

Annual report of regulatory compliance

provided to the ACCC pursuant to section 118PN of the Radiocommunications Act in relation to the 2021-2022 financial year

Digital Radio Broadcasting Mandurah Pty Ltd

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

Public version

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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 2021-2022 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 above matters in relation to the 2021-2022 financial year.

1.2 Overview of findings

The 2021-2022 financial year was the third year—and second complete financial year—in which DRB Mandurah supplied multiplex transmission services to access seekers pursuant to an access undertaking.

Based on our review, DRB Mandurah has been broadly compliant with the legislative requirements of the Radiocommunications Act and the terms of the access undertaking and access agreement for the 2021-2022 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 2021-2022 financial year. The latter circumstance was primarily due to 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 3 of Schedule 2 of the access agreement (see section 2.4 below);
 - the determination of the weighted average cost of capital under clause 3.4 of Schedule 2 of the access agreement (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, the Mandurah BSA radio area is one of several solus markets that exist across Australia.² It is served by a single commercial radio broadcaster.

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.

During the 2021-2022 financial year, West Coast Radio Pty Ltd remained the only 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 2021-2022 financial year.

2.3 Supply obligations

Clause 7 of the access agreement:

² 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.

- prohibits 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 was compliant with clause 7 of the access agreement in the 2021-2022 financial year. The sole access seeker, West Coast Radio Pty Ltd, was supplied with the multiplex transmission service allowing it to access the standard access entitlements and excess-capacity access entitlements that it was allocated previously in the 2019-2020 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.

Additionally, West Coast Radio Pty Ltd used some of its available allocated multiplex capacity to broadcast content provided by third parties. [C-I-C]

[REDACTED]

[REDACTED]

[C-I-C]

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.

The costs that have been included within DRB Mandurah's cost base during the 2021-2022 financial year were very modest.

In particular:

- DRB Mandurah incurred no additional capital expenditure during the 2021-2022 financial year, with all relevant capital expenditure being previously incurred in the 2019-2020 financial year;
- [C-I-C] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [C-I-C]
- the operating expenditure was limited, along with corporate overheads;
- levels of expenditure were sufficient to meet expected demand and to achieve the requisite level of quality, reliability and security of supply required 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.

Prior to the 2021-2022 financial year, DRB Mandurah conducted a review of the WACC and determined that it should be set at 4.81% (nominal vanilla WACC), compared to 6.58% that was applied in previous years. This updated WACC figure was adopted from the Amadeus Gas Pipeline Access Arrangement,³ which DRB Mandurah understands is the most recent

³ AER, Final Decision – Amadeus Gas Pipeline Access Arrangement 2021 – 2026 (April 2021) at page 24.

regulatory determination by either the ACCC or the AER, prior to the start of the 2021-2022 financial year.

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 2021-2022 financial year, are set out below. The figures are exclusive of GST.

Access Seekers	Q3 2021 Access Fee (per 32 Kbps, per quarter)	Q4 2021 Access Fee (per 32 Kbps, per quarter)	Q1 2022 Access Fee (per 32 Kbps, per quarter)	Q2 2022 Access Fee (per 32 Kbps, per quarter)	Total Access Fee paid 2021-2022 financial year (per 32 Kbps)
West Coast Radio Pty Limited (in respect of 97.3 Coast FM)	\$6,467.25	\$6,478.73	\$6,768.69	\$6,768.69	\$26,483.36
West Coast Radio Pty Limited (in respect of 91.7 The Wave)	\$6,467.25	\$6,478.73	\$6,768.69	\$6,768.69	\$26,483.36

DRB Mandurah is not aware of any material non-compliance with Schedule 2 of the access agreement in the 2021-2022 financial year.

3. Compliance with standard access obligations

Section 118NL of the Radiocommunications Act imposes standard access obligations on DRB Mandurah, which in turn requires 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. This remained unchanged from the 2019-2020 financial year. 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 the 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 As at the end of the 2021-2022 financial year, no community radio broadcasters had entered the Mandurah BSA radio area. Accordingly, no Representative Company was required to be established during the 2021-2022 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 2021-2022 financial year.

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.

In the 2019-2020 financial year, DRB Mandurah made available excess-capacity access entitlements, which was unchanged during the 2020-2021 financial year (as previously reported). These allocations remained unchanged during the 2021-2022 financial year. A summary of these allocations is also found in Attachment A.

DRB Mandurah is not aware of any non-compliance with its excess capacity access obligations for the 2021-2022 financial year.

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

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 2021-2022 financial year. At all times during the 2021-2022 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 2021-2022 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 2021-2022

There were no changes in multiplex capacity allocations during the 2021-2022 financial year.

The following table describes how multiplex capacity was allocated according to access seekers' standard access entitlements and any excess-capacity access entitlements. This was allocated during the 2019-2020 financial year.

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).

