



Temporary community licences

SYDNEY: The ABA is now considering submissions to its call for comment on how it should implement the new temporary community radio broadcasting licence scheme.

Comments on the discussion paper closed on 22 August.

Applicants for temporary community radio licences must be locally based, not-for-profit, representative community organisations. The key issues for the policy will be what channels can be used for temporary broadcasting, how the ABA will determine the amount of broadcasting air-time that should be made available and how to manage competition for access to limited broadcasting air-time.

The ABA is inviting early applications for temporary community broadcasting licences in 32 markets.

The ABA is considering a licensing policy which will enable the extension of temporary community broadcasting licences to other areas where the licensing issues are more complex.

'The ABA expects that, it will be able to allocate temporary licences for longer term or continuous broadcasting in regional areas where there is only one applicant and there is greater certainty that a channel will be available for a new permanent community service. More difficult cases may take longer to resolve, and will rely to some degree on how much cooperation there is between applicants to share the available air-time,' Mr Webb said.

ABA seeks comment on proposed licence condition for new television licence in remote WA

WESTERN AUSTRALIA: The ABA has announced that it is proposing to impose a licence condition on the new commercial television broadcasting licence to be allocated in the near future for the Western Australian remote and regional licence areas.

The proposed condition states:

The licensee must provide terrestrial re-transmission facilities enabling reception of its commercial television broadcasting service to at least:

- 75 per cent of the licence area population within twelve months of the commencement of the service; and
- 85 per cent of the licence area population on

the fourth anniversary of the commencement of the service.

In calculating the coverage of the licensee's service on the fourth anniversary of the commencement of the service the licensee may include the population in those parts of the licence area served by 'self help' transmitters and direct-to-home reception but not otherwise.'

'There is a strong public interest in making the second commercial television broadcasting service available to as many Western Australians as possible. However, the roll-out of the new service has to be commercially feasible for the new licensee,' said Mr Peter Webb, ABA Chairman.

Viewers in remote and regional Western Australia currently receive only one commercial television service. On 21 February 1997, the ABA decided that a second commercial television broadcasting service should be made available and that the licence area of the new service should be equivalent to the sum of the licence areas of the existing services provided by WAW, GTW, SSW and VEW. This licence area constitutes all of WA outside of Perth.

The ABA is seeking comment on the proposed licence condition. A consultation paper setting out the rationale for imposing the licence condition has been sent to known interested parties. Copies may be obtained by telephoning freecall 1800 810 241.

Interested parties should direct their comments in writing to: The Manager, Codes and Conditions, ABA, PO Box Q500, Queen Victoria Building, NSW 1230 by Friday 12 September 1997.

Submissions may be faxed to (02) 9334 7799.

Extension of 3HOT community radio service to Ouyen

OUYEN: The ABA has made an FM radio frequency available in Ouyen for transmission of the community radio service 3HOT Mildura.

'This will enable the township of Ouyen to receive a community radio service,' said Mr Peter Webb, ABA Chairman.

The ABA's decision is contained in its variation to the licence area plan (LAP) for the Mildura/Sunraysia region. The decision follows interest expressed by community radio service 3HOT Mildura in extending its coverage area via a transmitter at Ouyen. The Ouyen transmitter is planned to operate on FM 90.7 MHz with a maximum effective radiated power (ERP) of 100 W from a nominal site at Ouyen silos.



News Update

The ABA believes that to make a frequency available for the 3HOT service at Ouyen is likely to promote the objects of the Act which refer to the economic and efficient use of the spectrum.

The licence area of 3HOT will be extended to include the township of Ouyen, and will be defined against 1991 Census boundaries.

The variation to the LAP for Mildura/Sunraysia was proposed in the LAP determined for Mildura/Sunraysia in July 1995. As Ouyen lies within the area of planning zone R16 (Central Victoria and Central Murray), the question of the extension of 3HOT's service to Ouyen was deferred for consideration until planning for R16 was underway.

Details of the variation of the licence area plan for Mildura/Sunraysia is available for viewing at the Mildura Public Library, or can be obtained from the ABA by calling freecall 1800 810 241.

New community radio broadcasting licence for Broome

BROOME: The ABA has allocated a community radio broadcasting licence for Broome, Western Australia to Broome Aboriginal Media Association.

The service will target the Aboriginal community in Broome, and will broadcast on FM 99.7 MHz. The licensee has 12 months to get the new service up and running.

'The proposed Broome service will, to a great extent, meet the community radio broadcasting needs of the Aboriginal community within the Broome region,' said Mr Peter Webb, ABA Chairman. 'Presently, no other service in the region satisfies those needs.'

The ABA has allocated this licence after consulting with the local community to seek its views on additional broadcasting services in the region. The new community radio licence was advertised in the local media, and the application received was made available to the public for comment, particularly in regard to whether the proposed service would meet existing and future community needs.

Broome Aboriginal Media Association has been channel sharing with the ABC since 1991.

This is the sixth community licence to be allocated under the *Broadcasting Services Act 1992*. As licence area plans are completed for regions around Australia, additional

community radio broadcasting licences will be determined and then advertised for allocation. Any new community broadcasting licences detailed in these licence area plans will be allocated using a merit based process.

The ABA has previously allocated new community licences in Mildura, Vic., Ceduna and Kangaroo Island SA, and York and Fitzroy Crossing, WA.

Current ABA litigation

Project Blue Sky v ABA — the Australian Content Standard

The Australian Content Standard, determined by the ABA, came into force on 1 January 1996. Project Blue Sky Inc. and five New Zealand production companies challenged the validity of the standard.

On 2 August 1996, Justice Davies of the Federal Court ruled that it was open to the ABA to determine a standard which is consistent with the Protocol to the CER Agreement. The ABA's appeal to the Full Federal Court from the decision of Justice Davies was successful.

On 11 April 1997, the High Court granted Project Blue Sky leave to appeal from the judgment of the Full Federal Court.

This matter is now set down for hearing by the High Court on 29 September 1997.

SAT FM Pty Ltd v ABA

Justice Sundberg of the Federal Court has found that the ABA's determination of the licence area plan (LAP) for Kalgoorli, WA was not a decision of an administrative but rather one of a legislative character. It follows that it is not a decision to which the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) applies. The action commenced by SAT FM Pty Ltd was accordingly struck out by the Court.

The Court said that the trichotomy of administrative, legislative and judicial acts is maintained by the AD(JR) Act, and decisions of a legislative or judicial character are excluded from review under the Act.

The Court relied on the following indications:

- (a) A LAP creates rules of general application rather than applying such rules to a particular broadcaster.
- (b) The making of a LAP must be notified in the *Gazette*.
- (c) The ABA is required to make provision for wide public consultation in preparing LAPs