

Annual report of regulatory compliance

provided to the ACCC pursuant to section 118PN of the Radiocommunications Act in relation to the 2019-2020 financial year

Digital Radio Broadcasting Mandurah Pty Ltd

In relation to DAB+ services provided in the Mandurah BSA radio area

Public version

28 August 2020



Contents

1.	Executive summary.....	1
2.	Compliance with digital radio access undertaking	3
3.	Compliance with standard access obligations.....	7
4.	Compliance with excess-capacity access obligations	8
5.	Compliance with non-discrimination obligation	8
6.	Changes to membership.....	9
7.	Authorisation of third-party users.....	9
Attachment A	Multiplex capacity allocations for 2019-2020.....	10

1. Executive summary

1.1 Background

This document constitutes the annual report of regulatory compliance by Digital Radio Broadcasting Mandurah Pty Ltd, which is the digital radio multiplex transmission licensee in Mandurah (**DRB Mandurah**).¹ This report is given under section 118PN of the *Radiocommunications Act 1992 (Cth)* (**Radiocommunications Act**) for the 2019-2020 financial year.

On 1 November 2019, the Australian Competition & Consumer Commission (**ACCC**) accepted, pursuant to section 118NF(2) of the Radiocommunications Act, an access undertaking provided by DRB Mandurah in respect of access to digital radio multiplex transmission capacity services in the Mandurah BSA radio area (the **access undertaking**).

Section 118PN of the Radiocommunications Act provides that, if an access undertaking is in force during the whole or part of a financial year, DRB Mandurah must submit annual reports to the ACCC within 60 days of the end of the financial year, on the following:

- matters specified in the *Digital Radio Multiplex Transmitter Licence Procedural Rules 2018* made by the ACCC under section 118PO of the Radiocommunications Act (**Procedural Rules**); and
- matters that relate to:
 - compliance during that financial year with the access undertaking;
 - compliance during that financial year with the standard access obligations (if any) applicable to the licence;
 - compliance during that financial year with the excess-capacity access obligations (if any) applicable to the licence;
 - compliance during that financial year with the distributed-capacity access obligations (if any) applicable to the licence; or
 - compliance during that financial year with the obligations that are applicable to the licence under section 118NP.

The Procedural Rules require DRB Mandurah to cover the following matters within an annual report:

- compliance during that financial year with the access undertaking;
- compliance during that financial year with standard access obligations (if any) applicable to the licence;

¹ DRB Mandurah is the holder of a Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 10675046/1.

- compliance during that financial year with excess-capacity access obligations (if any) applicable to the licence;
- compliance during that financial year with obligations that are applicable to the licence under section 118NP of the Radiocommunications Act (i.e. DRB Mandurah's non-discrimination obligation);
- any non-compliance (including reasons) with the above;
- steps taken to rectify non-compliance;
- expected completion dates for matters requiring rectification;
- changes to the membership of DRB Mandurah that have occurred during the financial year; and
- any authorisation of third-party users.

This annual report covers the matters identified in section 118PN of the Radiocommunications Act and the Procedural Rules in relation to the 2019-2020 financial year.

1.2 Overview of findings

The 2019-2020 financial year was the first year in which DRB Mandurah supplied multiplex transmission services to access seekers pursuant to an access undertaking. Digital radio services initially commenced on the digital radio start-up date on 23 December 2019.

Based on our review, DRB Mandurah has been materially compliant with the legislative requirements of the Radiocommunications Act and the terms of the access undertaking and access agreement for the 2019-2020 financial year. In relation to compliance with the designated approach for setting the WACC under the access agreement, DRB Mandurah plans to fully align with that designated approach in the 2020-2021 financial year.

1.3 Confidentiality

There are aspects of this Annual Report that are confidential to DRB Mandurah and which are identified in this document as [C-I-C]. It is requested that aspects of this report that are identified as confidential not be disclosed to the public in accordance with section 13 of the Procedural Rules.

DRB Mandurah does not object to the disclosure of this annual report in its entirety to the Australian Communications and Media Authority in accordance with section 16(1)(f) of the Procedural Rules.

2. Compliance with digital radio access undertaking

2.1 Overview

This section sets out whether DRB Mandurah is compliant with key aspects of the access undertakings, including the access agreement that forms part of the access undertakings and which set out the terms on which DRB Mandurah supplies the multiplex transmission service to access seekers.

This annual report does not cover all aspects of the access undertaking and access agreement given there are many aspects of these documents that are non-substantive, or which were not operative or relied upon during the 2019-2020 financial year. In the 2019-2020 financial year, this was primarily a function of two factors:

- the fact that the digital radio start-up day occurred partway through the 2019-2020 financial year (23 December 2019); and
- the fact that DRB Mandurah operates in a 'solus market' (see section 2.2 for further background).

The areas of the access undertaking and access agreement covered in this section include:

- the supply obligations of DRB Mandurah in respect of the multiplex transmission service under clause 7 of the access agreement; and
- the compliance by DRB Mandurah with the pricing principles in Schedule 2 of the access agreement, including:
 - the efficient cost principle for the inclusion of capital expenditure, operating expenditure and overheads into the cost base of DRB Mandurah under clause (see section 2.4 below);
 - the determination of the weighted average cost of capital under clause (see section 2.5 below); and
 - the criteria for the calculation of access fees under clause 4 of Schedule 2 (see section 2.6 below).

DRB Mandurah's compliance with the standard access obligations and excess capacity access obligations is covered separately in sections 3 and 4 below.

2.2 Background to the Mandurah BSA radio area

Unlike the other radio broadcasting licence areas where digital radio services have commenced,² the Mandurah BSA radio area is served by a single commercial radio broadcaster.

² That is, the Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra, Hobart and Darwin areas.

West Coast Radio Pty Ltd is the single incumbent commercial broadcaster and holds two commercial radio broadcasting licences in respect of 97.3 Coast FM and 91.7 The Wave. No other commercial or community radio broadcasters have been allocated radio broadcasting licences in the Mandurah BSA radio area. The Mandurah BSA radio area is one of several 'solus markets' that exist across Australia.³

To that end, during the 2019-2020 financial year, West Coast Radio Pty Ltd was the sole access seeker in the Mandurah BSA radio area.

Accordingly, many aspects of the access undertaking that contemplate multiple access seekers did not apply in the Mandurah radio licence area during the 2019-2020 financial year.

2.3 Supply obligations

Clause 7 of the access agreement:

- forbids DRB Mandurah from preventing an access seeker from obtaining access to the multiplex transmission service in accordance with the access agreement;
- prohibits DRB Mandurah from discriminating between access seekers to which it supplies the multiplex transmission service in relation to technical and operational quality of the service itself, and the technical and operational quality and timing of the fault detection, handling and rectification supplied in respect of the service – this requirement implements the non-discrimination requirement in section 118NP of the Radiocommunications Act; and
- requires that DRB Mandurah make the standard access entitlements and excess-capacity access entitlements available to content service providers.

DRB Mandurah is not aware of any non-compliance with clause 7 of the access agreement in the 2019-2020 financial year. The sole access seeker, West Coast Radio Pty Ltd, was supplied with the multiplex transmission service from the digital radio start-up day such that it was able to access its standard access entitlements and excess-capacity access entitlements that it became entitled to during the financial year.

West Coast Radio Pty Ltd used its fraction of multiplex capacity to simulcast its existing FM analog programmes, at a bit rate of 96 Kbps for each licence. Initial take up of the DAB+ format is expected to be positive, however, full listenership figures will not be definitively determined until DRB Mandurah undertakes a comprehensive radio survey during the 2021-2022 financial year.

While the COVID-19 pandemic has impacted on the ability to introduce additional broadcasting services and programmes, there is an expectation that more channels will be broadcast via DAB+, all using the multiplex capacity that West Coast Radio Pty Ltd became entitled to during the 2019-2020 financial year.

³ For further information, please refer to section 3 of the Supporting Submission that was provided to the ACCC when it was considering DRB Mandurah's access undertaking.

2.4 Efficient cost principle

Clause 3.1 of Schedule 2 of the access agreement limits the costs that DRB Mandurah can recover from access seekers to those costs that have been efficiently incurred. Clauses 3.2 and 3.3 of Schedule 2 of the access agreement sets out the specific types and categories of costs that are recoverable in accordance with the “Efficient Costs” principle, including:

- capital expenditure;
- operating expenditure; and
- expenditure on corporate overheads.

DRB Mandurah submits that it has taken significant steps to ensure that the costs that have been included within its cost base during the 2019-2020 financial year, including its initial start-up and set up costs, reflect its efficiently-incurred costs.

The primary costs incurred by DRB Mandurah in the 2019-2020 financial year were in connection with the establishment and initial operation of the main multiplex transmitter site in Mandurah (including ancillary and incidental expenditure reasonably incurred in connection with this aim).

DRB Mandurah took the following measures to ensure that its set-up and initial operating costs were efficiently incurred:

- all digital radio multiplex infrastructure and services (i.e. the major cost components in respect of the multiplex transmission service) were sourced from vendors at the best possible pricing. [C-I-C] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; [C-I-C]
- [C-I-C] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [C-I-C]
- the operating expenditure incurred by DRB Mandurah reflected what was necessary to meet expected demand and was essential to achieving quality, reliability and security of supply in respect of the multiplex transmission service; and
- the value attributed to these contracts is consistent with those contained in audited accounts for the relevant financial year.

In light of this, DRB Mandurah is not aware of any non-compliance with the efficient cost principle contained within the pricing principles in Schedule 2 of the access agreement.

2.5 Weighted Average Cost of Capital

Clause 3.4 of Schedule 2 of the access agreement requires DRB Mandurah to determine the return on capital by reference to the weighted average cost of capital (**WACC**) of the depreciated value of the assets used to supply the multiplex transmission service.

The access agreement also requires the WACC to be set and reviewed annually by reference to factors such as:

- the WACC of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle; and
- the most up-to-date regulatory decision or determination issued by the ACCC or AER in respect of comparable regulated industries (such as telecommunications and electricity) as at the date DRB Mandurah conducts its annual review of the WACC.

During the 2019-2020 financial year, DRB Mandurah did not use a WACC derived in accordance with the above principles to determine access fees. This was primarily because of the relatively limited portion of the 2019-2020 financial year that followed the digital radio start-up date. For the portion of this financial year, the effective WACC applied by DRB Mandurah was a Vanilla post-tax WACC of 6.58%.

DRB Mandurah plans to adjust its approach to WACC to fully align with the requirements of clause 3.4 of Schedule 2 of the access agreement from the 2020-2021 financial year. In particular, it will set and review a WACC component periodically in accordance with the access agreement.

2.6 Calculation of access fees

Clause 4.1 of Schedule 2 of the access agreement provides that DRB Mandurah will levy fixed recurring charges based on the amount of multiplex capacity allocated to an access seeker, regardless of whether such capacity is used.

Clause 4.2 establishes a formula for the conversion of DRB Mandurah's annualised costs into an annual fixed recurring charge, based on the following formula:

$$AFRC = AC \times BMC/TMC$$

Where:

AFRC is the annual fixed recurring charge.

AC is the annualised costs derived under clause 3 of Schedule 2 of the access agreement.

BMC is the amount of multiplex capacity allocated to the relevant access seeker.

TMC is the total amount of multiplex capacity allocated to all access seekers.

The access fees payable by West Coast Radio Pty Ltd, as the sole access seeker for the 2019-2020 financial year, are set out below. The figures are exclusive of GST.

Access Seekers	Q3 2019 Access Fee (per 32 Kbps, per quarter)	Q4 2019 Access Fee (per 32 Kbps, per quarter)	Q1 2020 Access Fee (per 32 Kbps, per quarter)	Q2 2020 Access Fee (per 32 Kbps, per quarter)	Total Access Fee paid 2019-2020 financial year (per 32 Kbps)
West Coast Radio Pty Limited (in respect of 97.3 Coast FM)	N/A (digital radio start-up day not yet declared)	\$1,608 (partial quarter)	\$5,874	\$5,538	\$13,021
West Coast Radio Pty Limited (in respect of 91.7 The Wave)	N/A (digital radio start-up day not yet declared)	\$1,608 (partial quarter)	\$5,874	\$5,538	\$13,021

DRB Mandurah is not aware of any material non-compliance with Schedule 2 of the access agreement in the 2019-2020 financial year.

3. Compliance with standard access obligations

Section 118NL of the Radiocommunications Act imposes standard access obligations on DRB Mandurah, which in turn require DRB Mandurah to supply multiplex capacity to those content service providers that hold standard access entitlements.

The process for the implementation of standard access entitlements is set out in section 118NQ of the Radiocommunications Act.

DRB Mandurah has made standard access entitlements available with West Coast Radio Pty Ltd pursuant to section 118NQ of the Radiocommunications Act. A summary of the allocated standard access entitlements is found in Attachment A.

The Radiocommunications Act also requires that DRB Mandurah reserves two-ninths of multiplex capacity under each digital radio multiplex transmitter licence for digital community broadcasters that are nominated by the digital community radio broadcasting representative company (**Representative Company**) to claim the standard access entitlement.⁴ During the 2019-2020 financial year, no community radio broadcasters were established in, or entered into, the Mandurah BSA radio area. As such, no Representative Company was required to be established as at the end of the 2019-2020 financial year.

DRB Mandurah has maintained the reservation in the event of any future entry from the community sector in accordance with the Radiocommunications Act, although DRB Mandurah understands that this will be unlikely over the short-term.

In summary, DRB Mandurah is not aware of any non-compliance with its standard access obligations for the 2019-2020 financial year.

⁴ Radiocommunications Act, section 118NR(2). See also clause 4.4(c) of access agreement.

4. Compliance with excess-capacity access obligations

Section 118NM of the Radiocommunications Act imposes excess-capacity access obligations on DRB Mandurah, which in turn require DRB Mandurah to supply multiplex capacity to those content service providers that hold excess-capacity access entitlements acquired in accordance with section 118NT of the Radiocommunications Act.

Clause 5.3 of the access agreement provides the contractual basis for the implementation of the excess-capacity access entitlements, which expressly refers to section 118NT of the Radiocommunications Act. Pursuant to this, DRB Mandurah has made excess-capacity access entitlements available to West Coast Radio Pty Ltd, as the incumbent commercial broadcaster.

On 10 January 2020, DRB Mandurah ascertained the demand for excess capacity in the Mandurah BSA radio area. West Coast Radio Pty Ltd, on 15 January 2020, indicated its interest to acquire excess multiplex capacity, in respect of each commercial radio broadcasting licence it held. With there being no other content service providers in the Mandurah BSA radio area expressing interest in acquiring excess capacity, West Coast Radio Pty Ltd became entitled to access an additional two-ninths of multiplex capacity (i.e. one-ninth of multiplex capacity allocated in respect of each commercial radio broadcasting licence held by West Coast Radio Pty Ltd). A summary of the excess-capacity access entitlements is also found in Attachment A.

As at the date of this report, West Coast Radio Pty Ltd is not currently using the excess capacity to provide any digital radio services but may do so in the future (as indicated above).

DRB Mandurah is not aware of any non-compliance with its excess capacity access obligations for the 2019-2020 financial year.

5. Compliance with non-discrimination obligation

Section 118NP of the Radiocommunications Act prohibits discrimination by DRB Mandurah between content service providers that have access to multiplex capacity in relation to the following:

- the technical and operational quality of the services supplied to the content service providers; and
- the technical and operational quality and timing of the fault detection, handling and rectification supplied to the content service providers.

This obligation is also reflected in clause 7.3 of the access agreement.

Given that only one content service provider sought access to multiplex capacity, DRB Mandurah is not aware of any non-compliance with its non-discrimination requirements.

This covers the supply of both standard access entitlements and excess-capacity access entitlements.

6. Changes to membership

There were no changes to the membership structure of DRB Mandurah during the 2019-2020 financial year. At all times during the 2019-2020 financial year, West Coast Radio Pty Ltd was the sole shareholder of DRB Mandurah.⁵

7. Authorisation of third-party users

Section 114(1) of the Radiocommunications Act provides that DRB Mandurah may, by written instrument, authorise a third party to operate radiocommunications devices under the licence.

During the 2019-2020 financial year, DRB Mandurah has not authorised any third parties to operate radiocommunications devices under this section.

⁵ DRB Mandurah has 9 issued shares, all of which are held by West Coast Radio Pty Ltd.

Attachment A Multiplex capacity allocations for 2019-2020

The following table describes how multiplex capacity was allocated according to access seekers' standard access entitlements and any excess-capacity access entitlements.

Access Seeker	Multiplex Capacity (1/9 equivalent to 128 Kbps)
Standard access entitlement – allocated in respect of 97.3 Coast FM	1/9
Standard access entitlement – allocated in respect of 91.7 The Wave	1/9
Digital Community Broadcasters – no allocation	<i>(2/9 reserved)</i>
Excess capacity access entitlement – allocated in respect of 97.3 Coast FM	1/9*
Excess capacity access entitlement – allocated in respect of 91.7 The Wave	1/9*
Excess capacity – no allocation	3/9
Total Multiplex Capacity	9/9

* **Note:** West Coast Radio Pty Ltd holds the maximum permitted fraction of multiplex capacity pursuant to section 118NV of the Radiocommunications Act (i.e. two-ninths of multiplex for each commercial radio broadcasting licence held).

