

7 June 2001

House of Representatives Standing
Committee on Communications,
Transport and the Arts

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7 JUN 2001

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON
COMMUNICATIONS, TRANSPORT AND
THE ARTS

Dear Mr Neville

I refer to our appearance before your committee on 28 May 2001.

It may be helpful for me to confirm our position on a few points which have been raised.

Regular Hearings

We do not agree with the reintroduction of hearings at regular intervals (every three years or otherwise) to determine whether a licensee provides an adequate and comprehensive service.

A system which requires hearings will have significant adverse financial implications for licensees.

Auditors, valuers, investors and bankers will give significant weight to the fact that it is *possible* (whether or not it is *likely*) that a licence will not continue as a result of hearings (or that directions will be made as a result of hearings).

This will impact on valuation and amortisation, and therefore on capital raising, financial ratios and profit performance.

This was my experience with auditors, valuers, investors and bankers under the old system and that would be their position now if hearings are reintroduced. We have checked this again with our own external advisers.

Immediately upon the reintroduction of a system which requires hearings, there would be a major devaluation of our licences by auditors, valuers, investors and bankers. There would therefore be a major devaluation of our investment in the radio industry in Australia.

The same would apply for all licensees.

As a result, we would expect financial compensation to be given to licensees if hearings are reintroduced.

Hearings of this kind also cost money and take time. Many of us remember the enormous devotion of resources to hearings under the old system. To require such hearings again would impose additional costs on an industry which is already under significant pressure. In fact, in some of our very small markets, the costs which accompany hearings could wipe out all or most of the modest profits which are now made. Almost any increase in costs may result in the surrender of licences in very small markets.

We made the biggest investment ever in regional and rural radio, in the establishment of our hubs and local studio infrastructure, on the assumption that the law would not change back to something which was abolished in 1992. Our investment could be rendered less effective and our returns from that investment could be diminished in a significant way, if hearings are now reintroduced. That will lead to a reduction in the quality of our services in all markets and may again lead to the surrender of our licences in small markets.

Regional and rural communities will suffer as a result of the reintroduction of hearings. Licensees will invest less and will incur more costs which must be borne, in one way or another, by those markets.

Our strong submission is that audiences determine the way we run our business and they therefore determine the success of our business. Ultimately, they determine if the service we deliver is acceptable to them. The reintroduction of hearings would be an attempt by government to second guess the success of our business. That would not be consistent with the deliberate abolition of hearings by government, together with the introduction of the price based allocation system and the issue of new licences, all of which were designed as a package to encourage new entrants to come into the market in 1992.

To change these rules now would be a backflip *after* the government has received its money for new licences.

Moreover, even if we did not object to the reintroduction of hearings, there is no reason to impose them on regional and rural radio and not also on metropolitan radio and on metropolitan television and regional and rural television. Revenues and profits (both in absolute terms and in terms of growth) are far superior in each of those other media markets. To impose this burden on regional and rural radio and not on metropolitan radio and on metropolitan television and regional and rural television, would be to further devalue regional and rural radio relative to other media businesses. That would result in business investment moving away from regional and rural radio.

It is impossible to conclude that that could have anything but a negative long term effect on regional and rural audiences.

Trade Offs

We are opposed to trade offs of any sort. Some of the members of your committee have suggested that the introduction of new regulations in connection with local content, however that is defined, might be a trade off in return for a moratorium on licence fees or the abolition of ownership and control restrictions, etc. In my view, those suggestions are inappropriate. They attempt to create a link where one does not exist. We have not asked in the past and do not ask now that you recommend a moratorium on licence fees or the abolition of ownership and control rules, etc. Whatever we might think about licence fees, ownership and control rules, etc, we will take those matters up at an appropriate time with regulators and government. Those things have nothing to do with "local content", however that is defined and we do not accept that there can be

any trade off in that regard. We are content to work within the legal and regulatory system which was put in place in 1992. That system has its problems. But we took those problems on and we are prepared to deal with them through established channels.

All we ask now is that you do not recommend any changes to the system introduced in 1992. That system is audience driven. We have invested heavily in the industry because we agree that it should be audience driven. It should not be driven by regulators or by others who think that they can second guess our audiences.

Some members of your committee also suggested that it might be fair to impose new regulations if at the same time there is a halt on the issue of new licences by the ABA. We do not agree.

In addition, we must state on the record that we have not asked in the past and do not ask now that you recommend a halt on the issue of new licences by the ABA. We certainly do believe that licences were issued in the past in markets which could not afford them. But that is history. It has happened. There are now only very few markets left in regional and rural areas to be planned by the ABA. No new licences are contemplated after that under the BSA. Accordingly, any halt which might now be imposed on the issue of new licences, would benefit only a very small number of markets (which includes some of our own markets) but would not (and could not) address the follies of the past. In short, it would achieve very little and we are not asking you to recommend it. In fact, we submit that it would be inappropriate for a halt to be introduced at this late stage. It would mean that incumbent owners in the last few markets (and again we point out that we are one of those incumbent owners) would obtain an unfair advantage relative to incumbent owners in the markets which have already been planned and where new licences have already been issued.

Emergency Services

We have said in our earlier submissions and we again confirm that we would not oppose the introduction of guidelines for public announcements and other broadcasts in cases of disaster and emergency situations. We believe that we already achieve very high standards in that regard. Nonetheless, if you recommend that the process should be more formal, that would be acceptable, so long as there is consultation with the radio industry and the emergency services organisations before guidelines are set.

It would be necessary to ensure that guidelines do not impose unreasonable burdens on the radio industry and that they also recognise the corresponding obligations on emergency services organisations. The guidelines must be reasonable and mutual. That is why consultation is important.

Localism

However, we would not agree with any recommendation which would require licensees to program their radio stations in a particular way (eg requirements to achieve certain hours "live and local" or to employ certain numbers of announcers, journalists or other specified people) or to require hearings into or other regular reviews of the manner in which licensees program or run their radio stations. Government and regulators should not have any role in how radio stations are programmed or run.

Audiences determine how we program our stations. We already undertake sophisticated and expensive audience surveys and research. The members of audiences in whom we have most

interest are those members who are selected at random in accordance with established statistical survey methods. Those who make submissions to hearings or complain to us or to regulators are also important. But their submissions and complaints must be discounted. They are not representative of our aggregate audience. That is why surveys are our primary guide.

We will continue to undertake audience surveys and research, and we will continue to program our stations by reference to those surveys and research. In fact we commit to do those things. But we should not be expected to do any more in our effort to identify and then broadcast "local content".

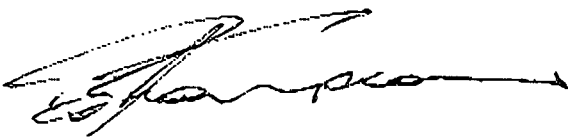
We repeat the fundamental point made in all of our submissions and appearances to date. That is, "local content" is about the relevance to our audiences of what we broadcast. That is determined by surveys of our audiences. It is not determined by the physical location of our stations or the number of people on the ground at those stations.

The most important question is what material comes out of the speakers and not how we put that material into the speakers.

We have not abandoned regional and rural areas, like some public utilities and authorities, banks, manufacturing enterprises and other businesses. In fact, we now provide a high quality service which exceeds anything from the past. Surely it is up to us, through listening to our audiences, to decide if we are sufficiently "local". Public utilities and authorities, banks, manufacturing enterprises and other businesses just left their customers and employees behind. We have not done that and we should not be penalised for our massive investment in hubs and other infrastructure in regional and rural areas, and for providing to our audiences superior quality radio services.

Attached is a discussion paper which outlines many of these points in more detail. I hope it is useful.

Yours sincerely,



PAUL THOMPSON
Chief Executive

DMG RADIO (AUSTRALIA) PTY LTD

DISCUSSION PAPER

REGULAR HEARINGS

We do not agree with hearings at regular intervals (every three years or otherwise) to determine whether a licensee provides an adequate and comprehensive service.

(i) Financial Implications

A system which requires hearings will have significant adverse financial implications for licensees. That was my experience with auditors, valuers, investors and bankers under the old system and that would be their position now if hearings are reintroduced. We have checked this again with our own external advisers.

Auditors, valuers, investors and bankers give only little weight to the fact that it might be *unlikely* that a licence will not continue as a result of a hearing. But they give significant weight to the fact that it is *possible* that a licence will not continue as a result of a hearing. This will impact on valuation and amortisation, and therefore on capital raising, financial ratios and profit performance.

What counts is the *possibility*, not the *likelihood* and, in my experience, the *possibility* will change the very nature of the asset and it will constitute a risk which will be taken into account, in a very real sense, by auditors, valuers, investors and bankers.

Immediately upon the introduction of a system which requires hearings, there would be a significant discount applied by auditors, valuers, investors and bankers to the value of our licences and to the aggregate value of our investment in the radio industry in Australia. The same would apply in respect of every other regional and rural radio licence in Australia.

In all these circumstances, it is not appropriate in response to these concerns to say that a licensee should not have anything to fear from regular hearings if it does in fact provide an adequate and comprehensive service. You can see that that is not the point behind our concerns.

As a result, we would expect financial compensation to be given to licensees if hearings are reintroduced.

(ii) Costs and Investments

Hearings of this kind cost money and take time. Many of us remember the enormous devotion of resources to hearings under the old system. To require such hearings again would impose additional costs in an industry which is already under significant pressure. In fact, in some of our very small markets, the costs which accompany hearings could wipe out all or most of the modest profits which are now made in those markets. That may result in our surrender of those licences.

In addition, our investment of over \$24 million in our hubs could be rendered less effective and our returns from that investment could be diminished in a significant way, if hearings are now reintroduced and if those hearings could result in directions for the conduct of our business which reduce the efficiencies delivered by our hubs.

We made that investment ... the biggest ever in regional and rural radio ... on the assumption that the law would not change back to something which was specifically and consciously abolished in 1992. To render our investment less effective in this way will necessarily lead to a reduction in the level and quality of our services and may again result in our surrender of some licences in small markets.

Regional and rural communities will suffer as a result of the reintroduction of hearings. Licensees will invest less (because of the risks identified above) and will incur more costs which must be borne, in one way or another, by those markets.

(iii) Capital Cities and Television

Even if we did not object to the reintroduction of hearings on any other basis, there is no reason to impose them on regional and rural radio and not also on metropolitan radio. Revenues and profits (both in absolute terms and in terms of growth) are far superior in metropolitan markets than in regional and rural markets. Your members recognised that themselves at the public hearing. To impose this burden on regional and rural radio and not on metropolitan radio would be to increase the gap between the two and would further devalue regional and rural licences relative to metropolitan licences.

The same applies to both metropolitan television and regional and rural television. Radio and television together should be subjected to these burdens or they should not. Regional and rural radio is already much more local than regional and rural television and even metropolitan television. To focus on regional and rural radio will not mean that regional and rural radio audiences are protected in the long term. Rather, it will mean that they are disadvantaged in the long term (because the business of serving those regional and rural communities by radio will be made even harder relative to the business of serving them by television or serving metropolitan communities by either radio or television). Business investment will move away from regional and rural radio, and into other forms of media, if hearings of this nature are restricted to regional and rural radio. It is impossible to conclude that that could have anything but a negative long term effect on regional and rural audiences. Businesses will become less interested in serving regional and rural communities by radio (because of the increased costs involved and the risk of consequences from government intervention in the conduct of the business).

(iv) Miscellaneous

It was suggested that hearings of this nature could in any event be undertaken today by the ABA. That is not correct. The ABA cannot undertake an investigation because it believes that a licensee may not be conducting its business in furtherance of one or more of the objects of the BSA. That does not mean that the objects have no teeth. They certainly do. The ABA must take the objects into account in the planning process and when deciding whether to issue licences (and what categories of licences). But once licences are issued, an investigation must be based on a reasonable belief of breach of the law or the conditions which attach to a licence. That does not extend to the objects. The objects do not prescribe the manner in which a licensee must conduct its business. Consequently, to reintroduce hearings, in part to force a licensee to conduct its business in furtherance of the objects, would be a very major change to the legislative and business landscape. Once again, it would change the risk profile of the industry and would be unfair to those owners who invested in the industry on another basis.

In the view of auditors, valuers, investors and bankers, there is a fundamental difference between a business which is at risk only if there is a breach of the law or of relevant conditions and, on the other hand, a business which is at risk of regular review and second guessing by regulators. The *purpose* of these different models might be the same in the eyes of the legislature. That is, the purpose might be to ensure that radio services contribute to an adequate and comprehensive service in the licence area. But auditors, valuers, investors and bankers are not interested only in the purpose. They are also interested and, in fact, they are more interested, in the manner in which that purpose is achieved because, at the end of the day, that manner will constitute a significant part of the risks inherent in the business.

Our strong submission is that audiences determine the way we run our business and they therefore determine the success of our business. Ultimately they determine if the service we deliver is acceptable to them. The reintroduction of hearings would be an attempt by government to second guess the success of our business. That would not be consistent with the deliberate abolition of hearings by government in 1992, together with the introduction of the price based allocation system and the issue of new licences, all of which were designed as a package to encourage new entrants to come into the market and invest heavily. To change these rules now would be a back flip *after* the government has received its money for new licences.

Some members of your committee also spoke about these hearings being to determine if an adequate and comprehensive service is provided by a licensee. Licensees today are required to *contribute* to an adequate and comprehensive service. They are not required to *provide* such a service. The distinction is very real and it was introduced in 1992. To change this back would give rise to an immediate devaluation of our licences and would be unfair for the same reasons identified above.

We reject the suggestion that hearings might be conducted by a panel which would include wider representation (ie advertisers, media buyers, program distributors and other commercial organisations). Those people would have a business interest in the outcome of the hearings. Many of them have primary relationships with one or more radio groups and their position could be expected to be consistent with the views of those groups. It would not work. Only our audiences are independent and qualified to decide if our service is acceptable. And they decide with their feet. They do not need a panel to do this. They just turn the dial.

We are opposed to trade offs of any sort. Some of the members of your committee have suggested that the introduction of new regulations in connection with local content, however that is defined, might be a trade off accepted by the industry in return for a moratorium on licence fees or the abolition of ownership and control restrictions, etc. In my view, those suggestions are inappropriate. They attempt to create a link where one does not exist. We have not asked in the past and do not ask now that you recommend a moratorium on licence fees or the abolition of ownership and control rules, etc. Whatever we might think about licence fees, ownership and control rules, etc, we will take those matters up at an appropriate time with regulators and government. Those things have nothing to do with "local content", however that is defined and we do not accept that there can be any trade off in that regard. We are content to work within the legal and regulatory system which was put in place in 1992. That system has its problems. But we took those problems on and we are prepared to deal with them through established channels. All we ask now is that you do not recommend any changes to the system introduced in 1992.

NEW LICENCES

Some members at the public hearing suggested that it was fair to impose new operating requirements (eg "live and local" requirements) if at the same time there is a halt on the issue of new licences by the ABA. We do not agree with that equation.

However, putting that to one side, we must state on the record that we have not asked in the past and do not ask now that you recommend a halt on the issue of new licences by the ABA. We certainly do believe that licences were issued in the past in markets which could not afford them. But that is history. It has happened. There are now only very few markets left in regional and rural areas to be planned by the ABA. No new licences are contemplated after that under the BSA. Accordingly, any halt which might now be imposed on the issue of new licences, would benefit only a very small number of markets (which includes some of our own markets) but would not (and could not) address the follies of the past. In short, it would achieve very little and we are not asking you to recommend it.

In fact we submit that it would be inappropriate for a halt to be introduced at this late stage. It would mean that incumbent owners in the last few markets (and again we point out that we are one of those incumbent owners) would obtain an unfair advantage relative to incumbent owners in the markets which have already been planned and where new licences have already been issued (which also includes us).

Free market principles have already been applied to a large extent in the planning process. That planning process is almost over. It would be inappropriate at this late stage to take an interventionist approach, whether in relation to the issue of new licences, or in relation to the imposition of new operating requirements in connection with the continuation of licences.

Regrettably, that horse has bolted and any attempt to pull it back would be to impose further burdens on licensees who have already paid significant amounts for their licences (in circumstances where such burdens not only did not exist but, even more to the point, they had been specifically removed in order to encourage new entrants into the industry).

COMMITTEE RECOMMENDATIONS

We have said in our earlier submissions and we again confirm that we would not oppose the introduction of guidelines for public announcements and other broadcasts in cases of disaster and emergency situations. We believe that we already achieve very high standards in that regard. Nonetheless, if you recommend that the process should be more formal, that would be acceptable, so long as there is consultation with the radio industry and the emergency services organisations before guidelines are set.

It would be necessary to ensure that guidelines do not impose unreasonable burdens on the radio industry and that they also recognise the corresponding obligations on emergency services organisations. The guidelines must be reasonable and mutual. This is why consultation is important.

However, we would not agree with any recommendation which would require licensees to program their radio stations in a particular way (eg requirements to achieve certain hours "live and local" or to employ certain numbers of announcers, journalists or other specified people) or to require hearings into or other regular reviews of the manner in which licensees program their radio stations. Government and regulators should not have any role in how radio stations are

programmed or run (except in relation to matters of broad public policy such as alcohol, tobacco, political material, etc).

It might be appropriate for such intervention in the case of community radio. Those licensees do not pay for their licences and are awarded them on the basis of the manner in which they undertake to program their stations. It therefore makes sense to consider their performance, against their undertakings, at regular intervals. But licensees of commercial stations have paid significant amounts of money for the very reason that they are commercial stations and not community stations, and on the very basis that the manner in which they program their stations will be determined by the market (ie audiences) and not by regulators.

We would oppose any recommendation which would enable community stations to become more commercial. That is not why community stations exist. They are not there to take up commercial opportunities which might be passed over by commercial stations. To enable community stations to do that would be enable them to operate as quasi commercial stations. Any such change in the rules would devalue commercial licences and would expose us to even more competition for mainstream audiences. That in turn would impact on revenues and profits. In many of our small markets we would not be able to withstand that impact. Even in larger markets it would be unfair to expect us to do so.

Audiences determine how we program our stations. We already undertake sophisticated and expensive audience surveys and research. The members of audiences who we are interested in are those members who are selected at random in accordance with established statistical survey methods. Those who make submissions to hearings or complain to us or to regulators are important. But their submissions and complaints must be discounted. They are not representative of our aggregate audiences. That is why surveys are our primary guide. We will continue to undertake audience surveys and research, and we will continue to program our stations by reference to those surveys and research. In fact we undertake to do those things. But we should not be expected to do any more in our effort to identify and then broadcast "local content".

The critical issue today is to find ways in which commercial radio services in regional and rural communities can be delivered at superior quality with less cost (rather than additional cost). I believe that any new requirement which results in additional cost will put at risk the quality of the radio services which are now provided and, in some small markets, it will put at risk the very services themselves.

After all, we have not abandoned regional and rural areas, like some banks, public utilities and authorities, manufacturing enterprises and other businesses. In fact we now provide a high quality service which exceeds anything from the past. Surely it is up to us, through listening to our audiences, to decide if we are sufficiently "local". Banks, public utilities and authorities, manufacturing enterprises and other businesses just left their customers and employees behind. We have not done that with our radio stations and we should not be penalised for having undertaken our massive investment in infrastructure in regional and rural areas and for providing to our audiences superior quality radio services.