

## Keeping community broadcasters Accountable

### The new renewals process

CBAA Conference November 2005 - Fremantle

#### 1. Introduction

What I am proposing to do at this session is to:

- give a brief description of the new renewals process and the intention behind the new process;
- talk about how licensees are going and what the main problems are which we have encountered;
- Cathy Prior will go through the ACMA B66 form and briefly identify the main things we are looking for when assessing an application;
- Open up the forum for general discussion/questions. If Cathy or I can't answer a question we are happy to take it on notice and contact people individually when we get back to the office;

#### 2. Background

The procedure for renewing a community broadcasting licence changed in December 2002 giving the ABA (and now ACMA) more discretion to review a community broadcasting licence at the time of its renewal.

Under the *Broadcasting Services Act* 1992, ACMA:

- must refuse to renew a licence if it decides that s83(2) of the BSA applies (i.e. if ACMA is satisfied that allowing a licensee to continue to provide the service would lead to a real risk of an offence against the BSA being committed or a breach of the licence conditions occurring);
- may refuse to renew the licence if, having regard to the matters in s84(2) (original allocation criteria), it considers

that it would not allocate such a licence if it were deciding whether to allocate the licence. The s84 criteria are listed on page 2 of the ACMA B66 form - *Application for the renewal of a community radio broadcasting licence*.

- can also consider a request for a change in the community interest of a community broadcasting licence. This amendment recognises that a community broadcasting service should be able to evolve with the community and therefore allows ACMA to consider a submission from a licensee that the community interest that it represents has evolved since the licence was allocated;

ACMA may conduct a renewal inquiry when considering whether a licence should be renewed or whether it should agree to a change in the community of interest.

The form an inquiry may take will vary (it can be a formal hearing or an informal meeting with the licensee). The nature of the inquiry will depend on the issue/s that need clarification and their seriousness.

### ***The Application Process***

I will now like to give a brief description of the community renewal process and the timeframes you will be experiencing.

- A renewal application form (ACMA B66 form) is sent to a licensee at least 12 months and 6 weeks prior to the expiry of the current licence.
- A licensee must lodge the completed Form with ACMA 12 months before its licence is due to expire. (A failure by a licensee to lodge its renewal application on time may suggest a lack of management capacity to provide the service and

may consequently give cause for ACMA to inquire into whether the licence for that service should be renewed).

- The Broadcast Licensing team in ACMA will assess the information provided soon after receipt of the application form.
- A preliminary view on whether the licensee has satisfied the allocation criteria at section 84(2) will be made. The renewals officer will also look at whether the licensee is complying with the conditions of its licence.

The licensee's compliance history (and whether a licensee has had breach findings by the ABA or ACMA in relation to a condition of the licence or a code) will be examined. The extent to which a licensee has taken remedial action to address ACMA breaches of codes or conditions would be looked at as well.

- The renewals officer will then write to the licensee seeking clarification of responses in the renewal form which are unclear, contradict information we know or where insufficient evidence was provided to support a claim. This informal "information gathering step" is most common and can often lead to more questions.
- An inquiry will be held where ACMA has real reason to believe that it may refuse to renew the licence either because s. 83(2) may apply or, if reviewed having regard to one or more of the allocation criteria in s. 84(2), ACMA would be unlikely to allocate the licence to the licensee.
- A significant change in the demographics of a licence area since the allocation of the licence, resulting in a significant change in the needs of the community

within that licence area may also give cause for a renewal inquiry.

- All licensees will be given as much notice as possible before any such inquiry was commenced.
- All licences to be renewed will be processed by the Broadcast Licensing section in ACMA approximately six weeks prior to the licence's expiry date.
- If a decision is made not to renew a licence, the frequency would most likely be made available for re-allocation either as a temporary community broadcasting licence or as a permanent community licence.
- New renewal process- All applications will now be placed on our website for accountability and transparency reasons.

### **3. How are licensees going with the new process and what are the main problems?**

To date we have assessed 64 community licences.

So far the process seems to be working well with most licensees being able to provide ACMA with sufficient information demonstrating that their service should be renewed.

In most cases ACMA staff will write back to a licensee requesting more information or clarification. In approximately 50% of the applications received more than one letter will be exchanged seeking further clarification or evidence.

ACMA and its predecessor the ABA have held 3 informal inquiries and no formal inquiries.

Out of those 3 informal inquiries one licensee changed its community of interest. Another had a series of licence

conditions imposed on its licence. While the third led to an undertaking to take action to prevent a breach from recurring.

These and some other stations are being monitored post renewal requiring them to report to ACMA on progress on a number of matters. The purpose of this reporting is to ensure steps are taken to remedy concerns identified during the renewal process.

### ***Commercially sourced programs***

A common compliance issue faced by many community licensees arises from the retransmission of commercially sourced programs eg. the *John Laws Morning Show* and *Take 40*.

Commercially sourced programs in most cases contain material which is of an advertising nature. The broadcast of advertisements by community licensees is prohibited.

Licensees who play commercially sourced programs are at risk of breaching the BSA and therefore of not being renewed if they continue to play advertisements.

An advertisement can be any material that is intended to promote some item or service. It is not necessary for a broadcaster to have received a payment or other consideration for the broadcast of the material.

Exemptions: The BSA permits the broadcast of advertisements in cases where the material is:

- a sponsorship announcement;
- community information material;
- a station promotion; or
- an accidental or incidental accompaniment to the broadcast of other matter, and no payment is involved.

*Sponsorship announcements:* Sponsorship announcements promote the goods or services of a sponsor of the licensee or a program broadcast on the service.

A sponsorship announcement must acknowledge *“financial support by a person of the licensee or of a program broadcast on the service provided under the licence”* (referred to as a “sponsorship tag”).

Sponsorship tags must be audible and comprehensible and limited to 5 minutes per hour.

If you intend to broadcast commercially sourced material it is important to have well trained staff or volunteers listening so as to either delete or tag appropriately.

Options you may want to think about implementing to reduce your risk of breaching the BSA might be:

- Pull the commercially-sourced rebroadcast program from the air; or
- Remove non-exempt advertisements from future rebroadcasts; or
- Modify the rebroadcast of the commercially-sourced material to ensure that audible, comprehensible tags are included on material that could be considered “sponsorship”, and to remove other advertising material.

### ***Other common problems?***

There has been some ambiguity with some of the older services (allocated before 1992) in so far as what their community of interest is that they represent.

The ambiguity stems from the different community licensing allocation regime that existed prior to the introduction of the *Broadcasting Services Act*.

Many of you here might remember that under the *1942 Act*, community broadcasting services were identified by a category of service rather than a specific community interest. [Category S –special interest ie ethnic,RPH and C – general community]

Community broadcasters allocated licences since the introduction of the 1992 Act must have a clearly stated community interest.

Licensees that were allocated licences prior to the introduction of the Act will now be required, under the new renewal process, to clearly state the community interest that they represent having regard to what the original intention or purpose for the service was.

***Compliance with standard condition that the service be open and accessible to its community***

It is a standard condition on a licence that the licensee encourage members of the community that it serves to participate in: the operations of the licensee in providing the service AND the selection and provision of programs.

Many licensees fail to adequately demonstrate that their service is open and accessible.

Alarm bells generally ring if a licensee has a small number of members and volunteers. Or where the same people have occupied board positions for a number of years. Situations where one person occupies more than 2 board positions is also of concern.

Being able to demonstrate that your service is open and accessible to your community of interest is critical to your renewal. It is therefore important that you look at this issue very carefully when filling in your application.

#### **4. Conclusion**

Broadcasting spectrum is a valuable and rare resource.

Licensees who have been allocated spectrum for a community broadcasting service must use it effectively and for community purposes.

My experience with community broadcasters is that they work very hard (usually for free) and are genuinely committed to providing valuable niche services for their community of interest.

I think that most broadcasters will be able to satisfy the Authority that they meet the “Threshold test” for renewal. When there are concerns ACMA staff will work with a licensee to try and resolve any issues.

Our objective is not to take a licence away but rather it is to ensure that a community licensee remains accountable with appropriate governance structures to ensure it is operating in accordance with the regime set out in the BSA.