

Australian  
Communications  
Authority

File Reference: X1999/452-2



Dr Geraldine Gentle  
Assistant Commissioner  
Productivity Commission  
LB 2 Collins Street  
MELBOURNE VIC 3000

Dear Dr Gentle

Further to our letter of 29 April 1999, the Australian Communications Authority (ACA) seeks to make another submission to the Commission's review of broadcasting regulatory arrangements.

In looking through the list of submissions presented to the review and the list of parties appearing at the Commission's public hearings, the ACA has observed that information is being provided about narrowcasting services.

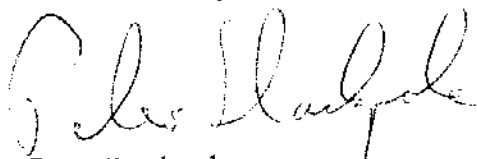
I wish to draw to your attention that the ACA has been looking at a specific aspect of narrowcasting services and this is the alleged hoarding of Low Power Open Narrowcasting (LPON) services.

A significant percentage of the 1500 plus LPON services are currently not operating. There have been frequent claims that the licences are being hoarded with a view to later sale and as a consequence many parties who would like to provide a service are unable to do so. The Minister asked the ACA to look at the issue and to look at options to address it.

As part of its consideration, the ACA released a discussion paper for public comment. Over 60 submissions were received in response to the paper. A copy of the ACA's discussion paper and the Minister's original press release on the issue is attached for your information.

The ACA is currently finalising its consideration of the issue and expects to be making recommendations to the Minister early in the new year.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Peter Stackpole".

Peter Stackpole  
Executive Manager  
Customer Services Group

14 December 1999



**Hoarding of licences for  
Low Power Open Narrowcasting services**

**Discussion Paper and  
Invitation to Comment**

**July 1999**

## 1. The LPON Licence Hoarding Issue

For some time, industry and government have been expressing concern that many of the apparatus licences used to provide low power open narrowcasting (LPON) services, are being held without the licensee providing a radio service. It has frequently been claimed that these licences are being hoarded with a view to later sale and, as a consequence, many parties who would like to provide a service are unable to do so. Hoarding of LPON licences may therefore be artificially restricting the choice and diversity of radio services available to the community.

On 11 June 1999, the Minister for Communications, Information Technology and the Arts, Senator the Hon. Richard Alston announced that he had asked the Australian Communications Authority (ACA), which administers LPON licences, to look at options to address the LPON licence hoarding issue. As part of this process, the ACA has prepared this discussion paper, and invites comment from interested parties on the issues raised. Particular issues on which comments are sought have been highlighted in the paper, however comments on any other matter related to LPON licence hoarding are also welcome.

Any comments should be received by the ACA by close of business on Friday 20 August 1999, and should be directed to:

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Manager, CAMT  
Customer Services Group  
Australian Communications Authority  
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Belconnen ACT 2616

Ph (02) 6256 5429  
Fax (02) 6256 5393  
Email [gkempton@aca.gov.au](mailto:gkempton@aca.gov.au)

A summary of comments will be made available on the ACA's website. Please indicate if you wish comments to remain confidential (ie. not to be included in this summary).

## 2. Background to LPON Services

An LPON service is a type of FM radio service designed to provide narrowcasting programs to a limited area, typically with a radius of 2 km in residential areas and 5-10 km in rural areas. A narrowcasting service is distinguished from a mainstream broadcasting service by the requirement that reception be limited in some way (eg. by being targeted at a special interest group). Typical narrowcasting formats include tourist information, racing information, community information and niche music programming. LPON services generally operate on the frequencies 87.6, 87.8 or 88.0 MHz.

LPON services were introduced by the Australian Broadcasting Authority (ABA) in 1993 following the enactment of the *Broadcasting Services Act 1992*. There had been a restricted arrangement known as Limited Licences from 1991 to 1993, but the introduction of LPON services saw interest in this type of licence increase greatly. Within a few years, the ABA had allocated approximately 1500 LPON licences, mainly to a handful of major applicants. Administration of LPON services was

transferred to the ACA in November 1996, by which time the available licences for most of Australia had been allocated. There are now approximately 1560 licences on issue.

Those licences issued by the ABA were issued without charge (the ABA does not generally impose cost recovery charges) and were subject to a minimal annual licence fee (originally \$20, now \$34). Licences issued by the ACA are subject to a first year fee (including issue charge) of \$346 and an annual fee in subsequent years of \$34.

Output power for LPON services is limited to 1 watt effective radiated power (ERP) in residential areas and 10 watts ERP in rural areas. In addition to the maximum ERP, LPON licences are also limited to a maximum field strength at a certain distance from the transmitting antenna. This allows the same channel to be reused every 10 km in residential areas and every 30 km in rural areas. To comply with the field strength limit, it is often necessary for LPON operators to transmit with a power below the maximum permitted, or to lower the transmitting antenna.

Over the last four years, many LPON operators have increasingly moved away from the information service format. LPON services are becoming more like commercial broadcasting services in character, and indications are that a large number of services are exceeding the maximum allowable field strength.

The combination of the low cost of obtaining LPON licences, the limited number of LPON frequencies available in an area, and the high demand for FM radio services may have encouraged the hoarding of licences, particularly as licences obtained from the ABA/ACA may be unsold on the 'secondary market'. The success of some LPON operators with quasi-commercial formats may have further increased the secondary market value of licences.

In addition to LPON services, there are also approximately 160 high power open narrowcasting (HPON) radio services, which operate in both the AM and FM radio bands. However, while subject to the same content restrictions as LPON services, HPON services are wide-coverage services planned through the ABA's licence area planning process and are subject to a price-based allocation, with a typical reserve price of \$4000 a licence.

### **3. Current LPON Licence Hoarding Situation**

From the early days of LPON licensing, a small number of licensees have held numerous licences across the country. Currently, while there are more than 200 LPON licensees, 10 of these licensees hold over 50% of the licences. There is a view in the community that several of these large holders submitted numerous applications in an attempt to lock up the market for LPON licences, with little or no intention of using the majority of licences themselves.

ACA field audits indicate that approximately 65% of LPON licences are not being used to provide a service, which would tend to lend support this view. In addition, the ACA receives regular representations from small, aspirant community information

operators and other parties aggrieved at the non-availability of channels in their areas who request that the larger operators be prevented from hoarding licences. The ACA understands that the Minister for Communications, Information Technology and the Arts has also received numerous representations on this issue. In a number of cases, it has been alleged that licences have been deliberately acquired to prevent a genuine aspirant from obtaining a licence to commencing a service.

The present administrative regime has no mechanism to address the hoarding of licences. Part of the difficulty is that the low cost of holding LPON licences means there is little incentive for hoarders to either make use of or sell their licences. Whilst hoarders may be willing to sell or lease licences for a price, the prices asked are claimed to be beyond the reach of most aspirant narrowcasters. The ACA understands that the going rate for licences in regional Australia is around \$5000 a licence, with tens of thousands of dollars being sought in major centres. This compares with a first year charge of \$346 to obtain a licence from the ACA.

Comment is invited on the extent of hoarding of LPON licences; and to what degree this hoarding may have impeded the introduction of new services.

#### **4. Options relating to LPON Licence Hoarding**

The following list contains what the ACA believes to be the four main options relating to LPON licence hoarding. This list is not necessarily exhaustive, and interested parties are welcome to suggest alternative approaches.

##### *a) Retain the current LPON licensing arrangements*

This option would cause the least amount of disruption and dissatisfaction to existing licensees, would maintain the current 'light touch' regulatory environment and would involve the commitment of no extra public resources.

However, FM radio frequencies are a scarce public resource, and if access to these frequencies is being misused, then a strong case exists for regulatory intervention. Such intervention would support the Government's stated objective of encouraging choice and diversity of radio services. There appears little possibility that occurrences of hoarding will lessen without ACA intervention.

Comment is invited on whether the problems created by the hoarding of LPON licences are such as to justify regulatory intervention, or whether current 'light touch' arrangements should remain in place.

##### *b) Impose a condition on LPON licences to require licensees to commence operation within a specific time period*

Such a condition is generally known as a 'use it or lose it' condition, and is already applied in some form to most other FM radio services. Under this condition, if an LPON licensee did not commence operation within the specified period (say six months), the ACA could cancel or refuse to renew a licence on the grounds of breach of the licence condition. The ACA anticipates that such a condition would operate on

a complaints basis (ie. the ACA would only act if a prospective operator complained of the inability to obtain a licence because of a non-operational LPON licence being issued for the proposed area of operation).

A potential complication with this approach is that there is no generally accepted meaning of what a service actually is and, in the absence of any legislative or other criteria, there could be some difficulty in establishing whether or not a service had commenced. In an extreme case, a licensee could switch on a mobile transmitter for a short period, and claim to have commenced a service as required by the licence condition. So, while the condition need not necessarily specify a full-time service, there clearly would need to be some criteria in order for it to be effective.

One way of addressing this issue would be to specify in advance the factors that the ACA would take into account when determining whether a service was being provided. Such factors could include:

- permanent location of a transmitter and antenna at the licensed site;
- evidence of site acquisition or site rental;
- evidence of power supply connection or power use at the site;
- program schedules;
- advertising contracts;
- agreements or contracts with program providers;
- tapes of broadcast material;
- evidence from listeners in the service area of the licence; and
- results of monitoring by the ACA.

In addition, consideration would need to be given to the situation where more than one party in an area was interested in an LPON licence, and the ACA needed to decide which party to allocate a licence to after the cancellation or non-renewal of an existing non-operational licence. As some licensees may seek to transfer LPON licences may circumvent the licence condition, the ACA may also need to restrict the transfer of LPON licences.

Properly implemented, it seems likely that a 'use it or lose it' condition would be a strong deterrent to the hoarding of LPON licences. The ACA recognises that the condition may be unpopular with existing licensees, who have generally held LPON licences for several years without it, and that the condition and related measures would require significant administrative resources to implement. Against this must be weighed the possible public benefit of new radio services that the introduction of this condition may bring, and the fact that the condition would not disadvantage genuine operators.

Comment is invited on how effective and appropriate a 'use it or lose it' condition would be in addressing the hoarding of LPON licences; what period should be allowed for licensees to establish a service under such a condition; whether the ACA should have the discretion to extend this period on application from the licensee; whether there should also be restrictions on the transfer of LPON licences; how competing applications for the same area should be treated; and what criteria should be used to establish whether a service is being provided.

*c) Increase LPON licence fees*

There is currently no financial incentive for LPON licensees to either operate a service or dispose of (surrender or transfer) licences. The vast majority of licences were issued by the ABA without charge, and have been subject to the minimum annual licence fee, currently \$34.

It is arguable that increasing the annual licence fee would provide a strong discouragement to the hoarding of LPON licences, although the increase would probably need to be substantial to provide an effective market signal. This option could also potentially be used to complement the approach in option b.

An increase in LPON licence fees would be easy to implement and potentially quite effectual, but could cause disquiet among existing licensees, some of whom (eg. community groups) may find it difficult to pay substantially increased fees.

Comment is invited on the appropriate fee level for LPON licences; and specifically whether an increase in licence fees would be justified as a deterrent to the hoarding of LPON licences.

#### *d) Class licence LPON services*

Under this option, individual LPON licences would no longer be issued. After a certain specified period, all existing licences would not be renewed. The ACA would issue an LPON class licence, which would permit LPON operators to transmit from any location providing that the standard LPON technical conditions were met. This would completely remove the problem of non-operational licences, without the need for complex regulatory measures.

However, operation would be on a 'no protection' basis, which may not provide a sufficient guarantee of interference-free reception for many operators. Also, because individual licences would no longer be required, no revenue would accrue to the Commonwealth from LPON licensing. A possible compromise approach would be to retain individual licensing in major centres, and introduce class licensing for other areas. This would be to the advantage of the people in towns where there are only a few prospective operators, but where these are unable to commence operation because of the existence of non-operational licences.

Comment is invited on the appropriateness of replacing individual LPON licensing with an LPON class licence, either Australia-wide or outside major centres; and the extent to which operation would be feasible under a 'no protection' regime.

## **5. Conclusion**

There is considerable evidence that some current LPON licensees are holding large numbers of licences with no apparent intention of using them to provide a service. It appears that these licensees may be preventing genuine aspirant LPON operators from providing community information services and other programming. There may



therefore be a case for the ACA to intervene to ensure access to LPON frequencies for genuine operators.

Three possible courses of action are: to impose a condition on LPON licences requiring licensees to commence operation; to increase LPON licence fees; or to class licence LPON services. Each of these options has different implications for existing licensees, prospective operators and government. In deciding on the most appropriate course of action, the ACA will seek to maximise the opportunities for prospective operators, while minimising the disruption to existing operators and containing the commitment of regulatory resources.

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## Media Release

SENATOR THE HON RICHARD ALSTON

*Minister for Communications, Information Technology and the Arts  
Deputy Leader of the Government in the Senate*

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### New measures for low power open narrowcasters

Holders of low power open narrowcasting licences (LPONs), currently not providing a radio service, have been put on notice by the Minister for Communications, Information Technology and the Arts, Senator Richard Alston.

The Minister today announced that he will direct the Australian Communications Authority (ACA) to address the issues related to the stockpiling of LPON licences as a matter of urgency.

'Many of the 1500-plus radiocommunications licences issued for LPON services are not operational,' Senator Alston said.

'Certain licensees appear to be stockpiling LPON licences-not providing narrowcasting radio services to the community and also preventing aspiring narrowcasters from obtaining licences to provide radio services in these regions.

'Such hoarding of licences restricts the choice and diversity of radio services that can be offered within each licence area'

The Government supports diversity of broadcasting services, encouraged and developed at the community level. LPON services, designed to provide niche programming to limited reception areas, are one way of achieving this diversity. They provide community access to broadcasting services such as racing, tourist information and other special interest programming, not necessarily catered for by the mainstream commercial radio services.

'The Government has been aware of problems with the LPON system and has asked the ACA to look at options, including the possibility of a "use it or lose it" condition on the LPON licence,' Senator Alston said.

This approach would set a deadline for starting a LPON service. If this timeframe is not achieved, the licensee could lose the licence. These licences could then be reallocated to other aspirant narrowcasters willing to offer a service.

'Imposing such a condition would not be new in broadcasting regulation-high and medium power narrowcasters, as well as commercial and community radio services already operate under a similar licence regime,' Senator Alston said.

'However, it is not the intention of the Government to impose onerous conditions on

the operators of LPON services. LPON licences would continue to be available on application to the ACA (subject to the availability of spectrum) and continue to have minimal regulation under the Broadcasting Act compared to other radio services.

Nevertheless, the Government considers all potential operators should have an equitable opportunity to apply for an LPON licence and, encouraged to introduce services which expand the range of radio services available to the community.

'The Government strongly advises licensees not currently providing a service to decide whether they wish to start an operating service, or face the possibility of losing their licences.'

**Media contact:**

Terry O'Connor, Minister's office 02 6277 7480

Website: <http://www.richardalston.dcita.gov.au>

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11 June 1999

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	<h2>Discussion Paper</h2>
Contact: <a href="mailto:gillian.kemplon@aca.gov.au">gillian.kemplon@aca.gov.au</a>	Updated: 7 September 1999
<a href="http://www.aca.gov.au/issues/discussion/hoarding.htm">www.aca.gov.au/issues/discussion/hoarding.htm</a>	

### Summary of comments on discussion paper:

## Hoarding of Licences for Low Power Open Narrowcasting Services

In July 1999, the ACA sought comments on possible regulatory action that might be taken against the alleged hoarding of radio licences for low power open narrowcasting (LPON) services. Options considered in the discussion paper included applying a 'use it or lose it' condition to LPON licences, increasing licence fees, or replacing individual LPON licences with an LPON class licence.

The closing date for comments was 20 August 1999.

Submissions were received from sixty parties. A list of these parties is provided at the end of this document.

Eight submissions, mostly from large licence holders, opposed any regulatory action by the ACA. These submissions generally argued that trading and leasing licences were legitimate entrepreneurial activities and that there was insufficient evidence that these practices were causing widespread problems.

Thirty two submissions supported the application of a 'use it or lose it' condition to LPON licences. The majority of these submissions were from small licence holders wishing to expand their services. A smaller number were from large licence holders, aspirant licence holders, government bodies and other interested parties.

Fifteen submissions in support of this option stated that they had direct experience and/or evidence of LPON licence hoarding. Among the claims in these submissions were that:

- licences were commonly being offered for prices ranging from \$4000 to \$15000;
- that leasing of licences often took place for amounts of \$2000 per year or more; and
- that some licences were being held for anti-competitive reasons and in many instances were not available for sale or lease (ie there was little possibility of these licences ever being used to provide a service).

Of those submissions that expressed a preference for the period for commencing a service under a 'use it or lose it' condition, four supported a three month period, eight a six month period and four a twelve month period. Six submissions argued that the ACA should have the discretion to extend the allowable period, while two believed that it should not. There was general support for the list of factors suggested by the ACA to be taken into account when considering whether a service was being provided, and for the operation of a 'use it or lose it' condition on a complaints basis.

Of those submissions that expressed a preference for the means of reallocating licences cancelled under a 'use it or lose it' condition, three supported 'first-come, first-served', one price-based allocation, and two some form of merit-based selection.

Four submissions supported increasing LPON licence fees. Four further submissions supported an increase in fees if this was linked to an increase in allowable transmitter power (see below).

One submission was in favour of replacing individual LPON licences with an LPON class licence.

One submission supported the ACA taking regulatory action in relation to licence hoarding, but did not express a preference for the nature of such action.

Six submissions, from small licence holders and prospective licensees, argued that an alternative means of reducing the hoarding of LPON licences would be to introduce ownership and control rules. A range of possible rules was suggested, including prohibiting the ownership of broadcasting and narrowcasting licences in the same market, restricting ownership of LPON licences to local residents, and restricting the number of LPON licences able to be held by an individual. Two submissions also expressed a wish to see

ownership and control restrictions applied to high power open narrowcasting services.

Twelve submissions, from small and large licence holders, argued that a major factor in the low use of LPON licences was that many licensees found operating a service with the current technical parameters to be unviable. An increase in allowable transmitter power was generally suggested as an effective means of encouraging the use of LPON licences. These submissions argued that a 'use-it-or-lose-it' condition with the current technical parameters may increase the number of services operating in the short run, but many of these services would fail, and so the long term situation would be little better. Two of these submissions believed that the best approach would be to completely replan LPON services with a higher power, and to give preference in the allocation of licences for these replanned services to current LPON licensees who are using their current licences.

Five submissions, including some that also argued for an increase in allowable transmitter power, argued that the use of LPON licences would be encouraged by a clearer, and possibly broader, definition of what program content constitutes narrowcasting as opposed to broadcasting. It was suggested that this could be accomplished through either an amendment to the Broadcasting Services Act 1992 or the development of new guidelines by the Australian Broadcasting Authority (ABA).

Four submissions expressed concern that many LPON services were breaching their technical and content restrictions, and that this was having a detrimental effect on mainstream broadcasting services.

Three submissions argued that the ABA should make frequencies in the main FM Broadcasting band (88 - 108 MHz) available for LPON services where spare channel capacity exists. The ABA made a submission indicating that it is unwilling to do this, as it would require diversion of engineering resources from current priorities and may compromise future planning decisions.

Three submissions argued that the ACA should not allow LPON services to be operated under 'third party authorisations' (ie that leasing of LPON licences should not be allowed).

One submission suggested that there should be a new category of very low power open narrowcasting services for educational purposes.

The ACA would like to thank all contributors to its public consultation process. A preferred approach on this issue is currently being developed, in consultation with the Minister for Communications, Information Technology and the Arts.

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## List of submissions

- 4KZ
- 4TAB
- 88FM
- The Academy of Radio
- Ashley Thorburn Engineers
- Australian Broadcasting Authority
- Australian Subscription Television and Radio Association
- Adrian Barwell
- Best-fm
- Big Country Radio Network
- Adam Boon
- Kevin Bradley
- Bulloo Shire Council
- Camplin Broadcasters Pty Limited
- Chief Minister, ACT
- Josephine Coppens
- Country Classics FM
- Cyril Jackson Senior Campus
- Department of Commerce and Trade, WA
- Etheridge Shire Council
- Rodney Fox
- Bill Gates
- The Federation of Australian Radio Broadcasters Limited
- Grant Broadcasters Pty Ltd

- Great Sandy Straits Tourism Association
- Hot FM
- Independent Regional Radio Broadcasters
- infoRadio Network
- Magicfm
- Mars Media Pty Ltd
- Martin Trading Pty Ltd
- Mia Mia-Kyneton Uniting Church
- Micro Broadcasting Systems Pty Ltd
- Minister for Communications, Science and Advanced Technology, NT
- Minister for Industry & Trade, SA
- Minister for Tourism, Sport and Racing, Qld
- Moredan Pty Ltd
- Pirate Broadcasters Pty Ltd
- Price Real Estate Pty Ltd
- Radio 2AAR
- Radio 4GG Gold Coast Pty Ltd.
- Radio Alpha
- Radio Energy FM
- Radio Sport 927AM
- really really BIG productions
- RM Media
- Shire of Corrigin
- Shire of Flinders
- Clyde Simpson
- South Australian TAB
- South West Broadcasting Pty Ltd
- Suncoast FM88
- TAB Queensland
- Tasradio (7TAB)
- TasTour Radio
- Travellers Information Radio
- Velvet Glove Holdings Pty Ltd
- Western Tourist Radio Pty Ltd
- Western Visitor Radio
- WOW FM