



---

# TELSTRA CORPORATION LIMITED

## Broadcasting Spectrum

Public version

28 July 2017



---

## CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>01 Single Spectrum Licensing Framework</b>	<b>4</b>
<b>02 Secondary Trading and Spectrum Sharing</b>	<b>5</b>



---

## EXECUTIVE SUMMARY

We have previously welcomed the Department of Communication and the Arts earlier proposals to bring the management of broadcasting spectrum into line with the management of spectrum for other uses and continue to believe this will ensure efficient use of spectrum to the benefit of the Australian community. Allocations of spectrum should occur in an open and transparent manner and, where demand exceeds supply, a competitive market process should facilitate payment of a market based price with all users receiving the same access rights. We believe that, over time, this approach would enable all spectrum to be put to its highest value use.

This current review offers a rare opportunity to ensure that the framework governing spectrum use and management for the foreseeable future (potentially the next 20 years or longer) addresses not only current spectrum requirements but also seeks to address the market's future spectrum needs.

The proposals provide for some aspects of broadcast spectrum planning to be more closely integrated with the broader spectrum framework, but it appears that the licensing and pricing of broadcasting spectrum will continue to be treated separately and managed under the Broadcasting Services Act.

The broadcast spectrum consultation paper does not explain the reasons for not fully integrating the broadcasting spectrum into the general spectrum management framework. We believe full integration is desirable as it creates the opportunities and incentives for broadcasting spectrum to be used most efficiently over time, consistent with the community's highest value use of the spectrum, and priced in a competitively neutral manner to avoid differentiating between broadcasters and other users.

So we ask that the Department explains the policy rationale for continuing to maintain a separate broadcast spectrum licensing regime. We recommend that Government gives further consideration to fully integrating broadcasting spectrum into the new legislation, and if this is not possible at commencement then to look at creating the opportunity for this to be considered again shortly after commencement, at the time when the annual broadcasting licensing fees are next reviewed.



---

## 01 Single Spectrum Licensing Framework

We support a unified spectrum management framework that treats all spectrum equally (including pricing and other licence terms) so that there is maximum opportunity for spectrum to be transferred and moved to higher value uses over time. This is consistent with the findings of the Spectrum Review that recommended that the planning, licensing and pricing of broadcast spectrum be integrated into the general spectrum management framework<sup>1</sup>.

The last major review of the spectrum licensing framework back in 1992 produced the current model which differentiates broadcast spectrum from all other spectrum, and provides for its own licensing and pricing provisions. That framework may have been appropriate and representative of a broadcast-centric media landscape 25 years ago, however it is no longer reflective of today's multi-media environment.

While we acknowledge the Department has taken some measures to seek to align broadcast licensing with the rest of the spectrum framework (e.g. by removing the designation of broadcast spectrum by the Minister and bringing spectrum planning under a unified regime managed by the ACMA), the Department's latest proposals do not fully integrate broadcast spectrum into the new general spectrum management framework. Further, no explanation has been provided as to why full integration has not been proposed in the current consultation.

We believe that access to spectrum should be provided on a competitively neutral basis and accessible by parties from any industry sector. By continuing separate spectrum entitlements for broadcasters it is less likely that broadcasters will give serious consideration to more efficient and/or alternative uses of that spectrum. Although the current highest value use of broadcast spectrum may be for broadcasting, over time, that may no longer be the case. In the new converging multi-media environment there may be multiple potential uses for broadcast spectrum. A streamlined spectrum management framework should provide for those various uses to be presented and resolved through an agreed competitive market based mechanism.

Another consequence of ring-fencing broadcast spectrum and treating it differently is the high risk of pricing inequity. The current proposal fails to provide a mechanism to ensure that broadcast spectrum is fairly priced relative to the opportunity cost of spectrum for other users. While the market drives prices for non-broadcast spectrum based on competitive market forces, it is proposed that broadcasters be given access to spectrum with pricing based on Ministerial discretion. The effect of this discretion has been illustrated recently with the Minister's recent announcement that broadcasters would receive a 12 month 'holiday' on broadcast licence fees<sup>2</sup>, effectively repricing broadcast spectrum at zero.

If short term Government commitments prevent broadcasting being integrated fully into the new licensing regime from its commencement then we suggest a possible compromise would be to incorporate a legislated review to explore this opportunity again a short while after commencement. This review could be timed to coincide with the first review of the annual broadcast licence fees.

---

<sup>1</sup> Recommendation 1(b) of the 2015 Spectrum Review recommended integrating management of broadcast spectrum into the general spectrum management framework.

<sup>2</sup> Minister Fifield announced on 28 June 2017 that the Federal Government would waive broadcasting licence fees for commercial free-to-air television and radio broadcasters for the FY17 financial year.

---

## 02 Secondary Trading and Spectrum Sharing

We support the Department's proposal to allow broadcasters to share, trade, or lease all or part of their spectrum with or to other broadcasters. However, this should be accompanied by changes requiring broadcasters to pay a transparent market price to the ACMA for the spectrum, either by purchasing it up front or through an annual fee, so that windfall gains are avoided.

Introducing provisions that technically enable broadcasters to share or trade spectrum does not necessarily mean that broadcasters will make use of the provisions. We believe the reforms provide little incentive for secondary trading to occur, given that the proposed framework maintains existing entitlements and spectrum holdings for broadcasters. With broadcasters continuing to benefit from a legislated entitlement to a license to access spectrum (in order to transmit services authorised under a broadcasting services licence), and financially incentivised to hold onto their spectrum (e.g. through lower annual broadcast fees, or removal of the fees altogether) we query whether broadcasters will be incentivised to innovate in order to optimise spectrum use, freeing it up for secondary trading.

We think there would be greater opportunity for trading and sharing by allowing broadcasting licensees to also transfer or share spectrum with parties that are not broadcasting spectrum users. However, the current proposals state that approval from the Government will be required if a broadcaster wants to share/trade/lease for non-broadcasting uses of spectrum, and this is likely to suppress interest in any such opportunities. We recommend the Government gives consideration to relaxing this constraint.

We note the US Federal Communications Commission (FCC) has recently conducted an 'incentive auction' of UHF television spectrum below 700 MHz. This auction was designed to provide a financial incentive for the holders of broadcast spectrum to transfer it back to the FCC for auction and resale to mobile providers. The incentive auction occurred in two parts. The first part involved the acquisition of spectrum by the regulator via a 'reverse' auction whereby competing broadcast licensees offer a minimum acceptable sale price for their spectrum, followed by a 're-packaging' process to create cleared blocks of spectrum. The second part of the process involved the FCC selling the repackaged spectrum via a normal 'forward' auction to mobile operators. Although we are not suggesting that such a process be adopted in Australia, we think consideration should be given to the compatibility of this approach, and other potential future broadcasting spectrum reallocation arrangements, within the context of the new framework.

We also note that there is little detail in the Consultation Paper about what would happen to any broadcast spectrum freed up by more efficient uses of spectrum. While we understand that it's the Department's view that vacated spectrum should be handed back to the Government, this is not addressed in the paper. We recommend that further guidance be provided on the treatment of such vacated broadcasting spectrum.