Radio KLFM (3EON)
Submission to the House of Representatives Standing Committee on Communications, Information Technology and the Arts Community Broadcasting Inquiry. March 2006

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INTRODUCTION

Radio KLFM welcomes the opportunity to make a submission based on sixteen years of experience since our first test broadcast and eight years since we began full time broadcasting.

Whilst some of our views may differ from those of some other community broadcasters, this just serves to illustrate the diversity in the sector and that *one size does not best fit all.* Anecdotal feedback over the years leads us to conclude that many community broadcasters would support our views; however we have not at this stage canvassed them with others.

Briefly our submission is to use the words of Lynn Maddock, Acting Chair of ACMA, at the *Broadcasting Conference 2005,* to seek for an "...effective regulatory environment that supports a dynamic communications sector while also enabling the industry to meet the communications needs of the community."[1]

Our submission will address Community Broadcasting from the position of community radio. We will briefly address the first two terms of reference, viz the scope and role of community broadcasting, and programming requirements. We will then comment on the third term of reference; technological opportunities. Finally, we will address in more detail the fourth term of reference opportunities and threats (as we see them) to achieving a diverse and robust network of community broadcasters. We present some recommendations that we believe will help to enhance the opportunities and to diminish the threats. Our major submission is for regulatory changes that Lyn Maddock (supra) has recognised as necessary in a changing environment.[2]

RADIO KLFM: A BRIEF HISTORY

A brief history of Radio KLFM follows in order to provide the committee with some background on where we are coming from with our submission.

Radio KLFM is locally owned and operated by a non-profit group, Radio KLFM Inc. ABN 38 437 961 510. Following some eight years of test transmissions and regular weekend broadcasts we began full time transmission in January 1998. We service a population in excess of 160,000 including the City of Greater Bendigo (Victoria's third largest centre with some 84,000 residents), Mt Alexander, Central Goldfields and Loddon Shires plus parts of Campaspe and Hepburn Shires.

Bendigo has four Community Radio Stations. Two, 3CCC (a general Community Station) and RPH, are licensed to transmit some 8kW from the National Transmission Site. KLFM is licensed to transmit 1 kW on 96.5 FM to the North and 100 W on 106.3 FM in the Castlemaine area. Central Victorian Gospel Radio operates on a Temporary Community Broadcasting Licence (TCBL) from the National Transmission Site. KLFM is a low powered station compared with other established stations in this area. However we find that we are able to achieve good coverage and to build a respectable audience with a limited resource, provided that we make the effort to have suitable equipment and to present quality programs (both in content and technically) of the type our listeners want.

Radio KLFM has been at the forefront of several developments in community radio. We were among the first community stations to present regular weekend broadcasting while still an Aspirant Group. We are the only community station that has broadcast an international cricket match live (England v. Victoria) when this match was played in Bendigo. When discussing planning for the Bendigo Radio Market with the then Australian Broadcasting Authority (ABA) engineers in the mid-1990's we were initially informed that no suitable frequency would be available. However we indicated that our research showed that we could provide a service using a lower powered transmitter from a site nearer to Bendigo than the National Transmitter Site at

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[1] Maddock, L. ACMA Broadcasting Conference, 9/11/2006. Report of speech, p. 4,at www.acma.gov.au accessed February 2006.
[2] Ibid. p.5.

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Mount Alexander. A suitable lower powered frequency was then found and we were able to develop another transmitter site firstly as an Aspirant Group and subsequently as a licensed station. This site covers Bendigo and to the North, but does not adequately cover Castlemaine. In negotiation with the ABA we were able to gain a translator (relay transmitter) license to serve the Castlemaine area. We believe that we were the first community radio station to be granted a translator licence. Many community radio stations now have translators.

In April 2000 we paid some $6,000 to be included in the ACNielson survey of the Bendigo Radio Market. The ACNielson survey is the industry standard survey and generally does not include community broadcasters. We were told that we were the first community station to seek to be included. We understand that few if any, other, community stations have since participated in the ACNielson survey. We saw participation in the survey as means to help obtain credibility in the local market.

Radio KLFM is licensed to serve Senior Citizens thus our programs are primarily directed at the 50 - 55$^+$ audience. ABS statistics show that some 33% of the Bendigo area population are aged over 55. Our success in reaching this target community was confirmed by the April 2000 ACNielson survey of the Bendigo Radio Market (the last publicly released survey) when we had only been on air full time for two years. This survey showed that for the older age groups Radio KLFM rated just behind 3BO-FM, Bendigo's long established commercial station playing older music, and well ahead of Star FM the other Bendigo commercial station that plays modern music.

We believe that one of our great strengths is that, except for our overnight service (generally midnight to 6am), our programs originate locally. Much of the programming on the local commercial and ABC stations is networked from other locations.

We are not afraid of competition, but submit that some regulations need to be changed to provide a more level playing field in our local radio market and to be consistent with National Competition Policy.

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1. SCOPE AND ROLE OF COMMUNITY RADIO

Community Broadcasting services are defined by section 15 of the *Broadcasting Services Act* (BSA) as being broadcasting services that:

>are provided for community purposes and
>are not operated for profit or as part of a profit-making enterprise; and
>provide programs that:
>>(a) are able to be received by commonly available equipment and
>>(b are made available free to the general public.

Community radio is largely seen as filling the gaps that are left unfilled by commercial and ABC/SBS Radio and, in particular to provide a local face for radio which is often networked in from other areas on the commercial and ABC/SBS services. The principal behind community radio is that it is provided by a community to meet specific desires of that community for particular programs. The desire may be for a community to get a particular ethnic, religious or political message spread, or it may be (as is the case for KLFM) to provide entertainment and information to a niche market in the wider community.

Radio KLFM found a niche market (Senior Citizens) that was not being adequately served by the other Bendigo district radio stations. This has enabled a community group with minimal resources to establish a successful radio station in a market dominated by established commercial stations that are part of a large Australia-wide network and the ABC.

Like most community broadcasters KLFM, operates on a very small budget compared with the commercial and ABC/SBS stations. We operate with a part time paid manager and volunteers. Our manager also produces and presents an independent local news service. In addition three or four volunteer presenters also sell sponsorship on a commission basis.

1.1 Local ownership and control

Most commercial radio stations are part of a network. (see Appendix A) The two Bendigo commercial stations are part of the Macquarie Radioworks network which holds some 85 commercial radio licenses across Regional Australia "...providing coverage to approximately 60% of Australia's population outside mainland capital cities. "[3] In fact Macquarie controls approximately 40% of all regional commercial radio licenses in Australia.[4]

By contrast, community radio is locally owned and (except for some community stations in smaller communities) usually produces most of its programming locally as we do.

Commenting on local content, Commercial Radio Australia (formerly Federation of Australian Radio Broadcasters (FARB)) argues that "...the services of ALL [sic] broadcasters in the market need to be considered when deciding if listeners are being adequately serviced."[5] "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 ... the solution (to local content) must rest with all media, not just commercial radio."[6] We agree that community radio is part of the overall radio service to a market and plays a vital part in meeting the overall market needs. The FARB submission goes on to recommend "Strict proactive enforcement by the ABA (now ACMA) of the regulations governing community broadcasting..."[7] Presumably, this includes vigorously enforcing the regulations that restrict community radio from broadcasting advertisements and limit sponsorship. It seems that FARB/Commercial Radio Australia want to have it both ways. They want community radio to shoulder a share of the responsibility for helping to provide an overall diverse radio service (a quite legitimate

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[3] MMG overview, www.maquarie.com.au/au/mmg/about/overview.htm, accessed Feburary 2006.
[4] Commercial Radio Australia has 252 members (98% of all Commercial Radio stations). Allowing say 40 stations in the capital cities, Macquarie's 85 stations = approximately 40% of the estimated 217 regional stations.
[5] Federation of Australian Radio Broadcasters Limited (Now Commercial Radio Australia), Final Submission to the House Of Representatives Standing Committee On Communications, Transport and the Arts Inquiry into the adequacy of regional radio. 23 May 2001. P.2.
[6] Ibid. p.6.
[7] Ibid. Recommendation 7. p.20.

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expectation that Radio KLFM is happy to meet) while at the same time they want community radio restricted in its ability to access sponsorship/advertising revenue.

1.2   Community radio and local business

Community radio is often portrayed as providing a forum for expression of alternative programs and views to those available on commercial or ABC/SBS radio. This is true, but it is only part of the story. Our experience is that community radio stations such as KLFM also provide an important means for small local businesses to get their message out to the local community. We believe that this is generally the case across regional (and suburban) Australia. Most of our sponsors spend from $100 to $300 per month. Our largest sponsor spends approximately $6,000 a year. We have recently been informed that the local Macquarie Radioworks owned commercial stations want their clients to spend at least $10,000 to $12,000 per year. Whilst some of our sponsors also advertise with the local commercial stations, many simply cannot afford to do so. Thus without community radio providing an alternative they are denied the opportunity to promote their business via radio and the community is denied access via radio to information about those businesses. Our sponsors promote their businesses with Radio KLFM because they find it works. They often comment to us about the benefits they gain. We believe that being a part of the local community involves promoting both community activities and local business.

1.3   Outside Broadcasts.

Outside broadcasts can be an important way for community radio to both connect with and promote its community of interest. Outside broadcasts take radio out into the community. They provide a means for members of the community to meet with presenters and give feedback about programs thus encouraging and enhancing community involvement. They can also provide a means to promote local business and activities, thus helping to build and strengthen the local community and economy. This is an important consideration in regional and suburban areas where other electronic media often does not have a significant local face or involvement because they are part of a large network or in capital cities are provided by city wide services.

However the ability of community broadcasters to provide such services is constrained by the current BSA restrictions regarding broadcasting sponsorship or advertising and by the regulators enforcement of those regulations.

ACMA Investigation Report No. 1617 concerning an outside broadcast by Swan Hill Community Radio (3SFM) on 14/10/2005 illustrates the negative effect that these constraints can have on a community broadcaster's involvement in its local community. As part of the *Morning Show* 3SFM conducted an outside broadcast "...during the Swan Hill Market Day, a community event in which local businesses promoted their goods and services."[8] The program included interviews with four local businesses. Because these interviews were held by ACMA to be advertisements (even though the licensee received no payment for them) 3SFM was held to be in breach of the BSA.

One outcome was that the licensee decided to restrict future outside broadcasts. It seems to us that ACMA's interpretation of advertisement (which is not defined in the BSA) and the current restrictions on community broadcasters broadcasting sponsorship/advertisements have acted to restrict a community broadcaster's ability to interact with and promote its community, including local business. Such restrictions act to marginalise community broadcasters by preventing them from fully participating in and serving their local community.

It may be argued that the interviews could have been included as permitted sponsorship announcements. Two difficulties arise here. Firstly, during live interviews as part of an outside broadcast it is difficult to always remember to label (or tag) each announcement as sponsorship. It may be difficult to decide on the spot if a particular comment is promoting a business

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[8] ACMA Investigation Report - The Morning Show broadcast by 3SFM on 14 October 2005, page 2 Accessed from www.acma.gov.au.

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(sponsorship/advertising) or is a general comment promoting the community and thus permitted to be broadcast as a community service announcement. The same difficulty can arise with community service announcements in general which community broadcasters should be expected to broadcast as part of their community participation.

The second difficulty is that because 3SFM did not receive any payment for the interviews they cannot be classed as sponsorship. The *ACMA Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* (included as Appendix D, state at page 3 "(t)he sponsor must have contributed in some way to the ongoing financial support of the station or the program." In other words a community broadcaster cannot promote a business in any way unless they are paid to do so and the promotion is labelled as a sponsorship announcement. A similar difficulty may arise when a community station plays a song by a local artist and advises listeners where they may obtain the track without being paid to do so, but as a service to the listeners. Surely part of the aim of community radio is to promote local artists whether paid to do so or not paid.

The ACMA rules regarding sponsorship and advertising broadcasts by community broadcasters run to in excess of eight pages and are quite complex. In contrast the ACMA Broadcasting Services (Commercial Radio Advertising) Standard 2000 is less than two pages long. The reality of the present regulation is that lay volunteers are being called on to make legal decisions regarding sponsorship/advertising that often turn on a fine legal definition. This does not appear to help facilitate community involvement in the fullest sense. In fact it may well mean that community broadcasters do not participate as fully as they could in their local community for fear of being in breach of the BSA. Surely this was not the intention of the Parliament when the BSA was framed.

1.3   Not for profit.
The BSA section 15 quoted above defines community radio as not operated for profit. In addition to the BSA provisions regarding *not for profit,* incorporated bodies such as Radio KLFM Inc. must be operated as not for profit under the relevant State/Territory Associations Incorporation Act. They must also have an appropriate non-profit clause in their constitution to meet the requirements of the Australian Tax Office (ATO). See appendix B for an example. Not for profit does not mean that a trading surplus may not arise, it simply means that the surplus cannot be distributed to members. Members can only be paid for goods or services actually provided and then only at market rates as per the rules an example of which is shown at Appendix B.

Not for profit organisations (such as community radio stations) that rely on costly equipment for their operation have to provide reserves to replace/upgrade equipment from time to time. This of course requires an operating surplus that can be set aside to provide the necessary reserves.

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2. CONTENT and PROGRAMMING

Radio KLFM is predominantly a music station. Given the demographic of our community our programs are mainly the music of yesteryear together with suitable modern music. We also present some specialist music programs (Blues, Irish, Various genres of Country etc) generally in evening time slots. During many of our programs listeners are invited to ring for requests thus helping to ensure that we play the music that they want to hear. Unlike a number of community radio stations we do not generally get involved in political or religious issues that others quite rightly do get involved in. This is not what our listeners are seeking. Thus we do not receive particular support from groups such as political or religious interests as some community stations quite rightly do when they meet the needs of these interest groups.

2.1   Diversity

The strength of community broadcasters is that they can provide different programs to the main stream media operators. Radio is increasingly being concentrated into large networks. For example the two commercial radio stations in Bendigo are part of the Macquarie Radioworks Network of some 85 stations. This network controls approximately 40% of all commercial radio stations in Regional Australia[9]. As with most radio networks much of their programming is networked in from elsewhere. Whilst this allows listeners in regional areas to enjoy many programs that may otherwise be unavailable to them, we find that many people want local radio.

We submit that a strong and financially independent Community Radio sector is essential to maintain diversity in the Australian Media. As *The Age* reported recently "...(T)he Productivity Commission found in 2000, most of the so-called new media was, and still is, controlled by the same companies that own newspapers, and television and radio stations."[10] Press reports indicate that recent proposed changes to the Media Ownership Laws will likely lead to an increase in the concentration of ownership, especially in regional radio.[11]

2.2   BSA Principals

We believe strongly in the principles enunciated in the BSA that community radio programs should be made freely available to the general public and should meet community needs. To present quality programs as desired by our target community is costly. Even though we mainly use volunteer presenters and have the services of some excellent volunteer technical people costs such as rent, utilities, copyright fees, program fees, equipment purchase and maintenance have to be met. If our program content is to meet the expectations of our community of interest we obviously need to be able to raise the required funds to do this.

2.3   Content and funding

The community that Radio KLFM serves is a demographic, rather than a cohesive interest group. They are spread across our listening area with the commonality that they like the programs we broadcast. We find that this limits our potential for fundraising activities. Because many older people are on fixed, or limited, incomes this again reduces the opportunity for us to raise funds directly from our listeners. Given that our community has a low population of Ethnic and Aboriginal persons we are not eligible for a number of CBF Grants that are directed at providing services to these groups. We thus find that sponsorship is the major source of funding to enable us to meet the requirement of the BSA. We have received no adverse feedback from our listeners regarding sponsorship.

Given that KLFM is primarily an entertainment station the potential for sponsorship to influence program content is minimised. Our sponsors are primarily interested in how many listeners we have, which of course follows from our presenting programs that our listeners want to hear. We respect the fact that some community broadcasters are ideologically opposed to the concept of sponsorship. If a station is able to raise the required funds from its community of interest by means other than sponsorship this is to be commended. As previously stated, diversity in the

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[9] See footnote 4.
[10] Burton, Tom. Future shot? What next for the media? *The Age* 17/2/2006. Business p.2.
[11] Caparelli, Lou. Goldman Sachs JB Were media analyst quoted by Burton, Tom and Murray, Lisa. "Hard to know how Australia's media story will pan out." The Age. 27/2/06. Business page 3.

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community radio sector requires that different stations be able to raise funds in the ways that best suit them and their community.

If community radio cannot access the funds required to present quality relevant programs it risks being marginalised and losing relevance as the number of electronic media outlets expands.

3. TECHNOLOGICAL OPPORTUNITIES

We refer to a Media Release by Mr Paul Terdich, President of the Community Broadcasting Association on 31/1/2006 in which he welcomed this inquiry and the opportunity to inform the Parliament about "...our concerns for the (Community Broadcasting) sector". Like Mr Terdich we feel positive about the future and particularly about the future of our station. We have always tried to be technologically up to date within the constraints of a limited budget. We look forward to the introduction of Digital Radio and the scope that it will provide for us (and others) to present more diverse services for the overall benefit of listeners.

3.1 Funding technology

Obviously the introduction of new services will require considerable capital outlay. We welcome government funding initiatives through the Community Broadcasting Foundation (CBF) and have been successful in obtaining some grants for satellite equipment and for on-line access. However we are also acutely aware that the demand for government funding is larger than the resources needed. Although there has been some increase in Government funding over time the corresponding increase in the number of community broadcasters (currently some 440 fully licensed community radio stations plus a number of Aspirant Groups) means that the potential Government funding for each station is less. Without adequate ongoing resources community broadcasters will be marginalised. They will not be able to properly utilise technological opportunities as they arise to build robust and diverse services to meet the expectations of their communities of interest.

The alternatives for providing the resources to utilise the technological opportunities are either significantly increased government funding, philanthropic benefactors or the sector will have to provide the resources itself.

According to the Community Broadcasting Association of Australia (CBAA) Community Broadcasting Database, governments currently provide a little less than 10% of the aggregate funding for community radio stations (excluding remote Indigenous Services that were not surveyed). Of this 6.4% is from Community Broadcasting Foundation (CBF) grants - Commonwealth funding - and 2.7% from State Government funding. We understand that a portion of the State Government funding is actually sponsorship payments. Even if government funding is doubled, it will still only provide less than 20% of the overall funding required by community radio.

Whilst some funding may come from philanthropic sources, this is obviously limited as there are so many good causes seeking a limited pool of funds. Additionally, many philanthropic grants are only available to groups who are registered with the ATO as Gift Deductible (ie gifts to these groups are tax deductible for the donor). Generally community radio does not qualify for Gift Deductible status thus excluding it from many philanthropic grants. Similarly governments have increasing demands to fund diverse causes. Governments at all levels are thus increasingly forced to adopt a 'user pays' approach to more and more activities. We believe that a 'self funding' approach will encourage community broadcasters to be even more responsive to the requirements of their community by rewarding those who are seen to be meeting the community's needs.

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4. OPPORTUNITIES AND THREATS TO ACHIEVING A DIVERSE AND ROBUST NETWORK OF COMMUNITY BROADCASTERS

This is the major part of our submission.

4.1 Opportunities:

Technical advances such as Digital Radio and the extra channels it provides will give community radio (and other operators) the ability to present a greater diversity of programs. Commercial radio by definition is about making a profit for the shareholders. There is nothing wrong with this, in fact privately owned companies have a legal duty to consider their shareholder's interests. On the other hand, community radio, being non-profit, has the opportunity to present extra services even though some may not contribute to the 'bottom line'. We at Radio KLFM look forward to being able to bring a greater diversity of programs to our community of interest. Multi channelling (for instance) may allow us to present more localised versions of our programs to local sections of our community.

4.2 Threats:

We see two significant threats that may prevent community radio from taking full advantage of the opportunities to become more diverse and robust. These are lack of resources and community radio being marginalised and not seen as relevant by the wider public. We argue that both of these threats can be (at least partly) addressed by relaxing the current restrictions on community radio broadcasting sponsorship or advertisements thus allowing community broadcasters to better access funds from their community and to better serve their community.

4.3 Sponsorship

4.3.1 History of Sponsorship.

When Radio KLFM commenced test transmissions in the early 1990's there was a clear distinction between sponsorship and advertisements. A sponsorship announcement was limited to 40 words and could only mention the sponsor's business in general terms. No specials or the like could be mentioned.

4.3.2 Definition of sponsorship.

Clause 2(2)(b) of Schedule 2 to the BSA now provides that " a sponsorship announcement that acknowledges financial support by a person of the licensee (and promotes the sponsors business) is not taken to be the broadcasting of an advertisement." In practice this means that now, as long as the announcement acknowledges that the advertiser is a sponsor of the relevant community radio station, the announcement may be virtually any advertisement that can be broadcast on commercial radio as long as it is 'tagged'. Tagging means including words such as "our Sponsor XYZ Business," "Sponsoring KLFM XYZ Business" in the announcement.

The ABA (now ACMA) *Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* state "other than the tag, the Act does not restrict what information the announcement can provide about the sponsor. Promotional language, product range details and price information can be broadcast."[12]

4.3.3 Difference between sponsorship and advertising

In a recent case[13] ACMA ruled that in deciding if broadcasting a paid promotional announcement for a business by a community radio station was sponsorship or an advertisement the following matters are **not** relevant:

* whether financial support is provided by a sponsor because of the marketing efforts of the licensee

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[12] ABA (now ACMA) Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television. Australian Broadcasting Authority, August 2003. Page 3
[13] ACMA Investigation Report #1547, 4FRB Family Radio, Posted to www.acma.gov.au, February 2006.

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- whether the amount of financial support provided was 'calculated by reference to a time buy rate
- whether there is any relationship or community of interest between the sponsor and the licensee (other than an arrangement under which the sponsor provides financial support
- whether the sponsorship announcements are produced by volunteers or paid workers or
- whether the sponsorship announcement promotes the sponsor's business in a similar way to the way it is promoted on commercial broadcasting services

In summary, the complainant alleged that because the community radio station was selling sponsorship in much the same way as commercial radio stations sell advertising, the sponsorship announcements were similar to commercial radio advertisements and appeared to be professionally produced, that the community radio station was therefore broadcasting advertisements in breach of the BSA. ACMA rejected this position.

As noted above (and found in this case) the key to determining if an announcement is an advertisement is tagging. In the reports of complaint investigations listed on the ACMA website (see 4.3.8 below) where ACMA found that a community radio broadcaster had broadcast advertisements it was because the announcement was not tagged, usually inadvertently.

4.3.4   ACMA Definition of advertising
Advertisement is not defined in the BSA. ACMA have thus taken it on themselves to define advertising using different definitions for different purposes. Reporting an investigation into alleged broadcasting of advertisements by community radio 2GLA[14] dated 10/9/2001 the then ABA seems to adopt a different definition of advertising for commercial radio than for community radio. The ABA inserted into code 3 of the Commercial Radio Code of Practice a definition of advertising that, "consideration must be received by the licensee or presenter or an associate for a promotion to be an advertisement". However for community radio the much wider common law definition of advertising is used which does not require consideration to be provided for an announcement to be classed as an advertisement[15]. Is this inconsistency necessary, or fair?

The commercial radio definition of advertising was apparently introduced to overcome difficulties with the wide common law definition of advertising especially in relation to "...magazine type programs, interviews, reviews, opinion pieces[16]..." The same difficulties are evident for community broadcasters in these types of programs that are a core component of programming for many community broadcasters. Most reports of ACMA investigations into community broadcasters broadcasting advertisements highlight the difficulties that the present regulations impose on community broadcasters.

4.3.5   Unpaid Announcements: ACMA has ruled that financial support **must** be provided by the entity being promoted to the community broadcaster for an announcement to be considered sponsorship rather than an advertisement.[17][18] In a case involving 7RGY (Huon FM) it found that sponsorship announcements in a program that originated at Huon FM were legitimate. But, these same announcements were not relevant to the other two stations that took the program on relay, and were advertisements on the other two stations because they did not receive any financial support from the sponsors. (page 4). This seems to be a very technical ruling, especially as the ABA had previously ruled that announcements on commercial radio are only advertisements if consideration is received.

It seems that applying the regulator's definition of advertising may well preclude a community broadcaster from presenting an interview with say, a local author about a book that they may

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[14] Australian Broadcasting Authority Investigation Summary, File Number 2000/0564, Complaint Number 11991, Investigation number 874, licensee, Great Lakes FM Community Radio Ltd, 2GLA. Decision date 10/9/2001. Page 6.
[15] Ibid footnote 12. Page 8. "Community licensees should be aware that the definition of 'advertisement' is very wide and includes unpaid advertisements".
[16] Ibid footnote 14. Page 6.
[17] Ibid. footnote 12. page 6.
[18] Australian Broadcasting Authority Investigation Summary, Stations 7RGY (Huon FM), Tasman FM, Edge FM. File Number 2002/1110, Investigation number 1208, Broadcast date 24/8/2002. Pages 6.

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have written and published as this can be seen to be promoting the book (and usually is). The exception seems to be if the interview is tagged as a sponsorship announcement and is paid for. This seems to be an unreasonable restriction on community broadcasters presenting information to their community and also helping to promote local talent. We see promotion of local talent as a valid role for community radio.

4.3.6 Diversity in local media
Community radio has a duty to promote diversity and to represent its community. The interpretation of advertisement used by the regulator in respect to community radio can pose real problems for community broadcasters trying to meet these responsibilities. For example, Radio KLFM may conduct an interview with the *Bendigo Weekly*, a free local paper that is distributed in competition with *The Advertiser*, the established local six days a week paper produced by Rural Press, which is owned by Fairfax. If that interview includes discussion of articles that appear in the Weekly (ie helps to promote diverse views) this seems to be a legitimate role for community radio. However this role can be restricted by technicalities in the current regulations regarding advertising. Are we broadcasting an advertisement or are we providing a community service? The distinction is not clear to lay persons such as most community radio volunteers. The current restrictions regarding sponsorship/advertising on community broadcasting services seem to hinder rather than assist the promotion of diversity in the local media.

4.3.7 Why Sponsorship and not Advertising?
The purpose of requiring sponsorship announcements to be tagged is apparently to indicate to listeners that the sponsor is providing financial support to the community broadcaster. We ask, Why is this considered necessary for community broadcasters but not for commercial broadcasters? The ACMA *Broadcasting Services (Commercial Radio Advertising) 2000* (Appendix C) provides in part 3, paragraph 6 that "Advertisements broadcast by the licensee must be presented in such a way that a reasonable listener is able to distinguish them from other program material". The commercial radio standard also provides that only paid announcements can be classed as advertisements (part 2, paragraph 5(b). An announcement may be regarded as an advertisement on community radio whether it is paid for or not paid for. In fact it will be an advertisement if not paid for, as only a paid announcement can be classed as sponsorship.[19]

It is usually obvious when a paid announcement is being run. SBS Television broadcast sponsorship announcements, but do not appear to be required to tag them. We submit that community radio listeners are just as well able to discern an advertisement as are commercial radio listeners. Therefore the need for tagging, and the difference between sponsorship and advertising, seems to be an unnecessary legal technicality that provides the principal source of complaints against community radio licensees for breaching the BSA. See 4.3.8 below.

We ask, Are there any real advantages in making a fine technical legal difference between sponsorship and advertising? Our experience is that for all intents and purposes the general listener (and sponsor/advertiser) does not see any difference between an advertisement broadcast on commercial radio and the same announcement broadcast on community radio with the words station sponsor (or similar) added.

From reading the investigation reports posted on the ACMA website one gains the impression that complaints against community radio stations for broadcasting advertisements most likely come from either commercial competitors or dissident former members/presenters looking to cause trouble. Is this good law? Does it achieve a worthwhile public purpose?

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[19] Ibid footnote 12, pages 5, 8 and 9.

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4.3.8 Analysis of complaints listed on the ACMA website

During the year to 22nd February 2006 reports of 25 complaints against radio broadcasters were posted on the ACMA website (www.acma.gov.au). These can be divided as follows:

ABC Radio, 2 = 8%   Commercial Radio, 5 = 20%   Community Radio, 18 = 72%.

Both the ABC complaints involved program content. All the commercial radio complaints related to complaint handling by the stations. The community radio complaints can be divided as follows

Alleged breach	Number of cases	% of all of complaints % of 25	% of community radio complaints. % of 18
Broadcasting Advertisements	10	40	55.5
Sponsorship Limits	3	12	16.7
Conflict Resolution	2	8	11.0
Community Participation	1	4	5.6
Complaint Handling	1	4	5.6
Retaining Records	1	4	5.6

Complaints regarding enforcement of the current rules that restrict community radio from broadcasting advertisements and restrict sponsorship to five minutes per hour are the major sources of complaints investigated by ACMA.

It seems that a lot of ACMA time and resources are used to enforce a very technical legal difference between an advertisement and a sponsorship announcement. Could these scarce resources be better employed elsewhere?

4.3.9 Programs sourced from commercial radio

Occasions may arise where a community has an unmet demand for a program originating from a commercial radio broadcaster to be made accessible. Community radio's role is to help meet unmet community needs. That need may be met by a community broadcaster providing the program as part of its service to its community. This appears to be in line with section 15 of the BSA which defines community radio *inter alia* as "...provided for community purpose".

However particular difficulties arise with the advertising content of such programs. Section E of the ACMA *Guidelines for broadcasting sponsorship announcements and other promotional material on community radio and television* (Appendix D) emphasises the difficulties that community broadcasters may have in editing "   out all promotional or commercial references that are not permitted by the Act..." even those references for which the community broadcaster does not receive any payment. The complaint against community radio 2GLA considered at 2.3.4 above illustrates this point. While we do not want to see community radio just become relays for commercial radio, we believe that there are legitimate situations were community radio will serve its community by sourcing a program from commercial radio. Obviously if a community broadcaster represents its community of interest (as required) that community will ultimately determine how much programming they want from commercial radio or any other source.t

This appears to be yet another area where the BSA restrictions relating to advertising/sponsorship broadcast by community broadcasters acts against the public interest by making it more difficult for the broadcaster to properly serve its community

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4.3.10 Reasons For Limiting Advertising on Community Radio

Some of the arguments for and against restricting advertising/sponsorship on community radio are listed below. None of the reasons against seem to have any strong foundation of public interest.

(i) **Competition with commercial radio.** In most regional markets the commercial radio operator holds a monopoly (or in a few cases there may be a duopoly). A few larger regional cities may have more commercial stations. Major competition for commercial radio stations in capital cities (where competition is most intense generally comes from other commercial stations) or perhaps as in Melbourne from an ABC service. Commercial radio argues for restrictions to protect it from competition. Small, locally owned, community broadcasters do not seem to be in position to provide significant competition to commercial radio that is usually owned by large networks. Even if a community broadcaster does provide significant competition to commercial radio, National Competition Policy (NCP) appears to endorse such competition. Commercial radio's objections to competition from community radio appear to be at variance with NCP.

The Australian Competition and Consumer Commission (ACCC) argue the need to remove legislative barriers to implementation of NCP.[20] We see restriction on community broadcasters broadcasting sponsorship/advertisements as just such a legislative barrier. Commercial radio may argue that competition from community radio for advertising revenue will hurt its bottom line. Speaking about the impact of NCP implementation, the Productivity Commission has found that "The costs experienced by some individuals or communities, while an important consideration, are not sufficient reason to forego reforms that are of substantial net benefit to the community as a whole."[21] Quoting from its previous review of broadcasting legislation the Productivity Commission "...found that the regulatory regime imposed significant costs on the Australian community and, in some instances conflicted with other government policy aims (such as promoting diversity of media opinion)."[22] We agree with the Productivity Commission and submit that allowing community broadcasters to compete on an even footing with commercial broadcasters for advertising revenue will be to the overall advantage of the community.

(ii) **Some community radio operators may be ideologically opposed.** This is a valid argument, especially, say, for those community broadcasters who have a strong ethnic, religious or political support base and can thus draw funding from this base. We would suggest that a community broadcaster drawing financial support from such a base to promote that base's views is in reality often receiving sponsorship/advertising revenue. Because such a broadcaster will also likely make unpaid announcements on behalf of its support base some of these announcements may well fall under the ACMA definition of advertising.

We suggest the following as a way to accommodate the diverse requirements of those community broadcasters who want to broadcast more sponsorship/advertising and those who do not, or who only wish to broadcast limited sponsorship (as at present). Currently, community broadcasters only pay a token licence fee. Those who wish to broadcast limited sponsorship announcements could continue under the existing arrangement. Community broadcasters (such as KLFM) who wish to see the restrictions on broadcasting sponsorship/advertising removed could pay a licence fee based on a percentage of advertising revenue, just as commercial broadcasters do. Community radio licensees already pay copyright licence fees as a percentage of revenue.

(iii) **Community radio listeners do not want advertising.** If a community broadcaster is properly serving its community that community will decide how much advertising they are prepared to accept to help fund the station, or they will arrange alternative sources of finance.

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[20] Australian Competition and Consumer Commission, Submission to the Productivity Commission Review of National Competition Policy Arrangements. 13 July 2004. Page 3.

[21] Productivity Commission, Review of National Competition Policy Reforms, Productivity Commission Inquiry Report No 33 February 2005. Page 85.

[22] Ibid page 234.

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4.3.10 Reasons For Not Limiting Advertising on Community Radio

These have largely been argued above and are thus only summarised here.

(i) National Competition Policy recommends the removal of legislative impediments to open competitive markets.

(ii) Removal of the legal uncertainty that many community broadcasters find with the current regulations.

(ii) Provide revenue for sector thus enabling it to be more vibrant, diverse and robust.

(iii) Help to provide funds for training. Many commercial radio and ABC presenters have gained their first experience in community radio. With more networking in commercial radio and the ABC, on the job training opportunities with those operators are becoming less available. Community radio, being local, is in an ideal position to help meet this need if it can gain the required resources. Limited CBF funding is available, but more is needed to do the job properly.

(iv) Help community radio to be seen as more relevant and to better serve the community by giving smaller business more opportunity to be promoted.

(v) Encourage more community involvement with local stations being more visible through activities such as outside broadcasts. As shown above, the current sponsorship/advertising restriction are a real constraint on outside broadcasting.

5 RECOMMENDATIONS

The current restrictions on community broadcasters broadcasting sponsorship/advertisements are complex and have acted to restrict the ability of community broadcasters to interact with and promote their community, including local business and to be more self funded. Such restrictions can help to marginalise community broadcasters by preventing them from fully participating in and serving their local community. This appears to be against the public interest and the purposes for which community broadcasting has been established. The restrictions also appear to be in conflict with National Competition Policy.

Recommendation 1: That the current prohibition on community broadcasters broadcasting advertisements be repealed.

Recommendation 2: That the current distinction between advertisement and sponsorship be removed to help simplify and clarify the regulations and to help remove the major source of complaints against community radio licensees.

Recommendation 3: That the current limits on community broadcasters broadcasting sponsorship announcements/advertising be removed and the level of sponsorship/advertising broadcast by each station be determined by that station and its community of interest.

Recommendation 4: That if recommendation three is implemented there be a graded set of licence fees for community broadcasters as set out in 4.3.10 (ii) above.

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