AUSTAR United Communications Limited

Response to the
Australian Communications and Media Authority

Spectrum Trading:
Consultation on trading and third party authorisations of spectrum and apparatus licences

23 January, 2009

AUSTAR UNITED COMMUNICATIONS LIMITED

Response to the ACMA's consultation paper on Spectrum Trading

INTRODUCTION

AUSTAR welcomes the opportunity to respond to the consultation paper released by the ACMA. AUSTAR United Communications Limited (AUSTAR) is one of Australia's leading subscription television providers, supplying digital television services to customers in regional and rural Australia. AUSTAR also offers internet and mobile telephone services. As a holder of the 2.3GHz and 3.4-5Ghz band licences in regional and rural areas, AUSTAR has a strong interest in the efficacy of spectrum trading.

BACKGROUND

AUSTAR invested A$183 million in 2000 to obtain spectrum licences covering 98Mhz of contiguous spectrum in the 2.3GHz band. AUSTAR's licences currently expire in 2015. The term of AUSTAR's spectrum licences is the maximum presently allowed under legislation

AUSTAR's investment in spectrum was based on our belief, supported by customer feedback, that our television customers would value the ability to purchase and bundle multiple products from AUSTAR, and that we could deliver new services efficiently given our best-in-class customer service facilities. Although technology and capital market developments at the time prevented further investment, AUSTAR retained its interest in investing in a broadband solution and, in 2006, commenced a phased roll out of wireless broadband services, launching in Wagga Wagga and Tamworth. Shortly after, due to the announcement of the Broadband Connect Infrastructure Program, AUSTAR paused its deployment in order to coordinate further investment with a possible broader solution. AUSTAR established the AUS*alliance* consortium with Unwired and SOUL and presented a compelling regional broadband solution which blended fibre, WiMAX and ADSL2+ access technologies.

Although AUSTAR was disappointed with the Broadband Connect Infrastructure Program outcome, we noted some logic in the Optus - Elders partnership, OPEL, being selected as the preferred provider. Given the vast density and topographical differences between metropolitan and regional Australia, adopting a single, national technology approach is not the most efficient

solution and is unlikely to be sustainable over the longer term. OPEL's solution, combining ADSL2+, wireless and fibre solutions, provided a roadmap to offering efficient, national coverage. The termination of the OPEL contract was extremely disappointing for everyone with an interest in service provision in regional Australia.

The Government's impending National Broadband Network announcement provides new opportunity for funding a fit-for-purpose network solution to ensure sustainable, affordable broadband access. Wireless Access Services (WAS) are frequently the most efficient and economical last mile solution in regional and rural areas and provide a complementary approach to fixed networks in dense metropolitan areas. As a result, it is likely that the successful National Broadband Network provider will review opportunities for spectrum access to facilitate their approach and may investigate the feasibility of spectrum trading to secure access to these assets. AUSTAR continues to actively engage in discussions with third parties on this matter.

AUSTAR'S SPECTRUM TRADING EXPERIENCE

Since the initial spectrum investment in 2000, AUSTAR has had two significant spectrum trading experiences.

In 2005 AUSTAR agreed to "swap" spectrum with Unwired. Under the agreement, AUSTAR traded a portion of its 2.3GHz spectrum licences (98Mhz) to Unwired and Unwired traded a portion of its 3.4-5GHz spectrum licences (65Mhz) to AUSTAR and the licence boundaries were redrawn. Unwired also made a supplementary cash payment to AUSTAR of $15 million.

As a result, AUSTAR now hold 2.3GHz and 3.4-5GHz licences in areas that roughly align with its current subscription television market in regional Australia, while Unwired hold the 2.3GHz and 3.4-5GHz licences for the majority of metropolitan Australia, as illustrated in Figure 1.

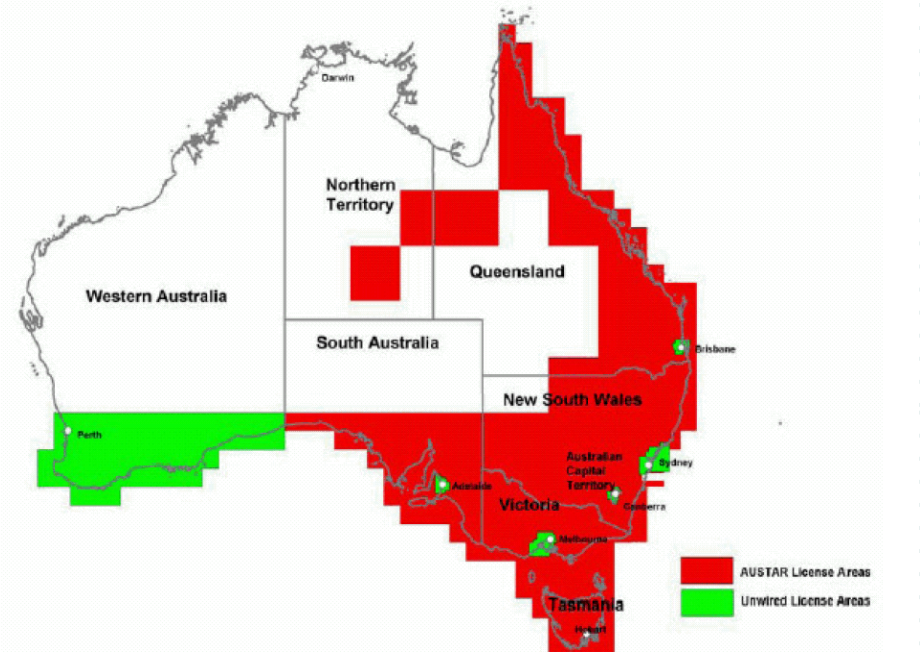

Figure 1: AUSTAR's Spectrum Holding

The 2.3GHz and 3.4-5GHz spectrum bands are both included in the mobile WiMAX (802.16e) global standard. In an environment where technology continues to evolve rapidly, the holding of spectrum in both bands remains important to AUSTAR to maximise future optionality.

Spectrum trading in this instance allowed AUSTAR to consolidate and commence plans for providing a broadly available service in regional areas, and Unwired the ability to broadly service urban areas. In this way, the secondary spectrum trading market was clearly effective in facilitating the movement of assets to a higher value of user, with greater likelihood of commercial use.

In 2008, AUSTAR entered into a conditional spectrum sale agreement to facilitate OPEL's technology neutral approach as part of the Broadband Connect Infrastructure Program, to ensure that regional Australians would be provided efficient broadband access using a combination of fibre, DSL and WiMAX. Unfortunately for regional Australians, the subsequent cancellation of the funding program by the Government meant that the sale was never completed. Regardless, the commercial agreement reached between OPEL and AUSTAR is another demonstration of the effectiveness of the secondary spectrum trading market.

In addition to these experiences, AUSTAR has historically, and continues to engage, in discussions with numerous third parties with an interest in using, leasing or purchasing the 2.3Ghz and 3.4-5Ghz spectrum licences in the secondary market.

RESPONSE TO ISSUES FOR COMMENT

AUSTAR is pleased to be able to provide some general comments on the issues raised in the ACMA's consultation paper, based on our spectrum trading experience to date.

Overall AUSTAR's belief is that the secondary spectrum market in Australia functions effectively and compares favourable to the secondary markets in the United States and Europe. While a number of barriers impact the volume of secondary trading, many of these factors are commercial rather than regulatory barriers.

In AUSTAR's experience, the primary impediment is the willingness of interested parties to pay fair value for the spectrum. Spectrum values can be determined by reference to the applications available in the particular band and can be benchmarked against international markets, for example using a cost per megahetz per population passed ($/MHzpop). Too often AUSTAR is approached by parties looking to access spectrum on a low or no cost basis, having no regard to the capital invested by AUSTAR, the potential impact on future commercial plans or the impact on the resale value of the overall spectrum holding. As the ACMA suggestions, stamp duty can provide a barrier to trade where it is factored into the purchase price and therefore impacts the capacity of the trading parties to agree fair value.

Where a fair value is able to be agreed, AUSTAR does not believe that anti-competitive behaviour is an impediment to trading. Particularly where new technologies are involved, such

as mobile WiMAX in AUSTAR's case, there is sufficient commercial incentive in encouraging investment by multiple parties to generate consumer interest in the technology and economies of scale for the vendors.

Due to the international nature of spectrum benchmarks, collecting price information for secondary market trades is unlikely to further improve information in the market and therefore unlikely to boost the secondary market. In addition, spectrum trades can be complicated, as evidenced by the AUSTAR and Unwired spectrum swap in 2005, which would limit the effectiveness of capturing trade prices.

AUSTAR agrees with the ACMA that spectrum tenure, and just as importantly certainty of renewal, is one of the key elements impacting the value and trading of licences. Licence tenure is a critical aspect of spectrum valuation and without certainty over the process it is challenging for any buyer in the secondary market to offer a compelling, and commercially sound purchase price. This is particularly the case for spectrum applications where capital investment is required and likely to be paid back over an extended period of time.

In addition to fair value and tenure issues, another determinant of secondary market value is the regulatory and technology certainty that surrounds the applications suited the particular spectrum band. For instance, AUSTAR's ability to trade or authorise third party applications using our 2.3 and 3.4-5GHz spectrum holding has clearly been affected by the Federal Government's national broadband programs, including the cancellation of the Broadband Connect Infrastructure Program in early 2008.

Finally, the ACMA also sought comment on whether information on third party authorisations should be collected and published. AUSTAR frequently accommodates requests from various parties – including utilities, mines and vendors – to loan spectrum for a short term period for proof of concept trials. Any reporting requirements on these types of authorisations would most likely have the unintended consequence of making these activities commercial prohibitive, and therefore AUSTAR does not support collection of the information.

CONCLUSION

AUSTAR appreciates the opportunity to comment on the ACMA's review of trading and third party authorisations of spectrum and would welcome the opportunity to discuss the issues raised with the ACMA.

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