MIDWEST RADIO NETWORK

Submission to the ACMA in response to the Consultation Paper seeking comment on ACMA’s proposed new approach to AM-FM conversion and the use of in-fill transmitters.

Submission dated December 1 2016.

1. In relation to the 30%+ criteria, stations designated as such are listed among ACMA’s 61 solus market stations as being legacy Section 39 licensees, having been awarded a supplementary license for a fixed fee. At issue is the (legally defined) 30%+ overlap. According to the ACMA appendix accompanying the consultation paper this only affects eight licensees, of which only 4 have applied for FM conversion. While we are not aware of the circumstances or history of each license, at a glance they all appear to be small markets and we believe they should be given the opportunity to convert if they wish to do so, or at the very least ACMA should retain the discretion to deal with each application on its merits. Additionally, we don’t see any reason for consideration of these 4 licenses to be deferred as is proposed in the consultation paper. We believe a fairly quick evaluation of the circumstances of each of the licenses can be made to determine whether there are issues for disqualification.

The principle of the 30%+ rule is to ensure there is no adverse competition arising from a licensee converting to FM. In the case of 2LT, it is subject to the criteria because its LAP overlaps with that of 2ONE (The Edge) in the Blue Mountains. 2LT has yet to attain technical operating conditions (TOCS) that would enable it to deliver an adequate signal into the Blue Mountains. It is noted in any event, The Edge was not acquired under the price-based allocative system, it is the old 2KA AM station launched in 1935, and its conversion to FM in 1992 was not on a price-based allocative (tender or auction) basis.

As would be the case with the other three 30%+ designated stations applying for conversion, to deny 2LT the opportunity to convert its main transmitter to FM would deny the local (Lithgow) population the superior FM technology in listening to their local radio station. 2LT’s application for conversion applies only to the original Lithgow service area, not the area it now overlaps in the Blue Mountains, which is covered under a separate in-fill transmitter license which is already FM. As such, the proposed conversion would not impact on any other station at all, let alone adversely impact on them.

The allowance of 2LT to convert to FM is in line with the objects as outlined in ACMA’s consultation paper:

“In short, the caveats seek to ensure that any proposed AM–FM conversion will result in no detriment to other incumbent FM radio licensees, and that the existing audience of the AM services are able to continue to receive the service if it converts to FM.”

“The ACMA’s methodology for coverage planning under the proposed revised approach is first to determine a power for the main FM transmitter that will match the coverage for the FM service planned for the licensee in the area served, provided under a license allocated under section 39 of the Act. The ACMA will then examine the extent of any service loss and may revise technical specifications, based on the transmitter for the section 39 license to mitigate this.”

2. Under this section, ACMA’s approach is to examine the extent of any loss and may revise TOCS if it determines there is a substantial loss. We believe this approach should not be confined to loss but also to gain. If the conversion of a license with new TOCS is to result in a significant service gain, particularly if it relates to a significant service gain in an LAP serviced by another licensee, then we believe the ACMA should have the discretion to vary the technical operating conditions after assessing the appropriateness of any gain (or loss). Conversely we propose that where any licensee is experiencing equity issues in relation to existing s39 licenses that ACMA have the discretion to address these as part of the AM-FM conversion process.
3. ACMA, and its predecessors, have been processing new license applications, AM-FM conversions and in-fill transmitter requests for decades. It has also processed multiple stations in bulk (the s39 roll-out). We question why there is a need for two pilots. This gives those stations selected, priority over all other stations, first pick of available frequencies, a fast-tracked process and a resultant start over competitors of at least several months, and perhaps up to a year or more. It also leaves them with their TOCs set in stone while they are free to object to neighbouring stations yet to be processed. We believe ACMA should review the need for pilots, and if it proceeds down this path that it acts to ensure other licensees are not disadvantaged in the process. One way of doing this would be to defer the consultation process for the pilot stations until such time as other stations in their geographic groupings are ready for consultation, and a joint consultation is commenced, similar to what is occurring currently with the West Australian north-west stations. That would put all stations in their respective geographic groupings on a level playing field in negotiating/finalising their respective TOCS, and in getting to air.

It could be said these are solus stations and it doesn’t matter. That may be the case with Pilot 2, which comprises a group of 4 small Tasmanian regional stations and as such will probably go out in one consultation process anyway, but in the case of Pilot 1 which comprises just one station, 2BS - despite its LAP, it is a firm competitor in two other markets. Its AM programming is not dissimilar to that of 2LT, so if it was to have a head-start of up to a year or so as a result of being a pilot, it would impact 2LT adversely, not only in the short term, but in the long term.

The ACMA invites comment on an appropriate mechanism to ensure FM coverage achieves equivalent coverage to the existing AM transmission.

4. We propose that ensuring the equivalent AM service area is covered by the new FM service not be limited to the provision of in-fill transmitters but in addition, the varying of the technical operating conditions (power, aerial pattern etc.) as is the case for the ACMA’s guidance on requests for FM in-fill transmitters. We believe a single service, with appropriate TOCs, and a single frequency, where possible, is a better solution, being more practical, more efficient, and more economical.

We applaud this joint CRA/ACMA initiative in putting forward this approach to AM-FM conversion. Thank you for the opportunity to make this submission.

End

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