



12 February 2020

Aidan Winder-Speed
Commerce Commission
regulation.branch@comcom.govt.nz

***RADIO BROADCASTERS ASSOCIATION RESPONSE TO COMMERCE COMMISSION
CONSULTATION PAPER "TREATMENT OF BROADCASTING SERVICES REVENUE IN THE
TELECOMMUNICATIONS DEVELOPMENT LEVY (TDL)"***

Dear Aidan

Please find following our responses and observations in relation to the Consultation paper.

Q1. Do you agree that telecommunications service does not include content or content aggregation services?

Yes we do.

Q2. Do you agree with the views expressed in Table 5?

- We AGREE that content production and media operators are NOT telecom services or PTN's.
- We AGREE that broadcast transmission via broadcast towers/spectrum is.
- We do NOT agree that signal distribution is always a PTN.
- We do not have a view on the way multiplex stage in the value chain for TV.
- We do not think customers with aerials and set top boxes should be considered to be a provider of telecommunications services.

Q3. Should DTT aerials and set top boxes be regarded as part of a PTN?

As this does not pertain to radio listening we do not have a view on this.

Q4. Do you agree with the views in Table 6?

As this does not pertain to radio listening we do not have a view on this at this stage but would agree the principle of whether the service is being provided in NZ should be taken into account rather than assuming because this is originating from somewhere else, the provider is not potentially a LP.

Q5. Do you agree that, where a satellite is transmitting signals to NZ, the operator is providing a telecommunications service to NZ?

As above.

Q6. Should satellite dishes and decoders be regarded as part of a PTN?

We do not have a view on this.

Q7. Do you agree with the views in Table 7?

- We AGREE that content and media operations are not telecommunications services.
- We DO NOT AGREE that compressing and multiplexing in the current AM/FM delivery model are telecommunications services. For AM/FM radio, compression and multiplexing is simply the establishment of a signal suitable for broadcast. This may need to be revisited if new technology like DAB is introduced into New Zealand.
- We AGREE that broadcast towers and spectrum may be treated as a telecommunications service with the recent removal of the exclusion.
- We DO NOT AGREE that the consumer or their equipment should be treated as providing a telecommunications service.

We would also like to note that as part of the broadcast chain, signal distribution is missing where a provider may provide a linking signal from the content creators to the transmission path. If this uses a telecommunications provider already (i.e. a data stream is used by the circuits are provided by an ISP) is there a mechanism to ensure both parties are not liable?

In Point 97 we would also like to clarify it is the delivery or transmission rather than the use of the spectrum that we would see meets the definitions of a telecommunications service. That is, the provider of the spectrum is the provider of the service rather than the media channel using it.

Q8 and Q9. Do you agree with the views in Table 8 and Table 9?

We do not have a view on these tables as they do not relate to radio broadcasting.

Qualified Revenue

We would suggest a template is created for broadcasters to complete once to confirm their qualifying revenue is below the threshold or above it, in which case they would enter into the recommended process for calculation you are developing.

Where a broadcaster is well below the threshold they should not be contacted annually.

Where a broadcaster is close to or may have reason to have had significant change in circumstances e.g. a merger of 2 companies, they should be sent the original template annually to confirm whether they meet the threshold.

We believe only revenue that may relate to the provision of telecommunications services should be taken into account when it is decided if someone is an LP and needs to complete a full return.

For the purposes of the radio broadcasting sector, it would only be those organisations who own/operate a transmission tower/site or provide gain revenue from providing a transmission/distribution service to a third party.

All normal radio broadcast revenue that may include advertising, sponsorships, integrated content arrangements and advertising on digital or streaming services would not be included or taken into account when determining LP status.

Q10. Do you agree that broadcasting services means any “goods, services, equipment and facilities that enable or facilitate broadcasting”?

AND

Q11. Do you agree that anything that enables or facilitates the transmission of advertising programmes is a broadcast service and therefore falls within the exclusions in section 85A?

No, we DO NOT agree with the definition of broadcast services. It is too broad and does not line up with common usage of the term broadcast or broadcast services.

We believe this definition needs careful consideration and review, especially as a greater range of content and on-demand content is developed via radio broadcasters digital and streaming platforms including things like podcasts and these are considered new services along with technical support. Neither of which we understand you mean to include in the definition.

The term broadcasters or broadcast service providers in relation to radio would usually apply to the content creators and aggregators, whereas the provider of transmission services is not usually referred to as a broadcaster or provider of broadcast services.

The common use of the term broadcaster, broadcast services and broadcast revenue does not line up with the definitions here which relate more to the telecommunications and transmission providers and services within a broadcast network. We believe this definition confusion is a significant issue that requires resolution.

Q12. Do you agree that all revenue received from the transmission of on demand programmes should be treated as non-broadcasting services revenue (i.e. not subject to section 85A)?

AND

Q13. Should revenue received from the supply of broadcasting services to free to air broadcasters be subject to 85(1) (a)?

Due to the confusing definition of broadcast services outlined above, we cannot be clear about the exact extent of these 2 questions. Is the intention that the levy would apply to the broadcast revenue which may be advertising or sponsorship, or is the intention only to apply the levy to any broadcast chain transmission revenue that may apply to the delivery of these services?

Q14. Should the Commission set specifications under section 85(2). If yes please give reasons why and explain what the specifications should address?

We believe the definitions of broadcast services and broadcast services revenue should be amended and specifications given to ensure absolute clarity on what services revenue the levy may apply to.

Q15 - 18.

These do not apply to the RBA. NZME & Mediaworks, our only members that may be liable for the TDL at this stage, will answer this in their responses.

Thank you for your time in meeting and answering our questions before we needed to respond.

Please do not hesitate to contact me if you require additional information or context.

Yours sincerely

**JANA
RANGOONI**
CHIEF EXECUTIVE
RADIO BROADCASTERS ASSOCIATION
mobile 021 244 6617 email jana@rba.co.nz
PO Box 8049, Symonds St, Auckland 1150
www.rba.co.nz

