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DMG Radio (Australia) Pty Ltd

Submission to DCITA on the Proposal for New Institutional Arrangements for the Australian Communications Authority and the Australian Broadcasting Authority

- 1 This submission is made by DMG Radio (Australia) Pty Ltd (“**DMG**”) in response to the Discussion Paper of August 2003 issued by the Department of Communications, Information Technology and the Arts (“**DCITA**”) in relation to the proposals for institutional reform of the Australian Communications Authority (“**ACA**”) and the Australian Broadcasting Authority (“**ABA**”).
- 2 In this submission, DMG wishes to emphasise one fundamental point. That point is that regardless of the institutional arrangements for the ABA and ACA, the mandate for planning new radio services in the Broadcasting Services Act 1992 (Cth) (“**BSA**”) must be preserved and maintained in any new regulatory arrangements.
- 3 In this regard, DMG supports and agrees with DCITA’s stated intention that any institutional changes will not be accompanied by substantial change to existing regulatory arrangements.
- 4 The basis of DMG’s submission is that new entrants to the commercial radio industry since the introduction of the BSA (including DMG) have paid a market price to acquire the new commercial radio broadcasting licences issued by the ABA in reliance on the implementation and continuation of the planning mandate in the BSA.
- 5 In particular, DMG and others have relied on the following core elements of the planning mandate in the BSA which have been fundamental to deciding how much to bid for new commercial licences issued under the BSA.

(a) A single, comprehensive and exhaustive planning process

The BSA contemplates that there will be **one (and only one)** comprehensive and exhaustive radio planning exercise conducted by the ABA pursuant to which all of Australia will be surveyed and new radio services planned in accordance with specific technical, economic, social and demographic planning criteria set out in the

BSA. The ABA is not required or permitted under the BSA to repeat that planning process at any time.

The ABA completed the radio planning process in December 2001. At that time it said:

“The Australian Broadcasting Authority has completed the radio planning exercise it started under the Broadcasting Services Act. Over nine years, the ABA has been engaged in a comprehensive program to completely re-plan radio broadcasting services throughout Australia ... With the finalisation in the past week of plans for services in Tasmania and Western Victoria, the ABA completed the licence area planning process, as identified in its Planning Priorities (1993).” (ABA NR 110/2001)

The ABA is not required, and nor does it have the power, to conduct the planning process again. There is, therefore, no further planning of new radio services to be done by the ABA.

(b) No further commercial licences

The BSA planning mandate also contemplates that final decisions about the number and types of new services will be made at the planning stage. The final licence area plans set out the number and types of services to be made available in each licence area and there is no provision in the BSA to re-plan or re-determine how many and what types of services to be made available in a licence area.

This is clear from the express provisions of the BSA and the Explanatory Memorandum which accompanied the Broadcasting Service Bill 1992 (Cth):

“It is at the planning stage that judgements will be made about the number and types of services to be made available in market areas. There will no longer be provision at the licence allocation stage for reconsideration of whether or not there should be another service of a particular category in a licence area - such issues will be settled during the planning stage.”

Now that the ABA has completed the planning process for all of Australia, the BSA dictates that the decisions about the number and types of licences to be made available are final and conclusive. The ABA is not required and does not have the power re-make any of its planning decisions about the number and types of services. This means that there will be no further analogue spectrum made available for new commercial or community licences or for narrowcasting services, other than those set out in the final licence area plans determined by the ABA.

- 6 The core elements of the planning mandate in the BSA set out above are fundamental to decisions about how much to bid for a new commercial licence. Subject to only very minor exceptions, the BSA does not permit a person who has not paid a market price to acquire a commercial licence to operate a broadcasting service of general appeal and for profit. These

core planning principles, therefore, determine the number of broadcasters who are permitted to generate profits from providing broadcasting services in a licence area and, therefore, how much an aspirant broadcaster is prepared to pay for a new commercial licence.

- 7 DMG and other aspirant commercial broadcasters have been invited and, indeed, encouraged to pay significant sums of money to acquire new commercial radio broadcasting licences at licence auctions on the legitimate expectation of the implementation and continuation of these core planning principles in the BSA. DMG alone has invested in excess of \$330 million in new commercial radio licences at the licence auctions, and over \$500 million in total in the commercial radio industry, in reliance on the implementation and continuation of these core principles.
- 8 It would cause significant unfairness to DMG and others if these core principles of the BSA were not protected and adhered to after any merger of the ABA and the ACA. In DMG's very strong submission, therefore, if there are any institutional changes to the ABA and the ACA:
 - there must be **no new radio planning exercise** to be conducted by the new consolidated regulator; and
 - there must be **no new analogue spectrum made available for new commercial licences**, other than those which have already been planned by the ABA in final licence area plans.