

The ABA has recently allocated three 'section 40' commercial radio broadcasting licences. This summary discusses the differences between section 40 and other commercial radio broadcasting licences.

## Allocation of non-BSB commercial broadcasting licences

### Section 40 of the *Broadcasting Services Act 1992*

Under section 40 of the *Broadcasting Services Act 1992*, the ABA may allocate to a person, on application in writing by the person, a commercial broadcasting licence that is not a licence referred to in section 36(1) of the *Broadcasting Services Act*.

The licences referred to in section 36(1) are:

- (a) commercial television broadcasting licences and commercial radio broadcasting licences that are broadcasting services bands licences; and
- (b) other commercial television broadcasting licences before the date referred to in section 28 of the *Broadcasting Services Act*.

Section 28 states:

The ABA must not, after 25 June 1998, allocate any new commercial television licences in any area before 31 December 2006.

### **Differences between section 40 licences and normal commercial broadcasting licences**

One of the most significant differences between section 40 licences and normal commercial broadcasting licences is that a service licensed under section 40 may not use the broadcasting services bands (BSB) to deliver its service. The *Broadcasting Services Act* sets out significantly different regulatory regimes for commercial broadcasting services that use the broadcasting services bands and those that do not.

#### **Content and carriage**

A licence for a commercial broadcasting service which uses the broadcasting services bands entitles the licensee to provide a service ('content') and to gain

access to the means of carriage of the service: the broadcasting services bands in the radiofrequency spectrum. Because the spectrum is a scarce public resource, commercial broadcasting licences which use the broadcasting services bands are limited in supply.

In contrast, licences allocated under section 40 only entitle the licence holder to provide a commercial broadcasting service, that is, they are content-only licences. Section 40 licences confer no rights of carriage and licence holders must make their own arrangements about obtaining a means of delivering the service. For section 40 licences there is therefore no question of either spectrum scarcity or use of a public resource. The number of non-BSB commercial broadcasting licences is potentially unlimited.

#### **Planning and allocation of licences**

Two other important areas of difference between broadcasting services bands and non-broadcasting services bands services relate to the planning and allocation of licences for new services.

The *Broadcasting Services Act* sets out detailed provisions relating to the planning of new broadcasting services bands commercial services. When a new broadcasting services bands licence is made available by the ABA as an outcome of the planning process, it may only be allocated using the ABA's auction-style price-based allocation system.

In contrast to this, there are no requirements in the *Broadcasting Services Act* for planning broadcasting services which do not use the broadcasting services bands, and section 40 licences may be allocated by the ABA on application in writing.

#### **Other provisions**

Other provisions of the *Broadcasting*

*Services Act* which apply to commercial services which use the broadcasting services bands, such as licence conditions, the control provisions, duration of licences and the requirement to pay annual licence fees, also apply to non-broadcasting services bands services.

#### **The broadcasting services bands**

The broadcasting services bands are the designated parts of the radiofrequency spectrum which have been referred to the ABA for planning under section 31 of the *Radiocommunications Act 1992*. Normal analog commercial broadcasting services (AM and FM radio services and free-to-air UHF and VHF television services) are provided on the broadcasting services bands. The BSB are:

- 526.5 to 1606.5 kHz;
- 45 to 52 MHz and 56 to 70 MHz (Band D);
- 85 to 108 MHz (Band II);
- 137 to 144 MHz (channel 5A);
- 174 to 230 MHz (Band III);
- 520 to 820 MHz (Bands IV and V).

#### **Licence area**

Before allocating a section 40 licence the ABA must designate a particular area in Australia as the licence area of the licence. Designating a licence area allows the ownership and control provisions of the *Broadcasting Services Act* to be applied to the service.

#### **Applications for section 40 licences**

Applications for section 40 licences must be on the form approved by the ABA (form ABA 20) and must be accompanied by the application fee determined by the ABA. On 26 November, the ABA determined a fee of \$2400 for each application.

Contact the ABA (02 9334 7700) for more information. 