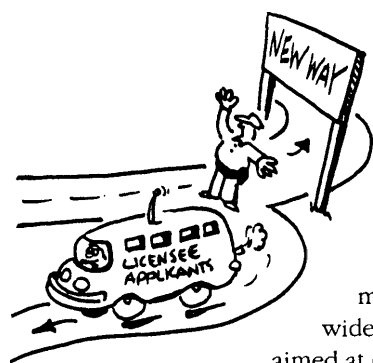




## LICENSING OF NEW FREE-TO-AIR BROADCASTING SERVICES

### A new approach to planning and allocation



#### General overview

The ABA is in the midst of a massive task — an Australia-wide public planning process aimed at deciding, area by area, the number, type and technical characteristics of new broadcasting services that will be available and progressively licensing these services.

The ABA's planning and allocation processes for licensing new commercial and community broadcasting services differ radically from the corresponding processes under the former Broadcasting Act. So now that some areas of Australia have been planned, and the allocation procedures finalised, it is timely to set out in some detail the way the new system works.

Apart from this general overview, there is a series of factsheets available from the ABA. Several of these factsheets summarise complex procedures which are described in much greater detail in separate information packages the ABA has produced. For example the factsheet entitled *Technical Planning Guidelines* provides a non technical explanation of what these guidelines - which came into force on 10 August 1995 - contain and how they apply. Likewise, the factsheets entitled *Price-based Allocation of Commercial Broadcasting Licences* and *Allocation of Community Broadcasting Licences* provide summary information which intending applicants will wish to augment by studying the more detailed information products covering these processes.

#### What's so different about the new planning and allocation processes?

Just about everything! Under the previous system, decisions about the timing and location of new broadcasting licences were made by the Minister with no legislative mechanisms for public input. When each such decision was made, detailed but indicative technical specifications applicable to each licence were made available to would-be applicants. The regulator's role was to assess, through a public inquiry process governed by regulations, the merits of licence applications received against a set of legislated criteria and decide whether or not it would grant a licence, and if so to whom. Once this decision had been made there was considerable scope and time for the successful applicant to negotiate changes to the draft technical specifications of the licence - a process involving co-ordinated consultation with other affected licensees - before the licence was finally granted.

The system which the *Broadcasting Services Act 1992* mandates is very different:

- the Minister has given an independent statutory authority, the ABA, responsibility for planning and allocating all parts of the radiofrequency spectrum traditionally used for free-to-air broadcasting services in this country, namely, the parts of the airwaves that are used for AM and FM radio and VHF and UHF television spectrum;
- the means by which the public participates in these processes has altered - decisions to plan new services are now made in public by the ABA. Planning is accompanied by wide public consultation. At the end of each planning process, the ABA prepares a licence area plan, ▶

For details about how to get further information, see p. 28



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or LAP, for the area which provides a comprehensive blueprint for development of all free-to-air broadcasting in that area;

- much of the detailed planning of transmission facilities will now be performed by successful licence applicants themselves, within guidelines set down by the ABA;
- the technical characteristics which the ABA's licence area plans prescribe, taken with the ABA's technical planning guidelines, provide a non-negotiable 'envelope' of technical parameters and procedures within which licensees must do their detailed planning;
- commercial licence allocation is by a price-based (rather than merit-based) process under which all commercial broadcasters take full responsibility for their own viability;
- community licence allocation remains merit-based with frequencies made available free-of-charge;
- regulation of content is now separate from regulation of the means of carriage. The content of broadcasting services is authorised by either a service licence or class licence under the Broadcasting Services Act (for example, a commercial television broadcasting licence, a community radio broadcasting licence or the open narrowcasting class licence). Separate authorisation may be required for the means of carriage. For example, if a broadcaster wishes to use a radiocommunications transmitter to reach its audience, it will need a separate transmitter licence under the *Radiocommunications Act 1992*. However, the successful applicant for a new commercial or community broadcasting licence that is shown as available in a licence area plan is automatically entitled to a transmitter licence. The transmitter licence is the primary means of enforcing the technical planning and operating constraints imposed on licensees.

## ***How are licensees and aspirants affected by these changes?***

To illustrate how these differences operate in practice, it is instructive to consider how someone who wants to provide a broadcasting service can negotiate the system and affect the outcomes.

Our hypothetical aspirant can position itself to benefit from the licence area planning process when public consultation occurs in its particular area of interest. It will know from the ABA's frequency allotment plan (which shows the number of channels available in particular areas of Australia), and the information the

ABA releases when it calls for submissions in the area, the number and type of channels available and unaccounted for in the area. It is at this point that the well prepared aspirant can lodge expressions of interest providing the ABA with evidence supporting the availability of a service of the kind it wishes to operate. This is also the time to submit to the ABA about the licence area, transmission power, transmitter siting and other key characteristics of the new service the aspirant wishes planned. And of course, suggestions for improving reception of existing services can be made at this point too.

The ABA releases draft licence area plans to allow those interested to react to its preliminary decisions and affect the final outcome. This is the aspirant's final call as the ABA will not be routinely varying licence area plans and cannot do so without a further wide consultative process.

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## **Key features of licence area plans (LAPs)**

- A LAP is a legal instrument setting out the number and characteristics, including the technical specifications, of all AM and FM radio, and VHF and UHF television services that are available within the licence areas covered by the LAP.
- LAPs specify the category (commercial, community, national and narrowcasting) of the new services to be made available and their licence area where applicable.
- The technical specifications set out in LAPs are not negotiable after finalisation however there is flexibility as to the siting of transmitters.

*More information is contained in the factsheet How to read a LAP.*

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Let's assume the aspirant's submissions have borne fruit; the ABA has prepared a LAP making available a new service in which the aspirant is interested. At this point the ABA may proceed to make licences available for allocation.

Where two (2) or more new commercial radio services are made available in a radio licence area containing a single commercial licensee, the existing commercial radio licensee is entitled to request a second licence under section 39 of the Act.

The factsheet *Commercial radio broadcasting licence allocation - Section 39* provides details of this entitlement and of the ABA's allocation procedures.

**The updated factsheet, *Planning for Broadcasting Services* outlines the three stages of the planning process: priorities planning, frequency allotment planning and licence area planning.**



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Similarly, where the ABA has made one or more new television services available in a licence area containing a single commercial television licensee, the existing commercial television licensee is entitled to request permission from the ABA to operate a second commercial television service without breaching the Act's 'one commercial television service to a market' limit.

In all other cases, making licences available for allocation involves advertising for applications for licences. There ends the similarity between commercial and community licence allocation procedures. The aspirant vying for a commercial broadcasting licence must compete in a price-based licence allocation process which will usually involve an auction.

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## Key features of price-based allocation system

- The ABA will advertise for applications for commercial radio and television licences which will be allocated under an auction-style price-based system unless there is only one application for the licence.
- Licences will be allocated to the highest bidder, subject to the requirements of the Act and the ABA's Determination which governs the system, following payment in full.
- Applicants for licences will be required to register with the ABA and pay an application fee which is currently \$10 000 (the default reserve price) for each licence applied for. Unless forfeited under the Determination, the application fee will be refunded to unsuccessful applicants.
- Higher reserves may be set for individual licences at the ABA's discretion.
- It will usually be economical for the ABA to advertise and auction a number of licences at one time.

*More information on the price-based system is contained in the factsheet, Price-based Allocation of Commercial Broadcasting Licences.*

The aspirant vying for a community licence must respond to the ABA's advertisement calling for applications after which the ABA will assess the comparative merits of all applications received.

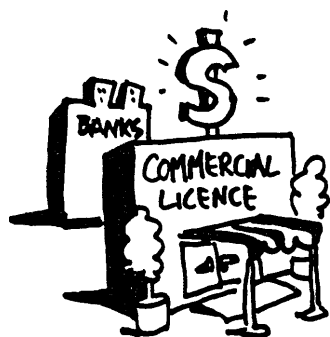
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## Key features of the community licence allocation process

- The allocation of community licences is subject to ABA discretion.
- Applicants for community licences must represent a community interest (the Minister may direct the ABA to give priority to a particular community interest or interests).
- The proposed service must be not-for-profit and be provided for community purposes.
- The ABA assesses applications and other information (planning information and any relevant submissions etc.) to consider among other things, the extent to which a proposed service meets community needs and the applicant's capacity to provide the service. Provision is made for community scrutiny of applications and input in the form of written submissions.
- The ABA's application form is comprehensive and the ABA has the flexibility to use other procedures, for example hearings, to assess the comparative merit of applicants.

*More information is contained in the factsheet, Allocation of Community Broadcasting Licences.*

Let's now assume the aspirant has been successful in one or other of the licence allocation processes and has been allocated a service licence. From the day of licence allocation the licensee has 12 months to commence a service (this is a licence condition; if requested the ABA can extend the period at its discretion). In the interim, a key challenge for the licensee will be the planning of its transmission facilities. This planning is the licensee's sole responsibility and must be carried out in accordance with the non-negotiable technical specifications of the service as determined in the LAP and in compliance with the technical planning guidelines ('the TPGs'). The TPGs came into effect on 10 August 1995. They set down procedures which must be followed and limits which must be observed in planning new transmission facilities or changes to existing facilities.



**Note: The planning and allocation processes described in this general overview and in the accompanying factsheets apply only to services and licences making use of the broadcasting services bands - those parts of the radiofrequency spectrum occupied by AM and FM radio services and VHF and UHF television services. Services using other means of delivery - cable, satellite or other parts of the radiofrequency spectrum, for example - are licensed differently and their availability is not subject to the ABA's public planning process. Intending service providers should contact the ABA for more information about the licensing of such services.**



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## Key features of the technical planning guidelines (TPGs)

- The TPGs include mandatory guidelines relating to start up procedure (including test transmissions); change of transmitter site procedure; minimum and maximum radiated power and maximum field strengths; interference to other services and emission standards.
- Transmitters licensed before 10 August 1995 are potentially subject to the TPGs. The TPGs will apply if any significant change is made to the technical specifications of the existing transmitter.
- The TPGs provide some flexibility for licensees wishing to use an alternative to the nominal site published in the LAP, placing the responsibility on the licensee to complete the necessary checks and calculations to determine that use of the alternative site will be satisfactory.
- Compliance with the TPGs is a licence condition on all transmitter licences issued under the Radiocommunications Act which are associated with commercial and community broadcasting service licences. Similar guidelines may be applied as special conditions to the transmitter licences of national broadcasting services and narrowcasting services using the broadcasting services bands.

*More information is contained in the factsheet Technical Planning Guidelines.*

The final piece in the jigsaw, once a licence area has been planned, a service licence allocated and the aspirant broadcaster has begun planning of its transmission facilities in accordance with the TPGs, is the issuing of a transmitter licence - the licence that authorises the carriage of the service. Transmitter licences are issued under the *Radiocommunications*

*Act 1992.* They did not exist for broadcasting services under previous legislation but they form an important component of the licensing regime because the service's technical specifications (as determined in the LAP) and compliance with the TPGs are both enforceable as automatic conditions of the transmitter licence.



## Key features of transmitter licences

- Commercial and community broadcasting licensees using the broadcasting services bands are entitled to a transmitter licence under the Radiocommunications Act which remains in force while the broadcasting service licence does so.
- Under two separate conditions of the transmitter licence, transmitters must be operated in accordance with the technical specifications determined in the relevant LAP and the TPGs must be complied with.
- Applicants must complete an approved form (Form ABA 12) to be issued a transmitter licence; the licensing process will differ depending on whether the nominal site (as specified in the LAP) or an alternative site is required.

*More information is contained in the factsheet, Transmitter licences for new commercial and community broadcasters.*

## Conclusion

Now that you have read this general overview, each of the component parts of the new system for the planning and allocation of new services and their licences has been introduced from the standpoint of the prospective licensee. The factsheets referred to throughout and which follow this general overview can now be read in context. ☐

### HOW TO OBTAIN FURTHER INFORMATION:

**For further information about licence allocation matters, please contact the ABA's Allocations and Renewals section in Sydney.**

**Ph (02) 334 7700**

**Fax: (02) 223 7799**

**PO Box Q500**

**Queen Victoria Building, NSW 2000.**

**For further information about planning matters, please contact the ABA's Services Planning section at the Canberra number below.**

**For further information about the technical planning guidelines and transmitters licensing matters, please contact the ABA's Planning Engineering section also in Canberra.**

**Ph (06) 256 2800 Fax: (06) 253 3277**

**PO Box 34**

**Belconnen, ACT 2616**