Final Submission by Federation of Australian Radio Broadcasters Limited

to

House of Representatives Standing Committee On Communications, Transport and the Arts Inquiry into the adequacy of regional radio

23 May, 2001

Introduction

FARB welcomes the opportunity to make a further submission to the Regional Radio Inquiry and to make a number of recommendations designed to assist the Committee in formulating its recommendations aimed at improving the adequacy of regional radio for its listeners.

The submission does not represent the views of all members of FARB, some of whom have made their own submissions with specific recommendations.

Putting aside the various suggestions which have been proffered as prompting the Inquiry, the 273 submissions received have highlighted a number of issues faced by radio listeners in regional Australia and have in fact served as valuable research for the industry. This has in turn presented the industry with a number of opportunities to raise issues that have been of concern and attempt to address them.

Some of the criticisms levelled at the industry have been valid, but we would contend that the vast majority are not. In fact, FARB would suggest that from the evidence presented, it is clear that listeners in regional Australia receive a commercial radio product comparable to that of their city counterparts. Unlike other essential services, commercial radio has not walked away from its listeners in regional Australia. In the past nine years, commercial radio services to regional Australia have increased from 109 to 202, but these stations share only 35% of the industry's $680.1 million revenue (1999/2000). While these economics remain, it makes it almost impossible for regional commercial stations to sustain a totally local broadcasting operation in the "old fashioned" way, ie. announcers sitting in studios whenever the station is on the air.

This explosion of services under the Australian Broadcasting Authority's planning process as part of the de-regulated *Broadcasting Services Act 1992* has had a significant impact on the evolution of the industry. In what is now a highly competitive market which has also seen an explosion in community broadcasting and narrowcast services, the commercial sector has been faced with serious viability issues. This has led to a major

consolidation of ownership resulting, in many cases, in a greater reliance on networking or automation to maintain services.

Various commercial operators, members of FARB, have presented the Inquiry with a wealth of information on their operations. The evidence has a common theme, that of the difficulty in maintaining viability of their operations in an increasingly competitive media environment and economically declining rural sector. While these operators have differing views on how this issue should be addressed, there are several recommendations on associated issued which the industry would like to put before the Committee for its consideration, and for which there is broad support.

Importantly, these recommendations are based on the premise that from a regulatory viewpoint they must apply equally to both regional and metropolitan stations and not contribute to expanding the cultural divide between rural and metropolitan Australia.

Localism

Much evidence has been presented to the Committee during the course of the Inquiry which raises doubts about the extent of coverage of local events. Largely, it comes down to perceptions, the vast majority of which can be dispelled once a detailed examination of the industry is undertaken.

The Government laid the foundation in 1992 for commercial radio today with the introduction of the Broadcasting Services Act. Rightly or wrongly, the Australian Broadcasting Authority's planning process has moulded the shape of the broadcasting industry through its interpretation of the Act, largely based on the objective of *"promoting the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information"*.

While many submitters have focused responsibility for the delivery of local content on commercial broadcasters, that is clearly not what was intended by the BSA.

The Schedule 2, pt 8 Standard Conditions of Licence for commercial broadcasting services clearly places an obligation on all licensees to:

- *"...provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area".*

In other words, the services of ALL broadcasters in the market need to be considered when deciding if listeners are being adequately serviced. Based on that criteria, there is indisputable evidence to suggest that regional Australia has never been better served by the large number of new services – commercial, community and narrowcasting – which have evolved during the past six years.

The Committee has taken evidence from a number of people who have suggested the imposition or tightening of content provisions on commercial radio.

Commercial broadcasters have invested large sums of money in the industry based on the principles espoused under the BSA. To change the rules now by imposing content rules on commercial broadcasters – and ignoring other media (broadcasting and print) - would destroy the fabric of the industry and place it under even more pressure relative to its competitors in the marketplace.

As FARB has previously submitted, localism is an overall product and culture and should not be measured according to how much content is produced by a local announcer or how much is produced in a local radio station. Localism is to be found in a radio program or format which could be a combination of locally-produced material – either "live" or automated – networked from another station within a network or syndicated from an outside source.

Put simply, localism doesn't have to be someone in the studio in the town to which the program is being broadcast. It is about what comes out of the speakers from the consumers' perspective – it is material of relevance and appeal to the local audience. Broadcasters are conscious of the programming and service expectations of their audiences, who rely on their radio station to entertain them and keep them informed and a very important component of information programming relates to the local scene.

Commercial broadcasters need to strike the difficult balance of providing listeners with information of local relevance and access to the wider world with programming received from their metropolitan counterparts. Broadcasters are clearly conscious of the Government's own policies which aim to provide rural Australia with the same level of services – and in this case programming – which is available to metropolitan listeners.

Commercial broadcasters are clearly committed to retaining localism, but it should not dominate to the point of excluding outside influences as well. The degree of localism will, and indeed is, being determined by market forces.

FARB strongly believes that its members should be able to choose the kind of local programming and associated services they broadcast, provided that they are meeting their requirements under the BSA. The broadcasting make-up of each market will mean that listeners will have access to a different range of stations and other media.

The majority of regional stations receive some form of network programming, whether it be national news, syndicated programming or network programs provided by a central hub. The reasons for networking come down to four basic issues – community needs, competitive issues, economic necessity and programming variety. By offering talk and music-based programs from central sources, regional stations are offering the community a wide choice of radio listening and keeping them in touch with topical issues which are important to all Australians. Regional stations also need to provide programming to

compete with and complement other stations and media in the market, particularly in competing with the ABC for the youth (Triple J) and older demographics.

FARB therefore submits that individual commercial radio stations in regional areas are themselves in the best position to determine what an audience does and does not want from radio and that individual broadcasters should have the ability to ascertain what combination of locally produced and networked programming will meet the needs of their particular market. Networking allows regional radio audiences to have access to a wider variety of radio programming, without compromising localism, as both local and networked programming are interwoven to produce a comprehensive service. Consolidation of ownership and networking introduces a professionalism and wider range of programming variety to stations in regional areas than they would otherwise normally receive and had before.

Rather than networking compromising the nature of local radio broadcasting in regional areas, FARB would submit that it has in fact enhanced the broadcaster's ability to satisfy regional audiences. It is through the use of networked programs from metropolitan and regional areas, in combination with locally-produced content, that commercial radio has succeeded in achieving the BSA's objective of diversity, responsiveness to audience needs, the provision of high quality and innovative programming and the appropriate coverage of matters of local significance in regional areas.

Commercial radio has served regional Australian communities for many years. Other industries – namely banks, energy, water, transport and education – have all consolidated the provision of services to rural Australia and in some cases have ceased to provide local infrastructure and maintain a local presence.

However, commercial radio has stuck by local communities and re-invented the way in which it serves listeners to ensure they continue to receive the best programming available with which they can interact as they go about their daily lives.

Recommendation 1

- **Following completion of the ABA's planning process, a 10 year moratorium on the issue of further licences in regional markets – commercial, community, narrowcasting, s.40s and LPONs - to improve the viability of incumbent operators.**

  The increase in competition resulting from the planning process has led to viability issues for regional stations. A tangible way of allowing these stations to re-establish themselves in the wake of this competition is by placing a moratorium on the issue of further licences at the completion of the current planning process.

  As outlined in FARB's earlier submission, the cornerstone of all broadcasting legislation today is the *Broadcasting Services Act 1992 (BSA).* The Act abolished the

necessity to assess viability and need in deciding whether more radio licences should be issued, with the result that new radio broadcasting licences have been either issued or auctioned at a far greater rate since 1992 than ever before. Significantly, the Act allowed the ABA to take into account "entrepreneurial" demand for new services, rather than any clear demand for new services from listeners.

This led to a rapid increase in commercial radio services in the first five years of the planning process to 1998 – some 86 licences - most of those between 1995-1998 in the form of 59 new services. The planning process has also delivered almost 60 new community broadcasting services and 170 high powered narrowcast services, while other provisions of the Act have allowed for around 1,600 Low Powered Open Narrowcast Services.

Commercial radio has seen a 65% increase in the number of commercial stations on the air since the introduction of the BSA and this has resulted in a significant decline in the number of operators or owners, in response to the changing market conditions and ownership rules. The new industry structure has forced broadcasters to rein in expenditure to achieve economies of scale in a range of areas, including administration, production and infrastructure, while endeavouring to maintain a balance between localism and other programming.

It is worth noting that FARB, in its response to the ABA's Planning Priorities Exposure Draft in 1993, maintained that, under s.23(g) of the BSA, the ABA should consider the capacity of a market to sustain additional services as it would be inconsistent with the Objects of the Act, namely s.3(b) and (f), for it to be ignored.

FARB noted that the granting of new and additional licences by the former Australian Broadcasting Tribunal during the last five years of its existence under the "more is best" philosophy had resulted in the failure of several companies granted a licence. The submission continued:

> *"This is a clear illustration of the need for adequate tests to be applied to a licence area on the likely effects of introducing new services. To ignore those factors simply exposes the new services and the incumbent to potential financial failure with a major loser being the listening public".*

The Coalition obviously saw the warning signs of the explosion on the horizon when announcing its 1998 election policy on communications. In noting that planning for a number of significant radio markets - Adelaide, Brisbane, Gold Coast, Richmond/Tweed, Gympie, Melbourne, Geelong, Colac, Perth, Sydney, Katoomba and Gosford - would be competed early during its next term of government the Coalition's 1998 election platform stated:

"Several factors must be considered when allocating new licences. The Coalition appreciates that, although additional licences can often provide a greater range of services, it is important they do not threaten the financial capability of existing stations to deliver high quality programming with emphasis on local content".

Prophetic words indeed.

A number of submitters to the Inquiry and several of those who have appeared, have advocated remedies to the problems facing the industry, including a return to the *"adequate and comprehensive"* provisions of the previous Broadcasting Act 1942, coupled with the re-introduction of *"commercial viability"* considerations by the ABA when it considers the make-up of new markets.

The BSA heralded a new era of relaxed regulation balanced against increased competition as the ABA sought to satisfy the main object of the Act *"to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information".*

As a result, commercial radio has been confronted by competition from a number of new services in the form of commercial, community and narrowcasting services in addition to competition in the marketplace from a proliferation of other media, namely print and television.

To now re-regulate the industry in terms of prescribing certain levels of local content and coverage would simply restrict the industry's ability and flexibility to compete on a level playing field with other media in an already depressed advertising market, and in some licence areas, may well sound its deathnell. As a number of submitters have indicated, it is virtually impossible to prescribe minimum levels of coverage because of the vastly differing environment of each market. In other words, there is no "one size fits all". FARB maintains that the commercial radio sector is already fulfilling its standard conditions of licence in Schedule 2, Pt 4 of the BSA, which states:

"(a) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area".

It is FARB's view that the BSA relieved commercial radio of the burden of being all things to all people and allowed it to be one component in a larger overall system of radio broadcasting and regulation in which it is intended to interact with the wider system of national broadcasters, community radio broadcasters and narrowcasters. If the Committee shares this view, the solution must rest with all media, not just commercial radio.

Whether or not a licensee provided an "adequate and comprehensive service" under the previous Act involved lengthy preparations by each operator during the licence renewal process which relied heavily on evidence presented by the licensee as to how the station had served the community. This in itself amounted to a huge burden on the licensee in terms of cost and time and would impose even greater constraints on their operations today, given the streamlining of staff which has taken place as part of increasing the efficiency of stations. More importantly, reverting to such a requirement would be directly against the principles of the more relaxed regulatory regime under the BSA. FARB therefore opposes the re-introduction of "adequate and comprehensive" provisions for individual licensees.

Proposals to re-introduce tests for commercial viability would seem to encounter similar difficulties. With only Group 5 (Murrumbidgee, Gippsland, Tasmania) planning remaining, the re-introduction of those provisions would do nothing to address the issues of financial viability of the already planned markets identified by the Inquiry.

What will assist the longer term stability of the industry is a moratorium on the issue of further licences in all markets, once the planning process is complete. This would restrict the power of the ABA to re-visit any markets which may have vacant spectrum and issuing new licences, which would simply serve to increase competition for revenue and impact further on the viability of the other stations in the market.

Recommendation 2

- **A five-year moratorium on payment of licence fees (operating on a sliding scale from 100% to 50%) for all new regional commercial broadcasting services delivered by the ABA planning process since introduction of the *Broadcasting Services Act 1992*.**

A second incentive to assist stations to return to a more stable economic environment would be a moratorium on licence fees for a period of five years, starting at 100% and reducing by 10% a year, before reverting to full payment.

Section 5 of the *Radio Licence Fees Act 1964* requires commercial radio licensees to pay fees on each 31 December based on gross earnings in the previous financial period. Since 1993 the process has been one of self-assessment by licensees, but as an accountability checking mechanism, financial documentation to be provided includes certification by auditors and statutory declarations by the Chief Executive or Secretary of the licensee as to the amount of gross earnings which is used to calculate the fee, in addition to audited accounts. Collection of the fees is a primary function of the ABA. Licence fee policy and ultimate financial accountability in terms of Commonwealth revenue, rests with the Department of Communications, Information Technology and the Arts.

While incentive schemes (sales tax and custom duty waivers on equipment costs and licence fee rebates equating to 65% of the capital equipment costs associated with aggregation) were devised to assist regional television with aggregation infrastructure costs, regional commercial broadcasters would seek similar assistance from the government to assist with the establishment of viability of new regional services. .

While there are a number of variables, regional operators have in many cases expended on average, about $1million each to establish their new s.39 FM service, while other operators have spent considerably more establishing new services. Coupled with a 25% annual increase in operating costs for the s.39 service, against estimated revenue increases of up to 10%, many services have, as evidenced by ABA financial statistics, found it almost impossible to remain viable without instigating networking or automation to invoke efficiencies in their operations.

The investment in capital infrastructure costs could be simply offset by a moratorium on licence fees for new services delivered under the ABA's planning process since inception of the *BSA* in regional Australia for a five year period, commencing with a 100% rebate in the first year and reducing by 10% a year to 50% in the final year, afterwhich the fees would return to normal.

Industry revenue

While the most recent financial statistics released by the Australian Broadcasting Authority show that the commercial radio industry generated record revenue of $737.5M in 1999/2000, a closer examination of the figures shows that 68.5% ($504.8M) goes to 39 metropolitan stations (Sydney, Melbourne, Brisbane, Adelaide, Perth) and 31.5% to the 201 stations in regional markets. In the 10 years to 1999/00, advertising revenue in regional markets has increased by $79.5M, slightly more than one third of the increase gained by metropolitan markets (revenue for the 39 metropolitan stations grew by $73.5M in 1999/00 over the previous year). Over the same ten-year period, the number of regional commercial licences has increased by 92, compared with two in metropolitan markets.

The average revenue per station during that 10-year period has grown from $7.54M for metropolitan stations to $12.94M, while for regional stations it has dropped from $1.4M to $1.15M, despite a 13.95% increase ($28.5M) in regional radio revenue in 1999/00 over the previous year.

This relatively small revenue increase, shared between more radio stations is continuing to put pressure on already tight margins and although the number of unprofitable stations has dropped in regional Australia from 59 to 41 it would be fair to say that the stations which have drifted into profit would be only marginal.

Recommendation 3

- **The Committee support commercial radio broadcasters' calls opposing the removal of the 1% broadcast fee cap in the Copyright Act 1968 to assist commercial viability, particularly in regional areas.**

  While this matter does not fall directly under the parameters of the terms of reference of the Inquiry, it nonetheless goes to the heart of the key issue of viability.

  The final report of the Intellectual Property and Competition Review Committee, released on 6 December 2000 contains a recommendation for an amendment to s.152(8) of the Copyright Act 1968 to remove the broadcast fee price cap which could potentially have a significant impact on commercial radio stations in rural Australia, and indeed several stations in metropolitan areas.

  The industry is concerned that lifting of the ceiling may act as a signal to overseas owners of major record companies, which control about 90% of the retail sales, that the government is no longer concerned about a viable commercial radio sector, particularly in the regions.

  FARB has previously made submissions to the Intellectual Property Task Force and the Review Committee opposing the removal of the 1% ceiling and has made recent representations to the Attorney General, Minister for Communications, and the Arts, Leader of the National Party and the Department of Communications, Information Technology, Transport & the Arts, urging the Government's rejection of the IPCR's recommendation.

  By way of background, the Phonographic Performance Company of Australia (PPCA) entered into its latest licence agreement with the commercial radio industry in a freely negotiated contract for four years from 1 July 1999 at a rate significantly less than 1% (0.366% of industry revenue, increasing to 0.4% during the term of the agreement). In the 2000/2001 financial year the commercial radio will pay PPCA almost $2.2M in copyright fees under the agreement, based on 0.388% of revenue for licence fee purposes. Considering the Copyright Act provisions have been in effect since 1968, this hardly suggests the existence of an artificial ceiling, or that it has limited the Copyright Tribunal's ability to set a price equivalent to that determined by the market, as suggested by the PPCA's and Australian Record Industry Association's (ARIA) submission to the Review Committee.

  In the only case to come before the Copyright Tribunal (application by WEA Records P/L [1980] 40 ALR III – 2MMM case) the conclusion was that the amount payable for the broadcaster's use of protected recordings should be 0.45% of that broadcaster's gross earnings. The history of fees payable since that time has been determined by free negotiation without recourse to the Copyright Tribunal and has

been at a rate well below that set by the Tribunal in the above decision and what could only be classed as the "market rate".

It could be asked: Why is commercial radio so concerned as the negotiated position has never exceeded .4%. FARB's concern is that the removal would be seen by record companies as a signal for excessive and ambit claims, well in excess of the levels of today.

It is worth noting that FARB collects the licence fees from member stations and pays PPCA quarterly, which involves considerable administrative savings to PPCA. Furthermore, contrary to the submission to the committee by PPCA and ARIA, there is no subsidy of the broadcasting industry (in keeping the 1% ceiling) by sound recording copyright owners in view of the benefits derived by the recording industry and artists by the airplay of their product. This is acknowledged by the music industry in practical terms by allocating only slightly more than $2.4 million, or 3.7% of their annual media advertising spend of $65.5 million to metropolitan commercial radio in the 12 months to 26/11/2000 and none on regional radio. If anything, there is a massive reverse subsidy to the recording industry by radio.

Revised Codes of Practice for the playing of Australian Content on commercial radio, including requirements for the playing of minimum content of "new" Australian music were introduced in late 1999 following lengthy negotiations with the record industry. The amount of "free" commercial airtime for Australian music on FARB's 235 member licensees resulting from these quotas would run into the hundreds of millions of dollars per year.

The value of this exposure to the record industry was underscored in the 1998 monograph *Headbanging or Dancing? Youth and Music in Australia (pt 2)* which was jointly funded by the Australian Broadcasting Authority, the Australia Council and the Australian Record Industry Association. Among the findings was that *"Radio was the most common sources of information about bands or music that young people were already familiar with, and about new or latest release music. It was also the most common medium used to discover types of music that they were not familiar with."*

It would appear to be implicit in the report prepared for the Review Committee by the PPCA and ARIA that record manufacturers will move, at the end of the current industry agreement in 2003, to claim a broadcast fee well above the 1%, if the ceiling is removed. If record companies were successful, this could have a dramatic impact on profitability of stations, particularly those in regional areas adding considerably to the cost pressures which have already forced them to increase networking or rationalise services.

The 1% ceiling was inserted into the Copyright Act 1968 following submissions from broadcasters who were apprehensive that the record companies would make excessive demands for royalties. Those fears would now appear well founded, particularly

when compared with overseas countries which today pay considerably more – Ireland (up to 9%), Hong Kong and Germany (4.5%), France (4.25%), New Zealand (up to 2%), UK (2%-5% for private radio; 8%-20% for other broadcasters).

In reaching its decision, the Review Committee accepted the argument for implementation of the 1% ceiling, but noted that since its introduction, *"the economic circumstances of the commercial radio industry have evolved"*. FARB would argue strongly against that assumption, particularly in relation to regional radio. The industry has presented ample evidence to the Committee outlining commercial viability issues confronting the commercial radio industry.

While it is true to say that profits of free to air (before interest and tax) are currently higher in real terms than at any time since 1987-88, they vary widely across radio markets. As previously submitted, according to financial results data compiled by the Australian Broadcasting Authority, over the past five years, the number of profitable stations has decreased from 73% of all stations to 69% of stations. While the profitability of stations making money has increased by 53% since 1994, over the same period the number of unprofitable stations has grown by 61% and they are 32% more unprofitable than they were five years previously.

Clearly, any increase in fees for the broadcast of recordings would impact hardest on rural and regional operators. The Federation seeks the support of the parliamentary committee by recommending against the removal of the broadcast fee cap at this time based on the arguments of commercial viability put to the Inquiry.

Recommendation 4

- **The introduction of a Government funded blackspots program to assist regional listeners in receiving better reception and to extend commercial services.**

An issue highlighted by a number of submitters to the Inquiry has been that of poor reception, or in fact, no radio services at all.

FARB has recently written to the Minister for Communications, Transport & the Arts seeking an extension of the provisions of the Blackspots program for television to commercial radio and discussions are continuing with the Department of Communications, Transport and the Arts.

There are a number of population centres within licence areas in regional Australia which cannot receive an adequate commercial radio service because of reception difficulties, generally as a result of geographic location and local topography. FARB members have identified at least 70 transmitters that could extend services to an estimated 100,000 people in regional and remote areas at an estimated cost of about $2 million. In several of these communities there is no existing commercial service. The attached list identifies the areas in which these services could be extended under such a program.

Currently, there is little likelihood of licensees installing retransmission facilities to extend services to these areas because extension of the service to the town is simply not viable, a point which has been made to the committee by numerous operators. However, the viability of these additional services would clearly be enhanced if commercial radio operators received relief from the capital costs of the initial installation.

Radio broadcasting has up to this point not been a beneficiary of the Blackspots program, a situation FARB submits should be reviewed as radio is the most consumed of all media with listeners spending 151 minutes per day with commercial radio, compared with 141 minutes per day with commercial television.

In accordance with the precedent set by the Government in its funding program to assist TV to eradicate blackspots, commercial radio licensees are prepared to install the services on the basis of the government providing a subsidy on a similar basis to that under the blackspots program for television.

The inclusion of radio in the blackspots program would also allow radio licensees to fully meet a number of the objectives of the *Broadcasting Services Act 1992* and their obligations under the *Technical Planning Guides for the Planning of Individual Services that Use the Broadcasting Services Bands.*

Under the *Technical Planning Guidelines* a minimum level of service is specified so as to ensure that all communities within the licence area receive a service. Further, under the ABA's policies adopted for the planning process, communities with a population of 200 people or more are entitled to expect a service from a broadcaster that is licensed to provide a broadcasting service in the licence area. However, due to geographical and topographical circumstances, and importantly the issue of viability, this is not always possible from the main transmitter.

Several submissions to the inquiry have highlighted the need to improve reception to a number of remote areas in all parts of Australia. Some, such as the Northern Territory Government and the Local Government and Shires Association of NSW, actually identified the blackspots program as an ideal source of funding.

In its submission, the Northern Territory Government has pointed out that radio services have an important role to play in lessening the social, cultural and economic disadvantages of living in remote areas. They point out that radio is an extremely valuable form of media in remote areas as other media sectors (for example, newspapers) do not provide the same level of connection with their audience, and in many instances are less accessible to more remote communities. The Northern Territory Government suggests that radio is capable of addressing some of the inadequacies of this situation. This is because, for those who are connected to the telephone network, radio broadcasting can provide a valuable form of social interaction by encouraging talkback, competitions and requests. In addition, remote areas with high levels of illiteracy within the population particularly benefit from radio, as it is a medium that can be heard and need not be read.

In the submission to the Inquiry by the Local Government and Shires Associations of NSW, the Shire of Tumut specifically suggested that a program be implemented similar to the Blackspots Television Fund program to overcome poor levels of radio communication for several small towns, particularly those in the foothills of mountain areas within the Shire. As was submitted, Tumut and several surrounding communities are only small, but are isolated due to terrain even though they are only two hours travelling time from the nation's capital.

Crookwell Shire Council, in its submission to the Inquiry, also alluded to assistance provided under self-help programs. The Council pointed out that the lack of consistent radio signal impacts on the social well being of the community and also the economic attraction of the area for both business and residential growth.

Further, submissions received by most parties in the regional radio inquiry confirmed the need for radio stations to provide all areas, including remote regional ones, with adequate services in terms of local news, sport and community service announcements. Any measures taken to increase reception to remote regional areas, including Federal government funding for the eradication of 'black spots' in regional areas, would serve to bridge the cultural divide between metropolitan and rural audiences in some regions by allowing programs which are currently received by metropolitan and larger regional communities to also be received in very remote areas currently incapable of receiving radio transmission, or suffering poor reception. Alternatively, it would allow other regional radio broadcasts to reach a wider audience and would make isolated communities feel part of the regional area from which the station broadcasts.

Finally, while the fundamental principle of universal service obligation (USO) does not apply to broadcast services, the provision of funds for extension of radio services under the blackspots program would clearly meet the Government policy of ensuring that all people in Australia, wherever they reside or carry on business in the cities or rural areas of the country, should have reasonable access to services, on an equitable basis.

Recommendation 5

- **FARB to foster regular forums between commercial radio, ABC and emergency services organisations to ensure coverage of potential disasters facing the community. This would make it unnecessary for regulation of mandatory requirements for the broadcasting of emergency warnings. Any recommendations should apply equally to all broadcast media – commercial, community, narrowcasting and television.**

  It goes without saying that the commercial radio industry has always played a positive and proactive role to ensure the best possible practices and mechanisms are developed and maintained in the way commercial radio operators respond to emergencies, disasters, disruption to public utilities or any incident likely to pose a

threat or give rise to concern in relation to the safety and well being of the wider community.

FARB has again taken a proactive stance in response to the issues raised by submitters relating to lack of warning of impending bad weather or the response to disaster or emergency situations. It must be said however, that the identification of these problems has only come to the fore since the announcement of the Inquiry.

As noted, there is no reluctance on behalf of commercial radio station operators to broadcast this type of information. Indeed, it is an accepted essential element in community relations and in providing a comprehensive service to listeners. Recent flooding in northern New South Wales has shown once again that commercial radio can be depended upon to broadcast critical information to the community.

It needs to be remembered that coverage of emergencies by commercial radio stations comes at a significant cost to the licensee. Inevitably, these emergencies often occur after-hours when a station is either networked or automated. The coverage therefore requires the station going "live" to air, which quite often involves the payment of considerable overtime to staff. Additionally, the very nature of an emergency requires that more staff than normal may be required to provide an adequate coverage and keep the public properly informed.

The devastation caused to farmers by, for instance, floods can also have a flow-on effect to the local radio station. Crop losses suffered by farmers means less money to spend in the local town, which in turn means local businesses have reduced revenue flow and in turn less money for advertising.

In addition to these issues being raised in the course of the current Inquiry, the Australian Broadcasting Authority (ABA) has sought the introduction of a code of practice for emergency response procedures. The ABA does not see the code as prescriptive and detailed as it accepts that this would not be practicable or appropriate. Rather, the ABA is seeking a broad code obligation that there be adequate procedures in place – and available for inspection – to ensure that emergency information is broadcast when the need arises. FARB is proceeding towards the public consultation process of registering the code (Attachment 1, Draft Emergency Procedures Code).

The ABA accepts FARB's view that its member stations are situated in a variety of climactic conditions and geographic locations and are therefore subject to various types of emergencies and natural disasters.

FARB conducted a survey of its members late last year, the results which could be summarised in the following terms:

- The majority responding to the survey said they could be contacted outside office hours.
- Local knowledge is the key to effectively responding to emergencies.
- The majority provide contact details to local emergency services.
- The majority are aware of their regulatory and social obligations during emergencies.
- The majority have standby transmitters and emergency power supplies to deal with emergencies.
- Commercial radio serves its customers 24 hours a day, 365 days a year. In fact FARB's 235 member stations provide over two million hours of listening each year.
- Because of the diversity of markets, infrastructure, climatic and geographic conditions in Australia, emergencies and natural disasters are varied as are responses, making it impractical to benchmark contingency planning across the nation.

Since the Inquiry commenced, FARB has initiated discussions with representatives of the NSW State Emergency Services, Weather Bureau and the Victorian Emergency Management Council Media Committee. These discussions have shown that there is no lack of goodwill on behalf of each of the parties in working with commercial radio to benefit the community in times of emergencies.

A subsequent meeting between FARB, the ABC and senior officers of the Bureau of Meteorology has agreed to review earlier guidelines on the broadcasting of meteorological information with a view to resigning the previous agreement (Attachment 2: *Guidelines to Broadcast of Emergency Meteorlogical Information).*

The discussions with the various bodies have identified that the information provided by some of these emergency response agencies and the manner in which the information is disseminated, is not always perfect. In fact the Chairman of the Committee made a similar observation during the Bathurst hearing of the Inquiry, and went as far as saying that the Committee had detected a real weakness in the transfer of information from the emergency services and the accuracy of forecasts.

The critical factor which has been identified as breaking down in the issues presented to the Inquiry, and in our subsequent meetings with these agencies, is communications. The operations of all emergency services and the advent of new technologies have changed markedly in recent years. Similarly, as evidenced before the Inquiry, the broadcasting industry has changed considerably as a result of consolidation and networking. Put simply, the changes in delivery of both commercial radio services and emergency services during the past decade do not make the solution either simple, or obvious.

What has emerged from discussions to date is a clear desire by all parties to re-establish firm lines of communications and ongoing review and it is hoped that the

proposals being explored in conjunction with the Victorian Emergency Management Council Media Committee can serve as a model for introduction in other states.

That said, there are two other areas which need to be addressed and are in a sense conditional if pressure is to be applied to commercial radio to be the primary source of information in emergency situations. The first is that radio is not prioritised, legislatively or otherwise, as being one of the first to be informed about emergency situations at a national, regional and local level.

The second is that there is no priority, enshrined in legislation or regulation, or upheld in practice, whereby priority is given by telecommunications providers, public utilities or emergency response agencies to repair, or assist in the repair of radio broadcasting equipment in the event that it is damaged as a result of an emergency situation such as fire, flood or storm.

It is clear to FARB, that both of these conditions are required if there is to be a symbiotic relationship between radio and the emergency agencies if we are to remedy the perceived failure by commercial radio to broadcast emergency information to regional areas. The first condition is generally fulfilled. The Weather Bureau and the Country Fire Authority in Victoria both recognise radio as the prime source for distribution of information on warnings because of its immediacy and flexibility. In fact, research provided by the Weather Bureau showed that more than 70% of respondents rely on radio for weather information.

The second issue, that of priority for repairs to broadcasting equipment, is critical if radio is to be relied upon, and indeed, if there is to be any pressure exerted for regulatory or code of practice obligations on commercial radio in regard to emergency broadcasts.

In the past, all radio stations were regarded as Commonwealth broadcasting stations, not just the ABC and SBS. Radio was held, in the public perception, as being of more importance and of higher priority as a public service. Radio was therefore notified, as a matter of priority, about impending emergencies so that they could notify the general public. In addition to this, section 131 of the *Broadcasting Act 1942* gave the Governor General the power to authorise the minister to reclaim broadcasting in times of emergency. Similarly, today the Minister is able, under the standard license conditions in Schedule 2 of the current *Broadcasting Services Act 1992*, to take control over matter broadcast from a licensee's broadcasting facilities in times of emergency.

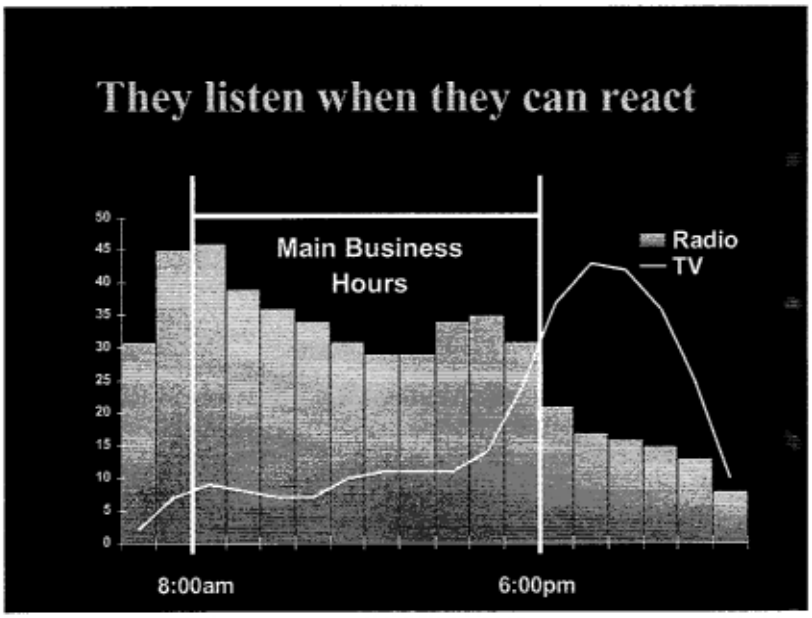
However, while this legislative power allows the Minister control over broadcasting in cases of emergency, it wrests the power to broadcast information about such emergencies out of the hands of broadcasters. It also does nothing to improve the lines of communication between radio stations and emergency response agencies, and it is a path of clear communication between these agencies and radio stations which is required.

FARB is moving to ensure that communications plans with emergency response services such as the SES and Weather Bureau, in each state, are reviewed to ensure that vital information about emergencies is passed on to listeners and there is a better flow of information between emergency response agencies and stations.

Effectively, there needs to be some system established whereby radio stations are immediately informed, as a matter of priority, about impending disasters or emergencies so that they are able to broadcast information about it to the affected areas.

While commercial radio is happy to play a role in keeping the public informed of emergency situations, the Committee should not place the sole responsibility and obligation for broadcast of emergency warnings on the sector.

In broadcasting information of this type the main object is to reach as many people as possible. However, despite commercial radio's high listenership during the day, the focus of the public on television viewing in the evenings means that sector should also bear equal responsibility. The graph below shows that while radio is the most listened to medium between 6am and 6pm the listenership drops dramatically after 6pm when people turn to television for their entertainment. It also needs to be borne in mind that many of these emergencies often occur after hours.



While the ABC accepts its role in coverage of emergencies, the Committee should also consider what role community broadcasters and narrowcasters should play in informing their listeners.

Recommendation 6

- **As an acknowledgement of radio's role in responding to emergency situations a declaration of radio services as "emergency services" to ensure they receive priority restoration of electricity supply and telecommunications repairs, etc.**

  As mentioned above, there has never been any legislative provision, in either the 1942 or 1992 Acts, granting radio any priority in terms of repairs in times of emergency. This is a further impediment on radio's ability to broadcast emergency information as, if radio broadcasting equipment in regional areas is damaged by emergencies such as fire or flood, then it is obviously impossible for that broadcaster to alert surrounding communities of the impending threat and action required.

  Recent examples highlight this issue. The January 2001 storm in Dubbo caused serious damage to the 2DU transmitter and put the station off the air. 2DU had broadcast numerous warnings to listeners in the several hours leading up to the storm, but its initial response in the aftermath of the storm was inhibited by the damage to its facilities. Fortunately, the repairs could be effected quickly and the station was back on air within a couple of hours.

  A second incident occurred the following month during the height of the devastating floods that hit the far north coast. On this occasion it was Radio 97 at Murwillumbah which was put off the air, again due to transmitter problems. The local SES management was called on for assistance in ferrying the station's engineer across floodwaters in the middle of the night to the transmitter site so the station could be put back on air. However, the local SES command determined that the risk to volunteer personnel was too high in the circumstances that prevailed and agreed to attempt the crossing in daylight the next morning. The station engineer eventually managed to reach the site using his own vehicle at daybreak in what were still very dangerous circumstances and put the station back on air.

  As evidenced, both these circumstances serve to highlight the difficulties under which stations operate during times of disaster, with station employees often putting themselves in potentially dangerous situations in an attempt to keep their station on air and keeping the public informed. It is a matter of fine judgement and often a no-win situation for the station management who are criticised by a public and sometimes authorities not fully appreciating the extreme circumstances which have prevailed.

  As previously discussed, the ABA has sought the development of a code of practice for emergency response procedures, while standard conditions of licence applying to all commercial broadcasters allow the Minister to take control over matter broadcast from a licensee's broadcasting facilities in times of emergency.

  For these obligations to be met there needs to be a corresponding recognition by the government of radio's "emergency status" granting the industry priority in terms of repairs, similar to that, for instance, afforded to hospitals. While stations generally have back-up generators for transmitters that is not always the case with studio

facilities. The services most vital to the operation of a radio stations are, of course, electricity to its studios, audio lines providing program and "studio-to-transmitter" links. There also needs to be a formalised understanding between the industry and organisations such as the State Emergency Services to provide assistance to station personnel in accessing often remote transmitter sites which are cut off, for instance, by floodwaters.

FARB would propose that the legislation/regulation impose a form of universal service obligation on public utilities and telecommunications providers to give priority to the repair of broadcasting equipment.

It needs to be recognised that radio stations cannot fulfill an obligation to broadcast emergency information if their broadcasting transmitters and other essential equipment have been damaged. It would be unreasonable to impose such an obligation on them without these issues being addressed.

Given the importance being placed on this information being provided to the public by various submitters to the Inquiry and the ABA, and indeed given the concern expressed by several Committee members, FARB would strongly urge the Committee to recommend this be adopted as a matter of priority.

Recommendation 7

- **Strict proactive enforcement by the ABA of the regulations governing community broadcasting and narrowcasting to ensure they adhere to the BSA definitions and that community broadcasters deliver the service promised during the allocation process.**

Again, this issue does not fall directly into the terms of reference of the Inquiry, but it impacts of marketplace dynamics.

There are several instances where investigations of complaints by the ABA have taken what could be regarded as excessive time and where, after the ABA has delivered a decision that a service is in breach, the decisions have been ignored.

If a station continues to operate in contravention of the Act the ABA appears reluctant, or insufficiently resourced, to commence a prosecution under the BSA. While a breach continues, the damage to legitimate operations can be significant and creates distortions in the marketplace (Attachment 3: FARB Submission to ABA Inquiry into clarifying the criteria for narrowcasting).

FARB would urge the Committee to recommend the ABA take a more pro-active approach to enforcing the provisions of the BSA relating to community and narrowcast services and the allocation of additional resources to the ABA so that the Authority can investigate and obtain the necessary evidence expeditiously where a complaint alleging a serious breach of the BSA has been made. This may include the

development of a prosecution branch within the ABA if the DPP is unable to act quickly, so as to preserve the currency of the evidence.

Recommendation 8

- **The committee to recommend the use of VHF spectrum by regional broadcasters to lessen the financial burden of moving to digital radio should the Eureka 147 technology be adopted. The Committee also recommend assistance for regional broadcasters for the purchase of capital equipment associated with the transition to digital broadcasting.**

  As outlined in FARB's original submission to the Inquiry, the industry proposes the allocation of available L-Band spectrum to all commercial, national and high-powered community and narrowcast broadcasters in regional Australia for digital broadcasting.

  While L-Band spectrum has been reserved worldwide for digital broadcasting utilising the Eureka 147 technology there are significant cost and coverage advantages in utilising VHF spectrum and regional Australia offers such opportunity. Estimates by FARB's technical consultants have identified savings of up to 50% due to the lower number of transmitters required. Importantly, VHF spectrum would allow for a far closer replication of the existing coverage areas in regional and rural Australia and ensure that those people now receiving analog services, will also receive digital.

  In preliminary planning of digital spectrum the Australian Broadcasting Authority has maintained that there is insufficient VHF spectrum available for digital radio as the spectrum may be required for television in the future.

  FARB Technical consultants have identified, through the Digital Conversion Plan for Television, sufficient surplus VHF spectrum available for digital radio. Further, there would appear to be some scope to relocate some television translators utilising VHF spectrum to UHF spectrum, to make further VHF spectrum available for digital radio.

  Given the viability issues of operators and the inadequate reception of some services identified by listeners, which have been exposed during the course of the Inquiry, FARB would urge the Committee to recommend to the Government that regional radio operators be afforded every opportunity to utilise VHF spectrum in the digital era to ensure that the same problems are not transposed.

  Similarly, FARB seeks the assistance of the Committee in recommending that regional radio broadcasters moving to digital be also afforded the same assistance with capital equipment purchase as that for regional television in its conversion to digital.

Recommendation 9

- **Propose a lifting of the "blackout" provisions on political advertising to allow electronic media to compete on an equal footing with print media and improve viability.**

This Inquiry has presented an opportunity to address other issues that have been of concern to commercial radio broadcasters for some time. One of these issues, is the provisions preventing election advertising being carried on radio during the three day period prior to an election. These provisions impact unfairly on the ability of commercial radio to compete fairly with print media.

Section 3A of Schedule 2 of the *Broadcasting Services Act 1992* imposes an election advertising blackout on radio from midnight on the Wednesday before polling day to the end of polling on the Saturday in relation to a state or federal election and referendums. This ban exists on all electronic media, but not the print media.

The reason given for this ban by the Australian Electoral Commission is that electronic political advertising campaigns can only be afforded by the major political parties, and that minor political parties and independent candidates are therefore excluded from access to these powerful advertising media and cannot get their messages across to the voters as efficiently. This is said to result in a general distortion of the democratic process.

FARB proposes that this restriction should be lifted, as it is regarded as discriminatory that the print media are also not subject to the same restrictions in terms of the advertising of elections in the period leading up to the election as radio and television. Significantly, the ban creates distortions in the marketplace in the generation of revenue. Furthermore, we submit that radio has been wrongly drawn into the restriction on electronic electoral advertising, as radio is in fact a far less expensive advertising medium than television or newspapers. Whilst television, as an electronic advertising medium, is very expensive and may indeed prevent less well-funded political parties from advertising, radio is not of the same nature. A few statistics will illustrate this point.

Whilst a full-page advertisement in the Sydney Morning Herald on a weekday costs around $34,000, and a full-page advertisement in the Daily Telegraph on a weekday costs $21,000, a 30-second spot on radio (bought in Run Of Station), with, for example, 2UE, which is one of the top rating radio station in Sydney, will only cost around $440 maximum. This figure is much less in less competitive grids. What this means is that even if thirty 30 second spots are bought, this will not be more than an average of $12,000. Regional stations in New South Wales generally range between $30-$50 per 30-second spot. These figures clearly demonstrate the false premise on which this ban was introduced. The same arguments, however, may not be relevant to television advertising.

New technology also levels the playing field. Internet communication can be cost effective and the development and maintenance of a website as a communications tool can also be relatively cheap.

FARB contends that there is no firm basis for insisting on the continuation of the advertising ban on election advertising on radio. The industry would strongly urge the Committee to recommend the lifting of the restriction on commercial radio to increase the ability of the industry to compete on a level playing field for revenue and thereby improve viability potential.

Conclusion

FARB has presented a range of recommendations to the Committee essentially to address the issue of viability, which is the predominant issue for regional broadcasters. It is an issue which has been the driver for increased levels of networking and automation which has been introduced in stations during the past few years.

This submission also seeks to ensure commercial radio is able to participate in broadcasting on a level playing field and proposes the introduction of a blackspots program to address reception problems identified in a number of submissions to the Inquiry.

Above all, commercial broadcasters want to operate in an environment which delivers fairness to all parties and in particular, ensures listeners receive a comprehensive coverage of local events.

FEDERATION OF AUSTRALIAN RADIO BROADCASTERS LIMITED

SUBMISSION TO

AUSTRALIAN BROADCASTING AUTHORITY

in response to

OPEN NARROWCASTING RADIO SERVICES
Clarifying the Criteria
Discussion Paper

May 2001

INTRODUCTION

FARB welcomes this opportunity to comment on the operation of the criteria applicable to the open narrowcasting radio category under the *Broadcasting Services Act 1991.* ("BSA"). The review of open narrowcasting criteria is both timely and necessary.

FARB believes that, in its present form, the open narrowcasting radio category is not operating efficiently or reliably in accordance with the spirit of the BSA. FARB acknowledges the BSA's philosophical approach that open narrowcasters should be subject to lower levels of regulatory intervention, but is of the view that the regulatory approach presently in use is at too low a level and too vague to effectively preserve the distinction between the commercial broadcasting and open narrowcasting categories in the radio industry. This undermines the achievement of the BSA's objects, as set out in Section 3(1), particularly the following:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs

(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity

In FARB's experience, there are a significant number of radio services that, while purporting to comply with the open narrowcasting class licence, provide services that are essentially intended to have broad appeal to the general public. Anecdotal evidence from FARB's members indicates that this is a significant and growing problem. The nature of the content of broadcasts is, in FARB's view, the most critical issue in this review. The format and other limitations placed on narrowcasters are the principal quid pro quo for their being excused from the ownership and control regulations, annual earnings-based licence fees and much higher auction prices applicable to the commercial broadcasting sector. Commercial broadcasters therefore regard it as vital that a clear distinction between the two classes of service be established and maintained.

There are two major difficulties in maintaining this distinction: firstly, the lack of clarity which surrounds the limitation criteria and secondly, the lack (for a variety of reasons) of effective enforcement action when the narrowcasting boundaries are overstepped.

Clearly, detailed discussion of the enforcement issue is beyond the scope of the present submission. Enforcement issues will only be addressed to the extent that they overlap with issues surrounding the definition of limitation criteria. However, the objective of Section 5(1)(b)(ii) of the BSA – "deal effectively with breaches of the rules established by this Act" is not being achieved in this respect. FARB believes that improvement of enforcement is critical and would welcome the opportunity for further discussion of this matter.

As to the clarity issue, FARB believes that limitation criteria are best clarified by the introduction, as far as is possible, of objectively ascertainable and measurable

parameters, by increased transparency in the Section 21 opinion process and by the establishment of readily accessible data registers. These views are elaborated in more detail below.

SPECIAL INTEREST GROUPS AND PROGRAMS OF LIMITED APPEAL

The most critical distinctions to be drawn between narrowcasting and broadcasting are to be made in the area of the content of programs. In FARB's view the current regime relies far too heavily on the use of discretion and interpretation, with the result that it is comparatively easy for self-proclaimed narrowcasters to transmit programming which mimics commercial formats and content, and which appears to be intended to appeal to the broadest possible audience. This ongoing encroachment into the sphere of commercial broadcasting is a threat not only to FARB's members but to the achievement of the objects of the BSA.

Degree of influence

It is the clear intention of the BSA that the level of regulatory supervision of each category of service vary according to the degree of influence they are able to exert in shaping community views in Australia.

There is no statutory definition or other explanatory guidance provided as to the relevant "community" upon whom the influence is to be exerted. One can therefore only assume that what is meant is the general usage of the word, to mean the Australian society and polity in general.

There is also no definition or guidance provided as to the meaning to be given to "influence", leaving us once again to fall back on common usage. The Australian Concise Oxford Dictionary defines the term as "having an effect" on someone or something. There is no concept of degree or quantum inherent here, with the result that the term "influence" establishes a fairly low hurdle. It is quite possible for narrowcasting services, even those which the ABA considers to be uncontroversial in their classification, to have a significant impact not only within their niche communities but on the wider Australian community overall.

For example, consider a service broadcasting in a language other than English, particularly in a talk back format. None of the factors which the ABA identified in its *Commercial Radio Inquiry Report on the Hearing into 2UE Sydney* (see p8) as critical to the success and impact of such formats is limited to English language programming. In fact it might be argued that its impact is magnified in small and more tightly knit sub-communities. Recent scandals, and public inquiries, into ethnically based branch stacking activities involving both sides of politics amply demonstrate the potential for direct impact on the political life of the Australian democracy. Similarly, a dance or rave party music service may potentially have a significant impact on attitudes in its target community – for example to recreational drug use – which are of vital interest to the broader community and the subject of political controversy.

In FARB's view the current regulatory approach to the narrowcasting category underestimates the potential degree of impact that such services can have. It appears to assume that their influence on the broader community is non-existent, a view with which FARB strongly disagrees. In FARB's view, an appropriate response is to clarify the criteria to ensure that they properly reflect the potential for impact of the category, to improve the transparency of ABA processes and to create appropriate and transparent records that will permit proper assessment and evaluation of this impact.

Special interest groups

In FARB's view the "special interest group" category is in fact redundant.

Special interest groups form, and continue to exist, because they support their members' common interest in matters with limited appeal to the broader community. Properly understood, therefore, they are merely an alternative method of expressing the idea that their subject matter appeals to a relatively small group in the community. In other words, the proper construction of criterion (i) of Section 18(1)(a) is that it has no real work to do.

Given this, FARB believes that the ABA should not move to clarify the provision further, or to create for it an artificial independent life. Instead, the ABA should recommend to the Minister that the wording of Section 18 be varied as follows:

- Open narrowcasting services are broadcasting services:
  (a) whose reception is limited:
    (i) by being targeted to special interest groups; and
    (ii) by providing programs of limited appeal; or
    (iii) by being intended only for limited locations, for example arenas or business premises; or
    (iv) by being provided during a limited period or to cover a special event.

The current subsection (v), "for some other reason", should be deleted in the interests of clarity and predictability.

If however the ABA is not inclined to accept this view, and wishes instead to create an independent meaning for Section 18(1)(a)(i), FARB submits that the definition of "special interest group" should be confined as far as possible to objectively ascertainable and measurable criteria.

To be a "special interest group" a group should have an objectively definable and measurable membership and address a particular interest or constellation of related interests, outside the general interest of the broader community. By way of example, a service targeted to "people interested in New Age spirituality" would not be a "special interest group" within this definition. A service targeted to "the Muslim community of X area" would. Further, to be considered to be limited under Section 18(1)(a)(i) the service must be targeted to meeting only the relevant special interest and not to any broader needs or interest of the members of the group. Hence, the example Muslim service discussed above would be limited to broadcasting material directly relevant to the practices and beliefs of Islam. Such an approach would ensure that the service remains both relevant to the target group and unlikely to have broader general appeal.

Summary responses to options for comment

10.11.1 – 3: If an independent definition is to be given to "special interest group" it should require the group to have an objectively identifiable and measurable membership. Further the group should focus on a clearly definable interest or constellation of interests outside those that appeal to the general public.

10.11.4: This will depend on the nature and circumstances of each broadcast program. For example, a broadcast in a language such as, say, Serbian might be of limited appeal to the broader English speaking community but might nevertheless have a significant impact on the community at large because of its content. The answer is so highly dependent on context that further examination of the question is unlikely to be fruitful.

10.11.5: Yes, potentially. Again this will be highly context dependent and detailed examination is therefore unlikely to be helpful.

10.11.6: Yes, potentially. Further exploration is unlikely to assist, as noted in answers to questions 10.11.4 and 10.11.5 above.

10.11.7: Yes. Such discussions, in whatever language or context, are among the fundamental underpinnings of any participatory democracy.

Programs of limited appeal

Much of what "appeals" to the broader public at any given time is a matter of fashion, particularly when it comes to music and entertainment. The "programs of limited appeal" criterion is highly fashion dependent, and as such is inherently conceptually unstable. This instability detracts substantially from the achievement of the statutory objects referred to above, and particularly object 3(b).

FARB is critical of the lack of transparency that currently surrounds the issue of Section 21 opinions, and believes that this could be considerably improved. While Section 210 of the BSA protects the right of aspirant broadcasters to keep their intended format a secret in the establishment period, there is no such protection once they are established. Transparency and efficient operation of the narrowcasting category could be enhanced by the creation of an easily accessible register of published Section 21 opinions, preferably searchable by key words on the ABA's website. A further useful step would be to circularize the relevant industry stakeholder representatives – FARB, FACTS, ASTRA and CBAA – with copies of each opinion as it is published.

FARB sees limited utility and some potential problems in the establishment of any summary form register of Section 21 opinions. Section 21 opinions are highly dependent on the facts and circumstances on which they are based. Many are borderline decisions, dependent on particular significant facts. Until the service actually commences, if it ever does, to allude to those facts and circumstances is to breach the applicant's commercial confidentiality. This means that, in the case of unpublished opinions, it is highly unlikely that any summary form reference to the kind of service could provide reliable guidance, particularly for people whose commercial survival may

depend on the outcome. The resultant list of "formats, which may or may not be of limited appeal", might be expected to be so broad and vague as to be of limited use, and might actually mislead anyone consulting it.

Nevertheless, FARB agrees that the proposed schedule would constitute an improvement on the present position, since it would at least facilitate a degree of monitoring and dialogue. On the other hand, FARB strongly opposes any attempt to define narrowcasting status by reference to any summary form description of format, or register of formats.

In FARB's view a more comprehensive approach, such as that outlined below, is called for.

FARB's proposal

In the absence of statutory amendment to specify a time limit on the confidentiality of section 21 opinions, FARB believes the ABA should adopt the following approach.

There should be no further attempt to clarify the "limited appeal" category until there is a transparent basis for evaluating the claims made to fit within it. The ABA should therefore go about establishing such a basis first.

FARB submits that the ABA should use its powers under Section 120 of the BSA to vary the terms of the radio open narrowcasting class licence as follows.

- Persons who operate a narrowcasting service should to be required to notify the ABA within 30 days of commencement of the service, presumably by lodging an appropriate form. Existing operators should be given a period of three months within which to lodge the appropriate form.

- The notification should specify the identity of the service operator, the location of the service and the means of transmission. It should also specify the grounds on which the operator claims to be narrow within the terms of the class licence.

- Further notification of changes to these particulars should also be required to be lodged within 14 days of their coming into effect.

- This information should then be published in a register, maintained by the ABA, and accessible by the public. It should be available and searchable by keywords on the ABA website.

The ABA should then be entitled to rely on the information provided by the operator for the purposes of the BSA, and the notice should include a statement to this effect. It should also include a disclaimer to the effect that the absence of requisitions or enquiry by the ABA does not constitute acceptance that the service complies with the BSA. Further in the interests of more efficient enforcement FARB is of the view that the ABA should seek a statutory amendment which would deem that the information recorded in the register is accurate unless and until the ABA determines otherwise.

The creation of such a register would enable the ABA and others in the industry to understand the way in which the class licence is being interpreted and to identify areas that might require further clarification. The need to notify only after commencement of the service would continue to provide protection for the commercial in confidence information of aspirant broadcasters who are still building their businesses. The existence of the register would also enable the ABA to better monitor the performance of this category and to assess the extent to which it is meeting the objectives of the BSA, particularly the diversity objective.

Further, the records would assist in streamlining the enforcement process in those cases where such action is required. Presently it can be a frustrating and almost impossible task even to identify precisely who is providing an alleged narrowcast service. The ABA has little means of doing so and competitors even less. FARB believes that such a register would be readily adaptable to support an improved enforcement process, for example by allowing the ABA to proceed against the operator notified on the register without having to demonstrate that the operation had not changed hands, and by providing a rebuttable presumption as to the character of the service on the basis of the description provided. FARB would welcome the opportunity to meet and discuss these and other enforcement issues with the ABA, outside the context of the current enquiry.

Summary response to options for comment

10.26: If there is to be a separate definition of "special interest group" it should require that the group have an objectively definable and measurable membership and that it address a particular interest, or constellation of related interests, outside the general interest of the broader community. The ABA should not create a register of deemed "limited appeal" formats, but should instead improve the transparency of the existing regime and then review the possibility of clarification of this criterion at a later date.

LIMITED LOCATIONS

The "limited locations" criterion specified in Section 18(1)(a)(ii) is intended to be especially small in scale. This is indicated by the examples set out in the BSA itself, and is not diminished by the addition in the Explanatory Memorandum of the domestic dwellings in a specified limited area or suburb or isolated town. It is noteworthy that the Explanatory Memorandum refers to "isolated" town rather than "town" *per se*. In FARB's submission this is because the intention is to describe an area with severe limitations on the size of the maximum potential audience. The common denominator between an "isolated town" and "an arena", as distinct for example from "a town" *per se*, is that the maximum available audience is finite and comparatively small.

The policy intent is one of providing smaller services, with smaller revenue bases and correspondingly smaller financial imposts, so that niche markets can be developed to provide a range of services beyond the capacity and interest of broad based commercial stations. In so doing it directly supports the statutory objectives of Section 3(1)(a), (b) and (e) referred to above.

The appropriate clarificatory criteria to be applied to Section 18(1)(a)(ii) are those set out in Sections 22(a) and (b):

(a) the geographic coverage of those services; and
(b) the number of persons who receive or are able to receive those services.

In FARB's view these criteria should be applied together, to establish parameters for the Section 18(1)(a)(ii) category based on the kind or size of area and the size of the maximum potential audience.

Low power transmitters

The power of a transmitter limits only its potential geographic reach. Whether or not the service provided using any given transmitter can properly be considered to be narrowcasting depends on other factors as well: the content of the broadcasts and the size of the potential audience.

By way of example, even a one-watt transmitter in an urban area can potentially reach a larger audience than the total population of the smaller commercial broadcast licence areas. If that transmitter is then used to broadcast content with a broad appeal, the service would clearly be unfairly competitive with the commercial broadcasters in the area, who are subject to far higher establishment and ongoing costs. It would contribute nothing to increased diversity or the provision of new services. To deem such a service to be narrowcasting merely because that was the use envisaged by the planners at a time prior to its establishment is inconsistent with the policy intent of the BSA.

FARB is strongly opposed to any proposal that a service be deemed to be narrowcasting by reference solely to the power of the transmitter.

Premises as limited locations

The Australian Concise Oxford Dictionary defines "premises" as "a house or building with its grounds or appurtenances". As with the example of low power transmitters discussed above, the concept of premises alone is not useful when defining narrowcasting parameters.

For example, a suburban "mega mall" would meet the dictionary definition of premises, being essentially one large building with "appurtenances" such as a car park. Within that building however are located facilities of such breadth and variety, from shopping to restaurants to cinemas, that people attend in large numbers for often substantial periods of time. (The usual provision of 3 to 4 hours free parking is a good indicator of the average length of stay). Such "premises" would have a potential audience of more than ten times that of small commercial broadcasters.

FARB is strongly opposed to any proposal that a service be deemed to be narrowcasting by reference solely to its provision to "premises".

Signal contours

FARB believes that there is merit in this approach, because it combines measurements of both area and population.

The BSA does not prescribe a critical size above which an intended service would cease to be limited by reference to location. It is however open to the ABA to do so using its Section 19 clarificatory powers.

The basic approach should be one of estimating the number of people who might receive an adequate signal from the service's transmitter, using census data where the transmitter serves more than a single premises. Where the transmitter is intended for "premises" a similar approach ought still to be taken, but based instead on substantiated estimates of the number of people passing through the premises, calculating instead an average daily maximum potential audience which should then function in a similar way to the population estimate for localities.

FARB does not accept that there needs to be distinctions drawn between different kinds of localities, although it would be reasonable to distinguish between localities and premises, where the available audience is transient and continually varying in its composition.

FARB proposes that any service intended for a locality (large or small, rural or urban) with a maximum potential audience greater than the smallest commercial operator should not be able to be classified as narrowcasting under the "limited location" criterion. Currently the smallest such licence is in Queenstown Tasmania, with a population of 6,764.

Where the service is intended for premises, FARB submits that the service should not be able to be classified as narrowcasting under the "limited location" criterion if the estimated daily maximum potential audience is more 5% of the exclusive population of the commercial broadcasting licence market in which the premises is situated.

FARB accepts that there are limitations to the accuracy of calculations of signal contours and audience sizes. It would be reasonable therefore to make allowance for a margin of error, the nature and size of which would depend on the method of calculation to be adopted. Should the ABA decide to proceed in this way, FARB seeks the opportunity for further discussions on this point.

FARB acknowledges that its preferred approach may require the diversion of ABA planning resources, which are already heavily if not over committed. However, FARB is also strongly of the view that it is inappropriate to shun the best available solution simply on the basis of resource convenience. FARB believes that appropriate additional funding should be provided to the ABA to enable this work to be undertaken without derogating from its current planning priorities.

Networks

FARB strongly endorses the proposal that services which are part of a network should not be able to be considered to be narrowcasters by reason of the limited location

criterion. In such cases, all the services in the network should be considered to be a single service for the purposes of the application of Section 18(1)(a)(ii).

A further and more complex issue arises in the case of services, which, although not in common ownership, broadcast substantially the same content. FARB submits that where stations broadcast such syndicated content for 50% or more of their airtime, they should be deemed to be networked for the purposes of the application of Section 18(1)(a)(ii).

Summary responses to options for comment

9.28.1 – 3: "Limited locations" should be defined as premises and localities, with suitable definitions of each. "Premises" should be defined in accordance with the dictionary definition of a building and its appurtenances. "Localities" should be defined by reference to signal contours. To be limited for the purposes of Section 18(1)(a)(ii) the maximum audience should not exceed:

(a) in the case of localities, the population size of the smallest exclusive coverage area applicable to a commercial broadcasting licence;
(b) in the case of premises, if the estimated daily maximum potential audience is more than 5%of the exclusive population of the commercial broadcasting licence market in which the premises is situated.

9.28.4: No.

9.28.5: Yes, and the definition of network should include services which, although not in common ownership, broadcast the same content for 50% of their airtime or more.

RACING RADIO

FARB notes the findings of House of Representatives Standing Committee on Communications, Transport & the Arts into Regional Radio Racing Services ("the *Regional Racing Report*") to the effect that racing radio is an important and traditional part of life in rural Australia (at p. 3). FARB also notes that there is a clear demand for racing radio services in those areas, although the ABC's research indicates that that demand may be declining into the future. (*Regional Racing Report* at p. 11ff)

What is clear from the *Regional Racing Report* is that it is the racing industry, and associated wagering, which holds this traditional place. It is only this particular industry that "represented a way of life and direct involvement in the euphoria generated by the racing industry" (*Regional Racing Report* at p.6). The same cannot be said of a generic gambling service, offering betting opportunities on various sports and possibly on other activities as well. Indeed the broadening of racing radio style services to encompass other sports would have the effect of substantially diminishing the traditional racing coverage that the Parliamentary Committee found to be so important.

In the context of television broadcasting, the ABA has always avoided any attempt to classify mainstream popular sports coverage as narrowcasting. FARB sees no reason

why mainstream sports coverage should be considered narrowcasting for the purposes of radio when it is not so classified for the purposes of television broadcasting.

Services offering coverage of sports such as football, soccer, motor sports and most of the others listed as being the subject of the TAB's SportsBet services have always been regarded by the ABA as being apparently intended to appeal to the general public: that is, within the ambit of the Section 14 definition of commercial broadcasting. There is nothing inherent in their being broadcast by a TAB or similar gambling operator that would significantly limit the attractiveness of the broadcast to the broader community. The combination of sports could only broaden the appeal of the broadcast and the association with gambling opportunities would have no significant limiting impact – indeed, it may even broaden the appeal further by introducing gamblers to new gambling opportunities and by introducing sports fans to the idea of sports gambling.

As the Productivity Commission has pointed out and the ABA has noted, TAB's and on-course totalisators account for massive takings each year. In the commonly used sense of the word, they are quintessentially commercial operations – large and successful, and growing. In FARB's view, while there is a case for (at least temporarily) retaining a niche for traditionally significant racing services, there is no case for stretching the narrowcasting category to encompass broadly attractive content simply because the entities which operate the traditional racing services have chosen to broaden their operations. The consequence of such broadening is the need to buy and operate a commercial broadcasting service.

There is also a strong public policy argument against the expansion of racing radio services to create a new and far broader gambling radio service. As the Minister has pointed out, in the context of explaining his proposed ban on internet gambling services:

- Australia has approximately 290,000 problem gamblers who lose on average at least $12,000 per head per year
- 130,000 of these problem gamblers are severe problem gamblers who lose considerably more than this
- 70% of Australians believe that gambling does more harm than good
- this has an enormous negative social impact.

FARB would not oppose the establishment of a racing radio narrowcast category, the content of which is to be directed only at the sports of horse and dog racing and consequent wagering, if the ABA were to prefer this option. However, FARB is of the view that such a service would be of limited appeal (within the current criteria), provided that its programs addressed only racing and racing related subject matter. If more certainty were desired, FARB would support a recommendation to the Government that the Parliament legislate to create such a category, provided that its ongoing relevance and utility were to be reevaluated after a specified period of time, say 5 years.

Summary responses to questions and options for comment

11.6.1: Accepting that racing radio is of limited appeal, that limitation would cease if any other sports betting services were added. Only programming relating to horse and dog racing and betting on such racing should be able to be transmitted.

11.6.2: No.

11.6.3 No.

11.31.1: FARB strongly opposes this proposal. Such a service would not be consistent with the concept of narrowcasting. It would be commercial broadcasting.

11.31.2: FARB opposes this proposal. It is too vague and uncertain to promote regulatory certainty and industry stability and in our view is likely to promote services far broader than are suitable for the narrowcasting classification. Racing radio should be confined to traditional racing, betting on traditional racing and material directly connected to these things.

11.31.3: FARB endorses the broad parameters of this proposal, but takes no position on whether the old Regulations or a newer version should form its basis.

11.31.4: FARB does not oppose this approach, but would wish any such report to note FARB's view that a narrowly constructed racing radio service, within the parameters of the old Regulations, would meet the current class licence criteria for programs of limited appeal, and that any broadening beyond racing would constitute commercial broadcasting.

CONCLUSION

In its present form, the open narrowcasting radio category does not effectively or reliably support the objectives of the BSA. Unlike narrowcasters, commercial broadcasters are subject to onerous regulation, including ownership and control regulations, annual earnings-based licence fees and much higher auction prices for their licences. The principal quid pro quo for these imposts is the ability to transmit broad based programming designed to appeal to the general public. When the distinction between narrowcasting and commercial broadcasting is allowed to be broken down, the assets and businesses of FARB's members are considerably and unfairly devalued.

There are two central problems: the lack of clarity surrounding the limitation criteria and the lack of any effective enforcement action against purported narrowcasters who overstep the boundaries.

The criteria by which a service is determined to constitute narrowcasting should, where possible, be amended by improving their clarity and predictability. In FARB's view this is best achieved by reducing the introduction of objective and measurable criteria and the reduction of the present reliance on discretionary decisions. Increased transparency in the Section 21 opinion process is necessary, and no further clarification of the "limited

appeal" criterion should take place until there has been an adequate opportunity to consider and evaluate the way the criterion is being interpreted in the market place.

It is also essential that these steps be accompanied by a greater commitment by the ABA to effective enforcement against narrowcasters who are effectively operating as commercial broadcasters without the appropriate licences.

FARB looks forward to engaging in ongoing dialogue with the ABA on these issues.

DRAFT CODE ON BROADCAST OF EMERGENCY INFORMATION

Purpose: to ensure the timely and accurate broadcast of emergency information.

- A licensee will, in consultation with appropriate emergency service organizations, implement a set of internal procedures to enable the timely and accurate broadcast of information relating to emergencies.
- A designated position in relation to each station is identified as the contact officer for all matters relative to this code.
- A licensee will renew and update procedures annually.

Definitions:

"appropriate emergency service organizations" include .....

"an emergency" is .....

DRAFT

Guidelines to the Broadcasting of Emergency Meteorlogical Information

The following guidelines, identifying points particularly pertinent to the nature of severe or emergency weather warnings, have been agreed between the Bureau of Meteorology, the Federation of Australian Radio Broadcasters and the Federation of Australian Commercial Television Stations to assist broadcasters in providing an important service to the community.

1 The Bureau should endeavour to provide relevant and timely material consistent with the inherent limitations of availability of data and with the conflicting requirements of brevity and comprehensiveness.

2 Bearing in mind the difficulty of describing in a few words the expected variation of weather over an extended area and period, and that paraphrasing, abbreviation or interpretation can significantly change or destroy the intended meaning, the material should be broadcast, whenever possible without paraphrase, precis, comment or interpretation in a manner that is consistent with the station's presentation philosophy.

3 Considering that the value and correct interpretation of weather information by the public depends not only on the text but also on correct identification of the material, the following should be indicated in the broadcast:

- ⊄ the area and period covered by forecasts and warnings
- ⊄ the time of issue of warnings

The time of issue of forecasts should also be given, but if the forecast has not been superseded it would be sufficient to refer to the forecast as the *current forecast.* The actual reference time of charts and satellite data should be given if specific reference is made in the TV broadcast to the position of fronts, cyclones or other significant weather systems.

4 As the value of weather information and forecasts usually decreases with time, the Bureau should disseminate information, forecasts and warnings in as timely a manner as practicable and, in so doing, take account of routine broadcasting schedules. The broadcaster should broadcast the latest available relevant material and should not continue to broadcast forecasts and warnings that have been superseded.

5 The importance of timeliness applies particularly to warnings that may be labelled **top priority** or **priority**:

(a) top priority warnings should, whenever possible, be broadcast immediately on receipt, interrupting programs if necessary (a caption may be superimposed on a TV picture);
(b) priority warnings should, whenever possible, be broadcast at the first opportunity within one hour of receipt;
(c) warnings without a specified priority may be broadcast with routine forecasts if no opportunity is available earlier.

Every effort should be made to comply with these warning schedules but it is appreciated that, during periods when broadcasting facilities are operating automatically, it may not always be possible to comply.

6 As forecasts and other weather information may sometimes be prepared and issued by individuals or organisations other that the Bureau of Meteorology, the source of the material should be identified to enable the listener to judge the acceptability of the advice. Identification of the source of the information is also necessary if there is any possibility that confusion could arise because of identification of sponsors with the time segment of the weather broadcast. **The Bureau of Meteorology** may be referred to as the **Weather Bureau** or simply as the **Bureau** where there is no likelihood of ambiguity.