**The following is an edited text of a speech given by Mr Peter Webb, ABA Chairman, at the 1996 Annual Convention of the Federation of Australian Radio Broadcasters in Adelaide, 20 September 1996.**

# The Australian radio industry and the ABA

It was at last year's conference that the former Minister, the Hon. Michael Lee, announced he intended to introduce amendments to the *Broadcasting Services Act 1992* that would have the effect of immediately making incumbent operators in solus markets eligible for second licences.

He said at the time he had accepted the suggestion - advanced by the ABA in June of 1995 in its first report to the Minister on the operation of the Act - that the objects of the Act would, in fact, be promoted if licences in the nature of supplementary licences were to be introduced for the remaining solus markets.

In that report we said to the Minister that the suggestion would permit additional local services, offering complementary programming, but that action - if it was to be taken - should be taken early, in order to reduce anomalies caused by the planning process.

Legislation was duly passed by the parliament, Senator the Hon. Richard Alston describing it as 'long overdue', and, between early January and early March this year, the eligible operators were able to apply. All 54 did. To date the ABA has granted 42 of these licences, the balance of which are being worked through by the ABA and the industry.

One of the conditions under which these new licences are operating requires the licensees to commence service under the licence within 12 months of allocation, or such longer period as the ABA approves in writing.

Parliament clearly envisaged circumstances would arise that would make it genuinely difficult for licensees to get to air within a year, and made express provision for the granting of extensions.

In considering the granting of extensions, it is likely the ABA will be looking for evidence of genuine attempts by the licensee to commence a service within the 12 months, and of ongoing efforts to ensure any delay is as short as possible.

Of course, the necessary focus on the s.39 licence roll-out has meant that our LAP planning process has not been able to receive the undivided attention of our Planning Branch. We knew this would happen, of course, and have not been overly concerned about it.

The prospect of getting another fifty or so commercial radio stations on the air in remote and regional areas of Australia, in return for a few months concentrated work, far outweighed the lost opportunity to further progress the planning process. But that opportunity postponed, rather than lost, has been picked up again and we are once more developing momentum in planning LAPs.

Since I spoke to you last year, the ABA has produced radio LAPs for areas that include:

- Darwin
- Broken Hill
- Carnarvon, Karratha and Port Hedland
- Mandurah
- the Riverland
- the remainder of remote Western Australia (from Broome to Beagle Bay, the Cocos and Christmas Islands to Carnamah and Cue, and from Halls Creek to Fitzroy Crossing)
- Charleville, Longreach and Roma
- Northam
- Geraldton
- Alice Springs and Mt Isa.

Ten commercial radio licences have been made available in those LAPs, but they have all been s.39 licences.

## Quick and clean

In an effort to speed up the finalisation of work, our Planning Branch broke away from the monolithic approach to LAP planning and developed what we call internally the 'quick and clean' approach.

Some of the LAPs I mentioned were produced using this approach, but we have also produced other LAPs like those for Ceduna, the Torres Strait and Bordertown, Woomera, Kangaroo and Lord Howe Islands, and Nhulunbuy where the ABA's decisions have been focussed on the community and open narrowcast radio sectors.

And we've also produced some television LAPs as well.

Just for the record, on the community and narrowcast radio front we have, since last year's conference, planned 24 new community radio licences as well as 70 open narrowcast radio licences.

Of course, it's one thing to plan, another to allocate. Our price-based allocation scheme for commercial licences was implemented earlier this year, with the allocation of a licence in Mildura.

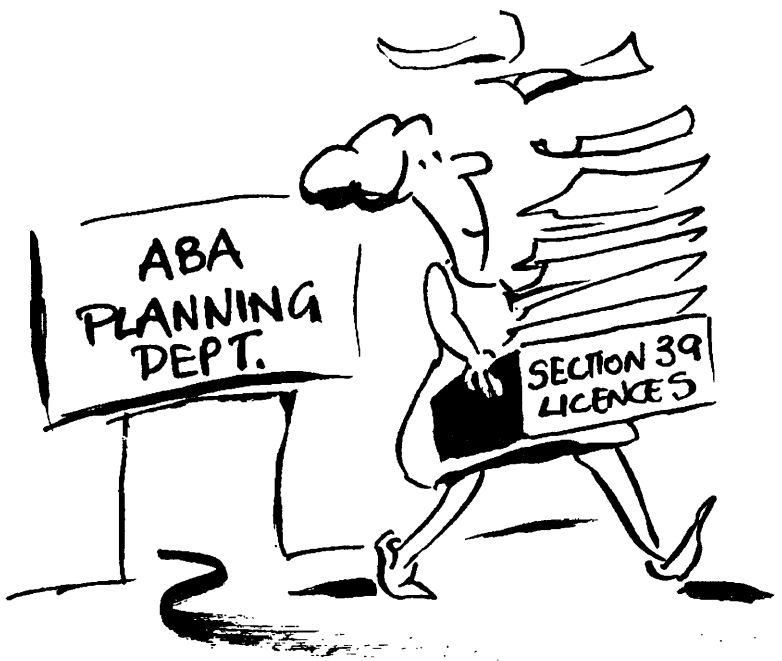
Our system for allocating community licences has also been commissioned, the first licence being allocated last week to a group, also in Mildura, catering for the print-handicapped community.

And for long-suffering open narrowcasters, we plan to finalise, with the assistance of the office of legislative drafting, the price-based determination

pursuant to which we will allocate narrowcast licences.

So the year to come is intended to be as productive as we can make it on both the planning and allocation fronts.

You will recall that last year the ABA had just produced its first two LAPs for Mildura and Griffith and I then indicated that, in order to overcome the discrepancy between the expectation of a rapid roll-out of new licences and the legalism of the Act, the ABA had been looking to 'smarter strategies' for an increase in LAP output.




I mentioned that the approach finally adopted in the first LAPs was designed to limit the process to planning for *presently manifest demand* in other words, for the demand for which there is good evidence at the time of planning.

Such an approach ran counter, of course, to the earlier expectation that the ABA would be entitled to rely on its allocation processes to test the demand for services of a type, and would be free to offer all vacant channels in a market for allocation in order to do so.

The rejection of that expectation, and the adoption of the approach whereby the scope for planning is measured against demand, was due to the finally prevailing legal view that the ABA needed to have some reason for believing that planning a new service would promote the objects of the Act. The promotion of the objects of the Act is a job that must be done on a case-by-case basis, balancing considerations that are from time to time in competition with each other.

In a situation where the provision of either high quality programming or local coverage is vying with the efficiency of operations or competitive developments, something has to give.

Our job is to assess how best to balance competing objects so as to achieve the best result in the public interest.

I made a number of remarks in this vein last year, and I outlined the roles that entrepreneurs, whether of the incumbent or predatory variety, needed to play in our open submission process if they wished their various cases to be taken seriously by the ABA.

## Forward planning

I don't intend to recapitulate on those matters but I do want to draw to your attention that finalisation of group one LAPs, which should be achieved before the end of the year, means that well over twenty per cent - perhaps as much as forty per cent - of the whole planning process will have been finalised with it.

Groups two and three are confined to radio only, except for the Perth television LAP in group two, but as Perth already has three television services, the planning issues there revolve around relatively uncontroversial issues such as reception standards and interference.

We are quite advanced with our work on groups two and three, and we plan to have the bulk of them finalised before 1997 is over.

We haven't finally determined how we will approach consultation for the metropolitans, but I can tell you that we will make a start this year.

The initial focus will be on technical constraints affecting the market where spectrum supply is most obviously outweighed by demand - Sydney.

In other words we are going to test just how many services might really be available in the Sydney market, if spectrum availability is tweaked hard enough.

There is also a third licence issue I should mention in connection with planning groups two and three. The December 1995 amendment to s.39 removed the obligation from the ABA to show an additional, i.e. a third, commercial radio service as available in areas where it was allocating a s.39 licence. However, the amendment was not intended to prevent the ABA from planning additional, competing services in areas during the LAP process.

Though many s.39 markets in the remote areas of group one planning have proved far too small to attract serious entrepreneurial interest from potential competitors, the markets in groups two and three contain several considerably larger centres where there has been, or is likely to be, serious interest by competitors in entering the market.

For example, the ABA has already proposed third services in two of the markets in the Central NSW draft LAP. These markets are Dubbo and Orange.

As the provision of additional commercial services is a matter solely for the marketplace, the ABA's preferred approach to promoting the objects of the Act, including the economic and efficient use of spectrum, remains an incremental introduction of new services, having particular regard to demand by potential service providers in those markets.

## Changes to LAPs

Finally, on the planning front, I want to draw attention to a widespread misunderstanding of new planning arrangements.

Licence area plans specify the number and technical characteristics of existing and proposed new services in an area.

Under the planning regime there is little opportunity to propose significant changes to those technical specifications after the LAP has been determined.

However, there have been instances recently where successful applicants for a licence have approached the ABA, after the LAP has been determined, with proposals for wholesale revision of technical specifications.

The Technical Planning Guidelines allow some limited flexibility with regard to transmitter site, but changes to, say, frequency, maximum or minimum power, or radiation pattern, are not possible without varying the LAP.

This would mean revising the planning process for the area, including wide public consultation on the changes.

The point I wish to emphasise is that the technical specifications in the LAP are final specifications they should not be thought of as an outline or an ambit claim which can be the subject of negotiations after the LAP is finalised.

## Other matters

I want to pass on now to quickly deal with a number of matters that deserve a mention before this audience.

### Digital radio

As you know, the ABA and FARB agreed some time ago that the ABA would constitute a digital radio broadcasting (DRB) task force, chaired by Mr Colin Knowles, ABA General Manager, Planning and Coporate Services Division to which would report a working party on technical planning issues.

This working party was led by Mr Henk Prins, whose involvement was sponsored and underwritten by FARB.

Under Mr Prins' leadership the working party has done invaluable work, which has cleared away the misinformation about how much capacity is necessary, and has discovered that we can work with the existing spectrum users to achieve considerable development of DRB before extra clearance of non-broadcasting services would need to be contemplated.

We intend to publish the report of the working party because it will have enduring value both as background and as a foundation for future planning work.

Mr Prins is to be commended for his leadership in this area.

At this conference last year the former Minister announced the establishment of a Digital Radio Advisory Council (DRAC), to be chaired by Victoria Rubensohn.

DRAC is likely to receive the ABA's task force report by the end of October, and that task force report is likely to suggest that comprehensive DRB services should be able to be established within about 26 MHz of spectrum initially, and that the costs per service of establishment of DRB are modest compared with those for FM.

The question of access to digital by existing broadcasters is one in which I know you are all interested, particularly those of you in large markets.

This particular issue, along with many others, is being grappled with by regulators and governments around the world.

Most solutions ventured to date have come down in favour of allowing existing broadcasters first entry advantage.

There is logical support for this point of view. The involvement of existing operators will ensure ready availability of programming - initially simulcast perhaps - that will give consumers a reason to buy DRB receivers. Digital radio broadcasting will not be a viable proposition unless receivers are present in the market in large numbers, including in motor vehicles, at an affordable price.

### On-line services

In the on-line services area, the convergence of technologies means that traditional delivery mechanisms are being challenged.

There is an increasing trend for existing content industries to use on-line services to deliver their products. A number of existing radio and television broadcasters are moving to provide on-line information and entertainment services.

Radio broadcasts are already being simulcast on-line, I notice in this week's *Australian* a report of litigation that has begun between the US National Basketball Association (NBA) and America Online over the issue whether or not AOL's continuous reporting of NBA scores during matches is a broadcast of those games.

The ABA will, as no doubt FARB will, continue to monitor developments like this to see what action, if any, might be warranted.

### Temporary breaches

Lastly, I want to say that the operation of that part of the Act which empowers the ABA to give prior approval of temporary and incidental breaches of the ownership and control rules has worked remarkably well, with very significant, though largely unremarked, results.

In major markets, for example, the transition from the old 'one station per market' rule to the new 'two stations per market' rule, has been achieved seamlessly as a result of co-operation between operators and the ABA.

Equally importantly, this co-operation has also allowed major players to 'trade up' their licences to better quality licences. It has solved the divestiture quandary. No longer is it necessary to sell the old before acquiring the new - you can now acquire the new before selling the old.

The networks of dual metropolitan stations that have been assembled during the past four years owe their existence, at least in part, to the 'prior approval' scheme we administer.

And the existence of much larger, more powerful and potentially much more profitable radio companies on the Australian scene, offering audiences more programming diversity than was the case under the old rule, provides an exception to the supposedly natural law of economics that greater competition leads to better consumer outcomes.

Counter-intuitively, however, less competition in radio spawns greater entertainment diversity for audiences.

And there would be broad agreement that the new rule has delivered such diversity, facilitated, as I say, by well-designed machinery provisions that have helped work a quiet revolution in commercial radio.