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10TH October 2019

Michael Cosgrave
Executive General Manager
Infrastructure Regulation Division
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3000

By email: digitalradio@acc.gov.au

Dear Mr Cosgrave

Digital radio multiplex transmission services in Mandurah – access undertaking

West Coast Radio Pty Ltd (**West Coast Radio**) is the shareholder of Digital Radio Broadcasting Mandurah Pty Ltd (the **JVC**) and will also acquire digital radio multiplex capacity from the JVC.

West Coast Radio 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. As the ACCC has noted, West Coast Radio will be the sole access seeker. West Coast Radio submits this should not be a matter of concern for the ACCC, as the proposed access undertaking properly accounts for such market conditions and has the necessary elements in place should there be a new entrant into the Mandurah radio licence area.

In particular:

- the JVC has strong incentives to incur costs efficiently and to only earn a reasonable rate of return, ensuring that JVC will not pass through inefficient costs into the downstream radio broadcasting markets;
- the proposed access undertaking is based on the undertakings for the metropolitan and regional broadcast markets, which have been previously approved by the ACCC—the core architecture has operated effectively for over a decade; and
- the terms of access are fair and reasonable and will encourage an equal playing field (particularly if there is new entry into the Mandurah radio licence area) 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 24 September 2019 are set out below:

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1. Does the undertaking 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 undertaking 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 also allow West Coast Radio to compete with broadcasters in the neighbouring Perth radio licence area, whose analogue and DAB+ signals already overspill into the Mandurah licence area to a significant degree.

Accordingly, the undertaking will likely promote competition in downstream markets and have a neutral impact on upstream markets.

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

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

4. Are the access prices or pricing methodologies in the undertaking fair and reasonable?

Yes. The 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.

5. Does the undertaking include an obligation on the DRMT Licensee to not hinder access?

Yes. Clause 7.2 in the access agreement expressly prohibits the multiplex licensee from hindering an access seeker's access.

6. Do the terms and conditions of access specified in the access undertaking 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?

West Coast Radio 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



Leslie Hawton
Company Secretary