

## **Flow FM submission to the Department of Communications on the future of the Australian Communications and Media Authority – August 2015**

### **Introduction**

This submission relates to that aspect of the review of ACMA that pertains to its responsibility for planning the availability of segments of the broadcasting service bands on an area basis. The submission proposes that the processes involved in this planning should be reviewed in the light changes in technology, the need to reduce red tape, greater contestability and diversity and the concept of broadcast innovation.

### **Background**

The nature of broadcasting has changed radically since the advent of the Internet. The introduction of technology such as Pandora means that radio streaming is becoming the norm for mobile radio reception. Radio listeners source broadcasting globally. Apart from the impact on audience allegiance it also means that radio providers have to provide stronger news and current affairs material if they are to remain competitive. In the case of a network like Flow FM, this means focusing on issues of interest to our regional and rural audience, which in turn implies employing specialised journalists to supply the material.

The existence of networks like Flow is critical to the economy and survival of the bush. We provide emergency services during events such as extreme bushfires (the Black Saturday fires are an example) and critical business news that is essential for farmers when they are doing business planning. In addition Flow is a sought after source of weekly regional sport information on local competitions now number 25 regions as well as content about local events and community service activity.

Flow FM is a national rural and regional commercial radio network that covers four states and territories. It started operations in 2001 under the Remote Central Zone commercial radio license. It predominantly services areas with very low population densities. Its service area covers 127,218 square kilometres of land with a population of 150,000. There are 37 re-transmission frequencies allocated in the license plus a number of self-help mining sites. In a large part of the broadcast area Flow provides the only commercial broadcast service. It is obvious from these statistics that Flow is a marginal commercial proposition with relatively high capital costs for the listeners serviced and sparse sources of revenue. Flow is therefore vulnerable to excessive regulation that can impact on cost structures and is easily impacted by predatory behaviour by larger commercial competitors. Flow does not received subsidized satellite delivery like other commercial, indigenous and ABC providers despite repeated requests to the Department of Communications for equalization.

As an example of regulatory difficulties, Flow has recently received License Area Plan variations, the application for some of which were submitted 9 years ago. The loss of income due to the dilatory conclusion of this process is estimated to have cost Flow in excess of half a million dollars. Another example is the termination of drop through arrangements which is impacting on the license extension process. Without a section 34 license being issued prior to

the License Area Plan being ratified in Common Law, the delays in achieving licensing and the scope for investment are lost given the 5 to 9 years that ACMA take to plan a new service or amend the planning to an existing service where population changes and coverage interference are apparent.

As examples of predatory behaviour, 8SAT Flow has been the subject of numerous instances where submissions by adjacent owners have sought relief from overspill as complainants to Flows LAP variations where they themselves overspill into Flow's areas, with the approval of ACMA, undermining the already vulnerable commercial viability. Examples of this are Nova FM applications in Melbourne and Adelaide along with 3MP and 5DN upgrades in power and the 2009 decision to provide Digital Services to capital cities which overspill into Flow towns including Kapunda, Ardrossan, Port Vincent and Kingscote. Examples of erosion of Flow LAP' have been the overlapping of Flow license at Apollo Bay, Roxby Downs and the excising of towns that border the Flow license (or indeed Flow has a proportion of the town population but is not allowed to serve that town) like Hay, Balranald, Condobolin, Hillston, Wentworth, Mathoura in NSW, Rainbow, Walpeup, Warracknabeal, Healesville, Warburton, Yarra Junction, Eildon and Yea in Victoria and Quorn, Wudinna, Kimba, Burra, Nuriootpa, Naracoorte, Meningie and Elliston in South Australia.

The asymmetrical overspill operates to the distinct commercial disadvantage of the smaller network. Large city based broadcasters invariably cover large sections of Flow's inner rural license areas which makes it hard for us to secure revenue to sustain broadcasts in these areas. Closing the frequencies provides a large social disadvantage because the local areas lose a broadcaster dedicated to their community interests. An example of this was our license in Kangaroo Island which served the local community there but had to be closed because the license area was overspilled by Adelaide based stations.

Another issue for Flow is the fact that when we have applied for licences to cover unlicensed areas and where no services are provided we are invariably rebuffed because the areas are deemed to be within some other provider's "area" (in some cases no licensed area) even though that licensee has declined to establish services (usually because the population densities are too small to support an expensive operation). The consequence is that people living within the areas involved receive no services with the possible exception of the ABC. We note our submission to ACMA of 2012 for both the Unlicensed and Unserviced towns of Batlow, Tumbarumba, Rand, Oatlands, Rugby, Frogmore, Binnalong, Bowning, Coolac, Wee Jasper, Reefton, Bland, Caragabal, Nattai, Bellimbla Park, Porters Retreat, Jerrong, Caroola, Captains Flat, Primrose Valley in NSW along with Lake Bolac, Willaura, Dergholm, Cann River, Tamboon, Marlo, Buchan, Swifts Creek, Dargo and Ensay in Victoria. All towns remain unlicensed and unserviced today despite 3 more years. A standard response from ACMA to our concerns about lack of movement forward for unserviced towns is that "the government does not change license areas without good reason" and that these areas could go through the Out of Area Service application process. However this process does not give any security of tenure to the out of area investing licensee and allows the incumbent licensee to change their mind and provide the radio service thereby wasting the investment for the Out of Area Service applicant.

## **Proposals**

We believe that ACMA should be restructured and given a new mandate relating to broadcast licences which recognises the greater contestability of broadcasting in the modern environment. In order for radio networks to survive and continue to provide services, ACMA must become more efficient and continuously improve the way it deals with licensees. It is our impression that the body has become moribund, in part because it has been heavily influenced by special interest groups which have become entrenched at different levels of the organisation. The technical planning guidelines allow for a reactive approach rather than a proactive approach and protect incumbents who have no intention of serving all of their license area.

### Purpose of Regulator

We believe there are unfair components to ACMA's mandate, which derive from its undertaking to implement the Broadcasting Services Act 1993 and components of this Act that are now outdated given the move to both digital and new media platforms.

Additionally, the favourable placement of spectrum to the ABC at both significantly higher field strengths and using more spectrum than is necessary in regional areas, impacts unfairly on commercial licensees trying to service rural and remote areas. Does a 3000 person town really require ABC Regional, ABC JJJ, ABC National, ABC Classics along with SBS, BRACS, Community, Narrowcast, and End of Band. Yet in some areas there are no commercial services and ACMA claim insufficient spectrum. Flow FM would like the government or regulator to:

1. Increase the number of media players (not decreasing as some are proposing)
2. Increase the diversity of content
3. Reach more Regional and Remote people
4. Provide Section 39 licenses for Flow FM to increase diversity
5. Remove barriers for the above to occur including reduction in funding for more than 2 ABC services in any one market and reducing power levels so more spectrum would be available for commercial providers in unlicensed and unserved areas.

### Structural Change

Flow believes that the board of ACMA should be retired and replaced by an independent board without industry connections. While such a board should have some technical and industry knowledge there is no reason why any of its members should be drawn from current industry players. The fact that ACMA is occasionally required to make quasi-legal adjudications requires some legal expertise but should not overwhelm the criteria for board membership. The key criteria for membership should be knowledge of competition policy, adaptability and innovation skills and an awareness of wider economic frameworks. Perhaps the amalgamation of Spectrum Management and the Australian Broadcasting Authority has reduced efficiency in allocating spectrum and the time to finalise License Area Plans is now much longer. We recommend separating Spectrum Management from the Administration.

### Unlicensed Broadcast Areas

Areas that have been unlicensed (note the maps of towns listed above was submitted to ACMA in 2012) for more than ten years, should be made available on a 'first come first served' basis. If these areas are classified as remote license areas then the same terms and conditions should apply. There should be no basis for objection from a non-applicant license holder. Towns that are bordering to adjacent licensees should become available for broadcast if the number of services to which the town is entitled to are not being fulfilled. This would increase competition and remove unfair monetary claims by licenses claiming coverage without providing a service. Regarding, unlicensed areas, there is no current process of allocation. Effectively ACMA has a process that currently allows the incumbent to do nothing but ACMA still denies 8SAT Flow transmission rights without any consultation, yet no other broadcaster has provided the service which would indicate a lack of will on the part of ACMA to actually make a decision to allocate the areas to the Flow LAP because of perceived fear from opposing industry forces. This is not productive and leaves 80,000 people in NSW and Victoria currently without a commercial licensee to actually provide them the service.

### Use it or lose it arrangement

If a license area has been allocated to a license holder who has after ten years failed to provide a broadcast service to the population within that area then those services should be able to be provided by other service providers either by them overspilling from an adjacent licensed area or for them being able to apply for that license on the basis that it is not being effectively used.

### Regulating overspill

Overspill should be regulated on a symmetrical basis. At the present time a large broadcaster may overspill 20% of a remote area license area and capture 50% of the population in that area. On the other hand the remote license holder will be limited in their overspill to 5% of the adjacent area with a much smaller commercial effect.

The solution is for ACMA to take into account the commercial effect of overspill. In the case of adjacent license holders of disproportionate size then there should be an equivalence of commercial effect and material evidence of the commercial effect should be taken into account in decisions on overspill.

### **Conclusion**

Flow is a highly innovative radio network performing a major public service by broadcasting to people in remote communities. On the other hand it is small business operating in a commercial environment where returns are marginal.

It is only seeking to be able to operate in a competitive environment and to reduce the impact of ACMA as a tool of special interests continually seeking to maintain an anti-competitive environment.

*Submitted by Wayne Phillips Chairperson 8SAT Flow FM*