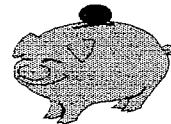
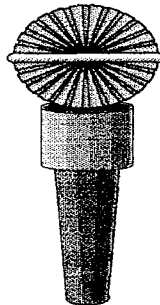


SUPPLEMENTARY SUBMISSION**Fax 02 62 77 44 27****HOUSE OF REPRESENTATIVES
House Communications Committee****INQUIRY INTO THE****ADEQUACY OF RADIO
SERVICES****IN NON-METROPOLITAN AUSTRALIA**

House of Representatives Standing Committee on Communications, Transport and the Arts	
Submission No:	198.01
Date Received:	17/11/00
Secretary:	Janet Holmes

**Name: G. Penrose****Address: Bingara 2404****Phone No: Restricted****IN THE COUNTRY, WITH THE COUNTRY, FOR
THE COUNTRY**



SUPPLEMENTARY SUBMISSION

**The Committee Secretary,
RADIO INDUSTRY INQUIRY
House of Representatives Standing Committee
on Employment, Education and Workplace Relations
Parliament House, Canberra ACT 2600**

Dear Committee,

I wish to formally make application for consideration to appear as a witness at a Parliamentary Committee Hearing if such Hearing is held in an economically viable point for a regional submittee to attend. Should the Committee so call and such Hearing refer in part to a Confidential Submission, that such part may be held in camera.

.....

I refer to a statement made in the body of page 9 of my original Submission wherein there appears to be no citizens' right of appeal on principle re. the perceived trade practices of the ABA against the issue of radio licences which create monopolistic commercial radio coverage in regional Australia, nor constrain the aggregation of previously individually owned small groups of stations. There appears to be no maximum ceiling number of licences which may be held by one company, corporation, or individuals with a vested interest in same, as was proposed in the amendment Bill of the Broadcasting (Ownership and Control) Bill [1942 Act] in 1988, allegedly due to 'too much redrafting would be involved'.

I wish to refer to information received from the ACCC and their role in monitoring competition, to protect consumers and business from unlawful anticompetition and unfair market practices, its primary role being to foster fair and informed marketing, to identify important issues as they emerge and to develop national and industry-wide solutions. It appears the role of the ACCC is not one of compliance handling nor to provide legal authority.

They advise that the Broadcasting Services Act is legally administered by the ABA to interpret the rules and guidelines as set down for the granting of commercial broadcasting licences within Australia. The general evidence that a company or corporation having a substantial market share does not in itself invoke a breach of the present [Fair Trading] Act.



This Act does cover the instances where a corporation may have a substantial degree of power market, the misuse of that power for certain proscribed purposes including elimination of or damaging a competitor or preventing a person engaging in competitive conduct. The anti-competitive provisions of the Act are applicable to the Commonwealth Government and Commonwealth Government authorities in as far as the said Government is carrying on a business.

However, this Act provides for the granting, refusing to grant, revoking, suspension or varying of licences. Whether or not the ABA, which I understand is a Government instrumentality, is subject to the conditions of 'carrying on a business' both under the Broadcasting Services Act and the Trades Practices Act, by its power to grant licences for commercial radio, taking in the considerations as defined in the previous paragraph, is a question raised by me as a layman.

If it is defined that the ABA, under the provisions of the Act or its Charter, is not 'carrying on a business' by its power to grant commercial broadcasting licences, what Government authority or constitutional expert can define the public's perception of 'monopolistic aggregation' which has occurred and accelerated since the legislation of the Broadcasting Services [Amendments] Act 1992?

If the ABA is not subject to the guidelines of the ACCC under the Trades Practices Act, it must be presumed it is answerable directly to Parliament. It is the House of Representatives House Committee which is holding this present Radio Inquiry.

CONCLUSIONS

Without expert knowledge, there appear to be some grey areas in parts of the formulation of commercial radio legislation under the Broadcasting Services Act as at 2000.

- (i) the lack of parallel legislation pertaining to foreign ownership compared to the television and print media industry, two of the three major industries engaged in comparable areas of information dissemination;
- (ii) that the same legislation should apply to all media ownership with no distinction between television, print or radio broadcasting as was imposed by the implementation of cross-media ownership under the provisions of the Broadcasting Services [Ownership] Act yet similar provisions of ownership, guidelines or ceiling limits, which attach to both print and television do not do so to radio;
- (iii) that sole broadcasting rights which currently may be granted in a licence area by the legal common ownership of both the AM and FM licences by a single company or corporation, even when there is no other commercial licence attaching or allocated to that area, should be reviewed;



- (iv) that consideration may be given to the separation of licence ownership in a licence area currently 'deemed' to support one only AM and FM licence market in order that market forces may be seen to be competitive and where deregulation would foster fair and informed avenues of access and marketing by advertisers and consumers;
- (v) the inclusion of the word 'local' in legislation and guidelines is seemingly meaningless legalese which, on application to the ABA, apparently is neither defined by statute nor guideline as to intent yet 'local' provisions attach to guidelines and sale of some licences by the ABA; that the intent of 'local' be defined, both in metropolitan and regional areas, taking into consideration parochial interests and wider regional common areas of local interest;
- (vi) that the interpretation of 'overlap' is meaningless when adjacent licences are owned in 'overlap' by the same company or corporation and therefore by default 'overlap' when serviced for a large percentage of broadcasting time by a detached transmission base on relay, and should be reviewed;
- (vi) that consideration may be given to restricting the granting of licences by the relevant authority, of adjoining licence areas, and that at the end of the current five (5) year licence holdings such adjoining licences may be refused, revoked, suspended or varied to a more democratic market penetration for advertisers and consumers, under the same principles as operated under the cross-media rules of adjustment.
- (vii) where the purchase of a station with one 'class' designation may be purchased by a broadcasting base with a different 'class' designation, thereby apparently automatically changing by such purchase the original licence designation, viz. a 'B' to a 'C', and its 'class' programming content;
- (viii) there appears from my reading, no parameters of minimum/maximum total 'Australian broadcast' content provisions in the Broadcasting Services Act by a company or corporation holding Australian broadcasting licences, thereby potentially allowing in an unknown future the broadcast relay through an Australian network programming sourced by transmission from an overseas [foreign] transmission base such as USA or UK;
- (ix) where a network of more than five (5) licences is put up for sale, that restrictions hereinafter may be legislated that no greater number than five (5) licences or part thereof may be purchased by any one company or corporation or persons having vested interests in same AND taking into consideration the purchaser/s current licenceholds in adjoining areas AND THAT a condition of sale shall attach whereby the purchased licences shall not be on-sold for a period of less than two licencing periods or ten (10) years, whichever is the lesser, with the same conditions of adjoining ownership attaching NOTWITHSTANDING the forced sale of same or part thereof by order of a Court or Mortgagee in possession.
- (x) that the proposed amendments of the Broadcasting Services Act [Broadcasting {Ownership and Control} Bill 1987, Second Reading by Peter Morris, Minister



for Transport and Communications 11.34, replacing Bill No. 3 1987]. [See insert Annexure Pages 3 [i - vi]] be revisited, reassessed and possibly redrafted to fulfil the technological changes now rapidly taking place in 'radio broadcasting'.

With the blurring of technology and the cross-over legislation now pertaining to 'broadcasting' whereby it comes under more than one or two Acts with the introduction of internet, Spectrum Management control and proposed digital/satellite broadcasting in addition to current AM/FM/LW/MW/SW bands, it seems a 'common' thread of legislation is overdue for broadcasting in the 21st Century.

If 'too much redrafting was required' twelve years ago, the major changes in direction would undoubtedly involve far more; but if it is not done 'in anticipation', the direction finding loops of early wireless may easily equate to direction finding loopholes in current legislation by specialist communications lawyers, which would enable legal anticompetition and unfair market practices rather than fostering fair and informed legislation. It is the role of the relevant Minister, our Parliament and its advisors to identify important issues as they emerge and to develop national and industry-wide policies, guidelines, legislation and solutions in anticipation before they occur, to the mutual benefit of both the broadbased varied broadcasting industry as a whole, its markets and the consumer.

I put these thoughts forward to the Committee for consideration.

The north west area of New South Wales is one of the last enclaves of fiercely independent newspapers; Rural Press is pushing into the most obscure little town papers with circulations of less than 300. The three largest regional areas of Gunnedah, Narrabri and Moree have resisted all pressures.


Gunnedah *Namoi Valley Independent/North West Magazine* was recently purchased by a consortium of senior editors; Narrabri *Courier* is one of the last of the family owned, third generation papers, the Chairman being President of Independent Newspapers Association, and is the central printing press for not only its own papers and publications, but many smaller regional papers for up to 140km radius; Moree *Champion* publishes the *Border News* insert magazine which covers Queensland border towns in addition to some small town newspapers.

I notice in one of the early Submissions list that a group of independent radio stations have also formed a similar alliance for economic and programme support.

However, the very independence of our local newspapers also makes this area of the Caralis network attractive to prospective purchasers should it be put on the market. It would not conflict with cross-media rules for a major group to add to their already similar octopus aggregation. This means regional listeners who are not happy with the present network could end up in the proverbial 'fire' of parable.

Yours sincerely,

By FAX:

A handwritten signature in cursive script, appearing to read 'G. Penrose', written in black ink.

G. Penrose

Bingara 2404

10th November 2000



Addendum:

From news letter of Radiowise website www.amt.org.au

"Hurry up!" says ABA to Broadcast Operations:

The ABA has issued a notice to Broadcast Operations Pty Limited under Section 141 of the Broadcasting Services Act, directing it to commence operation of a commercial radio service in Maryborough/Hervey Bay, Queensland within one month.

On 21 January 1999 the ABA allocated Broadcast Operations Pty Ltd a commercial radio broadcasting licence to serve Maryborough/Hervey Bay on 103.5 Mhz. Broadcast Operations Pty Ltd had paid \$700,000 for the licence at auction in late 1998 and was required 'to commence a commercial service within one year of being allocated the licence or within such longer period as is notified in writing by the ABA'.

Broadcast Operations Pty Ltd did not commence the service by 21 January 2000. The ABA granted two extensions of time, the first to 21 July 2000 and the second until 20 October 2000. When granting the second extension, the ABA told the licensee that, unless the licensee could show that it had taken demonstrable action to commence the service, the ABA would not be minded to grant any further extension.

On 17 October 2000 the ABA received an application from Broadcast Operations Pty Ltd seeking an extension of the commencement of service until 21 February 2001. The ABA decided not to grant any further extension.

The ABA is satisfied that Broadcast Operations is in breach of the condition of the licence and so failure to comply with the ABA's notice by the required date (9 December 2000) may result in Broadcast Operations being prosecuted under Section 142 of the Act and/or having its licence suspended or cancelled under Section 143 of the Act."

A further item from the same newsletter:

'From Eric Brodrick re regional radio - {Narrabri resident/2Max FM re Caralis network}

"[Some regional stations] which have dropped popular network programming have been playing catch up for revenue they perceive they have lost to community stations. In a recent round of [pitchings] one station is reported to have offered to match the prices charges by the local Community Statio [\$150 + GST for 50 x 30 sec spots]. The truth is that the community station has picked up only a small percentage of the advertisers that have pulled their ads. from these commercial stations. The real fact is that the advertisers, like the rest of the population, resent the loss of 'localism' in their 'local' stations and see no reason to support that station".

*heard licence
goes to
R6 Capital
1/01
GP*

Advertising rates: 16th November 2000

Caralis country:

Long Term 7 x 15 sec random @ \$40 per week, viz: 28 x \$120
both stations

Sattler/Moore insert \$21 per 15 sec.

Plenty of slot vacancies

Janet Cameron country:

Long term - 12 mth contract 20 per month random \$270 p.m.
both stations

one off 15 sec. ad. is \$31 both stations

one off 30 sec ad. is \$41 both stations

John Laws insert \$43 per ad 30 sec.

selected vacancies