
Supporting submission in relation to Access Undertaking lodged pursuant to Part 3.3, Division 4B, Subdivision B of the Radiocommunications Act 1992

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Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

T +61 2 9263 4000
F +61 2 9263 4111

DX 10348 SSE

www.gtlaw.com.au

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1 Introduction and Executive Summary

This is a supporting submission in relation to the access undertaking lodged pursuant to Part 3.3, Division 4B, Subdivision B of the *Radiocommunications Act 1992 (Cth)* (**Radiocommunications Act**) on 3 October 2008 by the following eligible joint venture companies (**EJVCs**), each of which holds either one or two (in the case of Sydney, Melbourne and Brisbane) foundation category 1 digital radio multiplex transmitter licences:

- Digital Radio Broadcasting Adelaide Pty Ltd (ACN 128 742 772) – licence number 1901330
- Digital Radio Broadcasting Brisbane Pty Ltd (ACN 128 742 950) – licence numbers 1901423 and 1901424
- Digital Radio Broadcasting Melbourne Pty Ltd (ACN 128 742 898) – licence numbers 1901421 and 1901422
- Digital Radio Broadcasting Perth Pty Ltd (ACN 128 742 638) – licence number 1901331
- Digital Radio Broadcasting Sydney Pty Ltd (ACN 128 742 978) – licence numbers 1901419 and 1901420.

Each EJVC has provided the Australian Competition and Consumer Commission (**ACCC**) with an identical access undertaking.

The access undertaking and this supporting submission have been prepared taking account of:

- the terms of the Radiocommunications Act;
- the *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008 (Decision Making Criteria)*;
- the Explanatory Statement accompanying *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008 (Explanatory Statement)*; and
- the *Digital Radio Multiplex Transmitter Licences Procedural Rules 2008 (Procedural Rules)*.

The access undertaking is consistent with the terms of the Radiocommunications Act and the ACCC's Decision Making Criteria.

This supporting submission provides an explanation of the access undertaking and the reasons why it should be approved by the ACCC, pursuant to section 118NF of the Radiocommunications Act.

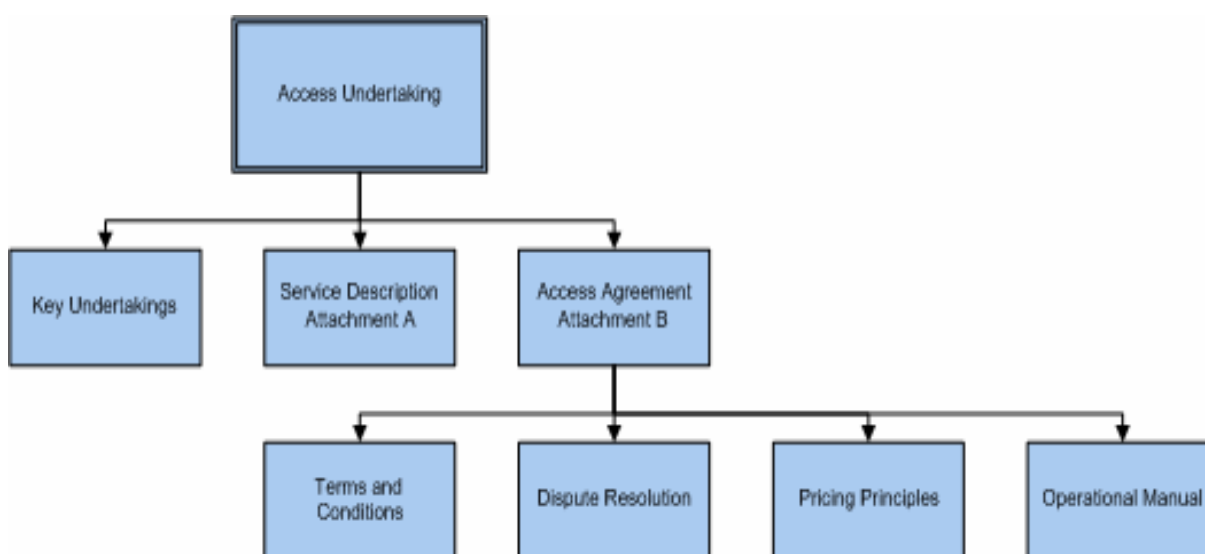
2 Key features of the digital radio access undertaking

2.1 Basic structure of access undertaking

The access undertaking sets out the terms and conditions on which the EJVCs (**Multiplex Licensee**) will provide multiplex capacity to access seekers to enable:

- an incumbent commercial broadcaster to obtain a standard access entitlement to which it is entitled;
- a digital community broadcaster to obtain, through the Digital Community Radio Broadcasting Representative Company, the standard access entitlement nominated for allocation to that digital community broadcaster by the representative company; and
- an incumbent commercial broadcaster, digital community broadcaster or restricted datacaster to obtain an excess-capacity access entitlement that it may acquire pursuant to the access agreement.

The access undertaking is structured as follows:



The access undertaking seeks to give effect to the rights and obligations of the Multiplex Licensee and access seekers through a comprehensive access agreement, which provides the basis for the allocation of standard access entitlements and excess-capacity entitlements.

2.2 Service Description – Multiplex Transmission Service

The Radiocommunications Act provides for the holder of a category 1 digital radio multiplex transmitter licence to supply access to “*multiplex capacity*”, which is defined as:¹

“...so much of the gross transmission capacity of the multiplex transmitter as is available for the transmission of content services”.

The concept of “*multiplex capacity*” has been adapted in the access undertaking into a comprehensive technical service description set out in Attachment A (**Service Description**).

The definition of “*Multiplex Transmission Service*” has been developed through industry consultation and reflects the underlying service that will be provided by the Multiplex

¹ *Radiocommunications Act 1992 (Cth)*, section 118NB.

Licensee as a means of satisfying its standard access obligations and excess-capacity access obligations.

The Multiplex Transmission Service comprises the following bundled components:

- **a multiplexing service**, comprising the multiplexing of digital channels from multiple access seekers into a single transport stream;
- **a modulation service**, comprising the modulation of the single transport stream using orthogonal frequency division multiplex (**OFDM**) in preparation for radio frequency transmission; and
- **an RF service**, comprising the radio frequency transmission of the OFDM modulated transport stream.

2.3 Access agreement

The access agreement is an integral part of the access undertaking and provides the basis for the Multiplex Licensee to implement the commitments given as part of the access undertaking.

In particular, the access agreement sets out the comprehensive terms and conditions on which the Multiplex Licensee will provide multiplex capacity to specified access seekers to enable:

- an incumbent commercial broadcaster to obtain a standard access entitlement to which it is entitled;
- a digital community broadcaster to obtain, through the Digital Community Radio Broadcasting Representative Company, the standard access entitlement nominated for allocation to that digital community broadcaster by the representative company; and
- an incumbent commercial broadcaster, digital community broadcaster or restricted datacaster to obtain an excess-capacity access entitlement that it may acquire pursuant to the access agreement.

It also sets out the principles to be applied by the Multiplex Licensee in determining the access charges payable by the access seeker.

The access agreement will commence from the date of execution and continue until 31 December 2012, unless terminated earlier.

As digital radio is a new service and EJVCs have designed the access agreement in the start-up phase of operations, the access agreement incorporates a fixed term to provide the industry with an opportunity to re-evaluate the appropriateness of the applicable access arrangements after a designated period.

This proposal received a broad level of support during the industry consultation process. It is intended that any subsequent revision to the access agreement would involve a variation to the access undertaking and would therefore require the ACCC's approval pursuant to section 118NH of the Radiocommunications Act.

Notwithstanding the limited term, the access agreement contains provisions to ensure the continuation of the access agreement in the event that the parties are unable to replace the access agreement before the expiry of the term. This will provide access seekers with

protection against the possibility of a loss of service at the end of the term of the access agreement.

For the purposes of the access undertaking and the access agreement, an “access seeker” is defined to include:

- an incumbent commercial broadcaster;
- the Digital Community Radio Broadcasting Representative Company (acting on behalf of digital community broadcasters); and
- a restricted datacaster.

To this end, the access undertaking places no obligation on the Multiplex Licensee to enter into an access agreement, except:

- with:
 - an Incumbent Commercial Broadcaster that holds either a standard access entitlement or excess-capacity access entitlement;
 - the Digital Community Radio Broadcasting Representative Company (which will represent and act on behalf of Digital Community Broadcasters that hold either a standard access entitlement or excess-capacity access entitlement); and
 - a restricted datacaster that holds an excess-capacity access entitlement;
- where there is sufficient multiplex capacity to accommodate the access seeker; and
- where the access seeker has satisfied the conditions precedent set out in the access agreement.

Once the access seeker has entered into an access agreement with the Multiplex Licensee and satisfied the applicable conditions precedent, the access seeker is able to acquire the Multiplex Transmission Service to enable the allocation of:

- a standard access entitlement to an incumbent commercial broadcaster;
- a standard access entitlement to digital community broadcaster nominated and represented by the Digital Community Radio Broadcasting Representative Company; and
- an excess-capacity access entitlement to an incumbent commercial broadcaster, digital community broadcaster or restricted datacaster acquired in accordance with the access agreement.

The access agreement contains comprehensive provisions and processes to allocate these standard access entitlements and excess-capacity access entitlements, which are modelled on, and in compliance with, the provisions of the Radiocommunications Act.

2.4 Standard access entitlements

The Radiocommunications Act prescribes the maximum multiplex capacity that can be made available to incumbent commercial broadcasters and digital community broadcasters.

Clause 6 of the access agreement sets out procedures for the allocation of standard access entitlements to incumbent commercial broadcasters and digital community broadcasters. These terms are modelled on the provisions of the Radiocommunications Act.

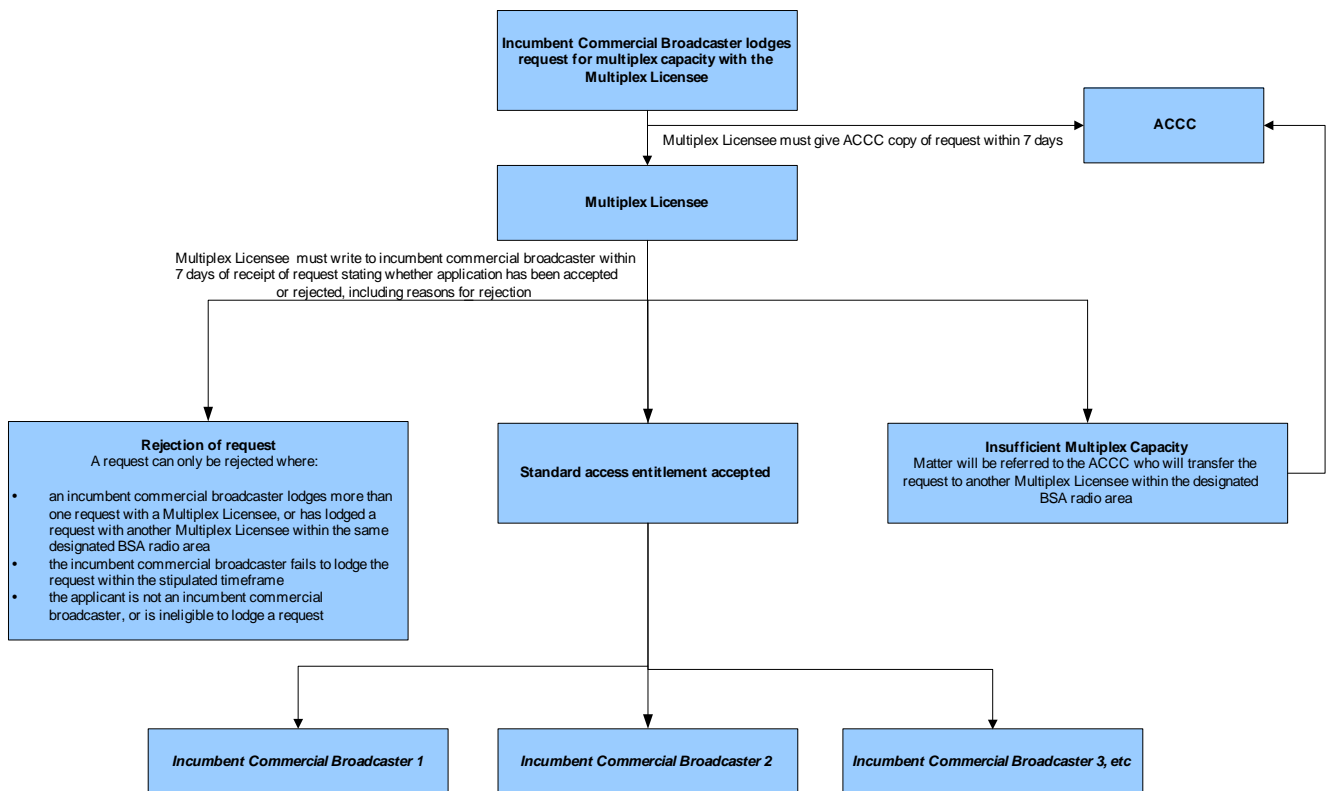
The access agreement provides for the allocation of standard access entitlements:

- directly to incumbent commercial broadcasters; and
- to digital community broadcasters through the Digital Community Radio Broadcasting Representative Company (which will represent the digital community broadcaster and facilitate access to the standard access entitlements allocated to digital community broadcasters).

The access agreement provides for the reservation of two-ninths of the total multiplex capacity for use by digital community broadcasters that are nominated and represented by the Digital Community Radio Broadcasting Representative Company.² This is consistent with the provisions of the Radiocommunications Act.³

The process by which an incumbent commercial broadcaster can claim standard access entitlements is set out below:

Summary of the process for the allocation of standard access entitlements to incumbent commercial broadcasters

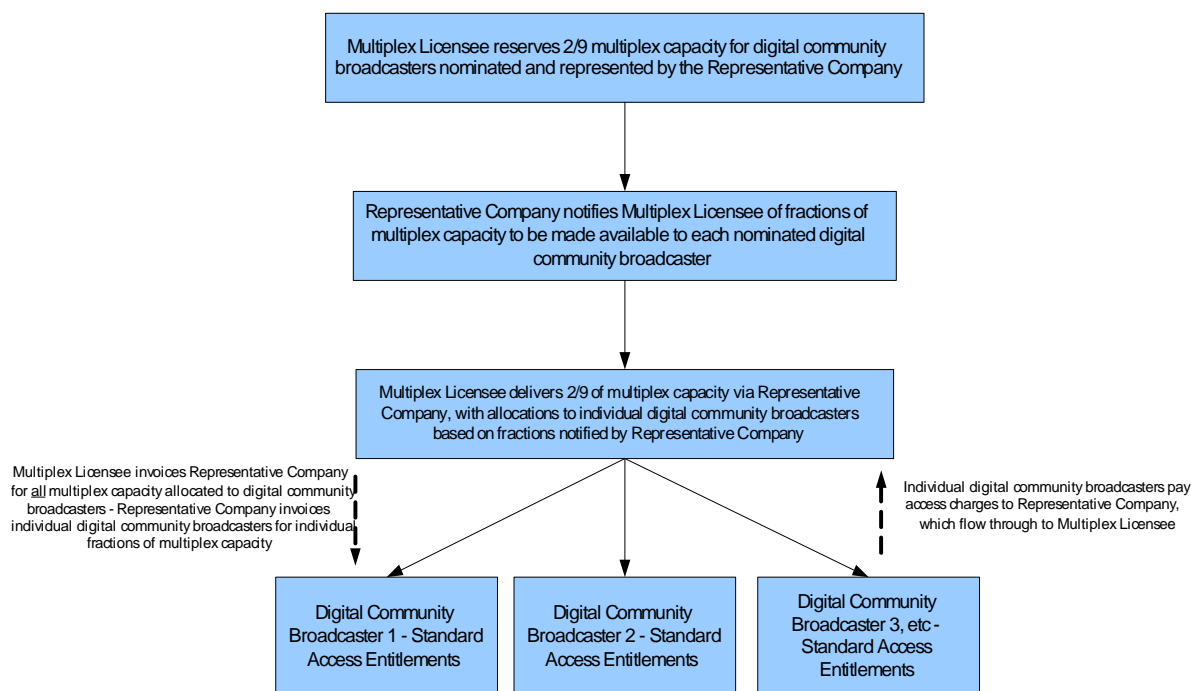


² Access agreement, clause 6.4(b) of main body.

³ Radiocommunications Act 1992 (Cth), section 118NR(2).

The process for allocation of standard access entitlements to digital community broadcasters occurs through the Digital Community Radio Broadcasting Representative Company and is set out below:

Summary of process for the allocation of standard access entitlements to digital community broadcasters



2.5 Excess-capacity access entitlements

The access agreement provides for the allocation of excess-capacity access entitlements:

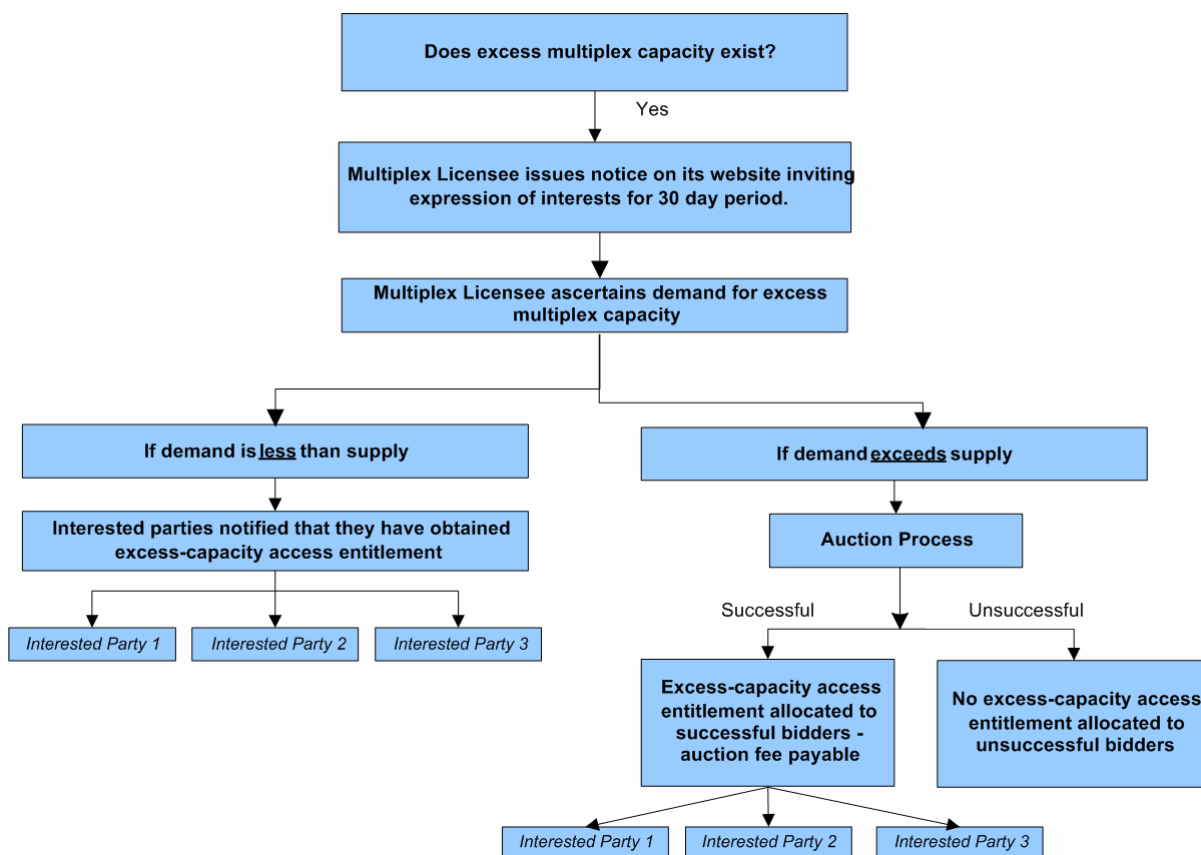
- directly to incumbent digital broadcasters;
- to digital community broadcasters through the Digital Community Radio Broadcasting Representative Company (which will represent the digital community broadcasters and facilitate access to excess-capacity access entitlements allocated to digital community broadcasters); and
- directly to restricted datacasters.

The access undertaking contains comprehensive provisions for the allocation of excess-capacity access entitlements, which are also modelled on the provisions of the Radiocommunications Act.

If there is excess multiplex capacity on the digital radio start up day or at any time after the end of the 12 month period beginning on the digital radio start up day, the access agreement provides for the Multiplex Licensee to ascertain the level of demand for excess capacity through consultation with the industry.

The diagram below provides an outline of the process by which the Multiplex Licensee will allocate excess-capacity access entitlements.

Summary of process for the allocation of excess-capacity access entitlements



Section 118NT(6) of the Radiocommunications Act provides that the Multiplex Licensee:

- must use an open and transparent auction process to determine which content service providers are to have access to which fractions of multiplex capacity for the purpose of providing one or more content services in the designated BSA radio area; and
- carry out the auction before the end of the 60 day period, beginning on the day on which demand from interested content service providers is ascertained.

The access agreement is consistent with these provisions of the Radiocommunications Act and provides for an efficient market based system of allocation in circumstances where demand exceeds supply.

2.6 Supply of the Multiplex Transmission Service

The access agreement requires the Multiplex Licensee to supply the Multiplex Transmission Service to access seekers to enable:

- the allocation of a standard access entitlement and excess-capacity access entitlement to an incumbent commercial broadcaster;
- in respect of a digital community broadcaster, the allocation of:

- a standard access entitlement (as nominated by the Digital Community Radio Broadcasting Representative Company); and/or
- an excess capacity access entitlement (acquired by the digital community broadcaster through the Digital Community Radio Broadcasting Representative Company); and
- the allocation of an excess-capacity access entitlement by a restricted datacaster.

2.7 Non-discrimination

In accordance with the requirements of section 118NP of the Radiocommunications Act, the Multiplex Licensee is required to supply the Multiplex Transmission Service on a non-discriminatory basis in relation to:

- the technical and operational quality of the Multiplex Transmission Service supplied to access seekers; and
- the technical and operational quality and timing of the fault detection, handling and rectification supplied to access seekers.

2.8 Availability of lower bit rate services

As currently drafted, the Radiocommunications Act provides for the allocation of multiplex capacity to incumbent commercial broadcasters based on divisions of one-ninth. Based on the technology proposed for use in Australia, one-ninth of multiplex capacity equates to approximately 128 Kbps of capacity on a multiplex transmitter.

However, digital radio signals can be transmitted at various bit rates to provide acceptable broadcast quality, so it is technically possible for access seekers to acquire a lesser amount of multiplex capacity if they choose and still be able to provide an acceptable digital radio service. The acquisition of less than 128 Kbps of multiplex capacity would still permit the access seeker to broadcast digital radio.

It is likely that certain access seekers will choose to acquire a lower bit rate for digital broadcasting services, depending on their business and service models.

The access agreement is sufficiently flexible to allow the Multiplex Licensee to offer the lower bit rate in circumstances where it is requested by access seeker. The supply of a lower bit rate will still enable the delivery of a broadcast quality digital radio service or data service, but will allow the relevant access seeker to pay a proportionally reduced access charge (see section 2.11 below).

2.9 Operational manual

As the supply of digital radio services has yet to commence (and EJVCs are still in the start-up phase of their operations), the operational and technical aspects of the Multiplex Transmission Service remain undefined at this point.

The EJVCs have appointed Commercial Radio Australia (**CRA**), the peak industry body, as its agent to:

- procure broadcasting equipment required by EJVCs to supply the Multiplex Transmission Service to access seekers;
- enter into arrangements with other suppliers for the installation of this broadcasting equipment; and

- enter into other agreements required by EJVCs to supply to the Multiplex Transmission Service.

In July 2008, CRA announced the selection of various companies to supply digital radio infrastructure and related services to the EJVCs.⁴ This included:

- high power DAB+ transmitters – Rohde & Schwarz;
- DAB+ multiplexers & coders – Factum;
- systems integration services and pre-build – The United Group; and
- project management support – Kordia.

As at the date of this supporting submission, however, the deployment of digital radio infrastructure remains in its planning and design stage, and such infrastructure has not yet been physically deployed. Similarly, negotiations with certain downstream suppliers (e.g. tower operators) are also ongoing and have yet to be completed.

As a consequence, the industry has yet to finalise its position on many of the technical and operational aspect of the Multiplex Transmission Service, including interface points, operations and maintenance procedures, and service levels.

Accordingly, the access agreement has been designed to allow the Multiplex Licensee to develop appropriate technical and operational documentation at a later date outside of the access undertaking process. This approach is consistent with industry practice in other networked industries, where operational and technical matters are dealt with in separate documentation between the parties.

The access agreement establishes strong safeguards to protect the interests of access seekers in any operational or technical procedures that are developed outside of the access undertaking process.

In particular:

- the access agreement requires the supply of the Multiplex Transmission Service to occur on a non-discriminatory basis in respect of operational and technical quality – any operational manual that is developed will need to comply with this requirement;
- the access agreement also requires the Multiplex Licensee to:
 - establish a process for the development of the operational manual, which includes a process for consultation with access seekers;
 - undertake such consultation with access seekers in good faith;
 - use its reasonable endeavours to accommodate any reasonable requests that may be made by access seekers during the consultation process in respect of the development or contents of the operational manual; and
 - ensure that the operational manual is consistent with the access agreement, including the Multiplex Licensee’s non-discrimination obligations;

⁴ Commercial Radio Australia, *Successful tenders announced for Digital Radio build*, Media Release, 10 July 2008.

- EJVCs are owned and controlled by access seekers, which have a significant incentive to develop operational and technical procedures that are reasonable, fair and balanced; and
- the operational and technical aspects of the Multiplex Transmission Service are relatively straightforward compared to other industries and therefore are unlikely to be contentious as between the Multiplex Licensee and access seekers.

It is also open to the ACCC to review any operational manual developed by EJVCs, including to determine the extent to which there has been compliance with the prohibition against discrimination in respect of the technical and operational quality of services.

2.10 Liability and indemnity regime

The access agreement provides for a fair and equitable liability and indemnity regime, which primarily operates on a reciprocal basis.

In all cases, neither party is liable for consequential loss (except for wilful or deliberate breach, act or omission). The typical conditions regarding mitigation of loss also apply.

The access agreement also caps each party's liability at \$100,000 for any one event in any 12 month period and \$250,000 for all events in any 12 month period. However, the liability caps in the access agreement do not apply to:

- payment of standard charges;
- reimbursements between the parties that are expressly provided for under the access agreement; and
- the indemnities contained in the access agreement.

In the event that the access seeker suffers loss that is caused by a third party (e.g. a supplier that provides an input to the Multiplex Transmission Service), the Multiplex Licensee's liability to the access seeker is limited to the amount recoverable from the third party. The recovered amount will then be apportioned between all access seekers who have suffered such loss.

If there is an interruption to the Multiplex Transmission Service, the Multiplex Licensee will only be liable for the access seeker's direct losses, but will not be liable if the interruption was caused by either:

- an excluded event, being:
 - a breach of the access agreement by the access seeker;
 - a negligent or fraudulent act or omission of the access seeker or any of its personnel;
 - a failure of any access seeker equipment; or
 - an act or omission of any third party (including a supplier or vendor) or unavailability of a third party product or service upon which the supply of the Multiplex Transmission Service is dependent; or
- a Force Majeure event.

The access agreement provides for each party to indemnify the other party in respect of injury to or death of any person, and damage to property of any person, caused by breach of the access agreement by the indemnifying party or its personnel or any negligent, wilful, reckless or unlawful act or omission of the indemnifying party or its personnel.

Typical conditions regarding the conduct of the defence under an indemnity and the reduction of an indemnity for cause or contribution apply to all indemnities.

Given that EJVCs have not concluded their supply arrangements with certain suppliers (e.g. tower operators), the access agreement also contains a mechanism that allows the Multiplex Licensee to propose changes to the applicable liability and indemnity regime to take account of changes in the Multiplex Licensee's arrangements with third party suppliers, subject to the approval of the ACCC.

2.11 Pricing principles

Schedule 2 of the access agreement sets out the pricing principles that are to apply in relation to the Multiplex Transmission Service.

As digital radio services have yet to commence and EJVCs are still in the process of finalising their downstream supply arrangements, it is not possible at this point in time for EJVCs to know their costs or for the access undertaking to set out specific prices for access to the Multiplex Transmission Service. Nor is it possible for EJVCs to propose indicative prices.

However, the pricing principles set out in the access agreement provide a sound methodology that ensures that the EJVCs are capable of recovering their costs in supplying the Multiplex Transmission Service and to obtain a reasonable return on their investment.

The ACCC has acknowledged that it is permissible for EJVCs to include a pricing methodology within an access undertaking where actual access costs are not available:⁵

"...if the licensee does not know the actual access costs at the time of lodging an undertaking, it may instead provide a fair and reasonable pricing methodology. This might be the case, for example, if agreement with infrastructure owners/operators has not yet concluded".

The methodology proposed in the pricing principles identifies the following cost categories, which are recoverable by the Multiplex Licensee from access seekers:

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

The pricing principles provide for the annualisation of the EJVC's costs to derive recurrent charges. Capital expenditure will be recovered by annualising these costs over the

⁵ Australian Competition and Consumer Commission, *Explanatory Statement issued by the Australian Competition and Consumer Commission: Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, page 6.

economic life of the assets, as determined in accordance with the accounting treatment applicable to those assets.

The pricing principles in the access agreement provide that the annualised capital expenditure will be determined by aggregating the return on capital of the depreciated value of the assets and the return on capital, whereby the return on capital is the weighted average cost of capital (**WACC**) of the depreciated value of the assets and the return on capital is calculated using a straight-line depreciation schedule.

The pricing principles provide that the WACC of the Multiplex Licensee:⁶

- is the nominal post-tax return on capital;
- is calculated by reference to the cost of equity and cost of capital to the Multiplex Licensee; and
- will be commensurate with the WACC of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle.

The WACC is considered in more detail in section 3.5 of this supporting submission.

The pricing principles provide for fair, reasonable and transparent pricing. In particular, the pricing principles provide for pricing on a non-discriminatory basis, with all access seekers being subject to the same prices for an equivalent amount of capacity. Accordingly, it is expected that all access seekers will pay the same level of access charges for the same amount of multiplex capacity.

The pricing principles are also sufficiently flexible to cater for a scenario where an access seeker chooses to acquire a lower bit rate service, in which case that access seeker will pay a proportionally lower access charge relative to an access seeker that chooses to acquire a higher bit rate service.

However, because the provision of the Multiplex Transmission Service at a lower bit rate results in the use of an additional line card for each separate service offered (regardless of the bit rate), the pricing principles provide for these additional costs to be recovered directly from the access seeker that seeks to acquire the lower bit rate service. This is consistent with the principle of cost causality and represents an efficient approach to pricing.

2.12 Other provisions

The access agreement also sets out other key terms and conditions that apply to the supply of the Multiplex Transmission Service, including:

- payment and billing;
- financial security;
- suspension and termination;
- force majeure; and

⁶ Access agreement, clause 3.3(c) of Schedule 2 (Pricing Principles).

- confidentiality of information.

3 Access undertaking is consistent with the Decision Making Criteria

3.1 Background

The access undertaking lodged by EJVCs is consistent with the Decision Making Criteria and should be approved by the ACCC in accordance with section 118NF of the Radiocommunications Act.

The Decision Making Criteria provides as follows:⁷

“In deciding whether to accept an access undertaking, the ACCC must have regard to the following matters:

- (a) whether the access undertaking complies with Division 4B of Part 3.3 of the Act;*
- (b) whether the access undertaking unduly restricts competition in related markets;*
- (c) whether the terms and conditions of access specified in the access undertaking are reasonable;*
- (d) whether the terms and conditions of access specified in the access undertaking include access prices or pricing methodologies which are fair and reasonable;*
- (e) whether the access undertaking includes an obligation on the licensee not to hinder access to services;*
- (f) whether the terms and conditions of access specified in the access undertaking provide for a reasonable dispute resolution mechanism”.*

The ACCC’s Explanatory Statement also provides greater guidance on how the ACCC intends to apply each aspect of the Decision Making Criteria.

The access undertaking has been developed with regard to the Decision Making Criteria and the Explanatory Statement.

As outlined below, the access undertaking is in compliance with, and satisfies the requirements of, the Decision Making Criteria.

3.2 The access undertaking complies with Division 4B of Part 3.3 of the Radiocommunications Act

Division 4B of Part 3.3 of the Radiocommunications Act:

- sets out the access regime for digital radio multiplex transmitter licences;

⁷ *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, section 5(1).

- requires Multiplex Licensees to comply with access obligations in relation to multiplex capacity;
- requires Multiplex Licensees to provide multiplex capacity to content service providers to enable the provision of content services; and
- provides for the implementation of a Multiplex Licensee's access obligations through an access undertaking.

The terms and conditions of the access undertaking are modelled on, and comply with, the provisions contained in Division 4B of Part 3.3 of the Radiocommunications Act.

In the Explanatory Statement, the ACCC has indicated that:

“The terms and conditions in an access undertaking must include terms and conditions that relate to standard access obligations and excess capacity obligations that are, or may become applicable to a digital radio multiplex transmitter licence. The licensee will be under an obligation to comply with those access obligations that are applicable to the licence on such terms and conditions as are ascertained in accordance with the accepted access undertaking”.

The access undertaking and access agreement incorporate these specific requirements, as required pursuant to the Radiocommunications Act.

In particular, the access agreement (which forms part of the access undertaking⁸):

- requires the Multiplex Licensee to provide each incumbent commercial broadcaster and digital community broadcaster (through the Digital Community Radio Broadcasting Representative Company) with access to the fraction of multiplex capacity to which it is entitled as a standard access entitlement;⁹
- requires the Multiplex Licensee to reserve two-ninths of the total multiplex capacity for use by digital community broadcasters nominated and represented by the Digital Community Radio Broadcasting Representative Company.¹⁰
- establishes a specific process for:
 - incumbent commercial broadcasters to take up their respective standard access entitlements and excess-capacity access entitlements;¹¹
 - digital community broadcasters, through the Digital Community Radio Broadcasting Representative Company, to take up their respective standard access entitlements and excess-capacity access entitlements;¹² and
 - restricted datacasters to take up their respective excess-capacity access entitlements, where acquired in accordance with the applicable process.¹³

⁸ Access undertaking, clause 3.2(d) of main body.

⁹ Access agreement, clause 6.2 of main body.

¹⁰ Access agreement, clause 6.4(b) of main body.

¹¹ Access agreement, clauses 6.3 and 7 of main body.

¹² Access agreement, clauses 6.4 and 7 of main body.

¹³ Access agreement, clause 7 of main body.

- contains terms that provide for the allocation of excess-capacity access entitlements through an economically efficient auction process where demand exceeds supply.¹⁴

The Explanatory Statement also provides that:

“Further obligations that a licensee must comply with in accordance with the Act concern an obligation not to discriminate between content service providers who have access to multiplex capacity under the licence, in relation to the technical and operational quality of the services supplied, and the technical and operational quality and timing of fault detect, handling and rectification processes (section 118NP)”.

These obligations are contained in the access undertaking itself¹⁵, as well as separately in the access agreement.¹⁶ The access agreement also establishes non-discrimination as an overarching obligation, for example, in respect of the development of an operational manual.¹⁷

3.3 Whether the access undertaking unduly restricts competition in related markets

Division 4B of Part 3.3 of the Radiocommunications Act establishes an access regime for the allocation of standard access entitlements and excess-capacity access entitlements, which in turn provides the basis for the provision of digital radio services in downstream retail markets.

There is nothing in the access undertaking that prevents or limits the ability of an access seeker to compete against other providers in a downstream retail market. In fact, the access undertaking actively facilitates the competitive process.

While the phrase *“unduly restricts competition”* has not previously been defined in Australian competition law, the ACCC has indicated in the Explanatory Statement that the access undertaking:

*“should not frustrate or unreasonable restrict the ability of an access seeker (a person with either a standard access entitlement and/or an excess-capacity access entitlement) to provide services”, and “should not favour particular access seekers”.*¹⁸

The access undertaking contains strong mechanisms to safeguard the competitive process. In particular:

- the access agreement contains a straightforward process for the allocation of standard access entitlements and excess-capacity access entitlement;

¹⁴ Access agreement, clause 7.6 of main body.

¹⁵ Access undertaking, clause 3.2(b) of main body.

¹⁶ Access agreement, clause 9.3 of main body.

¹⁷ Access agreement, clause 2.2 of main body.

¹⁸ Australian Competition and Consumer Commission, *Explanatory Statement issued by the Australian Competition and Consumer Commission: Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, page 5.

- the access agreement does not favour particular access seekers (e.g. access seekers that hold a shareholding interest in the Multiplex Licensee);¹⁹
- the pricing principles provide for the equal treatment of access seekers in the same situation, with each access seeker paying an identical access charge to another access seeker that acquires the same amount of multiplex capacity;
- the access undertaking prohibits discrimination in respect of the operational and technical quality of services, and in respect of fault detection, handling and rectification; and
- the access undertaking provides access seekers with the option of acquiring a lower bit rate service, in which case the access seeker will receive a proportionate reduction in the level of access charges that are payable.

In light of the above, it is clear that the access undertaking is consistent with the Decision Making Criteria and does not “*unduly restrict competition in related markets*”.

3.4 Whether the terms and conditions of access specified in the access undertaking are reasonable

The terms and conditions of access specified in the access undertaking are reasonable.

In the Explanatory Statement, the ACCC states that the attributes characterising “*reasonable*” terms and conditions include “*certainty, fairness and balance, timeliness and the removal of any potential for delaying access*”.²⁰

The ACCC also provides examples in the Explanatory Statement of the factors it may take into account in assessing the reasonableness of the terms and conditions contained in an access undertaking, which include:²¹

- the legitimate business interests of the licensee and its investment in facilities used to supply the service;
- the interests of persons who have rights to use the service;
- the public interest in having competition in markets and efficient investment in facilities and services;
- the operational and technical requirements necessary for the safe and reliable operation of the service; and
- the economically efficient operation of the network.

Each of these factors is considered below in greater detail:

the legitimate business interest of the licensee and its investment in facilities used to supply the services

¹⁹ Access agreement, clause 9.3(b) of main body.

²⁰ Australian Competition and Consumer Commission, *Explanatory Statement issued by the Australian Competition and Consumer Commission: Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, pages 5.

²¹ *Ibid*, pages 5-6.

The legitimate business interests of the Multiplex Licensee include the ability of the Multiplex Licensee:

- to recover the efficient costs of operating its business and supplying the Multiplex Transmission Service to access seekers;
- to achieve a normal rate of return (e.g. a rate of return that appropriately reflects the risks incurred by the Multiplex Licensee in undertaking its business); and
- to appropriately manage risk, which includes (amongst others):
 - liability risk, flowing from the conduct of the Multiplex Licensee's business (including its relationships with suppliers and vendors) and the supply of the Multiplex Transmission Service to access seekers; and
 - risk of non-payment by access seekers.

This interpretation is supported by judicial consideration of the phrase “*legitimate business interests*” in the context of Part XIC of the Trade Practices Act.

The Australian Competition Tribunal has stated:²²

“the expression connotes something which is allowable and appropriate when negotiating access to the carrier’s infrastructure. When looked at through the prism of a charge term and condition of access and its relationships to a carrier’s cost structure, it is a reference to the interest of a carrier in recovering the costs of its infrastructure and its operating costs and obtaining a normal return on its capital”.

The access undertaking contains appropriate provisions to ensure that the legitimate business interests of the Multiplex Licensee and its investment in digital radio infrastructure is protected.

This includes:

- a pricing methodology that ensures that the Multiplex Licensee is able to recover its costs of operating its business and supplying the Multiplex Transmission Service;²³
- a normal rate of return that reflects the returns of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle;²⁴
- provisions that ensure that provide for an appropriate management of liability risk;²⁵
- provisions that permit the Multiplex Licensee to minimise the possibility of non-payment through the provision of financial security, based on an objective assessment of the financial position of individual access seekers.²⁶

the interest of persons who have rights to use the service

²² *Re Telstra Corporation Ltd* [2006] ACompT 4 at 89 per L Goldberg, Mr R Davey and Professor D Round.

²³ Access agreement, Schedule 2.

²⁴ Access agreement, clause 3.3(c) of Schedule 2

²⁵ Access agreement, clause 17 of main body.

²⁶ Access agreement, clause 14 of main body.

The access undertaking provides content service providers with access to their standard access entitlements and/or excess-capacity access entitlements. This permits content service providers to provide digital broadcasting services to their target segments and to compete in downstream retail markets against other providers of such services.

The allocation of standard access entitlements and excess-capacity access entitlements (and the provision of the Multiplex Transmission Service) occurs:

- on a non-discriminatory basis with respect to technical and operational quality;
- using a transparent pricing methodology, where each access seeker is charged the same access charge for an equivalent amount of multiplex capacity; and
- on terms and conditions that are reasonable and fair to access seekers, including with respect to suspension and termination, confidentiality and dispute resolution.

the public interest in having competition in markets and efficient investment in and operation of the facilities and services

The access undertaking takes into account the public interest in having competition in downstream retail markets, while ensuring efficient investment in, and operation of, the digital radio infrastructure that provides the basis for such competition.

The access undertaking will promote competition in downstream retail markets:

- by facilitating access to the Multiplex Transmission Service, an essential input for providing digital radio services in downstream retail markets in competition with other providers; and
- by providing access on terms and conditions (both price and non-price) that are reasonable.

The access undertaking will enhance competition in downstream retail markets by providing the public with greater choice and quality of broadcasting services.

the operational and technical requirements necessary for the safe and reliable operation of the service

As the EJVCs are still in the start-up phase of their operations and various supply arrangements are yet to be finalised, the technical and operational requirements of the Multiplex Transmission Service remain undefined.

However, it is expected that any operational and technical processes that are developed will provide for the safe and reliable operation of the Multiplex Transmission Service as an overarching requirement.

the economically efficient operation of the network

The economically efficient operation of digital radio multiplexing equipment involves the utilisation of the maximum possible amount of multiplex capacity.

The access undertaking provides an appropriate mechanism for ensuring that multiplex capacity is utilised to the maximum extent possible.

In the event that there is spare capacity available on the digital radio start up day or at any time after a 12 month period beginning on the digital radio start day, the access

agreement provides for the Multiplex Licensee to increase the utilisation of multiplex capacity through an allocation of excess-capacity access entitlements.

It is expected that there will be demand for excess multiplex capacity on the digital radio start up date.

Where demand exceeds supply, the access agreement provides for the Multiplex Licensee to conduct an “*open and transparent*” auction for the purposes of allocating any excess-capacity access entitlements. This will ensure that scarce capacity is allocated in the most economically efficient manner to the highest bidder.

Higher levels of utilisation of multiplex capacity will increase the economic efficiency associated with the provision of the Multiplex Transmission Service. As the pricing principles provide for the recovery of these costs from all access seekers (based on the amount of multiplex capacity acquired), it follows that higher utilisation of multiplex capacity will result in an overall reduction in the quantum of access charges payable by all access seekers.

Therefore, when the mechanism within the access agreement for the allocation of excess-capacity access entitlements is viewed in the context of the proposed pricing methodology, the most likely outcome is a higher level of utilisation of multiplex capacity, resulting in reductions in the overall access charges payable by access seekers relative to a situation where such capacity remained under-utilised.

3.5 Whether the terms and conditions of access specified in the access undertaking include access prices or pricing methodologies which are fair and reasonable

The pricing principles set out in the access undertaking establish a fair and reasonable pricing methodology.

In the Explanatory Statement, the ACCC has stated:²⁷

“Fair and reasonable access prices included in an access undertaking should reflect the efficient costs of providing access to the multiplex capacity and associated services including a normal commercial rate of return. Reasonable access prices are required to ensure that the pricing of access to multiplex capacity is not excessive. Fair access prices ensure that access seekers are not disadvantaged for reasons which are anti-competitive”.

The pricing methodology set out in Schedule 2 of the access agreement is consistent with the ACCC’s requirement that any proposed pricing methodology be “*fair and reasonable*”. Specifically, Schedule 2 allows the Multiplex Licensee to set prices at a level that would recover its efficient costs and earn a normal rate of return on its investment.

The pricing principles identify a breakdown of the following cost categories incurred in the supply of the Multiplex Transmission Service, which are recoverable by the Multiplex Licensee from access seekers:

- capital expenditure;
- operating expenditure; and

²⁷ Australian Competition and Consumer Commission, *Explanatory Statement issued by the Australian Competition and Consumer Commission: Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, pages 6.

- expenditure on corporate overheads.

In light of the 'lumpy' nature of the capital expenditure on multiplex transmission equipment (and related items) and the limited revenues that are likely to be derived through digital radio services during the start-up phase of digital radio, it is expected that EVJCs will seek to recover their capital expenditure costs over the economic life of the relevant assets.

The pricing principles in the access agreement provide that the annualised capital expenditure will be determined by aggregating the return on capital of the depreciated value of the assets and the return on capital, whereby the return on capital is the WACC of the depreciated value of the assets and the return on capital is calculated using a straight-line depreciation schedule. The pricing principles provide that the WACC of the Multiplex Licensee:²⁸

- is the nominal post-tax return on capital;
- is calculated by reference to the cost of equity and cost of capital to the Multiplex Licensee; and
- will be commensurate with the WACC of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle.

As the above suggests, the pricing principles do not currently specify the WACC to be adopted by the Multiplex Licensees (i.e. either in percentage or formulaic terms).

Given the nascent status of the digital broadcasting industry in Australia and worldwide and the postponement of the launch of such services until 1 May 2009²⁹, it is premature to specify a particular percentage or an overly complex formulaic process for determining a particular rate of return.

Going forward, it would be appropriate for the industry to conduct a benchmarking exercise at a later date to determine an appropriate WACC for Multiplex Licensees, based on the criteria set out in clause 3.3(c) of Schedule 2 of the access agreement (i.e. *"similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle"*). It is assumed that with the passage of time, more data will become available to allow EJVCs to determine an appropriate rate of return.

It is envisaged that the rate of return that is eventually adopted for the digital broadcasting industry will be of a magnitude that is broadly consistent with the rates applied to regulated industries, such as telecommunications and electricity. These rates would likely constitute an important part of the benchmarking exercise to be conducted.

It is also the case that any WACC rate determined by the EJVCs would potentially remain subject to the ACCC's approval as part of the access undertaking process and could also be subject to the dispute resolution process under the access agreement in the event that it gives rise to a dispute with an access seeker going forward.

The approach set out in the access agreement for determining the costs that can be recovered by the Multiplex Licensee and the methodology used to annualise capital expenditure for the purpose of determining prices are fair and reasonable because:

²⁸ Access agreement, clause 3.3(c) of Schedule 2 (Pricing Principles).

²⁹ See generally, 'Digital services off air', in the *Australian Financial Review*, 10 September 2008, page 7.

- the agreement allows only for the recovery of efficiently incurred costs and, insofar as is possible at this stage, clearly defines the costs that are likely to be incurred in providing the Multiplex Transmission Service; and
- allows for a normal rate of return to the Multiplex Licensee. The precise level of the WACC is subject to a benchmarking exercise but it is anticipated that it will be consistent with the rates of return allowed to regulated businesses in Australia.

These reasons provide assurance that the costs recovered by the Multiplex Licensee will not be excessive and that the access prices determined through the recovery of these costs will be set at a fair and reasonable level.

Clause 4 of Schedule 2 of the access agreement establishes a transparent methodology for the calculation of access charges. It provides for the conversion of the annualised costs derived under clause 3 of the pricing principles into an annual fixed recurring charge according to the following formula:³⁰

$$AFRC = AC \times \frac{BMC}{TMC}$$

where,

AFRC is the annual fixed recurring charge.

AC is the annualised costs derived under section 3 of the pricing principles.

BMC is the amount of multiplex capacity allocated to the relevant access seeker by the Multiplex Licensee allocated for access by the access seeker.

TMC is the total amount of multiplex capacity allocated to all access seekers by the Multiplex Licensee and which shall be no greater (but may be less) than 9/9.

Such a methodology ensures that access seekers that acquire the same amount of multiplex capacity pay the same level of access charges as other access seekers that acquire an equivalent quantity. It also ensures that higher levels of utilisation of multiplex capacity result in an overall proportionate reduction in the level of access charges payable by all access seekers.

Given that the access charge varies depending on the amount of multiplex capacity that is being utilised by all access seekers at a certain point in time (and will vary as the number of access seekers on the multiplexer increases or decreases), the access agreement also includes a mechanism to ensure that any change in the amount of utilised multiplex capacity results in a proportionate and timely adjustment to the level of access charges payable by all access seekers.³¹

As noted above, the access undertaking provides incumbent commercial broadcasters with a 128 Kbps service and a 2 x 128 Kbps service for allocation by the Digital Community Broadcasting Representative Company to digital community broadcasters. The access undertaking also gives access seeker's the option of acquiring a lower bit rate service.

³⁰ Access agreement, clause 4.2 of Schedule 2 (Pricing Principles).

³¹ Access agreement, clause 4.3 of Schedule 2 (Pricing Principles).

In the event that an access seeker wishes to acquire a lower bit rate service from the Multiplex Licensee, the access charge payable by that access seeker will be proportionally reduced relative to the access charge that would otherwise be payable by that access seeker if they acquired a 128 kbps service.

At this point in time, it is envisaged that EJVCs will use a simple methodology for calculating the access charges payable by access seekers that elect to acquire a lower bit rate service. For example, where the access seeker acquires a 32 Kbps bit rate, it is envisaged that the access charge payable by that access seeker will be approximately 25% of the charge payable by an access seeker acquiring a 128 Kbps bit rate, subject to the costs of the additional line card (see below). Similarly, it is envisaged that an access seeker acquiring a 64 Kbps service will pay appropriately 50% of the access charge otherwise payable for a 128 Kbps service, subject to line card costs.

As noted above, the provision of the Multiplex Transmission Service at a lower bit rate results in the use of an additional line card for each service, regardless of the bit rate. In this situation, it is proposed that the cost of the additional line cards be recovered directly from those access seekers that choose to acquire the lower bit rate service. This is consistent with the principle of cost causality and represents an efficient approach to pricing.

The pricing formula specified above ensures that the charges that are applied to access seekers are determined solely on the basis of the multiplex capacity sought and the effect that these requirements may have on the efficiently incurred costs of the Multiplex Licensee. The pricing principles do not provide the Multiplex Licensee with the ability to discriminate between access seekers on any other basis.

In light of the above, it is clear that the pricing methodology set out in the access undertaking is “*fair and reasonable*” and should be accepted by the ACCC in its current form.

3.6 Whether the access undertaking includes an obligation on the licensee to not hinder access to services

The access agreement, which forms part of the access undertaking, includes an express obligation on the Multiplex Licensee to not hinder access to the Multiplex Transmission Service.³²

Similarly, there are safeguards throughout the access undertaking and access agreement that ensure that the Multiplex Licensee does not do anything (or fail to do something) that has the effect of hindering access to the Multiplex Transmission Service.

3.7 Whether the terms and conditions of access specified in the access undertaking provide for a reasonable dispute resolution mechanism

In the Explanatory Statement, the ACCC stated that it will have regard to the terms of the Dispute Resolution Mechanism (**DRM**) in the access undertaking to identify provisions that facilitate the “*fair, timely and efficient*” resolution of disputes.³³

³² Access agreement, clause 9.2 of main body.

³³ Australian Competition and Consumer Commission (ACCC), *Explanatory Statement* – issued by the ACCC relating to the *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*, page 7.

The ACCC also provides examples in the Explanatory Statement of the factors it may consider in assessing the reasonableness of dispute resolution provisions contained in the access undertaking, which include:³⁴

- setting the appropriate triggers and timeframes for dispute resolution, including the process for dispute notification and dispute termination;
- describing the process that will govern any dispute, including the definition and ambit of matters that may be resolved pursuant to the DRM and details of any differences between prices and non-price processes;
- identifying the appropriate arbitrator, or outlines a process for the selection of an appropriate arbitrator, taking into account the arbitrator's independence and impartiality, appropriate credentials and industry-specific knowledge and skills;
- identifying (without limiting) the factors to which the arbitrator should have regard in considering a dispute, which should include the terms and conditions of the access undertaking;
- defining the duties, functions, liability, authority and jurisdiction of the arbitrator; and
- defining the enforceability of any dispute resolution mechanism on the parties, including the enforceability of an arbitrated settlement.

Each of these factors is considered below in greater detail:

setting the appropriate triggers and timeframes for dispute resolution, including the process for dispute notification and dispute termination

The dispute resolution procedures in the access agreement sets out a reasonable mechanism to facilitate fair, timely and efficient resolution of disputes.

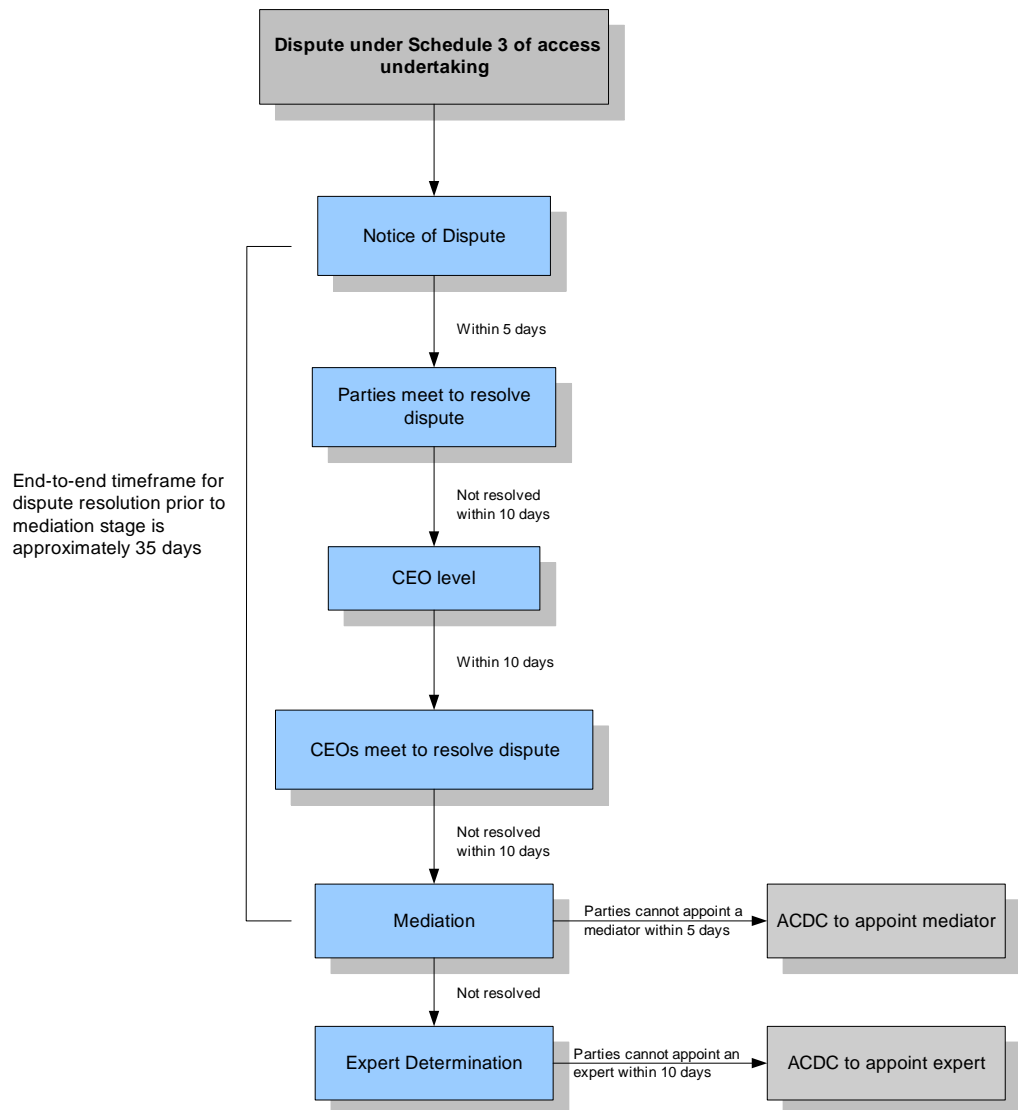
Clause 2 of Schedule 3 of the access agreement clearly set out the triggers and timeframes for dispute resolution. This clause governs the notification of disputes by the parties.

It also sets out the processes and timeframes for the initial escalation of disputes within each party's organisation, followed by escalation to the external dispute resolution bodies, which includes mediation and expert determination.

The dispute resolution process is set out in diagrammatic form below:

³⁴ Ibid, page 7.

Dispute Resolution Mechanism



The proposed dispute resolution procedures set out well-defined processes and strict timelines for the escalation of disputes. In particular, the dispute resolution procedures provide for escalation of a dispute (if required) to external resolution bodies within as little as 35 days.

It is also proposed that the mediation and expert determination will be conducted on an expedited basis, with streamlined procedures for the appointment of mediators and experts. It is also envisaged that these disputes will be conducted in accordance with the ACDC's Commercial Mediation Guidelines and the Expert Determination Rules.

describes the process that will govern any dispute, including the definition and ambit of matters that may be resolved pursuant to the DRM and details of any differences between price and non-price processes

Schedule 3 of the access undertaking describes the procedures that will govern dispute resolution between the parties and provides a step-by-step process for the parties to initiate disputes and escalate unresolved disputes.

The dispute resolution procedures apply to all disputes affecting both price and non-price terms arising under or in connection with the access undertaking. However, the dispute resolution procedures do not apply:

- where a party seeks “urgent interlocutory, injunctive or other immediate relief from a court”, and
- initially in respect of a billing dispute, which must be dealt with pursuant to clause 13 of the main body of the access agreement prior to escalation pursuant to Schedule 3 of the access agreement.

In the event that a dispute cannot be settled internally between the parties, the dispute resolution procedures provide for mediation, followed by expert determination if the dispute is not settled at mediation.

identifies an appropriate arbitrator, or outlines a process for the selection of an appropriate arbitrator, taking into account the arbitrator’s independence and impartiality, appropriate credentials and industry-specific knowledge and skills

As noted above, the dispute resolution procedures provide for mediation, followed by expert determination if the dispute is not settled at mediation.

In the mediation process, a specific selection criteria has been stipulated to ensure that the mediator appointed is independent, impartial and has appropriate credentials. In particular, the mediator must have:

- an understanding of the broadcasting industry or be able to acquire an understanding quickly;
- have at least 10 years experience in the broadcasting industry or as an adjudicator of similar disputes; and
- be independent of the parties and free of conflicts of interest.

In the event that a dispute cannot be resolved at the mediation stage, either party may refer a dispute for a binding expert determination by giving the other party notice in writing.

The expert must also be independent, impartial and have appropriate credentials. The expert must also have an understanding of the broadcasting industry and at least 10 years experience in the industry or as an adjudicator of similar disputes.

The functions and roles of the expert are virtually identical to that of an arbitrator. An expert determination process has been adopted to ensure that the adjudicator is appropriately qualified and capable of readily understanding the issues that would typically arise in the broadcasting industry.

While the ACCC has expressed a preference for arbitration as a means of resolving disputes, it is submitted that expert determination possesses many of the benefits of arbitration, but has the added benefit of ensuring that the adjudicator is also expert with the relevant expertise in the area of the dispute. This is preferable given that disputes arising from the model access undertaking are likely to be specific and technical in nature.

The expert determination process provides the same certainty as an arbitration and would result in a legally binding determination on the parties.

In the event that the parties cannot appoint a mediator or expert with an appropriate level of experience, the dispute resolution procedures provide for the appointment of a person that is capable of acquiring the relevant understanding within a short period. This could potentially include former judges or regulators with experience in respect of the subject matter of the dispute. The mediator and expert selection process have been drafted to ensure that while industry knowledge is valued, some flexibility is allowed to deal with any difficulties that may arise from time to time in finding an expert that is independent of both parties, or who has industry-specific knowledge and skills.

A binding expert determination is to be conducted in accordance with the ACDC Rules for Expert Determination. The access undertaking also provides that to the extent of any inconsistency between the dispute resolution procedures and the ACDC Rules for Expert Determination, the terms of the access agreement will prevail.

identifying (without limiting) the factor to which the arbitrator should have regard in considering a dispute, which should include the terms and conditions of the access undertaking

An expert may have regard to the following factors in hearing a dispute:

- the terms of the access undertaking;
- the applicable terms of the Radiocommunications Act;
- the legitimate business interest of the Multiplex Licensee and its investment in facilities used to supply the Multiplex Transmission Service;
- the interests of access seekers;
- the public interest in having competition in markets and efficient investment in facilities used to supply the Multiplex Transmission Services as an input;
- the operational and technical requirements necessary for the safe and reliable operation of the Multiplex Transmission Service; and
- the economically efficient operation of the facilities used to supply the Multiplex Transmission Service.

These factors for consideration are based on relevant aspects of the Decision Making Criteria. The use of these factors will ensure the reasonableness of decision making and ensure that the expert has appropriate guidance as to the issues that are to be taken into account.

defining the duties, functions, liability, authority and jurisdiction of the arbitrator

The dispute resolution procedures provide that any binding expert determination must be conducted in accordance with the ACDC Expert Determination Rules. These rules define the functions and liability of the expert.

In particular, the ACDC Expert Determination Rules provide that:

- the function of the expert is to conduct the determination process in accordance with ACDC's Expert Determination Rules and make a determination that is binding on the parties; and
- except in cases of fraud, the expert does not carry any liability arising out of or in connection with the expert's appointment or determination.

The dispute resolution procedures also ensure that the authority and jurisdiction of the expert is clearly defined. Clause 4.3(b) of Schedule 3 of the access agreement provides that the parties agree that the decision of an expert is final and binding on the parties.

defining the enforceability of any dispute resolution mechanism on the parties including the enforceability of an arbitrated settlement

The dispute resolution procedures in the access agreement specify that:

- the parties are legally bound by any settlement decision reached through mediation; and
- any expert determination is final and binding on the parties.

Attachment A - Information required pursuant to Digital Radio Multiplex Transmitter Licences Procedural Rules 2008 – Radiocommunications Act 1992

The following information is provided pursuant to section 9(1) of the *Digital Radio Multiplex Transmitter Licences Procedural Rules 2008*:

Requested Information	Details
Name of licensee	Digital Radio Broadcasting Sydney Pty Ltd (ACN 128 742 978) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901419
Name of each member of licensee	Today FM Pty Ltd Triple M Pty Ltd Nova 96.9 Pty Ltd Vega 95.3 Pty Ltd 2KY Broadcasting Pty Ltd Radio 2SM Pty Ltd Commonwealth Broadcasting Corporation Pty Ltd ARN Communications Pty Ltd Radio 2UE Sydney Pty Ltd Radio 2CH Pty. Limited Harbour Radio Pty. Limited
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of licensee	Digital Radio Broadcasting Sydney Pty Ltd (ACN 128 742 978) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901420
Name of each member of licensee	<p>Today FM Pty Ltd Triple M Pty Ltd Nova 96.9 Pty Ltd Vega 95.3 Pty Ltd 2KY Broadcasting Pty Ltd Radio 2SM Pty Ltd Commonwealth Broadcasting Corporation Pty Ltd ARN Communications Pty Ltd Radio 2UE Sydney Pty Ltd Radio 2CH Pty. Limited Harbour Radio Pty. Limited</p>
Nominated contact person for licensee	<p>Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer</p>
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Melbourne Pty Ltd (ACN 128 742 898) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901421
Name of each member of licensee	ARN Broadcasting Pty Ltd Austereo Pty Ltd Double T Radio Pty Ltd Malbend Pty. Limited Nova 100 Pty Ltd Radio 1278 Melbourne Pty Ltd Radio 3AW Melbourne Pty Limited Triple M Melbourne Pty Ltd Vega 91.5 Pty Ltd Victorian Radio Networks Pty Ltd 3UZ Pty. Ltd.
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Melbourne Pty Ltd (ACN 128 742 898) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901422
Name of each member of licensee	ARN Broadcasting Pty Ltd Austereo Pty Ltd Double T Radio Pty Ltd Malbend Pty. Limited Nova 100 Pty Ltd Radio 1278 Melbourne Pty Ltd Radio 3AW Melbourne Pty Limited Triple M Melbourne Pty Ltd Vega 91.5 Pty Ltd Victorian Radio Networks Pty Ltd 3UZ Pty. Ltd.
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Brisbane Pty Ltd (ACN 128 742 950) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901423
Name of each member of licensee	Broadcasting Station 4IP Pty. Limited Today FM Brisbane Pty Ltd Triple M Brisbane Pty Ltd Nova 106.9 Pty Ltd ARN Communications Pty Ltd Radio 4BH Brisbane Pty Limited Radio 4BC Brisbane Pty Limited Brisbane FM Radio Pty Ltd
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Brisbane Pty Ltd (ACN 128 742 950) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901424
Name of each member of licensee	Broadcasting Station 4IP Pty. Limited Today FM Brisbane Pty Ltd Triple M Brisbane Pty Ltd Nova 106.9 Pty Ltd ARN Communications Pty Ltd Radio 4BH Brisbane Pty Limited Radio 4BC Brisbane Pty Limited Brisbane FM Radio Pty Ltd
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Adelaide Pty Ltd (ACN 128 742 772) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901330
Name of each member of licensee	Austereo Pty Ltd Festival City Broadcasters Pty Ltd Nova 91.9 Pty Ltd Southern State Broadcasting Pty. Limited Triple M Adelaide Pty Ltd 5AD Broadcasting Company Pty Ltd
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.

Requested Information	Details
Name of Licensee	Digital Radio Broadcasting Perth Pty Ltd (ACN 128 742 638) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901331
Name of each member of licensee	Radio Perth Pty Ltd DMG Radio (Perth) Pty Ltd Consolidated Broadcasting System (W.A.) Pty Limited Perth FM Radio Pty Ltd Radio 96FM Perth Pty Limited Radio 6PR Perth Pty Limited
Nominated contact person for licensee	Joan Warner Chief Executive Officer, Commercial Radio Australia Ltd ACN 059 731 467 ABN 52 059 731 467 Level 5, 88 Foveaux Street Surry Hills NSW 2010 Contact phone number: 02 9281 6577 Fax number: 02 9281 6599 Email address: mail@commercialradio.com.au <i>With a copy to:</i> Gilbert + Tobin 2 Park Street, Sydney NSW 2000 Attention: Angus Henderson, Partner Ara Margossian, Lawyer
Details of services to which access is to be provided	Please refer to access undertaking.
Details of services to which the variation relates	Not applicable.
Reasons for variation	Not applicable.