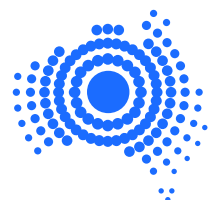


Draft Ministerial Policy Statement—Expiring Spectrum Licences

Submission of NBN Co Limited (nbn/the company)

12 April 2024



Introduction

Thank you for the opportunity to comment on the draft Ministerial Policy Statement (**MPS**) that the Minister for Communications is considering issuing to guide the Australian Communications and Media Authority (ACMA) in its consideration of spectrum licences due to expire between 2028 and 2032 (**ESL process**).

nbn holds a large number of licences in the 2.3 and 3.4 GHz spectrum bands, that are due to expire in 2030. These spectrum licences are fundamental to the ongoing operation and coverage of the **nbn** fixed wireless (**FW**) network. Therefore, the ESL process is of significant consequence to **nbn** and to the retail service providers and end users that use the **nbn** network.

As of 28 March 2024, there are approximately 400,000 active FW connections on the **nbn** network, each of which represents a household or business potentially impacted by the outcomes of the ESL process. By the end of 2024 it is anticipated that the **nbn** FW network will cover approximately 750,000 premises as a result of the Fixed Wireless and Satellite Upgrade Program across rural, regional and outer-metro fringe areas.

The draft MPS proposes the following communications policy objectives for the ESL process:

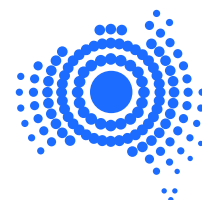
- Supporting service continuity for end users, particularly where no alternative service is available;
- Facilitating opportunities for new entrants and use cases, including for low earth orbit satellites;
- Connectivity and investment in regional areas to deliver improved services to end users;
- Promote competition; and
- Capacity for sustained investment and innovation.

nbn supports each of the above as relevant objectives of the ESL process. However, given the potential impact of the ESL process on the **nbn** FW network, we recommend that the MPS should also appropriately reference and acknowledge those requirements and objectives that apply specifically to those entities which are delivering Government policy (such as **nbn**).

More detailed comments on the draft MPS are set out below.

Scope of the draft MPS

The expiring spectrum licences that fall within the ESL process span a number of frequency bands and are used for a range of applications. However, we support the proposed exclusion from the draft MPS of licences currently being used for electronic news gathering and metropolitan rail safety. These licences serve very different uses from the remainder of the expiring licences, which are primarily mobile and fixed wireless broadband services and other telecommunications services.



The role of nbn in uplifting the digital capability of Australia

The MPS provides an opportunity for the Government to ensure that entities that play unique roles in the telecommunications ecosystems and their specific regulatory obligations and policy objectives are appropriately considered by the ACMA in making decisions regarding expiring spectrum licences.

We recommend that additional criteria are added to the MPS. These would provide that the Government communications policy objectives for the ESL process include:

- the policy objectives set by the Government for **nbn**, as detailed in the Minister's Statement of Expectations to **nbn** (**SOE**); and
- ensuring ongoing compliance with existing regulatory obligations that form part of the telecommunications regulatory framework.

The SOE guides **nbn** so that its strategic direction is aligned with the Government's objectives for the **nbn** network and delivering the Government's commitments to increase access to faster, more reliable broadband. Of particular relevance to the ESL process, the SOE includes an expectation that **nbn** will continue to improve its services and assist in addressing access challenges in regional and remote areas to enhance connectivity, improve safety and increase productivity. The SOE specifies that outcomes of those improvements should include implementing upgrades to provide all premises in the **nbn** FW network with access to wholesale download speeds of up to 100 megabits per second and typical wholesale busy hour speeds of at least 50 megabits per second. **nbn's** ability to deliver those outcomes will require ongoing access to adequate spectrum. In **nbn's** view, the SOE forms part of the Government's overall communications policy objectives and should be appropriately considered by the ACMA as part of the ESL process.

Existing regulatory obligations are also a relevant matter that the ACMA should be directed to consider as part of the ESL process. In particular, **nbn** notes that it requires adequate spectrum in order to meet its obligations as the default Statutory Infrastructure Provider (**SIP**) under the Telecommunications Act (**Telco Act**). The Telco Act requires SIPs to connect premises to a fixed-line network in the first instance but, if that is not reasonable, to connect premises to a fixed wireless or satellite network instead. **nbn's** FW network, and the spectrum used to provide it, is therefore fundamentally important to the company's ability to meet legislated obligations as the default SIP.

These are matters that the ACMA should be directed to consider when determining whether to renew licences, and the terms of any renewal.

Supporting service continuity for end users, particularly where no alternative service is available

nbn welcomes the Government's recognition in the draft MPS of the important role that spectrum in the ESL bands has in existing mobile and fixed wireless broadband network



coverage, and the importance of this to the provision of communications services to end users. Supporting service continuity for end users should be a key objective of the ESL process.

We note that the draft MPS does not include any order of precedence for the relevant policy objectives, which will give the ACMA broad discretion to determine how to manage any competing policy objectives on a case-by-case basis. However, in **nbn**'s view it would be valuable for the MPS to provide greater direction to the ACMA in relation to the relative weightings to be applied.

At a minimum, **nbn** would recommend that the MPS should ensure that the highest priority is applied to supporting service continuity in any circumstances where spectrum is being used to deliver valuable services to end users for which there are no or limited alternative services of equivalent price and quality.

Facilitating opportunities for new entrants and use cases, including for low earth orbit satellites

The expiring spectrum licence process does provide an opportunity for the ACMA to consider the extent to which there may be scope to strengthen existing service offerings by enabling access for new entrants and use cases. However, it is important that the long-term public interest derived from the use of the spectrum remains at the cornerstone of the ESL process. Therefore, it would be beneficial for the MPS to clarify that new entrants and new use cases should not be treated as intrinsically more beneficial than existing use cases. Rather the benefits of new entry or new use cases is a matter the ACMA would need to consider on a case-by-case basis, taking into account the risks and relative costs and benefits to end users.

Connectivity and investment in regional areas to deliver improved services to end users

nbn agrees that when designing the process to manage expiring spectrum licences, and subsequently setting new licence conditions, the ACMA should have particular regard to identifying potential impacts to connectivity and investment in regional Australia.

Regional and remote areas are already extremely costly areas to supply telecommunications services, because of Australia's geography and terrain. For this reason, it would be beneficial for the MPS to guide the ACMA to be particularly cautious when setting charges for spectrum renewal in regional and remote areas. Amounts that are paid for spectrum necessarily reduce the resources available to invest in network upgrades and improvements, which will constrain the delivery of new and improved services to consumers and could result in reduced service quality over time.

Promote competition

nbn agrees that it will be important for the ACMA to consider the long-term impacts on competition in the Australian telecommunications market, including the impact of the licence term alongside other licensing factors.



Capacity for sustained investment and innovation

nbn agrees that sustainable investment and innovation in the long-term use of spectrum is critical to enhancing productivity, competition and sustainable economic growth within Australia and delivering high quality services into the future. In the context of the ESL process, it is essential that both historic investment by existing licensees, and forward-looking investment capacity, are adequately considered.

Where spectrum is currently being used to deliver services and investment has already occurred, the sunk costs of existing network investment is delivering benefits to productivity and service quality. If spectrum licences are not renewed, those assets could become stranded investments, and overall consumer welfare may be reduced, even if a new spectrum licence holder has capacity for future investment. **nbn** therefore suggests that the draft MPS could be amended to clarify that the policy objective is to secure the long term benefits of sustained investment and innovation (both historic and future).

It should also be acknowledged that renewal uncertainty created by the ESL process itself could potentially have a significant impact on investment and innovation. Therefore, providing early clarity regarding probable renewal outcomes will assist to support long term investment.

