



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

Spectrum Framework Broadcasting and Pricing

Community Broadcasting Association of Australia
Submission in relation to the Radiocommunications Bill 2017,
Broadcasting Spectrum and Spectrum Pricing
consultation package issued by the Department of Communications

AUGUST 2017

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1. Introduction

- 1.1 The Community Broadcasting Association of Australia (CBAA) welcomes the opportunity to submit comments in relation to the consultation package released by the Minister for Communications and the Arts.
- 1.2 The consultation package relates to a partial exposure draft of the Radiocommunications Bill 2017; provisions affecting broadcasting spectrum and transitional arrangements; the pricing of spectrum; and the management of Commonwealth held spectrum.
- 1.3 The Community Broadcasting Association of Australia is the peak body for community broadcasting in Australia.
- 1.4 The CBAA represents licensed community radio broadcasters. Nationally, over 350 not-for-profit community radio services provide significant public benefit: a diverse mix of cultural and specialist talks, educational, music, Indigenous, print handicapped, youth, seniors, religious, ethnic language and multi-cultural radio, and general community access services.
- 1.5 Guiding principles underpin the contribution services make to media diversity and social inclusion, including to:
 - Promote harmony and diversity and contribute to an inclusive, cohesive and culturally diverse Australian community.
 - Pursue the principles of democracy, access and equity, especially for people and issues not represented in other media.
 - Enhance the diversity of programming choices available to the public and present programs that expand the variety of viewpoints broadcast in Australia.
 - Demonstrate independence in programming as well as in editorial and management decisions.
 - Support and develop local arts and music.
 - Increase community involvement in broadcasting.
- 1.6 Community radio stations operate in the majority of towns and cities across Australia, with 41% located in regional areas, a further 25% in rural areas, and 34% across metropolitan and suburban locations.
- 1.7 Community broadcasting licences are issued pursuant to and in promotion of the objects of the Broadcasting Services Act.
- 1.8 The allocation of a community broadcasting licence under Part 6 of the Broadcasting Services Act (BSA) is linked to section 102 of the Radiocommunications Act, which requires the ACMA to issue transmitter licences to access the Broadcasting Services Bands (BSBs).
- 1.9 Transmitter licences are issued as Apparatus Licences and aligned with the BSA licence term of five years.
- 1.10 Community radio stations therefore make significant use of radiofrequency spectrum.
- 1.11 Community radio services reach the public by way of freely available reception equipment.
- 1.12 The majority operate in the VHF FM Broadcast Services Band, 87.5-108 MHz; some operate in the MF AM Broadcast Services Band, 526.5- 1606.5 kHz; and a significant number now operate using capacity within shared Category 1 Digital Radio Multiplex Transmitter licences operating in a slice of the Broadcast Service Band otherwise and hitherto used for VHF television, 174-230 MHz.
- 1.13 There are also some services provided over VAST, and so occupy a small share of the spectrum designated for that purpose using Ku band satellite spectrum.
- 1.14 In addition to the Broadcast Services Band spectrum necessary to reach the public, community broadcasters necessarily make use of a limited amount of other spectrum.
- 1.15 Community radio, for example, has a current, on-going and critical need for use of spectrum within the 845-852 MHz band for fixed point-to-point links from their studio facilities to the transmitter site. This band is currently being re-stacked to 845-849 MHz.
- 1.16 The requirement and use of this band for specific radio distribution related purposes has been recognised in spectrum band planning and licencing instruments (RALIs).
- 1.17 While community television licensees now have an uncertain status, the CBAA continues to advocate the public policy principles that underpin community broadcasting generally and makes comment accordingly.

2. Scope of comments and consultation

- 2.1 As noted, the consultation package relates to a partial exposure draft of the Radiocommunications Bill 2017; provisions affecting broadcasting spectrum and transitional arrangements; the pricing of spectrum; and the management of Commonwealth held spectrum.
- 2.2 The CBAA was pleased to participate in briefings conducted by the Department covering the generalities of the Radiocommunications Bill 2017, as well as other briefings with a specific focus on broadcasting aspects.
- 2.3 The Department has indicated there will be only one round of consultation on the spectrum pricing and Commonwealth held spectrum reviews, whereas there will be at least a second consultation on the legislation generally, and broadcasting in particular.
- 2.4 The CBAA is not readily able to provide comprehensive feedback on every aspect of the consultation package. It has limited resources, the scope of the package is very extensive, and the timeline for consultation, even as extended, remains short for consideration of such detailed and fundamental changes to the legislative environment for radiocommunications and broadcasting.
- 2.5 The CBAA notes that further rounds of consultation are planned and may provide the opportunity for further comment and shaping of the final form of the legislation generally, and broadcasting in particular.
- 2.6 The CBAA is encouraged to note the new legislative environment is not intended to:
- alter broadcast policy objectives; and
 - change the spectrum holdings of any user, including broadcasters;
 - reduce spectrum holder's rights; and
 - afford new entrants more rights than incumbents.
- 2.7 The CBAA is also pleased that new entrants are to receive substantively equivalent rights and entitlements under the new framework that they would otherwise be afforded under the current law.
- 2.8 The current drafting of the Radiocommunications Bill 2017 has, quite appropriately, recognised that broadcasting has special obligations in relation to the public. While the aim may be to integrate broadcasting use of radiocommunications spectrum into a simplified licensing framework, it has been noted there is a need to undertake further broadcasting specific consultation as the detail of those aspects remain unclear.
- 2.9 Accordingly, proper consideration of the impact of the Radiocommunications Bill 2017 can only be thoroughly assessed during and after the next phase of its development and consultation around broadcasting matters.
- 2.10 The CBAA is highly concerned that the intentions of the new legislative environment in relation to broadcasting, outlined above, are not undermined in any way.
- 2.11 The Bill proposes a key shift away from the 'certainty' provided by the detailed licensing system being set out in legislation to the 'flexibility' that comes from moving those details to licence issue schemes and individual broadcasting licence conditions. Exactly how that will work is not fully set out, apart from in broad concept.
- 2.12 Detailed examination of proposed licence issue scheme, including the individual licence conditions, designated statements and regulatory undertakings is sought and is necessary as part of the next consultation phase.
- 2.13 A single one-time consultation on spectrum pricing has been a concern, mitigated somewhat for the specific remit of the CBAA as the Department confirms that the principles currently under consideration for licences issued under Part 4 of the Broadcasting Service Act will not be applied to community broadcasters, issued under Part 6 of the Broadcast Services Act 1992.
- 2.14 The CBAA is concerned to see that intention upheld in practice in the long term and also has comments and views on the broader scope of pricing arrangements.
- 2.15 Concern about a single consultation on spectrum pricing is leavened further by noting the intention of the consultation is more to do with setting broad principles, and it is suggested there be subsequent and separate consultation conducted by the ACMA in relation to specific pricing models and outcomes.

3. Policy intent of the Radiocommunications Bill 2017

- 3.1 The CBAA considers spectrum is a valuable public resource and a major contributor to economic and social well-being and is pleased that the Government's commitment and intention in undertaking change is not simply and only to maximise economic return but also to maximise social return from spectrum.
- 3.2 Overall the CBAA agrees that the simplified objects of the new Radiocommunications Bill do not detract from the policy objectives of the current Act. The objects of the (proposed) Act are:
- to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that:
 - facilitates the efficient planning, allocation and use of the spectrum; and
 - facilitates the use of the spectrum for defence, public and community purposes; and
 - supports the communications policy objectives of the Commonwealth Government; and
 - to establish an efficient system for the regulation of equipment.
- 3.3 Interestingly, the new Bill is no longer explicit in having an object to provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum.
- 3.4 The CBAA supposes the intention of the words 'communications policy objectives of the Commonwealth Government' extends to include and embrace the policy objectives for broadcasting, as expressed in the Broadcasting Services Act, including its own objects.
- 3.5 This supposition is given further weight by Departmental commentary that the new legislative environment is not intended to alter broadcasting policy objectives.
- 3.6 The Objects of Broadcasting Services Act 1992, include, inter alia:
- to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information.
 - to provide a regulatory environment that will facilitate development of a broadcasting industry that is efficient, competitive and responsive to audience needs.
 - to encourage diversity in control of the more influential broadcasting services.
 - to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.
 - to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance.
 - to promote the provision of high quality and innovative programming by providers of broadcasting services.
 - to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.
 - to encourage providers of broadcasting services to respect community standards in the provision of program material.
 - to encourage the provision of means for addressing complaints about broadcasting services.
 - to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.
 - to ensure the maintenance and, where possible, the development of diversity, including, public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.
- 3.7 Also relevant is section 15, where the definition of a community broadcasting service includes sub-section (c) to provide programs that:
- are able to be received by commonly available equipment; and
 - are made available free to the general public.
- 3.8 Section 14 has an equivalent provision relating to commercial broadcasting.

4. Broadcasting Services Bands & Ministerial Policy Statements

- 4.1 Under the section 31 of the Radiocommunications Act 1992 the Minister has designated parts of the radiocommunications spectrum as being (primarily) for broadcasting services, known as the Broadcasting Services Bands (BSBs).
- 4.2 The Minister empowers the ACMA to plan, and the ACMA prepares Licence Area Plans in accord with section 26 of the Broadcasting Services Act. In doing so the ACMA is to promote the objects of the Broadcasting Service Act using a mix of commercial, community and national broadcasting services.
- 4.3 The Minister has power to reserve capacity for community and national broadcasting services under section 31 (1) of the Broadcasting Services Act.
- 4.4 Digital radio licensing is structured somewhat differently, primarily due to fact that each Digital Radio Multiplex Transmitter (DRMT) is able to carry many content services and so a different approach that does not tie a single content service to a single licence for spectrum access is required. DRMT licences operate within designated BSB spectrum.
- 4.5 National broadcasters derive rights for BSB spectrum access not through the Broadcasting Service Act but through the relevant Acts of the national broadcasters, the Australian Broadcasting Corporation Act and the Special Broadcasting Service Act.
- 4.6 The Radiocommunications Bill 2017 proposes to do away with designated Broadcast Services Bands and instead rely on Ministerial Policy Statements.
- 4.7 The CBAA is very concerned at the lack of certainty that may arise from this arrangement.
- 4.8 As things stand, it seems that the Ministerial Policy Statements may not have the certainty and permanence that characterises designation of spectrum as BSBs.
- 4.9 It is acknowledged that the Department has indicated Ministerial Policy Statements would set out the expectation that the ACMA will have regard to the frequencies currently used by commercial, community and national broadcasters and that spectrum will be allocated on a primary basis for broadcasting.
- 4.10 Even so, there is a lack of clarity as to detailing the process of development, permanence or time-length, revocation and re-issuance of Ministerial Policy Statements, or even as to the extent to which they might be binding on the ACMA.
- 4.11 The need for long-term certainty in relation to bands being allocated on a primary basis for broadcasting is fundamental.
- 4.12 The CBAA considers that certainty of spectrum to be designated for broadcasting purposes should be directly written into the Radiocommunications Act 2017, able to be amended only by legislative change.
- 4.13 Alternatively, if given effect through Ministerial Policy Statement(s) the CBAA suggests that boundaries and parameters for those Ministerial Policy Statements be framed in legislation, so as to ensure long-term certainty of spectrum to be designated for broadcasting purposes.
- 4.14 The CBAA notes that industry stakeholders are to be consulted in the formulation of the relevant Ministerial Policy Statements.
- 4.15 It is appropriate that broadcasting has certainty of spectrum access. Broadcasting is different to other uses of radiofrequency spectrum. It is an activity that underpins cultural and social cohesion. It enables and contributes to democratic dialogue and must exercise a set of responsibilities, adhere to Codes of Practice and conform to broadcast regulations.
- 4.16 The important and enduring public policy objectives of broadcasting are captured in the objects of the BSA, and to underline these outcomes the BSA requires that broadcast services be made available on a free-to-air basis and on freely available reception equipment.
- 4.17 The social and economic barriers to reception of primary broadcast services are clearly intended to be zero, or so low that they do not cause or be subject to a social divide. There is no barrier from either subscription fees or on-going data charges levied on public users.
- 4.18 There is also a significant investment that has been made by the public in reception equipment that cannot be set aside. While broadcasting may be challenged, it has an inherent public policy role that informs key broadcasting outcomes and the role of community broadcasting.

5. Spectrum planning and licensing

Planning of broadcast services

- 5.1 The proposal is that the ACMA will undertake planning for broadcasting under the new general radiocommunications framework by making radiofrequency plans, without reference to the BSBs.
- 5.2 In planning for broadcasting, the ACMA will have regard to the Objects and updated planning criteria, similar to that currently in section 23 of the BSA, particularly in relation to management of potential interference.
- 5.3 Instead of planning BSBs, the purpose of section 26 of the BSA will be to plan the number and types of national, commercial, community and high-power open narrowcast services through Licence Area Plans.
- 5.4 However, the Licence Area plans would no longer determine the technical specifications of broadcasting services, with these then to be included as conditions on each broadcaster's individual radiocommunications licence. The reference to technical specifications would be removed from section 26. It is already absent for digital radio.
- 5.5 Television and radio licence planning functions will remain separate and no merging of Licence Areas is proposed.
- 5.6 As legislative instruments, Licence Area Plans will still be subject to consultation, Parliamentary scrutiny and disallowance.
- 5.7 A key outcome of these changes is to enable the ACMA to recover costs, if appropriate, related to the technical planning and administrative work involved in issuing or varying a radiocommunications spectrum access licence for a broadcasting service.
- 5.8 The Department has noted there may be a need for further work and consultation with the ACMA on the impact on broadcasters of this change.
- 5.9 It is not clear whether another key outcome is to provide the ACMA some added flexibility to vary the technical specifications of an individual licensee without always having to resort to consultation on the LAP. If so, that may be a worthwhile reform.
- 5.10 The CBAA can provide its preliminary view that it would be inappropriate in most cases for community broadcasters to be levied with charges, whether based on cost recovery by the ACMA or otherwise.
- 5.11 As community based not-for-profit organisations, this is likely to severely disadvantage the situation of community broadcasters.
- 5.12 Cost recovery would clearly be inappropriate if changes were required as a result of broader factors and not at the initiative of the broadcaster concerned.

Broadcast licensing

- 5.13 It is proposed that licensing of each broadcasting service is to remain as is, with licences issued under Part 4 of the BSA for commercial broadcasting and Part 6 of the BSA for community broadcasting.
- 5.14 Given that the proposal is to remove the concept of Broadcast Service Bands, the consequent change to licensing terminology, in both the Broadcasting Services Act and the Radiocommunications Act, would be for the 'provision of broadcasting services planned in a licence area plan'.
- 5.15 This seems logical and, as noted, this articulation covers the situation of national broadcasting services and high-power open-narrowcasting services.

Radiocommunications licensing

- 5.16 The CBAA support that access to radiofrequency spectrum for commercial and permanent community broadcasters will continue to arise as a result of linkage from the licence issued under the Broadcasting Services Act.
- 5.17 The CBAA supports that ACMA continue to be able to allocate spectrum for temporary community broadcasting licences without that service being planned in a Licence Area Plan. It is agreed that this provides the ACMA with flexibility to enable services to be provided in a more timely and discretionary manner without affecting the integrity of the Licence Area Plan process.

6. Spectrum pricing

- 6.1 Currently, setting aside Class Licencing, licenced spectrum users hold either a Spectrum Licence or an Apparatus Licence.
- 6.2 Spectrum Licences generally have specific location and frequency boundaries and apply for a period of fifteen years. Spectrum access charges are generally set by auction, or through renewal of existing licences. In addition, the ACMA applies direct cost recovery charges specific to a licensee, and indirect taxes, based on broader cost recovery principles.
- 6.3 Apparatus Licences generally are specific to a single location, transmitter/receiver and frequency. Apparatus licence fees are generally set using an administrative tax formula.
- 6.4 Bespoke pricing arrangements can also be used in place of auction or administrative tax formula approaches.
- 6.5 The review of spectrum pricing seems to be motivated by the idea that pricing of spectrum is a tool to ensure its efficient use and that it will be allocated to its highest value use.
- 6.6 While price in some situations may be a useful tool, it is by no means appropriate to equate price paid with the highest value use of spectrum.
- 6.7 Importantly, other factors can determine the highest value use. Allocation of spectrum can be key to Government public policy outcomes. Such is the case for broadcasting.
- 6.8 The Broadcasting Services Act sets out clear Government public policy and cultural objectives for broadcasting and provides the basis for planning a mix of services in each area, to include commercial, community and national broadcasting services.
- 6.9 The Broadcasting Services Act requires that broadcast services be made available on a free-to-air basis and on freely available reception equipment.
- 6.10 There is strong international harmonisation with bands used in Australia designated for broadcasting. This is key to low cost and freely available reception equipment.
- 6.11 In aggregate, the investment by the public in that broadcast reception equipment is highly significant. Therefore, the need for certainty in spectrum used for broadcast purposes is not limited to industry stakeholders, it also extends in a significant way to the public.
- 6.12 The above factors point to the fact that, as a general statement, alternative use of spectrum currently designated for broadcast purposes is not feasible, practical or in the interest of public policy.
- 6.13 Accordingly, it follows that the opportunity cost for spectrum designated for broadcast purposes is zero. Therefore, administrative approaches rather than market-based approaches are appropriate to pricing of spectrum designated for broadcasting.
- 6.14 In addition, the practical reality is that the only likely alternative use for spectrum that might attract significant revenue relates to upper UHF television band spectrum and its use for the alternative purpose of mobile broadband services.
- 6.15 This was made transparent in the discussion paper that initiated the Spectrum Review in November 2014 where the Minister identified three areas to be considered:
 - (a) implement a clear and simplified framework of policy accountability where the Minister makes over-arching policy statements about spectrum planning and may intervene for specific purposes, such as to reserve, allocate or re-allocate spectrum in a plan.
 - (b) replace the current apparatus, class and spectrum licenses with a single licensing framework, and provide the ACMA the flexibility to set licence parameters.
 - (c) a specific focus on spectrum and arrangements for free-to-air television broadcasting, noting that the highest growth in value has been in the spectrum used by television broadcasters, with potential for non-broadcast use and a second digital dividend.
- 6.16 Setting aside the contestability of sections of the UHF television broadcast bands, the remainder of broadcasting bands are not low-hanging fruit.
- 6.17 This is particularly the case for radio broadcasting services: MF AM and VHF FM bands have no apparent or pressing use other than broadcasting. Neither does the spectrum allocated within television bands for digital radio, as it is VHF.
- 6.18 Spectrum in the higher frequency bands would seem to be more a focus for mobile broadband, especially given the emergence of 5G with ultra-small scale cell sizings.
- 6.19 This is all to say that, in practical terms and for the foreseeable future, there does not seem to be a case for concern that revenue might be forgone for alternative uses of spectrum allocated for broadcasting purposes.

- 6.20 After a series of recent reductions, in the 2017-18 Budget the Government announced its intention to abolish commercial broadcasting licence fees and, instead, introduce a price for use of broadcasting spectrum that, it is suggested, better reflects its value.
- 6.21 As well as keeping to significant fee reductions to commercial broadcasters, the Government committed to ensure no commercial broadcaster would be disadvantaged by paying on the basis of spectrum compared to what would have been the situation with reduced broadcast licence fees.
- 6.22 It is arguable that the shift from broadcast licence fees to value-based spectrum pricing is the best fit. As outlined above, the opportunity cost, for radio services in particular, is effectively zero - suggesting an administrative approach to pricing is appropriate.
- 6.23 The only relevant commercial competitive forces at play that might give rise to an auction approach are between commercial broadcasters themselves, not between commercial broadcasters and alternative uses of the erstwhile broadcast spectrum.
- 6.24 In regards to community broadcasters, the Department has verified that the new spectrum pricing envisaged under the prospective Commercial Broadcasting (Tax) Bill 2017 is intended only for commercial broadcasters.
- 6.25 To be more specific, this means the new arrangements are intended to apply to holders of a transmitter licence issued under section 102 of the Radiocommunications Act 1992, and under Part 4 of the Broadcasting Services Act 1992.
- 6.26 As the allocation of community broadcasting licences is made under Part 6 of the Broadcasting Services Act 1992, the new spectrum pricing arrangements will not apply to community broadcasters.
- 6.27 As well as a five-year package of measures to ensure no commercial broadcaster will be disadvantaged, the Government has made a commitment to review the (commercial) broadcast pricing arrangements within five years to assess if pricing arrangements need adjustment under the new legislative arrangements.
- 6.28 As such, any outcomes from the broader review of spectrum pricing, such as a review of density areas, will be considered in that separate broadcast pricing review.
- 6.29 Against that background, it is worth noting that commercial services rely on a business model funded by advertising revenue as a result of attracting an audience.
- 6.30 By contrast, community broadcasters operate on a very different model. Community broadcasters are expressly required to be not-for-profit. Community broadcasters cannot monetise the use of spectrum for private financial gain. Their organisational structures and community of interest focus dictate a limited cost / revenue financial model, often, and usually, with a large base of volunteer engagement.
- 6.31 Having established that spectrum for free-to-air broadcasting, broadly, ought be priced based on an administrative model it may be that, depending on the model used for cost recovery, that the pricing is unaffordable for community broadcasters.
- 6.32 The CBAA strongly submits that, at least in a transition period that should be no less than five years, no community broadcaster should be disadvantaged in terms of its broadcast transmitter licence costs compared to what is currently the case under the Apparatus Licence scheme.
- 6.33 The CBAA also strongly submits that, in the long term, costs for the broadcast transmitter licence should be proportionate to the legislated not-for-profit model and recognise the public policy imperative of community broadcasting.
- 6.34 The Department's discussion paper canvasses the concept of transparent subsidies where there is a perceived discrepancy between market pricing and the licence fee paid.
- 6.35 If that approach is adopted then the CBAA submits that any assessment of subsidy should be based on the delta between what is determined as affordable for community broadcasters and the costs derived from an administrative pricing formula based on cost recovery only. There is no case for the assessment of any subsidy to be taken against market-based approaches.
- 6.36 Even if commercial broadcasting spectrum pricing were somehow to become based on opportunity costs, any concept of a subsidy for community broadcasters, whether deemed or actual, would be based on the difference between the price paid and an administratively determined price, not the difference from a market based price.

7. Digital radio

- 7.1 The framework for digital radio across both the Broadcasting Services Act and the Radiocommunications Act differs markedly from the framework in place for analogue radio and digital television planning and licensing.
- 7.2 This is primarily due to the fact that each Digital Radio Multiplex Transmitter (DRMT) is able to carry many content services and so a different approach that does not tie a single content service to a single licence for spectrum access is required. DRMT licences operate within designated BSB spectrum.
- 7.3 The current Radiocommunications Act 1992 sets out in legislation the corporate structures required for holders of DRMT licences. Standard access entitlements to digital radio capacity within the overall total of the multiplex are set out for holders of eligible licences under the Broadcasting Services Act. There is an inter-relationship with the ACCC with the intent that access to the shared infrastructure be based on a set of pricing principles and on a non-discriminatory basis.
- 7.4 While the framework is prescriptive and may not be perfect it has worked reasonably well in practice. The legislated basis of the framework provides a level of certainty for engagement and investment in infrastructure and service development.
- 7.5 The CBAA would be very concerned at removal from legislation of key aspects that provide certainty, including access entitlements and capacity reserved for community broadcasting.
- 7.6 The Department has noted separate existing processes are in place and is considering adjustments to the digital radio framework to facilitate rollout to regional Australia.
- 7.7 The Digital Radio Planning Committee is currently considering a range of planning matters, including proposals to streamline corporate aspects of the legislative framework and perhaps to adjust standard access entitlements, especially in cases where there is potential to better use excess capacity. There is also preliminary work underway to assess the merits of section 44A(11) of the Radiocommunication Acts 1992, which, in effect, requires alignment of national and commercial/community digital radio coverage.
- 7.8 Beyond and separate to those matters, the Department is proposing that the Radiocommunications Act in prospect will remove the requirement for Digital Radio Channel Plans, and shift the statutory process for issuing of DRMT licences into new arrangements for licensing under a single licensing framework, while access regimes with the ACCC and for accessing transmission towers would be retained.
- 7.9 This appears to have elements of major change and, while open to full consideration of further detail, the CBAA is concerned that the impacts and merits be fully apparent before proceeding. There would need to be rigorous consultation on the detail of any transplant of the current digital radio legislation into the single licensing framework.
- 7.10 The shift may result in extensive licence schedules associated with each content and DRMT licence rather than, as is currently the case, that detail being part of the licensing system. In many ways the desire for simplification may, in this area, result in excess complication.
- 7.11 The CBAA will be very concerned that the intentions and outcomes of the existing framework, including existing rights and entitlements are not diminished in any way.

Spectrum usage and pricing

- 7.12 In line with objects of the Radiocommunications Act, digital radio is spectrally efficient, Simplistically, within the channel allocation, a typical DAB+ 64kbps service achieves 235% improvement in spectral efficiency over VHF FM, improving further and significantly if the raster required for frequency re-use and interference protection is factored.
- 7.13 Within a Licence Area the coverage of digital radio can be improved with on-channel repeaters. This adds further to spectral efficiency.
- 7.14 It also underlines a defect in pricing spectrum usage by reference to transmitter licensing. If the on-channel repeaters are licensed they may attract fees. There should be no charge for on-channel repeaters.
- 7.15 At present and for the foreseeable future, this is an abstract issue as digital radio is, in effect operating in parallel as a simulcast of analogue.
- 7.16 If and when changes to pricing of broadcast services are implemented under the proposed Radiocommunications Bill 2017, there needs to be recognition that the DRMT multiplex share capacity. The pro-rata community capacity should be isolated and dealt with separately or exempted from any charges that might apply to the DRMT spectrum arising from its carriage of commercial services alongside.

8. Digital television

- 8.1 In previous submissions to the Department on Spectrum Reform the CBAA strongly advocated that community television licensees be permitted to make on-going use of spectrum beyond what was then a closure deadline set at 31 December 2015.
- 8.2 The on-going use of the spectrum by community television was not denying its use by others, either for technology trials of new technology television, or for non-broadcast purposes. That remains the case.
- 8.3 Since that time, community television licensees have had their access to spectrum extended on a short-term basis a number of times.
- 8.4 While the extensions are welcome, they have been granted in a manner that is not conducive to on-going certainty for community television and that has seriously impacted viability.
- 8.5 Some community television broadcasters have ceased use of free-to-air broadcast spectrum altogether. Others have endured but face an uncertain status into the future.
- 8.6 Where current community television broadcasting licensees have a Broadcast Services Band licence, under the Radiocommunications Act, the ACMA has issued a radiocommunications transmitter licence for transmitting the broadcasting service.
- 8.7 The Apparatus Licence makes use of a full 7MHz of spectrum, yet as a licence condition, community television broadcasters are limited to broadcast a single Standard Definition (SD) service on a free-to-air basis, with no use of latent capacity permitted by others.
- 8.8 Use of a full DVB-T 7MHz RF channel, capable of 23Mbps data capacity, to carry a single Standard Definition television service is certainly not efficient use of spectrum.
- 8.9 In part, this awkward situation comes about due to the one-to-one relationship between a broadcast service licence and a radiocommunications transmitter licence for digital television broadcasting, and that clearly remains something for exploration and a potential option for reform.
- 8.10 The proposed spectrum framework encourages continual review of options for allocating spectrum to alternative or higher value use and that the ACMA would indicate options for higher value use and propose options for change as part of its annual work-plan.
- 8.11 The situation of community television would be assisted if there were to be increased certainty about its on-going access to radiofrequency spectrum. It would also be useful to explore options for reform to enable a more permanent solution.
- 8.12 The CBAA notes, for digital radio broadcasting, that sufficient flexibility has been developed within the Broadcasting Services Act and the Radiocommunications Act to enable shared use by different broadcast licensees of a common RF transmission channel. The concept of separate 'multiplex' DRMT licence was developed for transmission, and all broadcast licensees are entitled and/or reserved access, with a related access and pricing regime overseen by the ACCC. This model seems worth exploring as one option to facilitate shared use of television multiplexes.
- 8.13 If this level of reform is not feasible in the short term, as a transition strategy, the CBAA would be pleased if a work-around solution could be found to enable carriage on a relevant terrestrial television multiplex of at least a single service for community television purposes.
- 8.14 In the medium-term, new technology television (DVB-T2 HEVC) provides scope for further spectrum efficiency and carriage of many more services within existing radiofrequency television channel constructs.
- 8.15 Meanwhile, and until it is genuinely needed for trials or other purposes, there seems little reason, where community television licensees are still operational using radiofrequency spectrum that this be able to continue with at least some level in increased certainty.
- 8.16 Community television operators have established online presence. While this is useful and a valuable activity, it is not free-to-air to the public and is not sitting side-by-side as a complementary platform to enable broader reach and facilitate on-demand services. It is not as a replacement for free-to-air.

9. Broadcasting and online delivery

- 9.1 Broadcasting has public policy objectives that have been discussed in more detail elsewhere and which include an enduring commitment to outcomes facilitated by community broadcasting.
- 9.2 To reiterate, the Broadcasting Service Act has as one of its primary objects 'to ensure the maintenance and, where possible, the development of diversity, including, public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting'.
- 9.3 The Broadcasting Services Act sets out that broadcast services must be able to be received by commonly available equipment and be made available free to the general public.
- 9.4 The social and economic barriers to reception of primary broadcast services are clearly intended to be zero, or so low that they do not cause or be subject to a social divide. There is no barrier from either subscription fees or on-going data charges levied on public users.
- 9.5 While it could be argued that online devices, including internet connected 'radios' and 'televisions', are commonly available, reception of services and programs delivered via online is not free. Even if content is made available without barrier or subscription there are significant data charges for FTA radio and television usage patterns.
- 9.6 Also worth noting is that the non-profit, community-based governance and ownership structures are central and defining characteristics of legitimate community broadcasting organisations, and those matters do not apply to internet online only operators. Neither does broadcast content requirements, Codes of Practice, legislation or regulation that applies across all broadcasters apply to any online content providers.
- 9.7 Alongside the on-going provision for digital radio broadcast delivery that has been discussed, and the carriage of community television that is sought, the CBAA suggests it is time for the complementary role of online delivery of broadcast services to be properly recognised as part of legislative reform.
- 9.8 The CBAA suggests consideration be given to amend the Broadcasting Services Act, the Radiocommunications Act and other related legislation to require telecommunications carriers, internet service providers and mobile network operators to treat services provided by holders of Broadcast Service Licences as non-metered data, available within customer plans but also without need for a customer plan.
- 9.9 This would ensure equity and be more closely in accord with the need for broadcast services to be made available free to the general public.
- 9.10 The CBAA does not in any way suggest this as a replacement for free-to-air broadcasting.
- 9.11 Broadcasting remains the mainstay method by which live services can be delivered on a free-to-air basis and on freely available equipment without limitation.
- 9.12 In one view, digital television services can be available to all Australians courtesy of the VAST platform, especially in remote and some regional areas where there is no terrestrial digital television available.
- 9.13 Similarly, legislating in this manner would ensure provision of at least a primary set of radio services being available to all Australians on a free-to-receive basis.
- 9.14 The question of whether and when digital radio broadcasting platforms will then provide for mainstay live delivery will become less relevant.
- 9.15 In the absence of a DAB+ digital radio broadcast solution in an area, the quality of service and delivery efficiency issues would rest with the mobile and terrestrial broadband platform providers to resolve in a manner of their choosing, whether by use of multicast techniques or otherwise.

10. Transitional arrangements

- 10.1 Comment on transitional strategies have been embedded throughout the submission.
- 10.2 A key point in regard to spectrum pricing is that community broadcasting licensees not be disadvantaged compared to current pricing arrangements, for at least a five year transition period, and should there be pricing changes after that period that they be incremental and on a graduated basis over a long term.
- 10.3 The CBAA is pleased to note that the Department will discuss any proposed changes with industry stakeholders to assist in a smooth transition.

11. Spectrum sharing and trading

- 11.1 The proposed new general licensing framework provides the flexibility for trading and sharing of spectrum.
- 11.2 The CBAA does not generally consider it appropriate that broadcasters engage in secondary trading of broadcast spectrum for non-broadcasting purposes.
- 11.3 There are mechanisms for the transfer of community broadcasting licenses issued under the Broadcasting Service Act but community broadcasting licences are not tradeable.
- 11.4 It is already the case that, in effect, spectrum is being shared under digital radio arrangements. This is particularly the case for community broadcasting licensees insofar as they must share a defined amount of reserved capacity on each available multiplex, whereas commercial broadcasters have a defined capacity entitlement per licensee.
- 11.5 The CBAA considers that flexibility should be retained for provision of multi-channel services within a digital television or digital radio multiplex if the multi-channel services are consistent with a broadcast licensee's community of interest and/or advances the public policy objectives of the Broadcast Services Act.

12. Studio-to-Transmitter linking

- 12.1 Community radio broadcasters make extensive use of spectrum within the 845-852 MHz band for fixed point-to-point links from their studio facilities to the transmitter site. This band is currently being re-stacked to 845-849 MHz.
- 12.2 The requirement and use of this band for specific radio distribution related purposes has been recognised in spectrum band planning and licencing instruments (RALIs).
- 12.3 Community radio broadcasters are currently undergoing a change process to find linking solutions within the reduced portion of the band, 845-849 MHz.
- 12.4 It is critical that at least this band is retained for studio to transmitter linking.
- 12.5 The spectrum pricing for this special purpose band is based on administrative tax formulas. It is critical that any change to spectrum pricing does not disadvantage community radio broadcasting users.
- 12.6 A transition strategy should lock costs in this band to no more than current levels for at least five years, and give certainty of similar levels of pricing in the long term, say, 15 years.
- 12.7 The CBAA is acutely aware that this band sits alongside bands that have been purposed for mobile broadband. It is not a like-for-like situation, given the criticality of this band and its specific technical structure for STL purposes. Accordingly, opportunity costs that relate to mobile broadband use patterns are not relevant.
- 12.8 Other, higher frequency, bands may be available for studio to transmitter linking but many of these are not suited to longer path lengths and/or already have spectrum pricing such as to make them completely unaffordable for community broadcasting purposes.