



SUBMISSION BY COMMERCIAL RADIO AUSTRALIA
ACMA PROPOSAL TO VARY THE NOWRA LICENCE AREA PLAN
CONSULTATION PAPER DATED JANUARY 2020

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the ACMA's consultation paper setting out its proposal to vary the Nowra licence area plan (**Consultation Paper**).

The Consultation Paper outlines two key proposals:

1. variation of the 2ST commercial service at Nowra; and
2. a new commercial radio broadcasting service in the Nowra RA1 area.

CRA supports the 2ST variation but strongly opposes the proposal to allow a new commercial radio broadcasting service in the Nowra RA1 licence area.

Further detail is set out below.

1. Variation of the 2ST commercial service at Nowra

CRA supports the ACMA's proposal to:

- make spectrum available for a new FM transmitter for the 2ST commercial radio broadcasting service that is currently planned on the AM frequency 999 kHz within the Nowra RA1 licence area. This will permit the new FM transmitter to operate on 91.7 MHz from Cambewarra Lookout to serve the Nowra area;
- require cessation of the FM infill transmitter for 2ST that operates on 91.7 MHz from Huskisson prior to the commencement of the 91.7 MHz service from Cambewarra Lookout;
- vary the existing 2ST AM technical specification so that it ceases to have effect 28 days after a service commences using the 2ST FM signal;

- make spectrum available for an FM infill transmitter for the 2ST commercial radio broadcasting service from Saddleback Mountain, Kiama; and
- delete the 2ST technical specification for a planned but not implemented FM infill transmitter on 91.7 MHz from Kangaroo Valley.

CRA agrees that this proposal is an economic and efficient use of spectrum that is likely to promote the objects in section 3 of the *Broadcasting Services Act 1992* (BSA). In particular, it is likely to promote the availability of a diverse range of radio services in the licence area.

Accordingly, CRA supports the ACMA's proposal in relation to the 2ST broadcasting service.

2. Proposal for a new commercial radio broadcasting service in Nowra RA1

The commercial radio industry strongly opposes the proposal for a new commercial radio broadcasting service in the Nowra RA1 licence area.

(a) There are no technical solutions that comply with the ACMA's long-standing policy approach or the criteria listed in section 23 of the BSA

The technical approaches outlined in the Consultation Paper do not comply with either the ACMA's long standing policy approach or the criteria set out in section 23 of the BSA.

CRA notes that the long-standing policy approach adopted by the ACMA is that:

commercial licence areas represent fixed media markets. New commercial services should, therefore, have the same licence area as existing commercial services in that market. This approach was adopted as it was likely to provide service to all, not just to the more commercially lucrative parts of the licence area. It makes costs and benefits equivalent, or close to, for all licensees'.¹

CRA supports this approach as a fair one, which affords equal benefit to all licensees. It is vital that this approach is observed when the ACMA assesses the proposal for a third commercial radio service in Nowra.

Furthermore, the ACMA must have regard to the planning criteria set out in section 23 of the BSA. The criteria include:

The number of existing broadcasting services and the demand for new broadcasting services within the licence area ...; and

¹ Page 9, Consultation Paper.

Technical restraints relating to the delivery or reception of broadcasting services.

Neither Scenario 1 nor Scenario 2 satisfy either the ACMA's policy approach or section 23 of the BSA.

Scenario 1

In relation to Scenario 1 – a new commercial broadcasting service with transmission from Knights Hill - the Consultation Paper states that:

It is very unlikely that a suitable frequency can be identified for a new Knights Hill FM transmission due to the proximity to Syd, Wollongong and Goulburn. Any frequency that might be identified will be interference limited and probably require severe limitations in the transmitter power toward Sydney to limit interference to other services or potentially require an existing service to change frequencies – which is unlikely to be practicable In the Sydney basin.

A new service that adversely affects existing services – possibly even requiring them to change frequencies - should not be approved by the ACMA, as to do so would not show sufficient regard for the criteria in section 23 of the BSA nor of the overriding obligation to oversee the economic and efficient use of spectrum as set out in section 3 of the BSA.

It also seems likely that coverage of the entire RA1 Nowra area would not be possible under this scenario, thus making compliance with the ACMA's long standing policy of supporting 'fixed media markets' impossible.

Scenario 2

In relation to Scenario 2 – a new commercial broadcasting service with functionally equivalent coverage using the spectrum available after the proposed AM to FM conversion of the 2ST Nowra service - the Consultation Paper states that:

It is likely that suitable frequencies could be identified for a new service with FM transmissions at Cambewarra Lookout, Ulladulla and possibly Kiama. However, it is unlikely that a suitable frequency with an equivalent specification to 2ST FM repeater at Bowral could be identified. To replicate the functionally equivalent coverage for the Bowral area, spectrum could be identified. However, there are significant constraints with limitations on power towards Sydney from the existing Bowral site needed to manage interference.

In the absence of alternative solutions for the Bowral area, coverage could not be provided to several towns in the Wingecarribee Shire resulting in an overall service materially different to that provided by the proposed AM to FM converted 2ST service.

This scenario would be unacceptable to commercial radio broadcasters as well as inconsistent with the ACMA's long standing planning policy approach of providing coverage to the full licence area. The new service could not cover the Bowral area without causing interference and would cover a licence area that is materially different to Nowra RA1.

(b) Decision must not be based on comparison with other markets

CRA notes the ACMA's comment that there are:

11 licence areas within Australia with a smaller population and comparable characteristics, that have a third commercial broadcasting service.²

Without further information regarding those 11 licence areas, it is difficult for CRA to comment on the ways in which Nowra RA1 might be distinguished.

Furthermore, CRA strongly submits that a decision must not be based upon a comparison with other markets, all of which are unique and must be considered on their own terms.

Factors that differentiate markets include:

- **Geographic position.** Licence areas such as Nowra, placed between major cities such as Sydney and Canberra, are likely to have very different advertising markets and listener requirements to those of other licence areas.
- **Local economy.** Local factors significantly impact on local economies and affect the amount available for advertising. Nowra has suffered extensively in the recent bush fires, making it impossible to compare its economic health and revenue available for advertising with other areas of a similar size.
- **Nature of industry.** A simple analysis of socio-economic characteristics does not necessarily reflect an appetite for advertising. Different types of industry advertise to different degrees and react differently to economic stimuli.

CRA's firm view is that a comparison with other licence areas – particularly where those licence areas are undisclosed – is not a reliable means of assessing whether Nowra RA1 is adequately served.

² Page 9, Consultation.

(c) No need for a third service in Nowra RA1

Nowra is already well serviced by radio stations. There is no need or demand for new broadcasting services. The ACMA is obliged to have regard to this point under section 23 of the BSA.

Nowra currently benefits from two commercial radio services – *2ST* and *Power 94.9FM* – in the RA1 licence area. The RA2 Nowra licence area hosts *2UUU Shoalhaven* and *Community Radio Bay & Basin* services the Jervis Bay and St Georges Basin area. The ABC operates four Radio National AM transmitters in the RA1 licence area.

The Nowra RA1 service area extends from Kiama all along the Coast to south of Ulladulla and also includes the Southern Highlands around Bowral.

2ST has 3 main transmission sites to cover this area. The main transmission in AM covers Nowra and surrounds and is boosted by an FM translator on the Highlands and an FM translator in Ulladulla.

The total service area population for Nowra RA1 is 176,000, with Nowra being the most populated centre (approximately 35,000). There are more than 28 villages and towns that make up the total population and a significant number of the population are on the Highlands.

(d) No advertiser demand for a new commercial licence

There is no apparent advertiser demand for a new station.

On the contrary, fragmentation of audience tends to reduce the reach of advertising and would therefore be detrimental to the interests of advertisers.

Advertisers already have a broad range of advertising opportunities, including:

- 9 free to air television channels;
- 2 commercial radio broadcast services;
- community radio broadcast services;
- local print publications;
- outdoor advertising;
- Google;
- Facebook; and

- other online platforms.

A third commercial radio service will further fragment audience, making it more difficult and expensive for advertisers to reach listeners. This could drive advertisers away from radio as an advertising platform.

(e) A third service in Nowra RA1 will impact negatively on incumbent broadcasters

CRA submits that a third station will impact negatively on incumbent broadcasters.

Fragmentation of revenue

There is a finite amount of revenue to be shared between commercial broadcasters in the area. The introduction of further commercial services will not bring with it new advertising revenue.

Instead, the existing advertising revenue pool will be split between an increased number of analogue commercial radio stations. This is likely to result in a significant reduction in the revenue flowing to the incumbent commercial radio broadcasters. The incumbent broadcasters are almost certain to suffer as a result. Negative revenue impacts will result in the reduction of services to the local community, both on-air and off-air, through the reduction in personnel that is likely to result from a decrease in revenue.

The value of existing commercial radio licences may decrease, as a result of division of the available advertising revenue pool. This is in addition to fragmentation already occurring as a result of emerging online platforms.

Incumbent commercial radio stations already face challenges from dominant market players

Significant challenges are currently being faced by commercial radio broadcasters, particularly in regional areas.

Commercial radio broadcasters are trying to maintain their markets in an era of rapid technological change and increasing dominance by digital platforms, such as Facebook and Google.

The ACCC concluded in its Digital Platforms Inquiry that Google and Facebook both have substantial market power in a number of markets and ‘*this power is unlikely to erode in the short to medium term*’.³

³ Pages 8 and 9, ACCC Digital Platforms Inquiry Final Report.

In this environment, where existing commercial radio stations are struggling to compete with the dominance of digital platforms, it would be highly damaging to introduce further commercial radio broadcasting licences in Australia, particularly where no need for new commercial licences has been demonstrated.

Impact of bushfires

Nowra RA1 has been gravely affected by the recent bush fire season. The area relies heavily on tourism and the Christmas holiday period is relied upon as being the busiest time of the year.

The 2019/2020 holiday season was severely disrupted by fires, as tourists stayed away from the region during and after the catastrophic bush fires.

This has had a significant economic impact, not only on tourism, but on ancillary services, such as food and retail. Agriculture in the region was also severely affected and the number of lost homes will take a long time to repair and rebuild.

Radio stations in Nowra RA1 are operating in an uncertain economic environment, as businesses and residents rebuild their local community. This is likely negatively to impact revenue available for advertising.

The addition of a third licensee in Nowra RA1 will aggravate the economic and commercial uncertainty currently faced by incumbent licensees in the area. It is not the time for the ACMA to take such a step.

(f) A third station may reduce - rather than increase - diversity of content

The ACMA confirms in the Consultation Paper that 'any new service would be allocated by price-based auction'⁴. This means that the successful bidder is likely to be an existing radio network looking to extend its coverage. This is unlikely to result in more diverse or local content.

The current commercial stations in Nowra RA1 produce far more local content than is required under legislation:

- Power FM is live and local from 6am to 4pm Monday to Friday and from 10am to 2pm on weekends.

⁴ Consultation Paper, page 9.

- 2ST is live and local from 5.30am to 6pm Monday to Friday, 6am to 3pm Saturdays and 10am to 3pm on Sundays.
- During emergencies, Power FM and 2ST provide additional hours of live service to keep the local communities informed. During the recent bushfires, Power FM and 2ST continued to provide regular and timely information on the fires and their path. This coverage continued despite the evacuation of staff from their own homes and from the North Nowra radio studios.

A third radio licence may reduce diversity of content in the area by forcing the incumbent local commercial stations to cut costs as a result of the reduction of advertising revenue. This could result in a reduction of local content – which is relatively expensive to produce – to the detriment of the local community.

(g) There should be no market disruption while a range of reviews are underway

There should be no additional market disruption pending the outcome of the various reviews that are currently underway, addressing the future of radio, spectrum allocation and dominance of the digital platforms.

Digital Platforms Inquiry. Work is currently being undertaken following the Federal Government's response to the ACCC's final report on the inquiry into digital platforms.

Spectrum review. The Government is continuing its work on radiocommunications reform. CRA has recently been advised of the Government's new staged approach to modernising Australia's spectrum management framework. We understand that the first stage will be designed to remove unnecessary constraints in spectrum allocation and reallocation processes and that a draft amendment bill will be introduced into Parliament in 2020.

ACMA Future Delivery of Radio consultation. The ACMA is currently considering submissions to its consultation on the future delivery of radio, which looked at the way in which AM, FM, DAB+ and online currently interact and are expected to interact over the medium and long term.

These inquiries may result in significant reform regarding the allocation and management of spectrum, the licensing of broadcast services and the obligations imposed on digital platforms. While such significant reform is underway, no further analogue commercial radio licences should be issued.

(h) There should be no re-use of vacant frequencies following conversion to FM

CRA notes that the Scenario 2 outlined in the Consultation Paper incorporates the use of:

Spectrum available after the proposed AM to FM conversion of the 2ST Nowra service. This would consist of FM transmission from Camberwarra Lookout and supplementary FM repeaters at Ulladulla, Bowral and Kiama....⁵

The licensing of vacant spectrum to new market entrants, following AM to FM conversion, is likely damage the position of incumbent commercial radio broadcasters.

Once an AM to FM transition has occurred, CRA's view is that any unused spectrum should be left vacant, to allow the incumbent commercial radio broadcaster to consolidate its position using its new frequency in the market.

Existing broadcasters must be given the opportunity to transfer their listeners to new FM frequencies, without new services emerging on the old frequencies. Such new services, on frequencies long established and serviced by incumbent commercial broadcasters, are likely to divert and fragment the existing audiences of incumbent broadcasters.

This may discourage existing commercial radio AM broadcasters from transferring to FM frequencies, resulting in continuing lower quality reception for Australian audiences.

Conclusion

The technical scenarios outlined in the Consultation Paper do not appear to satisfy the requirements of the BSA – sections 3 and 23 – nor the ACMA's long standing policy approach toward planning new services.

Further, the allocation of spectrum to new entrants at a time where the commercial radio industry is navigating AM to FM conversion, competing with increasingly dominant digital platforms, recovering from the recent bush fires and awaiting the outcome of significant Government inquiries, would be highly detrimental to incumbent commercial radio broadcasters, who already comprehensively service the RA1 Nowra licence area. There is no demand or need for a new service, either from listeners or advertisers.

⁵ Page 10, Consultation Paper.

Accordingly, the commercial radio industry urges the ACMA to reject the application for a new commercial radio service in Nowra RA1.

Please contact Joan Warner, on 02 9281 6577, for clarification on any aspect of this submission.

Commercial Radio Australia

28 February 2020