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25th September, 2006

Secretary
Media Ownership Bills Inquiry
Australian Senate
Environment, Communications, Information Technology and the Arts
PO Box 6100
CANBERRA ACT 2600

Dear Sir/Madam

Please find attached a submission from Grant Broadcasters Pty Limited concerning the Broadcasting Services Amendment (Media Ownership) Bill 2006 and related Amendments.

There are 2 parts to our submission. The first part is our comments on the proposed legislation and is intended to be a public document.

There is a second part which is an Appendix to this submission that we request is kept CONFIDENTIAL. The appendix is intended to provide some specific examples to illustrate the points made in the submission. It explores various scenarios in a specific named market. We request that it is confidential as it discusses Grant Broadcasters' commercial strategy, and also speculates on named other parties strategies.

We would also request the opportunity to discuss this submission in person before the Committee.

Yours sincerely

Grant Cameron
Director

## Summary

Grant Broadcasters stated in its March submission on the media reform discussion paper that the changes mooted to the Broadcast Services Act would *"seriously limit media operators' commercial flexibility and impede the new investments required to maintain and enhance the diversity of services on offer".*

There should be no doubt that this is exactly what will happen with the proposed legislation. Of gravest concern is that the legislation is written to specifically hold back Regional Radio and punish any changes with a regulatory heavy hand not seen since the days of the Postmaster-General.

Grant Broadcasters currently does not feel restricted from being able to be involved in new media. We should remain free to make these business decisions without the massive disruption to our core business coming from regulatory interference.

The key issues addressed in this submission are:

1. Cost-benefit is missing
2. Regional Radio singled out
3. Light hand regulation replaced with heavy hand with no evidence of change in role
4. Legislation Over-reaches to include current permitted transactions
5. Consequences of regulation
6. Legislation fails to protect the "innocent by-stander"
7. The consumer should mandate localism via choice, not government via regulation
8. No provision for ACMA powers to be appealed

**Grant Broadcasters supports IRR submission that the changes to cross-media law are unwarranted.**

**If media law is required to change to support flexibility for other operators, then it is imperative that regional media are not damaged by additional regulations.**

- **Serious consideration should be given to retaining the status-quo regulatory environment for non-metropolitan area as the best way to avoid unintended consequences of new legislation.**
- **At the very least, a regulatory light hand should prevail that only addresses real areas of concern should there be cross-media mergers that actually decrease diversity or the ability of all media operators to provide an adequate and comprehensive service.**

## Background

Grant Broadcasters, a private family company, controls 21 commercial radio broadcast licences in 12 markets and its historical entities date back 60 years. Only 1 market is in a major metro, the remainder being regional and do include some of the largest regional and smaller capital cities.

Throughout this time, the stations have provided local services, without networking between stations, and have seen long term gain from maintaining these services.

Grant Broadcasters is also uniquely positioned to comment upon the impact of changes to cross media ownership as it owns the **only** radio station in Australia that is in competition with a jointly owned TV and Radio Station (the Wollongong market)

## Key points

### Cost-benefit is missing

Additional regulations to mandate localism come at a very high cost with respect to productivity of the affected organizations. The proposed bill simply does not provide sufficient benefits to any stakeholder to justify the disadvantages.

From Grant Broadcasters perspective, any benefits that we may have been afforded by the elements of the legislation designed to protect smaller players is lost through the myriad ways in which we may become subject to new regulations.

### Regional Radio singled out

The Explanatory Memorandum recognizes that local content comes from press, television and radio, but places no restrictions on press and light restrictions on TV, whilst going to the extraordinary extent of mandating staffing levels and physical resources for radio. There is no explanation for this attention to radio other than the observation that it is radio assets that are more likely to change hands.

Senator Coonan has repeatedly said that the reason for the changes in media ownership are so that "old" media can effectively compete with new media and provide innovation through economies of scale. By singling out regional radio, this legislation ensures that regional radio will not be able to compete against "new" media, and perhaps even "old" media, and remain stuck in the dark ages in terms of programs delivered to audiences.

Another example of this is that a new S40 Television licence is subject to ministerial veto "in the public interest" but not S40 Radio licences.

## Light hand regulation replaced with heavy hand with no evidence of change in role

Under the proposed legislation, any trigger event will impose an extraordinarily heavy handed approach to regulation. The current BSA states "*The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and Internet services according to the degree of influence that different types of broadcasting services, datacasting services and Internet services are able to exert in shaping community views in Australia.*" This approach is frequently quoted as a key determinant of the amount of regulation used in all reviews of Broadcasting policy.

However, there is no evidence provided that radio has increased its degree of influence over the last 15 years since these words were written. Indeed, the Explanatory Memorandum states that *"In radio, the audience for commercial stations during the breakfast program timeslot in the capital cities dropped from 2 million in 1990 to 1.8 million in 1999"* which implies a loss of influence.

In other words, there is no policy or legislative basis for the increase in controls to be placed over radio.

## Legislation Over-reaches to include currently permitted transactions

The current legislation captures many transactions that are currently permitted under current legislation and now brings these under a harsh new regime. Included in these transactions are the sale of 15% or more of one radio station to another radio operator, not part of a cross media merger, and inter-generational transition of businesses.

There is no justification for the freezing of the structure of these assets at a point in time and the application of regulatory burden because an operator wishes (or is forced – perhaps by being run over by a bus) to transfer part or all of their business.

## Consequences of Legislation

There are always two consequences of any legislation. Firstly, that there are loopholes that can be taken advantage of and secondly that there are unintended consequences.

By way of one example, it is clear from the Explanatory Memorandum that the reason for a trigger event including a transfer of licence is to capture regional radio licences divested as a result of a cross media merger (p. 44 points 4 -6). However, the legislation is not drafted to reflect this and therefore there is an unintended consequence that all transfers of licence will be captured by the

legislation. This can only be addressed by further regulation, which will only open up more loopholes or create further unintended consequences.

If the government feel that there is a strong need for the removal of the cross media regulations, then it should be done without additional, complicated regulation.

## Legislation fails to protect the "innocent by-stander"

Despite the increase in regulation, and the acknowledgement of a potential race to merge, there are no protections on offer to media operations that may remain unmerged. A merged entity will be difficult for the remaining 3 independent operators in a market to compete against and the innocent bystander radio operator will have the un-enviable choice of either lost profit or lost re-sale value, or both.

## The consumer should mandate localism via choice, not government via regulation

The Communications Laws Centre is quoted in the Explanatory Memorandum as voicing a concern that is taken into consideration as a "PROBLEM" in the EM that *"...regional communities see television and radio... as entertainment media rather than serious sources of news and current affairs"* and that regional TV and radio do not "*monitor the political sphere and expose corruption*". There should be no doubt that this is not a role defined in the Broadcast Services Act, nor should there be any allowance given to try to make it so under the guise of cross-media legislative changes.

## No provision for ACMA powers to be appealed

Under the legislation, Local Content Plans are to be written by the regional radio licensee and are to be submitted to the ACMA for approval. The ACMA may or may not approve these plans.

The LCPs are qualitative in their nature in that they are to detail not just the fulfilling of the quantitative obligations prescribed by the legislation but also "how" these are to be delivered. This legislation gives powers to the ACMA over the operational nature of a radio station, which is totally unacceptable.

Furthermore, there is no avenue for appeal for any decision made by the ACMA. This is also totally unacceptable due to the subjective nature of LCPs.