum planning perspective. These priorities may change over time, with the potential to impact the ongoing availability of a frequency for temporary community radio broadcasting purposes into the future. Generally, planning new broadcasting services, including long-term community broadcasting services, is not a priority activity.

If spectrum is not (or is no longer) available for use for a temporary community licence, community groups may wish to consider other technologies to deliver an audio service (for example, internet radio).

The general effect of this addition is that expectations are set lower as to the granting of a subsequent licence.

The CBAA has several concerns regarding these amendments and additions.

1. As outlined earlier in this submission, the CBAA has concerns regarding the allocation of resources to support ACMA's licence area planning. In addition, ACMA's focus on AM to FM conversions leaves little planning room for the conversion of TCBLs to CBLs. The CBAA is concerned that the current drafting of the Guidelines will disproportionately impact TCBLs, particularly those that have been operating long-term services. Without a process to expediate TCBLs to CBLs, and a lower expectation set regarding the granting of subsequent TCBLs, it is possible that these Guidelines will curtail diverse services meeting genuine community need.
2. The CBAA is concerned at the Guidelines suggestion regarding the transition of TCBLs or aspirants to alternative technologies, e.g., online. The provision of subsequent TCBLs plays a particularly important role in upskilling community members to deliver broadcast services and develops free-to-air and free-to-receive community, First Nations and specialist broadcasting services. The CBAA's preference is for a transition system that moves long-term TCBLs to CBLs, rather than to online infrastructure.
3. There does not appear to be any guidance available to prospective subsequent TCBL applicants regarding how to find out if/when their frequency has been identified for use for other possible purpose (e.g., AM to FM conversion) and if so, whether and when they will be informed about this once that situation changes.

It may be the case that if licensees are not proactively informed of such an instance during their TCBL period, they won't find out about the changes until the month before their existing TCBL expires; when ACMA desires the subsequent application to be made. This makes it difficult for TCBLs to plan and develop their services for the benefit of the community.

TCBL applicants must be corporations and have the necessary governance documents and constitution, and volunteers and/or staff arranged, when they make an application—all of which require substantial investment for those in the not-for-profit sector.

While there has always been some uncertainty as to whether a subsequent TCBL would be granted, there is significantly more now because of these proposed changes. This may affect the level of investment made by a TCBL licensee, or whether they make any investment at all. This would have a detrimental effect on the sector as TCBLs have traditionally offered an opportunity for inexperienced proponents to gain experience in broadcasting—some of whom may now elect not to commence broadcasting if their initial investment is only for an initial period of three to 12 months, and never more than that.

Lowering expectations of spectrum availability and duration of TCBLs

The guidance under the heading 'How long do temporary licences last?' has not changed substantially; though the CBAA notes that the general tone and phrasing of the guidance clearly infers a lower expectation should be held by TCBL proponents, as to the duration for which any TCBL is granted.

In recent years, TCBLs have typically been granted for the whole of the maximum 12-month period. The CBAA notes the new proposed wording infers a more likely range of duration will be between three and 12 months.

Depending on demand for use of the frequency, we generally allocate a temporary licence for between 3 months to the maximum allowable 12 months.

Additional information about the demand for spectrum, has also been added to the new proposed guidelines, providing yet more reason for a proponent to lower their expectation as to the availability of spectrum.

The CBAA recognises that spectrum is scarce in some regions of Australia, and that the ACMA receives inquiries from aspirant groups in service dense areas such as capital cities. This clarity will be useful to those applicants.

However, this change, although minor, appears to be more evidence of the ACMA's desire to have fewer TCBLs using spectrum, and for less time. The CBAA is concerned that short TCBL timeframes will prevent the community investment needed and development of new and current TCBL services. We refer the ACMA to suggestions made earlier in this submission, as possible alternative solutions.

A single shared service is now preferred over time-sharing by multiple licensees

The proposed guidelines have changed regarding multiple organisations expressing interest in applying for a TCBL. Previously, ACMA had been open to considering time-sharing options for multiple proponents/licensees. Now, the preference appears to have changed to a shared single-licensee model where multiple proponents work together to provide a single service.

Where possible, the CBAA supports the ACMA's preference for a single shared service arrangement over a time-sharing arrangement. A single service often proves more beneficial for the community. In circumstances where there are multiple applicants for a TCBL, the CBAA would be happy to work with the ACMA and applicants at an early stage to work towards a single shared service.

Conclusion

The CBAA acknowledges the ACMA's intent to provide greater clarity in TCBL arrangements to current and future potential licensees. The CBAA is appreciative of the opportunity to contribute to this process, and the ongoing working relationship with the ACMA.

As the peak body for the sector, and active participants in research, policy and planning in broadcasting reform, we are well placed to provide further advice.

Questions or further discussions can be arranged with the CBAA's Head of Advocacy and Communications, Holly Friedlander Liddicoat, via holly.friedlander@cbaa.org.au or on 02 9310 2999.