17 February 2017

Manager, Broadcasting Carriage Policy section
Australian Communications and Media Authority
PO Box 13112
Law Courts
Melbourne VIC 8010

By email: BCP@acma.gov.au

Dear Manager

RE: SUNSETTING OF THE ADDITIONAL CONDITIONS – OPEN NARROWCASTING RADIO SERVICES NOTICE

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 regarding the proposed repeal of the Broadcasting Services (Additional Conditions - Open Narrowcasting Radio Services) Notice 2002 (Notice).

The Notice currently provides that on the day on which an open narrowcasting service is provided, the licensee must give the ACMA a statement explaining how the reception of the service is limited in a way described in paragraph 18(1)(a) of the Broadcasting Services Act (BSA).¹

Paragraph 18(1)(a) of the BSA provides that open narrowcasting services are services whose reception is limited by:

- by being targeted to special interest groups; or
- by being intended only for limited locations; or
- by being provided during a limited period; or
- because they provide programs of limited appeal; or
- for some other reason.

Similarly, if there is a significant change to a fact or circumstance by which reception of the service is limited then the licensee must provide the ACMA with a statement explaining the change and explaining how the reception of the service is limited.²

The commercial radio industry strongly objects to the proposed repeal of the Notice.

¹ Section 2 of the Notice.

² Section 3 of the Notice.
The ACMA’s Consultation Paper asserts that the Notice ‘no longer serves a useful and necessary part of the legislative framework’. CRA does not accept the reasons provided by the ACMA.

First, the ACMA states that the Notice is unnecessary because a person is entitled under the BSA to make a complaint to the ACMA about any broadcasting service.

The commercial radio industry does not agree that this is a satisfactory solution. It moves the responsibility to act from the narrowcaster onto other broadcasters.

Under the proposed regime, commercial radio broadcasters will need to monitor all open narrowcasting services to ensure that they are complying with the restrictions under the BSA. This imposes an unnecessary burden on the commercial radio industry.

It is also likely to result in more breaches, as the commercial radio industry cannot monitor all open narrowcast services to ensure compliance. This may result in the proliferation of ‘pseudo-commercial’ services, to the disadvantage of commercial radio broadcasters.

The small number of complaints regarding compliance with section 18(1)(a) is an indication that the current legislative framework is working effectively and should not be changed.

Second, CRA does not agree that the Notice is no longer necessary as ‘open narrowcasting services are now a well-established part of the broadcasting sector and the types of content that they provide is generally well known in the areas that they serve’.

Again, this places additional responsibility on commercial radio broadcasters, who would need to check that the narrowcasters are complying with the restrictions. In some cases, such investigation may require technical assessment which small regional commercial broadcasters are unable to undertake themselves.

Commercial radio broadcasters pay significant licence fees for the use of their spectrum and rely solely on advertising revenue to maintain commercial viability. The proliferation of services that erode the commercial broadcasters’ markets, because they do not properly comply with paragraph 18 of the BSA, is of great concern to the industry.

Accordingly, CRA urges the ACMA to renew the Notice.

We would be pleased to discuss any aspect of this letter if this would assist the ACMA.

Yours sincerely

Joan Warner
Chief Executive Officer