Annual report of regulatory compliance

provided to the ACCC pursuant to section 118PN of the Radiocommunications Act in relation to the 2023-2024 financial year

Digital Radio Broadcasting Darwin Pty Ltd
in relation to DAB+ services provided in the Darwin 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 Darwin Pty Ltd, which is the digital radio multiplex transmission licensee in Darwin (**DRB Darwin**).[1] This report is given under section 118PN of the *Radiocommunications Act 1992* (Cth) (**Radiocommunications Act**) for the 2023-2024 financial year.

On 13 March 2019, the Australian Competition & Consumer Commission (**ACCC**) accepted an access undertaking provided by DRB Darwin pursuant to section 118NF(2) of the Radiocommunications Act (the **access undertaking**). Subsequently, the Australian Communications and Media Authority declared a digital radio start-up day of 7 May 2019 for the Darwin BSA radio area.

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 Darwin 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 Darwin 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;
- compliance during that financial year with excess-capacity access obligations (if any) applicable to the licence;

[1] DRB Darwin is the holder of a Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 10503674/1.

- compliance during that financial year with obligations that are applicable to the licence under section 118NP of the Radiocommunications Act (i.e. DRB Darwin'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 Darwin 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 2023-2024 financial year.

1.2 Overview of findings

The 2023-2024 financial year was the sixth year – and fifth complete year - in which DRB Darwin supplied multiplex transmission services to access seekers pursuant to an access undertaking.

Based on our review, DRB Darwin has been compliant with the legislative requirements of the Radiocommunications Act and the terms of the access undertaking and access agreement for the 2023-2024 financial year.

DRB Darwin has supplied the multiplex transmission service to all content service providers in accordance with their legislative and regulatory obligations.

1.3 Confidentiality

There are aspects of this Annual Report that are confidential to DRB Darwin 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 Darwin 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 Darwin is compliant with key aspects of the access undertakings, including the access agreement that forms part of the access undertakings and which sets out the terms on which DRB Darwin 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 2023-2024 financial year.

The areas of the access undertaking and access agreement covered in this section include:

- the supply obligations of DRB Darwin in respect of the multiplex transmission service under clause 7 of the access agreement;
- the obligations of DRB Darwin in respect of financial security under clause 12 of the access agreement; and
- the compliance by DRB Darwin 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 Darwin 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 of the access agreement (see section 2.6 below).

This section does not explicitly consider the issue of compliance with the standard access obligations and excess capacity access obligations, which are covered in sections 3 and 4 below respectively.

2.2 Supply obligations

Clause 7 of the access agreement:

- prohibits DRB Darwin from preventing an access seeker from obtaining access to the multiplex transmission service in accordance with the access agreement;
- prohibits DRB Darwin 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 Darwin make the standard access entitlements and excess-capacity access entitlements available to content service providers.

DRB Darwin is not aware of any non-compliance with clause 7 of the access agreement in the 2023-2024 financial year. DRB Darwin:

- did not prevent any access seeker from receiving the multiplex transmission service during that period;
- supplied the multiplex transmission service on an identical basis to all access seekers from a technical and operational quality perspective during that period; and
- allowed all holders of standard access entitlements and excess-capacity access entitlements to acquire and obtain the benefit of those entitlements.

2.3 Financial security

DRB Darwin did not require financial security directly from any digital commercial radio broadcasters or digital community radio broadcasters in the 2023-2024 financial year pursuant to the terms of an access agreement.

[**C-I-C**] [redacted] [**C-I-C**]

2.4 Efficient cost principle

Clause 3.1 of Schedule 2 of the access agreement limits the costs that DRB Darwin can recover from access seekers to those costs that have been efficiently incurred. Clause 3.2 and clause 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.

DRB Darwin considers that the costs that have been included within their respective cost bases during the 2023-2024 financial year reflect the efficient costs incurred.

In prior financial years, DRB Darwin incurred costs in connection with the establishment and initial operation of its main multiplex transmitter. The primary costs in the 2023-2024 financial year were in relation to the operation of this main multiplex transmitter site.

DRB Darwin has not established an on-channel repeater network (as was the case in the Sydney, Melbourne, Brisbane and Perth BSA radio areas), but may do so in future years should coverage issues arise.

The following sets out the measures taken by DRB Darwin to ensure that the set-up and initial operating costs were efficiently incurred:

- all digital radio multiplex infrastructure and services (i.e. the major cost components in respect of the multiplex transmission service) were sourced from vendors at the best possible pricing and, where feasible, repurposed hardware and other components from DAB+ trials that preceded full-scale DAB+ services – most of this expenditure occurred in prior financial years;
- the operating expenditure incurred by DRB Darwin reflected what was necessary to meet expected demand and was essential to achieving quality, reliability and security of supply in respect of the multiplex transmission service, with such measures including:
  - engaging consultants who had experience in establishing DAB+ networks, thus enabling DRB Darwin to leverage industry best practice; and
  - setting operating expenditure parameters with reference to sites of similar size and scale of operation in the established metropolitan markets; and

- the value attributed to these contracts is consistent with those contained in audited accounts for the relevant financial year.

DRB Darwin 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 Darwin 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 WACC is 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 Australian Energy Regulator (**AER**) in respect of comparable regulated industries (such as telecommunications and electricity) as at the date of review of the WACC.

DRB Darwin adopted a nominal vanilla WACC of 5.55% during the 2023-2024 financial year. This WACC value was aligned with the ACCC's most recent regulatory determination in an adjacent industry sector at the time of review.[2]

2.6 Calculation of access fees

Clause 4.1 of Schedule 2 of the access agreement provides that DRB Darwin 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 Darwin's annualised costs into an annual fixed recurring charge, based on the following formula:

AFRC *= AC x 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 by DRB Darwin.*

The figures below are the access fees set for each of the access seekers for the 2023-2024 financial year. The figures are exclusive of GST.

[2] AER, Final Decision – APA VTS Access Arrangement 2023 to 2027 (December 2022) at page 16.

Access Seeker	Q3 2023 Access Fee (per quarter)	Q4 2023 Access Fee (per quarter)	Q1 2024 Access Fee (per quarter)	Q2 2024 Access Fee (per quarter)	Total Access Fee paid 2023-2024 financial year
Northern Territory Broadcasters Pty Ltd	$12,281.01	$12,281.01	$12,281.02	$12,281.02	$49,124.06
Digital Community Broadcasters	$6,140.50	$6,140.51	$6,140.51	$6,140.51	$24,562.03

DRB Darwin is not aware of any non-compliance with Schedule 2 of the access agreement in the 2023-2024 financial year.

3. Compliance with standard access obligations

Section 118NL of the Radiocommunications Act imposes standard access obligations on DRB Darwin, which in turn requires DRB Darwin 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 Darwin has made standard access entitlements available to the incumbent commercial broadcasters pursuant to section 118NQ of the Radiocommunications Act.

The Radiocommunications Act also requires that DRB Darwin reserve two-ninths of multiplex capacity under each 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.[3]

During the 2019-2020 financial year, DRB Darwin first made available standard access entitlements to all digital community broadcasters that have been nominated by the Representative Company as being eligible to acquire multiplex capacity in each of the respective designated BSA radio areas.

DRB Darwin continued to meet this requirement by allocating standard access entitlements to digital community broadcasters in the 2023-2024 financial year pursuant to the requirements of the Radiocommunications Act.

DRB Darwin is seeking to put in place arrangements between DRB Darwin, the CBAA and digital community radio broadcasters whereby the CBAA will operate as the single interface representing all digital community radio broadcasters taking supply of multiplex capacity in the respective BSA radio areas.

The capacity allocations are summarised in **Attachment A**.

DRB Darwin is not aware of any non-compliance with their standard access obligations for the 2023-2024 financial year.

[3] Radiocommunications Act, section 118NR(2). This is explicitly acknowledged in clause 4.4(b) of access agreement.

4. Compliance with excess-capacity access obligations

Section 118NM of the Radiocommunications Act imposes excess-capacity access obligations on DRB Darwin, which in turn require DRB Darwin 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.

DRB Darwin first made excess-capacity access entitlements available to incumbent commercial broadcasters during the 2019-2020 financial year. These allocations were made in accordance with the requirements of the Radiocommunications Act and have remained in place since the initial allocation, including over the course of the 2023-2024 financial year. These allocations are also summarised in **Attachment A**.

DRB Darwin made available excess-capacity access entitlements to all content service providers that are eligible to acquire the associated multiplex capacity in the Darwin BSA radio area.

5. Compliance with non-discrimination obligation

Section 118NP of the Radiocommunications Act prohibits discrimination by DRB Darwin 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.

DRB Darwin is not aware of any non-compliance with their non-discrimination requirements.

DRB Darwin has supplied the multiplex transmission service on an identical basis to all access seekers from a technical and operational quality perspective, including in respect of fault detection, handling and rectification.

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 Darwin during the 2023-2024 financial year. At all times during the 2023-2024 financial year, Northern Territory Broadcasters Pty Ltd was the sole shareholder of DRB Darwin.[4]

7. Authorisation of third-party users

Section 114(1) of the Radiocommunications Act provides that DRB Darwin may, by written instrument, authorise a third party to operate radiocommunications devices under the licence.

[4] DRB Darwin has 9,000 issued shares, all of which are held by Northern Territory Broadcasters Pty Ltd.

During the 2023-2024 financial year, DRB Darwin has not authorised any third parties to operate radiocommunications devices under this section.

Attachment A Multiplex capacity allocations

There were no changes in multiplex capacity allocations during the 2023-2024 financial year.

The following table describes how multiplex capacity was allocated according to access seekers' standard access entitlements and any excess-capacity access entitlements.

Access Seeker	Multiplex Capacity (1/9 equivalent to 128 Kbps)
Standard access entitlement – allocated to Northern Territory Broadcasters Pty Ltd (in respect of the licence for 8HOT)	1/9
Standard access entitlement – allocated to Northern Territory Broadcasters Pty Ltd (in respect of the licence for 8MIX)	1/9
Digital Community Broadcasters	*(2/9 reserved)*
Excess capacity access entitlement – allocated to Northern Territory Broadcasters Pty Ltd	2/9
Excess capacity – no allocation	3/9
Total Multiplex Capacity	**9/9**

***** Northern Territory Broadcasters 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).