

The Manager
Broadcast Spectrum Planning Section
Australian Communications and Media Authority
PO Box 78
Belconnen ACT 2616

By email: broadcastplanning@acma.gov.au

SUBMISSION OF NOVA 93.7

Introduction

This submission on the '*FM broadcasting services band in the Perth RA1 licence area: Options paper*' (**Options Paper**) is provided on behalf of NOVA 93.7.

NOVA 93.7 is a leading commercial radio broadcaster in the Perth RA1 licence area (**Licence Area**), and accordingly has a vested interest in the proposals outlined in the Options Paper.

NOVA 93.7 is a joint venture between NOVA Entertainment Pty Ltd (**NOVA**) and ARN Perth Pty Limited (**ARN**).

In addition to NOVA 93.7, NOVA and ARN each operate other commercial broadcasters across Australia:

- NOVA operates 9 commercial FM and AM radio stations in Sydney, Gosford, Melbourne, Adelaide, and Brisbane, including NOVA 96.9 and Smoothfm 95.3 in Sydney; Star 104.5 in Gosford; NOVA 100 and Smooth 91.5 in Melbourne; NOVA 91.9 and FIVEaa in Adelaide; and NOVA 106.9 in Brisbane.
- ARN operates 12 commercial radio stations in Sydney, Melbourne, Brisbane and Perth, including KIIS, Pure Gold and WSFM network in Sydney and Melbourne; Mix 102.3 and Cruise 1323 in Adelaide; 97.3FM (joint venture with NOVA Entertainment) and 4KQ in Brisbane; Mix 106.3 and Hit 104.7 in Canberra (in joint venture with Southern Cross Austereo); and the 96FM network in Perth.

Executive Summary

For the reasons set out in this submission, NOVA 93.7 does not support either of the five (5) replanning options proposed in the Options Paper (**Proposed Options**), whether facilitated via AM-FM conversion or issuance of new FM licences. Rather, NOVA 93.7 maintains its support of a moratorium on any new FM broadcast licence within the Licence Area.

The Proposed Options uniformly represent, to varying degrees, an unnecessary and unwarranted imposition on existing broadcasters within the Licence Area which is not balanced by the ostensible requirement to address AM propagation limitations, and in circumstances where:

1. **Market economics** – The Licence Area is already comprehensively serviced by a number of well established, incumbent FM broadcasters. The conversion of AM licences to FM or allocation of new FM licences within the Licence Area would be unsustainable and carry with it a prejudicial burden upon incumbent FM broadcasters given the adverse resulting impact on existing audience shares, revenue generation, and the capacity for broadcasters to meet significant ongoing hard costs. This impact is made more palpable by the effects of the COVID-19 pandemic, finite and declining advertising revenues, macroeconomic concerns, static population growth, and the substantial influence of digital platforms.
2. **Inequity and licence diminution** – FM broadcast licences are inherently more valuable than AM licences due to, among other things, superior broadcast quality, audience perception and marketability, attraction of top-end media spend, and historical market incumbency. This market value differential between AM and FM licences is well established both within the Licence Area and other metropolitan and regional licence areas, notably through myriad high value FM licence acquisitions relative to lower value AM licence purchases.

The conversion of incumbent AM licences to FM, particularly commercial AM broadcast licences, would lead to a significant but undeserved uplift in the value of those assets, and a considerable diminution in the value of licences held by existing FM broadcasters within the Licence Area. This has the effect of creating an inequity that is incurable in the absence of an appropriate and considerable compensation mechanism. The Options Paper is silent on any such compensation mechanism.

3. **ACMA planning criteria** – The Options Paper, and Proposed Options in particular, afford too much weight to technical and engineering outcomes. This unbalanced emphasis negates the ACMA's obligation under '*Planning criteria*'¹ of the *Broadcasting Services Act 1992 (Cth) (Act)* to promote the objects of the Act having regard to a broader range of factors, including but not limited to:
 - a. the economic and efficient use of radiofrequency spectrum; and
 - b. demographics; and
 - c. social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and
 - d. the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and
 - e. developments in technology; and
 - f. such other matters as the ACMA considers relevant.

Further, the Proposed Options mark an unwelcome departure from the ACMA's previous approach to AM-FM conversions for commercial radio broadcasting services in circumstances where the ACMA has formerly articulated that it will consider requests for such variations in

¹ *Broadcasting Services Act 1992 (Cth)*, section 23

“licence areas where the ACMA considers that the circumstances do not put existing FM commercial radio broadcasting licensees at a competitive disadvantage”².

4. **Alternative technology to address AM deficiencies** – Notwithstanding the availability of FM spectrum in the Licence Area, there are a number of alternative technology solutions at the disposal of the ACMA to overcome any asserted *“poor AM propagation”* which do not include AM-FM conversion or issuance of new FM licences. Moreover, the relevant incumbent AM broadcasters (6IX, 6PR and the ABC) have at their disposal substitute delivery mechanisms available to overcome any AM deficiencies, including:
 - a. DAB+ spectrum;
 - b. Smart speakers;
 - c. *‘listen live’* webpage stream functionality; and
 - d. Mobile applications (*‘apps’*).
5. **Content diversity** – One of the central objects of the Act is to promote the availability to audiences of a diverse range of radio services providing content across entertainment, education and information.³ The Proposed Options would not satisfy this objective. Rather, the Proposed Options would prohibit or stunt the proliferation of varied content offerings as new FM licensees would seek to create and monetise content that appeals to younger and more financially lucrative demographics. This pursuit of commercial FM advertising spend would result in reduced content diversity through a pronounced reduction in less lucrative content offerings such as that traditionally associated with AM broadcasts and of appeal to older demographics.
6. **Solus Market** – While the Proposed Options relate solely to the Licence Area, it remains unclear at this point whether or not future developments of a technical, regulatory or other nature might render the Proposed Options a test case and precedent for other metropolitan markets. This is of great concern for NOVA and ARN given the potential for the harms associated with the Proposed Options to flourish on an exponential multi-market or national basis.

² *The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services (April 2017), page 1, available at: <https://www.acma.gov.au/publications/2017-11/guide/am-fm-conversion-and-requests-fm-fill-transmitters>*

³ *Broadcasting Services Act 1992* (Cth), section 3(a)

1. Market economics

The Licence Area is comprehensively serviced by a number of existing, well established commercial FM broadcasters:

FM Broadcaster	Owner	Content
Mix 94.5	Southern Cross Austereo	Greatest Hits
Triple M 92.9	Southern Cross Austereo	Rock Music and Sports
Nova 93.7	Nova Entertainment and Australian Radio Network	Greatest Hits
96FM	Australian Radio Network	Rock

The introduction of new FM broadcasters within the Licence Area as currently proposed, whether through conversion of AM licences to FM or allocation of new FM licences, would be unsustainable and carry with it a prejudicial burden upon incumbent FM licencees in the following circumstances:

1. Market and share of audience

The commercial FM broadcast market is fiercely competitive, and in the case of the Licence Area specifically, characterised by static population growth, a limited audience, and diminishing advertising spends.

Deloitte figures between January and December 2016 to 2020 show that revenue has consistently fallen within the Licence Area, at an increasing rate (see Table A). Between 2019 and 2020 alone revenue fell 21.1%. Whilst an argument may be proffered that the COVID-19 pandemic is the root cause for such a reduction, that assertion fails to account for a 29.7% fall in revenue between 2016 and 2020.

Table A

Deloitte Perth Radio Revenue Jan-Dec					
Year	2016	2017	2018	2019	2020
Market Revenue	\$106,717,000	\$104,901,115	\$105,891,530	\$95,181,141	\$75,067,480
YOY		-1.7%	0.9%	-10.1%	-21.1%
V 2016		-1.7%	-0.8%	-10.8%	-29.7%

Deloitte figures in relation to audience within the highly lucrative and hotly contested 25-54 demographic for the Licence Area also present a grim narrative, with a 10.7% reduction in total commercial audience between 2016 and 2021 (see Table B).

The 25 to 54 demographic in the Licence Area is so lucrative and fundamentally important to the commercial success of incumbent FM commercial broadcasters that it accounts for the majority of total market revenue.

Table B

M-Sun 5.30am-12MN '000, All People 25-54						
Year	2016	2017	2018	2019	2020	2021
Surveys	1-8	1-8	1-8	1-8	1-8	1-3
NOVA93.7	18.2	17	19.1	18	16.4	16.7
6MMM	14.6	13	13.8	13	11.5	11.1
94.5	20.5	17.7	17.8	15.2	13	12.6
96FM	12.1	15.2	12.2	14.3	16	12.1
6PR	5.3	5.4	4.9	5.3	6	4.4
6IX	2.9	3.8	3.1	2.4	2.2	1.6
Commercial AM/FM Total	73.6	72.1	70.9	68.2	65.1	58.5
Commercial DAB+ Total	0	4.4	5.3	5.4	5.1	7.2
Commercial Total	73.6	76.5	76.2	73.6	70.2	65.7
YOY						
Commercial AM/FM Total		-2.0%	-1.7%	-3.8%	-4.5%	-10.1%
Commercial Total		3.9%	-0.4%	-3.4%	-4.6%	-6.4%
V 2016						
Commercial AM/FM Total		-2.0%	-3.7%	-7.3%	-11.5%	-20.5%
Commercial Total		3.9%	3.5%	0.0%	-4.6%	-10.7%

It is a well understood principle that revenue follows audience. It logically also follows therefore that the introduction of new FM participants within the Licence Area would further reduce audience share of incumbents, diminish access to advertising spend, and ultimately decrease generated revenues, beyond the declines those metrics are already suffering.

2. Population

Population growth for the city of Perth is static, with an average growth rate of 1.8% between 2018 and 2020, and CAGR growth between 2015 and 2020 of 1.1% (see Table C)⁴.

Table C

	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%			

This measurement alone further supports the argument that the Licence Area, being a highly competitive and contracting market, cannot sustain new entrants, with finite audience and revenue already spread thin.

3. Macroeconomic constraints

The Proposed Options will impose substantial commercial pressures on existing FM broadcasters within the Licence Area already battling severe economic and industry disruption. The COVID-19 pandemic, bushfires and drought have markedly reduced advertiser spend, and exacerbated broader structural issues within the media industry caused by rapid paced technological transformation, digitisation, regulatory reforms and population fluctuations in Perth on account of trade pressures in the mining industry.

The COVID-19 pandemic alone has accounted for considerable reductions in advertising spend, particularly in respect of automotive, travel and appliances, due to the uncertainty and vacillations in consumer spend derived from intermittent lockdowns.

Moreover, the incursion of digital platforms has had an unprecedented impact upon traditional advertising spends, with Google and Facebook jointly and severally amassing a

⁴ ABS Census data, 2015 - 2020

disproportionate share of advertising revenue without deference to the strict regulatory regime that binds Australia radio broadcasters. The emergence of digital platforms, as competitors of radio broadcasters for the advertising dollar, has created a competitive imbalance unlikely to ever be rectified.

In circumstances of finite and decreasing revenues and audience, and broader macroeconomic trends, the introduction of new commercial FM players within the Licence Area has the potential to render the commercial viability of incumbent FM broadcasters untenable.

2. Inequity and licence diminution

FM broadcast licences are inherently more valuable than AM licences due to a plethora of factors, including:

- a. “superior audio quality and immunity from electrical interference”⁵;
- b. audience perception and marketability;
- c. attractiveness to top-end advertising spend; and
- d. historical market incumbency.

This market value differential between AM and FM licences is well established both within the Licence Area and other metropolitan and regional licence areas, notably through myriad high value FM licence acquisitions relative to lower value AM licence purchases (see Table D).

Table D - Acquisition prices paid for NOVA FM licences

Amount spent on Metro Licences Auctions	Total (\$m)	Round (\$m)	
		2	1
Sydney	261	106	155
Melbourne	122	52	70
Brisbane 100%	80	80	
Adelaide	24		24
	487	238	249
Brisbane 50%	34		34
Perth 50%	12		12
	533	238	295

By contrast, the most recent acquisitions of AM broadcast licences were completed at far lower transaction values. SEN’s acquisition of 2CH in Sydney in mid-2020 came at a cost of just \$11.2 million. The 1377AM licence in Melbourne was purchased by Ace Broadcasters for \$4.5 million, inclusive of certain future commitments, in July 2020.

⁵ The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services (April 2017), page 2 available at: <https://www.acma.gov.au/publications/2017-11/guide/am-fm-conversion-and-requests-fm-fill-transmitters>

It is NOVA 93.7's understanding that at present there is no intention to charge 6IX or 6PR a conversion fee akin to that paid by incumbent commercial broadcasters within the Licence Area – on a proportionate basis or otherwise. The conversion therefore of incumbent AM licences within the Licence Area, specifically 6IX and 6PR, would lead to a significant but undeserved uplift in the value of those assets, at a negligible relative cost. Not only is this deeply inequitable, it also marks an unwelcome departure from precedent, with the conversions from AM to FM of 2UW and 2WS in 1993 coming at a combined cost of approximately \$20 million.

The ACMA has previously accepted the significance of such inequity, noting⁶:

“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 2020, an FM radio licence in Sydney was allocated after being auctioned for \$155 million”,⁷

and further that situations “that may give rise to equity issues include where:

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

FM broadcast licences have market-based values, that are readily quantifiable, and can be realised. AM-FM conversions however, which are achieved untethered from market reality, belie such commercial legitimacy, and as such have the potential to create an inequity that is incurable in the absence of appropriate and considerable compensation.

Moreover, not only do the Proposed Options present the opportunity for creation of substantial inequity amongst licence holders, they also stand to vastly diminish the underlying value of incumbent FM licences for the reasons set out comprehensively in section 1 of this submission.

On NOVA 93.7's reading of the Options Paper, the ACMA has not at this stage given any indication that adequate compensation will be provided to incumbent FM licencees within the Licence Area to address the inequity and licence diminution that will arise should the FM replanning contemplated by the Proposed Options come to fruition.

3. ACMA planning criteria

The Options Paper, and Proposed Options in particular, afford too much weight to technical and engineering outcomes. NOVA 93.7 urges the ACMA to instead place a greater and more impartial emphasis upon broader factors of relevance to both the objects and planning criteria of the Act.

The objects of the Act, outlined in section 3, encompass myriad factors relevant to the Proposed Options articulated in the Options Paper. These include, but are not limited to, the objects:

- a. to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- 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; and
- c. to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

⁶ The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services (April 2017), page 3 available at: <https://www.acma.gov.au/publications/2017-11/guide/am-fm-conversion-and-requests-fm-fill-transmitters>

⁷ The ACMA's approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services (April 2017), page 2 available at: <https://www.acma.gov.au/publications/2017-11/guide/am-fm-conversion-and-requests-fm-fill-transmitters>

- d. to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and
- e. to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- f. 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.

In planning the broadcasting services bands, the ACMA is required to promote the objects of the Act, including the economic and efficient use of the radiofrequency spectrum, and is to have regard to the matters set out in section 23 of the Act, which include but are not limited to:

- a. the economic and efficient use of radiofrequency spectrum; and
- b. demographics; and
- c. social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and
- d. the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and
- e. developments in technology; and
- f. such other matters as the ACMA considers relevant.

The Explanatory Memorandum for the *Broadcasting Services Bill 1992* (Cth) explicitly states that it “*is recognised that there are tensions between the objects*” of the Act, and that it was intended that the Australian Broadcasting Authority (**ABA**), the ACMA’s predecessor, “*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*”.⁸

It is the case therefore that any overemphasis placed upon the provision of a purely technical solution when considering replanning the Licence Area inevitably involves a negation of the ACMA’s obligations under the Act. Instead the ACMA’s considerations must take into account broader commercial, regulatory and macroeconomic themes. Moreover, the ACMA must not depart from its previous approach to AM-FM conversions articulated in ‘*The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services*’, which states that the ACMA will consider conversion requests in “*licence areas where the ACMA considers that the circumstances do not put existing FM commercial radio broadcasting licensees at a competitive disadvantage*”. And further that “*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 ...’*”⁹

The Proposed Options are inconsistent with this approach. A departure by the ACMA from such principles and regulatory mandate sets a dangerous precedent.

If the ultimate outcome of the Proposed Options is that the Licence Area would see a reduction in the diversity and availability of content of appeal to all demographics, or the commercial operations

⁸ *Broadcasting Services Bill 1992* (Cth), Explanatory Memorandum, Clause 3 – Objects of this Act - https://parlinfo.aph.gov.au/parlInfo/download/publications/tables/HSTP06029a_1990-92/upload_pdf/6029a_1990-92.pdf;fileType=application%2Fpdf#search=%22publications/tables/HSTP06029a_1990-92%22

⁹ *The ACMA’s approach to AM-FM conversions and infill transmitters for commercial radio broadcasting services* (April 2017), pages 1 and 2 available at: <https://www.acma.gov.au/publications/2017-11/guide/am-fm-conversion-and-requests-fm-fill-transmitters>

of one or more incumbent broadcaster suffer considerably or fail, the Proposed Options cannot be argued to be consistent with the objects of the Act.

4. Alternative technology to address AM deficiencies

Broadcast radio service providers in Australia have at their disposal a number of complementary delivery methods beyond traditional AM and FM broadcast. These include DAB+ spectrum, internet protocol delivery via streaming (simulcast and catch up), podcasting, smart speaker (such as Alexa and Google Home) and mobile applications ('apps'), including industry application *RadioApp* and third-party aggregators such as *TuneIn*.

The take up and utilisation of broader, non-traditional broadcast delivery methods by the listening public is increasing. Existing AM broadcasters within the Licence Area, including 6IX and 6PR, are therefore in a strong position to take advantage of this trend both with a view to proliferating delivery of their content, and overcoming any actual or perceived issues associated with AM propagation. In fact, 6IX and 6PR are each currently available on DAB+ and via 'listen live' and 'listen' functionality on their respective station websites, smart speaker, and 6PR can be accessed via the 6PR app.

The *ABC listen* app has gained substantial popularity. In 2019-20 alone the *ABC listen* app accounted for 657,000 streams, and has had steady growth in unique users, up 34% year-on-year with an average of 340,000 weekly unique users.¹⁰ Further, the ABC has categorically stated in its 'Five Year Plan 2020 -2025' that one of its core strategic pillars is to improve the visibility and accessibility of high-quality ABC news and information through its on-demand products, *ABC iview*, *ABC listen* and *ABC News Digital*.¹¹

It is the case therefore that the Proposed Options are not the only options available to ameliorate any existing AM propagation issues, and the FM replanning currently proposed must be balanced against a diverse range of viable and increasingly popular delivery methods. The AMCA should encourage investment by 6IX, 6PR and the ABC into such delivery methods, rather than impose an unnecessary and unwarranted imposition on existing FM broadcasters within the Licence Area.

5. Content diversity

One of the central objects of the Act is to "promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information"¹².

The Proposed Options would not satisfy this objective.

Rather, the most likely outcome from the introduction of new commercial FM players within the Licence Area is a narrowing and concentration of available content categories which target the most financially lucrative 25 to 54 demographic. As noted previously in this submission the 25 to 54 demographic accounts for the majority of advertising spend within the Licence Area and is fiercely contested by incumbent broadcasters.

This pursuit of younger audiences and associated high-end advertising spend would result in less incentive for new entrants to invest in more diverse content, in particular educational and information-based programming. Those categories of content are traditionally well serviced by AM broadcasters which skew toward older demographics. The conversion therefore of 6IX and 6PR alone would deprive older demographics less inclined to consume traditional FM content and manifest non-fulfilment of the Act's objective to promote the availability of a diverse range of radio services offering content across entertainment, education and information.

¹⁰ ABC Annual Report 2019-20 pages 23 and 50 available at <https://about.abc.net.au/wp-content/uploads/2021/02/Annual-Report-2019-2020-UDATED.pdf>

¹¹ <https://about.abc.net.au/wp-content/uploads/2020/07/ABC-Five-Year-Plan-FINAL-Updated.pdf>

¹² *Broadcasting Services Act 1992*, section 3(1)(a)

Moreover, the addition of more competition within an already competitive market would further jeopardise the finite and diminishing audience shares and revenues of incumbent broadcasters within the Licence Area.

6. Solus Market

While the Proposed Options currently relate solely to the Licence Area, it remains unclear at this point whether or not future developments of a technical, regulatory or other nature might render the Proposed Options a test case and precedent for other metropolitan markets. This is of great concern for both NOVA and ARN, and for that matter all existing commercial FM licence holders nationally, given the commercially catastrophic harms that would result were similar replanning to be introduced on a multi-market or national basis.

7. Conclusion

NOVA 93.7 does not support the Proposed Options suggested in the Options Paper. Instead, NOVA 93.7 maintains its support of a national moratorium on any new FM broadcast licences.

The Proposed Options, as currently formulated, uniformly represent an unnecessary and unwarranted imposition on existing broadcasters within the Licence Area which is not balanced by any requirement to address AM propagation issues.

In the absence of substantial compensation and/or the proposal of additional replanning options which will not lead to significant market inequity, considerable diminution in the value of FM licences held by incumbent licencees, diminished content diversity, audience shares and revenues, NOVA 93.7 is unable to support the replanning proposals in the Options Paper.

Should you wish to discuss any matter raised in this submission, or require further information, please do not hesitate to contact:

Ben Willis

Head of Legal

Nova Entertainment Pty Ltd

bwillis@novaentertainment.com.au