

SPECTRUM COMMITTEE

Meeting date: 5 September 2023

Agenda Number:

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Summary of submissions in response to the approach to expiring spectrum licences (ESL) consultation paper

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14. Some prospective users, such as Pivotal and the state governments, have submitted that spectrum should be set aside for alternative use cases, such as public safety mobile broadband (PSMB) and local area WBB (LA WBB). Such outcomes would require a non-renewal of some of the ESLs, or parts thereof (see discussion of alternative demand below for further information).

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Pricing

60. The MNOs had varied views about approaches to valuing the spectrum, which was reflected in AMTA's submission, but submitters broadly agreed that the approach to valuation and developing pricing should be transparent and consultative, beginning in stage 2.
61. Optus was of the view that the price for a renewed licence should be no more than necessary to cover the ACMA's cost for administering the ESL bands (i.e. cost recovery). TPG was of the view that an appropriate rate of return to the community should be a relevant consideration in the overarching ESL process, but that the approach to pricing should balance impacts of higher prices with impact of lower pricing (so as to discourage anti-competitive behaviours). Similarly, Telstra submitted that licences should be renewed at a discount to the fair market price determined by benchmarking, balancing the impact of setting spectrum prices too high and ensuring a fair rate of return for the Commonwealth for the use of a scarce resource.
62. NBN Co rejected the proposal of auction avoidance pricing and submitted that as long as spectrum is being used to supply services of value to public in regional and remote areas, prices for renewal should ideally be set at the cost recovery level.
63. Rail licensees hold the view that public interest administrative price setting for rail licences is warranted, consistent with the previous re-issue process, and noted that pricing should account for any restrictions on the use of a licence. However, VicGov submitted that the ACMA should consider further discounts, including setting prices for licences on a cost recovery basis.

Initial staff views

64. Economics Advisory Section will consider issues raised with respect to pricing as work on valuing the spectrum and pricing is progressed. EAS submitted 2 external consultancy reports to the August Spectrum Committee meeting relevant to this work.
65. Given the different business operations of the licensees, the diversity of views about pricing were in some respects not unsurprising:
 - a. Calls for pricing to be based on cost recovery principles (NBN Co, Optus, VicGov) are unlikely to promote the efficient use of spectrum
 - b. Recognition of the effects of setting prices too low or too high (made by TPG and Telstra), neatly summarise the challenge of settling pricing arrangements for the ESL process.
 - c. There were calls (from AMTA, Optus) for separate and/or early consultation on pricing matters. Staff consider that consultation on pricing matters is likely to align with the broader ESL work program. With this in mind it is unlikely to be preferable to undertake "early" consultation, in advance of other ESL consultations and announcements. The timing suggested by Optus for further consultation overlaps with the 3.4/3.7 GHz auction. It would be inappropriate to outline pricing/approaches (particularly about the 3.4 to 3.6 GHz) should the auction have commenced or is ongoing. The potential value of 3.4 to 3.6 GHz spectrum is likely to be of interest to potential bidders in the auction and may influence bidding.
 - d. There was a mix of suggestions (ARA, QDTMR) relating to public interest pricing and pricing reflecting different licence conditions which arguably overlap. One response (Telstra) considered that public interest pricing is

appropriate. Such matters will be considered as part of the broader pricing work plan.

- e. There was little commentary on requests for different payment terms, with NBN Co suggesting that instalments be provided as an option. While the ACMA has favoured upfront payments, it is expected that further consideration of the payment options is required.

Alternative demand for spectrum

66. Prospective licensees interested in what may be alternative uses of the spectrum covered by the ESLs, such as Pivotal and organisations like ACCAN, ARCIA, and CA SSWG, frame the ESL process as an opportunity to reconfigure, and improve the benefits derived from, existing spectrum holdings. They suggested outcomes that could, in their view, increase competition by making ESL spectrum available to alternative uses and under different licensing frameworks. In particular, they submit that low orbit satellites (LEOsats) and LA WBB have utility in improving service coverage for remote areas.
67. Pivotal made a number of other suggestions for alternative arrangements to facilitate regional connectivity and other outcomes, such as introducing area-wide apparatus licences into sub-1 GHz spectrum in regional areas to support LA WBB, reserving spectrum for neutral hosting, conditions in new spectrum licences to require open access or roaming, and reserving spectrum for dynamic spectrum access applications.
68. Several submissions also identified the possibility of ‘use it or lose it’ or ‘use it or share it’ arrangements being instituted in future spectrum licences to ensure that the spectrum is utilised, particularly in regional areas, else it becomes available for alternative users and use cases.
69. MNOs argue that any alternative uses or users should satisfy – with compelling evidence – public interest criteria to at least the same degree as incumbents, arguing the sunk investments by incumbents would need to be considerably outweighed by any benefits. Illustrating the point, Telstra state that re-allocating spectrum for private networks is not in public interest, citing a report that it will offer no strong advantages to operator-supplied private networks and can create significant costs, ultimately resulting in an inefficient use of the spectrum, which could have been re-allocated to an MNO that would provide proven public benefit.

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Initial staff views

71. Staff acknowledge consumer demand and technology has evolved since these licences were last allocated. Potential new entrants, such as LA WBB and LEOsat operators, as well as incumbent users, are encouraged to engage with the ESL process to provide views around use of the relevant spectrum covered by ESLs. Noting that the Act does not provide for a presumption of renewal, and that the ESL process offers an opportunity to evaluate how the spectrum is used and could be used in the future, the proposed ESL process has been developed to consider the ways in which both incumbent and alternative use cases fulfil the public interest.
72. However, any consideration of alternative use or users, particularly where it has been promoted to address issues such as regional connectivity, will likely need to involve weighing whether additional access to spectrum, at a potential cost to incumbent

licensees, is necessarily the best option for achieving the relevant outcome. Staff note that, in many cases, there may be alternative, non-spectrum policy levers for addressing an issue such as regional connectivity, such as mobile blackspot funding, encouraging neutral hosting or infrastructure sharing models, and carrier obligations that may better suit the dynamics of the issue (e.g. investment disincentivised due to lower returns on investment in lower population density areas). Staff have communicated – in broad terms – to staff in the Department and in the Minister’s Office that these policy levers may, in some cases, be better suited to achieving policy outcomes, from a range of perspectives.

73. Short of returning all or non-insignificant amounts of spectrum to the market in order to test market appetite (for new use cases, new users, or new entrants) the preliminary staff view at this time is that, compared to other policy levers, the ESL process represents a more complex, contentious and non-expeditious path to achieving the policy goals that are currently in the broader policy environment. In many cases, spectrum is likely not the most important or only input required to achieve the relevant objective (e.g. regional connectivity) and could likely also require other inputs such as financial incentives, reduction of regulatory barriers and other commitments. Achieving these objectives would, in the first instance, require a clear identification of the relevant objectives, and ideally be supported by parallel initiatives in the longer term to facilitate the spectrum be put to use and achieve the relevant objective. Such an approach would also require strong commitment from all stakeholders over a long time period. Given the interdependence between spectrum access and other required policy settings needed to achieve these outcomes, this would require broad coordination of relevant policy settings, potentially underpinned by legislation.
74. For those reasons, should the current Government be minded to pursue those policy goals through (or involving) the ESL process, strong and timely guidance in a public form that the ACMA can reference and rely upon is highly desirable. Staff note that while government has several levers at its disposal to enact communications policy, this ESL process represents a relatively rare window in which extensive spectrum access could be included as part of any solution.

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