

5/08/2024



AMTA Submission

Australian Communications & Media  
Authority

Our (the ACMA) approach to  
radiocommunications licensing and  
allocation 2024



## About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators and service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.



## Introduction

AMTA welcomes the opportunity to provide feedback on the Australian Communications and Media Authority's (ACMA) consultation on its revised Information Paper "Our approach to radiocommunications licensing and allocation 2024" (the Information Paper). If you have any queries or comments in relation to the content of our submission, please contact Chris Coughlan, Head of Spectrum and Network Infrastructure, [REDACTED], or by email [REDACTED].

## Executive Summary

The technological flexibility of Australia's spectrum licensing framework has enabled mobile network operators (MNOs) to rapidly deploy multiple generations of mobile technology. The certainty and exclusivity of spectrum access afforded to spectrum licensees has facilitated the billions of dollars of private sector investment needed to do so. This investment has delivered competitive national critical infrastructure networks enabling the supply of essential communications services to Australians. The public benefit derived from the use of spectrum for public mobile services is unrivalled.

The reforms of the Modernisation Act have provided the ACMA with broader discretion to adjust spectrum arrangements in response to market changes and ultimately to promote the long-term public interest. The Information Paper can serve a valuable function of clarifying the ACMA's approach to licensing and allocation decisions, with a view to improving certainty and predictability in a more flexible legislative regime.

However, in AMTAs' view, the revised Information Paper does not clarify the circumstances and factors relevant to the ACMA's discretion to intervene in spectrum arrangements. Rather than provide clarity upfront, the Information Paper indicates that the ACMA will rely on the incremental transparency of a case-by-case approach. Given this, the Information Paper provides very little certainty, or predictability, about the ACMA's decision-making. In summary, AMTA considers that the revised Information Paper:

1. Should strike a more investment friendly balance between transparency and certainty (or predictability) for licensees and the flexibility the ACMA needs to effectively manage spectrum.
2. More clearly articulate how the ACMA will likely employ a "balanced application of market and regulatory mechanisms". The revised Information Paper appears to raise the possibility that the ACMA may intervene even where the market is facilitating or can facilitate public interest outcomes.
3. Avoid any unnecessary "dilution" of spectrum licence rights thereby changing the terms of access that have supported billions of dollars in network investment over the last 30 years.
4. Should provide greater assurance that a spectrum licence that has been used to supply essential services to the public and will almost certainly continue to be used to supply those services to the public will be renewed.

In this way, the Information Paper does not afford sufficient weight to the long-term public benefits derived from use of spectrum for public mobile networks and services. AMTA does not consider that the degree of uncertainty the Information Paper creates is justifiable in the context of its impact on the deployment of national critical infrastructure and essential communications services. It is also counter to the Government's communications policy objectives to improve regional and remote connectivity.

It is not in the public interest to introduce further uncertainty into the investment climate of an industry critical to Australia's future and experiencing long-term declines in returns on invested capital (ROIC). Rather than preserve an unnecessarily broad discretion to adjust spectrum access under spectrum licences, AMTA urges the ACMA to adopt a default assumption that the use of spectrum licences for public mobile services will promote the long-term public interest.

The ACMA should amend the Information Paper to clarify:

1. Spectrum licences will be afforded a high degree of certainty and exclusivity of access to spectrum.
2. The impact on licensees and downstream services is a key consideration in the ACMA's decisions concerning any changes to existing licence arrangements, including the introduction of any overlapping licences or co-existence arrangements.
3. The ACMA will consider the nature of technology deployment and the relevance of spectrum to deployment decision-making when considering whether competing use cases better promote the long-term public interest.
4. Analysing demand based at a specific point in time is only reasonable to the extent that new access or licensing arrangements are supported by evidence of a viable business case. In other words, it must be clearly established that demand is not being met, including via existing market-based mechanisms of spectrum access and that prospective licensees have a viable business case.

AMTA considers that, if the Information Paper is published without further amendment to address the above concerns, it will constitute a missed opportunity to provide critical ex-ante transparency to stakeholders to help promote network investment.

# General Themes

## 1. Exclusivity and certainty of access to spectrum

Exclusivity and certainty of access to spectrum has been facilitated by the ACMA's spectrum licensing framework. This has underpinned MNO's billions of dollars in investment in mobile infrastructure. Undermining that by reducing certainty will impact the continuity of service and the utility of spectrum.

Mobile networks and services deliver unrivalled public benefit over spectrum, in fact it is viewed as critical infrastructure in today's modern society.

Mobile is a high fixed cost industry. Mobile networks require significant large upfront capital investment to deploy physical infrastructure and network equipment followed by lower variable costs to extend those networks and add new users. Mobile markets are also characterised by cycles of significant technological improvement and investment (4G to 5G, to 6G etc). The eventual obsolescence of older technology means that consumers will lose existing coverage, capacity, and capability if a mobile operator does not continually invest in the requisite infrastructure upgrades.

In this context, sufficient certainty of access to spectrum, and predictable decision-making are crucial to the ongoing promotion of the long-term public benefit derived from the use of spectrum for mobile services.

MNOs could not have made the billions of dollars in network investment, or towards the acquisition of spectrum, without the technological flexibility and certainty of access to spectrum that the Act affords to spectrum licence holders. Indeed, a statement to this effect was included in the previous draft of the Information Paper where it said that:

*"Spectrum licences have broadly been used to authorise the use of high value spectrum over large geographic areas to support services such as wireless broadband. This stems from the Act providing spectrum licensees with a high degree of exclusivity and certainty, making the licence type suited to supporting scenarios where licensees have long-term investment requirements."*<sup>1</sup>

AMTA is disappointed to observe that the above reference to the "Act providing spectrum licensees with a high degree of exclusivity and certainty" has been removed from the revised Information Paper.<sup>2</sup> We also note the subtle change in tone in the description of the "conditions of use" for spectrum licences under Appendix A of the

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<sup>1</sup> Our approach to radiocommunications licensing and allocation Implementing the Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020; March 2021, p.6

<sup>2</sup> Our approach to radiocommunications licensing and allocation Implementing the Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020; March 2021, p.8

Information Paper, which suggests that spectrum licensees cannot expect the same degree of exclusivity or protection from interference that they may have in the past.<sup>3</sup>

## **2. The Information Paper is an opportunity to limit the degree of uncertainty.**

The Information Paper is an opportunity to limit the degree of uncertainty inherent to a more flexible spectrum management framework. To achieve this, the ACMA should qualify its discretion to the extent that it creates unnecessary uncertainty relating to spectrum licensees access to spectrum used to deliver public mobile services and networks.

To be clear, AMTA supports the ACMA having discretion. However, AMTA is concerned the potential exercise of that discretion is not sufficiently articulated in the proposed guidance. This may lead to decisions being made contrary to the Act, unjustly impacting users or prospective users of spectrum.

While AMTA welcomes the intent of the Information Paper to provide ex-ante transparency over the ACMA's licensing and allocation decision-making, we consider that it falls short of this and in fact introduces an unnecessary degree of uncertainty into the mobile network investment environment. AMTA does not believe this is in the long-term public interest as it increases investment risk that has the potential to dampen the availability of critical infrastructure, with the effect of limiting the supply of mobile coverage or capacity.

AMTA fully supports the ACMA's approach to consultation, including through the FYSO. However, the Information Paper preserves a very broad discretion for the ACMA and does not provide particularly helpful examples or clarification of the nature and scope of the ACMA's discretion. It is also clear that the paper depends on other materials (e.g. FYSO, Govt policy, MPS, Statement of Expectations, Statement of Intent, spectrum planning and decision-making framework, consultation obligations etc.), which adds to the breadth of the ACMA's discretion and ultimately undermines "predictable" decision-making.

AMTA believes the ACMA could provide additional guidance than listing the legislative provisions. Predictability will be better fostered through clear explanation of the factors and how they may be applied. While we accept that there is a need to consider each case on its merits, the public interest cannot involve different (general) considerations every time a decision is made. The inclusion of some further case

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<sup>3</sup> For example, page 36 of the 2021 draft of the Information Paper states spectrum licences enjoy "Exclusive use within defined area and frequency range, however class and apparatus licences may be authorised to co-exist under specified circumstances. Interference protection in accordance with ACMA policies" while page 35 of the 2024 Information Paper states "Generally, exclusive use within defined area and frequency range, however class and apparatus licences may be authorised to co-exist under specified circumstances. Interference management in accordance with legislative instruments and ACMA policies"

studies explaining the ACMA's decision making in the years since the Act was amended would assist in this regard.

Decisions on whether to issue a licence are reviewable decisions. AMTA consider that leaving too broad a discretion for the ACMA to act as it sees fit is not supportive of long-term investment decision-making. While the Act grants the ACMA broad discretion, this does not mean that the criteria to be applied cannot be clearly articulated and the ACMA's discretion appropriately qualified. In fact, broad discretion requires greater qualification to avoid a perception of arbitrariness in decision-making.

In AMTA's view this requires that the Information Paper provides sufficient detail as to how the ACMA will apply its licensing and allocation powers in the general case. In other words, what are the general considerations that will inform these decisions. Ideally these considerations should be described in detail sufficient to enable an affected stakeholder to understand what to expect from the regulators exercise of discretion and to engage with the ACMA on licensing and allocation matters in an informed manner.

By way of example, the ACCC has issued *"A guidelines to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010 (the CCA)"*. The stated purpose of the guideline is to *"provide clear guidance about both the processes associated with declaration and the issues which the ACCC will generally consider in declaration decisions. It is also intended to assist those making submissions to the ACCC in the context of public inquiries considering declaration"*. To this end, the guidelines explore how the ACCC examines whether the LTIE will be promoted by declaration and the three objectives that the ACCC must have regard to in establishing whether the LTIE will be promoted.<sup>4</sup>

### **3. Market mechanisms remain the most efficient means of promoting the efficient use of spectrum**

AMTA believes that regulatory intervention should only be contemplated where it is clearly established that the market is failing to deliver the desired policy outcomes. Even then, regulatory intervention should be approached cautiously so as not to undermine nascent innovation or chill investment in new technologies and solutions.

In this context, AMTA notes that the Spectrum Review identified that an objective of reform was to *"provide for greater market-based activity"* highlighting that; *"given the inherent costs and inefficiencies in both governments and markets trying to jointly coordinate economic activity, the reforms provide a greater opportunity for Government to establish and promote the necessary conditions for market-based activity up-front with a view to limiting the extent to which further direct interventions*

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<sup>4</sup> ACCC; August 2016; available here: <https://www.accc.gov.au/about-us/publications/guideline-for-part-xic-declaration-provisions-for-telecommunication-services>



*are necessary. Noting that the Government would retain the right to intervene in specific spectrum management matters to achieve policy priorities”.*<sup>5</sup>

AMTA acknowledge that a stated intention of the amendments to the Act was to provide the ACMA with flexibility in re-allocation processes to prevent “spectrum becoming ‘locked’ into spectrum licensing” and enable new spectrum use cases and licensing approaches to be adopted as they emerge.<sup>6</sup> However, we do not consider that such flexibility should be left open ended, given the public interest to be served in supporting efficient network investment and deployment of critical infrastructure and essential connectivity services.

While AMTA agrees that the ACMA must have the power to intervene to prevent underutilisation of spectrum, we consider that it should be made abundantly clear that such intervention will be the rare exception rather than the rule, and then only based on clear evidence that existing mechanisms of spectrum access have failed.

#### **4. Trying to satisfy all stakeholders will provide suboptimal outcomes**

AMTA notes a recent trend where the ACMA has introduced complex licensing arrangements to satisfy a wide range of applications and stakeholders in a single band. This results in complicated interference management and sub-optimal spectrum efficiency. An example of this is the ACMA’s arrangements for the band n78, “C-band” spectrum the waterfront band identified for 5G.

For 5G to be effective, 3GPP recommend contiguous bandwidths of at least 100MHz to be deployed to deliver spectral efficiency. Given the amount of spectrum from 3.4 – 4.0 GHz, this should have been achievable for the mobile industry. However, in implementing the allocation of this spectrum the ACMA’s approach with the different licence types and conditions to cater for a wide array of applications and uses has created a very fragmented situation that reduces the ultimate utility of this band.

AMTA recommends that the ACMA consider a process where licence boundaries are minimised, so the interference issues are avoided, spectrum efficiency and utility maximised and allocation is based on highest value use.

Complex arrangements to manage multiple use cases in the same band are also being considered in the current consultation for the 1800 MHz and 2 GHz bands.<sup>7</sup> Catering for multiple use cases in a single band can cause fragmentation and the ‘automatic’ renewal of short-term apparatus license can make reconfiguration of a band to improve spectral efficiency difficult. Consolidating a single use case into a single band, rather than introducing complex rules to ‘manage’ perceived supply and demand issues, could improve spectral efficiency.

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<sup>5</sup> \*Spectrum-Review-report-FINAL\_-\_for\_publishing.pdf (infrastructure.gov.au); p.14

<sup>6</sup> Explanatory Memorandum to the Modernisation Act 2020, p.26

<sup>7</sup> Australian Communications and Media Authority, 1800 MHz and 2 GHz bands – Review of planning arrangements outside of spectrum licensed areas, June 2024.



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