



30 May 2019

Ms Creina Chapman
Deputy Chair
Australian Communications and Media Authority
Level 5 The Bay Centre
65 Pirrama Rd
PYRMONT, NSW 2009

Dear Creina

COMPLAINT – FAB-FM (Port Douglas)

We write to make a complaint regarding the narrowcast station FAB-FM, in Port Douglas, Queensland. This complaint is made by CRA jointly with Coastal Broadcasters, Grant Broadcasters and Southern Cross Austereo (**Complainants**).

The Complainants submit that FAB-FM broadcasts a general commercial service on both of its frequencies. This is inconsistent with its obligation to provide a restricted service under section 18 of the Broadcasting Services Act 1992 (**BSA**).

We provide further information below regarding the licences, licence conditions and regulatory framework under which FAB-FM operates, together with detail of the content that it broadcasts.

We attach a folder of *Airchecks and Observations* compiled by [REDACTED] (**Report**). The hard copy of this letter also includes audio of the airchecks referenced in the Report.

The Report contains copies of the FAB-FM licences.

Please note that the airchecks provided are representative of the daily programming broadcast on an ongoing basis by FAB-FM. Fab-FM's live streams may be accessed at its website - <https://fabfm.com.au/>.

1. FAB-FM Licences

FAB-FM currently holds a 1W LPON licence and a 1kW HPON licence in Port Douglas, Queensland.

LPON 107.1 FM

107.1FM is a 1 watt LPON licence licensed to the trustee for Mars Family Trust. It is one of the few remaining special LPONs in this band.

HPON 90.9 FM

90.9FM is in the Cairns LAP as a 1kW ERP HPON licence to serve Mosman at Nominal Planning site off Mossman-Daintree Road, Newell.

The transmitters are licensed to FAB-FM at Comms Tower, Flagstaff Hill, Island Point Road, Port Douglas. The coverage radius is listed as 20km.

Licence Conditions

Both 107.1FM and 90.9FM are licensed as narrowcast stations with content restricted under section 18 of the BSA.

2. Regulatory Framework

All narrowcast licences are subject to a condition that they:

must only be used for the purpose of providing an open narrowcasting service, as defined in section 18 of the Broadcasting Services Act 1992.

Section 18 of the *Broadcasting Services Act 1992* (**BSA**) provides that:

Open narrowcasting services are broadcasting services:

(a) whose reception is limited:

- (i) by being targeted to special interest groups; or*
- (ii) by being intended only for limited locations, for example, arenas or business premises; or*
- (iii) by being provided during a limited period or to cover a special event; or*
- (iv) because they provide programs of limited appeal; or*
- (v) for some other reason; and*

(b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

The *Broadcasting Services Clarification Notice 2016* (**Clarification Notice**) provides at section 6 that:

(1) This section applies if the broadcasting service is provided:

- (a) in an urban centre or locality; and*
- (b) within the FM radio band; and*
- (c) using a transmitter with a maximum effective radiated power of 1 watt or less.*

Note In broad terms, under the Australian Standard Geographical Classification (ASGC) 2001, an urban centre is a population cluster of 1,000 or more people while a locality is a population cluster of between 200 and 999 people.

(2) The broadcasting service is not an open narrowcasting service by reason only of the maximum effective radiated power of the transmitter used to provide the broadcasting service.

The Clarification Notice has the effect of requiring compliance with content restrictions as well as power restrictions by LPON licence holders.

Section 133 of the BSA provides that:

A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.¹

The practical effect of the above regulatory framework is that:

- (a) FAB-FM must comply with its restrictions under both its LPON and HPON licences in accordance with section 18 of the BSA and the Clarification Notice.;

¹ Penalty for breach of this provision is 2,000 penalty units.

- (b) FAB-FM is not permitted to broadcast programs of general commercial appeal on either 107.1FM or 90.9 FM;² and
- (c) FAB-FM is not entitled to provide a commercial radio broadcasting service on either 107.1 FM or 90.9 FM.³

3. **Breaches by FAB-FM**

Identical content is broadcast by FAB-FM on both 107.1FM and 90.9FM. Accordingly, our content related comments apply to both stations.

FABFM states on its website that its charter is:

to promote a thriving, sustainable tourism industry within our region and create awareness on the importance of protecting and respecting our environment.⁴

However, FAB-FM is primarily a commercial format station, with very little tourist information provided.

The ACMA will see from the Report that FAB-FM is largely a music station, playing music from the 70s, 80s, 90s and early 2000s, with more recent tracks integrated on occasions.

This 'Classic Hits' format is one commonly used by commercial radio stations. FAB-FM reviews and changes its play list continuously, as would a commercial station.

In addition to its music playlists, the FAB-FM format also incorporates other key elements of a commercial service. For example:

- The breakfast and afternoon live hosts make comments on various current news stories (e.g., elections, Notre Dame fire, price gouging) throughout their programs.
- FAB-FM runs listener driven competitions, particularly in the afternoon show between 1.00pm to 4.00pm.
- FAB-FM takes on-air calls from listeners.
- The presenters interview live guests with no connection to tourism. For example, Colleen Hewitt (16 April, AM).
- FAB-FM provides frequent time calls and weather forecasts.

Port Douglas is already served by commercial radio stations in Cairns and the Atherton Tablelands, which are licensed to Coastal Broadcasters, Grant Broadcasters and Southern Cross Austereo.

² Section 18 and 133 of the BSA.

³ Section 133 BSA.

⁴ <https://fabfm.com.au/about-us/>

These broadcasters have paid significant amounts for their commercial radio broadcasting licences and must comply with content restrictions applicable to commercial broadcasting services under the BSA.

These commercial broadcasters are significantly adversely affected by the provision of general commercial content by FAB_FM – contrary to its licence conditions and section 133 of the BSA - in the same area.

We ask the ACMA to investigate FAB-FM and to consider whether its programming is in breach of its licence conditions and section 133 of the BSA.

Please let CRA know if the ACMA requires any further information in order to progress its investigation into these issues.

We look forward to receiving the ACMA's response.

Yours sincerely



Joan Warner
Chief Executive Officer