



COMMERCIAL.
TELEVISION AUSTRALIA

**INVESTIGATION INTO THE ADEQUACY OF
REGIONAL TELEVISION NEWS SERVICES**

**SUBMISSION IN RESPONSE TO THE
AUSTRALIAN BROADCASTING AUTHORITY
INVESTIGATION REPORT**

COMMERCIAL TELEVISION AUSTRALIA

31 OCTOBER 2002

ADEQUACY OF LOCAL NEWS AND INFORMATION

SUBMISSION BY COMMERCIAL TELEVISION AUSTRALIA LIMITED

EXECUTIVE SUMMARY

- The requirement to broadcast local news and information should be contained in a Code of Practice rather than a Licence Condition.
- The new obligations on licensees should commence 12 months from registration of the new Code by the ABA, rather than 6 months as currently proposed to allow time for programming planning and infrastructure investment.
- Some changes to broaden the scope of “material of local significance” should be made.
- All content in a block program should count for quota points.
- Quota requirements should apply over a 48 rather than a 52 week period to reflect normal organisational practices.
- Retention of broadcast records should only be required for a limited period after each reporting date, such as three months.
- The obligations should not impose sub market boundaries within pre-aggregation market areas on regional broadcasters.
- Commercial Television Australia will work with the ABA in preparing a Code of Practice in relation to Emergency Information in Local Areas.

ADEQUACY OF LOCAL NEWS AND INFORMATION

SUBMISSION BY COMMERCIAL TELEVISION AUSTRALIA LIMITED

1. Introduction

Commercial Television Australia represents Australia's 48 commercial television licensees.

Commercial Television Australia appreciates the opportunity to comment on the ABA Report on its Investigation into the Adequacy of Local News and Information Programs on Commercial Television Services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria (Aggregated Markets A, B, C and D) which was issued in August 2002.

2. The Proposed Licence Condition

The ABA's Investigation Report proposes an additional licence condition to apply to all regional commercial television licensees in the four aggregated regional markets ("the Proposed Licence Condition"). The Proposed Licence Condition would implement a requirement for each regional broadcaster to broadcast a minimum amount of matters local significance. The obligation is expressed by way of a requirement to accumulate a certain number of points over periods of eight weeks.

Commercial Television Australia has a number of comments and suggested changes in relation to the Proposed Licence Condition.

2.1 *Code rather than Licence Condition*

Commercial Television Australia believes that the proposed new requirements for regional licensees should be implemented as a Code of Practice rather than as a Licence Condition.

Given the ABA's findings that there has been an overall increase in the quantity of local news broadcast in the four aggregated markets, the high quality of the services provided and the fact that no licensee has acted in breach of existing Licence Conditions, a Code of Practice is the most appropriate course of action in this instance.

A Licence Condition in these circumstances is overly interventionist. Concerns about the need for specific remedies in the case of a Code breach could be addressed in the Code.

Commercial Television Australia proposes that the Code would be reviewed after a period of three years.

A draft Code addressing this and the other issues raised in this submission is attached at Appendix A.

2.2 Commencement Date

The ABA's recommendations impose significant new obligations on regional broadcasters. It will take some time for broadcasters to consider and decide upon programming options and to deploy sufficient staff and infrastructure to meet these obligations.

This is also occurring at the same time as regional broadcasters are deploying digital infrastructure. In most cases, the core digital rollout will occur over the next 12 months.

Consequently, Commercial Television Australia proposes that the new obligations commence 12 months from registration of the new Code by the ABA, rather than 6 months as proposed by the ABA. This would avoid disruption to current digital rollout schedules with additional cost implications that would be created and allow sufficient time for complex programming decisions to be made.

2.3 Material of Local Significance

There are a number of issues arising in relation to the proposed definition of "material of local significance". In particular, Commercial Television Australia is concerned that the definition is too narrow in some respects and may not allow sufficient flexibility in providing information of real interest to local areas.

There are many subjects that may be relevant to more than one particular area. An example would be a levy to be imposed on particular tourism activities. Coverage of this issue should satisfy the ABA requirements, even if relevant to more than one local area. As the ABA's requirements are currently drafted, only that part of a story on this subject that specifically dealt with the implications for the particular area would qualify for points.

Commercial Television Australia also suggests that matters of social, environmental, political or economic relevance to a particular area should qualify as material of local significance.

2.4 How Points Accumulate

Commercial Television Australia believes that the ABA's points structure should be reconsidered.

News, sport and current affairs should all qualify for the same points. Each program type demands similar production resources and delivers material of value to local viewers. In addition, the quota should be structured to encourage maximum diversity of program types – counter programming rather than head to head schedules of similar material. In planning to meet quota requirements, broadcasters will need to strive to produce qualifying programming that maximises the return for the investment committed to that programming. Each of these program types should qualify for 4 points per minute.

Weather should qualify for 2 points per minute, except where part of a news bulletin, where it should qualify for the same points as the news.

The new obligations should also permit time taken to broadcast advertising and sponsorship material during block programming of material of local significance to be included. For example, a half hour program of local significance will contain some commercial breaks. These breaks should not be deducted from the half hour block.

This approach is similar to that taken in other forms of content regulation such as the Australian Content Standard and changes recently announced to the HDTV Quota.

2.5 Repeat Material

Commercial Television Australia believes that repeat material should count for quota points. This is similar to the approach taken in the Children's Television Standard, which allows for a combination of first run and repeat material. Such an approach recognises that different viewers may wish to access material at different times and that encouragement of some repeat programming delivers benefits to local viewers.

In particular, Community Service Announcements derive much of their benefit from being shown at different time slots and from reinforcing the message with viewers. All broadcasts of a CSA in a campaign should qualify for quota points as each delivers similar benefits to the community.

2.6 Quota Period

The ABA's current proposal is that licensees must meet quota obligations for 52 weeks of the year. However, this does not allow for any "down time" in the operations of regional broadcasters.

It is common for both metropolitan and regional broadcasters to move to a downscaled mode of operation over the Christmas non-ratings period. This allows staff to take annual leave and reflects a reduced incidence of television viewing over this period.

Commercial Television Australia therefore proposes that the quota requirements apply over a 48 rather than a 52 week period.

2.7 Record Keeping

The ABA's proposed Condition would require the retention of records of material broadcast in compliance with the Condition for a period of seven years.

Similar record keeping requirements are also found in Schedule 2 of the *Broadcasting Services Act 1992* relating to news, current affairs and political matter. These require retention of a copy of the material broadcast. Under the Schedule 2 provisions, records are only required to be retained for a period of 6 weeks or longer where there is a complaint or legal action. The requirement to retain copies of all matter broadcast for 7 years in each regional area will impose significant onerous archiving requirements on licensees.

There is no justification for a significantly more onerous requirement than currently in Schedule 2 of the Act. At the most, retention should only be required for a limited period after each reporting date, such as three months.

2.8 Definition of “week”

Commercial Television Australia believes that the weekly reporting period should commence on Sunday (rather than Monday as currently drafted) to mirror accepted practices for other commercial television operations.

2.9 Relevant time periods

Commercial Television Australia believes that programs should count toward the relevant quota where the program has commenced prior to or ceased after the relevant time zone, but is broadcast during the relevant time zone.

Some member stations provide local services that would qualify for quota points at times that sit outside the ABA's proposed relevant time periods. Commercial Television Australia also believes that the determination of whether a local program or provision of local information counts towards a quota should not be based on a random time zone, but more reflect the quality and content of the products such, the relevant time period should be expanded to 6am - Midnight, seven days per week.

3. Other Issues

3.1 Regional Areas

The proposed licence condition has set a points accumulation target for each regional area within the broadcast service area. These regional areas are broadly based on the pre-aggregation service areas.

However, the signal splits now in place do not in all cases reflect pre-aggregation markets, and, indeed, are not uniform to each broadcaster. In some cases, regional broadcasters may provide more than one service within a service area. In such cases, the provision of additional services within a designated area should be permitted to be offset in other regional areas within the overall market.

For example, within the Maryborough market in regional Queensland, STQ produces and telecasts two thirty minute news bulletins five days a week to service the disparate markets of the Wide Bay region and the Sunshine Coast. The total population of this market is 442,855 spread over a very wide geographic region.

This additional service should be recognised in contributing to the overall points requirement. One method to address this would be to alter the current points proposal to include an overall points requirement for each aggregated market. This would allow some flexibility in allocating points between the various sub-markets or local areas. We strongly believe that the "imposition" of sub-market boundaries has the potential to create far greater problems than it may fix, and that regional stations be allowed to identify their own "local areas" for provision of services.

We propose further work be done in conjunction with the ABA to establish either:-

- (a) uniform service areas;
- (b) a formula or methodology that takes into account the different signal splits and acknowledge the realistic issue the licensee is required to meet.

It is of importance that the ABA and the broadcasters work together so that the service areas defined are achievable.

3.2 Factual Inaccuracies in the ABA Investigation Report

There were a number of factual inaccuracies contained in the ABA's Investigation Report.

Table 2 on page 31 of the report does not list Seven Queensland as a "Licensee broadcasting local information". Within regional Queensland, STQ broadcasts significant local information through use of a "Community Noticeboard" segment. This segment, of some 90 seconds in duration, airs in all sub-markets within regional Queensland, five days per week and provides community organisations and local community event organisers the opportunity to promote themselves to a wide local audience.

The same Table lists WIN as a "Licensee broadcasting local news" in Mackay. STQ provides the only local news service in that pre-aggregation service area.

On Page 40, para 1 it is stated that "both Prime and Southern Cross stated that they were not providing local information to Regional Queensland". Prime does not broadcast at all in Regional Queensland and does not have a licence to broadcast in that market.

3.3 Tradeable Quotas

In evidence to the House of Representatives Regional Radio Inquiry last year the Deputy Chair of the ABA, Ms Lyn Maddock, suggested that the Committee consider a "trading credits" system as a way of sharing the responsibility between commercial radio broadcasters to provide for localism because, as she said, "if you had a system whereby you mandated that every station is responsible for their being on air in the area, X minutes or X hours per day of community news, but could contract with another station to deliver on their behalf, then the station that is most efficient at producing and organising it will do so".

It is surprising therefore, that on this occasion, the option of a "trading credits" system for local news has not been suggested by the ABA. The ABA's proposal places the burden of providing local information and news directly on each broadcaster but with no capacity for any trading of responsibility.

Commercial Television Australia supports the concept of "trading credits". In our view, such a mechanism would promote diversity and allow broadcasters to build on strengths in particular market areas. Such a mechanism would allow a balance between commercial imperatives and viewer interests. Trading credits are likely to result in higher quality programming intended to capitalise on market strengths in the relevant areas. It is not in the public interest to have head-to-head programming of local news which is quite likely to occur in a market where all three licensees are required to provide it.¹

¹ The concept of trading credits and these paragraphs are taken from "Sharing the burden of providing local news and information on commercial television in regional Australia" by John Corker and are reproduced with thanks.

3.5 *Local Emergency Information*

Commercial Television Australia notes the ABA's view that that a separate Code dealing with provision of emergency information is warranted in regional areas and that this Code should be prepared in advance of the current review of the Industry Code of Practice.

Commercial Television Australia will work with the ABA in preparing such a Code.

APPENDIX A

DRAFT CODE OF PRACTICE

The following document presents a Draft Code of Practice for provision of Material of Local Significance.

It is based on the ABA's Proposed Licence Condition amended in accordance with this submission.

Part 1 - Preliminary

1. Introduction

This Code has been developed in accordance with the requirements of section 123 of the *Broadcasting Services Act* and has been registered by the Australian Broadcasting Authority (“**ABA**”) after endorsement by commercial television licensees in regional areas and consultation with the viewing public. The Code aims to ensure that regional television licensees broadcast a minimum amount of program content containing material of local significance to their viewers.

It is intended that this Code will be formally reviewed after it has been in effect for three years. If, within that time, it is shown that the Code requires substantive change, the public will be given adequate opportunity to comment on the changes that may be proposed.

2. Commencement

This Code commences at the end of 12 months after the day on which it is registered by the ABA.

3. Definitions

In this Code:

Act means the *Broadcasting Services Act 1992*.

licensee means the holder of the commercial television broadcasting licence mentioned in section 4.

material of local significance has the meaning given by section 6.

point, in relation to material of local significance, has the meaning given by section 8.

regional area means an area described in that way in section 5 and Schedule 1.

week means a period of 7 days starting on a Sunday.

4. Application of Code

This Code applies to the holder of each of the commercial television broadcasting licences specified in Schedule 1.

5. Regional areas

The **regional areas** of the licensee’s licence are set out in Schedule 1.

Note Regional areas are broadly based on the pre-aggregation service areas, adjusted for the most recent Census data.

6. Material of local significance

(1) Material that is broadcast to a regional area is **material of local significance** to the area if:

- (a) it is material that relates to the area including:
 - (i) people or organisations in the area; or

- (ii) the activities of people or organisations in the area; or
 - (iii) events that occur in the area; or
 - (iv) issues that arise in the area; or
 - (b) it deals with the effects in the area of an event that occurs elsewhere; or
 - (c) it deals with people, organisations, events or issues that are of particular interest to people in the area; or
 - (d) it is of a social, environmental, political or economic relevance to people in the area.
- (2) For paragraph (1) (b), material that deals with the event itself, or with its effects generally, does not satisfy the paragraph.
- (3) Without limiting paragraph (1)(c), each of the following is material that satisfies the paragraph:
- (a) material that:
 - (i) relates to a political matter or a matter of current affairs; and
 - (ii) is in the form of discussion by, or statements or commentary from, people of relevance to the area ;
 - (b) material about a sporting event that involves a team from the area;
 - (c) material about a sporting event that involves a team from a nearby area, whose principal support base includes the area, or a significant part of the area;
 - (d) material about market conditions that affect business activities in the area;
 - (e) material about an individual in whom people in the area are particularly interested because of an association with the area, such as the individual's having grown up, or lived, in the area;
 - (f) a community service announcement, including an announcement of information about a person or organisation that provides a service to the community in the area.
- (4) Material in the form of advertising or sponsorship matter, whether or not of a commercial kind (other than community service announcements mentioned in paragraph (3) (f)), is not material of local significance.
- (5) Material (including a station promotion) that constitutes an announcement that material of local significance will appear later is not material of local significance.

Part 2

7. Licensee must broadcast material of local significance

The licensee must, for each license area as a whole, broadcast material of local significance that accumulates:

- (a) In each week following the commencement of this Code – at least 90 points in each licence area, calculated by adding the points achieved in each regional

area and dividing that total by the number of regional areas within the licence area; and

- (b) In each period of 8 weeks following the commencement of this Code – at least 960 points in each licence area calculated by adding the points achieved in each regional area and dividing that total by the number of regional areas within the licence area

provided that the licensee shall be under no obligation to accumulate points during any 4 weeks of each calendar year determined by the licensee (which need not be consecutive) and for the purposes of determining the licensee's compliance with paragraph (b), the licensee's obligation shall be reduced by 120 points for each week of any period of 8 weeks in which the licensee elects not to accumulate points for the purposes of this section.

8. How points accumulate

- (1) Programs or other broadcast material which contains material of local significance to a regional area accumulates points if it is broadcast in the relevant time period..
- (2) The rate at which programs or other broadcast material accumulates points is:
- (a) If the program or other broadcast material is in the form of news, current affairs or sport – 4 points per minute;
 - (b) If the program or other broadcast material is in the form of weather - 2 points per minute; or
 - (c) Otherwise – 1 point per minute.
- (3) For the purposes of clause 8(2):
- (a) if a news program includes weather, the weather component of the program shall be deemed to be news; and
 - (b) a program includes any advertising or promotional material broadcast during the program.
- (4) Subsection (1) does not prevent the licensee from broadcasting material of local significance at other times.
- (5) The following periods are *relevant time periods*:
- (a) On Monday to Friday (inclusive) – 3pm – 11pm;
 - (b) On Saturday or Sunday – 8am – 11pm.
 - (c) On any day provided that the program has commenced prior to or ceased after the relevant time zone but is broadcast during the relevant time zone.

9. Reporting to ABA and retention of records

- (1) The licensee must inform the ABA, within 30 days after the end of each period of 6 months ending on 30 June or 31 December in a year, of the points accumulated by the licensee for each regional area in each week of that period.

- (2) The licensee must make records sufficient to verify the times and the content of broadcast material that it claims accumulated points.
- (3) The licensee must provide the ABA with access to the records on request.
- (4) Records for this section must be kept until the end of 3 months after the end of the period to which they refer.
- (5) The licensee must comply with any directions by the ABA about:
 - (a) What the records must cover; or
 - (b) How they must be made or kept.
- (6) The ABA may publish information given by the licensee under subsection (1).

10. Compliance with the Code

Licensees must endeavour to comply with the Code, but a failure to comply will not be a breach of the Code if that failure is due to:

- (a) reasonable mistake;
- (b) a reasonable interpretation of the requirements of this Code; or
- (c) an act or failure of another person, or accident of some other cause beyond the licensee's control, provided that the licensee took reasonable precautions and exercised due diligence to avoid the failure.

Where a licensee has failed to satisfy its obligations under the Code by failing to accumulate sufficient points, the licensee shall, in addition to its continuing obligations under the Code, broadcast additional matter of local significance over a period determined by the ABA (which shall not exceed 12 weeks for any one breach) which accrues points equal to the amount of the shortfall, provided that nothing in this section will require a licensee to accumulate more than 240 points in any week.