

The Project Manager
Spectrum Review
Department of Communications
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CANBERRA ACT 2601

(via email spectrumreview@communications.gov.au)

June 20th 2014

Dear Sir/Madam,



Australian Commercial and
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Thank you for the opportunity to comment on the Spectrum Review. Our submission covers a number of items across several of the issues papers provide to us as part of the stakeholder consultation process.

The activities represented by the Australian Commercial and Entertainment Technologies Association (ACETA) and the Australia Wireless Audio Group (AWAG) which ACETA manages, are most pertinent to the *Enabling regulatory amendments paper*, *Spectrum Review Issues Paper* and the *Secondary Markets Paper*.

Comments relating to the Secondary Markets Paper

The class licence system has effectively operated as a secondary market mechanism with a couple of fundamental differences for a number of years:-

1. No money has been paid for the privilege of using the spectrum.
2. Without recognition provided by a unique licence the efficiency of this use could not be formally determined.
3. The digital dividend auction process failed to recognise secondary use.

This means that significant losses are now being incurred by the over 200,000 users who operate wireless audio devices such a radio microphone and in-ear monitoring systems across Australia and who, as a result of having the scrap their non-compliant but otherwise functional devices results in have a combined bill in the order of \$220 million that is required to pay for the replacement of these products. We have argued and continue to do so that the consequent impact on economic and cultural activities valued at more than \$32 billion per annum is contrary to the Department's stated aims and will ultimately lead to regulatory failure as we enter 2015.

Due to the complete transparency of use as a secondary user, this arrangement has not provided certainty over the last few years despite these devices having been deployed effectively and efficiently by a vast range of users when measured against the Department's future aims.

The actions of the Department from 2007 through until now, in particular in relation to the spectrum auction process of 2012 has done anything but facilitate a well functioning secondary market within the broadcast spectrum.

Despite the difficulties experienced by wireless audio users operating within the post digital dividend broadcast spectrum, demand for wireless audio products continues to grow both in terms of the types of deployments and the number of devices deployed per activity. Initially these devices were designed for use within the entertainment industry. However significant growth is currently being experienced in non-traditional areas such as education.

Apparatus Licences

From our industry perspective it could be said that people don't value spectrum because they haven't paid for it. "Yes, we'll have 32 wireless mics on this show because we can." Equally they don't consider it a finite resource because to their mind it is just air.

However users value the benefits that come with access to spectrum in much the same way that users of mobile telephones and tablets do. Wireless audio devices offer:

- Flexibility
- Safety
- Improved audience and user experience
- Improved utility
- Artistic and aesthetic benefits

amongst others.

The introduction of apparatus licences for wireless audio devices may provide visibility of use, and an increased degree of certainty for users, especially professional and commercial users than is currently the case under the class licence regime. However, the current apparatus licence mechanism is quite archaic and not appropriate to devices such as wireless microphones. Currently apparatus licence arrangements largely assume the devices will remain within certain locations and are more often than not static. This could be applied to a significant portion of current users. However there is another significant portion of use where this is clearly not the case. These are instances where wireless mics are deployed in broadcast, news gathering, event production, music and the entertainment industry amongst others.

The number of users involved and the nature of their use and their understanding of the technologies is disparate. The wireless microphone industry categorises its users this way:

- Professional users – known as Program Makers and Special Event users (PMSE). This group comprises audio professionals working in fields such as broadcast, news gathering, event production, tourism, large tertiary institutions, meetings and conventions, music and in the entertainment industry.
- Plug and play users – are the second group. Largely they deploy wireless audio products in areas such as the fitness industry, education (schools), churches, community groups such as surf lifesaving or little athletics clubs, auctioneers, civil celebrants and others. They do not have a sophisticated understanding of how these devices work but expect them to find and access spectrum in much the same way that they do with their mobile phones.

The scale of use and the extent of use, in particular by plug and play users, in this area contradicts the aim of providing a system which would reduce administrative burden on the department and

ACMA. ACETA through its members can identify around 200,000 users but that number is significantly larger when the overall and when all sources of product are included.

The wireless audio industry and in particular the PMSE sector is currently having some initial discussions with the ACMA to see if an apparatus licencing model could be deployed for that sector and user profile.

The benefits sought by industry are:

- Security of tenure
- Recognition and status as a group of users
- Increased flexibility in the deployment across the remaining broadcast spectrum not allowed under the terms of the class licence

For this group of users the possibility of a shift to an apparatus licence regime is a possibility but issues such as length of licence tenure and operating conditions along with questions concerning price sensitivity need to be examined and the scale of the arrangements considered by the ACMA.

We are currently in discussion with the ACMA to develop operating practices that improve the flexibility of use by professional wireless audio operates within the broadcast band but where the broadcasters product is not being consumed.

Q: Does the policy on apparatus licence tenure provide enough certainty for apparatus licensees?

With respect to wireless audio devices the 12 month licence tenure/renewal process may want to be considered in relation to the volumes of products involved. A longer tenure period and less frequent renewal periods may be advantageous to all parties.

Spectrum licences

It is unlikely that wireless audio users would ever have the capacity to be active as secondary traders of spectrum. However, given the failure at auction to sell all the spectrum in the 700MHz range and that there is the possibility it may lay fallow for some time, especially if arrangements for the use of some of this spectrum by the emergency services fail to materialise, a short term potential market may exist.. These circumstances may present a viable option for existing wireless audio users. The opportunity to use that spectrum for a period 2 or more years under an apparatus licence may provide not only a short term solution the cost of replacing all the post digital dividend inventory of the PMSE sector but may generate some short term income where there would otherwise be none. After all, wireless audio users have existing product capable of operating in the spectrum but under current regimes will be illegal to deploy after January 1st 2015. The critical issue will be the cost benefit to PMSE users. If the implementation of an appropriate apparatus licensing system were to cost less than the replacement of existing but illegal devices some use may be found for the unsold spectrum for a period of time.

When a spectrum licence expires, there is a presumption in the Act that the licence will be re-allocated via a price based method (section 81 of the Act), unless it is determined to be in the public interest to do otherwise (section 82 of the Act).

With increased demand for spectrum indicated in the Spectrum Management Framework document, **"The Australian Communications and Media Authority (ACMA) estimates that an additional 300 megahertz of spectrum is required by 2020 to meet future demand for wireless communication devices"** there must be more emphasis placed public interest. With such demands it could be that all spectrum becomes the play thing of the telecommunications sector and that other sectors including wireless audio, (which in fact is a critical tool in providing much of the content to be consumed on mobile devices) are either priced out or squeezed out of the market by the demands of the telco's. We recognise that wireless audio is, under the definition of the Radiocommunications Act, a secondary user. However, our various submissions made since 2007 clearly indicate that the use of these devices enables significant economic activity within Australia, including the contributing to the incomes promised by the expanding telco sector, making the ongoing use of wireless audio products and the benefits derived through their use clearly an issue of public interest.

Renewals should also consider efficiency gains. There was ample commentary by a series of international industry experts at the 2013 Radcomms Conference suggesting that the telco's use of their existing spectrum is fundamentally inefficient. We are not experts in this area, however if that is in fact the case, the telco's cannot and should not be allowed to continue to keep coming back to spectrum pool and demanding greater and greater access when in fact they are not operating at the greatest possible efficiency.

The Australian public will not be well served if the telco's are the only organisations able to reliably and affordably access spectrum with each passing review.

Comments relating to the Spectrum Review Issues Paper

Questions for Stakeholders

Q1 – The underlying theme of this paper and all others supporting it are that the reforms are to be developed in such a way as to ensure that spectrum will be used efficiently and market forces will determine its value. We agree that spectrum should be used efficiently and technology is allowing our industry to continually improve.

However, allowing the value of spectrum to be determined solely by market forces may result in those sectors who contribute largely to the ongoing public interest being unable to adequately operate in the remaining spectrum. A lot of devices are used to enable ongoing economic contributions however the class licence they operate under assumes they are not contributing to economic outcomes.

How does this review determine the value of the public interest?

Will this review develop a mechanism for ensuring reasonable return on the use of the spectrum without creating administrative burdens to either the ACMA or the end user?

Q3. - With respect to Terms of Reference 3 there remains the urgent need to review and mitigate the current issues faced by wireless audio users in the final 6 months prior to the completion of the digital dividend process.

Terms of Reference 3 speaks of

- how reallocation of spectrum can be facilitated, including the approach to providing financial assistance to spectrum users displaced through reallocation processes and the value of tools such as incentive auctions
- licence tenure, renewal processes and resumption and compensation rights

The digital dividend auction process failed to recognise the secondary use of the broadcast spectrum by wireless audio users. Furthermore the auction process failed to place any financial responsibility onto the winning bidders so that they might assist incumbent users in the process of decommissioning and relocating. These secondary users, it should be remembered, have operated legally and responsibly and, had built businesses or developed community assets, contributing to the community economically, socially and culturally. Instead the short-sightedness of the auction process left that responsibility in the hands of the existing users or government.

There was no provision of compensation rights in the digital dividend process save for those for TV broadcasters. Small business and community groups have been left to fend for themselves.

The lack of process in respect to the initial framing of the auction documents and subsequent lack of undertakings during the transition process by government will result in policy failure. Significant sections of the Australian community will soon be using their wireless audio devices illegally, either through ignorance or economic necessity. The result is that mobile phones and wireless audio devices will find themselves sharing common spectrum, something that was never intended and that will result in degraded services for both telephony and wireless audio users from the beginning of next year.

So, more than two decades of trouble free spectrum sharing between the broadcasters and wireless audio users, will soon become a spectrum battleground as one services the failure in the last three years by government and regulators to properly transition wireless audio products out of the digital dividend will result in significant disruption to the users of both services in the coming year.

With six months remaining before the 1 January 2015 conclusion to the digital dividend transition there is still time to resolve some of the most pressing issues of transition assistance to users and an effort to communicate and educate users of the need to decommission existing 700MHz wireless audio product.

Q4 – Harmonising Australian standards with international standards for wireless mics should be addressed in the short term. There have been some moves towards this recently, most obviously harmonisation of spectrum with the Asia Pacific region. Those areas still in need of review are centred largely around the adoption of European or North American standards for product performance. The aim of this would be to make product compliance easier and less burdensome on local importers, allowing them to be more competitive.

Q5 – The digital dividend has been the most fundamental change effecting our stakeholders in the history of wireless microphones. Our users could not sustain further significant changes and should not be asked to do so unless adequate consideration is given to their needs and significant compensation is offered to facilitate any changes.

Comments regarding the Enabling regulatory amendments paper

We have some concerns with regard to the proposal to amend the definitions of supply and importer. We concede that a flexible definition allows for the regulations to change with little intervention from parliament, but our concern is that making them flexible and sustainable risks making them ambiguous and possibly unenforceable. The current definitions give our stakeholders certainty and legitimacy.

This extends beyond issues of spectrum usage through to product compliance under the RCM.

To illustrate – our stakeholders operate in an environment whereby a lot of products are imported into Australia by grey marketers.

Under the current definitions, it is incumbent on the importer to ensure that a product is compliant. Declaring a product to be compliant in Australia is done at a reasonable cost to the responsible Australian supplier. These costs are then passed on to the consumer. As grey marketers ignore this compliance cost placed on them, they can offer the same product for a cheaper price.

Technically the grey marketer does have this same impost placed on them however the ACMA does not have the resources to police this sort of activity in a timely or effective manner.

Changes that are made to the definitions should protect legitimate Australian businesses marketing and selling legitimate and compliant product. The introduction of ambiguous definitions has the potential to increase the effect of the grey market. These changes should be made with consideration given to the consequences.

Equally these changes are useless without the ability to adequately enforce them through a properly resourced regulatory authority.

We look forward to the opportunity to discuss these issues via the bilateral meetings referred to in Minister Turnbull's letter of May 23rd.

Yours sincerely,



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Australian Commercial and Entertainment Technologies Association and the
Australia Wireless Audio Group