

# **Annual Reports to the ACCC pursuant to section 118PN of the Radiocommunications Act**

**Financial Year 2010-2011**

**Digital Radio Joint Venture Companies**

Adelaide, Brisbane, Melbourne, Perth and Sydney

1 September 2011

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# Executive Summary

## Background

This document constitutes the annual report by the digital radio multiplex transmission licensees in Adelaide, Brisbane, Melbourne, Perth and Sydney (**JVCs**) under section 118PN of the *Radiocommunications Act 1992* (Cth) for the 2010-2011 financial year.<sup>1</sup>

On 22 April 2009, the Australian Competition & Consumer Commission (**ACCC**) determined that an ACCC-modified access undertaking was to apply pursuant to section 118NF(5) of the Radiocommunications Act in respect of the supply of the multiplex transmission capacity services by the JVCs (**access undertaking**).

Section 118PN of the Radiocommunications Act provides that, if an access undertaking is in force during the whole or part of a financial year, the JVCs must submit annual reports to the ACCC within 60 days of the end of the financial year, on the following:

- matters specified in the *Digital Radio Multiplex Transmitter Licence Procedural Rules 2008* made by the ACCC under section 118PO of the Radiocommunications Act (**Procedural Rules**); and
- matters that relate to:
  - compliance during that financial year with the access undertaking; or
  - compliance during that financial year with the standard access obligations (if any) applicable to the licence; or
  - compliance during that financial year with the excess-capacity access obligations (if any) applicable to the licence; or
  - compliance during that financial year with the distributed-capacity access obligations (if any) applicable to the licence; or
  - compliance during that financial year with the obligations that are applicable to the licence under section 118NP.

The Procedural Rules require the JVCs to cover the following matters within an annual report:

- compliance during that financial year with the access undertaking;

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<sup>1</sup> Further details about the entities that have lodged this annual report are set out in Attachment 1.

- compliance during that financial year with standard access obligations (if any) applicable to the licence
- compliance during that financial year with excess-capacity access obligations (if any) applicable to the licence
- compliance during that financial year with obligations that are applicable to the licence under section 118NP of the Radiocommunications Act (i.e. the JVC's non-discrimination obligation)
- any non-compliance (including reasons) with the above
- steps taken to rectify non-compliance
- expected completion dates for matters requiring rectification
- changes to the membership of the JVCs that have occurred during the financial year
- any authorisation of third party users.

This annual report covers the matters identified in section 118PN of the Radiocommunications Act and the Procedural Rules in respect of the 2010-2011 financial year.

## Overview of findings

The 2010-2011 financial year was the second full year in which the JVCs supplied multiplex transmission services to access seekers pursuant to the access undertakings.

Our review has concluded that the JVCs have been largely compliant with the legislative requirements of the Radiocommunications Act and the terms of the access undertaking (including the access agreement) for the 2010-2011 financial year.

Some of the key highlights of the 2010-2011 financial year included:

- community radio broadcasters taking up their standard access entitlements for up to two-ninths of multiplex capacity in each capital city. These arrangements were implemented through the execution of access agreements with individual community radio broadcasters that were nominated by the Digital Community Radio Broadcasting Representative Company (**Representative Company**), as well as additional agreements with the Community Broadcasting Association of Australia (**CBA**A) and the Representative Company to give effect the financial, operational and technical arrangements required to delivery multiplex capacity to the nominated individual community radio broadcasters

- finalisation by the JVCs of the operational manual for the multiplex transmission service pursuant to clause 2.2 of the access agreement
- finalising the weighted average cost of capital (**WACC**) in accordance with requirements of the pricing principles in the access agreement, following the commissioning of an independent economic consultancy to recommend the WACC and subsequent discussions with the ACCC about its preferred approach. The revised WACC will be reflected in access fees from 1 October 2011.

The JVCs have largely supplied the multiplex transmission service to content service providers in accordance with their legislative and regulatory obligations, including the prohibition against discrimination in the supply of the multiplex transmission services in respect of the technical and operational quality of the multiplex transmission services and fault detection, handling and rectification.

Following the commencement of supply of the multiplex transmission capacity to community radio broadcasters, the JVCs did not adjust the access fees payable by the commercial radio broadcasters in accordance with the requirements of the pricing principles in the access agreement. This oversight will be corrected on an expedited basis through a credit note to be issued to commercial radio broadcasters.

## Confidentiality

There are some attachments to this Annual Report that are confidential to the JVCs.

It is requested that those attachments to this report that are identified as confidential not be disclosed to the public in accordance with section 13 of the Procedural Rules.

The JVCs do not object to the disclosure of this annual report (including the attachments) in its entirety to the Australian Communications and Media Authority in accordance with section 16(1)(f) of the Procedural Rules.

# Annual Report

## 1 Compliance with digital radio access undertaking

### 1.1 Overview

This section sets out the extent to which the JVCs have complied with key aspects of the access undertakings, including the access agreement that forms part of the access undertakings and which has been entered into with access seekers.

We have not sought to cover all aspects of the access undertaking and access agreement as part of our report given there are many aspects of these documents that are non-substantive or which were not operative or relied upon during the 2010-2011 financial year (e.g. the liability and indemnity provisions under the access agreement).

We have sought to focus our commentary on those areas that we envisage are likely to be of interest to the ACCC.

The areas of the access undertaking and access agreement covered in this section include:

- operational manual requirements under clause 2.2 of the access agreement
- the JVCs supply obligations in respect of the multiplex transmission service under clause 9 of the access agreement
- the JVCs obligations in respect of financial security under clause 14 of the access agreement
- the JVCs compliance with the pricing principles in Schedule 2 of the access agreement, including:
  - the efficient cost principle for the inclusion of capital expenditure, operating expenditure and overheads into the JVCs cost base under clause 3.3
  - the determination of the weighted average cost of capital under clause 3.4
  - the criteria for the calculation of access fees under clauses 4.1 and 4.2
  - the criteria for adjustments to access fees based on changes to the amount of multiplex capacity being acquired under clause 4.4
  - the process for review of the access fees under clause 5.

We provide a summary of our overall findings on compliance in Attachment 2.

This section 1 does not explicitly consider the issue of compliance with the standard access obligations and excess-capacity access obligations, which are covered in sections 2 and 3 respectively.

## **1.2 Operational manual**

The JVCs finalised the operational manual in the 2010-2011 financial year.

Clause 2.2(a) of the access agreement provides that the JVCs must develop an operational manual in consultation with all access seekers to deal with the

technical and operational matters in relation to the access agreement. The access agreement does not impose a specific timeline for the development of such a manual.

Clause 2.2(b) of the access agreement requires the JVCs to undertake the following tasks as part of the development of the operational manual:

- establish a consultative process for the development of the operational manual
- consult with all access seekers in good faith
- use its reasonable endeavours to accommodate any reasonable requests by Access Seekers during the consultation process relating to the development of the operational manual
- ensure that the operational manual is consistent with the access agreement.

The development of the operational manual commenced in May 2010 following finalisation of certain technical and operational issues associated with the multiplex transmission service and was finalised on 27 September 2010.

The process undertaken by the JVCs in respect of the development of the operational manual was compliant with the clause 2.2 of the access agreement.

In particular:

- the operational manual was developed by the Digital Technical Advisory Committee (**DTAC**) – DTAC was established by Commercial Radio Australia to provide technical advice on the implementation of the digital radio platform in Australia and is comprised of subject matter experts, vendors and technical representatives from all access seekers, including representatives from the community sector
- DTAC was the forum for consultation with access seekers on the contents of the operational manual, as required under clause 2.2(b) of the access agreement
- DTAC undertook multiple rounds of consultation as part of the development of the operational manual over a period of approximately 4 months
- the final version of the operational manual was signed off by DTAC, including by the CBAA representative (which represents digital community broadcasters on technical matters)
- the operational manual was reviewed for consistency with the access agreement by Webb Henderson, the external legal advisors to the JVCs.

In light of the above, the JVCs are not aware of any non-compliance with their obligations under clause 2.2 of the access agreement.

### **1.3 Financial security**

The JVCs did not require a financial security from any commercial radio broadcasters or community radio broadcasters in the 2010-2011 financial year.

However, as part of the financial arrangements that were put in place between the JVCs and the CBAA to support the supply of the multiplex transmission service to the community radio broadcasters, the parties agreed that the CBAA would provide a financial security equivalent to 3 months access fees for two-ninths of the reserved multiplex capacity to each JVC.

The purpose behind this payment was twofold:

- to offset some of the financial risk to the JVCs in entering into access arrangements with community radio broadcasters, which were not otherwise in a position to pay the access fees themselves and were reliant on payments from the CBAA to meet their financial obligations under their respective access agreements
- along with a requirement to pay access fees 3 months in advance,<sup>2</sup> to create a 'buffer' in the payments made on behalf of the community radio broadcasters to ensure that the supply of the multiplex transmission service could continue for a reasonable period in the event that the Commonwealth Government funding made available to the CBAA ceased and the CBAA was required to secure alternative funding to keep digital community radio broadcasts on the air.

The JVCs did not draw on the financial security given by the CBAA in the 2010-2011 financial year.

The JVCs consider that that financial security provided by the CBAA was outside the direct scope of the access undertaking and access agreement, as the financial security was not required from community radio broadcasters individually and was paid under a separate tri-partite agreement between the JVCs, the CBAA and the Representative Company.

The JVCs did not require a financial security from the incumbent digital commercial broadcasters in the 2010-2011 financial year.

### **1.4 Supply obligations**

Clause 9 of the access agreement:

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<sup>2</sup> Please note that the requirement of advance payment is also applicable to digital commercial broadcasters.



- forbids the JVCs from preventing an access seeker from obtaining access to the multiplex transmission service in accordance with the access agreement
- prohibits the JVCs from discriminating between access seekers to which it supplies the multiplex transmission service in relation to technical and operational quality of the service itself, and the technical and operational quality and timing of the fault detection, handling and rectification supplied in respect of the service – this requirement implements the non-discrimination requirement in section 118NP of the Radiocommunications Act
- requires that the JVCs make the standard access entitlements and excess-capacity access entitlements available to content service providers.

The JVCs are not aware of any non-compliance with clause 9 of the access agreement in the 2010-2011 financial year.

In particular, the JVCs:

- did not prevent any access seeker from receiving the multiplex transmission service during that period
- supplied the multiplex transmission service on an identical basis to all access seekers from a technical and operational quality perspective during that period
- allowed all holders of standard access entitlements and excess-capacity access entitlements to acquire those entitlements pursuant to their respective access agreements.

### **1.5 Efficient cost principle**

Clause 3.1 of Schedule 2 of the access agreement limits the costs that the JVCs can recover from access seekers to those costs that have been efficiently incurred. Clause 3.3 of the access agreements sets out the criteria to guide whether the various costs elements that comprise the multiplex transmission service (i.e. capital expenditure, operating expenditure and overheads) have been efficiently incurred.

While the JVCs have not engaged experts to express a definitive view on the efficiency of all JVCs costs, the JVCs consider that the costs that have been included within its cost base and which were partially recovered during the 2010-2011 financial year reflect the efficient costs incurred by the JVCs. The JVCs have already provided details in the 2008-2009 and 2009-2010 annual reports of the steps that it has taken to ensure the efficiency of key expenditure items in its cost base.

The 2010-2011 financial year was not characterised by high levels of new expenditure in respect of the multiplex transmission service (as key infrastructure

required to support the service was already in place at this point). However, in September 2010, the JVCs entered into a contract for digital radio operations services. While this was a reasonably low value contract, this contract was nonetheless allocated through a competitive tender process.

In light of the above, the JVCs are not aware of any non-compliance with the efficient cost principle contained within the pricing principles in the access agreement.

## 1.6 Weighted Average Cost of Capital

Clause 3.4(c)(i) of the Pricing Principles within the access agreement provide that the weighted average cost of capital of the JVC:

*“will be commensurate with the weighted average cost of capital of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle”.*

During the public consultation process for the access undertakings, the JVCs stated that it was premature to determine the WACC for multiplex transmission services given the nascent state of digital radio broadcasting in Australia and that it would be appropriate to conduct a benchmarking exercise at a later date once more data had become available. This proposition was accepted by the ACCC in its final decision on the digital radio access undertakings.<sup>3</sup>

During the 2010-2011 financial year, the JVCs used a post-tax WACC of 7.5% for the purpose of determining access fees. This percentage was based on the 10 year Commonwealth bond rate of 5.5% plus 2%.

That percentage was intended as an interim measure only and represented a conservative estimate of the cost of capital of the JVCs. A lower rate was also used to avoid any potential disagreement with access seekers about what would constitute an appropriate WACC for the JVCs.

The JVCs do not consider that the adopted WACC rate had a significant negative impact on access seekers or competition issues in relevant markets.

In particular:

- the proposed post-tax WACC of 7.5% was approved by the JVCs boards as part of the approval of the JVCs budgets in 2010-2011 financial year – the JVCs are constituted by shareholders that were acquirers of the multiplex transmission service

- the proposed post-tax WACC of 7.5% was not subject to any disputes between JVCs and access seekers in the 2010-2011 financial year under Schedule 3 of the access agreement
- the use of a lower WACC, particularly as an interim measure, did not have any negative impact on competitive investment (which is a risk associated with access prices that are set at artificially low levels), given that investment possibilities in digital radio multiplex infrastructure and related downstream markets are strictly limited by the licensing framework that exists under the Radiocommunications Act.

During the 2010-2011 financial year, the JVCs worked towards achieving full compliance with clause 3.4(c) of Schedule 2 of the access agreement. As part of this, the JVCs retained Competition Economists Group (**CEG**) to provide an independent assessment of a WACC range that could be considered by the JVCs in calculating the level of access fees.

The proposed approach to WACC adopted by the JVCs was discussed with the ACCC during the course of the 2010-2011 financial year. Having regard to input provided by the ACCC, the JVC boards approved a WACC for use in the calculation of access fees for the multiplex transmission service in June 2011 of 8.17% (using an Officer transformation approach).

The specific parameters used by the JVCs to calculate the WACC are summarised below:

Parameter	Value
Gearing	30%
Nominal risk free rate	5.56%
Inflation	2.52%
Real risk free rate	2.97%
Equity beta	0.83
Gamma	0.45
MRP	6.00%
Nominal return on equity (post-tax)	10.53%
Cost of debt	9.49%
Cost of equity	11.5%
Vanilla post-tax WACC	10.22%
Officer post-tax WACC	8.17%

The revised WACC will be applied to the access fees from 1 October 2011, once the relevant consultation process for changes to the level of access fees under Schedule 2 of the access agreement has been completed.

## 1.7 Calculation of access fees

Clause 4.1 of Schedule 2 of the access agreement provides that the JVCs will levy fixed recurring charges based on the amount of multiplex capacity allocated to an access seeker, regardless of whether such capacity is used.

Clause 4.2 establishes a formula for the conversion of the JVCs annualised costs into an annual fixed recurring charge, based on the following formula:

$$\text{AFRC} = \text{AC} \times \text{BMC}/\text{TMC}$$

Where:

**AFRC** is the annual fixed recurring charge.

**AC** is the annualised costs derived under section 3.

**BMC** is the amount of multiplex capacity allocated to the relevant access seeker

**TMC** is the total amount of multiplex capacity allocated to all access seekers by the JVC.

The access fees payable by access seekers for the 2010-2011 financial year for standard access entitlements is set out below. The figures below are exclusive of GST, broken down on the basis of 32Kbps allocations.

BSA Radio Area	Access Seekers	Access Fee (per 32 Kbps, per annum)
1. Adelaide	5AD Broadcasting Company Pty Limited	\$25,461
	Austereo Pty Limited	\$25,461
	Festival City Broadcasting Pty Limited	\$25,461
	Nova 91.9 Pty Limited	\$25,461
	Southern State Broadcasters Pty Limited	\$25,461
	Triple M Adelaide Pty Limited	\$25,461
	Digital Community Broadcasters, comprising:	\$19,803
	- Progressive Music Broadcasting Association Inc. - Ethnic Broadcasters Inc.	

<b>BSA Radio Area</b>	<b>Access Seekers</b>	<b>Access Fee (per 32 Kbps, per annum)</b>
	<ul style="list-style-type: none"><li>- Fresh Broadcasters Inc.</li><li>- Christian Radio Inc.</li><li>- RPH Adelaide Inc.</li><li>- The University Of Adelaide</li></ul>	

BSA Radio Area	Access Seekers	Access Fee (per 32 Kbps, per annum)
2. Brisbane (Channel 9A and 9B)	ARN Communications Pty Limited	\$19,493
	Brisbane FM Radio Pty Limited	\$19,493
	Broadcasting Station 4IP Pty Limited	\$19,493
	Nova 106.9 Pty Limited	\$19,493
	Radio 4BH Brisbane Pty Limited	\$19,493
	Radio 4BC Brisbane Pty Limited	\$19,493
	Today FM Brisbane Pty Limited	\$19,493
	Triple M Brisbane Pty Limited	\$19,493
	Digital Community Broadcasters , comprising:  - 4AAA FM 98.9  - Brisbane Interactive Radio Group Inc.  - Ethnic Broadcasting Association of Queensland Ltd.  - Family Radio Ltd.  - Music Broadcasting Society of Queensland Ltd.  - Creative Broadcasters Ltd.	\$14,907
	3. Melbourne (Channel 9A and 9B)	3UZ Pty Limited
ARN Broadcasting Pty Limited		\$20,264
Austereo Pty Limited		\$20,264
Double T Radio Pty Limited		\$20,264
Malbend Pty Limited		\$20,264
Nova 100 Pty Limited		\$20,264
Radio 1278 Melbourne Pty Limited		\$20,264
Radio 3AW Melbourne Pty Limited		\$20,264

BSA Radio Area	Access Seekers	Access Fee (per 32 Kbps, per annum)
	Triple M Melbourne Pty Limited Classic Rock 91.5FM Pty Limited Victorian Radio Network Pty Limited Digital Community Broadcasters, comprising: - Community Radio Federation Ltd. - South Eastern Indigenous Media Association Inc - Music Broadcasting Society of Victoria Ltd. - Progressing Broadcasting Service Co-op Ltd. - Vision Australia Limited. - Tripe R Broadcasters Ltd. - Sydney Youth Network - Light FM Inc. - Ethnic Community Broadcasting Association of Victoria	\$20,264 \$20,264 \$20,264 \$15,761
4.Perth	Consolidated BC Sys WA Perth FM Radio Pty Ltd DMG Radio Perth Pty Ltd Radio Perth Pty Ltd Radio 96FM Radio 6PR Perth Pty Ltd Digital Community Broadcasters, comprising: - Multicultural Radio & Television	\$25,759 \$25,759 \$25,759 \$25,759 \$25,759 \$25,759 \$20,035

BSA Radio Area	Access Seekers	Access Fee (per 32 Kbps, per annum)
	Association Of WA Inc. - Noongar Media Enterprises Pty Ltd. - Curtin University of Technology - Foundation for Information Radio of WA Inc. - Arts Radio Limited - Capital Community Radio Inc. - Sonshine FM	
5.Sydney	2KY Broadcasters Pty Limited ARN Communications Pty Limited Commonwealth Broadcasting Pty Limited Harbour Radio Pty Limited Nova 96.9 Pty Limited Radio 2CH Pty Limited Radio 2SM Pty Limited Radio 2UE Sydney Pty Limited Today FM Sydney Pty Limited Triple M Sydney Pty Limited Classic Rock 95.3 FM Pty Limited Digital Community Broadcasters, comprising: - Hope Media Ltd. - Free Broadcast Inc. - Gadigal Information Service Aboriginal Corporation - Music Broadcasting Society of NSW Ltd.	\$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$19,936 \$15,506



BSA Radio Area	Access Seekers	Access Fee (per 32 Kbps, per annum)
	<ul style="list-style-type: none"> <li>- Muslim Community Radio</li> <li>- Multicultural Community Radio Association Ltd.</li> <li>- Radio for the Print Handicapped of NSW Co-op Ltd.</li> <li>- Sydney Educational Broadcasting Ltd.</li> </ul>	

As a consequence of the community radio broadcasters becoming access seekers in the 2010-2011 financial year, the JVCs were required to adjust the access fees payable by commercial radio broadcasters to take account a larger number of access seekers over which each JVC's costs could be recovered.

However, as the above table demonstrates, the access fees payable by the commercial radio broadcasters were higher than those paid by the community radio broadcasters for the same amount of multiplex capacity within a BSA radio area in the 2010-2011 financial year. The JVCs acknowledge that this is technically non-compliant with clause 4.3 of Schedule 2 of the access agreements. However, the JVCs will correct this oversight by issuing a credit note to each impacted commercial radio broadcaster.

### 1.8 Review of the access fees

Clause 5.2 of Schedule 2 of the access agreement provides that the JVCs may review the access fees to ensure consistency with the Pricing Principles to reflect adjustments relating to:

- actual expenditure incurred by JVC when compared with forecasted or estimated costs
- changes in cost incurred by JVC
- changes in consumer price index

The access fees payable by access seekers were not subject to review in the 2010-2011 financial year pursuant to this clause. While the access fees were adjusted to take account of the community radio broadcasters taking up their standard access entitlements in each BSA radio area, the operation of this provision does not invoke the operation of clause 5.2 (and the review and consultation process contemplated within it).

Accordingly, the JVCs are not aware of any non-compliance with clause 5 of Schedule 2 of the access agreement in the 2010-2011 financial year. The JVCs also note that adjustments to the access fees to reflect the revised WACC will take place at the beginning of the 2011-2012 financial year.

## 2 Compliance with standard access obligations

Section 118NL of the Radiocommunications Act imposes standard access obligations on the JVCs, which in turn require the JVCs to supply multiplex capacity to those content service providers that hold standard access entitlements.

The process for the implementation of standard access entitlements is set out in section 118NQ of the Radiocommunications Act. Clause 6.3 and 6.4 of the access agreement provide the contractual basis for the implementation of these legislative requirements.

In the 2010-2011 financial year:

- the JVCs have made standard access entitlements available with the commercial radio broadcasters pursuant to section 118NQ of the Radiocommunications Act and clause 6.3 of the access agreement
- there was no change in the standard access entitlements that were originally allocated to commercial radio broadcasters in previous financial years.

The Radiocommunications Act also requires that the JVCs reserve two-ninths of multiplex capacity under each digital radio multiplex transmitter licence for community radio broadcasters that are nominated by the Representative Company to claim the standard access entitlement.<sup>4</sup>

The JVCs have met this requirement by allocating standard access entitlements to community radio broadcasters in the 2010-2011 financial year pursuant to access agreements with those broadcasters nominated by the Representative Company.

In addition to the execution of access agreements, the allocation of standard access entitlements to the digital community broadcasters was facilitated through the JVCs entering into an additional tripartite agreement with the CBAA and the Representative Company in respect of financial, operational and technical matters that would support the delivery of multiplex capacity to the individual digital community broadcasters.

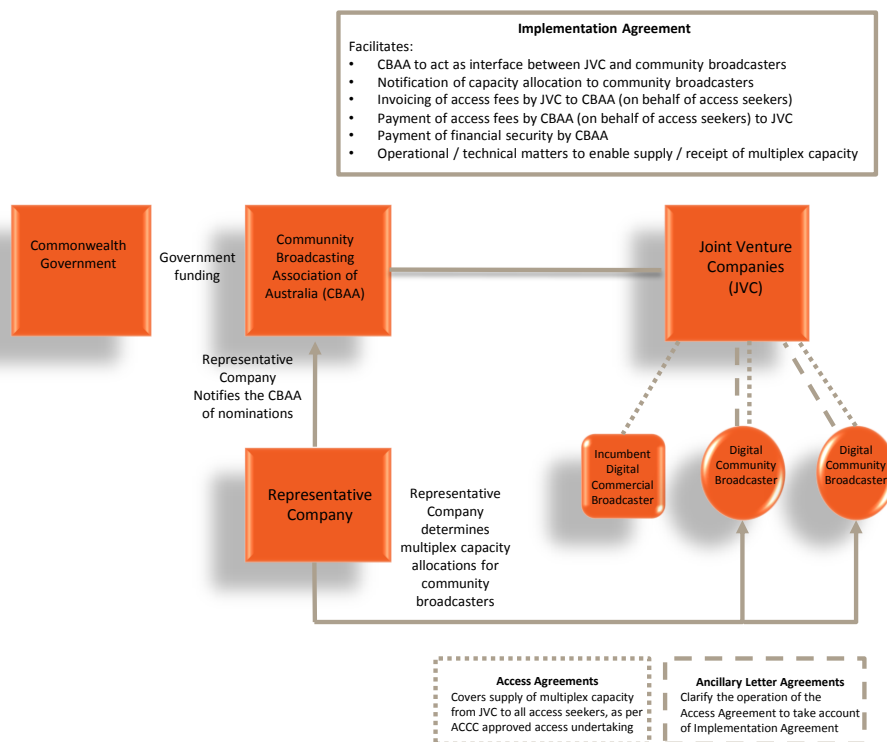
This additional agreement (called the '**implementation agreement**') was put into place for the following reasons:

<sup>4</sup> Radiocommunications Act, section 118NR(2). See also, clause 6.4(b) of access agreement.

- not all community radio broadcasters were in a financial position to pay the access fees for the multiplex capacity on a standalone basis pursuant to the terms of an applicable access agreement
- not all community radio broadcasters would necessarily have the operational and technical resources available to undertake the works required to acquire the multiplex transmission service from the JVCs without assistance from the CBAA
- the CBAA was the direct recipient of funding, via the Community Broadcasting Foundation as part of the “Digital Radio Project”, from the Commonwealth Government for use towards the payment of access fees on behalf of community radio broadcasters
- it was necessary to put in place arrangements to address interaction issues between the JVCs, individual community radio broadcasters and the Representative Company.

The implementation agreement was also complemented by an ancillary letter agreement entered into between the JVCs and individual community radio broadcasters that took account of the overarching arrangements put in place with the CBAA and the Representative Company under the implementation agreement.

A copy of the implementation agreement and ancillary letter agreement is provided at Attachment 3 [C-I-C]. A high level overview of the arrangement that has been put into place between the JVCs and the community broadcasting sector is set out in Diagram 1 below:



The key elements of these arrangements are summarised below:

- each JVC entered into an access agreement with the relevant individual community radio broadcaster to facilitate the supply of the multiplex transmission service to that broadcaster, as per the requirements of the access undertaking
- each JVC, the CBAA and the Representative Company entered into a tri-partite implementation agreement, which provided for the following:
  - for the CBAA to act as the interface between the JVC and the community radio broadcasters
  - that the Representative Company will nominate, and notify the CBAA, of the community radio broadcasters to which the JVCs is to allocate multiplex capacity
  - the JVCs will allocate the relevant fraction (i.e. up to two-ninths) of the multiplex capacity amongst the community radio broadcasters nominated by the Representative Company
  - the JVC will invoice the CBAA for the access fees in respect of the multiplex transmission service acquired by the relevant community radio broadcasters in that BSA radio area
  - the CBAA is required to pay the invoice for access fees (using the Commonwealth Government funding to the full extent possible) on behalf of the relevant individual community radio broadcasters
  - if there is a shortfall between the Commonwealth Government funding and the amount invoiced by the JVC to the CBAA on behalf of the relevant digital community broadcasters, the CBAA will use its best endeavours to procure any outstanding amount from either the relevant community radio broadcaster or an alternative source of funding
  - if the CBAA fails to pay an invoice for the access fees, the JVCs may use the financial security given separately by the CBAA to cover non-payment of the invoice (which is described in section 1.3 above and is equivalent to three months' access fees for the provision of the multiplex capacity based on the full two-ninths of multiplex capacity)
  - the CBAA would be responsible for operational and technical matters to enable the JVC to supply, and the digital community broadcasters to receive, the multiplex capacity

- the JVC would be responsible for JVC equipment that needs to be installed or operated by the JVC to enable the supply of the multiplex capacity to the community radio broadcasters.
- each JVC and the relevant digital community broadcaster entered into an ancillary letter agreement to clarify that the operation of certain provisions of the access agreement would take into account the operation of the implementation agreement.

When taken together, these arrangements provide the basis for the JVCs to make available standard access entitlements to all community radio broadcasters that have been nominated by the Representative Company as being eligible to acquire multiplex capacity in the designated BSA radio area.

In light of the above, the JVCs are not aware of any non-compliance with their standard access obligations for the 2010-2011 financial year.

### **3 Compliance with excess-capacity access obligations**

Section 11NM of the Radiocommunications Act imposes excess-capacity access obligations on JVCs, which in turn require the JVCs to supply multiplex capacity to those content service providers that hold excess-capacity access entitlements acquired in accordance with section 118NT of the Radiocommunications Act.

Clause 7 of the access agreement provides the contractual basis for the implementation of the excess-capacity access entitlements.

The JVCs have made excess-capacity access entitlements available to incumbent commercial broadcasters pursuant to section 118NT of the Radiocommunications Act and clause 7 of the access agreement. Further details about how those allocations were made are set out in the 2009-2010 annual report.

No further excess capacity access entitlements were allocated to content service providers in the 2010-2011 financial year.

The JVCs made excess-capacity access entitlements available to all content service providers that were eligible to acquire the associated multiplex capacity in the designated BSA radio area in the 2010-2011 financial year.

Accordingly, the JVCs are not aware of any non-compliance with their excess capacity access obligations for the 2010-2011 financial year.

### **4 Compliance with non-discrimination obligation**

Section 118NP of the Radiocommunications Act prohibits discrimination by the JVCs between content service providers that have access to multiplex capacity in relation to the following:

- the technical and operational quality of the services supplied to the content service providers; and
- the technical and operational quality and timing of the fault detection, handling and rectification supplied to the content service providers.

This obligation is also reflected in clause 9.3 of the access agreement.

The JVCs are not aware of any non-compliance with their non-discrimination requirements. In particular, the JVCs have supplied the multiplex transmission service on an identical basis to all access seekers from a technical and operational quality perspective, including in respect of fault detection, handling and rectification.

This covers the supply of both standard access entitlements and excess-capacity access entitlements.

## **5 Changes to membership**

There were no changes to the membership of any of the JVCs during the 2010-2011 financial year.

The membership of the JVCs (including the percentage of shareholdings) is set out in Attachment 4.

## **6 Authorisation of third party users**

Section 114(1) of the Radiocommunications Act provides that the JVCs may, by written instrument, authorise a third party to operate radiocommunications devices under the licence.

During the 2010-2011 financial year, the JVCs have not authorised any third parties to operate radiocommunications devices, under this section.

## Attachment 1 – List of JVCs submitting this annual report

This annual report for 2010-2011 has been submitted by the following entities:

- Digital Radio Broadcasting Adelaide Pty Ltd (ACN 128 742 772) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901330
- Digital Radio Broadcasting Brisbane Pty Ltd (ACN 1280742 950) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901423 and 1901424
- Digital Radio Broadcasting Melbourne Pty Ltd (ACN 128 742 898) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901421 and 1901422
- Digital Radio Broadcasting Perth Pty Ltd (ACN 128 742 638) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901331
- Digital Radio Broadcasting Sydney Pty Ltd (ACN 128 742 978) – Foundation Category 1 Digital Radio Multiplex Transmitter Licence Number 1901419 and 1901420.

## Attachment 2 – Table of compliance

Issue	Key legislative or regulatory requirement	JVCs compliance	Impact of non-compliance
<b>Compliance with access undertaking during financial year</b>			
<b>Operational manual</b>	<p>Clause 2.2(a) of the access agreement – the JVCs must develop an operational manual in consultation with all access seekers to deal with operational and technical matters that arise under the agreement, or in connection with supply of multiplex transmission service</p> <p>Clause 2.2(b) of access agreement – in developing the operational manual, the JVCs is required to:</p> <ul style="list-style-type: none"> <li>- establish a process of consultation with all access seekers</li> <li>- undertake consultation with all access seekers in good faith</li> <li>- use its reasonable endeavours to accommodate any reasonable requests that may be made by an access seeker during consultation process in respect of the development or contents of the operational manual</li> </ul>	Compliant	Not applicable
		Compliant	Not applicable
<b>Financial security</b>	Clause 1.4 of the access agreement –the JVCs may require that access seeker provide financial security	Not applicable. However, financial security provided by CBAA for digital community sector	Not applicable.
<b>Supply obligations</b>			



Issue	Key legislative or regulatory requirement	JVCs compliance	Impact of non-compliance
<b>General supply obligation</b>	Clause 9.1 of the access agreement – requires the JVCs to supply access to the multiplex transmission capacity in accordance with the access agreement	Compliant	Not applicable
<b>No hindering of access</b>	Clause 9.2 of the access agreement – prevents the JVCs from hindering access by access seekers to the multiplex capacity	Compliant	Not applicable
<b>Non-discrimination</b>	<p>Clause 9.3 of the access agreement – prevents the JVCs from discriminating against any access seeker in respect of:</p> <ul style="list-style-type: none"> <li>- technical and operational quality of the multiplex transmission service</li> <li>- technical and operational quality of the fault detection, handling and rectification</li> </ul>	Compliant	Not applicable
<b>Efficient recovery of costs</b>	<p>Clause 3.3 of schedule 2 – in determining the prices, the JVCs must recover no more than its “Efficient Costs”</p> <p>Clause 3.2 and clause 3.3 of schedule 2 – sets out the specific types and categories of costs that are allowably recoverable under the “Efficient Costs” principle, including:</p> <ul style="list-style-type: none"> <li>- Capital expenditure</li> <li>- Operating expenditure</li> <li>- Expenditure on corporate overheads</li> </ul>	<p>Compliant</p> <p>Compliant</p>	<p>Not applicable</p> <p>Not applicable</p>
<b>WACC</b>	Clause 3.4(c)(i) of Schedule 2 – WACC must be commensurate with the WACC of similar enterprises conducting similar businesses, with a similar risk profile and at a similar phase of their business cycle	Not technically compliant	<p>No material adverse impact.</p> <p>Compliance to be achieved in 2011-2012 financial year.</p>

Issue	Key legislative or regulatory requirement	JVCs compliance	Impact of non-compliance
<b>Calculation of access fees</b>	Clause 4.1 and 4.2 of Schedule 2 – requires the JVCs to calculate access fees in specified manner	Compliant	Not applicable
<b>Changes in access fees based on total amount of multiplex capacity being acquired</b>	Clause 3.4(c)(i) of Schedule 2 - if the total amount of multiplex capacity allocated to all access seekers increases or decreases within a billing period, charges payable are to be proportionally adjusted upwards or downwards from the date of the relevant increase or decrease	Not technically compliant	No material adverse impact. Credit note to be provided to commercial radio broadcasters to correct error
<b>Review of access fees</b>	<p>Clause 5.2 of schedule 2 of the access agreement – the JVCs may review access charges to ensure consistency with Pricing Principles, including:</p> <ul style="list-style-type: none"> <li>- actual expenditure incurred by JCV when compared with forecasted or estimated costs</li> <li>- changes in cost incurred by JVC</li> <li>- changes in consumer price index</li> <li>- technological developments that change the cost of supplying the multiplex capacity</li> </ul>	Compliant	Not applicable. WACC related adjustment to access fees to be made in 2011-2012 financial year
<b>Compliance with standard access entitlements during financial year</b>			
<b>Standard access entitlements</b>	Section 118NL – requires the JVCs to supply content service providers with their standard access entitlements. This is implemented under clause 6 of the access agreement	Compliant	Not applicable
	Section 118NQ(2) – sets out the way by which an incumbent commercial broadcaster may request access, and the JVCs is required to supply access to their standard access entitlement on the multiplex. This is implemented under clause 6 of the access agreement	Compliant	Not applicable

Issue	Key legislative or regulatory requirement	JVCs compliance	Impact of non-compliance
<b>Reservation of multiplex capacity for digital community broadcasters</b>	Section 118NR(2) – requires the JVCs to reserve two-ninths of the capacity on the multiplexer for the community digital radio broadcasters. This is implemented under clause 6.4 of the access agreement	Compliant	Not applicable
	The JVC allocated two-ninths of the capacity on the multiplexer for the community digital radio broadcasters in the 2010-2011 financial year	Compliant	Not applicable
<b>Compliance with non-discrimination obligation under section 118NP of Radiocommunications Act</b>			
<b>Non-discrimination</b>	Section 118NP – prohibits the JVCs from discriminating between access seekers on: <ul style="list-style-type: none"> <li>- technical and operational quality of services supplied to content service providers</li> <li>- technical and operational quality and timing of fault detection, handling, rectification supplied to content service providers</li> </ul> Clause 9.3 of the access agreement implements this requirement.	Compliant	Compliant

# **Attachment 3 – Implementation Agreement and Ancillary Letter Agreement [C-I-C]**

## Attachment 4 – JVC membership for 2010-2011 financial year<sup>5</sup>

Digital Radio Broadcasting Adelaide Pty Ltd	Number of shares	Shareholding percentage
5AD Broadcasting Company Pty Limited	13,000	16.66%
Austereo Pty Limited	13,000	16.66%
Festival City Broadcasting Pty Limited	13,000	16.66%
Nova 91.9 Pty Limited	13,000	16.66%
Southern State Broadcasters Pty Limited	13,000	16.66%
Triple M Adelaide Pty Limited	13,000	16.66%
<b>Total</b>	<b>78,000</b>	<b>100%</b>

Digital Radio Broadcasting Brisbane Pty Ltd	Number of shares	Shareholding percentage
ARN Communications Pty Limited	10,000	12.50%
Brisbane FM Radio Pty Limited	10,000	12.50%
Broadcasting Station 4IP Pty Limited	10,000	12.50%
Nova 106.9 Pty Limited	10,000	12.50%
Radio 4BH Brisbane Pty Limited	10,000	12.50%
Radio 4BC Brisbane Pty Limited	10,000	12.50%
Today FM Brisbane Pty Limited	10,000	12.50%
Triple M Brisbane Pty Limited	10,000	12.50%
<b>Total</b>	<b>80,000</b>	<b>100%</b>

<sup>5</sup> Please note that shareholdings have been rounded to 2 decimal places.  
Digital Radio Joint Venture Companies

Digital Radio Broadcasting Melbourne Pty Ltd	Number of shares	Shareholding percentage
3UZ Pty Limited	7,000	9.09%
ARN Broadcasting Pty Limited	7,000	9.09%
Austereo Pty Limited	7,000	9.09%
Double T Radio Pty Limited	7,000	9.09%
Malbend Pty Limited	7,000	9.09%
Nova 100 Pty Limited	7,000	9.09%
Radio 1278 Melbourne Pty Limited	7,000	9.09%
Radio 3AW Melbourne Pty Limited	7,000	9.09%
Triple M Melbourne Pty Limited	7,000	9.09%
Classic Rock 91.5FM Pty Limited	7,000	9.09%
Victorian Radio Network Pty Limited	7,000	9.09%
<b>Total</b>	<b>77,000</b>	<b>100%</b>

Digital Radio Broadcasting Perth Pty Ltd	Number of shares	Shareholding percentage
Consolidated Broadcasting System (W.A.) Pty Limited	13,000	16.67%
DMG Radio (Perth) Pty Limited	13,000	16.67%
Perth FM Pty Limited	13,000	16.67%
Radio 6PR Pty Limited	13,000	16.67%
Radio 96FM Perth Pty Limited	13,000	16.67%
Radio Perth Pty Limited	13,000	16.67%
<b>Total</b>	<b>78,000</b>	<b>100%</b>

<b>Digital Radio Broadcasting Sydney Pty Ltd</b>	<b>Number of shares</b>	<b>Shareholding percentage</b>
2KY Broadcasters Pty Limited	342,425	9.27%
ARN Communications Pty Limited	416,964	11.29%
Commonwealth Broadcasting Pty Limited	416,964	11.29%
Harbour Radio Pty Limited	7,000	0.19%
Nova 96.9 Pty Limited	416,964	11.29%
Radio 2CH Pty Limited	7,000	0.19%
Radio 2SM Pty Limited	416,964	11.29%
Radio 2UE Sydney Pty Limited	416,964	11.29%
Today FM Sydney Pty Limited	416,964	11.29%
Triple M Sydney Pty Limited	416,964	11.29%
Classic Rock 95.3 FM Pty Limited	416,964	11.29%
<b>Total</b>	<b>3,692,137</b>	<b>100%</b>