

Tuesday, January 27, 2009

Mr Richard Home
General Manager
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Australian Competition and Consumer Commission
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Dear Mr Home

DIGITAL RADIO: ACCESS UNDERTAKINGS, DRAFT DECISION

I write on behalf of Radio 3PBS, a metropolitan wide community broadcasting station operating in Melbourne.

Under digital radio legislation the station is eligible to capacity on the digital radio multiplex facilities currently being established. Subject to the determination of appropriate access arrangements, the station wishes to participate in digital radio and contribute to the diversity of services available, in accordance with the objects of the Broadcast Act.

The station notes the ACCC has published a draft decision in relation to access undertakings lodged by the digital radio multiplex licensees and that further comment is sought.

In reviewing the ACCC draft decision, this station is alarmed that the ACCC has not paid proper and full regard to the legitimate role and situation of community broadcasters. The CBAA submission lodged late in 2008 cogently outlined the concerns of this station and has our full support. We are very concerned that key points raised in that submission seem to have been set aside by the ACCC.

This station is licensed to broadcast for particular and specific purposes. Moreover, there is legislation that requires the station to operate on a not for profit basis. Of course this is an entirely different situation to that of a commercial broadcaster.

The special status of community broadcasting as distinct from commercial broadcasting licensees has been recognised to some extent by the reservation of capacity on the digital radio multiplex for specifically community broadcasting purposes.

We wish to underline that community broadcasters are sensitive to open ended costs. It is not simply that all broadcasters seeking access are equal and that some lack financial resources. Special treatment is required because - by law - community broadcasters must operate using good governance principles on a not for profit basis.

The station has a legislated entitlement to digital radio capacity and its situation is legitimate. Its situation cannot be equated with that of a commercial broadcaster, or of a commercial broadcaster lacking in financial resources.

The station therefore writes to ensure the ACCC is left in no doubt as to the points which need addressing before this station can - in keeping with its governance obligations - access digital radio capacity.

- (a) There must be a high degree of certainty and clarity about costs.
- (b) The potential for the costs to be radically altered beyond a margin must be eliminated.
- (c) Costs incurred by material changes to the equipment and facilities must be eliminated. In particular, we note that introduction of site redundancy has the potential to double costs. Changes of this type and scale must be factored outside of the standard access arrangements.
- (d) The cost for access should be limited to a pro-rata of the total maximum of 2/9th of overall multiplex costs. Any mechanism that does not give that certainty of cost will mean the station will be faced with open ended costs and is not acceptable.
- (e) All risk for any unused capacity should be borne only by the potential beneficiaries of that risk, not by not-for-profit non-shareholding Access Seekers.

The station also believes it is critical that consumers are provided with the best possible means to navigate services on their radio. We believe this is achieved by all broadcasters participating in an ensemble wide EPG on a multi-lateral basis. The station believes it to be entirely appropriate for the ACCC to be pro-active in this matter for the benefit of consumers. It is not enough for the ACCC to take a narrow view of its role as only ensuring there are commercial opportunities for potential providers of EPG services. In any case we believe this will not be so much a commercial opportunity but rather will take the form of a contract tendered to a third party by the multiplex licensee.

At the very minimum the ACCC should require that all broadcasters / access seekers are treated equally on any EPG that is developed for digital radio multiplexes.

Finally, we wish you to note that Access Undertaking in its current form and with only the minor adjustments sought by the ACCC in its draft decision will leave the station unable to seek access if it is to act consistently with good governance principles.

It is clear therefore that the current undertaking will hinder access.

We trust you will take our views into account.

Yours sincerely



Adrian Basso
PBS General Manager