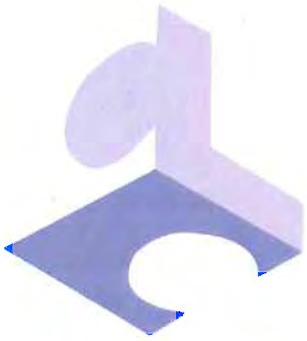


**Communications Law Centre, UTS**

**Submission to Regional Radio Review**

**9 April 2009**



## Communications Law Centre, UTS

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## Introduction

*The Communications Law Centre, UTS is an independent, non-profit, public interest centre specialising in communications, media and online law and policy. Communications law addresses the flow of information and communications and the function of the media. It is a key part of the social fabric. Its proper function maintains the health of a liberal democracy.*

### 1.1- Position of the Communications Law Centre

The Centre welcomes this opportunity to comment on the Regional Radio Review.

Localism has long been a central tenet of broadcasting regulation in Australia. The Centre recognises the significant impact of the policy on regional radio markets. Audiences both *demand* localism in their capacity as consumers, and *expect* it to assist them carry out their duties as citizens of regional communities. A tacit recognition of the significant public interest in local broadcasting is given in object s 3 (1) (g) of the *Broadcasting Services Act* (the Act), which places 'fair and accurate coverage of matters of public interest' alongside 'appropriate coverage of matters of local significance'. More generally, the Act is obliged to 'provide a regulatory environment... that is efficient, competitive and responsive to audience needs': s 3(1) (b).

A large proportion of the current debate has centred around allaying the concerns of industry on the grounds of a significant cost of compliance with the licence conditions contained in s 43B, s 43C and Division 5C. ACMA's *Investigation relating to Local Content on Regional Commercial Radio - Trigger Events and Local Content Levels Investigation Report*<sup>1</sup> did not require public comment, hence opportunities to inform drafting of the requirements were limited. This was especially concerning, since there was limited opportunity for public and industry views to be aired in parliament, with only two days allowed for Senate Committee hearings pertaining to the media reform package<sup>2</sup>. Whilst any regulation should balance public interest considerations with the cost of compliance for broadcasters, as required by s 4 (2) of the Act, the Centre believes that the structure of the broadcasting industry in regional markets has led to an inequitable distribution of power. As such, we aim to address this shortfall in our recommendations.

### 1.2- The need for regulation in the public interest

The then Minister for Communications, Transport and the Arts, Sen. Coonan, recognised the need to legislate against any further reductions in localism in light of the liberalisation of cross media ownership restrictions in 2006<sup>3</sup>. Likewise, submissions to the *Local Voices*<sup>4</sup> report provide clear evidence of an

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<sup>1</sup> Hereafter 'LCIR'.

<sup>2</sup> Hitchens, L, 'Australian Media Reform - Discerning the Policy', University of New South Wales Law Journal, Vol. 30, No. 1, 2007: 246-257

<sup>3</sup> Senator H Coonan, 'Safeguarding local radio content in regional Australia', Media Release 145/07 (13 September 2007) [http://www.minister.dbcde.gov.au/coonan/media/media\\_releases/safeguarding\\_local\\_radio\\_content\\_in\\_regional\\_australia](http://www.minister.dbcde.gov.au/coonan/media/media_releases/safeguarding_local_radio_content_in_regional_australia)

<sup>4</sup> House of Representatives, Standing Committee on Telecommunications, Transport and the Arts, *Local Voices: An Inquiry into Regional Radio* (2001), hereafter 'Local Voices'.

observed decline in local programming. As a consequence, there is a suggestion of a market failure that needs to be corrected. Ideally, market forces ought to ensure that audience needs are met; the broadcaster must act in the best interest of the audience or risk losing market share. Unfortunately, many regional markets are duopolies and thus far from competitive<sup>5</sup>. Because of the availability of economies of scale, broadcasters have a strong incentive to consolidate, centralising content and operations<sup>6</sup>. The incentive to act in the best interest of the audience is comparatively weak, as the audience has no way of 'punishing' the broadcaster if it chooses to reduce its localism output, by switching to an alternative commercial radio provider.<sup>7</sup>

More generally, regulation of commercial radio is desirable because of its influence on the public(s 4(1)). As the 'Cash for Comment' enquiry demonstrates, audiences exhibit a strong preference for commercial radio and hence rely on it for news and information<sup>8</sup>. Despite technological developments, commercial radio retains its position as an influential medium because of its ubiquity and accessibility. This is especially so in regional areas, which are often devoid of alternative media such as local television news. Whilst the ABC and the community radio sector also uphold public interest objectives, this is not an invitation for commercial radio to excuse itself of its obligations, as all broadcasting services must provide a service that contributes to an 'adequate and comprehensive' range of broadcasting services in a licence area (Sched 2, Part 4, s 8 (2) (a)).

### 1.3- Summary of this submission

The Centre recognises the central aim of the Review is not to weaken the requirements themselves, but to enable greater flexibility for broadcasters in meeting their obligations. Such an approach meets the test of good regulation in s 4 (2). We support this approach, so long as it does not have the potential to have an overall detrimental effect on the citizen and consumer.

We support the need for greater flexibility in the following areas:

- \* Racing broadcasters should be exempt from all requirements under s 43B, s 43C and Division 5C. These services are better regulated as narrowcasters, since they attract a specialised audience and produce programming of limited appeal. These audiences neither demand nor expect material of local significance or a local presence.
- \* Similarly, s. 40 licences are 'limited in some way' by being outside the broadcasting services bands, and often have formats that attract a specialised audience. Using the same argument as above, we consider that an exemption is desirable for these services.
- \* Remote commercial radio services should be exempt from complying with s 43B and Division 5C. To maintain a meaningful local presence across the licence area would be unsustainable, given the resources

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<sup>5</sup> '66% of licence areas have two licences', LCIR, p12.

<sup>6</sup> See Doyle, G, 'Understanding Media Economics' (2002) London: Sage for a general discussion.

<sup>7</sup> Submission No 273.01, Vol 8, p 2052 (Private Citizen), *Local Voices*.

<sup>8</sup> Australian Broadcasting Authority, *Commercial Radio Inquiry* (August 2000) p 14 and generally.

available to remote licensees. A requirement of 12.5 minutes of local news per business day in particular is likely to impact on commercial viability. However, we suggest that by retaining a minimum amount of material of local significance under s 43C (5 minutes per business day), remote licensees can fulfill a minimum service standard 'automatically', as short inserts of news and information suit this format.

\* s 61CB (Trigger Event) be modified to include only those events which impact on the programming and operations of the licence.

\* s 43B be modified to expire after 6-12 months, to enable licensees to adjust to changing audience demands and expectations over time. However, this should be subject to a requirement of maintaining the ability to broadcast in the licence area as required.

\* s 61CE (1) (b) be extinguished, to allow flexibility for licensees above the minimum standards.

We do not support a change of regulation in the following areas:

\* A change in the wording of s 43C to 'at least 5 days during the week' would invite licensees to abandon local programming on certain weekdays, which is inconsistent with radio usage patterns. Importantly, news and current affairs programming during the week could be traded off for voicetracked programming at the weekend.

\* Remote commercial radio services should provide at least 5 minutes of 'material of local significance', as audiences have an interest in maintaining a minimum level of service. We partition each remote licence area into 'sub markets', so that a meaningful definition of 'local' can be applied. Any additional compliance costs should be balanced by the abolition of the requirements under s 43B and Division 5C.

\* Minimum service standards under s 61CE should continue to apply in perpetuity, as the public interest in maintaining news and current affairs programming is especially significant. We recognise that compliance costs for licensees can also be significant, so a broad definition of local news should be adopted. We also consider the value of minimum services standards applying broadly to all licences.

**2.1: Should greater flexibility be provided for regional commercial broadcasters required to provide 'material of local significance' (for example, should broadcasters be permitted to broadcast material of local significance on weekends).**

ACMA recommended that the wording of s 43C be changed to allow material of local significance to be broadcast on 'at least five days during the week' rather than exclusively on 'business days'<sup>9</sup>. Thus, broadcasters would be permitted to trade off some of their obligations on business days in exchange for providing local content at weekends. We observe that such an arrangement would be consistent with s 43 A (Local Content Licence Condition- Television).

*Listener behaviour-key statistics*

Recent surveys of the Newcastle and Canberra markets<sup>10 11</sup> estimate that about 98-99% of the commercial radio audience listens for at least 15 minutes during the week (*business days* 5 am-12 midnight). Further, weekday breakfast (5:30-9AM) captures between 74% and 82% of the audience for at least 15 minutes per week. By comparison, 75% of the commercial radio audience listens to at least 15 minutes of programming on the weekend.

While the majority of the commercial radio audiences in the two markets listen to some programming at the weekend, we observe that it is programming on business days that garners the most listenership, particularly at breakfast time. If the listener values local content, then it would be prudent for the licensee to air material of local significance at these times in order to serve the consumer interest.

The news cycle reaches its 'peak' during business days; in consequence, programming aired at these times is geared towards the news and current affairs genre. By extension, the licensee is likely to produce material of local significance that reflects this. The existing regulation ensures that such material of local significance is exposed to the widest possible audience, which allows local commercial radio to fulfill its role in the public space by informing discussion and debate. It thus seems reasonable that broadcasters have a duty to ensure material of local significance is broadcast on each business day.

Weekend programming tends to be focused on the genres of sport and entertainment, moving away from news and current affairs.<sup>12</sup> While such programs are undoubtedly desirable in their own right, they are not a perfect substitute for news and information programming on business days. Given the choice, the broadcaster may scale back its local news and current affairs content during the week and substitute it for sport, general interest or voice tracked programming on the weekend<sup>13</sup>. Some licensees may choose to

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<sup>9</sup> LCIR, p 45.

<sup>10</sup> Nielsen Australia, *Newcastle Radio Summary Report-Survey #1, 2009-*  
<http://au.nielsen.com/products/documents/Newcastle12009.pdf>.

<sup>11</sup> Nielsen Australia, *Canberra Radio Summary Report- Survey #1, 2009-*  
<http://au.nielsen.com/products/documents/Canberra12009.pdf>.

<sup>12</sup> LCIR, p 50.

<sup>13</sup> A voice tracked program is estimated to cost \$20 000 to produce, as against \$60 000 for a talkback program (LCIR, p 36).

abandon local programming altogether on some business days, a decision which is incongruent with the public interest.

Additional local content outside business days should nevertheless be encouraged- as such the Review should consider alternative policy instruments such as a 2 week/year exemption from all local content requirements (over December-January), if the licensee commits to providing additional material of local significance outside business days.<sup>14</sup> Subsidies/grants (such as rebate of studio equipment costs) could also be utilised. This approach would encourage the provision of material of local significance on weekends, whilst ensuring no additional burden on industry.

#### *Inconsistency with s 43 A- comment*

There are some inherent differences between the operation of the policy of localism in radio and television. Importantly, local programming is significantly more expensive to produce for television licensees, so much so that the premise of localism as adopted in radio was implicitly rejected with the choice of a networked (aggregation) model<sup>15</sup>. As a consequence, this should lead to more flexible regulation of local programming for television licensees, when compared with radio licensees.

**Recommendation: The wording of s 43C should not be changed from 'business days' to 'at least 5 days during the week'.**

### **3.1: Should the 'material of local significance', local presence requirements and minimum service standards in the Act apply to regional commercial radio broadcasters primarily providing racing services?**

The four racing broadcasters that are licensed as *commercial* radio services (Maryborough QLD, Shepparton VIC, Ballarat VIC and Launceston TAS), are ex AM (populist format) commercial radio licences. The incumbent commercial broadcaster subsequently converted to the FM band (or extinguished itself in the case of 7EX Launceston), thus vacating the AM licence<sup>16</sup>. 3UZ have justified the decision to broadcast on these AM licences on the grounds of limited spectrum<sup>17</sup>. The ultimate responsibility should lie with the regulator, who has the power to draft and vary licence area plans under s 26 of the Act.

The majority of racing radio services in regional Australia (all in regional NSW, SA, WA and NT) are licensed as *narrowcast* services.<sup>18</sup> Narrowcasting services are targeted towards special interest groups, and provide programs of limited appeal, amongst other things under s 18. Arguably, the 'racing community' is a special interest group with clearly defined programming demands, and racing programming itself does not have

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<sup>14</sup> 'Audiences do not expect the same level of services during the six-week end-of-year holiday season', (LCIR pp 49-50).

<sup>15</sup> Department of Communications, 'Localism in Australian Broadcasting: A Review of the Policy', (August 1984) p 36.

<sup>16</sup> See, for example, Mac, W, 'Don't Touch That Dial: Hits 'n' Memories of Australian Radio' (2005), Canberra, WDJM.

<sup>17</sup> 3UZ Pty Ltd, Submission to LCIR, p. 7.

<sup>18</sup> See 'Australian Communications and Media Authority: Register of Radiocommunications Licences'- [http://web.acma.gov.au/pls/radcom/register\\_search.main\\_page](http://web.acma.gov.au/pls/radcom/register_search.main_page)

populist appeal when compared with other commercial formats (talk, music). Thus, racing radio services are ideal candidates for the narrowcast licence.

Essentially, it seems that the decision to grant commercial licences to broadcasters who predominantly air a racing format was misguided. The audience of these services neither desires nor expects a standard of local service equal to that of a populist commercial format<sup>19</sup>, and it would thus be counterproductive to impose a format change on these licences. The standard of regulation for these services should thus be lower. Racing broadcasters have also argued that the services are delivered without a profit motive<sup>20</sup>. Future licence area planning should prohibit licensees that intend to broadcast a predominantly racing format from applying for a commercial radio licence.

**Recommendation: That the four commercial services currently providing racing services be exempt from all requirements under s 43B, s 43C and Division 5C.**

### **3.2: Should the 'material of local significance', local presence requirements and minimum service standards in the Act apply to remote commercial broadcasters?**

The current definition of 'material of local significance' relates to the licence area of the radio station<sup>21</sup>. When applied to the three remote licence areas, which cover large tracts of Australia, defining 'material of local significance' is problematic as the Review maintains. For example, both St. Albans NSW and Thursday Island QLD lie in Remote North East RA1<sup>22</sup>. Given the vast area, material that is significant to the licence area as a whole (e.g. both St. Albans and Thursday Island) would likely be considered material of national significance. Categorising such material as 'local' would be inconsistent with the spirit of the licence condition, as each town in the licence area has their own unique 'local' agenda.

Similarly, what constitutes a 'local presence' is problematic over a licence area of this size. For local presence to be beneficial to a community, the station should be accessible to its citizens. This is not readily achieved in remote licence areas. Typically, remote area broadcasters operate from a central location (e.g. Southern Brisbane)<sup>23</sup>; restructuring operations to maintain a local presence in each town in the licence area- as consistent with the spirit of regulation in other licence areas- would likely have a profound impact on profitability. The LCIR<sup>24</sup> indicates that remote licences are owned by small companies (as opposed to large conglomerates), hence the industry has less ability to comply with regulation.

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<sup>19</sup> 'Localism is not an intrinsic part of the service'- Chair, Standing Committee on Communications, Transport and the Arts (6 April 2001) p. 36.- <http://www.aph.gov.au/HANSARD/reps/commttee/r4728.pdf>

<sup>20</sup> 3UZ Pty Ltd, Submission to LCIR, p. 1.

<sup>21</sup> See the discussion paper for this Review.

<sup>22</sup> 'Remote Commercial Radio Service North East Zone RA1', [http://www.acma.gov.au/webwr/aba/licplan/planning/licareas/defmaps/remote/documents/la\\_459\\_index.pdf](http://www.acma.gov.au/webwr/aba/licplan/planning/licareas/defmaps/remote/documents/la_459_index.pdf)

<sup>23</sup> 'Rebel FM: Contact us'- <http://www.rebelfm.com.au/Border-Ranges/Contact-Us.html>

<sup>24</sup> LCIR, p. 39



Despite these taxonomical difficulties, audiences in remote areas should not be denied a local service. As the LCIR identifies, a reduction in local services for outback audiences would adversely affect the diversity of services available<sup>25</sup>. Importantly, audiences in remote service areas are disconnected from public discourse and rely on electronic media for news and information. Radio is the most feasible medium for conveying such programming in areas where local newspapers and/or television stations cannot operate profitably, and the most accessible to the audience who are dispersed across communities, farms and cattle stations. As a consequence, a particular standard of service is expected from any broadcaster that is licensed in these remote communities.

Given the public interest in maintaining a service, it is reasonable that some level of local content be provided. However, we recognise the difficulty in defining 'local' for the purposes of remote licence areas, and such definitions may be inconsistent with a true 'local' service. Television solves a similar problem by dividing each regional licence area into sub markets, for the purposes of providing material of local significance. Here, 'local' is not defined in terms of each licence area but in terms of each sub market (typically a group of towns, one of which is a major regional centre)<sup>26</sup>. A similar approach could be used in relation to remote commercial radio licence areas- one licensee has already demarcated such 'sub markets' and has some local presence in a few of these<sup>27</sup>, so such policy is not without favour amongst remote area broadcasters.

We do not support any local presence requirement for regional broadcasters. In any case, the 'existing level of local presence' is minimal for remote licensees, so regulation in this area incurs the full cost of compliance, with minimal benefit to the listener. Since these broadcasters are the sole commercial operation in these licence areas, such a service needs to be safeguarded in the public interest.

**Recommendation: That remote area broadcasters should broadcast 5 minutes of 'material of local significance' per business day, with 'local' defined in terms of sub markets. Sub markets should be designed around a major regional centre, or a broad geographic region (e.g. Pilbara in Western Australia). The current level of 5 minutes per business day is sufficient to provide a basic level of local service, taking into account the financial constraints of the broadcaster and demography of remote areas. Obligations under s 43B are excused.**

#### *News and information requirements under Division 5C*

The choice of 5 minutes of 'material of local significance' is ideally suited to provide short segments of news and information. The broadcaster then automatically fulfills some of the requirement under Division 5C (minimum service standards for trigger event affected licences). Targeted news and information to each sub market would require some additional expenditure; hence the full requirement of 12.5 minutes of local news on business days would be potentially onerous. To maximise the ability of the licensee to provide at

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<sup>25</sup> Ibid.

<sup>26</sup> Australian Broadcasting Authority, 'Adequacy of Local News and Information Programs on Commercial Television Broadcasting Services in Regional and Rural Australia (Solus Operator and Two Operator Markets)', p2.

<sup>27</sup> See n. 23.

least 5 minutes of material of local significance to each sub market, it would be advisable to relieve obligations under Division 5C.

**Recommendation: That remote area broadcasters should not be required to comply with obligations under Division 5C (minimum service standards).**

### **3.3: Should the 'material of local significance' and local presence requirements in the Act apply to s 40 licensees ?**

As with racing licences, s. 40 licences are better regulated as narrowcast services rather than true commercial services. Since such stations broadcast outside the BSB, they are arguably 'limited in some way' under s 18, as not everyone in the licence area can access the broadcast. Many off band licences broadcast a narrowcast format in any case<sup>28</sup>. Furthermore, some non BSB licences that broadcast a commercial format are not captured by the local content licence conditions, as they were licensed as Narrowband Area Services rather than under s. 40<sup>29</sup>. If these licences are exempt from the provisions under Division 5C, then those issued under s. 40 should be exempt for consistency. The ACMA itself comments that 'there is therefore no question of either spectrum scarcity or use of a public resource. The number of non-BSB commercial broadcasting licences is potentially unlimited.'<sup>30</sup>

**Recommendation: That s 40 licensees should not be required to comply with requirements under s 43B and s 43C.**

### **4.1: How can the existing requirements be modified to ensure the appropriate application of the trigger event related provisions? What types of events, if any, should be exempt from the trigger event requirements?**

We suggest that the definition of 'trigger event' should apply only to those changes in ownership and control that have a bearing on the programming and/or operational decisions of the licensee. This approach is consistent, given the effect of the requirements under s 43B and Division 5C. Schedule 1 confirms that persons who are in a position to exercise control over a significant proportion of either the programming or operations of the licensee are in a position to control the licence.<sup>31</sup>

Applying the test above does not exclude any particular type of event. For example, some internal restructures, whilst not changing the ultimate controller, can have an effect. The licences '2ROC' and '1CBR' in Canberra are controlled 50/50 by Austereo and ARN<sup>32</sup>. It is feasible that direction over programming and

<sup>28</sup> 'Commercial Radio Broadcasting Licences allocated under s 40 of the Act', [http://acma.gov.au/webwr/\\_assets/main/lib100052/lic025\\_commercial\\_radio\\_allocations\\_under\\_s40.pdf](http://acma.gov.au/webwr/_assets/main/lib100052/lic025_commercial_radio_allocations_under_s40.pdf).

<sup>29</sup> 4KZ's translators in Karumba and Ingham are located outside of the BSB- see <http://www.4kz.com.au/index.html>.

<sup>30</sup> 'Non-broadcasting services band licences'- [http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC\\_90188](http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_90188).

<sup>31</sup> Schedule 1, Part 2, 2 (1) (b) (ii) & (iii).

<sup>32</sup> See 'Register of Controlled Media Groups'- <http://web.acma.gov.au/rcmg/rcmgIndex.htm>.

operations could be passed from one company to the other. As each has their individual propensity regarding localism, such a change could have profound impact. Some events that are currently captured, such as a change in controller of a registrable media group, that may not have any effect on the day to day running of the radio station.

**Recommendation: That the definition of trigger event be modified to include only those changes in ownership and control that may influence programming and operational decisions of the licensee.**

**5.1: For how long should broadcasters comply with additional requirements imposed after a trigger event occurs? (s 43 B)**

Under our proposed definition of trigger event, a change in ownership or control will necessarily have the potential to bring about a change in operations and/or programming for the radio licence. The use of staff and studios is likely to form a key part of any restructuring the licence may experience, as each represents a variable cost for the licensee. As noted by Doyle (2002), a consolidation gives a new controller an incentive to share resources among other media operations in the group, reducing the use of studios and staff in some licence areas.<sup>33</sup>

The maintenance of a local presence is of value to regional broadcast markets- by being in the regional centres themselves, the station is better equipped to meet the needs of the local economy and the audience alike. For example, advertisers, seeing a studio presence, are given a signal that the station has an interest in the local economy and are more likely to buy air time. Similarly, listeners in the licence area are more inclined to tune in if the station is 'visible' to them. Perhaps most importantly, the existence of live and local programming from studios in the licence area enables the listener to have intimate access to the station, which is made more difficult if station facilities are located outside the area. The issue of access is raised by Saffran, who found that listener access was unsatisfactory, when station and licence area were geographically separate<sup>34</sup>. Access is especially vital in times of emergencies<sup>35</sup> and personnel 'on the ground' is undoubtedly an advantage in covering issues of local significance.

We recognise that it may not be appropriate for a prescribed level of local presence to apply in perpetuity. As mentioned in a Productivity Commission report<sup>36</sup>, such restrictions will limit the ability of the licensee to respond to changing market conditions (for example, technological innovation) and each market has different characteristics. In particular, since local presence levels cannot be adjusted, they may not reflect listener demand or expectations over time. In cases where a licence did not have a local presence before the trigger event, they would not be required to establish one under the current arrangements. Thus, the regulation may under provide local presence in some cases, and over provide in others. Given the significant compliance costs involved<sup>37</sup>, it is important to have some flexibility in this area. We also

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<sup>33</sup> See Doyle at n. 6.

<sup>34</sup> Saffran, M, 'Effects of Local-Market Radio Ownership Concentration on Radio Localism, the Public Interest, and Listener Opinions and Use of Local Radio'(2008), The Rochester Institute of Technology, Department of Communication, College of Liberal Arts.

<sup>35</sup> See 'Local Voices' p. 109.

<sup>36</sup> 'Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services' (2009), p. 167.

<sup>37</sup> Ibid, p. 168.

recognise that maintaining a local presence is not a necessary condition to produce material of local significance, hence does not affect the licensee's obligations under s 43C.

The public interest objectives above, however, make it incumbent upon the broadcaster to maintain some minimum level of local presence. A new body that gains ownership and/or control of a radio licence does not yet have intricate knowledge of the licence area and what is in the best interest of its populace. Maintaining the existing level of local presence in the initial phases (6-12 months after the trigger event) will assist in establishing a healthy working relationship between licensee and community, and give the licensee a sense of how much local presence is desirable in their particular market. After such time, the licensee can adjust their level accordingly, subject to maintaining some broadcasting facilities in the area as below.

#### **Recommendations:**

- **That the requirement for a broadcaster to maintain the existing level of local presence be modified, with a duration not exceeding 12 months (but at least 6 months) from the trigger event, subject to the condition;**
  - **that all licensees maintain facilities that enable broadcasting from the licence area when required. This requirement does not legislate a minimum number of hours of content/personnel employed. The LCIR states that the cost of establishing and maintaining a minimal local presence is \$10 000 p.a for each licensee (\$5000 p.a. for maintaining the facility only)<sup>38</sup>. Compliance costs relating to the current provisions are \$25 000 p.a. per station (\$50 000 p.a. if a duopoly)<sup>39</sup>.**
  - **Licensees that do not yet have a local presence may receive assistance in complying with start up costs.**

#### *Comment*

The requirement to enable broadcasting from the licence area should perhaps apply generally to all licences, remote/racing/s 40 licences exempted. The need for access is common to all commercial radio operations, thus any regulation of local presence must be consistent.

#### **5.2: For how long should broadcasters comply with additional requirements imposed after a trigger event occurs? (s 43 B)**

We recognize that the provision of a news service represents a significant financial outlay for a radio licensee. It is estimated that the cost of compliance would be a minimum \$60 000 for an outsourced local news service, which represents 15-26% of PBIT for some licences.<sup>40</sup>

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<sup>38</sup> We use the minimum amounts as described at p. 31.

<sup>39</sup> Annual Review of Regulatory Burdens, n. 37.

<sup>40</sup> LCIR, p. 46.

*Content, Consolidation And Clout (2006)*<sup>41</sup> revealed that usage of local media to be significant, with participants generally regarding local news and information programming as desirable, and this conclusion has been verified by other studies<sup>42</sup>. While most respondents regarded commercial radio as a secondary source of local news to newsprint and television, this was because *'the news services are scant, and the sector is not seen as having great impact'*<sup>43</sup>. Further comments pertaining to the closure of local news services in *Regional Media Watch* support the conclusion that news services on commercial radio are valued by the consumer, thus have a place in a well functioning broadcasting market.<sup>44</sup>

The role of local news and information in facilitating participatory democracy is perhaps paramount and complements the consumer interest above. Indeed, there was explicit recognition of the media's role in the public space and not merely 'as a market for local advertisers'.<sup>45</sup> Through the objects of the BSA [s 3 (1) (g)], commercial media is not excused of public interest obligations. Although other mediums provide local news and information, diversity is critical for democratic objectives:

*'For the effective functioning of Australian democracy, there must be sufficient and sufficiently diverse sources of news and comment to ensure that members of the public are always promptly and well enough informed to make their own judgments about governance, regulation, sport, entertainment or other matters.'*

*Australian Press Council.*<sup>46</sup>

Radio is an efficient medium for providing local news- while its production costs can be considerable (as above), it is more economical than either print media or television. It is ubiquitous and easy to access, thus reaches a large potential audience in a given market. Given these characteristics, it is arguable that radio is an 'influential' vehicle for disseminating matters of public interest, and should attract some regulation in light of s 4 (1).

Since trigger events often involve centralisation of news bureaux<sup>47</sup>, this leaves the radio station with less incentive to produce local news. As local news and information is such a fundamental component of 'material of local significance', it seems incumbent on the regulator to protect it.

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<sup>41</sup> *Content, Consolidation And Clout: How will regional Australia be affected by media ownership changes?*, Communications Law Centre (2006), Ch. 5 generally.

<sup>42</sup> Iverson, D & Rosenstiel, T *'Local TV Eye-Opener: Politics Aren't Poison.'* (2003) *American Journalism Review* (March)

<sup>43</sup> *Content, Consolidation And Clout*, p. 123.

<sup>44</sup> See <http://www.abc.net.au/mediawatch/regional/>.

<sup>45</sup> *Content, Consolidation And Clout*, p. 166.

<sup>46</sup> Australian Press Council response to Australian government discussion paper 'Meeting the Digital Challenge', on media reform options (2006), p 2.

<sup>47</sup> Prindle, G, 'No Competition: How Radio Consolidation Has Diminished Diversity And Sacrificed Localism' (2003), 14 *Fordham Intell. Prop. Media & Ent. L.J.* 279 2003-2004, p. 311.

**Recommendation:**

**That the minimum service standards for local news and information apply to trigger event affected licences in perpetuity. Local news can be defined broadly to include repeat bulletins<sup>48</sup>, minimising the cost of compliance for the licensee. However, s 61CE (1) (b) should be extinguished, as this has the effect of locking in a local news requirement above the minimum service standard. The licensee should retain freedom of choice above the minimum standard, in order to respond to the demands of their audience. Whilst local news is the most important element of programming here, weather, community service announcements and emergency warnings also qualify as matters of public interest. Because such programming can be readily produced with minimal expenditure, it is desirable that they are included.**

*Comment:*

Because local news services represent such a fundamental part of the policy of localism, minimum standards should apply across all licences. Under the current definition of trigger event, it is expected that a wide range of licences will be compliant in any case. As the Productivity Commission notes, it is desirable to introduce consistency across all licences- 'there does not appear to be a valid rationale for this difference in requirements'<sup>49</sup>.

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<sup>48</sup> Modifying s 61CA (e).

<sup>49</sup> Annual Review of Regulatory Burdens, p. 168.