

16th April 2007



Dr Ian Holland
The Secretary
Senate Environment, Communications Information Technology and the Arts
Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600
E: ecita.sen@aph.gov.au

Dear Dr Holland

Inquiry into the provisions of the Broadcasting Legislation Amendment (Digital Radio) Bill 2007 and the Radio Licence Fees Amendment Bill 2007

The Community Broadcasting Association of Australia is the peak representative body for community broadcasting licensees in Australia.

The CBAA welcomes the inclusion of community broadcasting in the framework for digital radio in Australia and wishes to comment upon the Broadcasting Legislation Amendment (Digital Radio) Bill 2007, as tabled in the House of Representatives on 28 March 2007.

The CBAA notes that the Bill has been referred to your Senate Committee for inquiry and report by 30th April. The CBAA supports many aspects of the Bill as it stands but believes there are some areas of fundamental concern to community radio broadcasting licensees that need to be addressed by amendment to the Bill.

Through its detailed and active involvement over many years the CBAA is proud to have made many contributions to the development of digital radio policy and planning in Australia.

The CBAA, and the community broadcasting sector generally, is vitally interested to ensure the final form of this legislation will deliver the best outcomes for a diverse digital broadcast environment in Australia, including content generated from local communities.

The community radio sector has been an active participant in digital trials and in the development of innovative approaches to digital media. The sector is a breeding ground for the development of new and innovative content.

Over recent years it has been widely acknowledged that community generated content has provided some of the primary impetus for the uptake of new media forms, and the community broadcasting sector has over 30 years experience in the management and delivery of community based media.

The non-profit status and structure of community broadcasting operations ensures a focus on the development of new and engaging program material, and content that specifically services a broad range of communities of interest.

The Senate Committee would understand that such structures need to be carefully constructed to ensure on-going viability and optimal outcomes.

It is with this experience in mind that the CBAA makes the following points in regard to the current Bill and seeks the Committee's urgent engagement to formulate appropriate amendments, or, if that cannot be practically achieved before your reporting deadline of 30th April, that these concerns be properly heard, considered and amalgamated into the final form of the Bill by a short period for public hearings and/or other means you may have at your disposal.

The CBAA cannot stress too highly the importance of the fundamental framework being in good shape to the successful introduction of digital radio in Australia.

The Minister's Announcement, October 2005

In October 2005 the Minister for Communications, Information Technology and the Arts, Hon Senator Helen Coonan, announced the framework which sets out the basis for construction of the Bill now before the Parliament.

The Digital Radio technology envisaged by the Bill for introduction in the state capital cities is based on EU147 technology where a common 'multiplex' provides the means of transmission and is divided into 9 as the basic increment of digital capacity.

As it stands the Bill sets out a licensing regime that provides each of the existing metropolitan analog commercial radio licensees with the right to a designated fraction of digital multiplex capacities, effectively 1/9th of a multiplex. Commercial radio licensees have a right to a further 1/9th if that further capacity provides new services rather than replicating existing analog services.

Under the Minister's October 2005 announcement, existing metropolitan wide-coverage community radio broadcasting licensees were to have a guaranteed right to digital carriage on all available multiplexes - apart from a multiplex in

each capital city solely providing capacity for national radio broadcasting services.

The amount of capacity access guaranteed for community radio services was to be based on 1/9th increments in respect of each existing analog metropolitan wide coverage service, with a cap of 2/9th applied to each individual multiplex. Community radio licensees were to determine use of this capacity on a collective or joint basis.

Bill is at Variance with Minister's Announcement

As it stands the Bill sets out a licensing regime for 3 types of multiplex.

Category 1, which is brought into being by the entitlement of commercial radio broadcasting licensees for digital capacity. Community radio broadcasting licensees are guaranteed access up to 2/9th of each Category 1 multiplex.

Category 2, which is a multiplex for all comers - community, commercial or national radio broadcasting services. However Category 2 multiplexes are not considered foundation multiplexes and so there is no guaranteed entitlement for community radio access. Moreover, Category 2 multiplexes are only available by way of an auction allocation process.

Category 3, which is a dedicated multiplex for national radio broadcasting services only.

The difference from the original announcement is significant in that the Bill does not provide guaranteed capacity for community radio broadcasting services on all available multiplexes.

Moreover, access rights to digital capacity for the community broadcasting radio services can only arise where a multiplex is first brought into existence by virtue of commercial radio licensees exercising rights for digital capacity.

As the only path to digital for community radio broadcasting, this is not equitable or acceptable.

The Explanatory Memorandum at Page 35 tabulates the number of existing commercial licensees in each state capital. At Page 30 the Explanatory Memorandum does the mathematics on how many multiplexes will likely be needed for commercial broadcasting. Thereby the capacity available to community broadcasting, and any excess capacity, is estimated.

Our tabulation of that data is attached at Appendix 1 to this submission and clearly demonstrates the shortfall of capacity available for community radio broadcasting if community broadcasting services are limited by commercial radio broadcasting licensees exercising their minimum access rights.

The situation is eased somewhat if further multiplexes are licensed for additional commercial capacity as this gives rise to extra community capacity. But this is by no means certain.

There is a structural inequity in this arrangement that needs to be addressed.

Community radio broadcasting licensees should at least have access to digital capacity on the basis of 1/9th of a multiplex per existing analog licensee and be able to access that capacity on any available multiplex, or even initiate the implementation of such a multiplex if resources permit.

The discussion so far presumes that community radio broadcasting licensees would only ever exercise a right of access to a multiplex operated by another party. It is conceivable that a case could arise where community broadcasting radio licensees collectively have a legitimate requirement for digital capacity and / or can work with other commercial and / or national services to develop a viable proposal for licensing of a multiplex. The current legislation prevents this mechanism for the community sector.

A solution to this set of issues is that the Bill be amended to reflect the Minister's October 2005 announcement insofar as rights to capacity be available to community radio broadcasting licensees on all available multiplexes. That is, both Category 1 and Category 2 multiplexes.

Where there is excess capacity available priority should be given to providing 1/9th multiplex entitlements in respect of all existing analog community radio licensees in each market. All multiplexes should be considered foundation multiplexes until existing community radio entitlements are exhausted.

That is, community radio broadcasting licensees should be able to assert an access entitlement on any available multiplex.

Trading of the Access Obligation

The CBAA suggests the Bill should allow flexibility in how guaranteed access entitlements might be technically effected.

For example, even where there are two multiplexes available it might, by agreement, be technically or operationally efficient to carry all the community radio broadcasting services on one multiplex.

In effect, this would be to allow for trading of the access obligation.

Amendment to Replace Unworkable Management Structure

The Bill sets out a collaborative framework for management of access to multiplex capacity by way of a “digital representative company” in each city.

This is one of a number of possible structural approaches and imposing this extra layer of management obligation in such detail seems unduly prescriptive.

Previously the CBAA has expressed concern about the detail of these arrangements. The CBAA appreciates the difficulty in establishing a structure for community radio participation in digital radio where, at least in the short term, there is a high likelihood of insufficient capacity to enable each existing analog community radio licensee to have 1/9th of a multiplex.

As there is likely to be a shortfall in capacity available it follows there is a need for a structure or a process to determine decisions about the type and scope of services that will be provided.

In the initial stages of collaboration within the community broadcasting sector there is likely to be a range of options for the development, management and delivery of new digital content that services communities of interest.

In some cases collaboration may be at a capital city / state level but in other cases it may be at a national level. It is essential that the legislative framework for management and delivery of digital content is sufficiently flexible to maintain the most effective delivery to the communities of interest served by existing analog services.

At this point the CBAA has formed the view that licensing of digital community broadcasting services should be directly to existing analog community licensees at 1/9th capacity, or a fraction of 1/9th in the initial stages.

This would allow maximum flexibility for collaboration of content at both state and national levels and appropriate management and coordination structures to be developed.

The CBAA does not support the prescription of the “digital representative company” as outlined in the Bill. Instead it prefers a direct licensing model similar to that which applies for commercial broadcasting.

It is understood that the extra layer has been devised mainly to act as the means to arbitrate on decisions about how to manage with less capacity than is required to enable each existing analog licensee to have 1/9th of a multiplex in the digital environment.

Alternative spectrum options may mean that this capacity constraint is not necessarily a long term issue. Perhaps more importantly, licensees also need to

have surety that their digital service is not beholden to an extra layer of management agreement between services in a market.

The CBAA perspective is that it is most likely that collaboration to provide new and innovative services will arise through “communities of interest” that enable program and content exchange across markets. In the immediate term that will enable new and innovative content to be generated by the leveraging of collective resources.

Digital licences held directly as an adjunct by existing analog licensees (or a newly licensed digital only community broadcasting licensee) are most definitely preferred.

The extra layer of city based companies is judged to be onerous and unwieldy, needing newly created management entities.

In the absence of the extra layer of digital representative companies the existing management entities in the community broadcasting sector are well placed to take on the following roles.

Digital Community Broadcasting Licence

Held as an adjunct by existing analog community broadcasting licensees or, in the future, awarded by ACMA to new digital only community broadcasting licensees. That is, a similar arrangement as for commercial radio licensees.

Where there are more eligible licensees seeking 1/9th capacity than there is capacity available then decisions on allocation of 1/9th capacity or fractions thereof will be determined by processes developed by the industry body and documented in Guidelines and registered with the ACMA.

Community Broadcasting Representation, Multiplex Licence

Nominee/s as appointed by a process determined by the industry body and registered with ACMA.

Other Technologies

The Bill is clearly drafted with the presumption of Eureka 147 DAB/DMB technology. The reasons for the focus on EU147 at this time are understood and agreed. It seems likely that other technologies may also have relevance to the radio industry, including Digital Radio Mondiale (DRM) and Digital Video Broadcasting, Handheld (DVB-H).

Since we last made comments of this nature it seems the Bill may have been examined to ensure that licensing of near term future alternate technologies for radio purposes is not excluded or made inadvertently difficult.

Same coverage

The Bill provides the ability for community broadcasting licence areas to be taken to be the same as commercial licence areas and that it therefore seems logical to recognise that fact in Section 8AA(b).

The CBAA recommends amending Section 8AA(b) to read ... "the licence area must be the same or taken to be the same as that of commercial licensees."

Yours sincerely

A handwritten signature in black ink, appearing to read "Barry Melville". The signature is stylized and somewhat scribbled.

Barry Melville
GENERAL MANAGER

Att: Appendix 1 - Likely Use of Multiplex Capacity