

Section 39 of the *Broadcasting Services Act 1992* provides for the allocation, in certain circumstances, of an additional commercial radio broadcasting licence to licensees in markets where there is currently only one commercial radio broadcasting licensee providing services.

# Section 39: the facts

## *Allocation of commercial radio broadcasting licences*

### **When can a s.39 licence be allocated?**

Section 39 provides that if:

(a) there is only one commercial radio broadcasting licensee providing services in a licence area;

(b) at least two other commercial radio broadcasting licences are available for allocation in the licence area; and

(c) the licensee requests the ABA, in writing, to allocate another commercial radio broadcasting licence that is a broadcasting services bands licence to the licensee:

the ABA must, subject to section 37 of the Act, allocate an additional licence to an eligible applicant.

Section 37 states that the ABA must not allocate a licence to an applicant if the applicant is not a company formed in Australia with a share capital or if the ABA decides that the applicant is not a suitable applicant in the terms set out in s.41(2) of the Act.

### **When can an eligible applicant apply for an additional licence under s.39?**

A licensee in a single licence market may apply for an additional licence only after the ABA has released a licence area plan (LAP) which indicates that at least two other commercial radio broadcasting licences are available for allocation in the licence area to which their licence relates (s.39(1)(b)).

As soon as a relevant LAP is released, the ABA will notify

the eligible licensee of their eligibility for a s.39 licence.

Applications received by the ABA before the release of the relevant LAP will not be accepted.

### **How can an eligible applicant apply for an additional licence under this section?**

The ABA has approved an application form (form ABA 26) which eligible licensees must complete and return to the ABA. A copy of this application form will be sent to licensees in all single markets before the release of LAPs.

### **What's the allocation fee?**

The ABA has determined a fee of \$10,000 for the allocation of s.39 licences. The fee has been calculated on the estimated costs incurred by the ABA in planning and allocating the additional licence (s.39(2)). Payment must be in the form of a bank cheque made payable to the Australian Broadcasting Authority and the allocation fee must be paid when the application form is lodged with the ABA.

If for any reason the ABA is unable to allocate the licence, the allocation fee will be refunded.

### **Which of the two commercial licences available in the licence area will be allocated to the existing licensee?**

Eligible licensees who lodge their application within 28

days of the date of the ABA's notification of their eligibility for a s.39 licence will be able to nominate which of the two available licences they wish to be allocated.

There is provision in the application form for nominating the preferred frequency. Applicants should refer to the relevant LAP for details of the licences, including technical specifications. Copies of relevant LAPs will be sent to all licensees and may also be obtained from the ABA.

### **What happens if an application is not made within the 28 day period?**

If an application is received after the 28 day period, the decision as to which of the two available licences will be allocated to the licensee under s.39 will be at the discretion of the ABA.

### **Some important features of licences allocated under s.39**

The conditions of all commercial radio broadcasting licences are set out in Parts 2 and 4 of Schedule 2 to the Act.

A further condition applies to licences allocated under s.39: *It is a condition of a licence allocated under this section that the licensee will continue to provide services under that licence and the licence to which it relates for the period of two years after the allocation of the licence (s.39(3)).*

This means that neither the licence allocated under s.39 nor the existing licence can be

transferred or surrendered for a period of two years from the date of allocation of the s.39 licence.

Under Schedule 2, Part 4 to the Act, it is a condition of the licence that the licensee will commence providing a commercial radio broadcasting service within one year of being allocated the licence, or within such longer period as is notified in writing by the ABA. The ABA is not obliged to grant an extension of time for the commencement of the service.

If a licensee is not providing a service under its existing licence, it is not eligible under s.39(1)(a) to be granted a second licence.

The applicant for the additional licence must be the same company as the licensee of the existing service.

The licence area of the additional and existing services will be identical.

Licences allocated under the Act are not presently subject to annual licence fees. However, the existing service licence issued under previous legislation continues to be subject to the payment of annual fees.

It is a condition of all commercial radio broadcasting licences that the articles of association of licensees must contain certain provisions as detailed in Schedule 2, Part 4 of the Act. These provisions relate to the holding or disposal of shares in the licensee company. They augment the provisions of the Act concerning control of commercial radio broadcasting licences. ☐