

# Australian Communications & Media Authority

## Authority Submission

<b>Agenda Item No:</b>		<b>Meeting date:</b>	20 December 2007
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<b>Purpose:</b>	For info ( )	For decision ( X )	<b>File no: PF2007/1482</b>
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### ALLOCATION OF TWO COMMUNITY RADIO LICENCES IN PERTH

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#### SUMMARY

- There are two community radio broadcasting licences available for allocation in the Perth area: SL1150746, utilising the frequency 100.9 MHz (the 100.9 licence), and SL1150828, utilising 90.5 MHz (the 90.5 licence).
- Four applications were received for the 100.9 licence – from Capital Community Radio Inc (CCR), Peedac Pty Ltd (Peedac), Phoenix Radio Ltd (Phoenix) and Western Sports Media Inc (WSM). CCR, Phoenix and WSM also applied for the 90.5 licence.
- An assessment of each application, having regard to the matters mentioned in section 84(2) of the *Broadcasting Services Act 1992* (the BSA), is contained in the Allocation Report at Attachment A. Based on the findings in the Allocation Report, it is recommended that the 100.9 licence be allocated to Peedac and the 90.5 licence to CCR.

#### PROPOSED DECISION

That the Authority:

- a. **ADOPT** the Allocation Report at Attachment A.
- b. **AGREE** to allocate, under Part 6 of the *Broadcasting Services Act 1992* (the BSA), community radio broadcasting licence SL1150746 to Peedac Pty Ltd;
- c. **AGREE** to allocate, under Part 6 of the BSA, community radio broadcasting licence SL1150828 to Capital Community Radio Inc;
- d. **NOTE** that if the two licences are allocated as recommended then, under section 92J of the BSA, the licence periods of the temporary community broadcasting licences held by Capital Community Radio Inc and Western Sports Media Inc will be varied under delegation so that the licences expire on 21 January 2008.

#### TIMING/PRIORITY

1. High priority. The applicants have been advised that the Authority will make a decision on the allocation of the licences late in 2007 or early in 2008.

## **BACKGROUND**

2. The two licences available for allocation have different licence areas providing for different coverage:
  - the 100.9 licence, SL1150746, serves the Perth RA1 licence area encompassing the Perth metropolitan area and surrounding districts; and
  - the 90.5 licence, SL1150828, serves the Perth RA2 licence area and is limited to the inner and middle ring suburbs of Perth.

Copies of the licence area maps are at Attachment B.

3. On 13 July 2007, ACMA issued a news release inviting applications for the licences. An advertisement was placed in *The West Australian* on Saturday 14 July 2007. Applications closed on 16 August 2007. Public submissions were also invited.
4. Meetings were also held with each of the applicants on 19 November 2007.
5. There are currently six long term Perth-wide community radio broadcasting services and five sub-metro services serving the Perth area. See Attachment C.

## **DISCUSSION OF ISSUES**

### **Allocation Report**

6. Sections 84 and 85 in Part 6 of the BSA provide for the allocation of community broadcasting licences. The relevant legislation is set out in the Allocation Report at Attachment A.
7. ACMA has received applications for the 100.9 licence from:
  - CCR, proposing a seniors service;
  - Peedac, proposing an Indigenous service;
  - Phoenix, proposing a country music/general service; and
  - WSM, proposing a sporting, country music and easy listening service.
8. CCR, Phoenix and WSM also applied for the 90.5 licence. Peedac did not apply for this licence claiming that the majority of Perth's Indigenous community live in outer suburbs of Perth that are not within the Perth RA2 licence area.

### ***Applications that should be refused, having regard to the matters mentioned in section 84(2)***

9. On the evidence before ACMA, Phoenix and WSM failed to demonstrate:
  - they have the management capacity to provide the proposed service; and
  - their proposed service would meet the existing and perceived future needs of the community in the licence area to an adequate extent.

These are matters ACMA must have regard to in deciding whether to allocate the licences (section 84(2)).
10. Phoenix provided insufficient information demonstrating that there is a community need for a country music/general service. In addition, the evidence suggests that the corporate structure proposed by Phoenix would not provide for genuine community participation in the operations of the licensee.
11. WSM failed to demonstrate how its proposed service would meet the needs of the community in the licence areas. With the exception of some aspects of the 'sporting' community, WSM failed to demonstrate any connection to, or participation by, the communities it proposes to serve. WSM also demonstrated a lack of knowledge of its own Constitution and the requirements of the

*Associations Incorporation Act 1987 (WA)* relating to general meetings, the appointment of directors and auditing of financial statements.

**Allocation of the 100.9 licence**

12. Two applicants for the 100.9 licence, CCR and Peedac, submitted applications that sufficiently address the matters listed in section 84(2) of the BSA to warrant the allocation of a community broadcasting licence.
13. A comparative assessment of these applicants leads to a recommendation that ACMA should allocate the 100.9 licence to Peedac. Peedac has demonstrated that its proposed service would meet the existing and perceived future needs of the community in the Perth RA1 licence area to a greater extent than the service proposed by CCR.
14. The service proposed by Peedac will address two important and currently unmet needs of the Perth community. These are:
  - the need for the Indigenous community to have its own broadcasting service which addresses issues of particular concern to the Indigenous community, and caters to its specific cultural and language needs; and
  - the need of the general community to be informed about Indigenous issues and culture from an Indigenous perspective.
15. While there is no dedicated broadcasting service for seniors in Perth, the needs of the community are partially being met by other broadcasting services, including 15 hours per week of programming on Curtin FM specifically targeting a senior audience.
16. It is noted that while Peedac has not previously provided a broadcasting service it has provided evidence that it has access to the resources, personnel and expertise to provide a service within the 12 month time frame allowed under the BSA. Peedac estimates that it will take approximately 8 months to commence broadcasting. It is recommended that ACMA seek regular reports and updates from Peedac to ensure that it is meeting the targets and timeframes set out in its application.

**Allocation of the 90.5 licence**

17. Having regard to the matters listed in section 84(2) of the BSA, CCR is the only applicant for the 90.5 licence to which that licence should be allocated. Therefore, it is recommended that ACMA allocate the 90.5 licence to CCR.
18. The 90.5 licence serves the Perth RA2 licence area. Reception of the service is limited to the inner and middle ring suburbs of Perth. CCR may wish to consider its options with a view to increasing the coverage of its service including exploring engineering options to extend the coverage of the current frequency or moving to a new frequency should one become available in the future.

**Timing of the decision and announcement**

19. It is recommended that ACMA delay announcing its decision until 7 January 2008. ACMA offices will be closed from 25 December 2007 until 2 January 2008. Affected applicants, licensees, journalists, and members of the public may wish to discuss the decision with ACMA staff and may be critical of the timing if a decision is made just prior to the ACMA office shutdown. Delaying the announcement of the decision until 7 January 2008 will ensure that appropriate staff are available to answer questions and receive complaints and comments.

20. The current temporary community broadcasting licences (TCBLs) held by CCR and WSM are not due to expire until 20 March 2008. It is proposed that ACMA vary the licence periods of these TCBLs so that they expire on 21 January 2008.<sup>1</sup>
21. As required under section 92J of the BSA both CCR and WSM have been consulted. Both entities have indicated that they will only agree to the proposal if their application is successful, claiming that current sponsorship agreements extend well beyond 7 January 2008. A review of WSM sponsorship agreements with its 11 largest sponsors shows that only two of these agreements expire around 20 March 2008 when its TCBL is due to expire. The other agreements are either ongoing or have expiry dates well past 20 March 2008. It should also be noted that WSM's sponsorship agreements each contain a clause allowing either party to terminate the agreement with 2 weeks notice.
22. If the licences, SL1150746 and SL1150828, are allocated as recommended, it is proposed that the delegate vary the licence periods of the TCBLs held by CCR and WSM under section 92J of the BSA so that they expire on 21 January 2008. This ensures WSM sufficient time to terminate its sponsorship agreements prior to it ceasing broadcasting.

## **SENSITIVITIES**

23. The unsuccessful applicants, Phoenix and WSM, will be disappointed with ACMA's decision. It is unlikely that Phoenix will take any further action. However, WSM is likely to be very critical of the decision and encourage its supporters to contact ACMA. Delaying the announcement of the decision until 7 January 2008 will ensure that appropriate staff are available to answer queries and respond to complaints in a timely manner.
24. A decision to vary the licence periods of the TCBLs is subject to merits review by the Administrative Appeals Tribunal (s204). Appeals to the AAT must be lodged within 28 days. Unsuccessful applicants for the long term licence can also seek a review of the decision in the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

## **RESOURCES**

25. There are no resource implications with proposed decision.

## **COMMUNICATIONS**

26. A media release is to be issued announcing the decision.
27. The Department and the Minister's Office will be advised of the decision.
28. A Hot Topic briefing is to be prepared.

## **INTERNAL CONSULTATION:**

29. Catherine Scott from Legal Services Division (LSD) was consulted during the process, attended the meetings held on 19 November 2007 and has reviewed this paper. The recommendations in the paper are consistent with the advice provided by LSD.
30. A paper containing a summary of each application was considered by the Authority at its meeting of 8 November 2007.

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<sup>1</sup> Staff will, under delegation, revoke the s.34 drop-through determination so that the spectrum is no longer available for temporary community broadcasting purposes.

## **REGULATORY IMPACT ANALYSIS PROCESS**

We have formed the view that the recommendation in this submission would not give rise to a regulatory obligation.

## **ATTACHMENTS**

- A Allocation Report**
- B Licence area maps for Perth RA1 and RA2**
- C Background information on community broadcasting**