



Federation of Australian Radio Broadcasters
82-86 Pacific Highway
St Leonards NSW 2065
T 02 9906 5944
F 02 9906 5128
E mail@commercialradio.com.au
www.commercialradio.com.au

29 October 2001

Radiocommunications Inquiry
Productivity Commission
Locked Bag 2
Collins St East
MELBOURNE VIC 8003
Email: radiocomms@pc.gov.au

Introduction

FARB is the peak body representing 238 commercial radio broadcasters around Australia.

While there is some divergence of views on the issues canvassed in this submission, the industry is largely supportive of the position that has been expressed.

2.1 What problems does the legislation seek to address?

- *Do the objectives of the RCA adequately describe the social, environmental and economic problems which radiocommunications legislation should address?*
- *Should the trade-offs between competing economic and social uses of spectrum be more clearly articulated in the principles governing spectrum management?*

The open but finite characteristic of the radiofrequency spectrum requires the imposition of limits on the number of people who may access the spectrum. If the spectrum was open to access by anyone the level of interference would significantly undermine the community benefit that the spectrum may otherwise yield. This is particularly the case in relation to spectrum for commercial broadcasting where the demand for spectrum exceeds supply.

There has been significant debate in recent years in highlighting the effect that economic rationalist principles have had on the Australian public and the resulting economic well being of cities and regional centres.

The deregulation of the airline industry is a striking example of the serious impact on the public of deregulation. Further evidence of these pro-competition models which look to markets to bring about correction is emerging in the telecommunications industry as companies which have been prepared to spend significant amounts for access to 3G spectrum now appear to be struggling to overcome huge debts to complete the task and provide the expected benefits to the public.

Like radio, both industries are vital to Australian communities and it is critical that the views of the community are taken into account in their development.

The availability and regulation of commercial radio services has, therefore, a significant public interest benefit. Economic goals must be balanced against the public interest in guaranteeing that certain types of services remain and are made available within the Australian community. If there is a continuing public interest in ensuring the continuity of locally produced and delivered mass communication services such as commercial radio, then the need to have regard to the viability of those services is heightened.

If the principles of economic rationalism are followed and the market is allowed to decide the onus for ensuring the meeting of community obligations should fall squarely on those making the decisions, such as government and government authorities, and not on radio.

FARB believes that “broadcasting markets” require an assessment of social and economic factors affecting the market, competition, efficiency and the interests of consumers in the discrete markets that comprise the broadcasting sectors.

The BSA recognizes market or sector variations in its planning functions (s.23) and broadcasting service regulation, and there is flexibility within the legislation to apply different considerations to different activities and market conditions.

As has been shown in the recent ABA planning process there needs to be an ordered spectrum planning process for all broadcasting services spectrum. Ignoring these elements and auctioning all available spectrum to the point of increasing competition to unsustainable levels, while assuming that market corrections will take care of any undesirable outcomes, will clearly undermine any community benefit.

Overall, FARB believes that planning of the broadcasting services bands is best performed by a specific industry regulator, such as the ABA, under an ordered process whereby appropriate consultation is assured and market conditions included as a necessary consideration before licence allocation.

However, it should also be acknowledged that a small minority of FARB members have noted that there may be some benefit in the ACA administering spectrum allocation to allow for multi-use.

The BSA has a number of social and economic objectives, including:

- a) To promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;
- b) To provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;
- c) To encourage diversity in control of the more influential broadcasting services;
- d) To ensure that Australian have effective control of the more influential broadcasting services;
- e) To promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity;

On the other hand, the objectives of the Radiocommunications Act are heavily “efficiency” weighted and aimed at maximizing spectrum use at all cost, with an inadequate balance for other factors, namely:

- (a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;
- (b) make adequate provision of the spectrum for use by public or community services;
- (c) provide a responsive and flexible approach to meeting the needs of users of the spectrum;
- (d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;
- (e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum.

2.2 The approach to allocating spectrum under the Radiocommunications Act

- *What are the advantages and disadvantages of the current approach to spectrum planning?*
- *Are the objectives of the RCA being achieved through the licensing system?*
- *Does the current approach work smoothly from an administrative perspective?*
- *Is the licensing system effective in managing frequency interference?*

FARB is supportive of the current regime of allocating spectrum for services within the designated Broadcasting Services Bands (AM and FM).

The Productivity Commission's earlier report into Broadcasting was based on the premise that freeing up of existing broadcasting spectrum would enable more services to be provided and that these new opportunities would result in a broadcast media which is diversified in ownership and programming. The ABA's planning process, which is largely completed, has identified services that have totally exhausted that spectrum and met those criteria.

As the high level of capital investment and ongoing operating costs of broadcasters (whether by way of a priced-based allocation or by transfer) is unlikely to change, the availability of additional spectrum will not necessarily result in the entry of new interests in mainstream broadcast media.

What this shows is that the concept of an increase in the availability of spectrum on the one hand and diversity of media ownership and opinion on the other hand, are not necessary corollaries.

The ACA is required under the Radiocommunications Act 1992 to issue a transmitter licence that authorizes operation of one or more specified transmitters for transmitting a commercial radio or television broadcasting service licenced under the Broadcasting Services Act 1992.

The various licences (other than class licences) identify a frequency along the spectrum which is unique to it as a user and thereby acts to minimize interference. However, licensing is a necessary but insufficient factor in minimizing interference. It is also necessary to:

- a) Encourage spectrum users to develop the means for delivering the same service using the smallest amount of spectrum and therefore, the smallest amount of overlap; and,
- b) Continue to develop the technical planning process so that spectrum can be allocated with minimum interference (eg emission power levels, etc).

The ABA's approach to planning is clearly designed to minimize interference and places the onus squarely on the signal causing the interference to remedy any problems and has served the industry well.

FARB maintains that where there is any potential for interference with signals of a commercial broadcaster, a class licence should not be issued. The self-regulatory engineering approach applied to the issuing of class licences does not work well when it is virtually impossible to readily trace the current owner of the licence and where there is a relatively small investment involved, compared with the often multi-million investments of a commercial operator.

Broadcasting licences authorising low power open narrowcasting (LPON) services – of which there are about 1,800 - are issued for operation within the FM radio sub-band 87.5 - 88.0 MHz.

There is evidence to suggest that a significant number of these services exceed their 1watt maximum power, but it is often difficult to determine who owns the service should it be causing interference to another service. Because of their proliferation they are also difficult to police and any transgressions are left to the offended party to report.

2.3 Charging for the use of spectrum

- *Does the absence of fees affect how much spectrum is allocated for class licences?*
- *Does the absence of fees give users of class licences competitive advantages over users of other types of licences?*
- *To what extent have economic incentives from spectrum charges helped to encourage efficient spectrum use?*
- *What effect have licence fees had on incentives for investment and innovation?*

The Productivity Commission has previously argued that the current dual pricing arrangements of a price-based allocation system and the payment of annual licence fees linked to revenue do not provide an adequate return to the community for the commercial use of scarce spectrum. FARB does not accept that position.

It is hard to envisage a better indication of the value of spectrum than the auction process that has applied in the allocation of commercial radio and narrowcasting services in recent years. The most recent auctions for commercial radio licences in Sydney, Melbourne and Brisbane all serve to underline the value placed on that spectrum.

The value of spectrum and its ongoing use is therefore incorporated into the price paid on allocation, conversion and in the context of licence fees.

The PC has previously indicated support for overhauling the licence fee structure.

The most striking feature of the annual licence fees from an economic viewpoint is that, being based on gross earnings (advertising revenue) they fall most harshly on the type of operation that is relatively high volume/low margin. That is to say, in terms of impact on the 'bottom line' this tax structure is likely to be neutral in its impact between the well-established operator type on the one hand and the newer entrant type on the other hand.

Within commercial radio therefore, it can be seen to discriminate against newcomers and innovators – those who start off with low margins. Another important economic feature of the tax is that it discriminates against commercial radio. No such tax is levied

on commercial radio's closest competitors, namely newspapers, magazines, outdoor advertising hoardings, high powered open narrowcasters and community radio broadcasters – all of which carry advertising. It does not seem justifiable that other operators who seek a benefit financially from advertising, such as open narrowcasters, escape annual licence fees when they are clearly commercial operations competing head to head in many instances with commercial broadcasters who have paid a significant premium for their licence.

FARB considers a good case can be made for eliminating annual licence fees altogether, as previously recommended by the PC.

2.4 Licence tenure and band clearance

- *What factors influence the appropriate duration of licences?*
- *What would be the likely consequences of extending apparatus licences?*
- *What would be the advantages and disadvantages of allocating licences on an indefinite basis? Would a 'use it or lose it' condition be desirable?*

Commercial broadcasters operate under the assumption that as long as they do not put their licence at risk through improper conduct, it will be renewed for consecutive five year terms in perpetuity.

While apparatus licences are currently issued for renewable one year periods and up to a maximum of five years, it would make sense from a purely administrative point of view to extend that period to correspond with the licence period of the commercial service to which it relates.

Some of the submissions to previous government inquiries have proposed that greater security of tenure should be afforded to holders of transmitter licences used for the purpose of open narrowcasting services because of the lack of certainty that holders of such licences have in respect of future licence allocations.

In FARB's view there is no evidence to suggest that the limited period during which such transmitter licences remain in force has acted as an impediment to persons incurring capital expenditure in respect of appropriate transmission equipment to be operated pursuant to such licences

In addition, FARB notes that most transmitter licences used to transmit programs pursuant to the class licence determined by the ABA for open narrowcasting radio services merely transmit material relayed to them from central sources. In most instances open radio narrowcasting services have no requirement to maintain facilities other than basic transmission facilities and originate little, if any, programming. Consequently, in most circumstances there are few, if any, employees engaged in the area serviced by the transmitter concerned. Accordingly, the allocation of such a

transmitter licence to a third party at the end of a 5 year period would have a relatively limited commercial impact on the previous holder.

For the reasons outlined above, FARB submits that it is not appropriate that the regulatory regime under the Radcom Act be amended so as to extend significantly (or indefinitely) the duration of transmitter licences allocated for the purpose of providing open narrowcasting radio services, to provide programs of limited appeal and which are targeted to special interest groups for their private commercial purposes.

In addition, the prices paid by licensees for the allocation of such licences as part of the price-based allocation process reflect their limited duration. Persons bidding for transmitter licences to be used in connection with open narrowcasting radio services are well aware of the limited period during which such licences remain in force. As a consequence, the prices paid as part of the price-based allocation system for high-powered transmitter licences to be used for open narrowcasting services frequently approximate \$10,000 or less. That compares to the prices bid by successful applicants for commercial radio broadcasting licences allocated by the ABA under the BSA. The prices paid for such commercial licences are usually expressed in terms of hundreds of thousands of dollars and sometimes millions of dollars. In fact as much as \$155 million has been paid for such a licence.

It would therefore seem appropriate that the tenure of apparatus licences be more closely linked with the broadcasting licence to which it directly relates.

It is clear from an earlier *Discussion Paper* released by the ACA in relation to the hoarding of LPONs, and various media reports and advertisements, that some entrepreneurs have taken advantage of the low cost of LPON licences to purchase large numbers of licences for either lease or resale, with no apparent intention of commencing a service. Further, the impression gained from some advertisements is that these LPON licences are "commercial" services, which amounts to a misrepresentation of the licence by those seeking to profit from their resale.

This brings in to question the status of LPON licences and the obvious need for tighter controls on their use if the intention of the creation of these services to encourage greater diversity, is to be met.

The commercial radio industry has previously supported a much more controlled regime which would impose a licence condition on LPON licences to require licensees to commence operation within a specific time period and increase LPON licence fees.

It is FARB's view that, for the sake of consistency, the same conditions already applying to high/medium power narrowcast services auctioned by the Australian Broadcasting Authority under the planning process, should also apply to LPON - that is that *the licensee must commence to provide a service within six months of being issued the licence, or forfeit the licence*. Whether the ACA should have the discretion to extend this period should be linked to the licence fee, ie. if the fees were increased substantially an operator should be given some latitude in extending that timeframe for a limited period if it can be shown there is a just reason (technical/construction difficulties). The ACA should specify in advance the

factors that it would take into account when determining whether a service was being provided.

Another regulatory factor which comes into play is that of technical limitations of LPON services. There is ample evidence available to suggest that technical requirements are often abused, and whether these specifications are met by the operator should be taken into account when licence renewal is sought.

2.5 Secondary trading of licences

- *Which features of the regulatory framework support secondary trading?*
- *Are there factors constraining the development of secondary markets?*

Secondary trading of licences already happens in a limited way and prices paid are reflective of the type of service. Those licences in the broadcasting services bands which attach to a broadcasting licence have strict technical specifications and can only be sold in conjunction with the broadcasting licence.

There are no such technical specifications attaching to spectrum licences. FARB believes there needs to be very careful thought given to ensure that an essential service on which people rely is not seriously diminished at some time in the future because it becomes lucrative to trade the licence for use in relation to a new technology or other service or for some other strategic business purpose at odds with the interests of consumers generally.

2.6 Broadcasting

- *Can the spectrum that is currently designed for broadcasting licences be used for other purposes?*
- *What are the advantages and disadvantages of excluding the allocation of broadcasting spectrum from the broader spectrum planning and management processes undertaken by the ACA?*
- *Are there differences in the way the ACA and the ABA plan and allocate spectrum? Why?*
- *What are the advantages and disadvantages of the approach recommended by the Commission in its Broadcasting Report? That is, to transfer all spectrum planning and licensing responsibilities to the ACA?*

Both the ACA and ABA have similar staged processes in their planning functions in that they both engage in priority setting, followed by broad then detailed spectrum plans. However, while the procedures are broadly similar, the allocation criteria are different.

The ACA in the management of the Radcom Act give credence to market forces and technical criteria.

The ABA's obligation to promote the object of the BSA means its planning function is not confined to technical criteria.

Section 23 of the Broadcasting Services Act outlines the planning criteria to be applied by the ABA to promote the objects of the Act, including demographics, social and economic characteristics as well as the impact on existing broadcasters and efficient use of spectrum. Accordingly the ABA's planning and allocation process is more complicated than the ACA's.

The section operates, amongst other things, to allow a differentiation in markets within Australia. It particular, it allows a distinction to be made as between television and radio and as between metropolitan, regional and country licence areas. These distinctions are important in the commercial radio market.

The factors bearing upon the availability of radio services and the nature of those services in say, Mt Isa, are very different from those present in Newcastle or Adelaide. The analysis previously undertaken by the Commission in its review of the broadcasting legislation treats the legislation as having the same impact on all broadcasting sectors and markets. This fails to recognize the flexibilities within the legislation and ignores regional distinctions surrounding the provision of commercial radio services throughout Australia.

The Explanatory Memorandum to the BSA, specifically in relation to s.23 stated that *"it is at the planning stage that judgements will be made about the number and types of services to be available in market areas. There will no longer be provision at the licence allocation stage for reconsideration of whether or not there should be another service of a particular category in a licence area – such issues will be settled during the planning stage"*.

It is clearly more convenient for broadcasters to be subject to one regulator only.

The ABA's current role as a planner of the radiofrequency spectrum and regulator of broadcasting content has that distinct advantage. To allow allocation of spectrum to be under the ACA would see broadcasters being subject to double regulation along with additional compliance costs and paper work.

Importantly, the industry would be faced with considerable issues in relation to commercial viability.

It is worth noting that while the PC in its Broadcasting Report recommended transferring all spectrum planning to the ACA, a recent Parliamentary Inquiry into regional radio in Australia recommended a test for commercial viability be reintroduced to the BSA when issuing licences.

The Inquiry, the most extensive since the introduction of the BSA, concluded that:

“Commercial viability demands a finely tuned balance between the number of services and the revenue base of a community. In our view, decisions about the number of radio services in an area should be based on three sets of information: namely the level of demand in the community for services; the community’s capacity to afford that number of services; and the interest of broadcasters in providing those services.

In removing the test of viability, the BSA removed one of the critical pieces of information required to make licence allocation decisions. In failing to give sufficient attention to community demand the ABA has effectively removed another critical piece of information. The combination of deficiencies in both the BSA and in the administration of the BSA by the ABA has resulted in decisions being primarily determined by entrepreneurial demand.”

According to the Parliamentary Committee this drive to as far as possible ‘put the vacant radiofrequency spectrum to use’ led to a significant increase in the number of radio licences and a subsequent increase in the level of competition in the industry.

While the most recent financial statistics released by the Australian Broadcasting Authority show that the commercial radio industry generated record revenue of \$737.5M in 1999/2000, a closer examination of the figures shows that 68.5% (\$504.8M) goes to 39 metropolitan stations (Sydney, Melbourne, Brisbane, Adelaide, Perth) and 31.5% to the 201 stations in regional markets. In the 10 years to 1999/00, advertising revenue in regional markets has increased by \$79.5M, slightly more than one third of the increase gained by metropolitan markets (revenue for the 38 metropolitan stations grew by \$73.5M in 1999/00 over the previous year). Over the same ten-year period, the number of regional commercial licences has increased by 92, compared with seven allocated in metropolitan markets - two are already on air, another next month and a further four over the next two years.

The average revenue per station during that 10-year period has grown from \$7.54M for metropolitan stations to \$12.94M, while for regional stations it has dropped from \$1.4M to \$1.15M. However, of the 38 metropolitan stations, more than 30% (12) were in loss (the same as the previous year and up from 10 in 1997/98) while in regional markets there were 41 in loss, down from 59 the previous year.

To move to the Radcom Act regime with a purely market forces and technical criteria, could result in an even worse viability situation and significantly reduce the community benefit.

2.11 Looking to the future

- *How is technological change likely to affect the future management of the radiofrequency spectrum?*
- *How accommodating of future change is the approach of the RCA?*

- *What changes may be necessary to provide an appropriate regulatory framework for managing the radiofrequency spectrum in the future?*
- *Should there be a single regulatory framework for managing all communications technologies?*

The industry is currently working on consumer focused trials to enable the development of a business case to identify spectrum requirements for digital radio broadcasting. Until such time as consumer response has been fully assessed to a range of digital offerings and a variety of receivers in both the fixed and portable environment, the industry is not in a position to advise Government on final spectrum needs for this new technology.

In order to progress the introduction of digital radio, the Government has supported the industry's progressive trials of the different technologies and discussions on this are well advanced.

Without this consumer response to digital radio broadcasting products using existing digital transmission technologies and without the opportunity to trial new technologies such as DRM, IBOC and DVB, it is FARB's view that there is no reason to make a recommendation which would change our current approach to planning.

However, the new technologies as they come on line will present new challenges, new costs and new spectrum requirements. It is only when these are identified and fully assessed that the industry will be in a position to make a final recommendation and decision.

Conclusion

Research has shown that commercial radio is the most popular form of electronic media used in Australia. Listeners spend 151 minutes per day with commercial radio.

Radio has the advantage that listeners are able to undertake a range of activities while listening to the radio. It is arguably the most accessible form of media for receiving up-to-the-minute information, entertainment and education.

Commercial radio is particularly important in lessening the social, cultural and economic disadvantages of living in regional communities. It provides social interaction with audiences by encouraging talkback, competitions and requests.

Commercial radio also serves to bridge the cultural divide between metropolitan and rural audiences by enabling the retransmission of some programs currently received by metropolitan and larger regional communities to more remote areas. The need for radio to provide adequate services in terms of local news, sport and community service announcements is important.

Radio is a critical component of all communities providing substantial benefits. It cannot be allowed to be placed in jeopardy by a spectrum licensing regime under which the

industry could find retention of its spectrum unaffordable. Markets can and do fail and the results can be catastrophic.

In FARB's view an industry specific regulator is necessary to understand and assess the social, cultural and educative benefits, which the overall community receives from broadcasting, both commercial and non-commercial.

Kind regards

Joan Warner
Chief Executive Officer