



ACMA Review
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Rebel Media Response To Review of The ACMA Issues Paper (July 2015)

Background

Rebel Media [RM] is a Gold Coast based independent commercial broadcaster providing commercial FM radio services 4BRZ (Breeze FM) and 4RBL (Rebel FM) to regional areas of Queensland and New South Wales since 1996.

RM broadcasts 10 feeds via 40+ commercial FM repeaters and Intelsat IS19 to a licence area over 2,800 km long, encompassing over half the land mass of Queensland with diverse locations including Sydney's Blue Mountains, remote mining communities, coastal islands off Papua New Guinea, the plains of far western New South Wales, The Great Barrier Reef, Fraser Island, and key regional population centres including those located within the Gold Coast RA1 licence area and the sprawling outer high growth suburbs of the Brisbane RA1 metropolitan licence area. Unlike the ABC, SBS, Commercial TV and community radio sector, RM receive no ongoing federal government support to provide commercial radio services via satellite to remote parts of our licence area.

Our largest population centres and the majority of our FM broadcast sites are in areas classified by Government as either regional or metropolitan, with the balance located in remote regions. RM is a member of Commercial Radio Australia [CRA]. We welcome the opportunity to contribute to this review.

Potential Increased Industry Self Regulation

The introduction of the Broadcasting Services Act 1992 (BSA) has seen the formation of large broadcast networks, with a corresponding reduction in the number of independent commercial radio licencees. Today ~90% of Australia's commercial radio stations are in the hands of seven companies, with the likelihood of further rationalisation still to come. There are now only 8 independent regional broadcasters (including RM) that operate services in one licence area.

The RM (4BRZ & 4RBL) licence areas partially overlap the licence areas of 61 other commercial AM/FM radio stations, and is adjacent to other markets where there is no official licence area overlap, but where there is AM/FM signal overlap. Our independently owned services are in partial market competition with the majority of CRA members, who in turn hold nearly all CRA board of director positions.

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CRA have a chequered history of consulting with its own smallest members or representing their best interests. Over the past ~15 years on multiple occasions, CRA have rigorously participated in the ACMA draft Licence Area Plan (LAP) consultation process to strongly oppose the draft operating specifications of only two member stations; RM and South Australian independent broadcaster 8SAT (Flow). Those objections have resulted in compromising or ‘killing off’ adequate signal delivery within parts of our licenced market, and negatively impacted the commercial viability of both broadcasters. CRA never advised or consulted either broadcaster on their concerns or intent to lodge objections.

In this environment, we are concerned about how a push to greater industry self regulation may play out. We broadly support CRA’s push for less red tape and regulation, but we strongly caution against allowing CRA or its members to be provided mechanisms for ‘fast tracking’ service planning through the ACMA where ‘broad commercial industry agreement’ can be demonstrated. This risks putting CRA in a position to advance only the interests of its larger members, and further marginalise some of its smaller independent members that have the least resources to navigate a lengthy arduous planning process in the face of CRA opposition.

It is essential all commercial broadcasters large and small, are subject to the same ACMA independent regulatory process and outcome time frames, irrespective of the views of CRA.

Defining A Clear Right To Serve A Licence Area

The RM market is relatively young in commercial radio terms, having commenced operation in 1996 just a few months after the authority licensed RM its first FM frequency. The authority has progressively planned more FM frequencies over the years, and today there are 40+ Breeze & Rebel FM services on air within our licence area. For most of these sites, despite planning delays, this has been a relatively successful process with RM working constructively with the ACMA to achieve adequate coverage of our FM services that are highly regarded in the communities we serve.

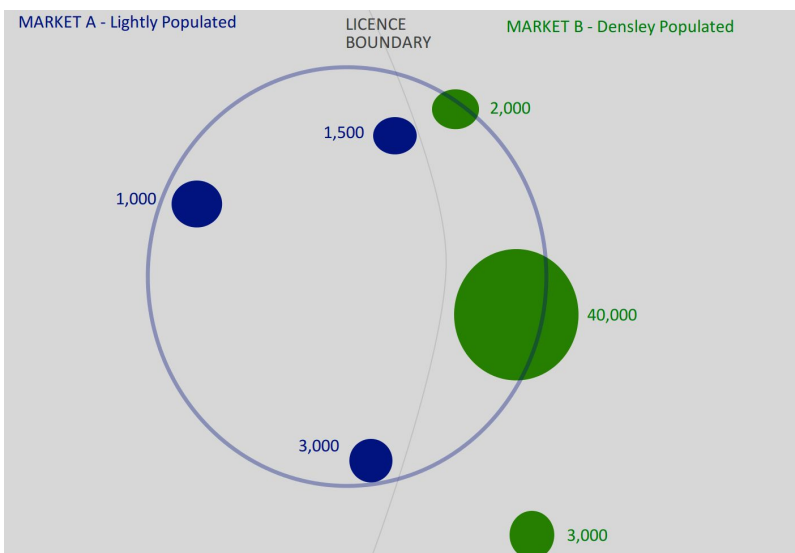
There has however, been one overriding failure of the planning process, with the ACMA yet to plan adequate FM spectrum at a few ‘industry contentious’ RM broadcast sites close to our licence area boundary. Incredulously, some of the largest population centres within our licence area that are so crucial to our viability, remain wholly unserved (or inadequately served) by RM today, some 20 years after RM first invested in commercial radio licences to serve them.

The BSA fosters the delivery of a diverse ranges of services in a predictable regulatory environment. The BSA does not envisage a commercial broadcaster will be denied access to its own market, solely to limit unavoidable signal over spill. The ACMA has internally adopted a ‘population balance’ test, where if the proposed transmitter in a market disproportionately services notably more people outside a licence than within it, then the ACMA won’t licence the service. That policy unfairly and always heavily discriminates against a lightly populated licence area, and works against the spirit and intent of why licence areas were first created by government in the 1980’s.

Figure A below shows the hypothetical ellipse coverage of an FM transmitter serving Market B, where the signal reaches 3 towns in its licence area with a combined population of 45,000 people. In our experience, the ACMA will permit this, citing the over spill of 5,500 people wholly serving the three towns of the lightly populated adjacent licence area as ‘unavoidable’, and an acceptable ‘balance’.



Figure B below shows hypothetical ellipse coverage of an FM transmitter proposed to serve Market A, where the signal reaches 3 towns in its licence area with a combined population of 5,500 people. In our experience, the ACMA will not allow this, citing the over spill of 30,000+ people into two towns of the lightly populated adjacent licence area, as ‘excessive’ even if the unavoidable signal is sub standard in parts of both towns, and relatively well contained within the target licence area.





In practice, the Market B licensee gets to serve both markets, and the Market A gets to serve neither, leaving the Market B towns with access to none of the commercial radio services its entitled to receive, and that the licensee has invested heavily in licences to service.

The commercial impact of over spill is not a simple population numbers game, as its being treated by the ACMA. When bi-directional over spill between two markets has been permitted by the ACMA, it is typically the large market broadcaster that has solid coverage signal across both regions key towns that ends up holding the commercial advantage over both markets.

RM has 5 market regions in this situation, including one which is the 4th largest centre in our licence area, where ~7,000 people have no service at all from us, and the neighboring licensee has been fortuitously serving it for over 15 years. We have two market regions where the authority has extended the licence areas of the adjacent market licensee Southern Cross Austereo (SCA) into the RM market (despite our objections) to create a significant geographical overlap, in one case doubling the geographic size of the adjacent licence area, creating a long term windfall for SCA. Yet, RM still can't get spectrum to service that original part of our market, on the misguided notion that some low grade RM unavoidable over spill may somehow impact the adjacent SCA stations more than the SCA stations have been allowed to effect our market.

At a time when the NBN, 4G coverage, convergence, and growth of multi platform media companies are making licence area boundaries increasingly irrelevant, and on the back of the Convergence Review 2012 recommending abolishing licence areas, the ACMA are taking an increasingly tougher line on over spill than its predecessor. We ask the government as a matter of urgency to direct the ACMA (and make any legislative changes required) to ensure RM can provide an adequate and competitive FM coverage to all major population regions within our market, as soon as possible.

ACMA Planning Delays

We ask the government consider steps to stream line the licence area planning process and adequately resource the ACMA to complete licence area planning in a timely manner. It can take 5 years from when a spectrum request is lodged (for an 'in licence' area service) to the finalisation of a LAP that allows that service to commence. ACMA planning staff turnover has required us on numerous occasions to brief a new planning officer or a section manager on complex issues before the LAP is finalised. Interference issues and site re locations, and even simple antenna polarisation changes can take years to get through the ACMA. We have had situations where we obtain site owner permission to lease tower space on a lightly populated tower, only to find the tower is loaded to capacity once ACMA grant permission 4 years later, and we can't re-licence to another site until we wait for another LAP variation to be secured. Once the ACMA deny an application in a given LAP process, its often back to the end of the queue for consideration of any revised proposals.

It is desirable that for 'in licence area' spectrum requests, that the planning process aim to be completed within one year of lodgment.



ACMA Decision Review Provision, and Access to Decision Makers

The LAP planning process does not typically grant us access to the ACMA board prior to their final decision, which we believe could be beneficial to a greater mutual understanding of the more complex planning issues.

A project that is progressed with ACMA planning staff over a few years, can be rejected by the ACMA board with a brief explanation in a one page press release. That makes it difficult to submit revised proposals that may be able to address the ACMA's concern, if we don't have sufficient detail on what those concerns were. On request, it is desirable the ACMA be required to provide sufficiently detailed reasons for a planning decision.

There is no decision review process available (other than through the courts) with the ACMA. It is desirable that there be a robust review process made available. While the courts offer a recourse, when a LAP decision may effect only one small regional transmission site, it is often not justifiable for the broadcaster to justify the expense of legal action in order to potentially service one small town, so that town remains unserved. That's not always an outcome in the best public interest.

Defining The Role Of Community Radio

Prior to 1992, the content of community radio on air sponsorship announcements was heavily restricted. The BSA 1992 allowed this to expand to 5 minutes an hour of what are in effect 'tagged commercials'. The 5 minute restriction was imposed to provide a 'real world' limit on how much advertising could be aired by the station in a licence area. That does serve as a partial limitation in cities of 30-60,000 people that may have one community radio station.

The RM market has by far, the most community radio stations within, or partially within, an Australian commercial radio licence area. Over 35 stations (including TCBL's), with one we're aware of commencing 3 months ago, and more in the planning pipeline. Each of these can air 5 minutes an hour of advertising, representing ~3 hours of advertising (5 x 35) per hour that can be sold and broadcast in at least one part of our licence area. That's a lot of commercials. Far more than we air in our licence area - and we have no restrictions.

There are 'genuine' community radio stations that carry alternative programming not catered for by the commercial or national sector, who do a commendable job servicing their community, adding to programming diversity. Our concern is an ever increasing number of community stations adopting mainstream, mass appeal, commercial radio formats. These 'pseudo commercial' music formatted radio stations typically run a peak time (5am-6pm) music play list that is virtually indistinguishable from a typical commercial radio station. Many are run by ex commercial radio employees. The motivation is to target commercial stations, aim for mass audience share, and maximise advertiser (sponsorship) income.



In small communities of under 4,000 people where RM run FM repeaters, a local community FM radio station can literally pop up unannounced overnight, as the ACMA can grant consecutive 12 month temporary community radio licences (TCBL's) with no consultation. While RM will retain market dominance, these community stations can effectively destroy the viability of small commercial radio repeaters, often selling their spots for a couple of dollars and undermining the value of proven radio advertising in the market. RM have a closed a number of its long term repeaters in small communities for this reason, leaving the communities without their favorite two radio stations. For example, the town of Wilcannia with <1,000 people had a local RM repeater, when the ACMA proposed to licence the towns third community radio station. We warned the ACMA it would result in the withdrawal of RM services - and that's what happened. Besides the commercial impact on our services, it's difficult to see how that is anything but a disastrous end outcome for those communities who valued commercial radio services.

Many of these community radio stations receive government grants, and some receive perpetual funding. The taxes we pay as a commercial broadcast are funneled back into fueling our pseudo commercial competitors under the guise of community radio stations offering a genuinely alternative service. It is an unlevel playing field, driving the commercial broadcaster (who has no ongoing federal government subsidies or free satellite carriage) out of small towns, in favor of inferior quality services that may well be perpetually reliant on tax payer funding to survive. We can't continue to invest in small community infrastructure with such uncertainty.

For the government to achieve additional diversity of services in these small communities, rather than gift spectrum to allow a 'pseudo commercial' community stations to be established, the community would be far better served by allowing the duopoly commercial broadcaster to launch a 3rd or 4th commercial service in the market. RM could guarantee economically sustainable, high quality content, with true programming diversity completely different to our existing two commercial services. That would be a great outcome for the communities, and we ask that be given due consideration in commercially small duopoly markets where spare spectrum can be identified.

Even in large markets, this issue is an increasing problem. For example on the Gold Coast in Australia's largest regional market, there are 4 community radio stations. One of these was a Jazz station until recently, providing some great programming and a real point of difference in the market. It relaunched, managed by an ex Breeze FM employee, with a music format largely based on the RM Breeze play list. So the Gold Coast no longer has a full time Jazz station, nor does it have a 'general' community radio station that broadcasts significant RPH programming, metal, classical music, or multicultural programming - in a market that does not have a local SBS radio transmitter, and many pockets of poor SBS reception from Brisbane.

It deprives the community of genuine alternative community radio programming, replaced with inferior commercial radio imitations that offer little to bolster market diversity. And in small population centers, they negatively effect the resources we can put into the RM services. No one wins from this, except a handful of community radio staff or volunteers who largely waste a scarce public resource in pursuit of their own agenda or pay packet.



The ACMA have not upheld complaints from commercial broadcasters about pseudo commercial hit music programming on regional community radio stations - even those holding 'educational class' licences. This is surprising, as separate community class licensing creates an expectation that an average radio listener should be able to expect completely different type of music programming from a community station than a commercial station.

This problem is set to spiral out of control if regional 'pseudo commercial' community stations are granted free access to DAB+/DRM+ spectrum, where they can establish further mainstream formats. If community radio is to utilise scarce free spectrum that could have instead been used by commercial radio to add true programming diversity in the market, then the ACMA need direction and sufficient legislative clout to police and enforce strict programming licence conditions that includes prohibition on all AM, FM, DAB and DRM community radio services broadcasting mainstream 'mass appeal' music formats, syndicated talk, news or national sports programming designed for the commercial radio sector.

We encourage government to clarify the role of community radio and empower the regulator to enforce it.

Regards

A handwritten signature in black ink, appearing to read 'Aaron Jowitt', written in a cursive style.

Aaron Jowitt
Managing Director
Rebel Media