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 Joint Venture Companies
Canberra, Hobart and Gold Coast

Public version

28 September 2024

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1. Executive summary

1.1 Background

This document constitutes the annual report of regulatory compliance by the digital radio multiplex transmission licensees in Canberra, Hobart and the Gold Coast (each a **JVC** and together, the **JVCs**) under section 118PN of the *Radiocommunications Act 1992* (Cth) for the 2023-2024 financial year.[1]

On 13 March 2019, the Australian Competition & Consumer Commission (**ACCC**) accepted access undertakings provided by the Canberra and Hobart JVCs pursuant to section 118NF(2) of the Radiocommunications Act (the **access undertakings**). Subsequently, the Australian Communications and Media Authority declared digital radio start-up days for each of the Canberra and Hobart BSA radio areas towards the end of the 2018-2019 financial year.[2]

On 2 March 2022, the ACCC accepted an access undertaking provided by the Gold Coast JVC pursuant to section 118NF(2) of the Radiocommunications Act. Subsequently, the Australian Communications and Media Authority declared a digital radio start-up day of 4 April 2022 for the Gold Coast 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, the JVCs 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 the JVCs 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;

[1] Further details about the entities that have lodged this annual report are set out in Attachment A.
[2] Digital radio start-up days were as follows: Canberra – 19 July 2019 and Hobart – 1 April 2019.

- compliance during that financial year with excess-capacity access obligations (if any) applicable to the licence;
- compliance during that financial year with obligations that are applicable to the licence under section 118NP of the Radiocommunications Act (i.e. the JVCs' 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 the JVCs 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 fifth complete year in which the Canberra and Hobart JVCs supplied multiplex transmission services to access seekers pursuant to an access undertaking. In the case of the Gold Coast JVC, this was the third year—and second complete year—in which such multiplex transmission services were supplied.

The JVCs have 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 (subject to the next point). The Gold Coast JVC inadvertently adopted the slightly higher WACC used by the Canberra and Hobart JVCs during the financial year. However, this has now been corrected for subsequent financial years.

The JVCs have 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 the JVCs 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.

The JVCs do 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 the JVCs are 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 the JVCs supply 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 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 the JVCs in respect of the multiplex transmission service under clause 7 of the access agreement;
- the obligations of the JVCs in respect of financial security under clause 12 of the access agreement; and
- the compliance by the JVCs 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 the JVCs 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 the JVCs from preventing an access seeker from obtaining access to the multiplex transmission service in accordance with the access agreement;
- prohibits the JVCs 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 the JVCs make the standard access entitlements and excess-capacity access entitlements available to content service providers.

The JVCs are not aware of any non-compliance with clause 7 of the access agreement in the 2023-2024 financial year. The JVCs:

- 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

The JVCs 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 the JVCs 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.

The JVCs consider that the costs that have been included within their respective cost bases during the 2023-2024 financial year reflect the efficient costs incurred by the JVCs.

In prior financial years, the JVCs incurred costs in connection with the establishment and initial operation of the main multiplex transmitter site in respect of each BSA radio area. The primary costs in the 2023-2024 financial year were in relation to the operation of these main multiplex transmitter sites.

The JVCs have not established any on-channel repeater networks (as was the case in the Sydney, Melbourne, Brisbane and Perth BSA radio areas).

The following sets out the measures taken by the JVCs 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 the JVCs 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 the JVCs 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.

The JVCs are 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 the JVCs 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, in turn, set and reviewed periodically 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 each JVC conducts its periodic review of the WACC.

The access agreements for Canberra and Hobart provide for an annual review of the WACC. The Gold Coast access agreement provides for the WACC to be initially set upon acceptance of the undertaking and then reviewed for the next financial year (i.e., the 2022-2023 financial year). The WACC for the Gold Coast BSA radio area is to then be reviewed every 5 years thereafter.

In the case of the Canberra and Hobart BSA radio areas, the JVCs 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.[3]

In the case of the Gold Coast BSA radio area, the Gold Coast JVC previously set a nominal vanilla WACC of 4.72% for the 2022-2023 financial year. Notwithstanding the requirement that this WACC value be maintained for a period of five years, the Gold Coast JVC inadvertently adopted the WACC stated above in respect of the 2023-2024 financial year. This has been corrected in the subsequent financial year and will remain at 4.72% for the remainder of the five-year period (up to and including the 2026-2027 financial year).

The impact of this change is minimal due to the relatively modest amount of capital expenditure associated with the JVC's current operating model (which is heavily opex oriented) and the fact that the bulk of the access fees are paid by commercial broadcasters (i.e. the entities that are also shareholders of the JVCs).

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

2.6 Calculation of access fees

Clause 4.1 of Schedule 2 of the access agreement provides that the JVCs 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 the JVCs' 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 the JVC.*

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

BSA Radio Area	Access Seeker	Q3 2023 Access Fee (per 32 Kbps, per quarter)	Q4 2023 Access Fee (per 32 Kbps, per quarter)	Q1 2024 Access Fee (per 32 Kbps, per quarter)	Q2 2024 Access Fee (per 32 Kbps, per quarter)	Total Access Fee paid 2023-2024 financial year (per 32 Kbps)
1. Canberra	Radio Canberra Pty Ltd	$845.63	$845.63	$845.63	$845.63	$3,382.50
	Canberra FM Radio Pty Ltd	$845.63	$845.63	$845.63	$845.63	$3,382.50
	Digital Community Broadcasters	$845.63	$845.63	$845.63	$845.63	$3,382.50
2. Hobart	Commercial Broadcasters Pty Ltd	$1,000.75	$1,000.75	$1,000.75	$1,000.75	$4,003.00
	Great Southern Land Broadcasters Pty Ltd	$1,000.75	$1,000.75	$1,000.75	$1,000.75	$4,003.00

	Digital Community Broadcasters	$1,000.75	$1,000.75	$1,000.75	$1,000.75	$4,003.00
3. Gold Coast	Gold Coast FM Pty Ltd	$1,149.06	$1,149.06	$1,149.06	$1,149.06	$4,596.25
	Sea FM Gold Coast Pty Ltd	$1,149.06	$1,149.06	$1,149.06	$1,149.06	$4,596.25
	Hot Tomato Australia Pty Ltd	$1,149.06	$1,149.06	$1,149.06	$1,149.06	$4,596.25
	Digital Community Broadcasters	$1,149.06	$1,149.06	$1,149.06	$1,149.06	$4,596.25

The JVCs are 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 the JVCs, which in turn require the JVCs 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.

The JVCs have made standard access entitlements available to the incumbent commercial broadcasters pursuant to section 118NQ of the Radiocommunications Act.

The Radiocommunications Act also requires that the JVCs 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.[4]

As of 30 June 2020, the Canberra and Hobart JVCs have 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. The Gold Coast JVC has done the same for the Gold Coast BSA radio area as of 30 June 2022.

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

The JVCs have met 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. The JVCs expect to put in place arrangements between the JVCs, 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 B.

The JVCs are not aware of any non-compliance with their standard access obligations for the 2023-2024 financial year.

4. Compliance with excess-capacity access obligations

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

The Canberra and Hobart JVCs have made excess-capacity access entitlements available to incumbent commercial broadcasters during the 2019-2020 financial year.

The Gold Coast JVC made excess-capacity access entitlements available to incumbent commercial broadcasters between the digital radio start up day for the Gold Coast radio area and the end of the 2021-2022 financial year. These allocations were made in accordance with the requirements of the Radiocommunications Act.

These arrangements remained in place during the 2023-2024 financial year. The allocations are summarised in Attachment B.

The JVCs have made available excess-capacity access entitlements to all content service providers that are eligible to acquire the associated multiplex capacity in each designated BSA radio area.

5. Compliance with non-discrimination obligation

Section 118NP of the Radiocommunications Act prohibits discrimination by the JVCs 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.

The JVCs are not aware of any non-compliance with their non-discrimination requirements.

The JVCs have 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 any of the JVCs during the 2023-2024 financial year.

Attachment C sets out the membership of the JVCs, including the percentage of shareholdings of the shareholders.

7. Authorisation of third-party users

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

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

Attachment A List of JVCs submitting this annual report

This annual report has been submitted by the following entities:

- Digital Radio Broadcasting Canberra Pty Ltd (ACN 627 555 695) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 10503410/1
- Digital Radio Broadcasting Hobart Pty Ltd (ACN 128 742 709) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 10501814/1
- Digital Radio Broadcasting Gold Coast Pty Ltd (ACN 650 666 149) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 11331530/1

Attachment B Multiplex capacity allocations

Canberra

Access Seeker	Multiplex Capacity (1/9 equivalent to 128 Kbps)
Standard access entitlement – allocated to Canberra FM Radio Pty Limited (in respect of the licence for 1CBR)	1/9
Standard access entitlement – allocated to Canberra FM Radio Pty Limited (in respect of the licence for 2ROC)	1/9
Standard access entitlement – allocated to Radio Canberra Pty Limited (in respect of the licence for 2CA)	1/9
Standard access entitlement – allocated to Radio Canberra Pty Limited (in respect of the licence for 2CC)	1/9
Digital Community Broadcasters	*(2/9 reserved)*
Excess capacity access entitlement – allocated: ▪ Canberra FM Radio Pty Limited ▪ Radio Canberra Pty Limited	 1.5/9 1.5/9
Excess capacity – no allocation	0/9
Total Multiplex Capacity	**9/9**

Hobart

Access Seeker	Multiplex Capacity (1/9 equivalent to 128 Kbps)
Standard access entitlement – allocated to Great Southern Land Broadcasters Pty Limited (in respect of the licence for 7TTT)	1/9
Standard access entitlement – allocated to Great Southern Land Broadcasters Pty Limited (in respect of the licence for 7XXX)	1/9
Standard access entitlement – allocated to Commercial Broadcasters Pty Limited	1/9
Digital Community Broadcasters	*(2/9 reserved)*
Excess capacity access entitlement – allocated: ▪ Great Southern Land Broadcasters Pty Ltd ▪ Commercial Broadcasters Pty Ltd	 2/9 1/9
Excess capacity – no allocation	1/9
Total Multiplex Capacity	**9/9**

Gold Coast

Access Seeker	Multiplex Capacity (1/9 equivalent to 128 Kbps)
Standard access entitlement – allocated to Gold Coast FM Pty Ltd	1/9
Standard access entitlement – allocated to Sea FM Gold Coast Pty Ltd	1/9

Standard access entitlement – allocated to Hot Tomato Australia Pty Ltd	1/9
Digital Community Broadcasters	*(2/9 reserved)*
Excess capacity access entitlement – allocated:	
▪ Gold Coast FM Pty Ltd	1/9
▪ Sea FM Gold Coast Pty Ltd	1/9
▪ Hot Tomato Australia Pty Ltd	1/9
Excess capacity – no allocation	1/9
Total Multiplex Capacity	**9/9**

Attachment C JVC membership for the 2023-2024 financial year[5]

Canberra

Digital Radio Broadcasting Canberra Pty Ltd	Number of shares	Shareholding percentage
Canberra FM Radio Pty Ltd	50	50%
Radio Canberra Pty Ltd	50	50%
Total	**100**	**100%**

Hobart

Digital Radio Broadcasting Hobart Pty Ltd	Number of shares	Shareholding percentage
Great Southern Land Broadcasters Pty Ltd	10,370	66.67%
Commercial Broadcasters Pty Ltd	5,185	33.33%
Total	**15,555**	**100%**

[5] Please note that shareholdings have been rounded to 2 decimal points.

Gold Coast

Digital Radio Broadcasting Gold Coast Pty Ltd	Number of shares	Shareholding percentage
Gold Coast FM Pty Ltd	50	33.33%
Sea FM Gold Coast Pty Ltd	50	33.33%
Hot Tomato Australia Pty Ltd	50	33.33%
Total	**150**	**100%**