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SUBMISSION BY 96FM

FM broadcasting services band in the Perth RA1 licence area

1. Introduction

Australian Radio Network Pty Ltd (**ARN**) is a leading radio network operating 12 commercial radio stations across Australia, including the KIIS network in Sydney, Melbourne, Brisbane, Adelaide and Perth; the Pure Gold network in Sydney, Melbourne, Adelaide and Brisbane; and Mix 106.3 and Hit 104.7 in Canberra (in joint venture with Southern Cross Austereo). In Perth, ARN owns 96FM and has a 50% joint venture interest in Nova 93.7FM (in joint venture with Nova Entertainment).

Thank you for the opportunity to comment on the ACMA's consultation on proposed FM replanning options in Perth, as outlined in the options paper *FM broadcasting services band in the Perth RA1 licence area (Options Paper)*. This submission is made on behalf of 96FM, a leading commercial radio station in Perth. However, as ARN owns one and a half commercial radio broadcasting licences servicing the Perth RA1 licence area, it has a vital interest in any proposed changes that may have an impact upon the Perth service area.

ARN understands that the proposals in the Options Paper relate to the Perth RA1 licence area only. Different considerations apply to other licence areas, including in relation to the competitive landscape and spectrum availability. While some of the observations made in this submission may apply more generally, ARN's position as set out in this submission relates exclusively to the Perth

metropolitan market and ARN expressly reserves its comments in relation to any subsequent consultations that may relate to the replanning of other commercial radio licence areas.

2. Executive Summary

ARN opposes the issue of any new commercial radio licences in the Perth RA1 licence area. The commercial radio industry has long supported a moratorium on any new licences given the delicate competitive balance in the radio sector. The sector has recently undergone a period of extreme uncertainty owing to the COVID-19 pandemic and prior to this the challenges of drought and bushfires across Australia. These unexpected adverse events have significantly impacted domestic economic activity with a corresponding decline in advertising revenues for commercial broadcasters. These events have affected the Perth RA1 licence area to a similar degree, with the timing of a full economic recovery from these events unclear at this time. The Perth market cannot sustain any new commercial radio operators and the issue of new licences would cause significant and unwarranted disruption to current market participants who are already facing significant commercial pressures.

ARN does not support any form of FM conversion for the commercial AM operators 6IX and 6PR in the Perth market. Radiofrequency spectrum has a market-based value. Similarly, AM and FM licences have differentiating radiofrequency and signal propagation characteristics which result in differentials in their respective values. FM technology provides line of sight signal propagation¹, superior audio quality and immunity from electrical interference.² The AM frequency is more susceptible to interference from power lines, electric lighting and electric motors which affects its coverage. Because of these known coverage deficiencies, the existing commercial AM operators in Perth have previously already availed themselves of technical solutions through additional FM translators,³ or power upgrades.⁴

Existing commercial AM operators acquired their AM licences at a market rate reflective of their coverage deficiencies and the underlying market value of the spectrum associated with AM licences compared to FM licences. Previous market valuations of AM and FM spectrum show that AM licences are less valuable, with FM licences being acquired for hundred million dollar sums⁵ and historical AM to FM conversions attracting a significant conversion fee.⁶ The most recent acquisition of an AM licence by

¹ *The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017, p. 6

² *The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017, p. 2

³ In the case of 6IX, two additional FM translators were granted in Joondalup and Rockingham to extend their coverage.

⁴ In the case of 6PR, LAP changes permitted an upgrade from 2 kilowatts to 10 kilowatts to extend their signal.

⁵ DMG radio paid up to \$155 million for its FM licences in the early 2000's.

⁶ An amendment to the *Radio Licences Fees Act 1964* (Cth) in the late 1980's made it necessary for those with AM licences wishing to convert their licences to FM to bid by tender for an FM licence. Section 6C(1) of the *Radio Licence Fees Act 1964* (Cth) provided that the fee payable in respect of conversion from AM to FM pursuant to a conversion application was payable "upon the conversion".

SEN in 2020 was for a considerably smaller sum of \$11.2 million, despite it being for a commercial AM licence in the Sydney RA1 licence area (Australia's largest radio advertising market).⁷ In these circumstances, it would be deeply inequitable to convert the commercial AM services in the Perth RA1 area and to essentially award them with a significantly more valuable FM licence without the imposition of any conversion fee.

The options being considered by the ACMA raise complex competition issues with uncertain consequences. The emergence of Google and Facebook and other online platforms have already created an enormous competitive imbalance for the commercial radio sector, including through the growing availability of new technologies such as voice activated devices and smart speakers which have eroded audiences from traditional radio. The proliferation of multinational streaming and aggregator services such as Spotify and the dominance of social media platforms such as YouTube, mean that there is increasingly intense competition for time and attention, with the large digital platforms amassing a disproportionate share of advertising revenue from the Australian media, without making any material investment in local content or jobs.

ARN urges the ACMA to consider the broader commercial impacts on the incumbent FM broadcasters in Perth in making its decision on the options outlined in its consultation paper. These are matters of critical importance in ensuring that there is a sustainable and diverse market in Perth that meets the needs of the general public, and accords with the matters that the ACMA is required to have regard to under the objects of the *Broadcasting Services Act 1992 (BSA)* and its planning principles.⁸ The commercial radio sector plays an essential role in the delivery of news and emergency services information as well as community engagement and cultural activity focusing specifically on the local area. The introduction of new services threatens the continuation of these valuable commercial radio services that are critical to maintaining localism against an increasing trend for syndicated, nationally focussed media content that does not meet the unique needs of the Perth community.

In ARN's submission, replanning of the FM spectrum in a competitive market should only be warranted where there is an overwhelming need and where there is little to no transition costs and competitive impact on existing market participants. There is no evidence of a need for additional commercial FM services in the Perth RA1 area. The existing commercial FM services available in the Perth RA1 area are supplemented by a diverse range of community and narrowcast broadcasters as well as a number of DAB+ stations which provide a broad range of content that already adequately services the area. There has been no significant change in market circumstances that warrants the addition of new FM services.

There is a finite amount of advertising revenue to be shared between commercial broadcasters in the Perth area. Converting the AM operators, and in particular the commercial AM operators 6IX and 6PR to

⁷ SEN reported to have paid \$11.2 million for 2CH 1170AM.

⁸ See *The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017.

the FM bands, will give an unfair commercial advantage by granting a significant signal and quality uplift, and by creating new audience opportunities that would not exist otherwise. This is likely to encourage at least one of the converted services to target existing audiences of one or more of the incumbent commercial operators with programming that substantially imitates and overlaps with that which is already available. This has the potential to result in market distortions and a material reduction in the allocation of revenue to be shared amongst the existing market participants in Perth.⁹

Accordingly, ARN considers that all of the options set out in the Options Paper are unfeasible and represent a severe and unwarranted impost on existing operators in Perth. In ARN's view, no compelling reasons have been identified for the allocation of additional commercial FM licences and there would be significant transition costs associated with any replanning of the FM bands in Perth. The conversion of the commercial AM broadcasters would have far-reaching and potentially devastating effects on the existing Perth market participants' ability to maintain their market presence at a time when commercial revenues are already under significant pressures.

3. ARN supports a moratorium on the issue of new commercial radio licences during recent period of economic disruption.

Over the recent period of significant economic disruption due to drought, bushfires and most recently the COVID-19 pandemic, the commercial radio industry has already faced and continues to face a significant number of challenges. ARN does not agree with the issuance of any new commercial radio licences during the current period of severe economic and industry disruption.

These economic challenges have exacerbated existing difficulties that have arisen from well documented changes to the media landscape, including audience fragmentation, rapid technological change and digital convergence. This has included significant competition from large multinational digital platforms for share and attention that do not themselves invest in public interest journalism or Australian or local content on commercial radio.¹⁰ These longstanding economic challenges to the media operating environment have been exacerbated by recent events including the COVID-19 pandemic, and bushfires and drought which have drastically affected Australian businesses and advertisers with a necessary flow on effect on advertising revenues for commercial broadcasters.

On 24 February 2021, ARN's parent company HT&E Limited released financial results for end of financial year 31 December 2020. In that release HT&E announced ARN's radio revenue was down 21%, with EBITDA was down 37% for the same period.¹¹ ARN's results were impacted by a commercial

⁹ See section 5 below.

¹⁰ These matters have not been ameliorated by the Government's News Media Code for the majority of commercial radio broadcasters, with whom Google and Facebook have yet to negotiate any news content arrangements or remuneration.

¹¹ HT&E, Full Year Results 2020 presentation, 24th February 2021 at <https://investorcentre.htande.com.au/static-files/b8bb36ef-c936-49b0-a2e9-48acf9ce052a>

metropolitan market that declined by 25.2% in 2020 across Australia with the Perth market declining by 21.1%.¹²

There has not been a complete economic recovery in radio advertising revenues in Perth from the impacts of COVID-19. The introduction of additional commercial broadcasters in this context (or FM conversion) would undoubtedly increase pressure on existing radio licensees servicing the Perth RA1 licence area. The commercial radio industry in Perth is in a delicate financial state and is not in a position to absorb any additional entrants to the market.

4. The objects and planning principles in the BSA require careful balancing of technical and public policy objectives.

ARN urges the ACMA to avoid an approach that only considers the technical or engineering aspects of the options canvassed in the Options Paper, and to consider the broader public policy objectives dictated by the BSA. In ARN's view, a narrow focus on an engineering solution to address the poor AM conductivity issues raised by the ABC and others, would overlook critical matters that it is required to have regard to as part of its spectrum planning functions.

In performing its planning functions, the ACMA is required to "promote" the objects of the BSA as specified in section 3, "including the economic and efficient use of the radiofrequency spectrum" and is to have regard to certain matters.¹³ Those matters are set out in section 23 of the BSA and include a broad range of factors such as demographics, social and economic characteristics within the licence area. Only one of the factors relates to "technical restraints relating to the delivery or reception of broadcasting services" and it must be balanced against the other section 23 criteria, including "the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within the neighbouring licence areas and within Australia generally" as well as "such other matters as the ACMA considers relevant".

In ARN's submission, while the fact of technical restraints on the AM operators' delivery or reception of broadcasting services is a factor to be considered, it is not the determinative or only factor to be taken into account. Other countervailing factors must be considered by the ACMA in consonance with any technical or engineering issues, including the overall impact of any planning decisions on existing services and market dynamics.

Relevantly, the exposure draft of the Broadcasting Services Bill (**Exposure Draft Bill**) contained a clause which was not included in the BSA, requiring the Australian Broadcasting Authority (**ABA**) "to ensure that maximum use is made of the broadcasting services bands". The explanatory papers to the Exposure Draft Bill indicated that the "maximum use" directive was intended to promote the introduction of greater

¹² CRA/Deloitte metropolitan radio market survey 2020

¹³ Section 23 BSA

competition into the market but was later omitted. As such, the planning process set out in the Exposure Draft Bill operated within a policy framework of maximising open competition and facilitating the entry of new services into the market but the process actually enacted in the BSA did not. ARN considers that this is a relevant omission and urges the ACMA to refrain from giving too much weight to engineering solutions that seek “maximum use” at the expense of significant disruption to existing market dynamics.

In a similar way, the objects of the BSA require careful weighting of multiple disparate factors as set out in section 3 of the BSA. The objects of the BSA include:

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;*
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;*
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity;*
- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance;*
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and*
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.*

The Explanatory Memorandum for the *Broadcasting Services Bill 1992* explicitly recognised that there were tensions between the various objects of the Act,¹⁴ and stated that it was intended that the ABA, in the exercise of its regulatory powers, should have regard to the “competing objectives” drawing on its ability to assess community views and needs and to monitor developments in the broadcasting industry.¹⁵

It is notable that within the current objects of the BSA, the promotion of availability of services to audience and the development of a competitive broadcasting industry, might reflect an emphasis on the introduction of new services. But, weighted against this are the objects of promoting high quality and innovative programming, and a diverse range of services, as to which economic arguments can be made for limiting the introduction of new services, depending on the individual market and the existing services. The objects set out in sections 3(ea) and 3(g) which relate to the encouragement and promotion of

¹⁴ With the exception of subsection (ea) above, the extracted object clauses of the BSA were in existence at the inception of the 1992 Act.

¹⁵ Broadcasting Services Bill 1992, Explanatory Memorandum, Clause 3 – Objects of this Act.

programs “about matters of local significance”, and the need for “appropriate coverage of matters of local significance” are also in conflict with the expansion of services in a market, if such expansion and the greater spread of market revenues across services leads to, for example, an increase in centralised networked programming and a reduction in local coverage.

ARN appreciates that the requirement that the ACMA promote the objects of the Act in performing its planning functions under Part 3 of the BSA means that the ACMA is charged with the difficult task of promoting potentially conflicting objects, without clear or directive legislative indicators as to the principle objects which were intended to govern the planning function. However, in relation to the directive in section 23 of the BSA to promote the “economic and efficient use of the radiofrequency spectrum”, it is neither an economic or efficient use of the spectrum to plan broadcasting services in an overcrowded market which are likely to induce one or more broadcasters to dramatically decrease their local services.

Ultimately, the elevation of certain factors over others may conflict with the first (and potentially most important) objective of the ACMA, being to “promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information”. If the net result of planning new services or new FM entry into a particular market would be that another service would fail, it is very difficult to argue that this is in keeping with the objects of the BSA.

5. Revenue in the Perth RA1 market is finite and in decline.

In general terms, the revenue in any licence area is finite – with any new entry resulting in reapportionment of revenue rather than revenue growth. In licence areas where there has been the issue of new entrants, the revenue “pie” has remained static, but with a commensurate reduction amongst the incumbent players to make room for the new entrants.¹⁶

Given there is a finite amount of advertising revenue to be shared between commercial broadcasters in the Perth licence area, the introduction of further FM commercial radio services (including the conversion of existing AM operators to FM) will necessarily result in a reallocation of revenue to be shared amongst existing market participants and has the potential to result in *material* reductions to incumbent broadcasters’ earnings. The reinvestment of advertising revenue is critical to commercial broadcasters, and is necessary to undertake costly program production, fund talent and provide valuable local programming. Any material reduction in advertising revenue is likely to compromise ARN’s ability to resource its Perth stations at the same level, and to continue to service the local community with valued on-air content and community engagement activities. This jeopardises the

¹⁶ See comments made by Les Heil in *AM/FM Conversion*, Communications Law bulletin 1990 at [28.pdf \(austlii.edu.au\)](#): “this increase in FM popularity (and profitability) is not primarily due to an increase in the total radio audience attracted by the new services. The radio sector’s audience while large has not increased dramatically. Revenue too is generally static, with recent and estimated future growth, at best, equalling inflation. The growth in FM’s audience and revenue has been achieved principally at the expense of the existing commercial AM licensees”.

localism model that remains highly relevant to the Perth community - threatening the valuable local content provided by incumbent commercial operators who already face significant difficulties in maintaining existing levels of service against growing financial pressures for syndication models in the Australian media.

This is exacerbated by data showing that revenue in the Perth market been in decline over the recent period and cannot support further market entry or destabilisation.

Table 1: Perth Market Size¹⁷

	2020	2019	2018	2017	2016	2015
Market Size	75,067	95,181	105,854	104,902	106,713	103,684
Market Growth	(21.1%)	(10.1%)	0.9%	(1.7%)	2.9%	
CAGR 2015-2019 Growth	(2.1%)					
CAGR 2015-2020 Growth	(6.3%)					

Population growth has also remained static, with limited population grown in the last 5 years.

Table 2: Perth Population Size¹⁸

	2020	2019	2018	2017	2016	2015
Perth Population	2,149,360	2,087,555	2,058,568	2,037,902	1,943,858	2,039,200
Population Growth	3.0%	1.4%	1.0%	4.8%	-4.7%	
CAGR 2015-2019 Growth	0.6%					
CAGR 2015-2020 Growth	1.1%					

Given the market in Perth is not in a significant growth phase (either from a revenue or a population perspective), it is difficult to see how the Perth radio market can sustain any new entrants into the market, or accommodate additional competition between existing FM broadcasters who already compete heavily for listenership and revenue.

Current FM operators in Perth have significant capital and transmission costs and overheads. Any further destabilisation of existing revenues has the potential to make the current licences held by the incumbent FM operators less profitable, requiring further rationalisation which would inevitably threaten jobs.

The Perth RA1 area remains highly competitive. The commercial radio industry and its advertisers currently rely on GFK radio surveys that are conducted at defined periods (8 surveys each year). There is intense competition between commercial radio stations for share of listenership according to each

¹⁷ CRA/Deloitte metropolitan radio market survey 2015-2020

¹⁸ ABS Census data, 2015-2020

scheduled GFK survey as the survey results enable the stations to market their survey ratings to advertisers as an indication of the efficacy of their advertising inventory.

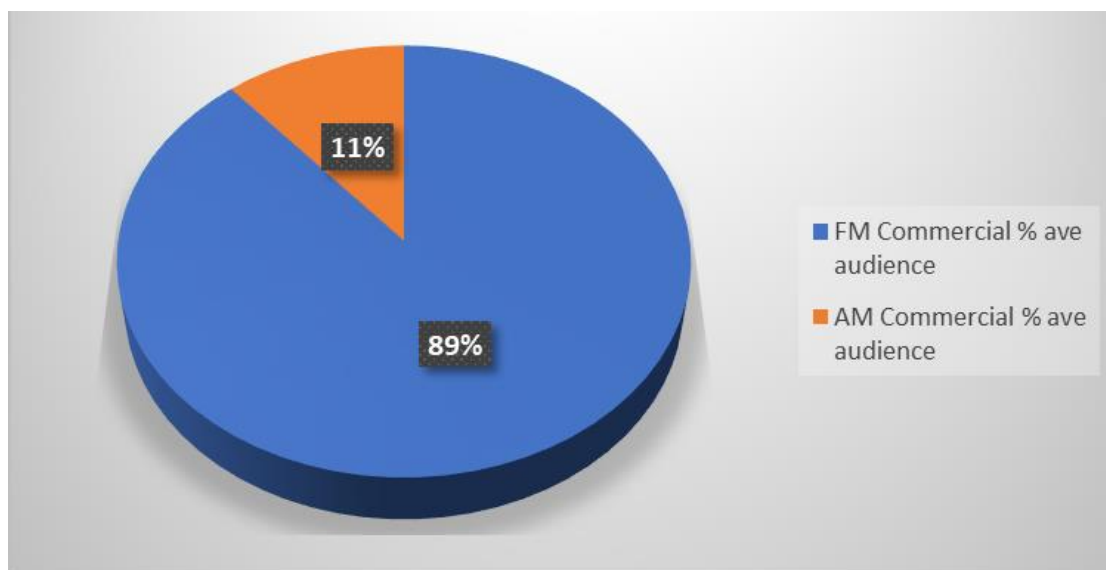
Commercial returns for radio operators are driven by survey results with average audience providing the trading currency. Declines in audience share necessarily translate to reductions in revenue. This dynamic is exacerbated by the fact that the vast majority of advertiser briefs are focused on the audience less than 55 years of age, providing the highest volume of briefs and activity. The following table and chart show the volumes of average audience by station.

Table 3: Audience by station, Perth, GFK Survey 3 2021, 1000's¹⁹

Station	Perth Survey 3	
	M-S 5:30 to mn	
	Survey 3	
	<55	>55
MIX94.5	19	9
92.9 MMM	16	2
96FM	17	8
NOVA937	27	3
FM Commercial Total	79	22
6IX	2	7
6PR	8	14
AM Commercial Total	10	21
ABC Per	4	13
6RN	1	3
ABC News	-1	3
6JJJ	19	1
ABC Classic	2	5
Other Total	25	25
Total	114	68

¹⁹ GFK Survey 3, 2021

Infographic 1: Average audience AM v FM, Perth < 55 age²⁰



Relevantly, **89%** of the commercial audience aged 55 and under is core to monetisation of the existing FM networks, with the remaining 11% on the AM networks. This revenue split between AM and FM revenues demonstrates that the FM licences are far more valuable than the AM licences, with FM licensees having a greater percentage of listeners and as a corollary, access to greater earning capacity and commercial returns.

The radio industry is already highly competitive. In particular, the impact of digital convergence, digital platforms and fragmenting audiences has created enormous pressures for the radio industry that make for an already precarious competitive dynamic. The influence of the large digital platforms has been well documented, with Google and Facebook competing heavily for time and attention, and amassing a disproportionate share of advertising revenue from the Australian media industry, without any material investment in Australian content or jobs, and in many cases avoiding the payment of Australian company taxes. The emergence of Google and Facebook as key market players has already created an enormous competitive imbalance. This has been further eroded by growing market share incursions by Spotify and other multinational streaming and aggregator services. Any further weakening of traditional players will further strengthen their position and erode already dwindling domestic media revenues by taking advertising revenue and reinvestment offshore.

The introduction of further competitive pressures into the Perth market are likely to have a significantly destabilising effect – exacerbating an already delicate competitive balance. At present, 6IX and 6PR have respective audience shares of 9,000 and 22,000, with audience under the age of 55 adjusting to 2,000 and 8,000 respectively. Allowing them to convert to FM will improve their services and is likely to result

²⁰ GFK Survey 3, 2021

in them converting listeners from existing FM broadcasters and exacerbate audience declines. This has an inverse impact – with each listener moving to the new FM stations representing not only a new listener for the new FM operator, but the loss of a listener for the incumbent operator.

Given the high level of competition, converting 6IX and 6PR to the FM bands provides an unfair commercial advantage by granting a significant signal and quality uplift, and creating new audience opportunities that would not exist otherwise. In a market where revenue is static, or in decline (as it is in Perth), this has the inevitable effect of reducing the allocation of revenue to be shared amongst the existing market participants.

6. ARN opposes the conversion of commercial AM licensees to the FM bands in Perth.

a) *Complex and uncertain effects of conversion on competitive landscape*

In ARN's opinion, the options being considered by the ACMA raise complex competition issues with uncertain consequences and the ACMA must apply a cautious approach where there may be unintended negative effects. This is particularly so in the context of the broad-ranging BSA objects discussed earlier.

The AM bands have traditionally been targeted to an older audience. The FM bands are a younger audience, that cohabits with the critical grocery buyer demographic. Converting the existing AM commercial operators to the FM bands will give them access to a new, younger audience in the highly desirable 25 to 54 demographic, and will create incentives for format changes to chase a new, more profitable audience.

Accordingly, the allocation of additional FM radio licences in a competitive Perth market could lead to market distortions by the installation of new and conflicting objectives for the converted licence holders. FM conversion for the commercial operators 6IX and 6PR would negatively impact on the established market in the Perth RA1 licence area by creating distortions in the market, incentivising the AM providers to realign their format to new audiences (who are already serviced by existing FM operators) to seek a greater share of advertising revenue and potentially leaving older audiences with less services.

ARN notes the ACMA's comments in its 2017 guidance *The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services* (**ACMA Guidance**):

The ACMA will consider requests for variations to licence area plans (LAPs) to enable AM–FM conversion of existing AM commercial radio broadcasting services when the request is from licensees in:

- > *solus regional licence areas*
- > **other licence areas where the ACMA considers that the circumstances do not put existing FM commercial radio broadcasting licensees at a competitive disadvantage**

> where suitable spectrum is available.

6IX is currently a music format station. It would be quite possible that conversion from the AM to FM bands would incentivise 6IX to shift its target programming mix to suit an FM audience as it may wish to tailor its offering to a broader audience base. This would have the dual impacts of reconfiguring the competitive dynamic between the existing FM providers and reducing the diversity of available services for traditional AM audiences. This could lead to a restructure of the competitive landscape in the Perth market, to the detriment of the incumbent FM commercial operators and raises the issue of competitive disadvantage set out in the ACMA Guidance.

b) Inconsistencies with ACMA's AM-FM conversion planning principles

The ACMA has previously indicated that its policy is to limit conversions to solus licence areas:

"By limiting conversions to solus licence areas, the ACMA's main historical objection to conversion – the perceived equity issues – is addressed."

The ACMA has also stated that this limitation assists in the furtherance of the objectives of the BSA:

*"The ACMA considers that confining conversions to licence areas where issues of competition and equity as (mentioned above) are unlikely to arise, will further the object of the Act ... to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs ..."*²¹

ARN agrees with this directive and the underlying policy. Replanning of the FM spectrum in a competitive market such as Perth should only be warranted where there is an overwhelming need and where there is little competitive impact on existing market participants.

While ARN understands that one of the ACMA's planning priorities is to allocate spectrum to higher value uses, this must be balanced against the interests of incumbent spectrum users. AM to FM conversion in the Perth licence area will have a deleterious effect on competition, and are counter to the policy objective of facilitating the development of a broadcasting industry that is efficient, competitive and responsive to audience needs.

c) No need for new FM licensees in the Perth RA1 market

The Perth licence area currently sustains a vibrant, dynamic FM offering. At present, the Perth FM market comprises four established commercial radio operators:

²¹ The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services, April 2017, p. 2

- 96FM wholly owned by ARN - 96FM is Perth's first FM station, being established in 1980 and recently celebrating 40 years of "Real Music", with Perth's original "no repeat guarantee" every day. It features the Perth-centric "The Bunch" each weekday morning, featuring Perth hosts Dean Clairs and Lisa Shaw. The 96FM website notes that "96FM is what living in Perth is all about".²²
- Nova 93.7 joint venture between Nova Entertainment and ARN - Part of the Nova network and established in the Perth Market on 5 December 2002 as an FM station, it is a leading hits-based music station. Its Perth breakfast program "Nathan, Nat & Shaun" features Nathan Morris, Natalie Locke and Shaun McManus who "talk all things Perth".²³
- 92.9FM Triple M Perth owned by Southern Cross Austereo – This station is part of the Triple M network that "plays real rock songs just for the city of Perth". It is broadcast to Perth from studios in Subiaco, Perth and features the breakfast program "Basil, Xav and Jenna" anchored by Perth's Lord Mayor Basil Zempilas, Xavior Ellis and Jenna Clarke and commenced on 1 December 2020 (taking over from Hit 92.9). The station was converted from AM in 1990, from the AM station 6PM.
- MIX 94.5 also owned by Southern Cross Austereo - Part of the Southern Cross Austereo's Hit Network and featuring breakfast program "Pete, Matt & Kymba" being Pete Curulli, Matt Dyktynski and Kymba Cahill who are said to be "Everything Perth!".²⁴ The station was converted from AM in 1991 from the AM station 6KY, and is also broadcast to Perth from studios in Subiaco.

In addition to the above FM operators, there are 5 ABC services, a further 12 community radio offerings²⁵ and another 7 open narrowcasting licensees²⁶ with a total of 28 services that cover the field to provide a diverse range of content. A number of public broadcasters and community radio licensees already provide very similar program format offerings, including for example 98five Sonshine FM, Triple J, Northern Suburbs Radio 89.7FM, and RTRFM 92.1, making for a market that is already considerably saturated and meeting an extremely diverse range of community needs. There are a further 29 DAB+ only stations in Perth that supplement the existing terrestrial radio stations including stations such as Buddha Hits, SBS Chill, ABC Jazz, ABC Country, Urban Hits, SoundCloud Radio, and Smoothfm as well as already existing terrestrial station simulcasts on DAB+.²⁷

In this context, there is no compelling need for additional commercial FM services in the Perth RA1 area. The existing commercial FM services available in the Perth RA1 area are operated by a diverse

²² See ARN website at <https://www.arn.com.au/brands/kiis-network/96fm/>

²³ See Nova website at <https://www.novafm.com.au/perth/>

²⁴ See Hit website at <https://www.hit.com.au/shows/pete-matt-kymba>

²⁵ ACMA, Register of Broadcasters by Region and State retrieved on 10 June 2021 at <https://www.acma.gov.au/sites/default/files/2019-11/Broadcasters%20by%20Region%20and%20State.PDF>

²⁶ ACMA, Register of Broadcasters by Region and State retrieved on 10 June 2021 at <https://www.acma.gov.au/sites/default/files/2019-11/Broadcasters%20by%20Region%20and%20State.PDF>

²⁷ See <https://www.digitalradioplus.com.au/listen.aspx?region=Perth>

range of commercial, community and narrowcast broadcasters and provide a broad range of content which already adequately services the area. There has been no significant change in market circumstances that warrants the addition of new FM services. Nor are there any absences in the market that require new entry.

If one of the major policy objectives of the BSA is to increase diversity of services, it is dubious whether the conversion of AM licensees would do anything to contribute to program diversity in Perth. Instead, it is quite likely that at least one of the converted services would target the existing audiences of one or more of the incumbent commercial operators with programming that substantially imitates and overlaps with that which is already available.

d) AM operators already able to overcome AM deficiencies via alternate delivery mechanisms

The radio sector is fortunate to have multiple delivery platforms for its program content. At present, commercial radio broadcasters have access to DAB+ spectrum to enable the digital simulcast of their programs. In addition, all stations have the capacity to stream their stations via internet protocol delivery on their respective websites, as well as a number of applications such as the industry application RadioApp and other third party aggregators such as TuneIn.

Each of the existing AM operators in Perth have these delivery mechanisms at their disposal to overcome the deficiencies in the AM signal. There is already significant distribution outside of the AM band. All of the ABC AM stations as well as 6IX and 6PR are available on DAB+. 6IX and 6PR have “listen live” and “listen” functionality on their respective station websites. The ABC’s Listen app is an extremely popular application on the iTunes App Store. According to the ABC’s *Five Year Plan 2020 - 2025*, one of its strategic pillars is to “improve the visibility and accessibility of high-quality ABC news and information through its own on-demand products, ABC iview, ABC Listen and ABC News Digital”.

While ARN accepts that the AM signal in Perth is deteriorative, all parties have multiple alternatives in order to reach its audience – including newer alternatives that are more technologically advanced compared with terrestrial AM or FM delivery being legacy technology developed some time ago. Arguments that the AM signal is too poor to reach its audience must be counterbalanced by the availability of alternate pathways to reach that audience that AM operators could invest in (at their own cost) rather than converting to FM (at the cost of incumbent FM providers). DAB+ already presents an alternative solution to the conversion and is current technology that is presently available to the AM operators. Similarly, internet protocol delivery via the “listen live” and other equivalent functions are readily available to the AM operators and their listeners alike. No conversion to FM should be required when the AM operators can convert directly to DAB+ and already have IP-delivery at their fingertips.

e) AM operators already able to overcome AM deficiencies via technical solutions granted in 2004

ARN is also aware that changes to the Perth Licence Area Plan (**LAP**) in 2004 provided technological solutions to the existing commercial AM operators to boost their AM signals either via a transmitter power upgrade, or additional FM translators. 6PR chose to upgrade its signal from 2 kilowatts to 10 kilowatts, while 6IX chose to utilise two new FM translators in Joondalup and Rockingham in order to take the existing signal further into the northern and southern areas of Perth. These FM translators give a significant signal uplift, reaching a significant proportion of the Perth population. Accordingly, the existing AM operators have already availed themselves of technical solutions to overcome AM signal deficiency and no further technological solutions should be granted.

f) Inequitable grant of a FM licence to AM operators for \$0

The Department of Communications has previously indicated its preference for employing market-based mechanisms including auctions and trading, to ensure the allocation of spectrum to “to its highest use value (both economic and social)”.²⁸ Spectrum licences, like any valuable asset, have a corresponding market-based value that takes into account its economic and social value. Previous market-based valuations of AM and FM spectrum licences demonstrate that the FM licence is a far more valuable commodity than its AM counterpart. The following table shows the acquisition price for previous FM licence auctions between 2000 and 2005.

Table 4: Acquisition prices for FM licences by DMG 2000 to 2005

Amount spent on Metro Licences Auctions	Total (\$m)	Round (\$m)	
		2	1
Sydney	261	106	155
Melbourne	122	52	70
Brisbane	80	80	
Adelaide	24		24
	487	238	249
Brisbane	68*		34
Perth	24*		12
	533	238	295

*DMG acquiring a 50% share

In contrast, the most recent trading activity in relation to an AM radio licence demonstrates that its current value is far lower, with SEN acquiring 2CH in mid-2020 for \$11.2 million.²⁹

²⁸ Dept of Comms, Consultation Paper “Spectrum Review: Potential Reform Directions” 2014.

²⁹ See <https://radioinfo.com.au/news/sen-expands-sydney-and-purchases-2ch-11-million>

Previous AM to FM conversions have attracted a conversion fee to reflect the revaluation of the converted licence and the increased quality uplift, and profit potential associated with a FM licence. In 1988, Gareth Evans, the then Minister for Transport and Communications, unveiled the Government's plan for the development of metropolitan radio services under the guise of the National Metropolitan Radio Plan which allowed existing AM licensees to lodge a sealed bid with the Department of Transport and Communication's Tender Board for the right to convert. An amendment to the *Licence Fees Act 1964* (Cth) created an obligation on the part of the relevant licensees to pay a fee upon conversion from AM to FM.³⁰

As a result of the resultant bidding to win the right to convert, a number of successful licensees paid enormous sums to convert. For example, 3KZ (later 3KKZ) bid \$31.5 million to convert its AM licence to the FM bands.³¹ In 1993, ARN's existing WSFM licence was converted from AM to FM for a bid of \$8.5 million. Taking into account inflation, this is the equivalent of approximately \$16.2 million in current terms.³² In 1994, ARN's existing KIIS licence was converted for a bid of \$11.5 million. In current day terms, this is the equivalent of \$21.5 million.³³

In 2013, the television networks vacated their analogue television channels and restacked the spectrum band for release to mobile operators. The Government auctioned 60 megahertz of spectrum in the broadcasting services band along with 140 megahertz in a less valuable band and secured \$2 billion from bidders TPG, Optus and Telstra for a 15 year spectrum lease.

Given the high economic value of FM spectrum, ARN opposes the allocation of FM licences to the AM licensees in Perth in circumstances where FM licences are highly valuable and have been acquired by incumbent licensees at great cost.

This is consistent with the ACMA's previous comments:

*"These equity considerations particularly arise in competitive markets where one competitor may seek an over-the-counter conversion, while another licensee has already paid the FM 'premium' at auction. For example, in June 2000, an FM radio licence in Sydney was allocated after being auctioned for \$155 million."*³⁴

³⁰ That fee was determined by a formula $B - V$ (where B is the amount of the bid made by the successful licensee and V is the value of the licensee's existing transmission facilities. Bids were required to be a single figure exceeding the value of the licensee's AM transmission facilities which were to be handed over to the Government.

³¹ *AM/FM Conversion*, Communications Law bulletin 1990 at [28.pdf \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/communications/bulletin/1990/28.pdf)

³² RBA Inflation Calculator, accessed at [Inflation Calculator | RBA](https://www.rba.gov.au/calculator/)

³³ RBA Inflation Calculator, accessed at [Inflation Calculator | RBA](https://www.rba.gov.au/calculator/)

³⁴ *The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017, p. 2

This inequity is highlighted by the fact that radio broadcasting licensees were not barred from bidding for FM licences at the time, subject to any ownership and control limitations such as those in Part 5 of the BSA. The ACMA has accepted the significance of these equity issues in its Guidance Paper:³⁵

Situations that may give rise to equity issues include where:

- > **a competing licensee has already paid a premium for FM**
- > *there is a competing AM licensee that is ineligible for conversion because its licence area is not a single licensee market.*

As a general rule, the ACMA assumes that the licensees in those circumstances are in contention for audiences and are unlikely to be eligible for an AM–FM conversion.

g) *Insufficient countervailing benefit to justify transition costs for industry*

The Options Paper flags that there could be some engineering costs involved in the replanning of the FM bands:

“We note that each of the options requires changes (of varying degrees) to transmission towers or frequencies, which are likely to incur some costs for affected broadcasters.”³⁶

The migration of frequencies is no small matter for any radio service. As well as the costs of retuning or replacing transmission equipment, there may be costs for informing listeners of the new frequency and remaking promotional material.

In 2013, the television networks vacated their analogue channels with a subsequent restacking of their frequencies. This incurred substantial obligations and associated costs to broadcasters. In ARN’s opinion, there is insufficient countervailing benefit to justify transition costs for the industry.

The ACMA has itself accepted that:

However, for AM-FM conversions, the ACMA considers that the benefits of conversion for the converting licensee and the audience are insufficient to justify imposing costs on other licensees.³⁷

A number of the options set out in the Options Paper could involve spectrum restack and redesignation of frequencies in the Perth RA1 licence area, which would incur additional capital and transitional costs, and unwarranted disruption to existing services. It is also unclear whether DAB+ spectrum would be made

³⁵ *The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017, p. 3

³⁶ ACMA Options Paper, p. 2

³⁷ *The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*, April 2017, p. 3

available to any new FM licence holder, requiring a new multiplex in Perth RA1 given the existing MUXs are at capacity. In ARN's opinion, concerns regarding the poor AM reception in the Perth area do not outweigh or justify imposing this significant cost burden on existing operators.

7. ARN supports status quo as the only rational option.

ARN does not support any of the options set out in the Options Paper and urges the ACMA to consider the status quo as the only rational option at this time. The overall radio market is in an extremely delicate position, having recently suffered significant losses because of the COVID-19 pandemic. This is not an appropriate time to be making spectrum re-planning decisions which can create further disruption. ARN has serious concerns about departures from the ACMA's Guidance Paper on AM-FM conversion, and the lack of certainty for incumbent broadcasters. Sudden changes in spectrum replanning and in planning policy in the Perth market significantly undermines certainty for the incumbent broadcasters.

Each of the options set out in the Options Paper are unfeasible and represent a severe and unwarranted impost on existing operators. The options cannot be implemented in circumstances where the Perth market cannot accommodate additional FM entry. The conversion of the commercial AM broadcasters would have far-reaching and potentially devastating effects on existing market participants' ability to maintain their market presence at a time when commercial revenues are already under significant pressures. This jeopardises the localism model that remains highly relevant to the Perth community - threatening the valuable local content provided by incumbent commercial operators who already face significant difficulties in maintaining existing levels of service.

For more information please contact:

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