



Investigations

previously) in combination with the payment of an additional subscription fee (\$6.95 on a pay-per-view basis). On these grounds the ABA formed the view that, as a result of the proposed changes, the Nightwatch service could be considered a subscription television narrowcasting service. This view is consistent with the ABA's reasoning for other similar services.

The advice provided to the ABA by Northgate about changes made to the operating conditions of the Nightwatch service did not alter the ABA's view that the new Nightwatch service being

provided by Northgate before 11 February 1998 was in breach of the licence condition set out at clause 10(1)(g) of Schedule 2 of the Act.

Action taken

In view of the changes made to the service the ABA decided not to take further action with regard to this matter.

Northgate ceased providing any subscription television services in May 1998.

Classic Hits FM, Qld

Category of service

Complaint

In January 1998 the ABA received a complaint from the licensee of two commercial radio stations on the Sunshine Coast, Queensland. The complainant alleged that Classic Hits FM Pty Ltd, whilst holding apparatus licences for the provision of low power open narrowcasting services, was providing a commercial radio broadcasting service in breach of section 133 of the Broadcasting Services Act.

Relevant legislation

Section 18 of the Act states:

Open narrowcasting services are broadcasting services:

- (a) whose reception is limited:
 - (i) by being targeted to special interest groups; or
 - (ii) by being intended only for limited locations, for example, arenas or business premises; or
 - (iii) by being provided during a limited period or to cover a special event; or
 - (iv) because they provide programs of limited appeal; or
 - (v) for some other reason, and
- (b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

Section 133 of the Act states:

A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.

Penalty: 2000 penalty units (1 penalty unit equals \$110)

Decision

The ABA considered the information and found that the service being provided by Classic Hits FM did not satisfy the section 18 criteria for open narrowcasting services. The ABA also found that Classic Hits FM was providing a commercial broadcasting service as defined in section 14 of the Act, but did not have a licence to provide a commercial radio broadcasting service. The ABA therefore found Classic Hits FM to be in breach of section 133 of the Act.

Action taken

The licensee responded it would take the necessary steps to ensure that the station conforms to the narrowcasting criteria in section 18 of the Act. The licensee also intended to apply to the ABA for an opinion as to which category the changed service falls into.

Providing the licensee immediately changes the service so that it conforms to the narrowcasting criteria and obtains a section 21 opinion to this effect, the ABA will be taking no further action at this stage.

Should the licensee not seek an opinion within 28 days of the date of the report, the ABA will require further sample tapes and a full program schedule so it can assess whether the service is meeting the requirements of section 18 of the Act.

It has since come to the ABA's attention that the service will shortly be sold and that the new owner intends to change the service significantly. The ABA will continue to monitor this situation.