



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

Expansion of digital radio to regional Australia

Proposed principles for licence area deeming

Comments on the ACMA consultation paper

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Expansion of Digital Radio to regional Australia

Proposed principles for licence area deeming

CBAA comments on the ACMA consultation paper

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1. Introduction

- 1.1 The Community Broadcasting Association of Australia (CBAA) welcomes the opportunity to respond to the ACMA consultation paper, 'Expansion of digital radio to regional Australia, Proposed principles for licence area deeming'.

Background and community broadcasting

- 1.2 The Community Broadcasting Association of Australia is the peak body for community broadcasting licensees in Australia.
- 1.3 Nationally, 359 (and a further 91 temporary) not-for-profit community radio services provide significant public benefit, including a diverse mix of social and cultural interests, specialist talks and music, and high levels of local content and presentation.
- 1.4 Community interests addressed include Indigenous services, radio reading services for the print disability community, youth, seniors, LGBTQIA+, religious and faith-based services, ethnic language and multicultural radio, specialist music, educational and general geographic services.
- 1.5 In metropolitan areas there are a greater number of specific community interest services. In regional and rural communities, community radio stations more frequently provide diverse programming covering broad community interests under a general geographic licence, with a high number of Indigenous services in remote locations.
- 1.6 Community radio stations operate in the majority of towns and cities across Australia, with approximately 75% located in regional and remote areas, and 25% across metropolitan locations.
- 1.7 Guiding principles underpin community broadcasting Codes of Practice and the contribution of community services to media diversity and social inclusion.
- 1.8 Community broadcasting licences are issued pursuant to and in promotion of the objects of the Broadcasting Services Act 1992 (BSA).

Basis of ACMA consultation

- 1.9 The ACMA consultation paper proposes a set of principles to guide the ACMA's deeming powers under subsection 8AD(3) of the Broadcasting Services Act 1992.
- 1.10 Subsection 8AD(3) of the BSA states that for the purposes of digital radio, the ACMA may determine that a specified licence area of a community radio broadcasting licence is taken to be the same as a specified licence area of a commercial broadcasting licence.
- 1.11 The CBAA notes that the ACMA intends to consult with the public and industry before making each deeming decision.

Planning based on legacy analogue commercial licence areas

- 1.12 Unlike analogue radio, where each licensee or national broadcaster requires a discrete transmitter for each service, DAB+ digital radio functions by combining the services from several broadcasting licensees into a multiplex, which is transmitted over a separately licensed Digital Radio Multiplex Transmitter (DRMT).
- 1.13 The DRMT is shared infrastructure, which brings about the need to align coverage of each participating broadcaster. Coverage of national analogue radio services does not necessarily align with commercial or community broadcasting licence areas. In regional areas many community broadcasting services have licence areas that are within, intersect or overlap but may not align with commercial broadcasting licence areas.
- 1.14 Under Section 44A of the Radiocommunications Act 1992 (RA), digital radio is planned on the basis of Designated BSA Radio Areas. The boundary lines of those areas is (currently) defined to be identical to the boundary of commercial BSA radio licence areas¹ or the boundary of a community BSA radio licence area, where that BSA licence area boundary is the same as a commercial BSA licence area, or has been deemed to be the same under subsection 8AD(3) of the BSA.

¹ With the exception of Western Suburbs Sydney RA1 licence area which is deemed to be the same as the Sydney commercial radio RA1 licence area directly under section 8AD(1) of the BSA.

- 1.15 It is significant that digital radio continues to be planned and licensed on the basis of Designated BSA Radio Areas being identical to existing commercial radio licence areas.
- 1.16 Community and commercial licence areas were drawn and licences allocated historically in an analogue broadcasting framework. In the era of digital and online delivery the socio-demographic factors that once sat behind these boundaries have legacy status and are increasingly challenged.²
- 1.17 The CBAA has long advocated that planning for free-to-air digital radio may require fresh considerations in a contemporary environment and to exercise flexibilities and be future-facing, rather than solely replicate historic demarcations devised for an analogue radio broadcasting framework.
- 1.18 MF-AM analogue radio broadcasting is celebrating 100 years, and VHF-FM analogue radio broadcasting was introduced into Australia around the same time as figure hugging flared pants, and, even then, decades after the rest of the world.
- 1.19 Free-to-air licensed radio broadcast services are in the process of digitisation and transition. With that comes opportunity and scope to enhance service diversity in accordance with the objects of the BSA.

Working within existing legislation to bring about positive outcomes

- 1.20 The difficulty of re-aligning commercial radio business models from existing analogue era market demarcations is well recognised.
- 1.21 Working within that constraint, the digital radio framework nevertheless has scope to bring about improved outcomes for listeners, along with efficient use of radiofrequency spectrum.
- 1.22 As reiterated by the ACMA, these twin outcomes are in strong alignment with the objects of the relevant legislation:
- to maximise the overall public benefit derived from using the radiofrequency spectrum by ensuring the efficient allocation and use of the spectrum for use by public or community purposes³.
 - to promote a diverse range of radio services⁴
- 1.23 In consultation with industry, the ACMA has developed and published a full national allocation plan aimed at clearing the way for the further extension and implementation of digital radio, particularly to regional areas.

Deeming as a key tool to achieve intended policy outcomes

- 1.24 Working within the constraints of the existing legislation and planning approach, the CBAA broadly supports the principles proposed by the ACMA for licence area deeming.
- 1.25 While it is acknowledged that digital radio planning is (currently) based on boundaries that also describe each commercial licence area, once established for digital radio purposes, the area within those boundaries may be more neutrally described as the Designated BSA Radio Area.
- 1.26 Without deeming, the ACMA has noted that the only 10% of existing community radio licence areas match the boundaries of Designated BSA Radio Areas.
- 1.27 The CBAA agrees with the ACMA's assessment that its deeming powers under subsection 8AD(3) of the BSA are a key mechanism by which community radio broadcasting licensees may have the opportunity to gain access to digital radio multiplex capacity.
- 1.28 The CBAA supports that the deeming principles are and should be directed towards the relevant objects of the Radiocommunications Acts 1992 (RA) and the Broadcasting Services Act (BSA), and that ACMA recognises both legislative Acts envisage community radio participation in the provision of digital radio service throughout Australia, including by the reservation of digital radio multiplex capacity for that purpose.

² ACMA Future Delivery of Radio, March 2020, Page 34 states that the ACMA has a 'long-standing position that licence areas represent fixed media markets and should not be changed without good reason' in the context of discussing analogue coverage considerations. The Digital Radio Planning Committee did discuss limited licence area aggregation in the context of digital radio planning, with no consensus reached.

³ Radiocommunications Act 1992, Objects, paragraph 3(a) and 3(b)

⁴ Broadcasting Services Act 1992, Objects, paragraph 3(1)(a) and, specifically, 3(1)(n)

Digital radio is now a mainstay free-to-air radio platform

- 1.29 Digital radio is now a mainstay free-to-air radio platform.
- 1.30 In areas where digital radio is already available the listener take-up of digital radio is enthusiastic, at over 30%⁵ of all radio listening.
- 1.31 Take-up of free-to-air digital radio in cars is advanced, being standard in over 73%⁶ of new vehicles, including entry-level vehicles, in Australia.
- 1.32 In the EU and UK, digital radio is now a mandated inclusion for new cars.
- 1.33 Digital radio is free-to-air, broadcast scale and able to be received on commonly available equipment, reflecting core characteristics as set out in the BSA.
- 1.34 As digitisation of media continues, these core characteristics are critical, especially where other delivery mechanisms require one-to-one and both-way connectivity with its attendant costs, risks to listener security, privacy, provision of listener data for third party use, commercialisation and targeting.
- 1.35 Community radio services are an essential part of the overall free-to-air radio service mix along with national and commercial services.
- 1.36 The CBAA encourages the ACMA to take necessary steps, including being pro-active in exercising its deeming powers, to promote the objects of the BSA in the transition to digital broadcasting and to enhance the diversity of radio services, with a particular emphasis on the development of community and Indigenous services.

⁵ Community Broadcasting Association of Australia 2019, National Listener Survey, Wave 1 July 2019
Listening using DAB+ digital radio, community stations, 30.5%. Average time spent listening 13.8 hrs per week.

⁶ Commercial Radio Australia, Glass Information Services June 2019, reported as a percentage of all new vehicles sold in Australia between July 2018 and June 2019. VFACTS and FCAI.

2. Legislative and policy imperatives

- 2.1 The ACMA performs a key role in enabling radio broadcasting services to be delivered to the public, and is empowered under Part 3 of the BSA to promote the objects of the BSA and efficient use of radiofrequency spectrum.
- 2.2 Broadcasting service bands (BSB) are determined by the Minister and DAB+ digital radio operates using channels within the BSB VHF Television band.
- 2.3 In common with all broadcast service band planning, the bands used for digital radio must be planned by the ACMA in accordance with the specific broadcast spectrum planning provisions of Part 3 of the BSA, as a specific aspect of the more general spectrum and market efficiency principles of the Radiocommunications Act 1992 (RA).
- 2.4 Many facets of digital radio are also set out in the RA, including the making of Digital Radio Channel Plans, Multiplex Transmitter Licensing, and Access Entitlements.
- 2.5 The objects of the BSA relevant to broadcast spectrum planning include:
- promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information.
 - provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs.
 - promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.
 - promote the provision of high quality and innovative programming by providers of broadcasting services.
 - ensure the maintenance and, where possible, the development of diversity, including public, community and Indigenous broadcasting, in the Australian broadcasting system transition to digital broadcasting.
- 2.6 While all the objects of the BSA are important, the final object - that specifically calls for the development of diversity, including public, community and Indigenous broadcasting in the transition to digital broadcasting - sets a clear imperative.
- 2.7 The ACMA has noted that the exercise of its deeming powers under subsection 8AD(3) of the BSA is a key mechanism by which community radio broadcasting licensees may have the opportunity to gain access to digital radio multiplex capacity.
- 2.8 In exercising its deeming powers, the objects of the BSA set a clear expectation of the ACMA that there be a positive and developmental approach that results in an increase in the diversity of services available.
- 2.9 It is not appropriate to limit the application of deeming powers if to do so would result in there being no development in the diversity of services. That would be against the clear intent of the BSA.
- 2.10 In finding an appropriate balance point, the CBAA considers that the ACMA is obliged to pro-actively and positively explore all possible options, and seek to ensure the result generates the opportunity for community services to access capacity reserved for community broadcasting purposes, for at least:
- two licensees in each Designated BSA Radio Area as a minimum benchmark in order to facilitate content services targeted to:
 - general geographic areas reflecting broad community interests, with particular attention to Indigenous services, and other community interest services on a case-by-case basis.
- 2.11 While deeming is based on licence areas, depending on the community interest of each licensee, deeming can also act as a mechanism to facilitate and enhance the provision of a mix of diverse content services using digital capacity, and regulated under licensing and content conditions.

3. General planning principles

- 3.1 The deeming powers allocated to the ACMA under subsection 8AD(3) of the BSA directly engage with the objects of the BSA.
- 3.2 In addition, when considering whether the exercise of its planning functions or powers under the BSA would promote the objects of the BSA⁷, as well as the economic and efficient use of radiofrequency spectrum, the ACMA must have regard to the following planning criteria, as set out in the BSA section 23:
- demographics; and
 - social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and
 - the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licencing areas and within Australia generally; and
 - developments in technology; and
 - technical restraints relating to the delivery or reception of broadcasting services; and
 - the demand for radiofrequency spectrum for services other than broadcasting services; and
 - such other matters as the ACMA considers relevant.
- 3.3 Furthermore, at section 4, the BSA sets out parliament's intention that broadcasting services in Australia be regulated in a manner that, in the opinion of the ACMA:
- enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of broadcasting services.
 - will readily accommodate change.
 - encourages the development of broadcasting technologies, and their application and the provision of services made practicable by those technologies to the Australian community.
- 3.4 In line with the BSA section 23 planning criteria, in considering broad principles regarding licence area deeming for digital radio under subsection 8AD(3), the ACMA has responsibility to consider the demographics, social and economic characteristics as well as services and demand *within* the licence area - being both the Designated BSA Radio Area, and the licence area of community radio broadcasting service/s.
- 3.5 Under these same section 23 criteria, the ACMA must also have regard to the same factors in *neighbouring* licence areas, and within Australia generally.
- 3.6 The CBAA view is that the ACMA must therefore consider these factors, not only within the Designated BSA radio area, but also in neighbouring licence areas, and especially where there would otherwise be no digital community broadcasting services operating within the Designated BSA Radio Area.
- 3.7 To be clear, the CBAA considers there should never be a case where there are fewer than at least two community licensee services able to operate within the capacity reserved for community broadcasting - with priority consideration to a general geographic community service providing broad community access and Indigenous community interests.
- 3.8 Given population overlap and social demographic considerations, out-of-area deeming either by reference to the neighbouring licence area and/or Australian community characteristics generally, enables community services to be supported and defined by the application of relevant community of interest content conditions.
- 3.9 In this scenario, there should never be a situation where there is no opportunity for community broadcasters to access the full capacity that has been reserved for community broadcasting by legislation.
- 3.10 Were that opportunity prevented or limited the outcome would be less than efficient use of radiofrequency spectrum⁸, and counter to legislative intentions of the BSA section 23.
- 3.11 In addition, where that opportunity is prevented, it would be inconsistent with the public interest and place an avoidable and unnecessary financial burden upon the operator of the digital radio multiplex transmitter, counter to the legislative intentions of the BSA section 4.

⁷ While digital radio channel planning decisions, being made under section 44A of Radiocommunications Act 1992, do not directly engage with the objects of the BSA in a statutory sense, the deeming powers under BSA subsection 8AD(3) do directly engage with the objects of the BSA.

⁸ The Mandurah licence area is a case in point. No community services. Maximum of four-ninths of total multiplex capacity able to be used is inefficient. Lack of service diversity is against the public interest.

4. Proposed deeming principles - overview

- 4.1 The ACMA has proposed principles to guide the exercise of its power to deem a community licence area under subsection 8AD(3) of the BSA.
- 4.2 The decision to deem a community licence area under subsection 8AD(3) of the BSA is made by a legislative instrument.
- 4.3 The CBAA notes that the ACMA intends to consult with the public and industry before making each deeming decision.
- 4.4 The ACMA has proposed and set out three overarching principles that it intends to apply when considering whether to deem a community licence under subsection 8AD(3) of the BSA:
- (1) There is spare capacity on the relevant digital radio multiplex transmitter, within the two-ninths allocation reserved for community radio broadcasting services.
 - (2) There is sufficient correlation between the community and the commercial licence areas.
 - (3) The community interests represented by the relevant community radio broadcasting licences are relevant to the commercial licence area.

Principles not binding, ACMA to retain agency and discretion

- 4.5 The CBAA endorses and notes that the proposed principles are not intended to be binding on the ACMA but represent a statement of disposition.
- 4.6 The CBAA considers this fundamental to the deeming process and further specific licence area considerations and consultation.
- 4.7 There is a complex set of intersecting considerations for deeming, and, as the regulator, the ACMA has full agency to reach appropriate decisions. The principles set out considerations that are in alignment with the policy intentions expressed in the BSA and RA.
- 4.8 There should be flexibility and judgement available to the ACMA to exercise in deeming decisions, and it is clear that the ACMA should generally take steps that enhance the diversity of services available to listeners.
- 4.9 The business model and market-based factors that underpin commercial broadcasting are not inherently relevant to the primary considerations of optimising a diversity of community services available and relevant to the community.
- 4.10 The reservation of multiplex capacity is set aside specifically for community broadcasting in legislation. The clear policy intention of that legislation is that how the reserved capacity is utilised should firmly sit in the domain of the ACMA as regulator, and commercial broadcasters should not have any sense of veto or undue influence.
- 4.11 Despite the tilt towards commercial broadcasting entitlements in the legislative framework, digital radio as a platform is not the province or under the stewardship of commercial broadcasting. Designated community services, or community radio licence areas deemed for the purpose of digital radio, are governed under community broadcasting licensing, regulatory oversight and conditions, and under legislated access entitlements.

Hierarchy and thresholds, wide variety of circumstances

- 4.12 The CBAA notes that the ACMA proposes that principle one (1) be a threshold question. That is, if there is no spare capacity on the multiplex further consideration of whether to deem any (further) community licence area is unlikely to occur.
- 4.13 The CBAA considers this threshold should take a wider view. Spare capacity on the multiplex may pertain to spare capacity within the allocation reserved for community broadcasting, but may also pertain to spare capacity on the whole multiplex.
- 4.14 Where other factors, including principles (2) and (3), suggest deeming would be pursuant to the Objects of the BSA and RA, then a lack of capacity might be seen as a prompt to consider adding an additional multiplex, or, encourage and allow for efficient use of otherwise unused multiplex capacity, especially in licence areas where there are 3 or less commercial licensees.

- 4.15 The CBAA endorses and notes that the ACMA proposes that principles (2) and (3) would generally be assessed together, so that the level and correlation under principle (2) and the relevance of community interests under principle (3) are taken into account.
- 4.16 The CBAA agrees that there is a wide variety of circumstances across regional licence areas, that the particular circumstances of each licence area community of interests need to be considered carefully, and that applying principles (2) and (3) together is appropriate.
- 4.17 The CBAA makes further comment on the detail of each principle in the following sections.

Other relevant matters

- 4.18 The CBAA also provides further comments that it considers relevant, mostly within the broad umbrella of the principles as set out by the ACMA, but not specifically articulated in the ACMA discussion paper.
- 4.19 These matters include the need to consider deeming based on the number and type of services in an adjacent licence area, with a specific policy ambition that capacity reserved for community broadcasting can be accessed by community broadcasters.
- 4.20 Additionally, that there be at least a minimum number and/or type of key community broadcasting services in each Designated BSA Radio Area, to include general geographic and Indigenous services, with RPH radio reading services and other community interest services to be considered on a case-by-case basis.
- 4.21 The CBAA draws specific attention to the example of Mandurah where there is policy failure, with no community broadcasting services deemed or entitled to access capacity reserved for community broadcasters.
- 4.22 Out-of-area deeming of specific Perth community services would address the BSA objects, and avoid the obvious spectrum inefficiency of allocating an entire DRMT licence where only four-ninths of its capacity can be used. Out-of-area deeming is one mechanism to address this spectrum inefficiency.

5. Principle One – Multiplex capacity, spectrum efficiency

5.1 The ACMA proposes overarching principles to apply when considering whether to deem a community licence area under subsection 8AD(3) of the BSA, principle one being:

There is spare capacity on the relevant digital radio multiplex transmitter (within the two-ninth allocation (reserved) for community broadcasting purposes).

5.2 The ACMA then outlines that within the two-ninths capacity there are practical limits as to the number of services able to be provided without materially impacting service audio quality and/or reception integrity.

5.3 The ACMA suggests four services within that two-ninths would be optimal, providing for each service to have a nominal capacity of 64kbps.⁹

5.4 The ACMA suggests that five services should be an upper limit for use of the two-ninths reserved for community broadcasting, but acknowledges that in some locations, including locations already on-air with digital radio, that the number of services exceeds five.¹⁰

Summary comments

5.5 The CBAA suggests that Principle one would be better positioned as:

There is available capacity within the relevant digital radio multiplex transmitter.

5.6 The CBAA makes the following additional points:

- (a) Principle one focuses on an optimum and also an upper limit on the number of services within the capacity reserved specifically for community broadcasting.
- (b) Principle one should reference an overarching ambition to ensure a minimum number of two licensees have access to capacity reserved specifically for community broadcasting, with that outcome being consistent with the objects of the BSA.¹¹
- (c) Principle one should also consider latent capacity on the multiplex beyond what is within the amount reserved for community broadcasting.
- (d) Principle one should note that eligible licensees may provide multiple services, as a key mechanism to service diversity for listeners where feasible.

5.7 Further background and comments related to these points follow, below.

A minimum of two licensee services in reserved capacity

5.8 The ACMA should exercise its licensing, planning and deeming powers to ensure there is no situation where community broadcasting cannot make use of digital radio multiplex capacity that has been specifically reserved for community broadcasting.

5.9 Leaving multiplex capacity unused is clearly counter to the intention of the legislative framework, spectrum inefficient, and not promoting the development of service diversity.

5.10 The CBAA considers that the ACMA should take steps to ensure that, in every digital radio licence area, its deeming power is exercised to ensure the provision of, as a minimum, two community licensee services, including general community and Indigenous services.

5.11 Where there are services within the footprint of the relevant commercial licence area that would be able to ensure provision of a minimum of either general community or Indigenous services, then these would be highly prioritised for deeming consideration. This is discussed further, under principles two and three.

5.12 Where there are no existing community services whatsoever within the footprint of the relevant commercial licence area, then the ACMA should consider deeming based on an adjacent or otherwise relevant licence area.

5.13 Alongside, the ACMA should consider licensing of digital-only radio services on the basis of providing out-of-area services to develop diversity.

5.14 This toolkit of options would provide avenues for the ACMA to ensure that in every digital radio multiplex the capacity reserved for community broadcasting purposes and conform to the objects of the BSA to develop diversity of services wherever possible.

⁹ This is a nett bit rate. Use of the nominal equal error protection scheme assumed in DRPC planning (equal error protection scheme 3A) results in use of one-eighteenth of gross multiplex capacity. Hence 4 such services equates to four-eighteenths, ie, two-ninths.

¹⁰ Adelaide currently operates with 6 licensees and 7 services on-air. Perth operates with 6 licensees and seven services on-air. There are pressures in both cities to add further and multiple services.

¹¹ Broadcasting Services Act 1992, Section 3 generally, and, specifically, subsection 3 (1) (n) which says, 'to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.'

Efficient use of spectrum – maximising use of multiplex capacity

- 5.15 The ACMA should broaden its consideration to take account of overall use of multiplex capacity, as well as that portion specifically reserved for community broadcasting purposes.

Existing legislated multiplex capacity entitlements

- 5.16 The existing legislation¹² sets out the framework for entitlements and allocation of category 1 foundation digital radio multiplex capacity.
- 5.17 The multiplex is first divided: two-ninths reserved for community broadcasting; the remaining seven-ninths being available for commercial broadcasting.
- 5.18 Each existing commercial licensee is entitled to one-ninth, with that ninth being sovereign to that commercial broadcaster, individually.¹³
- 5.19 In addition, commercial licensees are each entitled to a further one-ninth from Excess Capacity, up to a cap per licensee of two-ninths, after an allocation or open auction process.

Multiplex capacity in regional areas

- 5.20 If not all then the majority of regional licence areas still without digital radio will have less than three incumbent commercial radio services. Many will have two, or only one.
- 5.21 The Mandurah area, now with digital radio, is an example of a regional licence area with one common commercial owner, two commercial licenses. This is not uncommon.
- 5.22 In Mandurah, given the incumbent commercial licensees are the sole eligible licensees and there is a surfeit of Excess Capacity then the allocation would be perfunctory, leading to the maximum possible utilisation of that multiplex as being four-ninths.
- 5.23 The ACMA has not deemed any community broadcasting licence areas in the case of Mandurah. The CBAA advocated that it should deem in such a way as to allow access to Mandurah multiplex capacity by Perth community broadcasting services.¹⁴
- 5.24 There is genuine listener expectation that a number of community digital radio services currently operating in Perth also be receivable in a near-to-continuous manner across both Perth and Mandurah.
- 5.25 In the absence of licence area aggregation to recast the boundary of the Designated BSA Radio Area, licensing to extend and/or provide for out-of-area extension for neighbouring community radio services should be considered.
- 5.26 In the neighbouring licence area of Perth there are seven community broadcasting licensees operating seven digital radio services.
- 5.27 Operation of community services across Mandurah would provide for more efficient use of the multiplex capacity, and spectrum, than is otherwise the case.

Options to improve spectrum efficiency and use of multiplex capacity

- 5.28 Setting aside legislative change, the ACMA might address this lack of spectrum efficiency in a number of ways.
- 5.29 The ACMA could make available additional commercial radio licences in the Mandurah area, perhaps digital only.¹⁵
- 5.30 In addition, or alternatively, the ACMA could decide to make available one or more community radio broadcasting licence/s specifically in Mandurah, perhaps digital only.
- 5.31 The extension of Perth community radio services would be a more practical and immediate step.
- 5.32 This might be achieved either through each licensee seeking a digital only licence, or, by way of the ACMA applying its power to deem the Perth licence area in respect of the Mandurah Designated BSA Radio Area for these community radio broadcasters.

¹² Radiocommunications Act 1992, sections 109B-109D and sections 118NL-118NY

¹³ By contrast, the capacity reserved for community broadcasters is to be shared amongst all eligible community broadcasters on a joint use basis.

¹⁴ CBAA submission to ACMA, March 2019.

¹⁵ The ACMA has stated it does not envisage licensing any further commercial radio services, Future of Radio Delivery, Page 34. Whether that includes digital radio is unclear. There is also the potential for extra analogue VHF-FM radio services to be planned in the Perth and/or adjacent areas due to the closure of VHF Band II television in the area. Future of Radio Delivery, Pages 23 and 33.

Ongoing lack of spectrum efficiency otherwise

- 5.33 In the absence of deeming, the Mandurah multiplex will continue to be operated with poor spectrum efficiency. The two-ninths of multiplex capacity reserved for community broadcasters is unable to be allocated for use.
- 5.34 Each of the two commercial licensees has a standard access entitlement of one-ninth of multiplex capacity. Assuming allocation of Excess Capacity, the cap of two-ninths for each commercial licensee result in a total of four-ninths of multiplex capacity able to be used.
- 5.35 In other words, five-ninths of the multiplex is not able to be used. This is spectrum inefficient.
- 5.36 As the total cost of operating the Digital Radio Multiplex Transmitter (DRMT) is unaffected by use of capacity, this also results in costs being incurred wholly by the two commercial broadcasters, and not able to be recovered from community broadcasters, or others, by the DRMT licensee. This is an avoidable financial impost.
- 5.37 Aside from the financial impost, the situation where the incumbent commercial broadcasters are alone in operating on the digital radio multiplex favours the incumbents. It limits diversity in ownership and control structures, and limits the diversity of voices available in the area.
- 5.38 This is a lost opportunity to increase diversity and public benefit outcomes, and a lost opportunity to provide listeners with a set of community radio services.
- 5.39 The objects of the RA and the BSA require the efficient allocation and use of radiofrequency spectrum to maximise overall public benefit, and to make adequate provision of the spectrum for use by community radio services.

Upper limit within reserved capacity

- 5.40 The CBAA agrees there is an upper limit on how many services can be practically accommodated within two-ninths capacity, and that 4 services is typically optimal, with more (or less¹⁶) achievable dependent upon the specifics of multiplex transmitter coverage implementation, and the specifics of each service type¹⁷.
- 5.41 While they are useful indicators, the CBAA does not consider the simple arithmetic of licensee numbers to be definitive, or that it should be a threshold test in the negative.
- 5.42 Rather, the CBAA considers it relevant to look more broadly at the diversity of services that are or may be available.

Multiple services for community broadcasters

- 5.43 As outlined, each commercial broadcaster has a standard access entitlement of one-ninth of multiplex capacity.
- 5.44 Where they are designated or deemed, community broadcasters are eligible to jointly share two-ninths capacity reserved for community broadcasting purposes.
- 5.45 As the ACMA has noted, where there are more than two community broadcasting licensees sharing the reserved capacity, this means each community broadcaster operates within a less amount of digital radio multiplex capacity than each commercial broadcaster's standard capacity entitlement.
- 5.46 An additional factor in assessing demand and use of multiplex capacity is that some community broadcasters have legitimate need to operate multiple services, in addition or instead of a simulcast of an analogue service, adding further diversity. This is a key feature of digital radio, and common-place within commercial service capacity.
- 5.47 The CBAA can provide details of numerous community radio services on-air in locations where digital radio is already available, and that include non-simulcast and multiple services of RPH, ethnic, faith-based services, specialist talk and music services, and stretching also to temporary and event-based services.
- 5.48 These digital radio service outcomes are often a key method to add to service diversity for listeners.

¹⁶ Should the multiplex transmitter infrastructure be implemented with coverage dependent upon a higher degree of error protection than assumed in standard planning, then the number of services able to be accommodated with the same gross capacity allocation reservation would reduce. And vice-versa.

¹⁷ Some (programs or) services require more (or less) capacity to deliver fidelity to suit their typical program content. The arrangements for timely delivery of necessary metadata also vary with each (program or) service, some typically requiring or needing more regular updates to be broadcast. Given the very tight capacity constraints, within the overall two-ninths capacity reservation, these matters are currently resolved in a day-to-day operational manner through use of proportionate allocation of capacity on a demand driven basis.

6. Principle Two – Correlation with Designated BSA Radio Area

6.1 The ACMA proposes overarching principles to apply when considering whether to deem a community licence area under subsection 8AD(3) of the BSA, principle two being:

There is sufficient correlation between the commercial and the community licence areas.

6.2 The ACMA outlines several factors that could be used to assess correlation between the Designated BSA Radio Area and the community radio licence area. These may include:

- the extent of population overlap;
- the extent of geographic overlap; and
- coverage of major population centres.

6.3 The ACMA suggests that, in most cases, the population overlap is likely to be the best indication of correlation, rather than the extent of geographic coverage.

6.4 The ACMA suggests that if an analogue community radio broadcasting service is already broadcasting to a significant proportion of the Designated BSA Radio Area, a case can be made to deem the community service to be the same as the Designated BSA Radio Area.

6.5 The ACMA has noted population overlaps occur where the community licence area is a subset of the Designated BSA Radio Area, sitting wholly or partly within the Designated BSA Radio Area.

6.6 The ACMA does not propose to determine a specific population overlap threshold.

6.7 The ACMA proposes to consider Principle two and Principle three together.

Summary comments

6.8 The CBAA suggests that Principle two would be better positioned as:

There is sufficient correlation with the Designated BSA Radio Area

6.9 The CBAA makes the following additional points:

- (a) Principle two and Principle three should be considered together.
- (b) Principle two should include consideration of the extent of population overlap, geographic overlap, and coverage of major population centres.
- (c) Principle two should consider population overlaps where the community licence area is a subset of the Designated BSA Radio Area:
 - (i) wholly contained within the Designated BSA Radio Area;
 - (ii) partly contained within the Designated BSA Radio Area, where the remainder overlaps a neighbouring area;
- (d) Principle two should not determine a specific population overlap as a threshold¹⁸, but retain discretion, and be guided by the mix of community interests, as considered under Principle three.
- (e) Principle two should take account of the services in neighbouring license areas,¹⁹ and when there is no specific population or geographic overlap, also be guided by the mix of community interests, as considered under Principle three.
- (f) Principle two should note that some community licences wholly or partly overlap multiple Designated BSA Radio Areas. In this case, it is open to deem a community licence area under section 8AD(3) in multiple Designated BSA Radio Areas, or, in the alternate, consider the addition to diversity and mix of community interests in deeming in multiple Designated BSA Radio areas or only one.
- (g) Principle two should reference an overarching ambition to ensure a minimum number of two services within the capacity reserved specifically for community broadcasting, with that outcome being consistent with the objects of the BSA.²⁰

6.10 Further background and comments related to these points follow, below.

¹⁸ In relation to deeming determinations already made for Hobart, the ACMA has previously noted existing legislation sets 30% population overlap as the threshold for two licence areas being considered one for the purpose of Section 39 additional commercial radio licensing under BSA section 39, and in regarding to control of commercial broadcasting licences under BSA Part 5.

¹⁹ In accord with Broadcasting Services Act 1992, Section 23, Planning Criteria.

²⁰ Broadcasting Services Act 1992, Section 3 generally, and, specifically, subsection 3 (1) (n) which says, 'to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.'

Population, geographic, major population centres

- 6.11 The CBAA agrees that population overlap of licence areas is a useful indicator of correlation with the relevant Designated BSA Radio Area, rather than the extent of geographic overlap.
- 6.12 There may be some community licence areas where the population overlap across the region is significant and be an argument for deeming based on population alone.
- 6.13 In other cases, there are other factors relating to neighbouring licence areas, coverage of major town/s, and the patterns of commuting and social, economic and cultural activity may also be relevant.
- 6.14 Take the example of Katoomba: Katoomba has a major population centre, the town of Katoomba. The original intention of the commercial Licence Area known as Katoomba would have been to provide a radio service to Katoomba, and then, more generally, to towns that make up the Blue Mountains.
- 6.15 There is a Katoomba based commercial radio service with boundaries defined by Katoomba RA1, and a Katoomba based community radio service, Radio Blue Mountains, with boundaries defined by Katoomba RA2.
- 6.16 In providing digital radio for this region, clearly, it would be important that the Katoomba community radio licence area be deemed, so that Radio Blue Mountains could provide digital radio service/s.
- 6.17 Katoomba RA2 is wholly within Katoomba RA1, yet the population overlap is estimated at only around 12%.
- 6.18 This is due to the distortion of the Sydney RA1 population overlapping with Katoomba RA1. The population overlap is estimated at 77%, which overwhelms population counts in the Blue Mountains itself.
- 6.19 Current planning assumes Katoomba digital radio is introduced based on the Katoomba commercial radio licence area boundary, and as separate digital radio area to the neighbouring Sydney digital radio.
- 6.20 In that scenario there will be a need to deem to the community service, Radio Blue Mountains with an overlap of around 12%, and after taking into account its community of interest clearly being the Blue Mountains.
- 6.21 It is also worth noting that the Katoomba commercial licence area has one commercial radio licensee, and thus there will be spectrum in efficiency with a maximum of two-ninths of multiplex capacity able to be used by commercial broadcasters, plus the reservation for community broadcasting,
- 6.22 At the moment, this issue is addressed for listeners in 77% of the Katoomba licence area that is, in effect Western Sydney, as they can already receive the Katoomba commercial service content (The Edge) across all of the Sydney RA1 commercial licence area by dint of it being a secondary service on Sydney digital radio. Yet this disenfranchises the town people of Katoomba and the Blue Mountains community in relation to digital radio.
- 6.23 The commercial licence area of Lithgow RA1 is an historic AM licence area boundary that is neighbouring and wholly overlaps the Katoomba licence area over the Blue Mountains, stopping short of and abutting Sydney RA1. Across the Blue Mountains, Lithgow largely duplicates the Katoomba RA1 licence area, except for those parts of the Katoomba RA1 that overlap Sydney RA1. Lithgow also has a number of overlapping community licence areas including Katoomba RA2.
- 6.24 The Lithgow commercial licence area has two commercial licensees. As with Mandurah, Lithgow is another multiplex where only four-ninths of capacity can be used by the commercial broadcasters, plus the reservation for community broadcasting.
- 6.25 Taken separately each implementation results in sub-optimal outcomes, both in terms of spectrum efficiency and in terms of diversity of services. The efficient and best solution will lie in considering the neighbouring licence areas together.
- 6.26 In the example of the Gold Coast, there are three community radio services, each operating with Gold Coast RA1. These services are designated, no deeming required.
- 6.27 The neighbouring commercial licence area of Murwillumbah RA1 overlaps the Gold Coast RA1 by 26% and vice-versa by 66%. Given that level of population overlap, the Gold Coast community licence areas would be highly placed to be deemed in respect of Murwillumbah RA1. Yet that would result in duplication of the same licensee services across the main population centre of the Gold Coast, which does not necessarily add to service diversity.

- 6.28 The Murwillumbah commercial licence area has one commercial licensee. Again, spectrum inefficiency with a maximum of two-ninths of multiplex capacity able to be used by commercial broadcasters, plus the reservation for community broadcasting,
- 6.29 The neighbouring commercial licence area of Lismore RA1 has some overlap with the commercial licence area of Murwillumbah RA1. The digital channel planning is assuming a common main transmit site, with antenna patterns to discern different coverage.
- 6.30 Setting aside the Gold Coast, there are a number of town-based community licence areas which overlap Murwillumbah RA1, and some which also overlap Lismore RA1.
- 6.31 Deeming of these town-based services is their only pathway to digital transition.
- 6.32 The population overlap of each will be worth consideration in the context of adding service diversity, along with the relationship each town has with the region as a whole, which is typically strong.
- 6.33 The community licence area Byron Bay RA1 overlaps both Murwillumbah RA1 and also Lismore RA1, 9% and 20% respectively.
- 6.34 These example snapshots clearly illustrate the need for careful and case-by-case consideration to ensure deeming decisions are made in a way that improves spectrum efficiency, relevant community radio services are able to take up use of reserved multiplex capacity, and result in an overall increase and improvement in service diversity.

No minimum level of coverage requirement

- 6.35 There is no requirement that Digital Radio Multiplex Transmitter (DRMT) licensees provide digital radio coverage across all of the Designated BSA Radio Area.
- 6.36 For example, in the case of recent regional deployments in Canberra, Darwin and Hobart, the Category 1 implementation is by way of a main transmit site only. There are currently no in-fill transmission facilities.
- 6.37 While there are no current plans evident, perhaps there will be some in-fill to at least match the Category 3 national implementation, which has in-fill sites operating to support coverage in key urban areas.
- 6.38 Less likely, even in the medium term, is the provision of in-fill and extension sites to provide coverage across the significant and remaining areas of the entire footprint of the BSA radio area.
- 6.39 Factoring the reduced coverage footprint of the digital implementation as compared to BSA Radio area is an additional consideration in regard to deeming for the purposes of digital radio.
- 6.40 Coverage improvement is an on-going development, and the typical pattern of implementation, including for the major metropolitan areas has been to begin with a main site, and then add in-fill.
- 6.41 Extension and in-fill to add or improve coverage to significant areas of population with each BSA Radio Area continues currently, including in Sydney, Melbourne and Brisbane.
- 6.42 In regional areas there are practical and market issues that have resulted in limited implementation across the BSA Radio and that are likely to be long-term deficiencies.
- 6.43 The coverage of Darwin RA1 and Hobart RA1 are indicative.
- 6.44 While the main site at Mt Wellington has excellent coverage of urban Hobart and surrounds, there areas of Hobart RA1 extending up the east coast of Tasmania that are likely to have no coverage in-fill added in the long-term.
- 6.45 In Darwin RA1 the entire town of Katherine sits within the Darwin RA1, yet has no digital radio coverage, and with no plans for that to change. Leaving Katherine long-term disenfranchised in terms of digital radio.
- 6.46 The broad point is that numerous situations of a similar character across many regional areas in Australia challenge the current planning being solely based on commercial licence areas, and the which the ACMA should consider when assessing population coverage and deeming considerations on a case-by-case basis.

7. Principle Three – Relevance of community interest

- 7.1 The ACMA proposes overarching principles to apply when considering whether to deem a community licence area under subsection 8AD(3) of the BSA, principle three being:

The community interests represented by the relevant community radio broadcasting licences are relevant to the commercial licence area.

- 7.2 The ACMA lists the typical set of community interests that are addressed through licensing of existing community broadcasting services and delivered using analogue transmission. These include: general geographic area, radio reading services (print handicapped), religious, Indigenous / Torres Strait Islander, ethnic, senior / youth, educational, sport, category of music, and LGBTI.
- 7.3 The ACMA may take account of any information it considers relevant in exercising its deeming power, and makes the point that where there are multiple community radio services in a single licence area being considered for deeming it may consider the mix of community interests of all relevant services in making a deeming decision.
- 7.4 A deeming decision applies to all licences in a licence area in the same way, and following deeming, the ACMA is mindful that a community radio licensee will have to consider how best to comply with its licence conditions, including conditions in subclause 9(2) of Schedule 2 to the BSA.
- 7.5 The ACMA proposes to consider Principle two and Principle three together.

Summary comments

- 7.6 The CBAA suggests that Principle three would be better positioned as:

The community interests represented by the relevant community radio broadcasting licences are relevant to the Designated BSA Radio Area.

- 7.7 The CBAA makes the following additional points in relation to community interest:
- (a) That Principle two and Principle three being considered together is significant and important.
 - (b) In addition to the extent of population overlap in and between licence areas, there is further consideration required in relation to population concentration, social demographics, cultural interests, community interests and the mix of services available that may impact on deeming decisions.
 - (c) The result of deeming should be an increase in the availability and diversity of services available in the Designated BSA Radio Area.
 - (d) The key outcome required is that there is a mechanism to deliver an appropriate and diverse mix of radio broadcast services to the community via digital transmission.
 - (e) As a minimum, two community licensees that facilitate content services targeted to the general geographic area and local community interests and to Indigenous services are priorities, with consideration of other community interest services on a case-by-case basis.
 - (f) The CBAA agrees that there is a wide variation in community radio licence areas in relation to the Designated BSA Radio Area, and to each other in scale and the mix of community interests served.
 - (g) A number of regional Designated BSA Radio Area boundaries are based on the historic coverage pattern of an analogue MF-AM service. Within that geographic footprint there may be community services with wide-coverage, and/or a number of localised town-based services.
 - (h) While some Designated BSA Radio Areas may have more, a critical outcome is that there be at least one community licensee serving a general geographic area and reflecting broad community interests. This provides digital access opportunities for primary and secondary services, with content regulation to determine the appropriate extent of geographic focus.
 - (i) A general geographic area service also provides an umbrella framework for secondary digital radio services which, subject to compliance with licence conditions, can address relevant community service needs, if those services are not otherwise deemed or available.

- (j) This is particularly relevant to consideration of Indigenous services and RPH radio reading services, and other social and cultural community interests that may require consideration on a case-by-case basis.
- (k) In the context of contemporary cultural values and the objects of the BSA to ensure the development of diverse radio services, it is particularly critical that Indigenous services are considered and prioritised in deeming decisions for digital radio purposes.
- (l) The First Nations radio sector currently comprises 28 urban and regional radio services, and 8 remote media organisations servicing 138 remote communities. Digital radio broadcasting represents both opportunities to extend and develop First Nations services and enhance delivery, and constraints and barriers under the current framework for digital radio.
- (m) It is therefore critical that opportunities for inclusion of First Nations services in digital radio broadcasting and in accessing capacity reserved for community broadcasting, or where relevant spare multiplex capacity, are optimised in any considerations of the ACMA.
- (n) RPH radio reading services for the print disability community represent a significant and valuable community resource relevant to a large proportion of the Australian community, and digital radio presents opportunities for expansion of radio reading services and furthering the objects of the BSA.
- (o) As noted by the ACMA, there is a range of other community interests served by community licences, including ethnic language and multicultural radio services that support social cohesion and information dissemination, religious faith-based services, youth, senior citizens, LGBTQIA+ communities and educational services that may also require consideration on a case-by-case basis in regional areas.

Multiple deeming

- 7.8 In some regional areas there are community license areas that service or overlap multiple Designated BSA Radio Areas that will be relevant to a deeming process in each licence area.
- 7.9 This particularly applies to RPH radio reading services. As examples, 1RPH is licensed to Canberra RA2 (and deemed Canberra RA1 for digital radio purposes) including Canberra and the town of Wagga Wagga, and 7RPH is licensed to Hobart RA4 (and is deemed Hobart RA1 for digital radio purposes) including Launceston.
- 7.10 A similar situation occurs in Sydney, where the licence area of 2RPH extends and includes the cities of Newcastle and Wollongong.
- 7.11 As digital radio is implemented in these locations, it will be necessary and appropriate that the respective licence areas services be included in deeming considerations, so as to ensure the availability of RPH services in the transition to digital broadcasting.
- 7.12 As implementation of the Gold Coast nears, there is also a case to consider extending the RPH and Indigenous services in Brisbane, to be deemed for the Gold Coast. The alternative, as a short-term measure, is that these services be carried as secondary services, to support increased service diversity.