



TELSTRA GROUP LIMITED

Submission to ACMA Consultation

Expiring Spectrum Licences Stage 4: Proposed Application and Decision-Making Process

Public Submission

27 February 2026



Executive summary

Telstra welcomes the opportunity to respond to the ACMA's consultation on the *Proposed Application and Decision Making-Process for Renewing Expiring Spectrum Licences (ESLs) – Stage 4*.¹ We recognise that this process consultation forms one of two key components of the ACMA's Stage 4 work program, with the other being on the updated preliminary views on renewal pricing. Consistent with the scope of this consultation, this submission focuses solely on the procedural and administrative dimensions of the renewal framework, rather than the pricing methodology itself. Please see our other submission, "Expiring Spectrum Licences Stage 4: Pricing" for our response to the Stage 4 pricing proposals.

We support the ACMA's objective of establishing a renewal process that is transparent, efficient, predictable, and fair to all licensees. These outcomes are essential for licensee investment planning and supporting the continuity of national infrastructure for delivering essential services.

However, we hold significant concerns about the process as currently proposed.

Payments and issue of new licences should occur immediately prior to the expiry of existing licences – The Stage 4 materials contemplate a payment window that requires licensees to pay within five months of lodging a renewal application, which could be up to 18 months before the renewed licence commences, with early applications being very strongly encouraged. Telstra is strongly opposed to any requirement that obliges payment so far in advance of licence commencement.

This approach represents a substantial departure from established regulatory practice. Under the Radiocommunications Act of 1992, licensees are entitled to apply for renewal from the commencement of the Renewal Application Period, but payment has never been required so far in advance of licence commencement. Requiring licensees to pay renewal charges up to 18 months before gaining access to the renewed spectrum is unprecedented – both in the context of spectrum licensing and in broader commercial settings where payment is typically aligned to the point at which an asset can be used or generates value.

Our firm stance is that bringing forward such significant payments imposes material financial and economic impacts, including a substantial cost of capital burden. It would also shift costs into fiscal years where no expenditure of this magnitude has been planned or budgeted. Telstra considers this timing requirement neither reasonable nor proportionate, and it risks creating avoidable commercial and operational strain without delivering any clear public benefit.

Telstra is asking that the application and decision-making process be reconfigured so that payment and licence issue occurs immediately prior to the expiry of the existing licences. This approach also provides the ACMA and incumbent licensees with more time to resolve any issues that arise during the renewal process for each licence.

The scope of the additional information to be provided on future deployment and coverage is unwarranted – The introduction of substantial additional information requests at this advanced stage of the ESL program, such as for detailed deployment forecasts and associated future coverage maps, creates both administrative inefficiencies and unwarranted compliance burden. Many of these requirements were not envisaged in earlier stages, and their late emergence risks disadvantaging stakeholders who have acted in good faith in aligning with previously communicated expectations. Such additional information should only be required where there is uncertainty about the existing utilisation of ESL spectrum.

We seek clarity on how any unrenewed spectrum will be reallocated – The current documentation does not provide a clear or credible pathway for the handling of spectrum that is not renewed due to an

¹ [Expiring spectrum licences \(stage 4\) – application process | ACMA](#)



any incumbent electing not to renew that spectrum. At the proposed price levels, which in our view are well above a fair market price, it is likely that not all spectrum will be renewed.

This lack of clarity regarding the handling of spectrum that is not renewed presents a material investment risk for incumbent licensees. Simply pointing to s.60 of the Radiocommunications Act is inadequate, given the potential market-wide consequences of how unallocated or reallocated spectrum is treated, including the implications for long-term spectrum planning, competition, and consumer outcomes.

Further, it is critical the ACMA ensures that any spectrum not renewed, due to a licensee electing to not renew some or all of their spectrum, is reallocated in a way that does not disadvantage other licensees who have elected to renew their spectrum. Most importantly, all licensees must have access to the same price outcome.

The ACMA needs to provide clarity about how any non-renewed spectrum will be reallocated and put back to use in a timely manner, and without disadvantaging licensees who have elected to renew their spectrum in the same bands.

Administrative character of section 294 determinations – Section 294 determinations, as currently proposed by the ACMA, would fix spectrum access charges on a licence-by-licence basis after assessing individual renewal applications. Because these determinations uniquely and directly affect the rights and obligations of specific licensees, they bear the hallmarks of administrative – not legislative – decisions. Their individualised nature, the ACMA’s intention to consult directly with applicants on draft determinations, and the intrinsic connection between the spectrum access charge and the renewal decision all reinforce this characterisation.

As administrative decisions, the ACMA must comply with administrative law requirements, including procedural fairness and legal reasonableness, and would be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and the *Judiciary Act 1903 (Cth)*, as well as potential merits review where connected to licence renewal conditions. Failure by the ACMA to meaningfully engage with material submissions on pricing methodology or to allow applicants to be heard on the pricing applied to their specific licence risks denial of procedural fairness and exposes future decisions to review and potential invalidation.

Legislative character and *ultra vires* concerns –The Radiocommunications Act requires the ACMA to advance the efficient use of spectrum and consider long-term public interest factors and Ministerial policy objectives, including impacts on end users. A pricing methodology that inflates spectrum value beyond fair market levels risks undermining these objectives by increasing consumer costs, constraining licensee ability to renew ESLs, and potentially leading to unused spectrum if renewal becomes financially untenable. Such outcomes would conflict with both the Act and the 2024 Ministerial Policy Statement, which emphasise continuity of services, affordability, and sustainable competition. A determination that adopts an economically unsupported pricing methodology with materially adverse industry and consumer consequences would therefore fall outside the scope of the ACMA’s statutory authority and be legally invalid.

For these reasons, Telstra considers it essential that the ACMA refine the price setting, application and decision-making process to ensure it is proportionate, administratively coherent, and genuinely aligned with the principles of transparency and fairness. We offer constructive recommendations throughout this submission aimed at achieving a renewal framework that provides confidence for all stakeholders while supporting the efficient long-term management of Australia’s spectrum resources.



Contents

Executive summary	2
1 Introduction	5
2 Telstra's view of the proposed application and decision-making process	6
2.1. Proposed early application and linked early payments	6
2.1.1. Commercial and operational impacts	6
2.1.2. Regulatory principles and considerations	7
2.2. Concern with evolving process and the need for a transparent and predictable framework	9
2.3. Concern about newly introduced information requirements	10
2.3.1. Requirement to provide information and documents relating to current sites as well for future sites	10
2.3.2. Requirement to sign a declaration relating to current sites as well for future sites	11
2.4. Importance of aligning process design with long-term public interest criteria	11
3 Need clarity about unrenewed spectrum	12
4 Defragmentation of the 850 MHz and 3.4-3.6 GHz bands & conversion of 1800 MHz to national spectrum licences	13
5 Administrative law and broader legal considerations	15
5.1. Decision-making process for ESL renewals	15
5.2. SAC determinations are administrative decisions	16
5.3. ACMA's proposed pricing methodology	18
5.4. Natural justice	22
5.5. Determinations of legislative character - <i>ultra vires</i> determination	24
Appendix 1: Response to consultation questions	26



1 Introduction

We are concerned that the ACMA has continued to shift the expectations for the renewal process at what is a very late stage in a multi-year process. It has already been established that the Expiring Spectrum Licences (ESLs) currently held by Mobile Network Operators (MNOs) should be offered for renewal, on account of demonstrated high value use and satisfaction of the public interest criteria. Consistent with this finding, we anticipated a renewal application framework that would be relatively simple and consistent with current practices, but instead new and arguably unnecessary information requirements (that are inconsistent with current Government efforts to reduce red tape) have been proposed. In addition, it is not evident why payment for renewed licences cannot be aligned more closely with their actual renewal and commencement dates, consistent with standard commercial and regulatory practice, where significant payments typically coincide with the point at which rights take effect and value can be realised, rather than being required materially in advance.

At the same time the ACMA has effectively disregarded industry responses to its preliminary pricing proposals by completely changing the methodology (as addressed in our separate pricing submission), failed to elaborate on the process which will apply should any of the current ESLs not be renewed (a potentially material process shortcoming) and passed over the rare opportunity to support critical spectrum defragmentation and use-case transition opportunities that could greatly improve spectrum utilisation.

In our view the focus on new information requirements and early application and payment are misguided. All MNOs already submit detailed information on an annual basis to the ACCC under the Record Keeping Rules (RKR) framework, and licences inherently have strong incentives to utilise their spectrum assets both efficiently and effectively. It's also unclear why payment for renewed licences cannot be closer aligned to actual renewal dates, consistent with standard practices across the broader economy.

In our view the ACMA attention could have been more constructively focussed on some of the bigger issues impacting the efficiency and utility of the various ESLs, in particular the need for defragmentation in the 850 MHz and 3.4-3.6 GHz bands and the need to transition Rail and Television Outside Broadcasting (TVOB) to more suitable and more efficient long-term arrangements.

Resolution of these issues offers real tangible benefits, and would be supportive of government policy objectives in critical areas such as regional connectivity, digital inclusion and universal service provision, including furthering the objectives of the Universal Outdoor Mobile Obligation (UOMO) by transitioning licences in the 1800 MHz band to national spectrum licences, yet the ACMA has passed up the opportunity to develop any real vision for improving spectrum usage in Australia for the benefit of all end users. This lack of decisive action on these issues, and the corresponding focus on other matters that appear to offer little benefit, is – as we noted above – concerning.



2 Telstra's view of the proposed application and decision-making process

A well-designed renewal process is fundamental to ensuring that spectrum – a nationally critical and finite resource – is managed in a way that promotes efficient use, supports long-term investment, and sustains competitive and resilient telecommunications markets. Industry's ability to plan, invest, and deliver high-quality network services depends on a regulatory framework that provides clarity, stability and proportionality in both administrative expectations and financial obligations. A process that is predictable and anchored in established regulatory principles enables licensees to commit confidently to infrastructure programs that span multiple years and require significant capital deployment.

Furthermore, given the scale and importance of spectrum-based services to Australia's economy and connectivity outcomes, it is essential that the ACMA's administrative settings do not inadvertently introduce inefficiencies or distortions. Internal assessments underscore that the final stage of the ESL program should enhance certainty, not diminish it, and should avoid imposing new or expanded obligations unless they deliver demonstrable public interest benefits. Ensuring that all licensees are treated equivalently – including through consistent timing, conditions, and financial frameworks – is necessary to avoid differentiation across licensees for non-price terms and uphold confidence in the integrity of the ESL process.

We have identified several aspects of the proposed application and decision-making process that need to be changed to ultimately improve the efficiency and quality of the process; we deal with these in the remainder of this chapter.

2.1. Proposed early application and linked early payments

The Stage 4 materials contemplate a payment window that requires licensees to pay within five months of lodging a renewal application, which could be up to 18 months before the renewed licence commences, with early applications being very strongly encouraged. Telstra is strongly opposed to any requirement that obliges payment so far in advance of licence commencement. Requiring payment within five months of application, up to 18 months ahead of start-of-term, is commercially unreasonable and inconsistent with the basic principle that material outlays should align with the point at which rights (i.e., licences) are conferred and can be utilised.

If the ACMA's intention is to have all licensees apply early to ensure all applications are concluded well before the expiry date, the call for early payments is likely to have the opposite effect, with licensees waiting for 6 months before expiry before all submitting their applications to avoid the negative effect of early payment.

We would not be opposed to being offered instalment payments for the renewal of the expiring spectrum licences, provided that this option is made available to all licensees to avoid any potential asymmetry in licence conditions.

2.1.1. Commercial and operational impacts

The ACMA's proposed approach gives rise to a number of commercial and operational impacts:

1. Capital allocation and weighed average cost of capital (WACC). Advancing payments introduces a deadweight cost – capital is tied up without corresponding productive use – raising effective carrying costs and eroding net present value (NPV) of spectrum investments.
2. Investment planning and certainty. Committing significant capital up to 18 months early compresses internal funding windows, disrupts multiyear capex sequencing, and increases exposure to macro-financial volatility over a period when the underlying spectrum rights are not



yet productive. This may also force reprioritisation away from network programs that deliver near-term consumer benefits.

3. Accounting treatment and risk. Paying long before commencement amplifies uncertainty (e.g., if there are subsequent policy adjustments or market developments) and complicates provisioning and impairment assessments.
4. Program delivery. Early payment calls may delay deployment in other coverage or capacity projects, undermining the broader policy goal of timely network improvements.

2.1.2. Regulatory principles and considerations

The ACMA's proposed approach raises several important regulatory principles and considerations.

Regarding alignment of consideration with conferral of rights - in analogous regulatory frameworks, the obligation to pay typically coincides with the vesting of rights. Decoupling payment from commencement by as much as 18 months undermines predictability and regulatory coherence, and places financing obligations in a period when the licensee receives no contemporaneous operational benefit. In addition, frontloading the entire charge far ahead of commencement is contrary to the "capacity for sustained investment" objective as stated in the *Radiocommunications (Ministerial Policy Statement – Expiring Spectrum Licences) Instrument of 2024*.²

The ACMA has stated it will require upfront payment of spectrum access charges before issuing licences. The reasoning provided by the ACMA for the proposed timing for payment is that it is consistent with its historical practice of requiring upfront payment prior to licence issue.

The practical consequence of the ACMA's proposed timing for payment of spectrum access charges is that:

- a. The ACMA is only proposing to provide 30 days for payment in most cases, as the ACMA considers that this will be required to enable a renewal decision to be made within six months of receiving an application; and
- b. A licensee may be required to pay the spectrum access charge more than 18 months prior to the new licence coming into force, where the licensee has followed the ACMA's strong recommendation to apply for renewal as soon as possible after the two-year renewal application period commences.³ This represents a material change from the timing for payment of spectrum access charges in recent spectrum licence allocations and could result in a licensee being required to pay spectrum access charges up to two financial years prior to licence expiry.

We request that the ACMA reconsider its approach to timing for payment of spectrum access charges as part of the renewal process. Delaying the time for payment until closer to licence expiry would ensure that licensees are not economically disadvantaged if they apply for renewal early in the renewal application period by incurring a significant liability earlier than they would have otherwise planned for.

We acknowledge that the ACMA is required under s 286(6) of the Act to make a renewal decision under section 77C within 6 months after receiving an application from the licensee. However, we consider that the six-month timeframe for making a decision under section 77C does not require the ACMA to issue the new licence within six months after receipt of the application. In fact, subsection (9) provides that the new spectrum licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.

² <https://www.legislation.gov.au/F2024N00367/asmade/text>, pg 7.

³ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 9.



As explained later under “Decision-making process for ESL renewals”, the decision to renew or not renew the licence is a separate and distinct step to the issue of a new licence. The issuing of the licence is merely the implementation of the ACMA’s earlier decision which can happen at any time prior to the expiring of the current licence. This is clear from the fact that:

- a. Section 77C(1) states that the ACMA may *renew* a licence (cf make a decision to renew a licence) by issuing a new licence, and
- b. the Act contemplates the ACMA informing the licensee of its decision and having the ability to refuse to renew a licence by notice to the licensee, rather than merely not issuing a licence within the 6-month renewal decision-making period.⁴

Accordingly, it would be open to the ACMA to make a decision about renewal within the six-month statutory timeframe, but to delay issuing the new licence until a date closer to the expiry of the original licence. The ACMA could then allow payment of spectrum access charges closer to licence expiry (for example, one month prior to licence expiry) in line with licensees’ expectations, while remaining consistent with the ACMA’s historical practice of requiring upfront payment prior to licence issue. For completeness, we note that the ACMA’s renewal decision could be made conditional on the licensee paying the spectrum access charge in sufficient time for the new licence to be issued before the expiry date of the original licence.

The alternative process we have described above could play out as follows:

- a. A licensee submits an application for renewal two years before expiry (i.e. at the start of the renewal application period).
- b. There is direct consultation with the applicant, including about the draft licence terms and the draft SAC determination where the ACMA’s draft decision is to renew the ESL.
- c. The ACMA makes a decision on renewal within six months after receipt of the application (i.e. 18 months before expiry) and notifies the licensee of its decision. If the decision is to renew the licence, the renewal of the licence would be conditional on the licensee paying the relevant spectrum access charge before the expiry of the licence.
- d. If the decision is to renew the licence, the ACMA publishes the spectrum access charge determination at the same time as the decision on renewal.
- e. The licensee pays the spectrum access charge closer to expiry of the current licence (e.g. one month prior to licence expiry).
- f. The ACMA issuing a new licence following payment of the spectrum access charge and before the expiry of the licence.

We note that in previous auctions of spectrum licences, liability for payment of spectrum access charges only arose after a bidder became the winning bidder for one or more lots at the auction,⁵ at which point entitlement to the issue of the licence was conditional only on payment of the relevant spectrum access charges.⁶ Due to the timing of the auction, payment was only required shortly prior to the licence commencing. This is different to the process being proposed by the ACMA, where there will be a significant period of time between payment and the licence commencing (in some cases, more than 18 months).

⁴ See, eg, Act, s 77D(1), 286(7).

⁵ See, eg, *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*, Part 5, Div 7.

⁶ See, eg, *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*, ss 88(2), 90.



We further note that, notwithstanding the ACMA's historical practice of requiring upfront payment prior to licence issue, this is not a requirement of the Act. Rather, the Act clearly contemplates that it would be open to the ACMA to reach an agreement with the licensee for payment of the spectrum access charge (including as to payment method and timing),⁷ rather than requiring actual payment. As set out above, this could take place after the decision to renew has been made, but prior to the renewed licence coming into force.

For the reasons set out above, we consider that it would be appropriate for the ACMA to consider allowing licensees to pay the spectrum access charge closer to licence expiry, which could include even after it has issued a new licence to the licensee. Conceptually, payment could even occur after the licence has commenced: Section 67 of the Act requires a spectrum licence to include a condition that the licensee meet all obligations to pay spectrum access charges fixed by determination made under section 294 of the Act, so a failure of the licensee to pay the relevant spectrum access charge by the required timeframe would constitute a contravention of a condition of the licence entitling the ACMA to either suspend or cancel the licence. Telstra is not advocating for this position, but wishes to demonstrate there are a number of options available to the ACMA.

2.2. Concern with evolving process and the need for a transparent and predictable framework

Telstra has consistently supported the ACMA's stated objective of building a transparent, predictable, and confidence-inspiring framework for Stage 4 of the ESL process. However, we have reservations regarding several instances where positions have shifted late in the process, or where the ACMA has revised expectations in ways that diverge from earlier consultation documents. The perception of a shifting and uncertain policy environment has made it harder for licensees to plan ahead and respond appropriately.

Our greatest concern is the unexpected deviation to pricing-related matters during Stage 4 of the process, with the ACMA's pricing approach appearing to shift materially, despite strong, consistent positions expressed across all three MNOs during Stage 3. For example, AMTA in the Stage 3 reply to submission round⁸ highlights that all three MNOs independently proposed a 50% reduction to benchmark pricing based on global downward trends, yet subsequent ACMA steps did not clearly address this feedback and instead has pivoted to a different pricing methodology very late in the process.

Another concern relates to the unexpected expansion of operational and administrative requirements at the final stage, including broader information-gathering obligations. Stage 4 has introduced substantially greater requirements than stakeholders anticipated based on earlier guidance. Such changes undermine the credibility of the process and in this case we are concerned they also lead to an increase in red tape without any value add.

Finally, we note that any licence conditions must apply equally to all licensees. We see that equal treatment between licensees should remain a core objective, and that shifting procedural expectations can directly impact this principle. This indicates that shifting procedural expectations are not simply administrative concerns; they also carry significant strategic and competitive consequences.

Overall, these examples show why Telstra continues to urge the ACMA to stabilise and clearly articulate its procedural framework. A transparent, predictable, and consistently applied process is essential not only for effective regulatory engagement, but also for maintaining confidence in the long-term spectrum framework. Telstra remains committed to supporting the ACMA in achieving this goal

⁷ Explanatory Memorandum for the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, pp 36-7.

⁸ AMTA – "Consultation on ESL preliminary views reply to submission", 23 July 2025 (page 3)



and encourages the adoption of clearer processes that limit late-cycle changes unless justified by compelling evidence and accompanied by adequate consultation.

2.3. Concern about newly introduced information requirements

Several key information requests – particularly those contained within the “four specific questions” directed at licensees – were only introduced at Stage 4 of the process, creating new administrative and compliance burdens. The unexpected late introduction of these requirements undermines regulatory certainty and places additional obligations on licensees that were neither anticipated nor incorporated into long-term planning. From Telstra’s perspective, many of these newly added requests appear disproportionate or unnecessary, further highlighting the need for a more consistent and transparent approach to information gathering.

2.3.1. Requirement to provide information and documents relating to current sites as well for future sites

We note the ACMA’s intention to request information relating to current sites (and associated coverage) as well as for future sites (and associated coverage) for a reference period of three years⁹ for each application as per the consultation document as well as the draft *Radiocommunications (Spectrum Licence Renewal – Information and Documents) Instrument 2026*.

We can supply the current information requested by the ACMA as part of the renewal application in the format prescribed by the ACMA, although we consider that Record Keeping Rules (RKR) information supplied for historical deployments is more than adequate, and we consider the ACMA’s requirement to be an unnecessary regulatory burden. We do note the ongoing ACMA consultation regarding mobile coverage mapping¹⁰ that may have an impact on this requirement.

We, however, respectfully express our objection to the requirement to provide detailed forecasts of planned site deployments for the first three years following a licence renewal application. We likewise object to the requirement to supply coverage maps for this same period. Imposing these obligations represents a clear case of regulatory overreach. Three-year deployment plans are among the most commercially sensitive elements of any MNO’s operations, requiring disclosure risks leaking commercially sensitive information. In addition, forward looking plans over three years will be subject to change so cannot be relied on for absolute certainty about future deployment.

The ACMA has already indicated a preliminary view that licence renewals are appropriate on the basis that existing licensees continue to satisfy the public interest criteria. Introducing new forecasting and coverage mapping obligations at this stage is effectively a shifting of the goal posts.

All licensees have already:

1. provided a sufficient usage justification for renewal, and
2. satisfied the public interest criteria (PIC) test.

Given that these requirements have been fully met, licensees should not be compelled to provide additional onerous forward-looking deployment or coverage information as a precondition for renewal. Such a requirement is unnecessary, disproportionate, and inconsistent with the ACMA’s own stated basis for its preliminary renewal position. We would be agreeable to, as part of the licence renewal process, provide a statement that we will maintain our investment in the existing deployment in the

⁹ 3 years from 31 January preceding the date of the application

¹⁰ [Proposal to make mobile coverage mapping standard | ACMA](#)



relevant spectrum bands and will look to further expand that deployment where the business case justifies expansion.

2.3.2. Requirement to sign a declaration relating to current sites as well for future sites

We would be willing to sign a declaration in respect of current records, as this information is fixed, verifiable, and not subject to future operational uncertainty.

However, we do not support the requirement to provide forward-looking site or coverage information for the reasons outlined above. Should we ultimately be compelled to supply such forecast information, it is essential that any accompanying declaration be clearly understood as indicative only and not definitive. Accordingly, any declaration covering future projections must be treated as nonbinding, recognising that forecast data is inherently uncertain and subject to change based on operational, commercial, planning approval, technological and environmental factors beyond Telstra's control.

2.4. Importance of aligning process design with long-term public interest criteria

The ACMA has stated that its analysis and decisions for the ESL renewal program are guided by the five public interest criteria, namely:

- facilitates efficiency,
- promotes investment and innovation,
- enhances competition,
- balances public benefits and impacts, and
- supports relevant policy priorities objectives.

Telstra supports the use of these criteria. However, the growing set of procedural requirements introduced in Stage 4 - particularly new information-gathering obligations and expanded process steps - does not always align with these objectives, particularly the criteria of facilitating efficiency.

While the ACMA has relied on public interest rationales to justify the expanded procedural framework, several of the proposed requirements risk producing the opposite effect. Extensive administrative burdens - such as broadened data requests, obligations around forward-looking rollout forecasts, and consideration of potential alternative licence conditions - may increase complexity without delivering material improvements to the efficiency or transparency of the renewal process.

From a practical perspective, unnecessary administrative strain can undermine, rather than strengthen, public interest outcomes. Excessive compliance work diverts expertise away from activities that genuinely contribute to efficient spectrum use, including network planning, innovation, and service delivery. This runs counter to the ACMA's public interest criteria relating to efficiency and investment and innovation, as documented in the ACMA's own framework explaining how these criteria guide decision-making. Excessive procedural complexity may also slow the renewal process and lead to inconsistencies in implementation - outcomes that can hinder, rather than enhance, competition between licensees and market confidence.

For these reasons, Telstra encourages the ACMA to ensure closer alignment between the public interest criteria and the procedural obligations imposed on MNOs. Requirements that generate high administrative cost but limited policy value should be reconsidered or streamlined. Doing so will help the ACMA meet its stated objectives while ensuring that the procedural framework remains proportionate, predictable, and genuinely supportive of the public interest.



3 Need clarity about unrenewed spectrum

To date, the ACMA has been silent on what will occur if a current licensee elects not to renew their licence for a particular allocation of spectrum. The Act allows for the ACMA to adopt one of several options (for example, further renewal offers, direct allocation by negotiation or auction, or a combination of any or all of the preceding allocation methods) but does not favour one approach and therefore provides little clarity or guidance on how this will occur in practice. Similarly, the ACMA's decision-making process consultation paper is silent on what happens in this scenario, meaning it is presently unclear what happens if a licensee decides not to apply for renewal of a spectrum licence.

It is incumbent on the ACMA to clarify how it intends to deal with situations where spectrum remains unallocated where a licensee decides not to renew all or part of their spectrum licence (which at proposed pricing levels we consider likely) or where an application for renewal is refused. Allowing valuable spectrum to remain idle for any length of time would be inconsistent with the Object of the Act.

This factor is an important consideration and remains distinct from the final pricing which is ultimately associated with that spectrum. This clarification needs to be provided prior to the commencement of the first renewal application period for the ESLs, being the point at which licensees are entitled to apply for renewal of their licences. In circumstances where the current proposed pricing methodology for renewals reflects above market rates pricing, it may be that licence holders would choose not to seek renewal of some or all their spectrum in this process and test if fairer pricing might be available through a subsequent alternative process. It is also possible that a licensee may decide to not renew, or to partially renew, certain licence(s) due to other non-price considerations.

To make an informed decision about whether to renew licences at the finalised renewal prices, we need to understand whether the ACMA will (for example) auction any such unallocated spectrum where a true market value may be determined, or whether it is intending to follow some other process to allocate that spectrum. Providing clarification about what will happen if licences are not renewed, in whole or in part, would be consistent with the obligation to be transparent about the ACMA's decision making processes and to give licensees all the information they require to make informed choices about renewal.

Most importantly, any spectrum that is not renewed due to a licensee electing to not renew some or all of their spectrum must be reallocated in a way that does not disadvantage licensees who have elected to renew their spectrum. Specifically, in this scenario, all licensees must have access to the same price outcome. The ACMA must be clear about how unrenewed spectrum will be treated in a way that treats all incumbent licensees fairly and equally.

The ACMA should clarify:

1. how it proposes to deal with situations where licensees choose not to renew their licences (in whole or in part)
2. the process by which the ACMA will deal with unallocated spectrum if an application for renewal is refused
3. if, and how, the ACMA will notify other interested parties of the availability of unallocated spectrum
4. the process by which other licensees can apply for licences to use that unallocated spectrum, and
5. how the ACMA will ensure that licensees who have elected to renew their spectrum are not disadvantaged and will have access to the same price outcomes during the reallocation of unrenewed spectrum



4 Defragmentation of the 850 MHz and 3.4-3.6 GHz bands & conversion of 1800 MHz to national spectrum licences

In our view the ACMA should have given more consideration to larger, structural issues that directly affect the efficiency and long-term utility of expiring spectrum licences, namely defragmentation in the 850 MHz and 3.4–3.6 GHz bands and the conversion of the entire 1800 MHz band to national spectrum licences. These are not “micro” issues, and future approaches here determine how much spectrum can be practically and efficiently used, and therefore the level of service that can be delivered to end users. This is a rare opportunity to achieve critical defragmentation that deliver considerable benefits around improved spectrum utilisation. Missing this window risks entrenching inefficient band configurations for the duration of renewed licences, which is inconsistent with efficient spectrum use outcomes.

The ACMA's preferred view is to avoid taking a leading role and instead leave defragmentation to industry, assisting where appropriate. We view the regulator as uniquely positioned as a neutral party to deliver public benefit. Defragmentation creates public benefits through improved spectrum utility. The regulator is the only party that can credibly act as a neutral facilitator whose objective is to maximise public benefit rather than private advantage.

We observe that the ACMA is currently exploring an active facilitation role in related policy areas, such as its consideration of a Secondary Licensing Framework (SLF) that would enable other parties to access renewed spectrum in areas where the primary licensee has not deployed services. This approach demonstrates a willingness by the ACMA to take a ‘hands on’ role in supporting efficient spectrum use. However, to date, ACMA has taken a more hands-off position on leading defragmentation efforts, despite the clear efficiency gains such an approach could deliver. This difference in approaches raises questions about the consistency of policy direction: it may be challenging to advance more interventionist concepts like the SLF while maintaining a predominantly market-driven stance on defragmentation, which is an efficiency reform with well-established precedents.

Commercial negotiations alone have not produced widespread defragmentation; even where successful swaps occur, outcomes are partial and do not reliably deliver a coherent, whole-of-band solution. One example of an effective regulator-led approach is the approach utilised in 2013 for the 1800 MHz band, with the ACMA using two mechanisms (reissue drafting for licences expiring in 2013 and agreed variations for licences expiring in 2015) to achieve defragmentation in a single coordinated process. That precedent demonstrates that where fragmentation creates coordination barriers, regulator leadership can produce a superior public-benefit outcome while remaining procedurally robust; a non-interventionist posture risks persisting inefficiencies for the full term of renewed licences, undermining the public-interest case for renewal and the policy objective of efficient spectrum use.

We see merit in regulator-led defragmentation and consider that, to be properly effective, the exercise must extend holistically across the 3.4 GHz, 3.6 GHz and 3.7 GHz bands, rather than being confined to a narrow subset. We propose that the 850 MHz band could be defragmented using the same principles, noting the practical opportunity to align this with the proposed 850 MHz frequency downshift.¹¹

As we have indicated in our Stage 3 submission, we reiterate our position that the 1800 MHz band, under a national licence, could be a critical element to further Satellite-to-Mobile (STM) connectivity as envisaged under the UOMO. We further note that CSIRO sees 1800 MHz as the optimal band to be used for STM due to the minimal impact on radioastronomy “...and consider that this band would pose the least challenges to RAS when used from space.”¹² We consider the ACMA's preference to retain the current arrangements for this band as a significant missed opportunity to advance the objectives of the UOMO.

¹¹ ACMA [Consultation paper - review of 850 and 1800 MHz spectrum licence technical frameworks.pdf](#) – page 13

¹² CSIRO – “CSIRO Input to Review of ESL (Stage 3)” – page 3



Finally, we encourage the ACMA to maintain its focus on the substantive outcome of defragmented spectrum and to consider whether a creative and practical solution can be developed. In that context, a perceived lack of time should not, of itself, be treated as a sufficient reason for inaction.

Accordingly, we call on the ACMA to:

1. Reconsider its current preference for an industry-led approach to defragmentation in the 850 MHz and 3.x GHz bands and instead adopt a structured regulator-led facilitation model similar to the successful 2013 1800 MHz precedent.
2. Commit to a holistic defragmentation work program across the 3.4/3.6/3.7 GHz bands, rather than limiting consideration to a single band segment, to avoid perpetuating known inefficiencies.
3. Action industry's earlier suggestions to transition the 1800 MHz band to a nationwide spectrum licence, given the potential of this band for STM services and to ultimately further the objectives of the UOMO.



5 Administrative law and broader legal considerations

5.1. Decision-making process for ESL renewals

The ACMA has now released its ESL Stage 4 'Preferred Views on ESL Frequency Bands and Licensing Arrangements, and Response to Submissions', which is stated to reflect the ACMA's preferred view that renewal of the ESLs used for mobile services and the nbn is in the public interest.¹³

To implement this preferred view, the ACMA has also released its ESL Stage 4 'Proposed Application and Decision-Making Process' document which sets out the proposed process for making and assessing renewal applications. Specifically, the ACMA is proposing to assess renewal applications as follows:¹⁴

- a. a licensee applies to the ACMA for renewal of their licence
- b. the ACMA assesses the application and makes further requests for information as required
- c. the ACMA writes to the applicant and directly consults on its draft decision on whether to renew the licence
- d. in circumstances where the ACMA's draft decision is to renew the licence, the ACMA will also directly consult with the applicant on the terms of the draft spectrum licence and the draft spectrum access charge determination (**SAC determination**)
- e. the ACMA will consider the applicant's views and whether to change the draft decision
- f. if the licence is to be renewed, the ACMA will make the SAC determination and write to the applicant informing them that renewal is subject to payment of the amount fixed in the SAC determination
- g. if the applicant pays that amount by the required time, the ACMA will renew the licence by issuing a new licence and writes to the applicant advising them this has occurred and
- h. if the applicant does not pay the amount by the required time, the ACMA refuses to renew the licence and writes to the applicant advising them this has occurred.

From the process described, it is clear the point in time that the ACMA makes its decision to renew (or not renew) the ESL is following the direct consultation. The final SAC determination is also made following the direct consultation. After this, issuing the new licence is merely an administrative step implementing this decision, which the ACMA plans to do once the relevant spectrum access charge is paid (however, as we have set out at paragraph 48 below, full payment prior to licence issue is not a requirement of the *Radiocommunications Act 1992* (Cth) (**Act**)). This distinction between the decision to issue a spectrum licence, and the implementation of this decision through actually issuing the licence, is also reflected in the Act in section 62(2). This subsection requires the ACMA to issue a spectrum licence to the person it is allocated to, if the person pays the spectrum access charge or where there is an agreement with the ACMA for the payment of the charge. This section makes it clear the decision to allocate the spectrum licence is a separate function to issuing the licence, as the ACMA does not have any discretion to not issue the licence under this subsection once one of these two steps is taken.

¹³ ESL Stage 4: Preferred Views on ESL Frequency Bands and Licensing Arrangements, and Response to Submissions, December 2025, pg 2.

¹⁴ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, summarised at pages 4 - 5.



It is at the point in time that the ACMA advises of their decision, being that the ESL will be renewed subject to payment of the spectrum access charge, or that the ACMA has decided to refuse to renew the ESL, that an applicant's rights and interests are impacted. The ACMA would be aware that in making this decision to either renew or not renew the ESL, it is required to apply principles of good administrative decision making to ensure its decision is not infected with an error of law and vulnerable to being set aside if challenged. Even if we are wrong — which given the described process seems unlikely — and the issuing of the renewed licence is the operative decision, the ACMA will still be making an administrative decision when deciding to renew an ESL. As such, the same principles of administrative law and decision-making will apply.

5.2. SAC determinations are administrative decisions

In its ESL Stage 4 'Updated Preliminary Views on Pricing' consultation paper, the ACMA has noted that under section 294 of the Act, it may make SAC determinations fixing the spectrum access charges payable by licensees for issuing spectrum licences and specifying the times when such charges are payable.¹⁵ As noted above, the ACMA has proposed a decision-making process that when its draft decision is to renew a licence, it will consult on the draft spectrum licence and draft SAC determination.¹⁶ If after consultation the ACMA is 'minded' to renew the licence, it will make a SAC determination, which will specify an amount that must be paid before the new licence is issued.¹⁷ For the reasons set out above, the ACMA's proposed process contemplates it making the decision whether to renew (or not renew) following direct consultation with the applicant, and where that decision is to renew, that decision is made in conjunction with the issue of the SAC determination.

The ACMA's description of its decision-making process does not explain the precise relationship between a decision to renew the ESL and the making of the relevant SAC determination. However, it is clear the two are inextricably linked. It is also clear that the ACMA is proposing to fix spectrum access charges for individual licensees by making a SAC determination for each new licence under section 294. Based on the materials published by the ACMA as part of this Stage 4 consultation process, we understand that where the ACMA has assessed a licensee's renewal application and decided to renew an ESL, it will make a SAC determination to fix the spectrum access charge payable by that specific licensee for each band.

As the ACMA would be aware, SAC determinations are legislative instruments. Section 295 permits the ACMA to make those determinations public in the way it thinks appropriate. The ACMA has previously registered such determinations on the Federal Register of Legislation (presumably in accordance with section 15G of the *Legislation Act 2003* (Cth)). This aligns with the ACMA's position as set out in the Stage 4 consultation documents that it will provide a SAC determination directly to the applicant and that it will be 'published' (although the ACMA's paper does not confirm where or how the determinations will be published).¹⁸

SAC determinations of the nature described by the ACMA will uniquely and directly affect the interests of individual licensees, rather than the broader interests of members of the public or a class of the public. While the ACMA has foreshadowed using determinations to fix spectrum access charges, which will 'generally be calculated from the preferred \$/MHz/population value identified for the relevant ESL frequency band, the total bandwidth of spectrum included in licence to be renewed, and the population covered by the geographic footprint of the licence',¹⁹ each determination will be specific to an individual

¹⁵ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 6.

¹⁶ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 4 and 13.

¹⁷ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 4, 14 and 15.

¹⁸ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 14.

¹⁹ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 14.



licence holder and licence. The ACMA has not proposed making a general determination that applies to all licensees.

It is a well-established principle of administrative law that to determine whether a decision is of administrative or legislative character, the author must look to whether the decision has general or particular application. SAC determinations, if made in the way currently proposed by the ACMA, will be administrative decisions despite the fact they are contained in legislative instruments. That view is further strengthened by the ACMA proposing that determinations will be made on an application-by-application basis once a licensee has sought renewal of one or more of its ESLs. The ACMA seems to implicitly accept this is the case by the fact it is proposing to directly consult with each applicant on the draft SAC determination prior to making the final SAC determination under section 294.²⁰

Determinations in this nature are properly characterised as administrative decisions (and not legislative decisions). This obviously has consequences for the ACMA and the processes it will need to follow when making each SAC determination.

What this means

Given it is clear any SAC determination that adopts the approach currently proposed by the ACMA would be an administrative decision, the ACMA must apply administrative law principles when making each decision to fix the spectrum access charge payable by a licence holder seeking renewal. This is in addition to complying with administrative law requirements when making its decision whether or not to renew the ESL. Our comments on the process the ACMA is proposing for making renewal decisions are set out in the paragraphs below.

We appreciate that the ACMA is currently consulting prior to releasing its preferred views on pricing, and it will be these preferred views that will be applied to the making of any SAC determination in the future. However, we are concerned that if the ACMA takes the approach to pricing as set out in its updated preliminary views, any SAC determination fixing the spectrum access charge payable by a particular licensee using this methodology will be unlawful and vulnerable to a successful judicial review application.

The ACMA asserts that imposing a spectrum access charge through making a SAC determination is not a reviewable decision,²¹ presumably because section 294 determinations are not listed in section 285 of the Act as a 'reviewable decision'. However, SAC determinations are not immune from legal challenge. At a minimum, these determinations will be administrative decisions and so are reviewable under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) as well as under the *Judiciary Act 1903* (Cth). The Federal Court will be able to consider if these determinations are lawfully made. Even if the ACMA changes its proposed approach and the SAC determinations take a form that is akin to a legislative decision, the Federal Court will still be able to determine if the determinations are lawful. The ACMA should not be assuming the SAC determinations will be immune from judicial oversight.

In addition, the Federal Court will also be able to undertake judicial review of the ACMA's decision to renew, or not renew, the ESL.

These avenues for review are separate and additional to the rights of merits review that exist under the Act. For example, where the conditions in the proposed renewed licence are different to those contained in the ESL, merits review would also be available to licence holders. Section 77C of the Act provides that a decision to renew a spectrum licence with different conditions is a reviewable decision under section

²⁰ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 4 and 13.

²¹ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 15.



285 of the Act and may be subject to reconsideration by the ACMA,²² and if affirmed or varied, the Administrative Review Tribunal.²³

5.3. ACMA's proposed pricing methodology

Note: this section is our legal view of the ACMA's proposed pricing methodology – for the complete analysis of the pricing from a statistical and economic point of view, please refer to Telstra's "Expiring Spectrum Licences: Stage 4 Pricing" as well as the Aetha/NERA submission titled "Review of the ACMA's revised approach to ESL pricing".

The ACMA has released its updated preliminary views on pricing, specifically on the methodology for calculating the value of spectrum access charges for ESLs.²⁴ That paper advises that the ACMA is seeking further feedback on its updated preliminary views, with the ACMA's preferred views on pricing intended to be released in Quarter 2 of 2026, prior to the first renewal application period, commencing on 18 June 2026.²⁵

Telstra considers that there are many substantive reasons why the ACMA should reconsider its proposed approach to spectrum pricing.

Purely from an administrative law perspective, the ACMA should also revisit its approach and reasoning. In particular, the ACMA has said that it has adopted a methodology that ensures ESL pricing more closely reflects 'the market rate **at the time** of licence renewal'. However, it has adopted an approach to pricing spectrum which manifestly fails to do this, and there is no explanation from the ACMA justifying its position.

As outlined below, the pricing methodology reflected in the ACMA's updated preliminary views is fundamentally flawed. We hold concerns that should this methodology be carried over to the ACMA's preferred view on pricing, and ultimately embodied in a SAC determination or otherwise applied as part of an ACMA decision to renew an ESL, that it would infect these administrative decisions with an error of law and render them unlawful. These concerns are set out in more detail below.

Unreasonableness

We consider the analysis relied upon by the ACMA that underpins its updated pricing methodology is flawed and should not be adopted by the ACMA when fixing spectrum access charges. Telstra has commissioned our own independent review of DotEcon's analysis, prepared by Aetha/NERA.²⁶ A copy of that report is included as part of our submissions and sets out in detail why both the DotEcon analysis and the way that the ACMA relies upon that analysis as the basis for its proposed approach to pricing, is wrong.

DotEcon's analysis, and by extension the ACMA's proposed approach to calculating spectrum access charges, is premised on incomplete and incorrect data, methodological and statistical flaws, and assumptions that lack an evidentiary basis. In addition to being substantively not the best and preferable position to adopt for the reasons we outline below, should the ACMA adopt this approach

²² Section 285(d) of the Act.

²³ Section 292 of the Act.

²⁴ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 6.

²⁵ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 7.

²⁶ Aetha/NERA: Review of the ACMA's revised approach to ESL pricing.



when fixing spectrum access charges, the SAC determination may in these circumstances be subject to a successful legal challenge, and found to be legally unreasonable.

Summary of the ACMA's preliminary views as based upon DotEcon's analysis

In its updated preliminary views, the ACMA has adopted the recommendations from DotEcon's peer review of the ACMA's benchmarking methodology to estimate the market value of spectrum. This has informed how the ACMA proposes to set appropriate renewal fees for expiring spectrum licences. Specifically:

- a. The ACMA's updated preliminary views estimate the market value of spectrum using benchmarking, purportedly based on outcomes from domestic and international spectrum awards. The ACMA claims that this allows it to derive prices that reflect the market value of the spectrum in a transparent and evidence-based manner.²⁷
- b. The ACMA has advised it intends to incorporate the recommendations made by DotEcon into its pricing methodology. Importantly, the ACMA states that the aim for adopting these recommendations is 'to ensure that ESL pricing more closely reflects the market rate at the time of licence renewal'.²⁸
- c. DotEcon's approach to benchmarking proposed to be adopted by the ACMA involves calculating geometric mean, median and interquartile range (IQR) of the benchmark dataset, and of different cohorts within it. DotEcon then combines the insights in a specific way to derive central estimates, that are then checked against relevant policy considerations for the relevant band category using the data contained in the dataset. For each band category, DotEcon split the benchmark data into two groups (pre-2018 and 2018-onwards) and undertook a statistical test to check if differences in those periods were statistically significant. Where differences were observed, DotEcon only used data from the latter period.²⁹

The ACMA's reasoning is internally inconsistent

Some aspects of the ACMA's reasoning, purportedly in reliance on DotEcon's analysis, are internally inconsistent and do not support the ACMA's updated preliminary views on pricing. In particular:

- a. The ACMA adopts DotEcon's findings that *"The data supports a view in which market prices of all bands, other than the more recently allocated 3.4 GHz spectrum, have fallen in real terms over the relevant period"*. However, the ACMA then uses an approach that ignores that trend, and does not make the necessary downward adjustments to the historic benchmark data to derive a current day market price. This results in an overestimation of Sub-1 GHz value and Lower 1-3 GHz value. While for the other two band groups – Upper 1-3 GHz and 3.4 GHz – Aetha/NERA considers the ACMA's methodology of benchmarking across the whole sample with no adjustments for time trends to be acceptable, the ACMA should consider that its estimates of market value carry a greater risk of overstatement than understatement. There is some evidence, albeit not statistically significant, of historic price declines in those bands too.
- b. DotEcon states that *"No competitive auctions should be excluded from a benchmarking exercise without good reasons, which are restricted to obvious errors or unavailability of data, or very strong a priori reasons to believe an award is irrelevant."* The ACMA has largely adopted this approach in its revised methodology, and explicitly or implicitly observes the following rules: (i) the award must be an auction, (ii) it must be possible to identify a price for each band, and (iii) there must be an acceptable source to verify the prices. Despite those rules proposed by DotEcon itself, the Aetha/NERA report identifies 50 benchmarks that appear to meet the

²⁷ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 1.

²⁸ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 17.

²⁹ ESL Stage 4: Updated Preliminary Views on Pricing, December 2025, pg 23.



ACMA's rules for inclusion but are not in the ACMA dataset. There are also 7 awards where prices appear to be substantially misstated (as either too high or too low). Finally, Aetha/NERA notes systematic misstatement of US prices.

- c. In its report, DotEcon acknowledges that in some countries licences are awarded for an initial term but the licensees are given "*a strong expectation of licence renewal*" which "**clearly increases the value of the licence**" (emphasis added).³⁰ DotEcon notes that the US "would have the strongest case for being treated as if it had a longer notional licence duration"³¹ than its initial licence duration (of 10+ years). In the US, the certainty over renewal and absence of meaningful renewal fees are important factors in US operators generally paying much higher initial fees for spectrum than in most other countries. As such, a much longer licence term is appropriate when benchmarking the amounts paid for US spectrum. Aetha/NERA model US licences as having a duration of 40 years or more. Despite DotEcon's own observations, it recommended that the ACMA use the initial licence duration for all countries including the US, rather than making a reasonable adjustment for this outlier.

These are examples of analysis/ conclusions reached by DotEcon which have been adopted by the ACMA, which are not supported by the reasoning provided. In an absence of explanation by the ACMA about why it has reached its conclusions, despite them being inconsistent with the reasoning provided, there is a risk that such findings will be legally unreasonable.

The ACMA's updated preliminary views are not rational or logical

There are further examples of conclusions contained in the ACMA's updated preliminary views that also have no rational or logical basis, including:

- a. Use of inappropriate test to determine whether a trend exists. The ACMA used the Mann-Whitney U test to determine whether a trend exists, but the Mann-Whitney U test is not fit for the purpose of reliably detecting pricing trends over time because it ignores the timing of each award, which is crucial to determining whether a trend exists. As our pricing submission sets out, and underpinned by Aetha/NERA, the Mann-Kendall test, which uses the temporal ordering of each observation, is more appropriate for determining whether a trend exists for datasets of this nature.
- b. The decision to use a geometric mean with zero-gradient, which is not grounded in reality and inconsistent with DotEcon's own observation about the downward pricing trend for spectrum. In line with DotEcon's observations, the ACMA has acknowledged the declining year-on-year trend (following a high in 2015/2016) yet has not adjusted for it. Applying a downward trend to benchmarks using a trend line or curve (such as a log-linear regression) to estimate the single price for renewal, across a period in which prices have markedly declined, is the more logical and internationally accepted approach. By failing to adjust for the downward trend, the ACMA's method results in an estimate of market value in 2021/22 (the mid-point of the ACMA's dataset) rather than an estimate of market value in 2025. The Aetha/NERA report (see Figure 10) illustrates the significance of failing to adjust for the downward trend in the Sub-1 GHz and Lower 1-3 GHz band groups by comparing: 1) an exponentially decreasing trend; with 2) the geometric mean of data points between 2018-2025. The chart shows that a 17% annual decrease in prices results in the geometric mean overestimating the market value by approximately 100% (~17% is the observed year-on-year decline for both lower band groups). Adopting a geometric mean with zero-gradient will produce further inaccurate results when calculating the market rate *at the time licences will be renewed*, which is in over six years' time for some licences.

³⁰ DotEcon report page 11 and footnote 11.

³¹ DotEcon report, footnote 11.



- c. The choice of 2018 as a cut-off date for determining the central estimate is arbitrary. The ACMA says the choice of 2018 aligns with the global commencement of awards for 5G spectrum, however, spectrum licences are technology agnostic,³² so the ACMA's justification discounts the other many factors that have influenced price trends. Calculating the central estimate across the eight years (2018-2025 inclusive) derives a price estimate at the midpoint of the time period, namely 2021/22, not the price estimate "at the time of licence renewal" as is the ACMA's stated intention.
- d. The ACMA's failure to use pre-2018 data to establish a price is illogical. While the ACMA considers pre-2018 information to assess whether there is a price trend (albeit, using the inappropriate Mann-Whitney U test to do so), the ACMA then excludes pre-2018 data when establishing a price. In seeking to closely estimate the "market rate at the time of licence renewal", it is illogical for relevant data to be arbitrarily excluded. The method of determining the price based on an assessment of all relevant data should then be appropriate to the trends detected in that data. That is, the ACMA's use of the geometric mean is not appropriate in light of a downward trend having been observed.
- e. The ACMA does not conduct a robust sensitivity analysis to determine whether the single price for renewal is sensitive to its chosen price estimation model (geometric mean) or its (arbitrarily) chosen start date of 2018. As set out in Figure 13 of the Aetha/NERA report, the ACMA's chosen model is very sensitive to the start date. The ACMA also neglects to compare the robustness of their chosen model with natural alternatives (e.g. log linear regression or the Sen slope estimator)
- f. The data points relied upon by the DotEcon analysis are partially inaccurate and incomplete. Our independent analysis has identified:
 - i. 50 missing spectrum price events that appear to meet the ACMA criteria for inclusion in the analysis but are missing from DotEcon's dataset. The ACMA has provided no explanation as to why those 50 missing spectrum price events were not included in the dataset. It is therefore unclear why those spectrum price events have been omitted, undermining the defensibility of the analysis.
 - ii. 7 awards where the price used in DotEcon's analysis differed significantly from data we identified. Of those 7 awards, 5 awards have overstated prices compared to our analysis and 2 awards have understated prices. Similarly to the missing price events, the ACMA has provided no explanation as to why the datapoints DotEcon relies upon should be regarded as accurate.

The erroneous benchmarks in the ACMA dataset are listed in Figure 17 of the Aetha/NERA report. The dataset used by DotEcon and relied upon by the ACMA is materially deficient. This is compounded by the absence of any explanation or reasoning from the ACMA about why the defective dataset has been relied upon. In light of these issues, the ACMA's reliance on the DotEcon data is unreasonable, as it does not support the ACMA reaching logical and justified conclusions for making any future decisions about fixing spectrum access charges.

- g. We have identified errors in DotEcon's treatment of US awards, including the use of gross bids instead of net bids, the use of outdated or incorrect population totals for some awards, and (as noted earlier) incorrect licence durations for all US awards. DotEcon recommends benchmarking US licences on the basis of their initial term (10+ years) only, but in reality, US licences allocated in early awards have been in use for over 30-40 years and repeatedly renewed to existing licensees for token fees.

³² It is worth noting that Australian spectrum licenses are technology neutral, i.e., they do not specify a specific technology such as 3G, 4G, 5G, etc. It is, therefore, inconsistent that a particular technology (5G) is being used as a justification in this way.



- h. The ACMA fails to account for the inherent uncertainty of the benchmarking process: benchmarking produces an estimate, but it is only a best guess based on a noisy sample. This estimate may be too high or too low. The ACMA has not considered the asymmetric risk of setting prices that may be too high (i.e. it is economically more detrimental to the community if prices are set too high rather than too low). The large change in the ACMA's own view on market value, as evident from comparing its latest view with its April 2025 preliminary view, is an example of the inherent uncertainty of the benchmarking process.
- i. The ACMA proposes to apply inflation to its 2025 estimates of market value to account for the period between the final benchmarking update and the renewal date. Its rationale is that it is uncertain if the spectrum pricing trends will persist.²² Put differently, the ACMA adopts a forecast of flat prices in real terms ('no trend') going forwards. In our opinion, this approach is likely to further exacerbate the overstatement of market value at the time of renewal, given the ACMA's proposed use of a geometric mean almost certainly overstates the market value of the spectrum in 2025. Given the ACMA's stated aim of estimating full market prices, any forecast trend it applies for the period between the benchmarking and the point of renewal should be neutral — i.e., it should be equally likely overestimate as an underestimate (notwithstanding that prices should be set cautiously owing to the asymmetric risk of setting them too high). Given the decade-long trend of real prices declining by ~17% per year in the lower band groups, it is more likely that a 'no trend' forecast will result in an overstatement than an underestimate. Likewise for the higher band groups, given weak evidence that prices have declined by ~7% per year, an assumption of flat real prices also appears aggressive and is not based on any objective evidence (or compelling explanation from the ACMA about why such an approach is appropriate). We agree that it is uncertain if the downward trends in spectrum prices will persist. However, the ACMA's proposed solution is effectively to assume with 100% confidence that a trend that has persisted for the last decade will cease from 2025. This is not a logical conclusion to reach, based on the material before the ACMA.

In summary, there is no evident and intelligible justification for the ACMA to claim that its methodology will ensure the ESL pricing reflects the market rate at the time of licence renewal - which is the ACMA's own stated rationale for adopting the DotEcon analysis. In fact, the effect of implementing ACMA's methodology would overestimate the market value at the relevant time which is in direct contrast with the stated objective. Should the ACMA in its preferred views on pricing and subsequently in any SAC determination rely on this methodology (or any variation that reflects analysis or embodies conclusions based on no evidence or illogical reasoning), the ACMA would commit a serious legal error and make a legally unreasonable decision. To prevent this outcome, the ACMA must incorporate the statistically established trend of decreasing spectrum prices into the pricing methodology, as well as address the other issues with the dataset identified in our submissions.

5.4. Natural justice

As the ACMA is aware, it is a well-established principle of administrative law that in the absence of a clear contrary legislative intention, decision-makers must comply with the rules of procedural fairness. The ACMA obviously appreciates its obligations, as it is proposing to consult with the licence applicant about its proposed decision to renew (or not) an ESL. Where the ACMA is proposing to renew an ESL, it is also proposing to consult on the draft licence terms and the draft SAC determination for the new licence.³³

³³ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 4 and 13



However, concerningly, the ACMA has advised that at the time it consults with an applicant about a licence it is proposing to renew, it will not be seeking further views on the approach to spectrum valuation and pricing.³⁴ This is despite the SAC determination being an administrative decision.

Throughout this general consultation process, Telstra has made earlier detailed submissions about a preferable approach to assessing the value of spectrum that is based in evidence and supported by expert reports and analysis and also identified deficiencies in the ACMA's proposed pricing methodology. These materials are available to the ACMA, and yet the ACMA has not substantively engaged in its publicly available documents with this analysis or submissions in a meaningful way. This is despite that analysis being directly relevant to the decision to be made about the spectrum pricing to be fixed for Telstra's ESLs, and demonstrating in a clearly articulated and evidence supported manner why the ACMA's analysis is wrong.

By way of example, during Stage 3's preliminary views on spectrum pricing, the views of respondents were near unanimous — ACCAN being the sole exception — and were closely aligned with our own. Specifically, respondents considered the Stage 3 preliminary pricing to be materially above market value. In the subsequent outcomes paper, the ACMA noted that ACCAN's submission did not include its own modelling or pricing analysis. It is unclear why the ACMA adopted an approach that led to increased Stage 4 preliminary pricing outcomes, notwithstanding that this outcome was contrary to the views expressed by the majority of respondents during Stage 3.

As part of this current round of consultation, we have provided a further independently commissioned expert report. This report supports our position that the DotEcon approach, which has been adopted by the ACMA, is flawed. In contrast to the DotEcon approach and the manner in which the ACMA relies upon it, the alternative approach proposed in our independent analysis has strong statistical confidence and is justified with compelling evidence. If the ACMA is truly aiming to achieve a methodology that calculates a price for spectrum that more closely reflects the market rate at the time of licence renewal, our expert report provides a more comprehensive and accurate representation of the global value of spectrum, which should be preferred over the ACMA's analysis.

In the circumstances, it is incumbent upon the ACMA to engage in detail and in a meaningful way with the points we have raised both in this and previous submissions, including our expert report. To avoid denying us, as well as each other ESL applicants, our common law right to procedural fairness, the ACMA must:

- a. Meaningfully engage with and respond to Telstra's and other prospective applicants' arguments and supporting analysis about why the pricing methodology proposed by the ACMA, reflecting the DotEcon report, should not be preferred.
- b. Alter its proposed approach to decision-making to allow applicants for spectrum licences to make submissions about the pricing — including the methodology — contained in the draft SAC determinations. A failure by the ACMA to consider whether its preferred methodology is appropriate for each licence would be to apply policy in an unfettered and unlawful manner. It is incumbent on the ACMA to receive, consider and meaningfully engage with submissions on this issue as part of the decision-making process to issue a SAC determination.

Our rights and interests are impacted by the ACMA's decision to renew (or not renew) an ESL for a particular price — that price is contained in the SAC determination. Failing to respond to our substantial and clearly articulated arguments raised across our various submissions on these points is a breach of natural justice.³⁵ The ACMA's failure to date to meaningfully engage with these

³⁴ ESL Stage 4: Proposed Application and Decision-Making Process, December 2025, pg 13.

³⁵ *Dranichnikov v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 197 ALR 389 at [24].



issues publicly is all the more concerning now that it has indicated its intention not to seek further views on pricing at the time draft SAC determinations are provided to individual applicants. In doing so, the ACMA seems to be seeking to deny applicants their common law right to procedural fairness by artificially separating out the decision on pricing methodology, from the renewal of the application and the SAC determination.

The ACMA is failing to engage in the specific positions and evidence put forward by prospective applicants as part of the pricing methodology consultation process, and is also signalling it will refuse to consider these issues when applying its ultimate preferred position at the time it makes a SAC determination. The ACMA must reconsider its position to ensure it is not infecting its decision-making process with legal errors. The long-term public interest is only served by the ACMA making decisions about the use of spectrum that are lawful and consistent with good administrative decision-making practice.

5.5. Determinations of legislative character - *ultra vires* determination

Even if our position with respect to SAC determinations being administrative in nature is wrong — which we do not consider to be the case — we consider any SAC determination that implements the ACMA's updated preliminary views would be invalid as *ultra vires* to the Act.

The Object of the Act includes facilitating the efficient use of spectrum for commercial purposes. In circumstances where the ACMA's updated preliminary view reflects an over-inflated and inaccurately-priced model for spectrum (as demonstrated by our own independent analysis), taking such an approach to pricing would be inconsistent with that objective.

In considering the long-term public interest of the use of the spectrum, the ACMA is obliged to take into consideration various policy objectives outlined in the *Radiocommunications (Ministerial Policy Statement – Expiring Spectrum Licences) Instrument 2024 (Ministerial Statement)*, and to explain how it took into consideration different and competing policy objectives.

It is important that the ACMA consider the topic of affordability for consumers and sustainability of the industry as a whole. A key policy objective in the Ministerial Statement is to consider the potential impact that certain decisions made in relation to applications for renewal of spectrum licences may have on the continuity of service for end users (s 6). This includes decisions relating to spectrum access charges payable by licensees. Relevantly, the Ministerial Statement also directs the ACMA to have regard to connectivity and investment in regional areas (s 8), promotion of competition (s 9), and the capacity for sustained investment and innovation (s 10).

The approach to pricing spectrum above the market value as set out in the ACMA's updated preliminary views will not promote the long-term public interest if the cost of renewing ESLs becomes prohibitive for current licensees. Pricing spectrum in the proposed way creates a real risk that some MNOs will not be able, or will choose not to, renew all their current holdings for all their bands.³⁶ As recognised by the ACMA itself in its consultation report,³⁷ it is unlikely that a scenario where only part of a licence is renewed will be beneficial and in the public interest.

If licensees are not in a position to renew all their ESLs due to the proposed price being out of step with market value, the continuity of services to end users may be affected and the market may not be able to respond. Such a situation can be avoided if the pricing methodology is both reasonable and supported by evidence.

³⁶ Aetha/NERA Analysis, section 6.1.

³⁷ ESL Stage 4: Preferred Views on ESL Frequency Bands and Licensing Arrangements, and Response to Submissions, December 2025, pg 19 in respect of 700 MHz.



Adopting a pricing methodology that has a detrimental impact on the industry and which is not supported by the body of expert economist reports before the ACMA as reflecting market value at the time the licences are renewed (despite that being the ACMA's claimed objective) is not in the interests of promoting the long-term public interest derived from the use of the spectrum. The implementation of such a pricing methodology is inconsistent with the Object of the Act, and any determination relying on that methodology would be ultra vires and therefore invalid.



Appendix 1: Response to consultation questions

This appendix contains our response to the consultation questions.

Question 1

Do you foresee any practical reasons that would prevent you from providing information that is accurate as of a date closer to when the application is made? (For example, accurate as of 30 days prior to when the application is made.)

We note the ACMA's intention to request information relating to current sites (and associated coverage) for each application as per the consultation document as well as the draft *Radiocommunications (Spectrum Licence Renewal – Information and Documents) Instrument 2026*. Telstra's view is that this information closely relates to the information that we supply annually on 31 January under our Record Keeping Rules (RKR) obligation; we do not have any objections relating to providing this information.

In response to the ACMA's query regarding whether this information could be less than 30 days old at the time of application, we note that generating and auditing coverage maps as required under the RKR obligation is a complex process that demands substantial resources and poses a significant operational challenge. Consequently, we do not support a 30-day currency requirement for the production of coverage maps. However, producing an updated site list is a less complex task, and we anticipate being able to provide these without significant difficulty.

We express our objection to the requirement to submit detailed forecasts of planned site deployments for the three years following a licence renewal application. Similarly, we oppose the obligation to provide coverage maps for this period. We believe that these requirements constitute regulatory overreach. Three-year site plans are among the most commercially sensitive aspects of any MNO's operations, and their disclosure poses a significant risk of exposing proprietary information. Additionally, such plans are inherently subject to change. We would be agreeable to, as part of the licence renewal process, provide a statement that we will maintain our investment in the existing deployment in the relevant spectrum bands and will look to further expand that deployment where the business case justifies expansion.

The ACMA has expressed a preliminary position that licence renewals are justified, contingent upon existing licensees continuing to meet the public interest criteria. The introduction of new forecasting and coverage mapping requirements at this juncture represents a significant change to established expectations. All licensees have submitted sufficient justification of usage for renewal and have met the public interest criteria. As these conditions have been fully satisfied, imposing further requirements for forward-looking deployment or coverage information as a prerequisite for renewal is unwarranted, excessive, and does not align with ACMA's stated rationale for its preliminary renewal stance.

We would be willing to sign a declaration in respect of current records, as this information is fixed, verifiable, and not subject to future operational uncertainty. We do not support providing forward-looking site or coverage information for the reasons previously stated. If required to supply such forecasts, any related declaration should be seen as indicative, not definitive, and must remain non-binding. Forecast data is inherently uncertain and may change due to factors outside Telstra's control, including operational, commercial, planning, technological, and environmental influences.

Finally, in the ACMA's executive summary, it is noted: "*The decision-making period may be longer for some licences. For example, if we request further information from an applicant to help us make a decision, we will have 6 months to decide from when we receive the additional information.*" We request clarification regarding whether updated site lists and coverage maps would be a requirement should such a request be made, thereby extending the decision-making period.



Question 2

Do you foresee any practical issues that would prevent you from providing the proposed documents about existing and planned sites and coverage in the required format to the ACMA as part of a renewal application?

We are amenable to providing the current site lists in an Excel-compatible format, such as .csv or .xlsx. Additionally, we can supply coverage map data in Shapefile (.shp) or Keyhole Markup Language (.kml or .kmz) formats, with all files reflecting information accurate as of 31 January in the year the application is submitted.

We do however object to supplying this information for future planned sites and associated coverage for a 3-year period post 31 January on the year that an application is made. Please see section 2.3 and **Question 1** for more information on our views.

Question 3

Do you foresee any practical issues that would prevent you from providing the proposed documents about third-party authorisations in the required format to the ACMA as part of a renewal application?

We do not see any practical issues that would preclude us from providing information on third-party authorisations.

We do however request a clarification on this point – when stating “*Applicants will be required to provide geographic information about third-party authorisations...*”, is the ACMA asking for coverage maps or rather for the definition of the area which is being authorised – i.e. if sections 7 and/or 8 of the draft *Radiocommunications (Spectrum Licence Renewal – Information and Documents) Instrument 2026* also apply to section 9 that covers authorised persons?

Question 4

Do you foresee any practical issues that would prevent you from paying the spectrum access charge in full within the proposed timeframes?

The Stage 4 materials propose a payment window requiring licensees to submit payments within five months of lodging renewal applications – potentially as much as 18 months prior to the commencement of the renewed licence, with early applications actively encouraged. Telstra expresses strong reservations regarding any requirement that mandates payment substantially ahead of licence commencement. The obligation to pay within five months of application, which may be up to 18 months before term commencement, is commercially impractical and does not align with the principle that significant financial outlays should correspond with the conferral and utilisation of rights.

If the ACMA aims to encourage all licensees to submit their applications well in advance of the expiry date, requesting early payments may inadvertently produce the opposite outcome. Licensees are likely to delay submitting their applications until six months prior to expiry in order to avoid the drawbacks associated with early payment.

We would not be opposed to being offered instalment payments for the renewal of the expiring spectrum licences, provided that this option is made available to all licensees to avoid any potential asymmetry in licence conditions.



We consider the application of regulatory principles, as well as their commercial and operational implications to be of significant importance. The following section is a condensed version of Telstra's view of the regulatory considerations; for our full response to this question refer to section 5.

We acknowledge that the ACMA is required under s 286(6) of the Act to make a renewal decision under section 77C within 6 months after receiving an application from the licensee. However, we consider that the 6-month timeframe for making a decision under section 77C does not require the ACMA to issue the new licence within 6 months after receipt of the application. In fact, subsection (9) provides that the new spectrum licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.

As set out in above, the decision to renew or not renew the licence is a separate and distinct step to the issue of a new licence. The issuing of the licence is merely the implementation of the ACMA's earlier decision which can happen at any time prior to the expiring of the current licence. This is clear from the fact that:

- b. section 77C(1) states that the ACMA may *renew* a licence (cf make a decision to renew a licence) by issuing a new licence and
- c. the Act contemplates the ACMA informing the licensee of its decision and having the ability to refuse to renew a licence by notice to the licensee, rather than merely not issuing a licence within the 6-month renewal decision-making period.³⁸

Accordingly, it would be open to the ACMA to make a decision about renewal within the 6-month statutory timeframe, but to delay issuing the new licence until a date closer to the expiry of the original licence. The ACMA could then allow payment of spectrum access charges closer to licence expiry (for example, 1 month prior to licence expiry) in line with licensees' expectations, while remaining consistent with the ACMA's historical practice of requiring upfront payment prior to licence issue. For completeness, we note that the ACMA's renewal decision could be made conditional on the licensee paying the spectrum access charge before the expiry date of the original licence.

We note that in previous auctions of spectrum licences, liability for payment of spectrum access charges only arose after a bidder became the winning bidder for one or more lots at the auction,³⁹ at which point entitlement to the issue of the licence was conditional only on payment of the relevant spectrum access charges.⁴⁰ Due to the timing of the auction, payment was only required shortly prior to the licence commencing. This is different to the process being proposed by the ACMA, where there will be a significant period of time between payment and the licence commencing (in some cases, more than 18 months).

We further note that, notwithstanding the ACMA's historical practice of requiring upfront payment prior to licence issue, this is not a requirement of the Act. Rather, the Act clearly contemplates that it would be open to the ACMA to reach an agreement with the licensee for payment of the spectrum access charge (including as to payment method and timing),⁴¹ rather than requiring actual payment. As set out above, this could take place after the decision to renew has been made, but prior to the renewed licence coming into force.⁴² For the reasons set out above, we consider that it would be appropriate for the ACMA to consider allowing licensees to pay the spectrum access charge closer to licence expiry, which could include even after it has issued a new licence to the licensee. Conceptually, payment could even occur after the licence has commenced: Section 67 of the Act requires a spectrum licence to include a

³⁸ See, eg, Act, s 77D(1), 286(7).

³⁹ See, eg, *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*, Part 5, Div 7.

⁴⁰ See, eg, *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*, ss 88(2), 90.

⁴¹ Explanatory Memorandum for the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, pp 36-7.

⁴² Act, s 77C(2).



condition that the licensee meet all obligations to pay spectrum access charges fixed by determination made under section 294 of the Act, so a failure of the licensee to pay the relevant spectrum access charge by the required timeframe would constitute a contravention of a condition of the licence entitling the ACMA to either suspend or cancel the licence. Telstra is not advocating for this position, but wishes to demonstrate there are a number of options available to the ACMA.