

## **Submission on the Radiocommunications Bill and associated ACMA consultation papers**

### **W & L Phillips Pty Ltd T-A Flow FM**

#### **Background**

FlowFM is an adult contemporary format commercial radio station operating from Kapunda in rural South Australia and broadcasting through 20 separate frequencies in Victoria, South Australia and the Northern Territory. It operates under the remote and rural commercial radio licence arrangements. The current licensee commenced broadcasting in 2001 and is a member of Commercial Radio Australia (CRA).

FlowFM welcomes the reforms to the radiocommunications and broadcasting regimes. There is no doubt that they will make the allocation of spectrum more efficient, transparent and flexible however we are concerned that it may not offer sufficient protection to smaller operators. We understand that the delegation of executive power to ACMA is an essential component of a more flexible system, but believe that this puts substantial weight on the ministerial statement of direction to ACMA as the vehicle for safeguards to ensure that all licensees are treated identically and equitably.

We also believe that there are some other structural safeguards that should be built into the legislation.

#### **Structural changes**

The experience of FlowFM under the current legislative and policy regime leads us to the view that the management of the current arrangements for the management of radio broadcasting is strongly weighted against the interests of small and medium sized commercial broadcasters, the majority of whom are located in regional and rural areas, and in favour of large urban-based commercial networks and community stations (which operate as de facto commercial stations).

A consequence of this bias is that rural listeners are short-changed when it comes to commercial broadcasting. There are a number of manifestations of this problem: licences are maintained by networks who have no intention of utilising them but simply want to exclude other broadcasters; lengthy delays by ACMA in granting licences even to broadcast areas that are not licenced; excessive spectrum claims by the ABC; and appropriation of spectrum by the ABC for programmes that do not have even a single listener in some broadcast areas.

The main structural change that is required is the exclusion of vested industry interests from the ACMA board. To this end any individual who has had a direct or indirect involvement with a commercial interest in the radiocommunications industry or any lobby group that has represented commercial interests within the industry within the last five years should be excluded from membership of the ACMA board.

This proviso should be included in the new legislation. Apart from this FlowFM has no suggestions with regard to amendments to the bill.

## **Proposals for Broadcasting Services Policy**

For ease of comprehension these comments follow the architecture of the consultation paper on the radiocommunications bill. As a start, Flow FM strongly endorses the six principles on which the new legislation is based: transparency; efficiency; flexibility; certainty; simplicity; and consistency. However Flow is concerned at the prospect of unfettered power being delegated to ACMA. Flow has not been dealt with well by ACMA in the past, not because of evident systemic bias but rather because of an obsessive preoccupation with regulatory diligence and in contrast a marked lack of diligence when it came to the procedural processes attached to the issue of new licences to our company. As a consequence we have come to believe that ACMA has very little investment in the future of remote and rural commercial licences.

### **The Role of the Minister**

Flow is strongly of the view that the Minister should establish a strong set of parameters for the operation ACMA's delegated powers. The Ministerial Statement and the Statement of Expectations should therefore not only contain directions for ACMA but also a statement of the Government's policy intentions along the lines of a second reading speech. From this perspective Flow would like the statements to include declarations that remote and rural commercial broadcasting is an essential component of the national broadcasting system and is to be treated equally with other components of the system.

In terms of ACMA'S **annual work programme** priority should be given to the issuing of licences for those population areas that do not currently receive radio broadcasts or only receive the national broadcaster. Flow has been thwarted when it has tried to secure licences for these neglected areas.

When it comes to the **single licensing system** Flow supports the concept in principle. However we believe that if there is a single system that covers licence issue and conditions and renewal processes that there need to be safeguards that ensure uniform conditions do not facilitate the operations of the major broadcasting networks at the expense of the smaller ones. This will require extensive consultations that are not conducted through or dominated by Commercial Radio Australia (CRA).

In relation to **specific arrangements for spectrum management** Flow would like to suggest that these contain a 'use it or lose it' provision where a spectrum licence should not be renewed if no attempt has been made to implement a service utilising that spectrum. Secondly, we believe that licensees that have not opted to supply services to a neglected area adjacent to its licence area should be precluded from objecting to a licence being issued for that area.

### **Expiry of Licences**

It is understood that the licensing of broadcasting services will remain as is for licences allocated under parts 4 (commercial) and 6 (community) of the Broadcasting Services Act. It is intended that these licences will remain in force during transition to the new legislation under sections 45 (commercial) and 89 (community) of the Broadcasting Services Act.

It is proposed that ACMA will continue to be obliged to renew these licences under section 46 of the broadcasting Services Act unless the applicant is identified as unsuitable on the grounds outlined

under section 41(2) of the Broadcasting Services Act. We propose that amendments be made to the legislation to provide that if a licensee has held a licence for the whole of the five year licence period without any attempt to introduce a service, then it should forfeit the licence.

### **Dispute Resolution**

It is proposed by the Government that if there are disputes over matters such as overspill that these should be settled by the disputants themselves. If the parties are unable to reach a solution then ACMA can conduct its own dispute resolution or it can refer the matter to a recognised alternative dispute resolution mediator.

This approach, at face value, is a good one; however it could lead to perverse outcomes in the event the dispute is between a large network that can afford an expensive litigation approach and a small network with limited resources. For example the appointment of an expensive mediator who presides over a protracted process could result in bankruptcy for smaller operators.

The alternative could be a panel of publicly funded mediators to handle disputes employed on a case by case basis.

### **Equipment Rules**

FlowFM proposes that any equipment that meets the applicable industry standards should prima facie be eligible for approval for use in broadcasting. Flow FM purchases equipment from overseas suppliers including USA and European Manufacturers. We would ask that ACMA should automatically approve equipment that complies with the US FCC standard or the European Unified standard and that ACMA accept compliance badging of the equipment as evidence of meeting this standard. It would be cost prohibitive for broadcasters to obtain approvals for equipment purchased from overseas and an onerous regulatory system would drive prices up for equipment as local vendors sought these approvals.

We agree that any elaboration of the rules should be developed in consultation with the industry. We accept the proposal that all equipment currently in use will automatically be approved.

### **Responses to Selected Questions Raised in the Departmental Papers**

#### **Do you consider the change in approach to spectrum planning will have any practical implications?**

Our responses are outlined above.

#### **What matters should be considered for inclusion in the broadcasting Ministerial policy statement?**

Our responses are outlined above.

#### **Will consolidating the existing radio LAPS and TLAPS into a general LAP category have any negative implications for licencees?**

In principle, no: the efficacy of the new general LAP category will depend on how it is administered by ACMA.

**Are there any other existing rights that broadcasters have in relation to their licences which need to be addressed in the proposed framework?**

Our proposals are outlined above.

**Will any of the changes to digital radio create unintended consequences or operational impediments?**

Flow FM remains sceptical of the value of digital radio in remote and rural licence areas where apart from the ABC we are likely to be the only broadcaster. Any rudimentary cost benefit analysis will show that the benefits do not outweigh the costs. As a consequence we are concerned at attempts to force rural broadcasters to adopt digital radio.

**Transitional Arrangements**

**What are the major issues to be addressed in designing the transitional arrangements?**

From Flow's point of view our primary concern is to ensure that the transition arrangements do not threaten the viability of our business, which performs an important public service in remote and rural regions. This could occur if the conditions applied to new licences are more onerous than those applied to existing licences or secondly if the spectrum charges are so high as to render the business commercially non-viable.

At the present time Flow has no indication that these circumstances will occur but we remain apprehensive.

**Should the Australian Radiofrequency Spectrum Plan be revised at commencement?**

Flow considers that it would be prudent for the 'spectrum plan' to be revised at commencement so the practical implications of the plan can be fully considered in the light of the final policy framework.

However we understand that this may have implications for other spectrum users that will need to be taken into account.

**How should the transition in the equipment rules occur?**

Flow believes that grandfathering existing equipment as well as a light touch with the approval of future equipment will ensure that the equipment rules are satisfactory.

However we are concerned about the provision in the legislation that allows ACMA to delegate its powers. We assume that the powers that are most likely to be delegated are those that relate to approval of equipment. We would be concerned if corporations that were involved in the approval of equipment were also commercially related to manufacturers, importers or distributors of products.

We believe the rules that cover these situations should come into effect at commencement.

## **When should the work programme for transition of licences be available?**

Flow believes that the work programme should be available as soon as possible after commencement. In any event transition of any licence should not occur until 12 months after the work programme is made available.

## **Transition of existing licences**

### **Should licences be grouped to transition?**

Flow would like all its licences to be transitioned as a single group.

## **Simplifying the Licence Process**

Flow appreciates the work that has gone into the simplification of the licence process. However we are concerned that there should be a time limit on how long the issue process should take from the initial application. In the past we have been concerned at the length of time that it has taken to issue licences even when there are no contentious issues.

We are indifferent as to whether the time limits are included in legislation, the ministerial statement or the work programme.

We would also be concerned if the licence issuing process is to be delegated by ACMA at least in the case of remote and rural licences where deep background knowledge is needed to evaluate the applications.

## **Delegation and Management Rights**

Flow will reserve its views on delegation and management rights until it sees the delegation rules developed by ACMA. However as a first reaction we would prefer that any delegation of powers should be limited to approval of equipment.

## **Conclusion**

The new legislative and policy framework appears to offer considerable advantages over the existing legislative and policy framework. However there are risks, most of which will only emerge when the scheme becomes operational. The advantages are greater freedom to deal with the licences, the fact that processes will be sped up and that the playing field will be more level.

However we are concerned that an unfettered ACMA will be biased towards the major networks with which it has a symbiotic relationship. From that perspective we would reinforce the position that the ACMA board should be at arms' length from industry players. We would also like to see protections for smaller broadcasting networks included in the Ministerial statement as well as the other protections we have delineated in this submission.

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