

The conversion of metropolitan commercial radio services to FM

Since the introduction of commercial FM radio services in Australia about nine years ago, licensees of commercial AM radio services have been seeking the opportunity to convert to the FM frequency band.

Paul Marx assesses the progress of the conversion procedures

Prior to the introduction of new FM services many AM licensees were advocating the proposition that FM radio represented a technological advance similar to the introduction of colour television transmissions and, as such, existing AM radio licensees should be permitted to convert to FM as a matter of right.

Representations to Government advocating AM/FM conversion intensified as the new commercial FM radio services attracted larger audiences and their advertising revenues increased largely at the expense of many long-established AM services. The AM licensees argued that the increased popularity of commercial FM radio was attributable to superior technical quality of FM transmissions, particularly for the broadcast of music. The FM licensees attributed their success to better programming and management of the new services.

Conversion of commercial AM services to FM has always been a relatively simple administrative procedure pursuant to the Broadcasting Act 1942 ("the Act"). The technical transmission aspects of commercial radio services (AM v. FM) are matters for the Minister. S.89D of the Act provides, inter alia, that where the Australian Broadcasting Tribunal ("the Tribunal") has determined that a licence should be granted to a person, the Minister shall grant the person a licence warrant in respect of the licence that specifies the technical conditions that are to be complied with. The definition of "technical condition" in s.4(1) of the Act includes "the design, siting, installation, maintenance or operation (including operating power, constancy and frequency) of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the licence".

Section 89(D) (6) provides that the Minister may by notice in writing to the licensee vary any of the technical conditions to be applicable to the licence warrant. Before so doing the Minister must give the licensee notice in

writing of the proposed variation informing the licensee that it may make representations to the Minister and the Minister is to have regard to such representations. Hence the conversion of a commercial radio service from AM to FM is effected by the Minister varying the frequency of the relevant radiocommunications transmitted or transmitters specified in the licence warrant. There may also be a requirement pursuant to s.125D of the Act that the Minister consult with representatives of the Australian Broadcasting Corporation, the Special Broadcasting Service and other licensees should conversion of a particular service from AM to FM affect them.

Notwithstanding the relatively simple administrative procedures involved in the conversion of AM radio services to FM, amendments have been made to the Act. Those amendments have been made for two reasons, namely the number of available FM frequencies (which it seems is less than the number of AM licensees desirous of converting to FM) and the desire to raise substantial revenue from the process of conversion.

The Act was amended in 1987 (Act 134 of 1987 s.3) by the insertion of a new s.82AA. That section provides that a fee (in some instances several million dollars) is to be paid by successful commercial radio licence applicants on the grant of proposed licences. The payment of such an "establishment fee" which is calculated by reference to the licence fee payable by relevant existing radio licensees (and hence the "gross earnings" of such licensees) must be made in full prior to the grant of the subject licence. Its introduction was a consequence of the abandonment of the Government's proposal to "auction" new commercial radio licences because of likely rejection of the necessary legislative amendments in the Senate by Coalition Senators.

In conjunction with the introduction of the requirement that new commercial radio licensees pay an "establishment fee", an amendment was made to the Radio Licence

Fees Act 1964 ("the Licence Fees Act"). In 1987 s.6B was inserted to provide for the payment of a fee in circumstances where a licence warrant granted in respect of a non-metropolitan commercial radio licence is varied by the Minister at the request of a licensee so as to authorise very high frequency (i.e. FM) transmission. The term "non-metropolitan commercial radio licence" is defined in s.6B(3) to mean a commercial radio licence other than a large city licence. A commercial radio licence is a "large city licence" if the service area of the licence includes the general post office or main post office of a city or town and the population of the statistical district or statistical division for the city or town exceeds 800 000, or such higher figure as is prescribed (s.6B(2)). The fee payable is to be an amount equal to 50% of the "establishment fee" payable under s.82AA(1) of the Act in relation to a new licence and is only payable where the Minister publishes a notice (after 1 March 1987) inviting applications for the grant of a new commercial radio service having a service area substantially the same as the existing AM licence. In other circumstances the Minister is unlikely to vary licence warrants to permit AM/FM conversion of non-metropolitan commercial radio licences.

In most instances to which s.6B of the Licence Fees Act is applicable there is no relevant shortage of FM frequencies. The 1987 amendment to the Licence Fees Act can only be attributed to the legislature's desire to raise revenue from the AM/FM conversion process. To date one non-metropolitan AM service, namely 4GG, Gold Coast (now 4GGG) has been converted from AM to FM upon payment of the fee specified in s.6B of the Licence Fees Act. Conversion from AM to FM of "non-metropolitan" commercial radio licences is not a right conferred on AM licensees subject to the payment of the prescribed fee. A variation of the relevant licence warrant pursuant to s.89D(6) of the Act is a matter for the Minister. It remains to be seen whether the Minister will

permit AM/FM conversion in service areas such as Newcastle, Hobart and Townsville where there are more than one existing AM radio services. Conversion in such areas appears likely and the Minister's Department has already prepared draft guidelines in respect of at least Townsville.

AM/FM conversion in capital cities was addressed by the then Minister for Transport and Communications, Senator the Hon. Gareth Evans Q.C. in August 1988 when he unveiled his grand plan for the development of metropolitan radio services (Media Statement 83(A)/88 dated 9 August, 1988). At that time the Minister stated that a "number of long-standing broadcasting policy issue are simultaneously resolved by the National Plan for Development of Metropolitan Radio Services announced today following final approval by Cabinet last week." Senator Evans stated that the problems and issues addressed by the "Plan" included, inter alia:

- the strongly pursued claim of many existing AM licensees to convert to FM on commercial, and in some cases technical, grounds
- the need to guarantee a secure and technically effective future for the Radio for the Print Handicapped (RPH) service
- the need to find a delivery mechanism for Parliamentary broadcasts which does not hopelessly disrupt ABC programming, but is not prohibitively expensive to establish
- the need to not only minimise Government financial outlays to secure these various objectives, but to ensure an appropriate financial return to the community from the right to profit from the respect of a scarce public resource."

The grand plan for the development of metropolitan radio services not only contemplated AM/FM conversion. Stage 2 of that plan contemplated the introduction of two further FM frequencies in each of Sydney, Melbourne, Brisbane, Adelaide and Perth in the period 1990 - 1992. This article does not consider Stage 2 of the grand plan.

Because of the shortage of FM frequencies in capital cities it was necessary to amend the Act to provide a mechanism to allocate a scarce resource. According to the current Minister, the Hon. Ralph Willis, MP of "the 27 AM commercial licensees Australian-wide eligible to apply for conversion of their licences, 24 have expressed interest in tendering" (Media Statement 25/89 dated 18 April 1989). The amendments to the Act were made by the Broadcasting (National Metropolitan Radio Plan) Act 1988 ("the Radio Plan Act"). The Radio Plan Act inserted a new Division 1A of Part IIIB of the Act and new sections 89DAA to 89DAP. The License Fees Act was also amended by the Radio Licence Fees (National Metropolitan Radio Plan) Act

1988. The latter act inserted into the Licence Fees Act an obligation on the part of relevant licensees to pay a fee upon conversion from AM to FM. That fee is determined according to the formula $B - V$ where B is the amount of the bid made by the successful converting AM licensee and V is the value of the AM licensee's existing transmission facilities. That amendment satisfied the legislature's requirement to raise revenue from AM/FM conversion. The Broadcasting (National Metropolitan Radio Plan) Bill amended the Act by inserting in the ACT procedures for the submission and processing of bids to be made by AM licensees desirous of converting to FM. Those amendments to the Act were designed to overcome the problem of allocating a scarce resource, namely the limited number of available FM frequencies. The solution to that problem was to require AM licensees to participate in an auction. The auction for FM frequencies in large cities or towns is conducted as follows:

- The process of AM/FM conversion commences when the Minister publishes a notice in the Gazette inviting AM licensees eligible for conversion to lodge applications with the Tender Board of the Department of Transport and Communications. That Tender Board is established under s.89DAF of the Act. The Minister published such notices on 18 April, 1988 inviting tenders for the conversion of a total of 10 AM services (2 in each of Sydney, Melbourne, Brisbane, Adelaide and Perth). The Minister expects all of the new FM services to be operating by the end of 1989 except in Brisbane where the frequency for the second service "will not be available until 1991" (Media Release 29/89 dated 18 April 1989).
- The matters which must be included in the Minister's notice inviting applications for AM/FM conversion are specified in s.89DAB.
- In response to the notice by the Minister, AM licensees may lodge with the Tender Board an application for conversion to FM. That application must be accompanied by various documents (s.89DAE) including a sealed envelope that contains a written statement of the amount of the licensee's bid for conversion to FM and statements by the Secretary of the Department of Transport and Communications approving the technical adequacy of the AM transmission equipment to be transferred to the Commonwealth as part of the conversion process and stating the value of the transmission facilities. That equipment is to be used by the Commonwealth (for Parliamentary broadcasts or radio for the print handicapped)

- The amount of the bid submitted by a licensee must be expressed as a single amount and the bid must exceed the value of the transmission facilities (s.89DAE). Prior to making an application for conversion an AM licensee must have paid to the Commonwealth a deposit. The amount of that deposit is specified in the Minister's notice inviting applications for conversion. (ss.89DAE and 89DAM).
- Section 89DAH specifies the manner in which applications for conversion to FM are to be processed by the Tender Board. Essentially, that Board will open the envelopes containing the various bids and prepare a list that sets out the names of the licensees and the amounts of their bids in descending order according to the amounts of the bids. Where the bids of two or more licensees are the same, the order in which the licensees' names are to be set out on that list are to be determined by lot. The Minister has previously determined the amount of the reserve that is to apply to the conversion of the FM licences concerned. That reserve naturally would be unknown to the various licensees bidding for conversion (ss.89DAG and 89DAH). An application by a licensee whose bid is below the reserve is to be rejected (s.89DAH).
- After the Minister has received the Tender List from the Tender Board he is to publish a notice in the Gazette setting out the names of the licensees on the list according to their order on that list (s.89DAJ).
- The Minister is obliged to convert to FM the licence of an AM licensee who has been offered FM conversion and who meets the necessary pre-conditions for conversion before the end of the period specified in the notice from the Minister containing the offer of conversion (s.89DAP).

It remains to be seen how many metropolitan AM licensees will eventually convert to FM and the monetary value placed by such licensees on the ability to transmit on the FM Band. Documents considered by officers of the Department of Transport and Communications have estimated that tender bids for conversion to FM of an AM service in Sydney or Melbourne could be in the range of \$16.8 million to \$28.0 million. Such projected bids are based on an estimated dollar value of an FM frequency in Sydney or Melbourne of \$42 million.

A successful tenderer for AM/FM conversion in some cities such as Sydney, is likely to encounter practical problems in implementing the conversion. The

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Department of Transport and Communications, on technical grounds, requires FM radio transmission facilities to be sited in the same area as the existing television transmitter facilities. In Sydney that requires FM licensees to instal antennae on either of the two existing towers used by the commercial television services. AM licensees desirous of converting will need to satisfy themselves that the structures of such towers are capable of supporting the additional transmission equipment. The Minister has announced (Media Release 16/89 dated 3 April 1989) that the Federal Government has commissioned an Environmental Impact Statement for a planned replacement broadcasting tower at Gore Hill in Sydney. That tower would be designed to "meet future demand for television and FM radio services in the Sydney region, including an expected five new FM radio services." Nevertheless, the construction of such a facility (which has been foreshadowed for about the past ten years) would seem to be some years away.

The Government's proposal to permit additional utilisation of the FM band by commercial radio services in mainland capital cities (as a consequence of AM/FM conversion and the introduction of new services as part of Stage 2 of the National Metropolitan Radio Plan) also raises issues as to the technical adequacy of the signals provided by the commercial FM radio services in some cities such as Sydney.

The existing commercial FM radio services in Sydney currently are unable to transmit an adequate signal to some densely populated parts of their service areas because of the topography of the area. The same problem would be faced by services converted from AM to FM. That difficulty could be overcome by an amendment to the relevant licence warrants so as to permit the installation of low powered secondary FM transmission facilities (translators) on the FM band. Such a course of action now appears unlikely to be approved by the Minister (notwithstanding the undertaking given by the licensees pursuant to the Act to provide an adequate and comprehensive service) on the ground that insufficient FM frequencies will be available following the implementation of the National Metropolitan Radio Plan.

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24 April 1989

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