

Australian Broadcasting Corporation

submission to

Department of Communications

Spectrum Review consultation paper

December 2014

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Introduction

The ABC welcomes the opportunity to comment on the proposals set out in the Department's consultation paper "Spectrum Review: Potential Reform Directions". As the services that the Corporation provides to the Australian public depend on its use of a range of broadcasting and non-broadcasting spectrum, the ABC has a keen interest in the outcomes of the Spectrum Review.

The Corporation recognises the value of creating a more streamlined approach to spectrum regulation. The consultation paper seeks to provide such an approach through a new, flexible spectrum management framework that would appear to be adaptable to reflect a wide range of potential policy settings.

Unfortunately, the paper is high level and leaves unanswered a number of questions of some significance to a public broadcaster such as the ABC. These include the basis on which the "highest value" uses of spectrum—a central concept within the proposed framework—might be determined and how it is envisaged that spectrum allocations for publicly-funded services that deliver social benefits will be made in the longer term

Accordingly, Corporation's comments on the proposed framework are necessarily partial. The ABC welcomes further detail on various issues that it raises.

Public-benefit uses of spectrum

Contemporary Australian life depends on a significant number of non-commercial spectrum-dependent activities that deliver considerable public benefits. These include meteorology, emergency services, aviation communications, medical imaging, train safety, defence-forces communications and public broadcasting. It is important that any future spectrum management framework acknowledges and includes appropriate mechanisms for planning,

allocating and, where required, pricing spectrum for these uses.

The consultation paper recognises that spectrum users want social, non-economic public benefits recognised alongside economic benefits, in processes of spectrum allocation (p.5).

The paper expresses a strong preference for employing market-based mechanisms, including auctions and trading, to ensure the allocation of spectrum to “its highest use value (both economic and social)” (p.4). The ABC acknowledges the potential for allocative efficiency of market mechanisms in a commercial environment, where parties are able to balance the prices they are willing to pay to licence spectrum against the returns they expect to derive from their use of it. However, non-commercial spectrum users that serve public functions and do not derive revenue from their use of the spectrum are not easily accommodated in such models. In the case of public broadcasters, such as the ABC, this incompatibility is further exacerbated by the fact that it operates in a mixed environment alongside commercial broadcasters.

The Corporation does not believe that market-based pricing or allocation of spectrum is appropriate in circumstances where the spectrum is being used to deliver public benefits on a non-commercial basis. The ABC does not pay licence fees for the spectrum in the broadcasting services bands (BSBs) that it uses for core broadcasting functions that it carries out in accordance with the Charter obligations set out in its enabling legislation. That spectrum is instead allocated by the ACMA in accordance with reservations made by the Minister under s.31 of the *Broadcasting Services Act 1992* (“BSA”). The Corporation believes this is the simplest method of allocating spectrum for public-benefit uses and believes that it should continue in preference to publicly-funded entities being charged for spectrum that is provided for the delivery of their core public purposes, whether on a market-determined or market-equivalent basis.

The ABC notes that the consultation paper seeks to determine prices for spectrum as part of the calculation of its value. As such, it recognises the need for non-market-based pricing, but proposes only that the framework include “exceptions to the market-based approach on a case-by-case basis where there is a sound public interest rationale” (p.9). As described above, there is already a known set of public-interest spectrum uses for which it is inappropriate to apply market-based pricing and/or allocative mechanisms. The Corporation believes that, insofar as pricing mechanisms are applied to public-benefit uses of spectrum, the framework should explicitly recognise such uses as a specific class of public-benefit spectrum uses, rather than treating them as exceptions that are assessed on a case-by-case basis.

Further, the ABC believes that the inclusion of spectrum uses within such a designated class of public-benefit spectrum uses should be based on published criteria that are clear and specific, rather than an open-ended approach that is developed at the discretion of the ACMA. This will ensure certainty for entities seeking to access spectrum for public-benefit uses. Moreover, the process of determining eligibility under the framework should be administered by the Government or its agencies and should not be administered by any third-party entities permitted by the framework. Determinations should also be subject to an appeal process.

The consultation paper also proposes that a review of pricing for administrative allocations be conducted. Again, insofar as pricing mechanisms are applied to public-benefit uses of spectrum, the ABC would support such a review as a necessary step towards developing means for assigning non-market-based prices to such uses.

Moving spectrum to its highest-value use

The fundamental objective for spectrum management embodied in the proposed framework is ensuring that spectrum is used efficiently through allocation to its “highest value” uses. To that end, the consultation paper proposes that the ACMA be required to continually review options for allocating spectrum to alternative or higher-value uses and to publish proposals for such changes in its annual work plans (proposal 11). However, the ways in which the relative value of spectrum uses are to be assessed and compared are not explained or significantly developed anywhere in the paper.

The introduction indicates that highest-value use should be understood in both social and economic terms (p.4), which is consistent with accommodating non-commercial spectrum-based activities intended to deliver public benefits in the framework. In terms of the ABC’s activities, social factors are likely to be more significant determinants than economic factors when assessing the value of its use of the spectrum. However, the ways in which the relative social use-value of spectrum uses might be determined—or compared with economic use-value—are unexplored in the consultation paper.

The paper proposes that the ACMA continually consider possible factors that might be considered in assessing higher-value spectrum uses. The factors it offers by way of example are all sensible and include international standards, technologies, business models, consumer preferences and the amount of spectrum required relative to alternative approaches. However, they do not include any reference to assessments of factors relating to the social or public value of spectrum use. The ABC believes the ACMA should be explicitly required to consider the public benefits of spectrum-based activities among the factors it draws upon when assessing the relative value of spectrum uses; it should similarly be obliged not to weight those factors in such a way that economic factors invariably overshadow social ones.

Moving broadcasting spectrum to highest-value uses

The ABC notes that the consultation paper presents the recent proposals in relation to broadcasting spectrum announced by the Minister, including the use of more efficient compression technologies, as exemplifying this principle of a continuous drive towards higher-value spectrum uses (p.13).

As the Corporation has pointed out in previous submissions, the transition to new broadcasting technologies, such as DVB-T2, will require additional spectrum to allow a “simulcast” period during which existing and new services are available. In the case of the switch from analog to digital television, that transition period took over a decade. The alternative—simply cutting over from the old to the new technology—will disenfranchise whatever proportion of the Australian public has yet to acquire receivers capable of receiving the new signals. Particularly relevant in this context is that the future upgrade path for digital television was not planned for during the clearance of the 800 MHz band in order to realise the “digital dividend”. As a result, there is currently insufficient spectrum to conduct a simulcast of two free-to-air television broadcasting technologies.

In the case of a transition to MPEG-4 encoding, as nominated by the Minister, a similar, but

subtler problem exists. The current encoding standard, DVB-T, is compatible with MPEG-4, allowing the transition to be made in-band without the need for additional spectrum. However, the ABC does not have spare capacity within its existing 7MHz television spectrum allocation to carry new MPEG-4 channels without sacrificing one or more of its existing channels; it strongly suspects that the other free-to-air broadcasters would be in a similar position. Given the desire to maximise the availability of its services, the Corporation would be loathe to convert channels to MPEG-4 and suffer the accompanying loss of audience unless the penetration of MPEG-4 receivers—both primary and secondary—in the community was very high indeed. Conversely, if broadcasters do not offer new, additional services in MPEG-4, no incentives exist for Australians to acquire MPEG-4 receivers.

In a similar fashion, the level of take-up of receiver equipment for broadcasting services other than digital television, such as AM, FM, DAB+ and shortwave radio, should also be considered when determining the economic value of spectrum. The Australian public has significant collective investment in the reception technologies used within the BSBs and any new licensing mechanism needs to ensure that factors such as the size of that receiver base and any cost to the public of a transition to alternative technologies are factored into value determinations.

Consolidated licence categories

Central to the proposals set out in the consultation paper is the replacement of the three existing licence categories with a single licensing framework. The paper provides only a brief description of the way in which the proposed framework is intended to work, as a result of which it is difficult to make an informed assessment.

It appears that the proposed parameters used to shape licences issued under the new, unified framework are intended to be sufficiently broad that they can substantially emulate or convert existing licences. Given the paper's statement that "it will be important to maintain certainty for incumbent spectrum users throughout the review process and beyond" (p.6), the ABC assumes the Government's intention is to initially migrate existing spectrum allocations to the proposed framework under new licences configured to duplicate current licence conditions, albeit with some greater flexibility to trade and share spectrum. Such an approach would provide some certainty for incumbent spectrum users. However, at some point thereafter, the ACMA will presumably begin replanning and, as required, making proposals to reallocate spectrum to move it to higher-value uses and fulfil any other policy objectives specified by the Minister. The Corporation would welcome confirmation that this is indeed what it intended.

The consultation paper does not make clear the timeframes in which the Government envisages the ACMA beginning that replanning process or the scale of replanning that is expected. A continuation of the ACMA's current practice of regularly publishing five-year spectrum outlooks would allow spectrum users whose activities are potentially affected by proposed changes to respond accordingly. A faster and more aggressive replanning program would significantly undermine any certainty for spectrum users.

The ABC would support a principle of compensation for licence revocation during a licence term.