



AIR FM - Sydney

Providing a community broadcasting service without a licence

The complaint

Between June 2001 and January 2002, the ABA received several complaints regarding AIR FM, an open narrowcast radio station broadcasting in the Penrith area of NSW on the frequency 87.6 FM.

The complaints alleged that the AIR FM service:

- was not distinguishable from the content of the service that was being provided by AIR FM when it was operating as a temporary community broadcaster;
- did not fall within any of the open narrowcasting criteria as set out in section 18 of the *Broadcasting Services Act 1992* (the Act); and
- was therefore either an unlicensed community broadcasting service or an unlicensed commercial broadcasting service.

Relevant legislation

Section 14 of the Act defines a commercial broadcasting service as follows:

Commercial broadcasting services are broadcasting services:

- (a) that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (c) that are usually funded by advertising revenue; and

- (d) that are operated for profit or as part of a profit-making enterprise; and
- (e) that comply with any determinations or clarifications under section 19 in relation to commercial broadcasting services.

Section 15 of the Act defines a community broadcasting service as follows:

Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

Section 18 of the Act defines an open narrowcasting service as follows:

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 for a limited period or to cover a special event; or
 - (iv) because they provide programs of limited appeal; or

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(v) for some other reason; and
(b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

The decision

At its meeting of 6 June 2002, the ABA determined that, at the time relevant to its investigation, the AIR FM service, being provided by Nepean Riverlands Community Radio Association Inc.:

- was not an open narrowcasting service as defined at section 18 of the Act;
- was not a commercial broadcasting service as defined at section 14 of the Act;
- was a community broadcasting service as defined at section 15 of the Act; and
- was being provided without an appropriate licence and therefore in breach of section 135 of the Act, which states that:

A person must not provide a community radio broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

Penalty: 50 penalty units.

Action taken

The ABA will be issuing AIR FM with a notice directing it to cease providing a community broadcasting service without a licence. The notice was being prepared as this edition of *ABA Update* went to print.

