

RBA Annual Report 2009





Opening Comments from Chairman

2009 turned out to be a most challenging year for media with advertising turnover down 12%.

Fortunately radio pretty much held its share position at 11.5% of

total media. We appear to now be through the worst of the downturn and there are signs that business is picking up as the economy recovers. The challenge for us will be holding radio's share and then "surfing the wave" of the recovery.

The licence renewal payments fall due this year and with the significant downturn in trading we worked hard with Government to get an extended payment plan in place. While the terms were not as attractive as we had hoped for, we are nonetheless grateful that we got to a position which gave some relief.

Two other significant issues took a considerable amount of effort during the year. The first was the dispute over royalty rates payable to PPNZ. It took considerable resource, both time and financial, to defend their very unreasonable claims to the Copyright Tribunal. We have yet to get a decision from the Tribunal.

The second issue was the engineering of the frequency changes in the FM band. Our thanks go to the Engineering and Technical sub committee for their considerable efforts in working with MED to minimise disruption.

Brent Impey's resignation from MediaWorks at the end of 2009 marked the end of a continuous link back to the beginnings of commercial broadcasting in New Zealand. At an industry level, his contribution has been very substantial. He was involved in the formation of the RBA's predecessor, the Independent Broadcasters Association, and its expansion to the current structure and name with the joining of The Radio Network.

He has been an energetic, tireless and successful advocate in Government relations; self-regulation (long serving member & Chair of the ASA); containment of the role of the BSA;

support of NZ music; control of royalty payments and many other areas. At the December member of the Executive Board, Brent's vast contribution was acknowledged with a unanimous minute of thanks.

Our Executive Director, David Innes, has done his usual sterling job of summarising the issues and our position and progress in the body of the report. I urge you to read it and discuss any ideas or concerns you have with either David or me or any of the Executive Board.

My thanks to our Executive Board – Brent Impey, Sussan Turner, Norm Collison, Glenn Smith and Brent Birchfield and to the many people who have given so much of their time in our industry's interests.

My very special thanks to our Executive Director, David Innes, who with his commitment, intelligence and ready sense of humour makes my job very much easier. Also to our Executive Secretary, Janine Bliss, who in her typically calm and capable way always makes sure that we get the job done.

John McElhinney
RBA Chairman

Transition to 2011-2031 Licences

Management of the transition to the new 2011 licences was the major preoccupation of 2009.

Payment Terms

Payment terms and timing was agreed in 2006. However, since that time the recession has had a negative impact on the economics of commercial radio. The RBA took the view that it was not realistic to attempt to re-negotiate the total renewal cost of around \$96 million. However, we did see it as reasonable to ask the Government to extend the payment terms to reduce the serious cash flow impact at the payment date of October 2010.

Extensive (and expensive) discussions took place between the RBA and the office of the Minister of Communications. The RBA's position was that there were a number of precedents where businesses leasing Crown assets were offered a 'pay as you go' structure. This was not accepted.

In the end, the arrangement offered was less attractive than we sought, the three main components being the offer to spread payments over five years (we sought a minimum of seven), interest at the Crown Technology Enterprise rate (acceptable) but with a CPI loading (unreasonable in our view). Consequently take-up of the offer was less than universal but it was still seen by some members as better than no deal at all.

Engineering of Frequency Changes

Of the total of more than 750 FM licences, close to 300 across all broadcasters are required to change frequency by April 2011.

Planning for these changes was the major activity for the Technical & Engineering Sub-Committee in the latter part of 2009.

The resource implications in terms of manpower and finance have been substantial. Likewise the sequencing of changes to avoid interference within and between markets is complex.

MED agreed to fund a consultant to act as administrator but the bulk of the work still falls back on our members' broadcast engineering staff.

The RBA took the initiative in bringing together all affected broadcasters including Radio New Zealand, iwi, community access and independent commercial broadcasters. The consortium/consensus approach for the most part has worked very well and at time of writing in April 2010 we are confident that the change programme will be completed by 2 April 2011 as required by law.

MED engaged Warren Harding from JDA to project manage the engineering site changes required by site owners. He also facilitated the agreement of licence owners to the timing of the changes. In our view Warren has ensured professional and positive outcomes on what are complex issues.



PPNZ Royalty Dispute

The other major time and money consuming activity of 2009 was the royalty dispute with PPNZ.

The extremely aggressive approach demonstrated by PPNZ in 2008 continued into 2009 culminating in their Third Statement of Claim in January seeking a 6.5% royalty i.e. a 261% increase!

After several rounds of information exchange via discovery and legal maneuvering, the Copyright Tribunal Hearing was finally agreed for July.

In the first instance, the Tribunal attempted to impose Wellington as the venue for most of the Hearing. This would have added substantially to cost and created significant logistical difficulties. Without support from PPNZ, we were able to get this reversed to a full Hearing in Auckland, but not without threatening a judicial review.

Running alongside the Copyright Tribunal hearing we lodged a complaint with the Commerce Commission about the anti-competitive implications of the exclusive contract between PPNZ and recording companies.

The Copyright Tribunal Hearing took place during the second, third and fourth weeks of July in the District Court in Auckland. The RBA case was led by John Katz QC assisted by Suzanne Robertson. Our case was supported by expert witnesses including John Small (COVEC economic consultants), John Hagen (financial consultant), Peter Myles (formerly Colenso BBDO) and Jim Dertouzos (US consultant used by NAB) as well as senior RBA management people. The PPNZ case was led by Andrew Brown QC and also included a number of expert witnesses and management people from the recording industry.

In short, PPNZ used two different economic models in an attempt to demonstrate that the financial benefits to radio were such to warrant a royalty of 6.5%. In neither model was proper credit given for the reciprocal benefit that airplay provides.

This was the core of our rebuttal – that COVEC's analysis of a number of top albums showed very close tracking between airplay and record sales to the point that the economic benefits of airplay to the recording industry are indisputable.

Nine months later in April 2010, the Copyright Tribunal has not yet delivered its decision. This is very disappointing as we believe our case was disadvantaged by time compression to meet various commitments of Tribunal members.

However, the initiative with the Commerce Commission has successfully borne fruit with PPNZ having to abandon exclusive licensing arrangements with record companies.

In the course of our de-brief after the Hearing, we concluded in summary the following:

- Strenuous efforts should be made to negotiate or submit to formal arbitration – the Copyright Tribunal process adds a very costly legal 'superstructure' and as was evident, they knew very little about the economics of broadcasting and the recording industry.
- Make sure we have absolutely the best team – the financial consequences of failure are very high.
- There is no such thing as 'objective truth' or 'fairness' in this process. It is simply a commercial negotiation and all legal tactics of commercial negotiation should be brought to bear from the beginning.

On a more positive note, notwithstanding the serious damage to the relationship between the RBA and PPNZ/RIANZ, the Executive Board resolved to continue support for New Zealand music.

Crown Spectrum Policy

As usual there were a number of issues relating to spectrum policy that were dealt with in 2009, the major of these being:

1. Studio transmitter links

Early in the year, MED advised of their view that the 915-921 MHz band was likely to become increasingly crowded with Short Range Devices, many of which will be beyond the scope of licensing. They therefore proposed that broadcast STLs relocate to 841-849 MHz. They also raised the possibility of creating management rights in this band – the upside of which would be security, but the downside, apart from the cost of re-engineering, being the uncertainty and cost of an auction. While arguing that there is not yet any evidence of interference in the 915-921 MHz band, we were able to negotiate a five year window for transition, not yet activated, and a continuation of the low cost radio licensing regime in the 841-849 band.

2. Start up of Local Commercial Licences

Holders of local commercial licences progressively commenced broadcasting during 2009. As anticipated by us, the policy goal of 'diversity' does not seem to have been achieved with most operators following existing programme formats. The goal of 'localism' seems to have been achieved in terms of ownership, but content-wise it is too early to say.

The MED compliance programme, although somewhat slow in getting started, is now in place within the SMART section of the RSM website.

The RBA remains very sceptical about the original policy but given its statutory basis accepts local commercial licensees as members of the RBA as Associate Members.

3. Use of Band III Spectrum after TV Analogue Switch Off

In mid year MED asked for views as to usage of analogue television spectrum after switch off. Band III would be the logical home of DAB+ / DMB if this technology were to be used in New Zealand. Our view is that there is not yet a successful business model for digital radio but that it would be prudent to reserve Band III for possible future use. MED concurs with this position.

4. Radio Microphone Spectrum

As part of the same Discussion Paper entitled 'Digital Futures', MED asked for views on spectrum usage and location for the future in relation to radio microphones. The RBA's submission argued that if relocation was necessary to 502-698 MHz that there should be reasonable time and compensation allowed for this move. Further, that given the rapid growth in use of radio microphones, additional spectrum may be needed in the future. MED's final position has not been published by May 2010.

5. Regulation of Broadcasting

During 2008, under the previous Labour administration, the Ministry for Culture & Heritage circulated a Discussion Paper covering strategic issues such as generation and regulation of broadcasting content, with particular emphasis on new media.

One possibility raised was that of a central regulator similar to Australia and the U.K. At the time of submissions in 2008 this was opposed by the RBA as unnecessary and inappropriate. It is pleasing to note that the incoming Minister of Broadcasting, Hon Jonathan Coleman, concurred with this position and the issue was closed down early in 2009.



Threats to Advertising

Liquor

Major activity in 2009 revolved around initiatives from the previous year – the establishment of a self-regulatory Code to cover marketing activities other than advertising and the review of the Law Commission into regulation of the liquor sector overall.

The Promotions Code was finally approved in February 2010. Executive Director David Innes will represent media interests on the Board of Control. Public representatives to the complaints board have been finalised and are Penny Mudford (Chair), Dr Ruth Richards, Paul Stanley and Deborah Rundle. The two industry representatives have yet to be appointed.

The day before our AGM, the Law Commission tabled its report. Despite early indications of support for self-regulation via the ASA, the final report took a radical u-turn recommending a harsh regulatory regime. This will of course be strenuously opposed.

At a meeting in late 2009 between the Media Freedom Committee and the Minister of Justice, Hon Simon Power, he made it clear that the Government would take its own decisions on any changes to liquor regulation – and that “inevitably, advertising will get caught up in it, one way or another”. It therefore behoves all broadcasters to ensure that advertisements comply with the Codes and that they have LAPS approval before going to air. Also that on-air content is not seen as encouraging irresponsible use of liquor.

Once the Government has made its responses to the Law Commission recommendations clear, we will initiate an appropriate review of self-regulation of liquor advertising, including the two ASA Codes.

Treat Foods

The National government is showing a commendable change in emphasis in confronting the obesity problem with more emphasis on personal responsibility and education and less on restrictions and bans.

However, the health issue remains and the advertising sector, including radio, remains committed to responsible behaviour

in this area with our efforts co-ordinated through the Food Industry Group. In the past year, the operational responsibility has shifted to the Food and Grocery Council based in Wellington. Chief Executive Katherine Rich is obviously very well placed to communicate with senior members of Government.

The major initiative during 2009 was a review of the ASA codes for Advertising to Children and Advertising of Food. Quite logically, the review team came up with a recommendation that there should be a special code for advertising treat foods to children. This was approved by the ASA in April.

The review was an extremely protracted and complex exercise and our thanks are due to the Chair Lincoln Gould, formerly of the NPA.



NZ Radio Awards

2009 was a watershed year for the awards programme. Issues of affordability and access were carefully considered both by the RBA Executive Board and the Awards Committee. It was concluded that the 'hard copy' format needed close examination, particularly in respect of the cost of entry, the cost of judging and administration and finally the cost of attending the function.

The outcome was the decision to 'go digital' with the goal of simplifying and reducing the cost of the entry process; reducing costs in management and judging; and finally the creation of an on-line show which would be accessible to all members of the radio family around New Zealand.

As anticipated, there was a reduction in entry numbers from 477 to 352 with much of this coming from categories dominated by Radio New Zealand (who, because of financial stringency were unable to continue their financial support of the Awards overall and their own entries).

Happily, long term sponsors including RCS, Research

International, Kordia, NZ On Air, CPIT, Reaction Screenprint, and Te Mangai Paho continued to provide financial support along, of course, with MediaWorks Radio, The Radio Network, the RBA and The Radio Bureau.

Development of the awards website and backup IT was managed by Bridget Turner with Janine Bliss returning to the fray to manage administration, finances and production of the on-line show.

The organising committee comprises David Brice (Chair), Jana Rangooni, John Barr, Bridget Turner, Janine Bliss and David Innes. The RBA thanks and congratulates all members of the team for successfully re-jigging this important programme.

Finally, our thanks also go to Andrew Szusterman of MediaWorks and Mikee Carpinter who conceived and produced our on-line show on a shoestring (or less) budget.

Tertiary Education

During 2009 the Unit Standards approved by NZQA came up for review – alternatively, abandonment.

It was our feeling that too much work had been invested in the content of what broadcasters want the various tertiary providers to teach for them to disappear.

A key part of the problem has been the dissolution of the broadcast media Industry Training Organisation. The new ITO 'Communications and Media', formed by collaboration between the Journalist Training Organisation and the print sector offered to act as the 'home' for our Unit Standards. Under their sponsorship, a sub-committee convened by Lynn Stanton of Framework Solutions and including Debbie Baker (NZRTS), Paul Bushnell (RNZ), and Marie Tepuaki

Rangihau and Cushla Tangaere-Manuel, representing Maori broadcasters, and Executive Director David Innes undertook a review of the Unit Standards. Inputs provided by Jana Rangooni, David Brice, Tom Davidson, Neil Jenkins and Rew Shearer assisted considerably.

The process will be completed around mid-2010 and we feel that the outcome is a solid foundation for radio tertiary educators going forward. When complete the Unit Standards will be viewable on the CaM website.

Civil Defence Emergency Warnings

Given commercial radio's unique ability to broadcast at the local level, it was understandable that the Ministry of Civil Defence should seek our support for establishment of an emergency warning system in 2006.

In the past year this has been activated twice – first the earthquake and tsunami in Samoa and second in the Chilean earthquake tsunami on February 28, 2010.

Both occurred at challenging times in the early hours of the morning, particularly the Chilean incident which was on a Sunday.

While warnings were broadcast as intended in both cases,

some weaknesses in the overall system were identified – in particular, the greater speed and urgency of radio news sources as opposed to the Civil Defence HQ processes; the ability of CD HQ to communicate with designated radio people at difficult times; and the networking of the emergency messages down through radio networks.

In the event, had Samoa and/or the Chilean situation resulted in dangerous circumstances in New Zealand, the system would have delivered. However we are looking to improve response times. This is presently undergoing review and we anticipate that, as usual, RBA members will rise to the occasion.

Advertising Standards Authority

During 2009 there were 77 complaints about radio advertisements with 20 of these upheld/settled. This compares with 49/9 in 2008. Categories subject of upheld complaints were Food and Beverages (3), Entertainment, Consumer Products, Media, Liquor, Retail, Real Estate and Professional Services (1 each).

The Codes and Rules subject of upheld complaints were mainly Truthfulness (4), Social Responsibility (4), Denigration and Safety.

Hilary Souter continues to do an excellent job in managing the ASA. The average time between receipt of complaint and notification to parties again met the demanding target of 22 working days.

The reviews into the Code for Advertising to Children and the Code for Advertising of Food were completed early in 2010 and were approved by the ASA Board in March.

The Complaints Board released a total of 823 decisions of which 182 were upheld/settled. This compares with 699/162 in 2008.



Broadcasting Standards Authority

During 2009, there were 19 complaints about broadcasts by RBA members, of which 2 were upheld. This compared with 15 and 6 in 2008.

We acknowledge again the collegial relationship we enjoy with the BSA, particularly the Chief Executive Dominic Sheehan, the Complaints Manager Christine Sophocleous and the members of the Authority. The terms of several members expired during 2009 - Dianne Musgrave

was replaced by Mary Shanahan in June; broadcasting representative Paul France was replaced by Leigh Pearson in October; and Chair Jo Morris was replaced by Peter Radich, also in October.

We acknowledge the quality of thinking and fair-mindedness brought to the process by the out-going members of the BSA and look forward to the same quality relationship with new members.

New Zealand Music

2009 was another successful year for NZ music airplay with an annual total of 19.86%.

Performance by genre was as follows:

Genre	2009 Target	2009 Actual	Top Station
Pop	17%	13.66%	ZM Network
Rock	22%	23.06%	Bayrock
Urban	14%	20.62%	Niu FM
A/C	20%	22.22%	1XX
Hot A/C	18%	17.62%	Life FM
Easy	19%	10.36%	Southern Star
Kiwi FM	-	100%	
Overall	20%	19.86%	

The RBA again thanks the monitoring body, the NZ Music Performance Committee for the voluntary time its members put into monitoring airplay performance. The Committee is Chaired by Michael Glading and members include John McElhinney (RBA), David Brice (TRN), Brendan Smyth (NZ On Air), Adam Holt (RIANZ), Cath Anderson (MIC), Jana Rangooni (RadioWorks), Mark Kneebone (IMNZ) and Roger Harper (The CD Store). Paul Kennedy of Radioscope provides the airplay figures and David Innes is the Secretary.

At its final meeting for the year, the RBA Executive Board resolved that the quarterly meetings should be discontinued. Reporting will continue on a quarterly basis with any issues needing attention dealt with by email or teleconference. Annual results will be presented at an AGM in February of each year.

It is pleasing to note that the NZ music airplay for the first quarter of 2010 is 20.95%.

Our Thanks Go To...

The Technical & Engineering Sub-Committee

Much of it 'dark and lonely work', TESC is in continuous contact with the Ministry of Economic Development on matters relating to engineering, spectrum allocation, compliance and the like.

This work requires both depth of understanding and persistence in the face of moves that often have the potential to damage the viability of commercial radio.

Our sincere thanks go to the group comprising Norm Collison (Chair), Ray Smith, Geoff Berry, Peter Casey and Vern Talbot. The major project of the year has of course been the transition to new frequencies for 2011 licences. Without the knowledge and persistence of TESC, this process would have been both costly and disorderly and the thanks of all members should go to them for this alone.

Radio Industry Awards Committee

As noted earlier, they have managed a major transition in the shape of the NZ Radio Awards, and at about financial break even - not easy in tough times.

Foundation of Advertising Research

Glen Wiggs' knowledge and energy in driving this 'think tank' underpins the success of self-regulation and indeed, freedom of commercial speech. It was a pleasure for your Executive Director to be part of the team successfully nominating Glen for an honour eventuating in a Member of the NZ Order of Merit in the New Year's Honours list.

Industry Colleagues

Many of the issues we deal with each year affect everyone in the advertising and media sectors. Successful resolution

can only be achieved through collaborative effort. We would like to thank ANZA (Jeremy Irwin and Lindsay Mouat), the Media Freedom Committee (Tim Pankhurst), CAANZ (Rick Osborne), the Television Broadcasters Council (Rick Friesen) and our other media colleagues.

And finally, my personal thanks again go to our Chairman John McElhinney for his ready accessibility, wisdom and determination on matters of importance to all RBA members and to Janine Bliss for her efficiency, dedication and commitment to the interests of all members.

David Innes

Executive Director



RBA Council Members (representing RBA full members)

John McElhinney The Radio Network (RBA Chairman)	Belinda Mulgrew MediaWorks Radio	Glenn Smith Radio Bay of Plenty	Ed Taylor Radio Wanaka
Norm Collison The Radio Network	Samson Yau Chinese Voice Broadcasting	Robert Khan Radio Tarana	Debbie Baker Beach FM
Clare Bradley MediaWorks Radio	John Fabrin Rhema Broadcasting Group	Brent Birchfield Port FM Network	Geoff Anderson Peak FM
	Everlyn Liu Radio Chinese	Simon Law Central FM	

RBA Associate Members

Big FM
Southland Community Broadcasters
Ski FM
Pacific Media Network
X105

RBA Affiliate Members

Radio Computing Services
Research International
Kordia

RBA Sub-Committees

Technical & Engineering Sub-Committee Norm Collison (Chairman), Geoff Berry & Peter Casey (The Radio Network), Ray Smith & John Allen (MediaWorks Radio), Vern Talbot & David Innes (RBA).	Radio Industry Research Sub-Committee David Innes (Chairman, RBA), Gill Stewart (The Radio Bureau), David Brice (The Radio Network), Jana Rangooni (RadioWorks), Alistair Jamieson (Starcom Worldwide), Colin Yee & Julia Harrison (Research International).	Content Rules/BSA Clare Bradley (MediaWorks Radio), Bill Francis (The Radio Network), George Bignall (RNZ), David Innes (RBA).
Radio Industry Awards Committee David Brice (Chairman, The Radio Network), Jana Rangooni (RadioWorks), Janine Bliss & David Innes (RBA), Bridget Turner (Executive Producer).	Media Freedom Committee Melanie Jones (MediaWorks Radio), Bill Francis (The Radio Network), David Innes (RBA).	

