

From Deregulation to Regulation: A Change for the Better for Regional Radio?

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Abstract

In 1992, the then Keating Labor government introduced sweeping changes to the Broadcast Services Act 1942 (BSA) by deregulating the radio industry. In 2006, the Howard Liberal government made further changes to media ownership and local content. These changes were to promote diversity and competition in the regional radio industry; however, the result of these changes was a perceived loss of localism, concentrated ownership, a lack of diversity and an increase in networking. A key part of the 2006 amendments to the BSA was the introduction of the local content licence conditions that would only apply to regional radio. During the research process, the Australian Communications and Media Authority (ACMA) published the results of an audit on regional radio operators after a breach of these conditions by the Super Radio Network (SRN). Apart from the SRN, other licensees were found to have breached a specific piece of these conditions relating to material of local significance that, in itself, is quite broad. This paper looks at how the development of networking in regional Australia led to such prescriptive conditions, the effect these conditions are having on regional radio, and what the findings of ACMA's audit means for holders of regional radio licences.

Introduction

Up until 1992, radio was a heavily regulated industry. Ownership was limited to a maximum of eight licences, content such as the amount of advertising per hour was regulated and quotas for Australian music were set. Networking was also very different to what exists today. Rather than stations being under the control of the one licensee, such as the Super Radio Network, stations were members of networks. That is, they would be one of a number of stations that obtained programmes or news from a third party. The distinction being that the stations were not obligated to take a programme and they could be more selective about which programmes they wanted to air. This in turn led to more local programming.

From 1992, radio entered an era of deregulation. The deregulatory changes to the BSA in 1992 were brought about by a shift in economic thinking during the term of the Hawke and Keating Labor governments (Cunningham & Turner, 2010: 121). It was believed that neo-liberal economic policy such as deregulation would encourage diversity and competition in a range of industries, including radio. In 2006, the coalition government introduced amendments to the Broadcast Services Act to further liberalise ownership of the media sector. However, deregulation had an adverse effect on radio, particularly regional radio. There is now a concentration of ownership as well as a perceived loss of diversity and localism. This paper discusses the 2006 amendments to the BSA and their application to regional radio. It will look at the economic issues of regulation and in particular discuss the recent ruling by the ACMA on the local content conditions in relation to three stations in the Super Radio Network (SRN).

Historical context

In discussing localism, it is necessary to gain an understanding of the regulation and the consequent deregulation of the radio industry, which for Australia, stems from events in America and Britain. Radio in Australia, Britain and the United States had its beginning in the 1920s. While it may be possible to make comparisons with the regulation of radio in each of these countries, the way the industry developed affected the way it was to be regulated. America has no government funded public broadcaster and there was a reliance on the free market to establish the industry. As American radio grew, regulators allowed the radio industry to self-regulate. As Stoller states there was a problem with this approach:

Many stations tried to broadcast on the same wavelength, 360 metres, and had to agree to shut down on what were termed 'silent nights' to allow other, more distant stations to be heard. There was no effective external regulation, so everything had to be done through bilateral deals. (2010: 13)

It was becoming evident to the American regulators that the industry was incapable of self-regulation and was not a feasible option for future development. This was mostly due to the reason that with self-regulation, the number of licences exceeded the number of available frequencies (Williams, 1998: 9).

In Britain, a private company made up of radio manufacturers ran the BBC. Seeing the state of American radio and the problems that were being experienced, the BBC became a public corporation by 1927 with no commercial competitors (Hitchens, 2008: 67). The British regulators, looking to the events taking place in America, decided that to maintain the radio industry and avoid the 'resulting chaos' (Stoller, 2010: 13) experienced in America, the industry had to be regulated. According to Stoller (2010) the British regulator at the time was somewhat suspicious of the 'arguments that radio needed to be available to the public on some basis other than as a business proposition' (p.12). Added to this was the view that 'to have a large number of firms broadcasting' (Stoller, 2010: 13) would create an impossible situation similar to America at the time. There was also the concern on the part of the regulators that radio in the hands of one private entity would be hazardous.

Radio began in Australia in 1923 and by 1932 it evolved into two distinct entities: commercial radio funded by advertising and public radio (the ABC) funded by the government (Cook, 1992). The evolution of radio in the United States and Britain compared to Australia was very different. The Australian regulator mirrored its British counterpart in the way it was to regulate the radio industry (Cook, 1992). The establishment of the ABC and the commercial radio sector set the future path for Australian radio. The ABC was to be the national broadcaster while the commercial sector was expected to fill the gaps. However, regional radio was essentially non-existent for many reasons, the main one being economic (DoC, 1984).

While the ABC was broadcasting to regional Australia, the unwillingness of the commercial stations to expand outside metropolitan areas was problematic for the government at the time. Citing problems with their metropolitan operations as well as the perceived inability for country towns to support a commercial radio station, expansion was slow. The government recognised that it was important for regional communities to be provided not only a national service through the ABC but a local service provided by the commercial stations (DoC, 1984). It is in this period of the late 1920s to 1940s where localism, networking and the development of regional radio had begun. It is also the point at which the provision of a local radio service through local

ownership was never enshrined in legislation. Rather, it was inferred in the legislation that a local operator would own the licence. As Hitchens stated, Australian broadcasting policy was at best scant, poorly implemented and reluctantly embraced by the radio broadcasting industry (2008: 150). The Broadcast Services Act (Commonwealth) (BSA) controls various aspects of the Australian radio industry and is overseen by the Australian Communication and Media Authority (ACMA). Since the passing of the original BSA in 1942, there have been many changes made to broadcasting legislation.

Deregulation, networking and local content

The most dramatic changes were made in 1992, bringing an overhaul of the radio industry that was to alter the way that radio would operate at a regional level. The government at the time decided that deregulation was the avenue that would provide a range of benefits to the broadcasting industry, in particular radio. The intention behind deregulation in Australia was that it would, in part, foster competition as well as offer a diverse radio landscape. While competition and diversity may exist in the capital cities, for regional radio it has been the opposite. The relaxing of both the ownership cap (Note 1) and foreign ownership rules, led to what could be best described as the unofficial sanctioning of networking. As such, this had affected regional radio through:

...a combination of technological, economic and regulatory developments. Regional areas are still receiving radio services albeit with an increasing degree of networked, pre-recorded, automated and syndicated programming. (PCA, 2001: vi)

This perceived loss of localism in 2001 led to *Local Voices: An Inquiry into Regional Radio* that looked at whether 'networking is having an impact on the local character of regional radio' (PCA, 2001: 52). While the inquiry made a number of recommendations, they mostly centred on ensuring that stations identify the originating source of their programming (PCA, 2001: xiii).

It wasn't until 2006 that the government, in another overhaul of the BSA, implemented some of the recommendations made in the above inquiry. For radio, there were moves to regulate local content in an effort to stem the impact of networking in regional Australia. The *Broadcasting Services Amendment (Media Ownership) Act 2006*, an amendment to the BSA 1992, introduced two main pieces of legislation that applied to, and had an impact on, the operation of regional commercial radio - trigger events and material of local significance. Referred to as local content licence conditions (LCC), the basis for applying these key pieces of legislation to regional radio was to ensure that local content was maintained.

It is important to note that this amendment did not apply the same conditions to regional print and television to the same extent as radio. In 2007, as a requirement of the proposed implementation of the amendments, the ACMA held the Local Content Levels Investigation that looked into the effect that these local content provisions would have on operators and to 'address current coverage of material of local significance' (ACMA, 2007c: 1).

While the report recommended that the LCC be enacted, its prescriptive nature seems to go against not only the spirit of the legislation itself but also the Coalition policies of fostering the business sector. In the explanatory memorandum for the introduction of this Bill it was stated that:

The proposed changes will encourage greater competition and allow media companies to achieve economies of scale and scope, while protecting the diversity of Australia's media. (PCA, 2006: 1)

These legislative changes, as they apply to regional radio, seem to restrict the free-market intent of the legislation and the opportunity for licensees of regional radio to take advantage of those economies of scale implied in the legislation. It would seem that while this legislation strives to protect media diversity, its application to an industry that has been experiencing ownership concentration since 1992 is problematic.

Trigger events

Take for example what could be considered the most prescriptive section of the BSA, trigger events. According to the BSA, a trigger event occurs under the following conditions: the transfer (or sale) of a radio licence; the formation of a new registerable media group; or a change in the controller of a registerable media group. While these conditions may seem reasonable and straightforward, it will be shown that a complex interweaving of the LCC occurs.

A new owner wishing to make changes to the radio station(s) they are buying, or to their overall business structure, 'must maintain at least the existing level of local presence' (BSA p.68). This means that they must maintain (or add to) the existing staffing levels, station facilities and local content for an indefinite period. Therefore, buying several stations at the same time, or adding a single station to their network, means a licensee cannot take advantage of the immediate economies of scale to streamline their operation. Furthermore, by restricting the trigger event to apply only to regional radio, it limits the industry's ability to compete with other regional media that are not subjected to the same restrictions on their business units. The trigger event provisions also force licensees to provide a 'minimum service standard for local news and information' (ACMA, 2007c: 8). This minimum requires the broadcast of 12.5 minutes of news during prime-time hours. Again, under a trigger event, licensees are restricted in the provision of this news service. The bulletins must reflect matters of local significance and no bulletin can contain news that was previously broadcast in the licence area. No such restriction applies to any other regional media.

However, it is necessary to state that at the time of writing, the Gillard Labor government made changes to the section of the BSA relating to trigger events but were yet to be ratified. Under the changes, licensees subject to a trigger event have now been given a definite period of twenty-four months where they have to maintain a local presence. This however does not dilute the problem. The same costs are involved with maintaining a local presence but for a lesser period than under the previous legislation. Under the changes, a licensee will have the opportunity to better utilize and put in place any economies of scale that may exist under their current structure. For larger operators, this may mean a move to the networking of program sooner, with more certainty and without penalty.

These LCCs are not only restrictive they are also broad and could be open to interpretation and their application becomes complex. This is because the BSA fails to adequately provide a specific definition for local. Rather, we are given a broad definition of the term for radio programming to satisfy the meaning of local in s.61CC of the BSA:

News bulletins, weather bulletins, community service announcements and designated local content programs are local if they relate to a licensee's area. (ACMA, 2007b: 2)

Added to this, and to ensure a degree of localism, the ACMA applies s.43C of the BSA relating to material of local significance. This section of the Act refers to 'material that is hosted in; or is produced in; or relates to the licence area of the regional commercial radio broadcasting licence'. As long as one of these requirements and other minimal conditions are met (which are discussed later), the licensee can be compliant with the legislation. In its submission to the 2007 investigation, CRA pointed out that by breaking down the individual meanings of the words that make up material of local significance, it might be open to interpretation in its application to local content. The key point made by CRA was that this section of the BSA is more an explanation as opposed to a definition and as such the application of local can be applied to the local area not just the defined licence area. CRA argued that groups of licences held by an operator should be seen as a single locality (CRA, 2007: 1).

The Super Radio Network example

To further explore this, we can use the example of SRN, which holds licences in the New England district of NSW. The network has licences in Tamworth, Armidale, Moree, Inverell and Gunnedah with Tamworth being the main centre of this district. Situated in the same geographical region, these towns generally experience the same regional issues. Also, as the signals of the radio stations in each of these towns overlap, consumers can tune into programs from either radio station. Therefore, in applying CRA's reasoning, programs can be tailored to suit the surrounding licence areas as occurs with the local news. Other programs are sourced from the SRN hubs in Sydney or Newcastle and while the programs may not have any regional specific content, they may relate to the licence area. That is, the programs may be of local significance.

We can use an ACMA investigation to gain an understanding of the idea of local significance and the complex interweaving of the LCC. In 2009 the ACMA conducted an investigation into breaches by the SRN in Orange (2EL), Port Macquarie (2PM) and Coffs Harbour (2HC) in relation to material of local significance. Prior to the investigation, these stations were broadcasting networked program twenty-four hours per day seven days a week. As mentioned earlier, there are some conditions attached to S.43C of the BSA that a station must comply with. Firstly, that a licensee is to broadcast the applicable number of hours, which for the SRN is three hours between 0500 and 2000 Monday to Friday (ACMA, 2010: 3). Secondly, while commercials and/or sponsorship can be considered material of local significance, they cannot 'comprise more than 25% of the applicable number of hours' (ACMA, 2007a: 4). Therefore, in terms of time counted, these are capped at 45 minutes per day for the SRN. Also, to comply with the legislation, licensees must submit a local content statement that must state 'the material of local significance broadcast on a business day' (ACMA, 2010: 5).

The problem for the SRN arose from its broadcast of the Grant Goldman Breakfast Program, produced in Sydney at 2SM, into the licence areas of Orange, Coffs Harbour and Port Macquarie. In its local content statement to the ACMA, the SRN stated that between 0600 and 0900 the breakfast program was local. In assessing whether the SRN complied with the requirements of the BSA, the stations were found to have failed two of the tests for material of local significance, and almost passed one. The ACMA found that the program was not hosted in, nor produced in

each of the licence areas. However, as to whether the program *related* to the licence area, the ACMA found that the SRN met the requirements for this test. This comprised of news reports; weather reports; calls from listeners and advertising for local businesses. At the time of the investigation, the ACMA stated that it 'is aware that the fact that material is produced in a licence area will not necessarily be evident' (ACMA, 2010: 9).

However, the SRN failed to sufficiently prove to, and satisfy, the ACMA that any of the locally relevant items were produced in the licence areas affected (ACMA, 2010: 9). Had it done so, it may have passed the requirement for 'material produced in the licence area'. It would have also supported CRA's comments on what constitutes material of local significance.

From this ACMA investigation and subsequent audits on other regional radio stations, it is possible to understand the concerns regional radio operators have with the LCC. The applicable number of hours is intrinsically tied to material of local significance, trigger events are an economic burden (Note 2) and the legislation is clearly targeted at networks to ensure they maintain a local presence in the licence area. Yet these changes have ensnared smaller operators, such as those who may own two licences in the one market, who have to comply with prescriptive conditions at significant cost since they do not have the ability to absorb the overall cost of compliance. Many licensees in their submission to the 2007 investigation argued that they would be affected by the economic impost of the legislation.

The effects on profitability

America, like Australia, has experienced an increase in the number of radio licences issued after deregulation. This, argued the industry, affected the profitability of radio stations in regional areas. As Williams (1998) explained, an increase in licences in America led to an increase in competition for advertising, not only from other radio stations but also from all media forms that forced the formation of networks. What Williams says is applicable to Australia:

The changing economic instability of the local radio industry was most pronounced in the smaller markets. Many stations were forced to reduce their staffs, which most affected their ability to offer news...The proposed solution was to allow radio stations to combine operations in some markets to reduce staff and likewise expenditures. (Williams, 1998: 10).

Williams added that at the time, the American regulator was hopeful that this system of consolidation would generate diversity and increase the profitability of the stations. As mentioned, the Australian regulator expected the same result but, as they discovered, Australia's small radio industry was further reduced through concentrated ownership that in turn affected diversity. Also, networks were a consequence of deregulation and changes in ownership rules led to a reduction in staff and expenditure for most regional licence areas (Williams 1998). This was due to the redundant nature of local announcers and journalists. Networks had no need for them at all their regional stations since content, for the SRN as an example, was to be networked on both the AM and FM stations. Under the current regulations, this means that a regional network only needs one announcer per station. There is not even a need for a network to have a journalist at each station. In the case of the SRN they have a journalist at a central regional station that provides a tailored news service for a number of licence areas.

Regulating local content was bound to place pressure on a regional industry that was experiencing falling revenues. In its 2007 investigation, the ACMA admits that the new legislation

would increase compliance costs for regional operators (ACMA, 2007c: 31). This is especially true for when a trigger event occurs and a licensee has to maintain staffing levels for both radio stations indefinitely (Note 3).

In researching material for this paper, it was difficult to determine the profitability of a regional radio station without conducting an audit of the accounts of that particular station (Note 4). It is only possible to refer to the financial trends offered by the ACMA. These reports group the financial results of regional stations according to their service area. While this provides an overall view of the health of the industry, it does not show which regional stations are having financial difficulty. The submissions to various inquiries and investigations do provide an insight into the pressures facing individual stations or networks.

The 2007 investigation by the ACMA caused a backlash from many radio operators indicating that regulating local content is draconian and imposing unnecessary financial costs on operators. One submission outlined that some stations in their network are 'borderline profitable' (Grant Broadcasters, 2007: 4) while others stated that to hire additional staff to comply with the proposed legislation would affect the profitability of several of their stations.

Southern Cross Media (Note 5) in its submission to the Review of Local Content Requirements for Regional Commercial Radio, undertaken in 2010 by the Department of Broadband Communication and the Digital Economy (Note 6), in part states:

...commercial radio stations rely on advertising revenue to conduct their business. However advertising revenue is not a constant – in tough economic times, advertising business for regional commercial radio stations inevitably slows. (Media, 2010: 10)

Grant Broadcasters in their submission to the same review stated that the current regulations have had a financial impact on some of the individual stations in their network (Grant Broadcasters, 2010).

These submissions, while not supplying balance sheets or profit and loss statements, provide enough information, albeit not detailed, directly from the affected licensees about the profitability or otherwise of their stations. This is not reflected in the collated figures supplied by ACMA. Since the 1990s the deregulation of the Australian broadcasting industry had a major effect on radio as it faced competition for advertising from the aggregation of television licence areas. As mentioned, unlike radio, television has not been subject to such prescriptive local content conditions. The resultant competitive environment affected regional radio stations, especially those in smaller markets, who reduced their staffing to adapt to changing economic environments (Williams, 1998: 10) only to experience the financial burden of complying with the BSA.

Conclusion

The 2006 amendments to the BSA specific to regional radio raise a number of issues. Firstly, technology has advanced considerably in the years since the amendments were first mooted. As (Schmidt, 2011) states, listeners, through technology such as the Internet, are no longer passive and they now contribute to content in some way or another (p.34). The Internet has given consumers of media more choice on a wider geographic scale than their local area for which the current BSA does not make allowances. Secondly, The local content licence conditions are not

applied equally amongst all regional media. Radio is often referred to as an old medium and in this era of convergence, consumers have more media choice. This includes the ability to stream radio, television or read newspapers on their computers or smart phones. These may be locally based, national or international and to have such prescriptive legislation at this time may restrict regional radio from remaining competitive. The situation is further compounded by the changes in technology that have taken place since 2006. The ACMA investigation failed to look at the potential impact of the Internet and the unfairness of applying restrictive legislation to one sector of regional media.

Furthermore, the Convergence review interim report, unlike ACMA, has acknowledged that the legislation referring to trigger events needs to be abolished. While the report acknowledged that networking provides a service to regional Australia that would otherwise 'not be feasible' (DBCDE, 2011: 14), it also recommends the maintaining of the prescribed hours of local program. Interestingly, it also suggests that broadcasters develop 'apps' for smart phones so that local content can be accessed.

The very nature of the free-market approach as applied in 1992 and the growth of networking means that it is too late to regulate local content, especially as it has never been regulated to the extent that it is today. The lack of foresight by the regulator in 1992 allowed ownership concentration and networking to be capitalised upon by licence holders. To suddenly place a hold on expansion through restrictive legislation twenty years later implies that the regulator is playing catch-up on a regulatory environment that failed to ensure local content was embedded in the BSA. Had the regulator truly considered the impact of deregulation, it would have learned from the American experience where the free-market shaped regional radio into a concentrated and networked medium. By enacting restrictive legislation that applies only to radio, it has made the industry uncompetitive when compared to its regional counterparts in an era of media convergence.

Notes

1. This refers to the number of licences a licensee can hold. The cap of eight stations was removed but restricted to two stations per licence area.
2. This opinion was attained through reading the industry submissions to the 2007 ACMA investigation.
3. Licensees are in control of one FM and one AM station in the majority of licence areas.
4. Prior to deregulation in 1992, licensees had to submit their financial figures to the regulator. This allowed a public review of the profitability or otherwise of a radio station.
5. Southern Cross Media was formerly Macquarie Regional Radio Works. Since its takeover of Austereo in 2011, it is now known as Southern Cross Austereo and is the largest regional radio network in Australia.
6. The SRN did not make a submission to this review.

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