

21 November 2017

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### **Invitation to subscribe for shares in an eligible joint venture company for the Canberra RA1 BSA radio licence area**

On 20 November 2017, the Australian Communications and Media Authority (**ACMA**) published a notice on its website pursuant to section 102C of the Radiocommunications Act inviting applications from eligible joint venture companies (**JVCs**) in relation to the issuance of a foundation category 1 digital radio multiplex transmitter licence for the Canberra RA1 BSA radio licence area (**Category 1 DRMT Licence**).

ACMA's invitation will remain open for a period of 150 days and applications must be received by ACMA before **19 April 2018**.

#### **Purpose of this letter**

2CC through digital commercial radio broadcasting licensee Radio Canberra Pty Ltd (**Radio Canberra**) intends to act as the promoter of the JVC for the purposes of section 102C of the Radiocommunications Act.

To this end, we invite your organisation, as an eligible incumbent digital commercial radio broadcasting licensee / the digital community radio broadcasting representative company in the Canberra RA1 BSA radio licence area, to participate in the establishment of a JVC in that licence area by subscribing for shares.

This invitation will remain open for a period of **120 days** from the date of this letter in accordance with section 102C(5) of the Radiocommunications Act (i.e. until 21 March 2018).

Once this invitation expires, *Radio Canberra* and any eligible party who has accepted and taken the relevant steps contemplated in this invitation will:

1. proceed to establish a joint venture company to be called *Digital Radio Broadcasting Canberra Pty Ltd*; and

2. apply for a Category 1 DRMT Licence in the name of that entity (and pay relevant application fees) by no later than 19 April 2018.

If a licence application is not made by the JVC by this date, ACMA may:

1. accept the application of another eligible joint venture company (if a competing JVC is established in the Canberra RA1 BSA radio licence area); or
2. pursuant to section 106 of the Radiocommunications Act, choose to allocate the Category 1 DRMT Licence through a price based allocation method.

### **Eligibility to subscribe for shares in JVC**

This invitation to subscribe for shares in the JVC is limited to the following organisations:

- incumbent digital commercial radio broadcasting licensees for the Canberra RA1 BSA radio licence area; and
- the digital community radio broadcasting representative company for the Canberra RA1 BSA radio licence area (if any), as defined in section 9C of the Radiocommunications Act 1992.

### **Activities of the JVC**

The JVC's activities will broadly include:

- applying for and holding the Category 1 DRMT Licence in the Canberra RA1 BSA radio licence area;
- the rollout and operation of the digital radio multiplex infrastructure in the BSA radio licence area;
- the provision of multiplex capacity in the BSA radio licence area pursuant to the Category 1 DRMT Licence and ACCC approved access undertaking to support the supply of digital radio broadcasting services by digital commercial radio broadcasters and digital community radio broadcasters in that area;
- improving the efficiency, coverage and quality of digital radio services in the BSA radio licence area, which may include the potential rollout and operation of on-channel repeaters at a future date; and
- matters that are related to the above.

### **Share subscription and issue**

The JVC will be incorporated as a proprietary company limited by shares.

On formation of the JVC, 9,000 shares will be issued for a nominal amount of A\$1 per share.

The allocation of shares will be in accordance with section 102C(5)(a) of the Radiocommunications Act, which provides as follows (in the case where all eligible incumbent digital commercial radio broadcasting licensees and the digital community radio broadcasting representative company take up this offer to subscribe for shares):

- each incumbent digital commercial radio broadcasting licensee will hold an equal number of shares (in aggregate, seven-ninths of the shares in the JVC); and
- the digital community radio broadcasting representative company will hold two-ninths of the shares in the JVC.

If any party does not accept this invitation to subscribe for shares, those shares will be offered to those parties who have accepted this offer on a proportional basis. For example, if only two incumbent digital commercial radio broadcasting licensees wish to subscribe for shares, each broadcaster will be allocated 4,500 shares.

### **Funding commitments**

Separately to any consideration payable through the subscription of shares in the JVC, each member will be required to accept the following financial commitments as a condition of its participation in the JVC:

- a financial commitment to pay the set up and rollout costs in relation to the digital radio multiplex infrastructure in the BSA radio licence area, in proportion to its shareholding;
- ongoing obligations to provide funding to the JVC in accordance with the budget and relevant business plan (if any), in proportion to its shareholding;
- to provide any other funding that may be required from time to time, including by way of the acquisition of new shares issued, or any other funding mechanism determined by the Board.

We will develop an initial business plan and cost base for the JVC, which will provide an indicative estimate of the set up and rollout of the multiplex infrastructure in the BSA radio licence area.

We will be able to provide this information to eligible incumbent digital commercial radio broadcasting licensees and the digital community radio broadcasting representative company shortly after the date of this letter. Subject to appropriate confidentiality arrangements, our intention is to provide cost information on an open book basis and to develop our business case in an iterative and collaborative manner with other prospective members.

As part of this process, we will also provide an indicative estimate of the access fees that will be payable for access to multiplex capacity in the Canberra RA1 BSA radio licence area (discussed further below).

These access fees will initially be calculated based on the regulatory pricing principles that have previously been accepted by the Australian Competition & Consumer Commission (**ACCC**) in relation to digital radio multiplex capacity services in metropolitan areas. However, the final level of access fees will need to be determined closer to the digital radio start up day by reference to the terms of our own digital radio access undertaking, which will need to be approved by the ACCC.

### **Constitution and Shareholders Agreement**

We have developed a Company Constitution and Shareholders Agreement for the JVC.

Draft versions of these documents are available on request. It is expected that these documents will be finalised with eligible parties who have accepted this invitation prior to the formal establishment of the JVC.

These documents set out the key rights and obligations of each member that acquires shares in the JVC. You should familiarise yourself with these documents prior to acceptance of this offer.

Some of the key rights established by these documents in respect of each shareholder of the JVC include (amongst others):

- the right to appoint one (1) representative as director;
- voting rights in proportion to your shareholding; and
- the right to receive dividends, as determined from time to time.

Membership of the JVC is subject to acceptance of the terms of the Company Constitution and entry into the Shareholders Agreement.

### **Access regime applicable to supply of multiplex capacity by the JVC**

Under the Radiocommunications Act, the supply of digital radio services cannot commence in a BSA radio licence area until ACMA has declared a digital radio start up day for that area. For ACMA to declare the digital radio start up day, the ACCC must have accepted an access undertaking from the JVC that sets out the terms of access to the digital radio multiplex service.

Within three months of being awarded the Category 1 DRMT Licence, the JVC must submit an access undertaking to the ACCC that specifies the terms and conditions on which it proposes to provide access seekers with access to multiplex capacity.

The JVC, once established, will need to develop a digital radio access undertaking for this purpose. It is envisaged that this undertaking will be modelled heavily on the digital radio access undertaking that has been developed for the metropolitan areas and previously approved by the ACCC.<sup>1</sup>

The access regime for digital radio provides statutory rights of access to multiplex capacity to the following entities:

- digital commercial radio broadcasting licensees, who are entitled to one-ninth of the total multiplex capacity available on the Multiplex Transmitter as a standard access entitlement; and
- the digital community radio broadcasters, who will be represented by the digital community radio broadcasting representative company, will be entitled to two-ninths of the total multiplex capacity available as a standard access entitlement.

The access regime also provides for excess-capacity access entitlements in situations where there is excess multiplex capacity available.

The JVC has statutory obligations to supply the digital radio multiplex capacity services on a non-discriminatory basis to all holders of standard access entitlements and excess-

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<sup>1</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/broadcasting-content/digital-radio-services/variation-request>

capacity access entitlements, regardless of whether the holders of those entitlements are members of the JVC.

If an eligible incumbent digital commercial radio broadcasting licensee or the digital community radio broadcasting representative company does not subscribe for shares in the JVC, the relevant commercial or community broadcasters may still acquire access to the digital radio multiplex capacity services pursuant to the ACCC approved access undertaking.

Those entities, as standalone access seekers, will not be entitled to play a role in the management and investment decisions of the JVC, which will be limited to access seekers that are also shareholders.

### **Next steps**

If you are interested in becoming a member of the JVC and satisfy the eligibility criteria, please confirm your willingness to participate by completing and returning the form set out in **Annexure A**.

We will make draft versions of the Company Constitution and Shareholders Agreement available to you on request. Details of our initial business plan and cost information for the JVC will be available shortly after the date of this letter. Please note that we may require you to enter into a short form non-disclosure agreement prior to provision of such information.

Please don't hesitate to contact me if you have any questions.

Yours sincerely



Kevin Blyton  
**Managing Director**  
**Radio Canberra Pty Ltd**  
**2CC**

### **Copy to:**

Sarah Tinsley  
Australian Radio Network Pty Limited  
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Giles Tanner  
General Manager  
Communications Infrastructure Division  
Australian Communications and Media Authority  
Level 5  
The Bay Centre  
65 Pirrama Road  
Pyrmont NSW 2009

Joan Warner  
Chief Executive Officer  
Commercial Radio Australia  
Level 5, 88 Foveaux Street  
Surry Hills, NSW 2010

David Sice  
Community Broadcasting Association of Australia  
PO Box 564  
Alexandria NSW 1435

## **Annexure A: Application to become a member of and subscribe for shares in the Canberra JV Company**

**To:** Ara Margossian  
Webb Henderson  
Level 18, 420 George Street  
Sydney NSW 2000  
[ara.margossian@webbhenderson.com](mailto:ara.margossian@webbhenderson.com)

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### **Application to become a member and subscribe for shares**

#### **Applicant's details:**

Type of applicant     incumbent digital **commercial** radio broadcasting licensee  
                             digital **community** radio broadcasting representative company

Company name: \_\_\_\_\_

ACN: \_\_\_\_\_

Registered Address: \_\_\_\_\_  
\_\_\_\_\_

(the **Applicant**).

#### **Acceptance and declaration:**

The Applicant applies to become a member of the Canberra JV Company (the **Company**) on the basis:

1. contemplated under section 102C(5) of the Radiocommunications Act 1992; and
2. as otherwise set out in the letter from 2CC, Radio Canberra Pty Ltd, dated **21 November 2017** (to the extent consistent with the provisions of section 102C of the Radiocommunications Act 1992).

Signed for and on behalf of the Applicant company, identified above, in accordance with section 127 of the Corporations Act.

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Signature of director

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Signature of director/secretary

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Full name of director (print)

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Full name of director/secretary (print)

**Date:**