IRB

AUSTRALIAN ASSOCIATION OF INDEPENDENT REGIONAL RADIO BROADCASTERS

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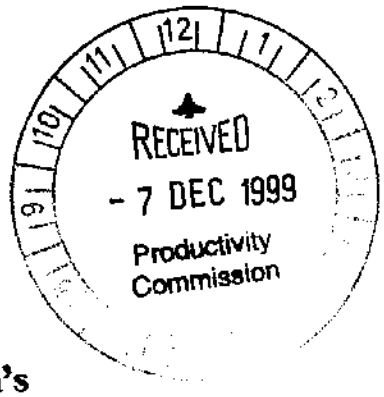

Comment on the Productivity Commission's Draft Report on the Inquiry into Broadcasting

1. Introduction

The Australian Association of Independent Regional Radio Broadcasters (IRB) welcomes this opportunity to comment on the Commission's draft report of its inquiry into broadcasting (the draft).

IRB makes the general observation that the draft – no doubt as a matter of necessity – is primarily concerned with general principles rather than matters of detail. The circumstances of commercial television appear to have been a powerful influence in the "broad brush" approach which has been taken. IRB, as representative of small regional commercial radio licensees, is concerned that prescriptions which might apply to commercial television or to metropolitan commercial radio are not necessarily appropriate in small radio markets.

The portions of the draft which are of principal interest to IRB are Chapter 4 and, in relation to ownership and control issues, Chapter 8.

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2. Chapter 4

Draft recommendation 4.1

The draft states it is likely that some broadcasters (particularly television broadcasters) have been allocated more spectrum than they would have taken if they had been required to purchase it, and concludes that the creation of a licence to use spectrum would give broadcasters an incentive to review the amount of spectrum they hold.

Generally speaking the amount of spectrum allocated to a broadcaster is outside the broadcaster's control. Most broadcasters are more concerned to carry on the business of broadcasting than to exploit unused spectrum which might have been allocated to them. IRB is not aware of any spectrum having been allocated to its members over and above their legitimate needs.

Such inefficiencies as may have occurred in the allocation of spectrum must be attributed to past planners who no doubt reflected the state of knowledge, technology and the planning philosophy of their times.

There is, perhaps, an argument that the criteria on which their decisions were based should have been rigorously reviewed from time to time. For example, one impediment to more efficient use of broadcasting services band spectrum is the Technical Planning Guidelines which have been determined by the Australian Broadcasting Authority pursuant to section 33 of the Broadcasting Services Act. (the BSA). These guidelines are essentially standards which were

laid down decades ago and which have been merely consolidated to satisfy the requirement of section 33. They are in urgent need of review.

By the same token, the means have always existed under the various broadcasting regimes for efficiencies to be effected in the utilisation of spectrum. A classic example was the reduction in channel spacing from 10kHz to 9 kHz in the medium frequency broadcasting band which affected practically every AM station in the country.

In short, IRB argues that the responsibility for the efficient use of the spectrum lies with the planners, and will continue to do so irrespective of whether or not the licence to use spectrum is separate from the licence to broadcast. Broadcasters generally do not want or seek spectrum which is in excess of their broadcasting needs.

Draft recommendations 4.2 and 4.3

Governments' approaches to licence fees and "establishment fees" for commercial radio licences have had a tortuous and illogical history, although the underlying theme has remained: broadcasters should pay for their use of a scarce national resource.

IRB suggests it is somewhat artificial to represent the fees paid in acquiring licences (through the ABA's price-based auction system) and in maintaining

them (through annual licence fees based on advertising revenue) as being anything other than payment for access to the spectrum.

So far as acquisition is concerned, it would be hard to argue that the sums paid at auction or in purchasing from existing licensees are not indicative of the market value of the spectrum. On-going licence fees are a different proposition; the taxing of revenue is not so much a reflection of the value of the spectrum as of the capabilities of the broadcaster.

The fact that licences which have attracted large sums "up front" also attract on-going licence fees on the same basis as licences which were originally free of "up front" charges is one of the anomalies which have been spawned by the many changes made to the licence fee regime over the years.

Draft recommendations 4.4, 4.6, 4.7 an 4.8

IRB also questions the proposition that separation of spectrum access licensing and content related licensing may be justified on the grounds of improving regulatory efficiency. Criticism of the ABA's "conservative approach to spectrum planning" is by no means universal and would be seen by many (including IRB members) as a necessary consequence of the task confronting the ABA, and of the need to consider the best interests of the listening public.

The clear thrust of the draft is that the market should determine the number of services which can be supported, as in "most areas of the economy". The draft asserts the interests of consumers are likely to be better served by competition by broadcasters to serve consumers. In other words, more is better.

As IRB pointed out in its original submission, the preservation of localism in smaller regional markets is very dependent on commercial radio broadcasters and on the commercial viability of those broadcasters. Recognition of this is tacit in the Broadcasting Services Act (the BSA) in the application of section 39, whereby "solus" licensees are granted an additional licence on application (and on certain conditions). In virtually all of those markets (in excess of 50) the effect of competition would lead to a degradation of services in which the first victim would be localism.

The fact that this scenario may not be applicable to large broadcasting companies operating in large markets highlights the point that a single, broad-brush approach to licensing is not appropriate to all cases. There is a need to evaluate the effects of introducing additional commercial licences in particular markets.

IRB contends the ABA is the logical body, and the most competent, to perform this role. While there is no question regarding the competence of the Australian Communications Authority as a spectrum manager, IRB is not aware of ACA experience in addressing the kinds of issues which the ABA is required to take into account under section 23 of the BSA.

3. Chapter 8

Draft recommendtions 8.3

This draft recommendation needs to be seen in context. As IRB understands it, the intention of the draft is to bring about a situation where all broadcasting services bands frequencies not required for specified non-commercial purposes (national, community, indigenous) would be allocated for commercial broadcasting, resulting in significantly increased numbers of commercial stations and increased competition. In that environment, the two-to-a-market rule which currently applies would be repealed.

As this submission has already made clear, IRB is opposed to any regime which would arbitrarily create more commercial stations in small markets without consideration being given to the consequences of such action. The reality is that competition in the kinds of markets in which section 39 licences have been granted would seriously damage the quality and diversity of services.

One of the virtues of the section 39 approach is that it guarantees diversity of program content, whereas head to head competition in small markets reduces diversity and produces sameness. It is probable that a small market community would benefit as much if not more from a three station combination operated by one licensee as it would from a two-station combination.

On that basis, IRB members would support the repeal of the two to a market rule, but not if its concomitant condition was the opening up of the market to competition.

Draft recommendation 8.4

The draft makes it clear that relaxation of the cross-media rules raises a number of important issues which mandate the retention of those rules until certain conditions, most particularly a media specific public interest test, have been met. Absent the detail of such a test, IRB supports the retention of the rules at this stage.

The main concern of IRB members is not about the acquisition of radio stations by television or press interests, but about the prospect of having to compete against comonly owned television and print interests acting in concert to attract advertising revenue. Because of this inherently threatening scenario IRB members remain opposed to relaxation of the cross media ownership rules in regional markets as a matter of self interest.

In the event that an appropriate media specific public interest test can be devised, an important issue, in IRB's view, will be to determine which body should be given the task of applying the test. Reasonable arguments can be advanced for both the ABA and the ACCC to be considered for this role.

IRB suggests it would be premature at this stage, before test details have been resolved, to recommend one way or the other.

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