

JH:NB:1930/04

28 April 2005

The General Manager
Digital Radio Committee
Department of Communications
Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

BY FACSIMILE NUMBER : (02) 6271-1717

Dear Sirs,

**RE: OUR CLIENT HEART N' SOUL PRODUCTIONS & HYGRADE PROPERTIES
SUBMISSIONS INTO DIGITAL RADIO**

Our client Companies Heart N Soul Productions Pty Ltd and Hygrade Properties Pty Ltd hold commercial and narrowcast broadcasting licenses and instruct us to make the following submission on their behalf.

The Technology.

Our clients see digital radio technology (regardless of the platform) as a valuable science, similar to the invention of a CD which should be afforded to all members of the public and delivered via all incumbent commercial broadcasters.

The introduction of digital radio is inevitable and "tidal". It is in the public interest to allow all existing commercial and public broadcasters to begin delivery of their content in digital, and to the public as early as possible.

The Issue Of Spectrum.

The issue of spectrum using the Eureka 147 platform will be contentious and it is for this reason that our clients feel, that Ibiqity and DRM platforms be adopted in order to allow all incumbent broadcasters a "level playing field".

In a country as sparse as Australia, it is clear that perhaps Eureka 147 platform may not be suitable both economically and technically in the regional areas. Our clients believe

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that a combination of platforms be adopted to suit the geographical area of Australia, and that, maybe, radio manufacturers will make digital receivers with the ability to receive all platforms adopted.

The Listener

Let us not forget the most important person in the overall Digital debate. The Listener. The Listener is the final consumer and any listener, whether he or she consumes whatever Content, must never be stopped or obstructed from receiving their favourite radio station content, whether commercial, narrowcast or community in its purest available digital form. Digital technology was ultimately designed for final consumer use- **and not uniquely for self- interested commercial co-operatives to warehouse and monopolise.**

MF NAS Planning.

MF NAS channel planning has been seen (since these frequencies were originally released thirteen years ago) as against any logical ITU International Telecommunications Union MF planning guidelines.

The simple facts are that any two same 5000 watt co- channels which are in the BSB (Broadcast Services Band) band will deliver the same amount of sky wave interference as any two same 400 watt co – channels on the MF NAS (Narrowband Area Services) band. The difference is that the BSB band channels were planned correctly in the early days (and in accordance with ITU regulations)in order to confront the harsh sky wave interference created by nature’s ionosphere- for example many having directional pattern antennas in order to efficiently manage this sky wave / skip.

Our clients can also provide ample evidence of sky wave from their MF NAS frequency being received from as far away as Finland, Italy, the US and Canada. Whilst the ACA papers state a 10 kilometre “clear” zone for MF NAS frequencies, it is debatable whether even this clear zone is workable from dawn until dusk. The ACA have acknowledged that they do not account for sky wave interference on MF NAS frequencies.

Clearly, no consumer of any incumbent radio service, whether it be commercial or narrowcast, should ever have to endure such frustration of interference of content from their favourite station because of bad planning of these frequencies.

The issue of digital spectrum will assist the consumer from the frustration of having to cope with content that is mixed and interfered with from dawn until dusk. Currently some of our client’s radio content ends up on the other side of the world rather than locally where it is intended.

House of Representatives Enquiry 2001 –“Local Voices”

In 2001 the member for Hinkler MR Paul Neville MP chaired this committee. The recommendation was as follows:

“The Minister for Communications, Information Technology and the Arts should prepare amendments to the relevant legislation to extend the boundaries of the BSB bands part of the spectrum to encompass the frequencies used for section 40 licences (paragraph 3.248)”

It is clear that this decision was made, in the national interest. Unfortunately, this recommendation was rejected by the relevant government agency citing reasons that it would create a **“windfall gain to licensees”** because **sec 40 licensees were able to obtain licences for a price much lower than that under a price based allocation system”**.

The sad reality is that section 40 licensees appear to have fallen victim to the constant lobbying of the “major players” (in an industry where “Titans”, and not the listener – rules) without all the true facts being placed on the public record.

1. Section 40 licensees paid valuable consideration for their licences, the value of which was determined by the Government at the time.
2. Section 40 licences were allocated legally.
3. Any member of the public had equal rights at the time to obtain a section 40 licence for the requested consideration.

It is unfortunate that a “windfall gain to licensees” formed the essence of the contrary conclusion, which if adopted, would have given so much joy and choice/diversity to Australian radio consumers and would have been in keeping within the spirit of the BSA Broadcast Services Act 1992.

Section 39 licences

It is also very interesting to note that section 39 (high power FM licences) were allocated virtually free of charge to existing “heritage” AM licensees as an additional licence to their AM allocation.

Our client notes that a nominal charge of around \$5,000: was requested by the Government which would have paid for administration costs. The only other condition

placed on these free high power FM licences was that they could not be separately on sold within twelve months.

These section 39 FM allocations (to the very same owners of the existing AM licences) allocated without any due tender process only exacerbated existing monopoly interests and, in our clients opinion, “cartels” in the radio industry and particularly in the most vulnerable of regional areas of Australia.

Our clients have not heard any comment from peak body groups, such as CRA, opposing these allocations, yet they oppose section 40 licensees from obtaining digital radio as if they were “alien” to the industry and as if they were the only ones investing valuable time and consideration into the industry.

We are instructed that the CRA constantly complains that section 40 licensees entered the market through the back door.

This is false and misleading. It is fact that anyone of their members had the same opportunity as any other member of the public to obtain one of these licences.

We would respectfully submit that if CRA member stations (section 36 and section 37 commercial licensee) receive free digital spectrum, in the interest of fairness, equity and diversity then, all section 40 commercial licensees should also receive the same allocation.

Clearly, our clients, as incumbent commercial broadcasters under the provisions of the BSA Act 1992, would be exposed to being treated in an inequitable manner at common law by not being allowed to access digital spectrum in which to operate.

The Black Spots Program

Like wise the Black Spots Program which was a recommendation of the 2001 House Of Representatives Enquiry saw the ABA issue many free high power translator services to existing licensees throughout Australia. Many operators also enjoyed financial support from the government which was additional to the allocation. Our clients note that there was no complaint from CRA about these allocations, and yet CRA seem to be against everything section 40 licensees do or try.

Section 40 licensees were not invited to participate in this Black Spots program, despite the fact that many of our clients services cater for major and minor regional townships across Australia.

Many section 40 licensees could also have easily met the criteria for the Black Spots program.

Productivity Commission Inquiry - March 2000.

It is important to note that The Productivity Commission Inquiry Report dated March 3rd 2000 stated:

“Existing commercial broadcasters should not be constrained from participating in the new medium”.

The Productivity Commission report also suggested that digital spectrum” **be sold on a competitive basis”.**

In the event that spectrum is issued free of charge, our clients believe it to be, only fair and equitable for the Government to **not discriminate** between commercial licensees in the BSB band and others in the extended BSB band -being the MF NAS band.

This “band” differentiation is one, which in its description of “the band” – is merely reduced to writing in legislation as the BSB band 525 KHZ 1606.5 kHz and not in the mind of the final consumer – ordinary Australians would not know the difference if they were “surfing the dial” between the BSB band and the extended BSB band 525 kHz-1701 kHz.

The extended BSB band works very well and is entrenched as an important part of radio broadcasting in countries such as the US and Canada with many operators enjoying up to 50kilowatts (directional pattern)transmission.

Our clients submit, there is no good reason to obstruct this extended BSB band from being developed further in Australia.

Eureka 147 might work in England -. but what about our regions?

The Eureka 147 system clearly has its deficiencies in regional Australia. If five transmitters(for example) are required to provide a reasonable coverage in a city such as Sydney, then would it be viable for a regional broadcaster to invest in say, five times as many more transmitters in order to cover a larger area(in regional areas) with fewer people consuming the content? Our clients think not. It is this very reason why the Ibiqity system or DRM (Digital Radio Mondiale) should be seriously considered for the regions.

Our clients have attended many forums where they hear the same talk over and over that “Iboc doesn’t work”. Put simply, IBOC does work and has been adopted in the US by the FCC Federal Communications Commission. Yes it does have its deficiencies – however, our clients believe, over time, with the exponential advancement of technology, this technology will be fined tuned and will ultimately put all incumbent broadcasters on a level playing field.

The use of multiple and different systems would, however, create complications similar

to the Queensland/NSW rail gauge problems which existed in the early 20th century.

This is an area which needs to be considered now before it's too late.

Conglomerates And Control

Recent acquisitions of multiple regional and capital city radio stations by companies who now not only have the biggest share of commercial radio licences in Australia **and in particular, in our regions.** also control Australia's biggest transmission site infrastructure (used by most commercial and public broadcasters). This needs to be examined.

Our clients respectfully submit that it may not be in national interest for such companies to have such tight control of both the main body of national broadcast site infrastructure and commercial radio licences.

Clearly, if eureka 147 is adopted, transmission site usage may become almost a monopoly and subsequently cause pricing problems further down the line particularly given the current difficulties in developing and building radio communications tower infrastructure around Australia.

Digital radio trials.

Our clients have been very active over the last four years in encouraging new digital radio technology trials in Australia.

Unfortunately however, our clients companies (who have been very much in favour of Ibiqity digital radio transmitters because of their ability to deliver a level playing field to all incumbent broadcasters), have not been favoured with assistance from Ibiqity USA despite repeated requests and offers made to assist Ibiqity with transmission sites and infrastructure at our clients sites .

Communication with Ibiqity commenced in April 2000 and evidence of many written offers of assistance to them (to participate in the testing of this technology in Australia) is available. None of our client's offers ever came to fruition and without the digital transmitters our client could do nothing.

In August 2004 a letter was written to Broadcast Australia requesting our client's participation in Eureka 147 trials. These letters were not answered.

CRA for the record was never approached because of the following reasons:

1. CRA do not allow section 40 commercial licensees to become members.

2. Our clients understanding that another section 40 Australia wide licensee was refused access to participate in CRA trials.
3. The many condescending remarks made by CRA about our clients frequencies along with the active public participation of certain CRA members attempting to frustrate our clients expansion programme, made it seem almost impossible and a complete waste of time to make the request.

Our client's wishes are to make it abundantly clear that all reasonable attempts were made to actively take part in digital radio trials. These attempts are still continuing.

The CRA investment of 400 Million dollars - how is this broken up?

Our client instructs that the amount of 400 million dollars has been bandied around as the typical "trade – off" figure for CRA members to receive free spectrum and zero competition for a long period of time.

It would be more than reasonable to request a breakdown of how this 400 Million dollars is made up given that:

- (A). the science has already been invented.
- (B). Towers used to deliver digital content would very likely be those of BA (Broadcast Australia) 650 of which are existing or alternatively other VHF/UHF towers used by other operators.
- (C). New digital radios are already available on the market and will only become cheaper as time goes on and does not require much local input in their development.
- (D) Digital transmitters in DRM, Eureka and Ibiqity have already been invented and do not require much local input into their development.

Whatever the model is, however, this leaves us with an extraordinary amount that has been publicly documented which needs to be scrutinised.

Depending on the "bit – rate," anywhere between fifteen and thirty channels can be accommodated on any mainframe multiplexer including transmitters and would cost around \$200 -300 thousand dollars per annum plus outgoings. This should be classified as a "standard" cost which any business must outlay if they are to move forward and, in our clients opinion, should not be classified as one which justifies a "swap – type" deal for spectrum by CRA.

Other commercial licensees are also making substantial investments into digital radio.

256 kbits and the potential “warehousing” of digital spectrum.

It is questionable whether all incumbent licensees will require a total of 256 kilobits of bandwidth.

AM radio stations whether BSB or extended BSB band - MF NAS can only ever expect their consumers' radios to receive a maximum of 4.5 kilohertz of quality anyway –despite the differences in available bandwidth. In fact, the vast majority of AM radios begin rolling off at around 2 kilohertz before they hit a brick wall at 4.5 kHz.

Evidence supporting this is that the world's biggest broadcaster, Clearchannel USA, has reduced all its AM stations bandwidth to a mere 5 kHz with Jeff Littlejohn (Clearchannels chief engineer) stating “if the listener can't hear it, why are we transmitting it”.

We are instructed that AM Stereo never took off in Australia and, consequently, the equivalent of a mono signal currently heard by consumers of all AM radio stations (including MF NAS) in Australia is about 64 kilobits of bandwidth.

The argument that consumers of a favourite radio service should be entitled to now receive their service in stereo, and in a better digital quality, is one which is again, in the public interest.

There seems to be no reasonable argument why Community stations would require the full allocation of 256 kilobits to deliver what 128 kilobits of bandwidth would adequately do in a digital format.

Any push for the allocation of excessive spectrum where it not being reasonably used for the benefit of the public will be to reduce diversity and make the “Titans” even cosier.

Curbing any potential “warehousing” of spectrum should form a fundamental part of any allocation process which may see some incumbent broadcasters and their listener ship **“orphaned”** and consequently creating an irreversible vacuum and irreparable damage to modern day radio broadcasting in Australia - as we know it.

Who paid what – and how much for which licence?

FM Broadcasters who paid hundreds of millions of dollars for spectrum recently, are entitled to feel that they need a certain level of protection from AM Broadcasters obtaining a “level playing field”.

This, we submit, was a commercial decision on their part and what's most important to note is that this commercial decision was also made with the clear knowledge of digital radio being inevitable as a broadcasting medium both globally and in Australia.

There would be every reason for operators such as those who paid such premium amounts along with the peak body groups who represent them, to attempt to obstruct any commercial AM licensee from obtaining digital spectrum for the benefit of their AM listeners.

The argument that AM licensees obtained their licences for a lesser price than FM licensees would not, we respectfully submit, deserve a proper place in a decision making process which affects the national interest.

AM licensees who entered the market at a “cheaper rate” did so, (like FM broadcasters who alternatively entered the market at an expensive rate) knowing the future and the inevitability of digital radio globally and should not be discriminated against because of this.

Conclusion

It would be fair to say that all incumbent broadcasters should be able to have the science of digital technology administered to their services, not because for some it may provide a windfall gain, but in the national interest where consumers of any broadcasting service, whether they be punters, niche music lovers or consumers of foreign language content, be the final beneficiary of this now available and long awaited science.

The ACA is the stakeholder of this valuable spectrum which belongs to the public and therefore no member of the public should be orphaned from receiving any of their favourite radio services in a digital format.

There is no public benefit served by regulation that prevents certain incumbent commercial broadcasters from providing their service in digital to the communities.

It would be a tragedy on a national scale if a 33 member “private club/cartel” were made the only immediate beneficiary of this long awaited, now available science which was intended when invented, for all radio consumers and broadcasters on the planet, not just a privileged few.

Yours faithfully,

JOHN B. HAJJE & ASSOCIATES