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Senate Standing Committee on Environment, Communications, Information Technology and the Arts
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Dear Dr Holland

Clarifying the CBAA's position in response to the submission by CRA

The Community Broadcasting Association of Australia (CBAA) notes a submission by Commercial Radio Australia (CRA) was lodged on 20 April 2007 with the Senate Environment, Communications Information Technology and the Arts Legislation Committee Inquiry.

On the last page of its submission CRA refers and makes comment upon the submission by this organisation, the CBAA.

The CBAA considers it has a duty to respond, particularly as the comments made by CRA seem to be borne of a misreading of the CBAA's position. The CBAA would not wish the Senate Committee to be misinformed as to the true situation and views of the community broadcasting sector.

Entitlement to Multiplex Capacity

CRA claims the CBAA has requested that additional spectrum be made available for digital community radio and that wide-coverage community radio licensees should be able to individually assert an entitlement to 1/9th of any multiplex.

The Minister's announcement of October 2005 already entitles access rights to 1/9th of each "available" multiplex for wide-coverage community radio broadcasters. Access is capped at 2/9^{ths} of each "available" multiplex for community broadcasters to use on a collective basis.

The question then becomes – how many available multiplexes will there be?

Estimates in the Explanatory Memorandum are predicated on the assumption that in the short term, there will be two multiplexes in each state capital city, except for Hobart where there will be one.

The CBAA's submission demonstrates that the limited number of multiplexes will result in a significant shortfall of "1/9th increments" available to the community sector should commercial radio licensees exercise their minimum access rights.

The CBAA accepts this is likely to be the short term situation but argues that over time, as further spectrum is available and/or further multiplex capacity is available, then the Bill should give effect to a framework that prioritises community broadcasting licensee entitlements until all eligible "1/9th increments" are exhausted.

This is an entirely fair and reasonable position.

The meaning of the word "available" is also relevant. The Minister's announcement set aside one multiplex in each state capital city market for the national broadcasters. That is accepted. Thus, all remaining multiplexes were to be "available".

The Bill proposes a licensing regime for three multiplex categories and introduces the concept of "foundation" and "non-foundation" multiplexes. Although the Bill would enshrine access by community radio services to capacity on foundation multiplexes (Category 1) it provides no such guaranteed access rights to those facilities that might be subsequently provided, i.e. the non-foundation or Category 2 multiplexes.

The CBAA position is simple. The Bill should remain true to the Minister's October 2005 announcement and provide entitlements for community broadcasters on each and every "available" multiplex until and unless the entitlements are exhausted in full.

Again, this is an entirely reasonable position.

Finally, the CBAA argues that, if they are able, nothing in the Bill should prevent eligible community broadcasting licensees from exercising their right to establish a multiplex on their own or in collaboration with others. In many cases, resource constraints may prevent licensees from availing themselves of this right but it should nevertheless be legally permissible. Otherwise, digital community radio services could only ever come into existence through entitlements arising from commercial radio licensees' rights for digital capacity.

Allocation of Capacity to Community Broadcasting

CRA's submission suggests that the Bill's existing allocation of multiplex access to community broadcasters on multiplexes used by commercial broadcasters is "excessive".

The CBAA makes no comment on the adequacy or otherwise of digital capacity provided for commercial radio services.

The fact is that on every "available" multiplex the Bill allocates up to 2/9th of total capacity for community broadcasting services on each multiplex shared by community and commercial radio broadcasters.

This hardly seems excessive for a sector of broadcasting that has a similar number of services operating in each capital city as does the commercial sector. Moreover the commercial radio sector is "entitled" to 2/9th of multiplex capacity per existing broadcaster compared to 1/9th per existing community broadcaster.

The CBAA points out that, as a "foundation" multiplex, the multiplex upon which community services will be carried is actually provided at no spectrum cost to the commercial or community sector, apart from ACMA administrative charges.

Community broadcasters will have to meet other multiplex access costs on a fair and reasonable basis. There is no requirement for free carriage or other financial burden on the commercial sector arising from the requirement to share multiplex capacity with legitimate community broadcasting services.

The community sector is naturally concerned to ensure costs are "affordable" and is currently consulting with the government regarding this issue. It has no bearing on the legislative requirement for sharing multiplex capacity.

Community Broadcasting Representative Company

The CBAA disagrees with CRA's assertion that the "community broadcasting representative company approach that is contained in the Bill is a far more workable approach than that which has been suggested by the CBAA."

The CBAA does not presume to make comment upon the adequacy or otherwise of internal structures pertaining to the commercial sector. The CBAA respectfully suggests, as it is the peak industry body for community broadcasting in Australia, it is well placed to make observations about what internal structures will be workable for the community broadcasting sector.

CRA seems to believe the CBAA is suggesting "commercial radio licensees had to become involved with any competing claims by individual community licensees".

This is a complete misreading of the situation and is most certainly not the CBAA's position.

Community broadcasting licensees and the CBAA are very concerned that the Bill is too prescriptive in its requirement that community broadcasters in each state capital city must establish a representative company to enable their participation with the commercial radio broadcasters in the joint venture company controlling the multiplex transmitter licence.

The CBAA suggests the Bill should require decisions about claims for capacity to be managed by an industry agreed process. By that the CBAA means the community broadcasting industry, certainly not the commercial radio industry.

Such a self-regulatory approach is not uncommon. The community broadcasting sector already has an industry agreed process that codifies management and content practice that is registered with ACMA. It is called the CBAA Code of Practice and has legal force. Industry agreed self-regulatory processes are all that is required to manage issues of shared access to limited digital capacity. In instances where such

CBAA-initiated arbitration processes fail, there should be a mechanism for the Australian Communications and Media Authority (ACMA) to intervene.

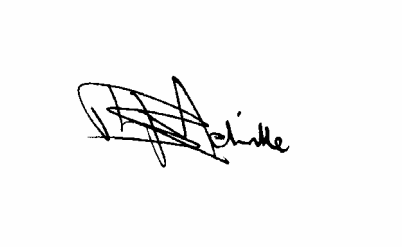
A similar model using a single and industry agreed process is all that is required for managing issues arising from digital capacity constraints.

Conclusion

I trust this response clarifies any confusion about community broadcasting and the sector's stance on digital radio that may arise from the Commercial Radio Australia submission.

The CBAA asks that the Committee take on board the CBAA's concerns, which the organisation considers to be fair and reasonable.

Yours sincerely



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