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Michael Cosgrave
Executive General Manager
Infrastructure Regulation Division
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

By email: digitalradio@accc.gov.au

Dear Mr Cosgrave

Digital radio multiplex transmission services in Canberra, Darwin and Hobart – access undertakings

Commercial Broadcasters Proprietary Limited. ACN 009 476 653 is a shareholder in Digital Radio Broadcasting Hobart Pty Ltd ACN 128 742 709 (JVC) and will also be an acquirer of the digital radio multiplexing service from the JVC.

Our organisation strongly supports the digital radio access undertaking that has been lodged with the ACCC and submits it should be accepted by the ACCC in its proposed form.

In particular:

- the JVCs have strong incentives to incur costs efficiently and to only earn a reasonable rate of return, ensuring that JVCs will not pass through inefficient costs into the downstream radio broadcasting markets;
- the proposed access undertaking is based on the undertakings for the metropolitan broadcast markets, which have been previously approved by the ACCC, and have operated effectively in those markets for close to a decade; and
- the terms of access are fair and reasonable and will encourage an equal playing field for access seekers and promote greater choice and quality for listeners in downstream markets.

Some short responses to the ACCC's questions in its *Consultation and Position Paper* dated 19 November 2018 is set out below:

1. Do the undertakings comply with Division 4B of Part 3.3 of the Radiocommunications Act?

Yes. The proposed access undertaking is consistent with the applicable terms of the Radiocommunications Act, including the ACCC's decision-making criteria made under section 118NJ of the Act.

2. Are there any aspects of the undertakings that unreasonably restrict competition for digital radio services or related markets?

No.

The undertaking includes a transparent and non-discriminatory process for allocating access entitlements, which reflect the requirements of the Act. The undertaking will likely promote competition in downstream markets and have a negligible impact on upstream markets.

3. Are the terms and conditions of access specified in the access undertakings reasonable?

Yes. The price and non-price terms are reasonable.

4. Are the access prices or pricing methodologies in the undertakings fair and reasonable? Does the addition of clause 5.2(j) in Schedule 2 raise any concern?

Yes. We proposed pricing methodology is fair and reasonable. It provides for cost-oriented pricing with a reasonable rate of return, which will be determined annually by reference to an ACCC approved price from other regulated sectors.

The pricing principles provide for extensive consultation with access seekers and these obligations apply in all circumstances where non-affiliated access seekers (e.g. community broadcasters) are taking multiplex services from the JVC. Accordingly, the inclusion of clause 5.2(j) in Schedule 2 of the access agreement does not raise any concerns, given its limited scope.

5. Do the undertakings include an obligation on the DRMT Licensees to not hinder access?

Yes. Clause 7.2 in the access agreement expressly prohibits the multiplex licensee from hindering an access seeker's access. This is complemented by the natural incentives of each JVC to make access available to all eligible access seekers as a means of defraying and minimising the overall costs of multiplex access.

6. Do the terms and conditions of access specified in the access undertakings provide for a reasonable dispute resolution mechanism?

Yes. The proposed dispute resolution mechanism is reasonable.

7. Are there any other matters which the ACCC may consider?

Our company supports the ACCC's initial assessment and position that it is likely to accept the proposed undertakings. We would be supportive of the ACCC accepting the proposed access undertaking in its current form.

Please do not hesitate to contact me if you have any questions.

Yours sincerely



Alison Cameron

Director

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