



K-FM Kingaroy and Nanango

Providing a commercial broadcasting service without a licence

Complaint: Not operating as a narrowcast service

On 12 September 2001, the ABA received a complaint alleging that the open narrowcasting service, broadcasting on 96.3 MHz in Kingaroy, Queensland, and known locally as K-FM Kingaroy 96.3, was not providing a narrowcast service, as required by its licence.

The complainant also advised that this service was being relayed to a low powered open narrowcast service on 87.6 MHz, known as K-FM Nanango 87.6, in Nanango (approximately 24 kms south east of Kingaroy). As a result, the complainant alleged, the service provided in Nanango was also operating outside the requirements of its licence.

The licensee advised the ABA that it was unable to provide tapes for some of the periods requested by the ABA, as news tapes were retained for four weeks, rather than the six week period required by the Broadcasting Services Act.

Relevant legislation/code of practice

Section 133 of the Act states:

Prohibition on providing a commercial radio broadcasting service without a licence

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

Clause 5(3) of Schedule 2 to the Act states:

Records of matter broadcast

Subject to this clause, a broadcaster must retain in

his or her custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about the matter - for 60 days from the date on which the matter was broadcast;

or for such longer period as the ABA, in special circumstances, directs in writing.

Decision

The ABA determined that, at the time relevant to its investigation, the licensee breached section 133 of the Act by providing a commercial broadcasting service without a licence. In addition, the ABA determined that the licensee breached subclause 5(3) of Schedule 2 to the Act by not retaining, for a period of six weeks, a record of matter broadcast which related to a political subject or current affairs in the form of news, a commentary or a discussion.

Action taken

In response to the ABA's preliminary report, the licensee advised that its format had been amended so that news was no longer a component of the service and that relevant tapes were now retained for the required period. The ABA finds that the new format, if implemented, would be likely to be compliant with the requirements set out at section 18 of the Act.

The ABA notes the steps taken by the licensee and does not intend to take any further action in relation to this matter.

