

Attachment 1: Planning and licensing of community broadcasting services

This attachment outlines the process for planning the broadcasting services bands, and describes the licensing, allocation and renewal processes for the various types of community broadcasting services.

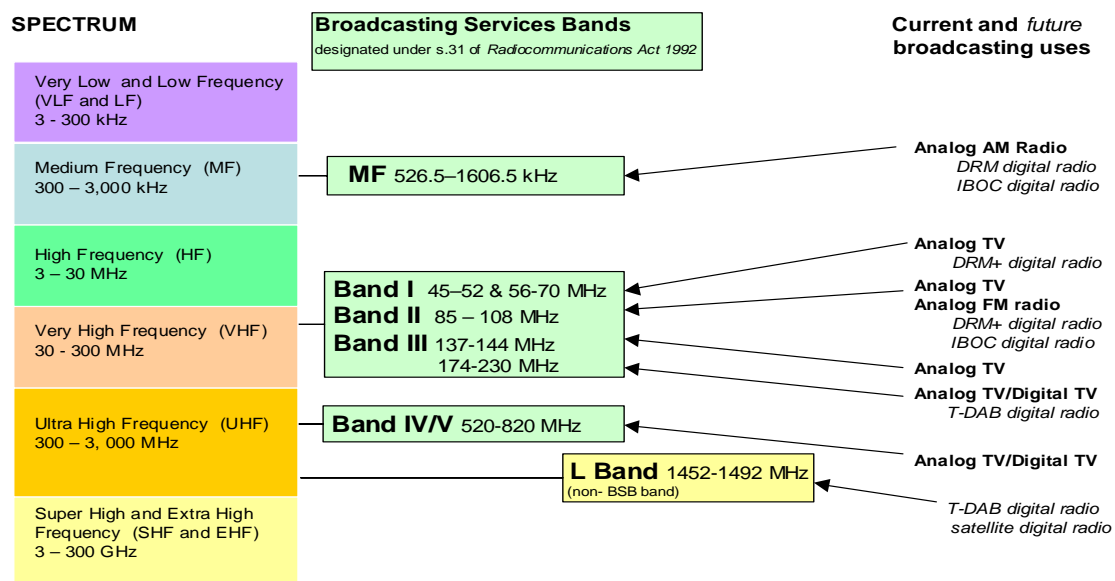
1 PLANNING OF THE BROADCASTING SERVICES BANDS

The Australian Communications and Media Authority (ACMA) can offer a community broadcasting licence for allocation only when a new community broadcasting service has been made available in a licence area plan in planning the broadcasting services bands. The planning process is outlined below.

1.1 The broadcasting services bands

The broadcasting services bands (BSBs) are the part of the radiofrequency spectrum that is designated under section 31 of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes; and is referred by the Minister under that section to ACMA for planning. ACMA’s role in planning the BSBs is set out in part 3 of the *Broadcasting Services Act 1992* (the BSA).

The following diagram shows the BSBs and current and potential broadcasting uses of those bands.



1.2 Planning criteria

In planning the BSBs, ACMA must promote the objects of the BSA including the economic and efficient use of the radiofrequency spectrum. Section 23 of the BSA outlines the criteria ACMA must take into account in planning the BSBs, including technological developments, demand for spectrum, existing broadcasting services and demand for new broadcasting services.

The planning and allocation of community broadcasting licences may also be subject to Ministerial direction. Under section 31 of the BSA, the Minister for Communications, Information Technology and the Arts may notify ACMA to reserve capacity within the BSBs for a specified number of community services.

1.3 The planning process

At the commencement of the BSA in 1992, the former Australian Broadcasting Authority (ABA) was required to plan analog broadcasting services in the BSBs. The first stage of the planning process involved determining planning priorities; and the second stage required the ABA to prepare frequency allotment plans to determine the number of channels available in particular areas of Australia.

A licence area plan (LAP) is the third and final stage of the planning process. The LAP determines the number and characteristics, including technical specifications, of the broadcasting services available in particular areas of Australia. The ABA completed radio LAPs in 2001 and television LAPs in 2003. LAPs are varied as the need arises to allow for changes to the characteristics of existing services, such as changing the site or radiated power or antenna height. New transmitter specifications can be added to allow for coverage to be extended or improved and new services may also be introduced.

The BSA mandates that commercial and community broadcasting services are licensed to serve specific geographic areas. These specific geographic areas are referred to as Licence Areas, and are determined in a LAP. ACMA defines Licence Areas in terms of areas defined by the Australian Bureau of Statistics (ABS) for the purposes of the Australian Census.

Members of the public have the opportunity to comment on draft LAPs and proposed amendments to LAPs, including proposals for new community broadcasting services. All draft and final planning documents are made available on ACMA's website.

2 THE COMMUNITY BROADCASTING LICENSING REGIME

2.1 Community broadcasting licences

The information in this section relates only to community radio and television broadcasting licences issued to authorise services to operate in the broadcasting services bands. Community broadcasting licence allocations and renewals are regulated under part 6 of the BSA.

Temporary community broadcasting licences, community television trials and non-BSB community broadcasting licences are regulated under different parts of the BSA and are discussed in separately below.

2.1.1 Application process

If a community broadcasting service has become available through a planning process, ACMA may allocate a licence for the service. Before allocating community broadcasting licences in the BSBs, ACMA must advertise for applications. ACMA's advertisement invites applications for the new community broadcasting licences, includes a closing date for applications, and specifies the conditions that will apply to the licence, the licence area and any priorities that the Minister has directed ACMA to give to particular community interests.

ACMA may only accept applications from companies that are formed in Australia or an external territory of Australia and represent a community interest. An applicant for a community television (CTV) licence must be a company limited by guarantee within the meaning of the *Corporations Act 2001*.

Applications must be made using the approved form. Copies of all applications received are made available for public perusal. ACMA welcomes written submissions from members of the public in relation to applications received.

A guide to applying for community radio broadcasting licences and a guide to applying for community television broadcasting licences are available on ACMA's website.¹ Each guide includes information on the licence types, conditions, application and allocation processes and matters ACMA will consider when deciding whether to allocate a licence to a particular applicant.

2.1.2 Allocation of licences

The BSA provides that the allocation of BSB community broadcasting licences is merit based: that is, ACMA will allocate these licences on the basis of the merits of applicants and their proposed services and, where necessary, on the comparative merits of competing applications.

ACMA is not obliged to allocate a community broadcasting licence to an applicant even though ACMA has advertised for and received applications.

In assessing applications ACMA will have regard to matters set out in section 84 of the BSA. These matters include:

- whether the proposed service meets the definition of a community broadcasting service;
- whether the applicant is a 'company' and represents a community interest;
- the existing and perceived future needs and interests of the community and the extent to which the applicant's proposed service would meet those needs and interests;
- the nature and diversity of other broadcasting services available within the licence area;
- the applicant's capacity to provide the proposed service;
- matters related to the control of the licence; and
- whether the Minister has directed ACMA under section 84 of the BSA to give priority to a particular community interest when allocating community broadcasting licences.

ACMA must not allocate a community broadcasting licence to an applicant if it has decided under section 83(2) of the BSA that allowing that applicant to provide or continue to provide community broadcasting services would lead to a significant risk of an offence against the BSA or regulations being committed or a breach of the licence conditions occurring. In deciding whether such a risk exists, ACMA must take into account:

¹ The guide to applying for community radio broadcasting licences is at: http://www.acma.gov.au/acmainterwr/aba/forms/aba_32_guide.rtf. The guide to applying for community television licences is at: http://www.acma.gov.au/acmainterwr/aba/forms/aba_64_guide.pdf

- the business record of the applicant company;
- the company's record in situations requiring trust or candour;
- the business record of the chief executive and each director and secretary of the applicant;
- the record in situations requiring trust and candour of each such person; and
- whether the company or a person referred to above has been convicted of an offence against the BSA or the regulations.

ACMA publishes details of its decision on an allocation exercise and the details of successful applicants in a media release and on its website.

2.1.3 Licence conditions

The general licence conditions set out in parts 1 and 2 of schedule 2 to the BSA apply to all broadcasting licensees, not only community broadcasters. These general conditions relate to the broadcasting of political or controversial material, the broadcasting of election advertisements, identification of certain political matter, records of matter broadcast, and advertisements relating to medicine.

Part 5 of schedule 2 to the BSA contains additional licence conditions applicable to services provided under community broadcasting licences in particular. The conditions include:

- a requirement to encourage members of the community served to participate in the operations of the service, and in the selection and provision of programs;
- a requirement not to operate the service for profit, or as part of a profit-making enterprise;
- a prohibition of broadcasting tobacco advertisements and programs classified RC or X 18+;
- a provision requiring the licensee to commence broadcasting services within one year of being allocated the licence unless notified of a longer period by ACMA; and
- a requirement for licensees to remain suitable and continue to represent the community interest when the licence was allocated or last renewed.

Part 5 of Schedule 2 also contains the parameters for the broadcasting of sponsorship announcements.

Community broadcasting licensees are also subject to any relevant program standards and industry codes of practice in the provision of services. Licence conditions regarding content and programming requirements are discussed in ACMA's submission.

2.1.4 Renewal process

Community broadcasting licences remain in force for five years and may be renewed by ACMA on application by the licensee. The procedures for renewing community broadcasting licences are set out in sections 90 and 91 of the BSA. The BSA was amended at the end of 2002 to give the ABA more discretion to review community broadcasting licences on renewal.

When renewing community broadcasting licences, ACMA can take into account the same matters it had regard to under section 84(2) of the BSA in deciding whether to

allocate a licence. These criteria are discussed above in relation to allocating licences. ACMA can refuse to renew a community licence where the applicant no longer meets the criteria set out in section 84(2). ACMA must not renew a licence if it decides that section 83(2) of the BSA applies to the licensee (i.e. the licensee is no longer a suitable person).

The procedures for renewing community broadcasting licences are as follows:

- ACMA sends out reminder letters to licensees to lodge their renewal application (using the appropriate form) 12 months and 6 weeks before their broadcast service licence is due to expire.
- A licensee must lodge their completed form 12 months before their licence is due to expire.
- ACMA confirms receipt of completed applications and must publish a notice in the *Commonwealth Gazette* giving details of all the applications for renewal of licences it has received.
- ACMA assesses completed applications against the criteria set out in section 84(2), and may seek additional information from licensees on the information submitted in their applications.
- In assessing applications, ACMA takes into account the compliance history of the licensee, and a renewal inquiry may be conducted in circumstances where there is a real suggestion that a licence should not be renewed and/or that ACMA should consider a change to the community interest represented by the licensee. ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed.
- ACMA may decide to impose an additional condition on the licence and it can also consider a change to the community interest the licensee is required to represent.
- ACMA will advise a licensee in writing when its licence has been renewed, usually 8 weeks before the renewal date.

2.1.5 Transmitter licences

A transmitter licence is a form of apparatus licence issued under the *Radiocommunications Act 1992*. It authorises the licensee to operate a radiocommunications transmitter in accordance with the conditions of the licence.

If a person is allocated a broadcasting service licence to operate a service within the BSBs, ACMA must also issue to the person a transmitter licence under the Radiocommunications Act that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service. The apparatus licence(s) in relation to a community broadcasting service remains in force while the broadcasting service licence to which it relates remains in force.

Transmitter licences for community broadcasting services are subject to a set of conditions under section 109 of the Radiocommunications Act. The transmitter licence includes details of the technical specifications of the service drawn from the relevant LAP, such as the frequency, maximum effective radiated power, and any special conditions relating to the radiation pattern of the signal.

2.2 Temporary community broadcasting licences

Under section 34 of the BSA, ACMA may make temporary community broadcast licences (TCBLs) available under the following conditions:

- If ACMA has advertised under section 38 of the BSA for applications for the allocation of commercial television broadcasting licences or commercial radio broadcasting licences that are BSB licences and the licences are not allocated; or
- If BSB spectrum is available in a licence area but has not been made available for commercial television or commercial radio broadcasting licences; or
- If BSB spectrum has been reserved under section 31 of the BSA but has not been made available for the purpose for which it was reserved; or
- If BSB spectrum is available but ACMA has not commenced or completed planning and allocation processes in relation to that spectrum.

TCBLs provide aspirant community radio broadcasters with access to available spectrum ahead of, but without prejudice to, the planning and allocation of long-term broadcasting service licences. The issuing of a temporary community broadcasting licence does not infer that a frequency or licence will be permanently allocated in the future.

2.2.1 Licence area, timing conditions and licence period

Before allocating a TCBL, ACMA must designate the area of the licence, determine the timing conditions of the licence, and determine the licence period. In determining the timing conditions and licence period, ACMA must have regard to any other applications for TCBLs in the licence area of the proposed licence, any other TCBLs in the licence area of the proposed licence, and such other matters as ACMA thinks fit.

Temporary community broadcasting licences can be allocated for periods of up to 12 months. However, if more than one applicant applies to operate a temporary community radio service in the same area, applicants will be required to share the frequency under a time-share arrangement approved by ACMA. ACMA will specify the times during which a licensee may broadcast as a condition of the licence.

2.2.2 Applications and allocation of licences

Temporary community broadcasting licences allocations and renewals are regulated under part 6A of the BSA. Like community broadcasting licence applicants, applicants for TCBLs must be a company formed in Australia or an external territory that represents a community interest.

Applicants for a temporary community broadcasting licence may be asked to make a submission to ACMA identifying why they consider a further long-term service should be made available in the area and provide details of the service proposed. Submissions also need to include evidence in support of claims that there is a need for a new service. If ACMA is satisfied that there may be a need for a long term community service, the applicant will be sent an information kit, which contains the necessary forms required to apply for a temporary community broadcasting licence.

A temporary community broadcasting licence can only be allocated if an available frequency is identified, and ACMA determines that it is suitable and appropriate for the provision of a community broadcasting service. As mentioned in ACMA's submission, there is a lack of available and suitable spectrum for radio services in the

BSBs, particularly in capital cities and large regional areas. This narrows the scope for any new TCBLs to be issued.

ACMA must not allocate a TCBL to an applicant who is considered unsuitable for the purposes of section 92D(2) of the BSA. This section requires ACMA to have regard to the same suitability criteria as used for community broadcasting licensees under section 83(2) of the BSA.

ACMA may refuse to allocate a licence to an applicant if the applicant was previously a temporary community broadcasting licensee but failed to provide community broadcasting services during the period of the previous licence.

ACMA aims to allocate temporary community licences within 12 weeks of application. ACMA publishes decisions about the allocation of TCBLs by media release and on its website.

Temporary community broadcasting licences are not renewable. However, a licensee can make an application for a new licence before the expiration of its current licence. The terms and conditions of a new licence may be different to those of an earlier one.

More detailed information about the allocation of temporary community broadcasting licences can be found in the Guide to the Allocation of Temporary Community Broadcasting Licences, available on ACMA's website.²

2.2.3 Licence conditions

Temporary community broadcasting licensees are subject to the same licence conditions, codes of practice and enforcement provisions that apply to community broadcasting licensees.

2.3 Community television trials

Community television (CTV) trials operate under the open narrowcasting television class licence. An open narrowcasting service is a service whose reception is limited in one of the ways identified in section 18 of the BSA:

- by being targeted to special interest groups;
- by being intended only for limited locations, for example, arenas or business premises;
- by being provided during a limited period or to cover a special event;
- because they provide programs of limited appeal; or
- for some other reason.

Class licences issued under the BSA are not individually issued in the same manner as broadcasting services licences, but are a standing authority for any operator to enter the market and provide a broadcasting service, as long as the operator has access to delivery capacity, abides by the conditions that apply to the relevant category of class licence and (where applicable) obtains an apparatus licence (under the *Radiocommunications Act 1992*).

² The guide to applying for TCBLs is available at:
http://www.aba.gov.au/licplan/broadcasting/types/community/documents/guide_tcbi_feb05.pdf

A condition is placed on these apparatus licences that they be used only ‘to provide an open narrowcasting television service for community and educational non-profit purposes’. The criteria an applicant must satisfy for an apparatus licence to be issued are set out in an Access and Compliance Statement, which is available from ACMA’s website as part of a guide for community television trial applicants.³ The Statement includes the matters to which ACMA has regard in deciding whether a proposed service is likely to comply with the licence condition. It includes information such as the capacity of the applicant to provide the service; and community access to station management, operation and programming decisions.

Trial CTV services are generally licensed to operate for a 12 month period. If at the end of the licence period ACMA decides to extend the trial, ACMA may require a trial operator to demonstrate continued compliance with the licence conditions and the matters set out in the Access and Compliance statement.

³ The guide for applicants for trial community television services can be found at:
http://www.acma.gov.au/acmainterwr/aba/licplan/broadcasting/types/community/documents/ctv_trial_guide.pdf