

**SENATE STANDING COMMITTEE ON ENVIRONMENT,
COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS**

**Inquiry into the Broadcasting services Amendment (Media Ownership) Bill 2006
& related bills**

Dear Secretary

We submit the following for consideration by the committee as it considers amendments to the Broadcasting services Act. This submission is made on behalf of Radio KLFM a Community Radio Broadcaster located in Bendigo Victoria.

The submission has also been submitted to the House of representatives enquiry into Community Radio but we feel may also be relevant to the current Senate enquiry .

I have attached a copy of our submission (plus the three appendices) to this email and listed some of the main points below for your information.

Community Radio is ideally placed to provide local content as it must by definition be locally owned and operated.

One of the major problems that we see is that Community Radio is limited in its ability to properly serve its local community and provide local content by the current restrictions on advertising contained in the Broadcasting Services Act.

We thus submit that consideration be given to removing the current restrictions on Community Radio and Television broadcasting advertisements so that these services can better serve their local communities and help to provide diversity and local content.

Community Radio is not allowed to broadcast advertisements, but can broadcast up to 5 minutes of sponsorship announcements per hour. We believe that this not only restricts Community Radio's access to finance, but also restricts our ability to interact with and promote local business and our local community. Particular problems occur in the area of Outside Broadcasts and in the definition of advertising/sponsorship which have many grey areas.

As you can see from our submission different definitions of advertising are used (we believe unfairly) by the Australian Communications and Media Authority (ACMA) for Commercial and Community Radio. For Commercial Radio an announcement is only an advertisement if it is paid for, while for Community Radio any announcement that may be promoting anything other than a community event is likely an advertisement whether paid for or not. Volunteer announcers are thus often in the position of having to make what ACMA admits are complex legal decisions regarding what is or is not an advertisement. A further anomaly is that a sponsorship announcement has to

be paid for or it is an illegal advertisement. On air the only difference between an illegal advertisement and a legal sponsorship announcement is that the latter is "tagged" that is it contains words such as "Station Sponsor" otherwise it may be the same ad as is run on Commercial Radio.

The majority of complaints against Community Radio licencees are about advertising/sponsorship. Anecdotal evidence is that most of these complaints are bought by Commercial Radio competitors or by disgruntled Community radio members/volunteers.

We note that Commercial Radio in several submissions over time to ACMA has asked that the restrictions on Community Radio broadcasting advertisements/sponsorship be strictly enforced. no doubt for their commercial advantage. This seems to be against the principals of National Competition Policy. Further, at least in the country, Community Radio is run by very small organisations compared to the large Corporations that run networked Commercial Radio. It is hard to see that Community Radio poses much of a threat to the viability of Commercial Radio unless Commercial Radio is just not providing what the listeners want.

We suggest that complaints bought by disgruntled Community Radio personnel are not usually made in good faith as the complainant is generally just trying to cause trouble or to pressure the Community Broadcaster into a course of action. KLFM has been subject to threats from certain former personnel that if we do not follow certain courses of action they will just keep making complaints to ACMA until we meet their demands. Unfortunately there does not seem to be any mechanism for having such complaints deemed malicious. This seems to be unfair as a station like KLFM is staffed almost entirely by Volunteers who do not wish to use their time dealing with malicious complaints.

KLFM recently received a complaint from a listener alleging that we were broadcasting advertisements in our regular interview with the editor of a small local paper that is published in a country town in our area. We see this interview as current affairs/community interest, but looking at cases reported on the ACMA website it could be argued that we are breaching advertising rules as interpreted by ACMA. This means that we have to consider whether we continue to broadcast these interviews as a matter of public interest, or stop them for fear of being found in breach of the Act if the complainant puts his complaint to ACMA. Surely the principal of Community Radio is to be able promote its local community including commercial interests. The rules seem to be designed (or enforced) to marginalise Community Radio.

We see outside broadcasts as a good way for local radio to get out and be part of the community and to promote the community including local businesses. However the current restrictions on advertising/sponsorship make this very difficult, especially the promotion of local business. The ACMA Website lists a recent case where Swan Hill Community Radio were found to have breached the Act by conducting an Outside Broadcast during a local trader's Market Day by including interviews with local traders. We believe that

such promotions can give small local business that may not be able to afford advertising on a Commercial Radio an opportunity to be promoted to their local community.

We realise that some Community Broadcasters will not agree with our submission regarding advertising. This just shows the diversity in the sector. We believe that it also shows that some Community broadcasters believe that as long as advertising is restricted Government has some responsibility to fund the sector.

I trust that our submission will be of interest to the committee. Please do not hesitate to call us if you require further information. We would be happy to appear before the Committee if required to expand on our submission.

David Kippen
Treasurer Radio KLFM

Radio KLFM (3EON)
Submission to the House of Representatives Standing Committee on
Communications, Information Technology and the Arts Community
Broadcasting Inquiry. March 2006

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INTRODUCTION

Radio KLFM welcomes the opportunity to make a submission based on sixteen years of experience since our first test broadcast and eight years since we began full time broadcasting.

Whilst some of our views may differ from those of some other community broadcasters, this just serves to illustrate the diversity in the sector and that *one size does not best fit all*. Anecdotal feedback over the years leads us to conclude that many community broadcasters would support our views, however we have not at this stage canvassed them with others.

Briefly our submission is to use the words of Lynn Maddock, Acting Chair of ACMA, at the Broadcasting Conference 2005, to seek for an "...effective regulatory environment that supports a dynamic communications sector while also enabling the industry to meet the communications needs of the community."¹

Our submission will address Community Broadcasting from the position of community radio. We will briefly address the first two terms of reference, viz the scope and role of community broadcasting, and programming requirements. We will then comment on the third term of reference; technological opportunities. Finally, we will address in more detail the fourth term of reference opportunities and threats (as we see them) to achieving a diverse and robust network of community broadcasters. We present some recommendations that we believe will help to enhance the opportunities and to diminish the threats. Our major submission is for regulatory changes that Lyn Maddock (supra) has recognised as necessary in a changing environment.²

RADIO KLFM: A BRIEF HISTORY

A brief history of Radio KLFM follows in order to provide the committee with some background on where we are coming from with our submission.

Radio KLFM is locally owned and operated by a non-profit group, Radio KLFM Inc. ABN 38 437 961 510. Following some eight years of test transmissions and regular weekend broadcasts we began full time transmission in January 1998. We service a population in excess of 160,000 including the City of Greater Bendigo (Victoria's third largest centre with some 84,000 residents), Mt Alexander, Central Goldfields and Loddon Shires plus parts of Campaspe and Hepburn Shires.

Bendigo has four Community Radio Stations. Two, 3CCC (a general Community Station) and RPH, are licensed to transmit some 8kW from the National Transmission Site. KLFM is licensed to transmit 1 kW on 96.5 FM to the North and 100 W on 106.3 FM in the Castlemaine area. Central Victorian Gospel Radio operates on a Temporary Community Broadcasting Licence (TCBL) from the National Transmission Site. KLFM is a low powered station

¹ Maddock, L. ACMA Broadcasting Conference, 9/11/2006. Report of speech, p. 4, at www.acma.gov.au accessed February 2006.

² Ibid. p.5.

compared with other established stations in this area. However we find that we are able to achieve good coverage and to build a respectable audience with a limited resource, provided that we make the effort to have suitable equipment and to present quality programs (both in content and technically) of the type our listeners want.

Radio KLFM has been at the forefront of several developments in community radio. We were among the first community stations to present regular weekend broadcasting while still an Aspirant Group. We are the only community station that has broadcast an international cricket match (England v. Victoria) live when this match was played in Bendigo. When discussing planning for the Bendigo Radio Market with the then Australian Broadcasting Authority (ABA) engineers in the mid-1990's we were initially informed that no suitable frequency would be available. However we indicated that our research showed that we could provide a service using a lower powered transmitter from a site nearer to Bendigo than the National Transmitter Site at Mount Alexander. A suitable lower powered frequency was then found and we were able to develop another transmitter site firstly as an Aspirant Group and subsequently as a licensed station. This site covers Bendigo and to the North, but does not adequately cover Castlemaine. In negotiation with the ABA we were able to gain a translator (relay transmitter) license to serve the Castlemaine area. We believe that we were the first community radio station to be granted a translator licence. Many community radio stations now have translators.

In April 2000 we paid some \$6,000 to be included in the ACNielson survey of the Bendigo Radio Market. The ACNielson survey is the industry standard survey and generally does not include community broadcasters. We were told that we were the first community station to seek to be included. We understand that few if any, other, community stations have since participated in the ACNielson survey. We saw participation in the survey as means to help obtain credibility in the local market.

Radio KLFM is licensed to serve Senior Citizens thus our programs are primarily directed at the 50 - 55⁺ audience. ABS statistics show that some 33% of the Bendigo area population are aged over 55. Our success in reaching this target community was confirmed by the April 2000 ACNielson survey of the Bendigo Radio Market (the last publicly released survey) when we had only been on air full time for two years. This survey showed that for the older age groups Radio KLFM rated just behind 3BO-FM, Bendigo's long established commercial station playing older music, and well ahead of Star FM the other Bendigo commercial station that plays modern music.

We believe that one of our great strengths is that, except for our overnight service (generally midnight to 6am), our programs originate locally. Much of the programming on the local commercial and ABC stations is networked from other locations.

We are not afraid of competition, but submit that some regulations need to be changed to provide a more level playing field in our local radio market and to be consistent with National Competition Policy.

1. SCOPE AND ROLE OF COMMUNITY RADIO

Community Broadcasting services are defined by section 15 of the *Broadcasting Services Act* (BSA) as being broadcasting services that:

- are provided for community purposes and
- are not operated for profit or as part of a profit-making enterprise; and
- provide programs that:
 - (a) are able to be received by commonly available equipment and
 - (b) are made available free to the general public.

Community radio is largely seen as filling the gaps that are left unfilled by Commercial and ABC/SBS Radio and, in particular to provide a local face for radio which is often networked in from other areas on the commercial and ABC/SBS services. The principal behind community radio is that it is provided by a community to meet specific desires of that community for particular programs. The desire may be for a community to get a particular religious or political message spread, or it may be (as is the case for KLFM) to provide entertainment and information to a niche market in the wider community.

Radio KLFM found a niche market (Senior Citizens) that was not being adequately served by the other Bendigo district radio stations. This has enabled a community group with minimal resources to establish a successful radio station in a market dominated by established commercial stations that are part of a large Australia-wide network and the ABC.

Like most community broadcasters KLFM, operates on a very small budget compared with the commercial and ABC/SBS stations. We operate with a part time paid manager and volunteers. Our manager also produces and presents an independent local news service. In addition three or four volunteer presenters also sell sponsorship on a commission basis.

1.1 Local ownership and control

Community radio stations such as KLFM are locally owned and operated. By contrast most commercial radio stations are part of a network. The two Bendigo commercial stations are part of the Macquarie Radioworks network which holds some 85 commercial radio licenses across Regional Australia "...providing coverage to approximately 60% of Australia's population outside mainland capital cities."³ In fact Macquarie control approximately 40% of all regional commercial radio licenses in Australia.⁴

By contrast, community radio is locally owned and (except for some community stations in small communities) usually produces most of its programming locally as we do.

Commenting on local content, Commercial Radio Australia (formerly Federation of Australian Radio Broadcasters (FARB)) argues that "...the services of ALL [sic] broadcasters in the market need to be considered when deciding if listeners

³ MMG overview, www.mmg.com.au/au/mmg/about/overview.htm, accessed February 2006.

⁴ Commercial Radio Australia has 252 members (98% of all Commercial Radio stations). Allowing say 40 stations in the capital cities, Macquaries 85 stations = approximately 40% of the estimated 217 regional stations.

are being adequately serviced."⁵ "It is FARB's view that the BSA relieved commercial radio of the burden of being all things to all people and allowed it to be one component in a larger overall system of radio broadcasting ... the solution (to local content) must rest with all media, not just commercial radio."⁶ We agree that community radio is part of the overall radio service to a market and plays a vital part in meeting the overall market needs. The FARB submission goes on to recommend "Strict proactive enforcement by the ABA (now ACMA) of the regulations governing community broadcasting..."⁷ Presumably, this includes vigorously enforcing the regulations that restrict community radio from broadcasting advertisements and limit sponsorship. It seems that FARB/Commercial Radio Australia want to have it both ways. They want community radio to shoulder a share of the responsibility for helping to provide an overall diverse radio service (a quite legitimate expectation that Radio KLFM is happy to meet) while at the same time they want community radio restricted in its ability to access sponsorship/advertising revenue.

1.2 Community radio and local business

Community radio is often portrayed as providing a forum for expression of alternative programs and views to those available on commercial or ABC/SBS radio. This is true, but it is only part of the story. Our experience is that community radio stations such as KLFM also provide an important means for small local businesses to get their message out to the local community. We believe that this is generally the case across regional (and suburban) Australia. Most of our sponsors spend from \$100 to \$300 per month. Our largest sponsor spends approximately \$6,000 a year. We have recently been informed that the local Macquarie Radioworks owned commercial stations want their clients to spend at least \$10,000 to \$12,000 per year. Whilst some of our sponsors also advertise with the local commercial stations, many simply cannot afford to do so. Thus without community radio providing an alternative they are denied the opportunity to promote their business via radio and the community is denied access via radio to information about those businesses. Our sponsors promote their businesses with Radio KLFM because they find it works. They often comment to us about the benefits they gain. We believe that being a part of the local community involves promoting both community activities and local business.

1.3 Outside Broadcasts.

Outside broadcasts can be an important way for community radio to both connect with and promote its community of interest. Outside broadcasts take radio out into the community. They provide a means for members of the community to meet with presenters and give feedback about programs thus encouraging and enhancing community involvement. They can also provide a means to promote local business and activities, thus helping to build and strengthen the local community. This is an important consideration in regional and suburban areas where other electronic media may not have a significant

⁵ Federation of Australian Radio Broadcasters Limited (Now Commercial Radio Australia), Final Submission to the House Of Representatives Standing Committee On Communications, Transport and the Arts Inquiry into the adequacy of regional radio. 23 May 2001. P.2.

⁶ Ibid. p.6.

⁷ Ibid. Recommendation 7. p.20.

local face or involvement because they are part of a large network or in capital cities are provided by city wide services.

However the ability of community broadcasters to provide such services is constrained by the current BSA restrictions regarding broadcasting sponsorship or advertising and by the regulators enforcement of those regulations.

ACMA Investigation Report No. 1617 concerning an outside broadcast by Swan Hill Community Radio (3SFM) on 14/10/2005 illustrates the negative effect that these constraints can have on a community broadcaster's involvement in its local community. As part of the *Morning Show* 3SFM conducted an outside broadcast "...during the Swan Hill Market Day, a community event in which local businesses promoted their goods and services."⁸ The program included interviews with four local businesses. Because these interviews were held by ACMA to be advertisements (even though the licensee received no payment for them) 3SFM was held to be in breach of the BSA.

One outcome was that the licensee decided to restrict future outside broadcasts. It seems to us that ACMA's interpretation of advertisement (which is not defined in the BSA) and the current restrictions on community broadcasters broadcasting sponsorship/advertisements have acted to restrict a community broadcaster's ability to interact with and promote its community, including local business. Such restrictions act to marginalise community broadcasters by preventing them from fully participating in and serving their local community.

It may be argued that the interviews could have been included as permitted sponsorship announcements. Two difficulties arise here. Firstly, during live interviews as part of an outside broadcast it is difficult to always remember to label (or tag) each announcement as sponsorship. It may be difficult to decide on the spot if a particular comment is promoting a business (sponsorship/advertising) or is a general comment promoting the community and thus permitted to be broadcast as a community service announcement. The same difficulty can arise with community service announcements in general which community broadcasters should be expected to broadcast as part of their community participation.

The second difficulty is that because 3SFM did not receive any payment for the interviews they cannot be classed as sponsorship. The *ACMA Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* (included as Appendix C, state at page 3 "(t)he sponsor must have contributed in some way to the ongoing financial support of the station or the program." In other words a community broadcaster cannot promote a business in any way unless they are paid to do so and the promotion is labelled as a sponsorship announcement. A similar difficulty may arise when a community station plays a song by a local artist and advises listeners where they may obtain the track without being paid to do so, but as a service to the listeners. Surely part of the aim of community radio is to promote local artists whether paid to do so or not paid.

⁸ ACMA Investigation Report - The Morning Show broadcast by 3SFM on 14 October 2005, page 2 Accessed from www.acma.gov.au.

The ACMA rules run to in excess of eight pages and are quite complex. In contrast the ACMA Broadcasting Services (Commercial Radio Advertising) Standard 2000 is less than two pages long. The reality of the present regulation is that lay volunteers are being called on to make legal decisions regarding sponsorship/advertising that often turn on a fine legal definition. This does not appear to help facilitate community involvement in the fullest sense. In fact it may well mean that community broadcasters do not participate as fully as they could in their local community for fear of being in breach of the BSA. Surely this was not the intention of the Parliament when the BSA was framed.

1.3 Not for profit.

The BSA section 15 quoted above defines community radio as non-profit. In addition to the BSA provisions regarding *not for profit*, incorporated bodies such as Radio KLFM Inc. must be operated as not for profit under the relevant State/Territory Associations Incorporation Act. They must also have an appropriate non-profit clause in their constitution to meet the requirements of the Australian Tax Office (ATO). See appendix B for an example. Not for profit does not mean that a trading surplus may not arise, it simply means that the surplus cannot be distributed to members. Members can only be paid for goods or services actually provided and then only at market rates as per the rules in Appendix B.

Not for profit organisations (such as community radio stations) that rely on costly equipment for their operation have to provide reserves to replace/upgrade equipment from time to time. This of course requires an operating surplus that can be set aside to provide the necessary reserves.

2. CONTENT and PROGRAMMING

Radio KLFM is predominantly a music station. Given the demographic of our community our programs are mainly the music of yesteryear together with suitable modern music. We also present some specialist music programs (Blues, Irish, Various genres of Country etc) generally in evening time slots. During many of our programs listeners are invited to ring for requests thus helping to ensure that we play the music that they want to hear. Unlike a number of community radio stations we do not generally get involved in political or religious issues that others quite rightly do get involved in. This is not what our listeners are seeking. Thus we do not receive particular support from groups such as political or religious interests as some community stations quite rightly do when they meet the needs of these interest groups.

2.1 Diversity

The strength of community broadcasters is that they can provide different programs to the main stream media operators. Radio is increasingly being concentrated into large networks. For example the two commercial radio stations in Bendigo are part of the Macquarie Radioworks Network of some 85 stations. This network controls approximately 40% of all commercial radio stations in Regional Australia⁹. As with most radio networks much of their programming is networked in from elsewhere. Whilst this allows listeners in regional areas to enjoy many programs that may otherwise be unavailable to them, we find that many people want local radio.

We submit that a strong and financially independent Community Radio sector is essential to maintain diversity in the Australian Media. As *The Age* reported recently "... (T)he Productivity Commission found in 2000, most of the so-called new media was, and still is, controlled by the same companies that own newspapers, and television and radio stations."¹⁰ Press reports indicate that recent proposed changes to the Media Ownership Laws will likely lead to an increase in the concentration of ownership, especially in regional radio.¹¹

2.2 BSA Principles

We believe strongly in the principles enunciated in the BSA that community radio programs should be made freely available to the general public and should meet community needs. To present quality programs as desired by our target community is costly. Even though we mainly use volunteer presenters and have the services of some excellent volunteer technical people costs such as rent, utilities, copyright fees, program fees, equipment purchase and maintenance have to be met. If our program content is to meet the expectations of our community of interest we obviously need to be able to raise the required funds to do this.

2.3 Content and funding

The community that Radio KLFM serves is a demographic, rather than a cohesive interest group. They are spread across our listening area with the commonality that they like the programs we broadcast. We find that this limits our potential for fundraising activities. Because many older people are on fixed, or limited, incomes this again reduces the opportunity for us to raise funds directly from our listeners. Given that our community has a low population of Ethnic and Aboriginal persons we are not eligible for a number of CBF Grants that are directed at providing services to these groups. We thus find that sponsorship is the major source of funding to enable us to meet the requirement of the BSA. We have received no adverse feedback from our listeners regarding sponsorship.

Given that KLFM is primarily an entertainment station the potential for sponsorship to influence program content is minimised. Our sponsors are interested in how many listeners we have, which of course follows from our presenting programs that our listeners want to hear. We respect the fact that

⁹ See footnote 4.

¹⁰ Burton, Tom. Future shot? What next for the media? *The Age* 17/2/2006. Business p.2.

¹¹ Caparelli, Lou. Goldman Sachs JB Were media analyst quoted by Burton, Tom and Murray, Lisa. "Hard to know how Australia's media story will pan out." *The Age*. 27/2/06. Business page 3.

some community broadcasters are ideologically opposed to the concept of sponsorship. If a station is able to raise the required funds from its community of interest by means other than sponsorship this is to be commended. As previously stated, diversity in the community radio sector requires that different stations be able to raise funds in the ways that best suit them and their community.

If community radio cannot access the funds required to present quality relevant programs it risks being marginalised and losing relevance as the number of electronic media outlets expands.

3. TECHNOLOGICAL OPPORTUNITIES

We refer to a Media Release by Mr Paul Terdich, President of the Community Broadcasting Association on 31/1/2006 in which he welcomed this inquiry and the opportunity to inform the Parliament about "...our concerns for the (Community Broadcasting) sector". Like Mr Terdich we feel positive about the future and particularly about the future of our station. We have always tried to be technologically up to date within the constraints of a limited budget. We look forward to the introduction of Digital Radio and the scope that it will provide for us (and others) to present more diverse services for the overall benefit of listeners.

3.1 Funding technology

Obviously the introduction of new services will require considerable capital outlay. We welcome government funding initiatives through the Community Broadcasting Foundation (CBF) and have been successful in obtaining some grants for satellite equipment and for on-line access. However we are also acutely aware that the demand for government funding is larger than the resources needed. Although there has been some increase in Government funding over time the corresponding increase in the number of community broadcasters (currently some 440 fully licensed community radio stations plus a number of Aspirant Groups) means that the potential Government funding for each station is less. Without adequate resources community broadcasters will be marginalised. They will not be able to properly utilise technological opportunities as they arise to build robust and diverse services to meet the expectations of their communities of interest.

The alternatives for providing the resources to utilise the technological opportunities are either significantly increased government funding, philanthropic benefactors or the sector will have to provide the resources itself.

According to the Community Broadcasting Association of Australia (CBAA) Community Broadcasting Database, governments currently provide a little less than 10% of the aggregate funding for community radio stations (excluding remote Indigenous Services that were not surveyed). Of this 6.4% was from Community Broadcasting Foundation (CBF) grants - Commonwealth funding - and 2.7% from State Government funding. We understand that a portion of the State Government funding is actually sponsorship payments. Even if government funding is doubled, it will still only provide less than 20% of the overall funding required by community radio.

Whilst some funding may come from philanthropic sources, this is obviously limited as there are so many good causes seeking a limited pool of funds. Additionally, many philanthropic grants are only available to groups who are registered with the ATO as Gift Deductible (ie gifts to these groups are tax deductible for the donor). Generally community radio does not qualify for Gift Deductible status thus excluding it from many philanthropic grants. Similarly governments have increasing demands to fund diverse causes. Governments at all levels are thus increasingly forced to adopt a 'user pays' approach to more and more activities. We believe that a 'self funding' approach will encourage community broadcasters to be even more responsive to the requirements of

their community by rewarding those who are seen to be meeting the community's needs.

4. OPPORTUNITIES AND THREATS TO ACHIEVING A DIVERSE AND ROBUST NETWORK OF COMMUNITY BROADCASTERS

This is the major part of our submission.

4.1 Opportunities:

Technical advances such as Digital Radio and the extra channels it provides will give community radio (and other operators) the ability to present a greater diversity of programs. Commercial radio by definition is about making a profit for the shareholders. There is nothing wrong with this, in fact privately owned companies have a legal duty to consider their shareholder's interests. On the other hand, community radio, being non-profit, has the opportunity to present extra services even though some may not contribute to the 'bottom line'. We at Radio KLFM look forward to being able to bring a greater diversity of programs to our community of interest. Multi channelling (for instance) may allow us to present more localised versions of our programs to local sections of our community.

4.2 Threats:

We see two significant threats that may prevent community radio from taking full advantage of the opportunities to become more diverse and robust. These are lack of resources and community radio being marginalised and not seen as relevant by the wider public. We argue that both of these threats can be (at least partly) addressed by relaxing the current restrictions on community radio broadcasting sponsorship or advertisements thus allowing community broadcasters to better access funds from their community and to better serve their community.

4.3 Sponsorship

4.3.1 History of Sponsorship.

When Radio KLFM commenced test transmissions in the early 1990's there was a clear distinction between sponsorship and advertisements. A sponsorship announcement was limited to 40 words and could only mention the sponsor's business in general terms. No specials or the like could be mentioned.

4.3.2 Definition of sponsorship.

Clause 2(2)(b) of Schedule 2 to the BSA now provides that " a sponsorship announcement that acknowledges financial support by a person of the licensee (and promotes the sponsors business) is not taken to be the broadcasting of an advertisement." In practice this means that now, as long as the announcement acknowledges that the advertiser is a sponsor of the relevant community radio station, the announcement may be virtually any advertisement that can be broadcast on commercial radio as long as it is 'tagged'. Tagging means including words such as "our Sponsor XYZ Business," "Sponsoring KLFM XYZ Business" in the announcement.

The ABA (now ACMA) *Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* state "other than the tag, the Act does not restrict what information the announcement can

provide about the sponsor. Promotional language, product range details and price information can be broadcast."¹²

4.3.3 Difference between sponsorship and advertising

In a recent case¹³ ACMA ruled that in deciding if broadcasting a paid promotional announcement for a business by a community radio station was sponsorship or an advertisement the following matters are **not** relevant:

- whether financial support is provided by a sponsor because of the marketing efforts of the licensee
- whether the amount of financial support provided was 'calculated by reference to a time buy rate
- whether there is any relationship or community of interest between the sponsor and the licensee (other than an arrangement under which the sponsor provides financial support
- whether the sponsorship announcements are produced by volunteers or paid workers or
- whether the sponsorship announcement promotes the sponsor's business in a similar way to the way it is promoted on commercial broadcasting services

In summary, the complainant alleged that because the community radio station was selling sponsorship in much the same way as commercial radio stations sell advertising, the sponsorship announcements were similar to commercial radio advertisements and appeared to be professionally produced, that the community radio station was therefore broadcasting advertisements in breach of the BSA. ACMA rejected this position.

As noted above (and found in this case) the key to determining if an announcement is an advertisement is tagging. In the reports of complaint investigations listed on the ACMA website (see 4.3.8 below) where ACMA found that a community radio broadcaster had broadcast advertisements it was because the announcement was not tagged, usually inadvertently.

4.3.4 ACMA Definition of advertising

Advertisement is not defined in the BSA. ACMA have thus taken it on themselves to define advertising using different definitions for different purposes. Reporting an investigation into alleged broadcasting of advertisements by community radio 2GLA¹⁴ dated 10/9/2001 the then ABA seems to adopt a different definition of advertising for commercial radio than for community radio. The ABA inserted into code 3 of the Commercial radio Code of practice a definition of advertising that, "consideration must be received by the licensee or presenter or an associate for a promotion to be an advertisement". However for community radio the much wider common law definition of advertising is used which does not require consideration to be provided for an announcement to be classed as an advertisement¹⁵. Is this inconsistency necessary, or fair?

¹² ABA (now ACMA) Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television. Australian Broadcasting Authority, August 2003. Page 3

¹³ ACMA Investigation Report #1547, 4FRB Family Radio, Posted to www.acma.gov.au, February 2006.

¹⁴ Australian Broadcasting Authority Investigation Summary, File Number 2000/0564, Complaint Number 11991, Investigation number 874, licensee, Great Lakes FM Community Radio Ltd, 2GLA. Decision date 10/9/2001. Page 6.

¹⁵ Ibid footnote 12. Page 8. "Community licensees should be aware that the definition of 'advertisement' is very wide and includes unpaid advertisements".

The commercial radio definition of advertising was apparently introduced to overcome difficulties with the wide common law definition of advertising especially in relation to "...magazine type programs, interviews, reviews, opinion pieces¹⁶..." The same difficulties are evident for community broadcasters in these types of programs that are a core component of programming on many community broadcasters. Many reports of ACMA investigations into community broadcasters broadcasting advertisements highlight the difficulties that the present regulation impose on community broadcasters.

4.3.5 Unpaid Announcements: ACMA has ruled that financial support must be provided by the entity being promoted to the community broadcaster for an announcement to be considered sponsorship rather than an advertisement.¹⁷¹⁸ In a case involving 7RGY (Huon FM) it found that sponsorship announcements in a program that originated at Huon FM were legitimate. But, these same announcements were not relevant to the other two stations who took the program on relay, and were advertisements on the other two stations because they did not receive any financial support from the sponsors. (page 4). This seems to be a very technical ruling, especially as the ABA had previously ruled that announcements on commercial radio are only advertisements if consideration is received.

It seems that applying the regulator's definition of advertising may well preclude a community broadcaster from presenting an interview with a local author about a book that they may have written as this can be seen to be promoting the book (and usually is). The exception seems to be if the interview is tagged as a sponsorship announcement and is paid for. This seems to be an unreasonable restriction on community broadcasters presenting information to their community and also helping to promote local talent. We see promotion of local talent as a valid role for community radio.

4.3.6 Diversity in local media

Community radio has a duty to promote diversity and to represent its community. The interpretation of advertisement used by the regulator in respect to community radio can pose real problems for community broadcasters trying to meet these responsibilities. For example, we may conduct an interview with the *Bendigo Weekly*, a free local paper that is distributed in competition with *The Advertiser*, the established local six days a week paper produced by Rural Press, part of the Fairfax network. If that interview includes discussion of articles that appear in the *Weekly* (ie helps to promote diverse views) this seems to be a legitimate role for community radio. However this role can be restricted by technicalities in the current regulations regarding advertising. Are we broadcasting an advertisement or are we providing a community service? The distinction is not clear to lay persons such as most community radio volunteers. The current restrictions regarding sponsorship/advertising on community broadcasting services seem to hinder rather than assist the promotion of diversity in the local media.

¹⁶ Ibid footnote 14. Page 6.

¹⁷ Ibid. footnote 12. page 6.

¹⁸ Australian Broadcasting Authority Investigation Summary, Stations 7RGY (Huon FM), Tasman FM, Edge FM. File Number 2002/1110, Investigation number 1208, Broadcast date 24/8/2002. Pages 6.

4.3.7 Why Sponsorship and not Advertising?

The purpose of requiring sponsorship announcements to be tagged is apparently to indicate to listeners that the sponsor is providing financial support to the community broadcaster. We ask, Why is this considered necessary for community broadcasters but not for commercial broadcasters? The ACMA *Broadcasting Standard (Commercial Radio Advertising) Standard 2000* provides in part 3, paragraph 6 that "Advertisements broadcast by the licensee must be presented in such a way that a reasonable listener is able to distinguish them from other program material". The commercial radio standard also provides that only paid announcements can be classed as advertisements (part 2, paragraph 5(b)). An announcement may be regarded as an advertisement on community radio whether it is paid for or not paid for. In fact it will be an advertisement if not paid for, as only a paid announcement can be classed as sponsorship.¹⁹

It is usually obvious when a paid announcement is being run. SBS Television broadcast sponsorship announcements, but do not appear to be required to tag them. We submit that community radio listeners are just as well able to discern an advertisement as are commercial radio listeners. Therefore the need for tagging, and the difference between sponsorship and advertising, seems to be an unnecessary legal technicality that provides the principal source of complaints against community radio licensees for breaching the BSA. See 4.3.8 below.

We ask, Are there any real advantages in making a fine technical legal difference between sponsorship and advertising? Our experience is that for all intents and purposes the general listener (and sponsor/advertiser) does not see any difference between an advertisement broadcast on commercial radio and the same announcement broadcast on community radio with the words station sponsor (or similar) added.

From reading the investigation reports posted on the ACMA website one gains the impression that complaints against community radio stations for broadcasting advertisements most likely come from either commercial competitors or dissident former members/presenters looking to cause trouble. Is this good law? Does it achieve a worthwhile public purpose?

¹⁹ Ibid footnote 12, pages 5, 8 and 9.

4.3.8 Analysis of complaints listed on the ACMA website

During the year to 22nd February 2006 reports of 25 complaints against radio broadcasters were posted on the ACMA website (www.acma.gov.au). These can be divided as follows:

ABC Radio, 2 = 8% Commercial Radio, 5 = 20% Community Radio, 18 = 72%.

Both the ABC complaints involved program content. All the commercial radio complaints related to complaint handling by the stations. The community radio complaints can be divide as follows

Alleged breach	Number of cases	% of all of complaints % of 25	% of community radio complaints. % of 18
Broadcasting Advertisements	10	40	55.5
Sponsorship Limits	3	12	16.7
Conflict Resolution	2	8	11.0
Community Participation	1	4	5.6
Complaint Handling	1	4	5.6
Retaining Records	1	4	5.6

Complaints regarding enforcement of the current rules that restrict community radio from broadcasting advertisements and restrict sponsorship to five minutes per hour are the major sources of complaints investigated by ACMA.

It seems that a lot of ACMA time and resources are used to enforce a very technical legal difference between an advertisement and a sponsorship announcement. Could these scarce resources be better employed elsewhere?

4.3.9 Programs sourced from commercial radio

Occasions may arise where a community has an unmet demand for a program originating from a commercial radio broadcaster to be made accessible. Community radio's role is to help meet unmet community needs. That need could be met by a community broadcaster providing the program to help meet the needs of its community. This appears to be in line with section 15 of the BSA which defines community radio *inter alia* as "...provided for community purpose". However particular difficulties arise with the advertising content of such programs. Section E of the *ACMA Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* emphasises the difficulties that community broadcasters may have in editing "out all promotional or commercial references that are not permitted by the Act..." even those references for which the community broadcaster does not receive any payment. The complaint against community radio 2GLA considered at 2.3.4 above illustrates this point.

This appears to be yet another area where the BSA restrictions relating to advertising/sponsorship broadcast by community broadcasters acts against the public interest by making it more difficult for the broadcaster to properly serve its community

4.3.10 Reasons For Limiting Advertising on Community Radio

Some of the arguments for and against restricting advertising/sponsorship on community radio are listed below. Non of the reasons against seem to have any strong foundation of public interest.

(i) **Competition with commercial radio.** In most regional markets the commercial radio operator holds a monopoly (or in a few cases there may be a duopoly. A few larger regional cities may have more commercial stations). Major competition for commercial radio stations in capital cities where competition is most intense generally comes from other commercial stations. Commercial radio argues for restrictions to protect it from competition. This is not consistent with National Competition Policy (NCP).

The Australian Competition and Consumer Commission (ACCC) argues the need to remove legislative barriers to implementation of NCP.²⁰ We see restriction on community broadcasters broadcasting sponsorship/advertisements as just such a legislative barrier. Commercial radio may argue that competition from community radio for advertising revenue will hurt its bottom line. Speaking about the impact of NCP implementation, the Productivity Commission has found that "The costs experienced by some individuals or communities, while an important consideration, are not sufficient reason to forego reforms that are of substantial net benefit to the community as a whole."²¹ Quoting from its previous review of broadcasting legislation the Productivity Commission "...found that the regulatory regime imposed significant costs on the Australian community and, in some instances conflicted with other government policy aims (such as promoting diversity of media opinion)."²² We agree with the Productivity Commission and submit that allowing community broadcasters to compete on an even footing with commercial broadcasters for advertising revenue will be to the overall advantage of the community.

²⁰ Australian Competition and Consumer Commission, Submission to the Productivity Commission Review of National Competition Policy Arrangements. 13 July 2004. Page 3.

²¹ Productivity Commission, Review of National Competition Policy Reforms, Productivity Commission Inquiry Report No 33 February 2005. Page 85.

²² Ibid page 234.

(ii) Some community radio operators may be ideologically opposed. This is a valid argument, especially, say, for those community broadcasters who have a strong ethnic, religious or political support base and can thus draw funding from this base. We would suggest that a community broadcaster drawing financial support from such a base to promote that base's views is in reality receiving sponsorship/advertising revenue? Because such a broadcaster also likely makes unpaid announcements about its support base some of these announcements may well fall under the ACMA definition of advertising.

We suggest the following as a way to accommodate the diverse views of those community broadcasters who want to broadcast more sponsorship/advertising and those who do not, or who only wish to broadcast limited sponsorship (as at present). Currently, community broadcasters only pay a token licence fee. Those who wish to broadcast limited sponsorship announcements could continue under the existing arrangement. Community broadcasters (such as KLFM) who wish to see the restrictions on broadcasting sponsorship/advertising removed could pay a licence fee based on a percentage of advertising revenue, just as commercial broadcasters do. Community radio licensees already pay copyright licence fees as a percentage of revenue.

(iii) Community radio listeners do not want advertising. If a community broadcaster is properly serving its community that community will decide how much advertising they are prepared to accept to help fund the station, or they will arrange alternative sources of finance.

4.3.10 Reasons For Not Limiting Advertising on Community Radio

These have largely been argued above and are thus only summarised here.

- (i) National Competition Policy recommends the removal of legislative impediments to open competitive markets.
- (ii) Removal of the legal uncertainty that many community broadcasters find with the current regulations.
- (ii) Provide revenue for sector thus enabling it to be more vibrant, diverse and robust.
- (iii) Help to provide funds for training. Many commercial radio and ABC presenters have gained their first experience in community radio. With more networking in commercial radio and the ABC, on the job training opportunities with those operators are becoming less available. Community radio, being local, is in an ideal position to help meet this need if it can gain the required resources. Limited CBF funding is available, but more is needed to do the job properly.
- (iv) Help community radio to be seen as more relevant and to better serve the community by giving smaller business more opportunity to be promoted.
- (v) Encourage more community involvement with local stations being more visible through activities such as outside broadcasts. As shown above, the current sponsorship/advertising restriction are a real constraint on outside broadcasting.

5 RECOMMENDATIONS

Recommendation 1: That to properly serve their communities of interest community broadcasters need to be freed from at least some of the constraints currently imposed by the BSA on broadcasting sponsorship/advertising.

Recommendation 2: That the current rules regarding sponsorship/advertising on community radio be reviewed and amended to ensure that community radio stations have the capacity to earn the funds they require to continue providing the services that are expected of them. Adequate funding is required if community broadcasters are to play a significant part in the overall presentation of radio to the Australian population.

Recommendation 3: That community broadcasters be encouraged and enabled to enter agreements with government and other bodies (including sponsors/advertisers) to obtain the resources required to take proper advantage of all available technological opportunities.

Recommendation 4: That the current legislative provisions that prohibit community broadcasters broadcasting advertisement and restrict sponsorship announcements be repealed.

Recommendation 4: That the current legislative provisions that prohibit community broadcasters broadcasting advertisement and restrict sponsorship announcements be amended so that community broadcasters can choose whether to be restricted in the amount of sponsorship repealed.

Recommendation 5: That if recommendation four is implemented there be a graded set of licence fees for community broadcasters. Those who choose

As previously stated, diversity in the community radio sector requires that different stations be able to raise funds in the ways that best suit them and their community.

Appendix A

Source www.commercialradio.com.au, accessed March 2006

COMMERCIAL RADIO MEMBERS INCLUDING NETWORKS as 10 August 2005

INDEPENDENT OWNERS

New South Wales

- 2KY Broadcasters Pty Ltd – Parramatta – 2KY 1017
- Bathurst Broadcasters Pty Limited – Bathurst – 1503 2BS Gold and B-Rock FM 99.3 (2BXS)
- Macquarie Radio Network – Sydney – 2GB and 2CH
- Mid-West Radio Limited – Lithgow – 2LT and Kiss 95.3 (2ICE)

Win Corporation

- Win Radio Pty Ltd – Wollongong – i98 (2WIN)
- Campbelltown Radio Pty Ltd – Campbelltown – C91.3 (2MAC)

Queensland

- Coastal Broadcasters Pty Ltd – Innisfail – KZ Cairns to Ingham (4KZ) and Kool-FM 98.3 (4ZKZ)
- Hot Tomato Pty Ltd – Gold Coast – 102.9 FM (4HTB)
- Pinecam Pty Ltd – Charleville – 4VL and Triple C FM (4CCC)
- Rebel Radio Network Pty Ltd – Rebel FM (4RBL) and Breeze FM (4BRZ)
- QMI Broadcasters Nambour (Sunshine Coast) – Hot 91.1 (4MCY) and The Heat 96.1 FM (4NNN)

Victoria

- Pacific Star Network - Melbourne – 3MP and SEN 1116 (3AK)

Western Australia

- West Coast Radio Pty Ltd – Mandurah – 6MM 1116 AM and 97.3 Coast FM (6CST)
- Yamatji Media Aboriginal Corporation – Carnarvon – C FM 99.7 (6CAR) and Triple 6 LN
- Great Northern Broadcasters – Geraldton – 98 FM (6BAY) and 96.5 FM (6GGG)

Tasmania

- Tasradio Pty Ltd – Hobart – The New Magic 107

- Tasradio – Launceston – Total Sport Radio 1008 AM (7EX)
- XS West Pty Ltd – Queenstown – AUS FM 92.1 (7AUS) and West Coast 7XS

Northern Territory

- Alice Spring Commercial Broadcasters Pty Ltd – Alice Springs – 8HA and Sun FM (8SUN)

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NETWORKS

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ACE RADIO BROADCASTERS PTY LTD (12 stations)

PO Box 7515

St Kilda VIC 3004

Ph: (03) 9645 9877; Fx: (03) 9645 9866

Managing Director – Stephen Everett

Stations:

Colac – Mixx FM 106.3 (3CCS) and 3CS

Hamilton – 3HA 981 and Mixx FM (3HFM)

Horsham – 3WM and Mixx FM 101.3/98.5 (3WWM)

Sale (Gippsland and the Latrobe Valley) – 3TR FM and 1242 3GV

Swan Hill – 3SH and Mixx FM 107.7 (2SHI)

Warnambool – 3YB 882 and Coast FM (3YBF)

AMI RADIO PTY LIMITED (5 stations)

PO Box 1387

Griffith NSW 2680

Ph: (02) 6962 0980; Fx: (02) 6962 0992

Stations:

Bunbury – Easy Listening 621 (6EL)

Cairns – AM 846 (4EL)

Mackay – Easy Mix Ten-26 AM (4AA)

Maryborough (Central Victoria) – Easy Listening Ten-71 (3EL)

Mildura – Easy Listening 1467 (3ML)

AUSTereo LIMITED (12 stations)

Level 24, Tower 1, 500 Oxford Street

Bondi Junction NSW 2022

Ph: (02) 9367 1000; Fx: 9387 5207

Contact – Michael Anderson

Stations:

Adelaide – SA FM (5SSA) and Triple M (5MMM)

Brisbane – B105 FM (4BBB) and Triple M (4MMM)

Canberra – Mix 106.3 FM (1CBR)# and FM 104.7 (2ROC)#

Melbourne – Fox FM (3FOX) and Triple M (3MMM)

Newcastle – NX FM (2XXX)* and KO FM (2KKO)*

Perth – Mix 94.5 FM (6MIX) and 92.9 FM (6PPM)

Sydney – 2Day FM (2DAY) and Triple M (2MMM)

* joint venture between Austereo Group Ltd and RG Capital Radio Ltd

jointly owned by ARN and Austereo

AUSTRALIAN RADIO NETWORK PTY LIMITED (12 stations – TBC)

3 Byfield Street, North Ryde NSW 2113

Locked Bag 2110, North Ryde NSW 1670

Phone: 8899 9555 / 8899 9777; Fax: 8899 9566

Stations:

Adelaide – Mix 102.3 FM (5ADD) and 5DN 1323 AM (5DN)

Brisbane – 4KQ and 97.3 FM (4BFM)*

Canberra – Mix 106.3 FM (1CBR)# and FM 104.7 (2ROC)#

Katoomba – The Edge 96.1 (2ONE)

Melbourne – Gold 104.3 FM (3KKZ) and Mix 101.1 FM (3TTT)

Sydney – WS FM (2UUS) and Mix 106.5 (2WFM)

* jointly owned by ARN and DMG

jointly owned by ARN and Austereo

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CAPITAL RADIO (7 stations)

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PO Box 1206

MITCHELL, ACT 2911

52 Hoskins Street

Mitchell ACT 2911

Ph: (02) 6452 1521; Fx: (02) 6452 1006

Managing Director – Kevin Blyton

Stations:

Canberra – 1053 2CA and Talk Radio 1206 2CC

Cooma – Snow FM (2SKI) and 2XL

Goulburn – 1368 2GN and Eagle FM 93.5 (2SNO)

Perth – 6IX

DMG RADIO AUSTRALIA

49 Angas Street

Adelaide, SA 5000

Ph: (08) 8415-5240; Fx: (08) 8415-5262

Chief Executive – Paul Thompson

Stations:

Adelaide – 5AA and Nova 91.9 (5ADL)

Brisbane – 97.3 FM (4BFM)* and Nova 106.9 MHz (4BNE)

Central Coast – Star 1045 (2GOS)

Melbourne – Nova 100 (3MEL) and new licence on 91.5 MHz – currently testing

Perth – Nova 937 (6PER)

Sydney – Nova 969 (2SYD) and Vega 95.3 MHz (2PTV)

GRANT BROADCASTING PTY LTD (15 stations)

Level 2, 53 Walker Street

NORTH SYDNEY, NSW 2060

Ph: (02) 9958 7301; Fx: (02) 9958 6906

General Manager – Janet Cameron – phone: (02) 9929 2111

Stations:

Ballarat – 103.1 Power FM (3BBA) and 3BA FM (3RBA)

Bega – 2EC and Power FM (2EEE)

Darwin – Hot 100 FM Stereo (8HOT) and Mix 104.9 FM (8MIX)

Geelong – 93.9 Bay FM (3BAY) and FM 95.5 K-Rock (3CAT)
Hobart – 101.7 HO-FM (7HHO)
Murray Bridge – Power 98.7 FM (5EZY) and 5MU
Muswellbrook (Hunter Valley) – 98.1 2NM and Power FM 98.1 (2VLY)
Nowra – 2ST and 94.9 Power FM (2WSK)
Wollongong – Wave 96.5 FM (2UUL)
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MACQUARIE REGIONAL RADIOWORKS

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Executive Chairman – Tim Hughes

CEO – Rhys Holleran

Stations:

Albany – 6VA and Hot FM (6AAY)

Albury – 104.9 Star FM (2AAY), 1494 2AY and The River 105.7 FM (2BDR)

Bendigo – 3BO FM 93.5 (3BBO) and 91.9 Star FM (3BDG)

Bridgetown/Manjimup – 6BY and Hot FM (6BET)

Bunbury – Hot FM (6BUN) and 6TZ

Bundaberg – 93.1 Sea FM (4RGB)

Burnie – 7BU 558 AM + new s.39 licence

Cairns – Hot FM (4HOT) Sea FM (4RGC)

Charters Towers – 4GC and Hot FM (4CHT)

Coffs Harbour – 2CS FM 106.3 (2CFS) and 105.5 Star FM (2CSF)

Devonport – 7AD and Sea FM 107.7 (7DDD)

Dubbo – 93.5 Star FM (2DBO)

Emerald (Central Highlands) – 4HI and Hot FM (4HIT)

Esperance – 6SE and Hot FM (6SEA)

Gold Coast – 92.5 Gold FM (4GLD) and Sea FM 90.9 (4SEA)

Gosford – Sea FM 101.3 (2CFM) and 2GO FM 107.7 (2GGO)

Griffith – 2RG and 99.7 Star FM (2RGF)

Hobart – TTT 100.9 FM Stereo (7TTT)

Kalgoorlie – 6KG and Hot FM (6KAR)

Katanning – 6WB and Hot FM (6KAN)

Kingaroy – FM 89.1 (4KRY) and 10.71 AM (4SB)

Launceston – 7LA 1098 AM

Mackay – Hot FM (4MKY) and Sea FM 98.7 (4RGM)

Mareeba (Atherton Tablelands) – 4AM 558 and Hot FM (4AMM)

Maryborough – 103.5 Mix FM (4MB) and 101.9 Sea FM Fraser Coast (4CEE)

Merredin – 6MD and Hot FM (6MER)

Mildura – 99.5 Star FM (3MDA) and 3MA FM (3RMR)

Mount Gambier – 5SE and 96.1 Star FM (5SEF)

Mt Isa – 4LM and Hot FM (4MIC)

Newcastle – NX FM (2XXX)* and KO FM (2KKO)*

Nambour (Sunshine Coast) – Sea FM Sunshine Coast (4SEE) and 92.7 Mix FM (4SSS)

Narrogin – 6NA and Hot FM (6NAN)

Northam – 6AM and Hot FM (6NAM)

Orange – 105.9 Star FM (2GZF) and 105.1 2GZ FM (2OAG)

Port Macquarie – 2MC FM (2PQQ) and 102.3 & 105.1 Star FM (2ROX)

Rockhampton / Gladstone - Hot FM (4ROK), Sea FM 101.5/95.1 (4RGK)

Roma – 4ZR and Hot FM (4ROM)

Scottsdale – 7SD 540 AM + new s.39 licence

Shepparton – 95.3 3SR FM (3SRR) and Sun FM 96.9 (3SUN)

Toowoomba – C FM (4RGD) and 864 4GR AM (4GR)

Townsville – Hot FM (4RAM) 102.3 4TO FM (4TOO)

Wagga Wagga – 2WG AM 1152 and 93.1 Star FM (2WZD)

Warragul – 3GG AM 531 and 94.3 Sea FM (3SEA)

Young – 2LF and 93.9 Star FM (2LFF)

Note: Following stations to be divested:

Albury –1494 2AY. Cairns – 4CA FM (4CCA). Gladstone – 4CC
Rockhampton - 4RO 990 AM. Mackay - 4MK-FM 101.9 (4MMK)
Townsville - 100.7 Sea FM (4RGT) and Mix 106.3 FM (4RGR)

NORTH EAST BROADCASTERS LTD (4 stations)

General Manager – Col Dayman

Stations:

Deniliquin – 1521 QN and Classic Rock102.5 FM (Rich Rivers Radio Pty Limited)

Wangaratta – Solid Gold Hits 3NE and 102.1 Edge FM
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RADIO OUTBACK PTY LTD (4 stations)

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PO Box 1224

Deniliquin NSW 2710

Managing Director – Dave Robertson

Ph: (03) 5881 3641

Stations:

Broken Hill – 2BH and 106.9 Hill FM (2HIL)

Longreach –4LG and West FM (2MRG)

REDWAVE MEDIA LTD (6 stations) (now owned by West Australian Newspapers)

20 Oxford Close, Leederville WA 6007

PO Box 38, Leederville WA 6902

Ph: (08) 9381 1122; Fx: (08) 9381 1555

Stations:

Karratha – Spirit (6KA) and WA FM Karratha (6RED)

Port Hedland – WA FM Port Hedland (6HED) and Spirit (6NW)

Remote Western Australia – Red FM (6FMS) and Spirit (6SAT)

STAR BROADCASTING NETWORK (9 stations)

Cnr Pine Mount Road & Hill Street

Raymonds Hill QLD 4305

Ph: (07) 3813 1000; Fx: (07) 3812 3060

CEO: Graham McVean

Stations:

Bundaberg – Classic Gold 4BU and 93.9 Hitz FM

Ipswich – River 949 (4MIX)

Port Lincoln – 5CC and 89.9 Magic FM (5CCC)

Spencer Golf North Area – 5AU/5CS and Magic 105.9 (5AAU)

Renmark (Riverland) – 5RM and Magic 93.1 FM (5RIV)

SUPER NETWORK

PO Box 1269

Pymont NSW 2009

Ph:

Fax:

Chairman: Bill Caralis

Stations:

Armidale – 2AD 1134 AM and New England's FM 100.3 (2NEB)

Coffs Harbour – Easy Listening 639 AM (2HC)

Dubbo – 2DU and Zoo FM (2ZOO)

Grafton – FM 104.7 (2CLR) and 2GF 1206 AM

Gunnedah – Triple G 97.5 FM (2GGG) and 2MO 1080 AM

Gympie (Noosa) – 4GY

Inverell – 95.1 Gem FM (2GEM) and 1188 2NZ

Lismore – 900 2LM and Triple Z FM 100.9 (2ZZZ)

Moree – Now FM (2NOW) and 2VM 1530 AM

Mudgee – 93.1 Real FM (2GEE) and 2MG 1449

Murwillumbah – Radio 97 AM – 104.1 FM (2MW)

Newcastle – 2HD and New FM (2NEW)

Parkes – 1404 2PK (2PK) and ROK FM 95.5 (2ROK)

Orange – Easy Listening Ten-89 (2EL)

Port Macquarie –Five-31 (2PM)

Sydney – 2SM 1269

Tamworth – 2TM 1287 AM and FM 92.9 (2TTT)

Taree – Max FM 107.3 (2MVB) and 2RE AM 1557

Toowoomba – Stereo 4AK 1242 (4AK) and Radio 4WK

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SOUTHERN CROSS BROADCASTING (7 stations)

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43-49 Bank Street

South Melbourne VIC 3205

Ph: (03) 9243 2100; Fx: (03) 9690 0937

Stations:

Brisbane – 4BC and 4BH

Melbourne – 3AW and Magic 693 (3EE)

Perth – 882 6PR and 96.1 FM (6NOW)

Sydney – 2UE

Notes (not from Commercial Radio Australia:

1. The former AMI Network stations are now Easy Mix Radio owned by Elmie Investments Pty Ltd
2. Macquarie Radioworks holds some 85 licences = approximately 40% of all regional commercial radio licences.
3. In almost all cases where only two commercial radio licenses exist in any regional market (the majority of markets) they are both controlled by the same operator.
4. Most capital city commercial stations are high powered city wide stations.

Appendix B

These rules which prevent an Incorporated Association from distributing its assets on winding up, or profit or dividends to members are required by the *Association Incorporation Act*. They are also required by the Australian Tax Office to enable an Incorporated Association to be exempt from having to pay income tax. Rule 35 was taken from an ATO publication.

Extract from KLFM constitution

WINDING UP OR CANCELLATION

33. If upon the winding up or dissolution of the Association there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association but shall be given or transferred to some other institution(s) having objects similar to the objects of the Association and which is a fund, authority or institution approved by the commissioner of taxation as a fund, authority or institution, referred to in section 78 (1) (a) of the Income Tax Assessment Act 1936, as amended. Such institution(s) shall be determined by the Committee or in the absence of a Committee by the registrar.

FUNDS

35. (1) The funds of the Association shall be derived from sponsorship, fund raising activities, annual subscriptions, donations and such other sources as the committee determines.
- (2) The income and property of the Association shall be used and applied solely in promotion of its purposes and the exercise of its powers as set out herein and no proportion thereof shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the members of the Association provided that nothing herein contained shall prevent the payment in good faith of interest to any such members in respect of moneys advanced by them to the Association or otherwise owing by the Association to them or of remuneration to any officers or servants of the Association or to any member of the Association or other persons in return for any services actually rendered to the Association provided further that nothing herein contained shall be construed so as to prevent the payment or repayment to any members of out of pocket

expenses, money lent, reasonable and proper rent for premises demised or let to the Association or the provision of services to a member to which they would be entitled in accordance with the purposes if they were not a member.



Australian
Broadcasting
Authority

Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and community television

- [Background](#)
- [What promotional material is allowed?](#)
 - [Sponsorship announcements](#)
 - [Acknowledging the sponsor's financial support](#)
 - [Is there a particular form of words that has to be used in the 'tag'?](#)
 - [Are sponsorship announcements subject to time limits?](#)
 - [Do the sponsorship announcement rules apply to program material that is not produced by the station itself?](#)
 - [How do the sponsorship rules affect 'sale of airtime' arrangements?](#)
- ['Community information material' and 'community promotional material'](#)
- [Material that announces or promotes the licensee's service](#)
- [Unpaid advertisements that are an incidental or accidental accompaniment to the broadcast of other matter](#)
 - [What is the meaning of 'accidental or incidental accompaniment'?](#)
 - [Other advertising material is not permitted](#)
- [Broadcasting syndicated programs – what are the risks?](#)

Background

Under the *Broadcasting Services Act 1992* (the Act), all community broadcasting licensees are subject to a licence condition that prevents them from broadcasting advertisements.¹

However, community broadcasting licensees may broadcast a range of announcements and other promotional material that are not classified as advertising under the Act.

¹ Clause 9(1)(b) of Schedule 2 to the Act.

Understanding the difference between permitted promotional material and advertisements is important for community broadcasters. This is because failure to comply will breach a licence condition which carries with it the possibility of serious penalties, including licence suspension and cancellation.

The ABA has developed these guidelines to assist licensees in preparing announcements and other promotional material that comply with the Act.

The guidelines are *advisory only* and are designed to help licensees to improve current practices. They do not replace the requirements of the Act. If in doubt, licensees should seek independent legal advice on the application of the Act to particular situations.

To get a better understanding of their obligations, licensees will need to be familiar with Schedule 2 to the Act. This can be accessed via the ABA's website at <http://www.aba.gov.au>.

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What promotional material is allowed?

The following types of promotional material can be broadcast by community stations:

- sponsorship announcements;
- community information material;
- community promotional material;
- station promotions; and
- advertising material that is an accidental or incidental accompaniment to the broadcast of other matter, where there is no payment involved.²

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A. Sponsorship announcements

The key feature of a sponsorship announcement is its acknowledgement of financial support given by a sponsor to a community broadcasting licensee or a program broadcast on the service provided under the licence.

The announcement may also promote the activities, events, products, services or programs of the sponsor, provided that it contains an acknowledgement of financial support by the sponsor of the licensee or a program.³

Sponsorship announcements may run for up to 5 minutes in any hour for community radio licensees and 7 minutes in any hour for community television licensees.

² Clause 2(1) of Schedule 2 to the Act.

³ Clause 2(2)(b)(ii) of Schedule 2 to the Act.

Of course, sponsorship announcements must be genuine, so that the licensee must be able to demonstrate (if asked) that the sponsors featured in the announcements are actually financial supporters of the licensee or of a program.

For community television licensees, sponsorship announcements must be broadcast only during periods before programs commence, after programs end or during natural program breaks.

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Acknowledging the sponsor's financial support

A sponsorship announcement must include an acknowledgement of financial support given by a person to the licensee broadcasting the announcement or to a program broadcast on that licensee's service. This acknowledgement is commonly referred to as the 'tag'.

For example, an announcement concerning the products or services of sponsor 'XYZ Pty Ltd' is permitted, so long as it includes, starts with or is immediately followed by a tag, such as 'XYZ Pty Ltd, sponsor of 1FM'.

Other than the tag, the Act does not restrict what information the announcement can provide about the sponsor. Promotional language, product range details and price information can be broadcast.

The acknowledgment of financial support (or 'tag') must state that financial support is provided by the sponsor to the licensee who is broadcasting the sponsorship announcement or of a program broadcast on that licensee's service.

In other words, for a sponsorship announcement to properly acknowledge support, there must be a relationship between the supporter or 'sponsor' and the licensee or a program. For example, sponsorship of a program might have a tag such as: "The Chamber Music Program is sponsored by Paganini Violin Strings of Black Forest Road – string makers to the world's great quartets."

The 'sponsor' must have contributed in some way to the ongoing financial support of the station or a program. This could be by way of a donation of cash, or of goods or services that would otherwise be an expense for the licensee in operating the service.

Tags should also be:

- attached to each and every sponsorship announcement broadcast;
- able to be clearly heard and understood; and
- in the same language as the announcements.

Promotional material is not considered to be a sponsorship announcement if the tag:

- is left out;
- is inadequate; or

- names as a sponsor someone who is not in fact a sponsor of the licensee or the program in which it is broadcast.

Each sponsorship announcement must be individually tagged. It is not sufficient to broadcast one tag covering a block of announcements.

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Is there a particular form of words that has to be used in the ‘tag’?

Broadcasters are not restricted to a particular style of ‘tagging’. Examples of ways that tags can show the licensee has received financial support from another person are:

- 1FM is sponsored by XYZ; and
-XYZ, 1FM’s sponsor...

These examples indicate that the named licensee (1FM) has received financial support from the sponsor (XYZ).

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Are sponsorship announcements subject to time limits?

Yes. For community radio licensees - five (5) minutes of sponsorship announcements (including their tags and music) are permitted in each hour of broadcasting.⁴ For community television licensees – seven (7) minutes of sponsorship announcements (including their tags and music) are permitted in each hour of broadcasting. To ensure that the time limit is not exceeded, licensees should count the time spent broadcasting sponsorship announcements from the start of each hour.

There is no limit on the number of sponsorship announcements that may be broadcast in each hour, so long as their combined duration does not exceed the permitted minutes per hour of broadcasting.

The following are not included in the time limit for sponsorship announcements:⁵

- material that publicises programs to be broadcast by the licensee;
- material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive payment in cash or in kind;
- community information or community promotional material for the broadcast of which the licensee does not receive payment in cash or in kind;

⁴ Clause 9(3) of Schedule 2 to the Act.

⁵ Clause 9(5) of Schedule 2 to the Act.

- sponsorship announcements consisting of moving text that is overlaid on a test pattern.

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Do the sponsorship announcement rules apply to program material that is not produced by the station itself?

Yes. Any sponsorship announcement featured in this type of broadcast should be correctly tagged i.e. it must state that the ‘sponsor’ named in the announcement has given support to the licensee that is actually broadcasting the announcement or to the program to which the announcement refers.

If the ‘sponsor’ named has not provided financial support to the licensee re-transmitting the program or to the program itself, then the announcement does not count as a sponsorship announcement and will be in breach of the ban on advertisements.

Likewise, simply adding a ‘tag’ to an advertisement or promotional announcement in program material obtained from a commercial source will not ensure compliance with the Act. Unless the named sponsor has actually provided the relevant support to the licensee broadcasting the program or to the program itself, the announcement will be an advertisement, and in breach of the licence condition.

For example: Station 1FM takes a program on syndication. After each advertisement or promotional sponsorship announcement, it inserts the words: ‘Sponsors of 1FM’.

This will breach the prohibition on advertising, unless there really is a relationship of financial support between the sponsor and 1FM.

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How do the sponsorship rules affect ‘sale of airtime’ arrangements?

The term ‘sale of airtime’ describes a practice where a licensee accepts a fee from an individual or organisation in return for allowing that person/organisation to provide program material during an agreed timeslot. Community broadcasting licensees should approach the practice of selling airtime with caution in circumstances where the licensee has also permitted that person to sell sponsorship time.

The licensee has ultimate responsibility for ensuring that all material broadcast on its service, including material broadcast under sale of airtime agreements, does not breach the conditions of its licence, including the time limits per hour permitted for sponsorship announcements.

Any sponsors featured in the announcements must have given financial support to the licensee or to a program and the announcements must be tagged.

Community television licensees are subject to specific restrictions on the sale of airtime, which can be found in section 87A of the *Broadcasting Services Act 1992*.

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B. 'Community information material' and 'community promotional material'

Community announcements which fall into this category are allowed. This category usually covers events within the community or community services. Usually, no payment is made to the station for the broadcast of such announcements.

Community information material and community promotional material do not need tags. However, if the licensee receives a payment in cash or kind for broadcasting the material, it will count towards the hourly sponsorship time limit.⁶

Examples of material that falls into the community information category are:

- material about an appeal by a registered charity, or a non-profit or volunteer group;
- announcements that can be seen to meet the needs of the community served by the licensee. For instance, a licensee may inform listeners belonging to a particular language group about an upcoming cultural festival, or provide information about other events of a cultural, welfare, or educational nature;
- announcements about goods or services, where the money raised benefits the community or charitable purpose. Announcements about goods or services which charge commercial rates are unlikely to be community information/ promotional material and should be tagged.

In some cases where payment is received for the broadcast of community information or community promotional material, it may be difficult to distinguish this material from sponsorship material. It is recommended that where there is doubt, the material should be tagged. For example, care should be taken with community notice board items as, in addition to genuine community information, they may contain material which could be classified as a sponsorship announcement or as an advertisement.

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⁶ Clause 9(5)(c) of Schedule 2 to the Act.

C. Material that announces or promotes the licensee's service

This includes material that is likely to encourage the public to give support (financial or otherwise) to, or to make use of, the community broadcasting service. This could be by way of announcement or promotion of events, products or services associated with the station.

Examples of this might include on-air promotions of the station's call sign and frequency, an announcement concerning a promotional barbecue organised by the licensee, on-air competitions run by the station, the sale of station T-shirts, bumper stickers or the licensee's involvement in an outside broadcast.

This material does not require a tag. However, where payment in cash or kind is received, the material must be counted towards the hourly sponsorship time limit.

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D. Unpaid advertisements that are an incidental or accidental accompaniment to the broadcast of other matter

The Act permits community licensees to broadcast material that has an advertising character in circumstances where it:

- can be regarded as an 'accidental or incidental accompaniment' to a broadcast of other matter; **and**
- is not paid for (in cash or kind).

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What is the meaning of 'accidental or incidental accompaniment'?

Advertising material will only be an '**accidental** accompaniment' to the broadcast of other matter if it was broadcast by the licensee by mere chance or casually without being planned. If the broadcast of the advertising material is deliberate, or due to some arrangement or understanding, it would not be 'accidental'.

Advertising matter will be regarded as an '**incidental** accompaniment' to other material being broadcast where the program material includes a reference to a product, service, organisation etc., merely as a minor part of the broadcast. This may include a casual reference to a product or service where that type of casual reference is likely to occur in a discussion of some other thing.

For example, a single reference to a particular type of fertiliser in the broadcast of a gardening program may be permissible:

You need a high phosphate fertiliser otherwise the tree won't fruit. Brand X is one, but there are many others that are just as good and cheaper in price.

In the same way, a reference to a commercial organisation, such as a restaurant, may be allowed, where it occurs in passing, during a conversation about another matter, and without payment. For example:

I went to the Chinese Moon Festival last night and came across a food stall called *Noodle House* that served up some wonderful noodles. And then we watched some local dancers who had the most beautiful costumes...

Repeated references to a particular product or organisation may risk breaching the ban on broadcasting advertisements.

Interviews or discussions with ‘experts’ and industry representatives are common to broadcasting. If the program turns from a general discussion about a topic, and focuses on the promotion of a particular product, service or organisation, the licensee risks broadcasting material that may in fact be an advertisement. The risk is even greater if the licensee has some form of financial arrangement with the expert or representative being interviewed.

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Other advertising material is not permitted

Unless an advertisement falls into one of the types of promotional material explained in these guidelines, it may not be broadcast on a community broadcasting service.

Community licensees should be aware that the definition of ‘advertisement’ is very wide and includes unpaid advertisements.

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E. Broadcasting syndicated programs – what are the risks?

Programming not produced by the licensee but obtained from other sources is increasingly a feature of community radio and community television. Many stations carry syndicated community programming and the ABA is also aware of some stations that broadcast material obtained from commercial broadcasting services.

Licensees should be aware that they are responsible for all material that is broadcast under their licences.

Broadcasting syndicated or shared material carries a risk of breaching the Act. This risk is higher when re-transmitting commercial programs, because commercial programming typically contains paid spot commercials plus a range of other promotional and commercial content. These programs may require modification by the licensee who is re-transmitting the program to ensure that the content does not include advertisements.

Unless a community licensee is able to identify and edit out all promotional or commercial references that are not permitted by the Act, it is likely to breach the ban on advertising. Obviously, it is more difficult to edit material that is relayed live, such as a sporting event.

Some broadcasters mistakenly believe that if they do not receive payment for any advertisements that appear in a syndicated commercial feed, they are not in breach of the licence condition ban on advertisements. Any advertisement broadcast, paid or unpaid could potentially breach the licence condition.

Also, if programs are obtained from other community stations, a licensee should be aware that sponsorship announcements in that retransmitted material may breach the ban on advertising. Such announcements are only permitted where the sponsor is actually a financial supporter of the licensee that broadcasts the announcement or a sponsor of the program being re-transmitted.

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