



2WEB, MAX FM, 2GLA, 2LVR and 2YOU

Commercial programming on community radio

The investigation

In July 2000, the ABA decided to use its power under section 170 of the *Broadcasting Services Act 1992* (the Act) to commence investigations into community radio stations 2WEB Bourke, MAX FM Narrabri, 2GLA Great Lakes Area, 2LVR Lachlan Valley and 2YOU Tamworth which were broadcasting the commercially-sourced programs, The John Laws Morning Show, Breakfast with Alan Jones, Take 40 Australia and The Outback Club.

The ABA was concerned that even if attempts were made to remove advertisements from the programming and replace them with compliant material, community broadcasters may breach paragraph 9(1)(b) of Schedule 2 to the Act which prohibits the broadcast of advertisements by community stations.

Relevant licence condition

Section 86 of the Act subjects community broadcasting licences to the conditions set out in Part 5 of Schedule 2 to the Act. The relevant provisions are:

9 Conditions applicable to services provided under community broadcasting licences

(1) Each community broadcasting licence is subject to the following conditions: ...

(b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in clause (3); ...

(3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than 5 minutes in any hour of broadcasting. ...

(5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of

the following:

- (a) material that publicises programs to be broadcast by the licensee;
- (b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;
- (c) community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;
- (d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

2 Interpretation—certain things do not amount to broadcasting of advertisements

(1) For the purposes of this Schedule (other than Clauses 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

(2) For the purposes of this Schedule (other than Clause 9(1)(a)), the broadcasting by a community broadcasting licensee of:

- (a) community information material or community promotional material; or
- (b) a sponsorship announcement that acknowledges financial support by a person of the licensee, whether or not the announcement:

- (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
- (ii) promotes activities, events, products, services or programs of the

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person; or
(c) material that announces or promotes the service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the services provided under the licence;

is not taken to be the broadcasting of an advertisement.

Decision

Each of the 5 stations involved was found in breach of the licence condition set out at paragraph 9(1)(b) of Schedule 2 to the Act due to the broadcast of advertisements.

2GLA

2GLA was found to have broadcast advertisements during the John Laws Morning Show for Toyota, Mr Laws' television show on Foxtel, tickets for the Olympic Games and Paralympic Games, United Cinemas, Shell Helix, and Tuncurry Bowling Club.

2GLA was also found to have broadcast advertisements during Take 40 Australia for the Commonwealth Bank, Nescafe, Certified Hits Collection Volume 1, Sunkist, Australia National Training Authority, Impulse Airlines, travel.com.au, Samboy, *Charlie's Angels* Soundtrack, Sanity music stores, *28 Days*, Cointreau, Lime and Soda, Communicate, Playstation game *Driver 2*, Tommy Hilfiger fragrances, Myer Grace Bros, and Butter Fingers Bakery.

2WEB

2WEB was found to have broadcast advertisements during the John Laws Morning Show for Toyota, 'Our Century' video collection, 5 Star Fresh Supermarket, tickets for the Olympic Games, My Life Story, Roseville Park Merino Stud Information Day, and St George races, Gulargambone Jockey Club's Gold Cup Meeting, and Brewarrina Jockey Club Showtastic Race Meeting.

MAX FM

MAX FM was found to have broadcast advertisements during the John Laws Morning Show for Toyota, Foxtel and United Cinemas.

MAX FM was also found to have broadcast 18 advertisements for Toyota during the Outback Club and 40 advertisements during Take 40 Australia, broadcast on 6 August 2000.

2LVR

2LVR was found to have broadcast advertisements during the John Laws Morning Show for Toyota and Panthers at Penrith. The ABA also determined 2LVR

did not comply with clause 5(2) of Schedule 2 to the Act by not keeping a record of matter broadcast which related to a political subject or current affairs, in the form of news, an address, a statement, a commentary or a discussion.

2YOU FM

2YOU FM was found to have broadcast advertisements during the John Laws Morning Show for Toyota, Foxtel, Players Twin Tarts and Penrith 'Panthers' Rugby League Club. The ABA also determined 2YOU FM did not comply with clause 5(2) of Schedule 2 to the Act by not keeping a record of matter broadcast which related to a political subject or current affairs, in the form of news, an address, a statement, a commentary or a discussion and thereby breached the licence condition set out at subclause 9(1)(i) of Schedule 2 to the Act.

Action taken

A number of investigations regarding sponsorship and advertising on community radio have been carried out by the ABA. The ABA is very concerned by issues raised in these investigations. The ABA reminds community licensees that:

- Community broadcasters are not permitted to broadcast advertisements; and
- Sponsorship announcements must be 'tagged'. The 'tag' is for the benefit of the listeners, and must be stated clearly so as to be intelligible to those listeners and therefore in compliance with the Act; and
- Sponsorship announcements are only genuine when financial support is provided to the licensee. If the licensee does not receive financial support from a person/organisation, then an announcement mentioning that person/organisation is not a sponsorship announcement. If the announcement is not community information or station promotional material, then an advertisement broadcast is likely in breach of the licence condition.

In the ABA's experience, it is more difficult for community licensees to comply with the licence conditions in the Act if material is sourced from outside the station, particularly when that material is broadcast live.

The ABA is of the view that these are issues affecting the community radio broadcasting sector as a whole and has discussed with the CBAA how best to assist community radio licensees interpret and comply with the Act and the Community Broadcasting Code of Practice.

