



The ABA has decided to bring greater clarity to the concept of 'open narrowcasting radio services' and has postponed the planned auction of open narrowcasting services in metropolitan regions, including Sydney.

Clarification of open narrowcasting radio licence category

The ABA has decided to exercise its powers under section 19 of the Broadcasting Services Act to bring greater clarity to the concept of 'open narrowcasting radio services'. Open narrowcasting is defined in the Act to be a broadcasting service whose reception is limited in some way.

The legislation already contains criteria to assist in determining the kinds of services which fall into the open narrowcasting category. However, it is not always clear to service providers where the line is to be drawn between, for example, an open narrowcasting radio service and a commercial radio service, or an open narrowcasting radio service and a community radio service. The result is considerable uncertainty in the market place about what is or is not allowed to be broadcast as part of an open narrowcasting radio service.

The ABA may determine additional criteria or clarify ex-

isting criteria for the purpose of distinguishing between services,' said Mr Gareth Grainger, Acting ABA Chairman. 'The ABA has taken the view that this clarification should be undertaken before open narrowcasting radio licences are auctioned in the major metropolitan markets. Otherwise there is a real risk that bidding will take place based on misconceptions about the uses to which the licences may be put.'

The ABA had planned to hold an auction for open narrowcasting radio licences in Sydney late in May, but the auction has been postponed until the clarification process has been completed. As a radio licence to use the broadcasting spectrum in the major metropolitan markets is potentially a very valuable asset, the auction will not take place until the ABA can provide greater certainty to applicants.

The clarification process will be undertaken with wide public consultation and all who

are interested will have an opportunity to contribute their views,' said Mr Grainger. 'Parliament has conferred on the ABA a range of powers and functions that are to be used to produce regulatory arrangements that are stable and predictable. In recent times, the ABA has received numerous inquiries about what constitutes the radio narrowcasting category of broadcasting and it has become obvious that clarification of the issue is necessary.'

Although a large number of open narrowcasting radio licences have been auctioned already in regional markets, the ABA does not anticipate that the value of these existing licences will be adversely affected by the decision to clarify the criteria of the radio narrowcasting category. To the contrary, a section 19 determination should assist the industry by bringing greater commercial certainty about how open narrowcasting radio services may be used.

Open narrowcasting services

The open narrowcasting service category is defined as a service whose reception is limited:

- (i) by being targetted to a special interest group; or
- (ii) by being intended only for limited locations, for example, arenas or business premises; or
- (iii) by being provided during a limited period or to cover a special event; or
- (iv) because they provide programs of limited appeal; or
- (v) for some other reason.

Only one of these criteria needs to be satisfied to bring a service within the open narrowcasting category. The criteria, however, are fairly broad and it is not always possible to be certain whether the service will be sufficiently limited in nature to bring it within the category.

Section 19 of the Act provides that:



(1) The ABA may, by notice in the *Gazette*:

(a) determine additional criteria to those specified in sections 14 to 18;

(b) clarify the criteria specified in sections 14 to 18; for the purposes of distinguishing between categories of broadcasting services.

(2) Different criteria or clarifications may be determined or made for radio services and television services.

(3) The Minister may give specific directions to the ABA as to the making of determinations and clarifications, and the ABA must observe those directions.

A service provider seeking to provide an open narrowcasting service may apply to the ABA for an opinion under section 21 of the Act as to what category a proposed service would fall within. Such an opinion is binding for a minimum period of five years, after which any determination made under section 19 of the Act would become effective in relation to that service. Applications for an opinion by the ABA must be accompanied by an application fee of \$1275.

Open narrowcasting licences are only for a fixed period of time and are not intended to be permanent. For this reason, an opinion which is binding for five years is generally adequate to meet the need for regulatory certainty. However, in the major metropolitan markets, the ABA has taken the view that the value of the spectrum is such that it should provide regulatory certainty through the legislative process, rather than expect individual applicants to rely on the opinions process.

Although the ABA has already called for applications for narrowcasting radio licences in the Sydney licence area, all applicants will have their application fee and information package purchase price refunded to them. The auction will now take place some time in 2001, after the ABA has completed its determination process under section 19 of the Act. In the meantime, existing open narrowcasting radio licensees in the Sydney licence area will be permitted to renew their licences.

The ABA has imposed an additional condition on the licence of commercial television service QTQ 9 Brisbane making compliance with clauses 3.6, 3.7 and 3.8 of the Commercial Television Industry Code of Practice a condition of the licence held by Queensland Television Limited

ABA imposes licence condition on QTQ 9 Brisbane ...

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The ABA sought comments from the licensee, Queensland Television Limited, on the draft condition it gazetted in February. The condition it has imposed on QTQ 9's licence takes into account the submission received.

The licence condition makes compliance with clauses 3.6, 3.7 and 3.8 of the Commercial Television Industry Code of Practice a condition of the licence held by Queensland Television Limited. Clauses 3.6, 3.7 and 3.8 concern the broadcast of promotions in G viewing periods.

Professor Flint said that the community has a reasonable expectation that material broadcast during G viewing periods will be mild in impact and not contain any matter likely to be unsuitable for children to watch without super-

vision. 'In imposing this condition upon the licence, the ABA is responding to this expectation.'

In October 1999, the ABA completed an investigation into a complaint from a member of the public about the broadcast by QTQ 9 of a promotion for an M-classified program, 'Co-Ed Call Girl', in a G viewing period. This was the third occasion, between August 1998 and October 1999, that the ABA found the licensee of QTQ 9 to have breached the code of practice about broadcasting program promotions in G viewing periods.

The two other investigations by the ABA concerned the placement of promotions for the M classified programs, 'Chippendales: A Secret History' and 'Peter Benchley's Creature'.

Codes of practice

The Federation of Australian Commercial Television Sta-