



**For the first time, the ABA has found a licensee not suitable to hold a commercial radio licence.**

# Cybervale Pty Ltd not suitable to remain a commercial radio licensee

The ABA has determined that Cybervale Pty Ltd is not a suitable commercial radio licensee. As a result of this decision, the ABA did not renew Cybervale's commercial radio licence which expired on 25 November 2003.

The ABA's decision was made following an assessment of Cybervale's business record, and record in situations requiring trust and candour.

Cybervale held commercial radio licence SL1150458 and has provided the service on the 1611 AM frequency in Wagin, Western Australia. It is a condition of the licence that Cybervale remain a suitable licensee.

'This is the first time the ABA has found a licensee not suitable to hold a commercial radio licence. The ABA takes very seriously the manner in which every licensee complies with its obligations under the Act,' said Professor David Flint, ABA Chairman.

As a result of this decision, Cybervale is not able to provide a commercial radio service on 1611 AM (from 25 November 2003). The ABA has

been advised that this service has been off air since early June this year due to a transmitter problem. Once this technical problem is fixed Cybervale will be able, if it wishes, to use the frequency to provide a different type of radio service (see below).

This decision does not affect the operation of Cybervale's narrowcasting service Radio 6GS on 1422 kHz in Wagin.

Wagin is located 228 kms south-east of Perth and falls midway between the towns of Narrogin and Katanning. Wagin has a population of 18 000 and is currently served by four commercial radio services, a narrowcasting service (provided by Cybervale), and two ABC radio services.

It is a condition of all commercial radio licences that the licensee remains suitable (Schedule 2 clause 8(2)(b) of the *Broadcasting Services Act 1992*). If the ABA decides that a licensee is not suitable, the ABA must refuse an application to renew the licence (section 47 of the Act).

## Suspension

The ABA suspended commercial radio licence SL1150458 for two weeks in June this year following a finding that Cybervale breached a condition of its licence in relation to audited annual returns for the financial year ended 30 June 2002.

On 22 November 2003, the ABA determined that:

Subsection 41(2) of the *Broadcasting Services Act 1992* (the Act) applies to Cybervale Pty Ltd (Cybervale), and therefore for the purposes of Part 4 of the Act, Cybervale is not a suitable licensee.

In reaching this view, the ABA was satisfied that allowing Cybervale to continue to provide a commercial radio broadcasting service under licence SL1150458, would lead to a significant risk of:

- an offence against sections 62, 63, 202 or 142 of the Act being committed
- a breach of the licence condition in paragraph 8(1)(ha) of Schedule 2 to the Act occurring.

In deciding whether such a risk exists, the ABA took into account:

- a. the business record of Cybervale
- b. Cybervale's record in situations requiring trust and candour
- c. the business record of each person who is in a position to control the licence
- d. the record in situations requiring trust and candour of each such person and
- e. whether Cybervale, or a person referred to in paragraph (c) or (d), has been convicted of an offence against the Act or the regulations.

As the 1611 AM frequency is not in the broadcasting services bands (i.e. the frequency is outside the broadband frequencies of 526.5 to 1606.5 kHz that most AM radio receivers can pick up), this decision only affects the type of service Cybervale can provide on 1611 AM. Cybervale may, for example, provide a narrowcasting service on this frequency after 25 November 2003.

