

Ref: BN14/2029

Spectrum Management Review  
Department of Communications  
GPO Box 2154  
CANBERRA ACT 2601

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### **Terms of Reference for the Spectrum Management Review**

Dear Sir/Madam

I refer to the Department of Communications' Issues Paper on the Terms of Reference for its Spectrum Management Review and the request for responses.

The NSW Government Telecommunications Authority (Telco Authority) is responsible for the overall coordination of radio communications services for the NSW Government, including its spectrum holdings. It works closely with NSW Government agencies for which radio communications is a critical requirement for their operations. I have enclosed the Telco Authority's submission on the issues raised. The submission to this latest review builds on our previous response to the request for comment on the *Objects of the Radiocommunications Act* (I have enclosed a copy of this document as well) and the two documents should now be considered collectively.

A review of the Australian Spectrum Management Framework is welcomed. The current legislative basis for the framework, the *Radiocommunications Act 1992* was enacted more than two decades ago at a time when the current levels of demand for spectrum could not have been properly foreseen.

While supportive of the review, we are concerned to ensure that the current requirement set out in section 3(b) of the Act for the regulator to allocate spectrum for defence, law enforcement and emergency management purposes is not in any way diminished or becomes a minor consideration after economic or market methods of allocation. The continuation of the current arrangements is essential in order that frontline public safety officers have access to the right tools to carry out their important work in protecting the community. Likewise, we are keen to ensure that in allocating spectrum for public safety purposes, the Commonwealth relies on a transparent and robust decision making process.

It is noted that this response is part of the first phase of what will be a lengthy review process. The Authority looks forward to continuing involvement and will provide a response to the substantive issues raised by the Terms of Reference at the appropriate time.

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In the meantime, if you wish to discuss the submission, please contact Norman Cossey, Principal Policy Officer at the Telco Authority on telephone 9372 8522 (or via email at [norman.cossey@finance.nsw.gov.au](mailto:norman.cossey@finance.nsw.gov.au)).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Shaun Smith', with several large, overlapping loops and a horizontal flourish.

Shaun Smith  
Executive Director  
**Telco Authority**

# Response to Spectrum Review Issues Paper

July 2014

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## Introduction

### **Radiocommunications Act 1992 and the Spectrum Management Framework**

The *Radiocommunications Act 1992* provides for the regulation of spectrum use in Australia. The Act seeks to establish a framework for the management of spectrum and requires that it be used in an efficient and effective manner.

A number of policies, standards, guidelines, directions and other documentation help to guide the Australian Communications and Media Authority (the ACMA) and spectrum stakeholders, including licensees, equipment manufacturers and the community on how the requirements of the Act are to be met. The entire regulatory framework for spectrum management combines to provide a system that ensures that spectrum is used in the national interest and that inappropriate uses of spectrum (such as interference and unlicensed use) are minimised.

### **Public safety related issues arising from the review**

#### **The importance of maintaining section 3(b) of the *Radiocommunications Act 1992***

Section 3(b) of the *Radiocommunications Act 1992* provides a requirement for the ACMA to allocate spectrum for defence, emergency management and law enforcement purposes. As noted in the Telco Authority's response on the *Objects of the Radiocommunications Act* (copy attached), the Telco Authority is supportive of this requirement continuing.

Section 3 (b) provides an unambiguous affirmation that a primary role of the Act is to ensure that adequate amounts of spectrum are allocated for defence, public safety, law enforcement and public/community services purposes. The continuation of this provision is necessary to ensure that a range of public service agencies have access to sufficient spectrum to undertake their important work for the community, particularly in the face of increased demand for spectrum as commercial and consumer technology develops.

The Telco Authority seeks to ensure that the Terms of Reference are not drafted in a way that will lead to a diminishing of the requirement for regulators to allocate appropriate spectrum for public safety purposes. In saying this, it is acknowledged that there will continue to be ongoing tension between the spectrum needs of public safety agencies and commercial users of spectrum. This tension helps to ensure that spectrum is allocated efficiently, however, the ability of commercial operators to influence public debate and pay large amounts for spectrum allocations must not be used to justify not allocating spectrum to meet the needs of front line agencies which use spectrum to perform their vital community services.

## First principles cost benefit review for PSMB spectrum

Earlier in 2014 the Commonwealth Minister for Communications announced a first principles assessment of the merits of a dedicated Public Safety Mobile Broadband (PSMB) capability in comparison to utilising commercial networks. The assessment is to include a cost benefit analysis on the most efficient way to provide a nationally interoperable PSMB capability to states and territories.

The assessment follows a lengthy process undertaken by the national PSMB Steering Committee to determine the quantum and type of spectrum that could be allocated for use as a public safety mobile broadband capability. As part of that process, various states and territories provided detailed advice to the ACMA on the public safety and community benefits of PSMB, a copy of which was considered as part of the *Parliamentary Joint Committee on Law Enforcement's 2013 Inquiry into Spectrum for Public Safety Mobile Broadband*. This work provides a qualitative analysis of the benefits and must be considered in any decision on the allocation of spectrum above and beyond any cost benefit analysis which will not give sufficient credence to the increasing occurrence of extreme events or the heightened risk of security incidents.

It is the Telco Authority's position that both the spectrum review and first principles analysis processes must be undertaken collectively. The Authority also seeks to ensure that both give adequate consideration to the critical needs of law enforcement and emergency services agencies when deciding on the allocation of spectrum to support PSMB operational requirements, the quantum of spectrum to be allocated and the how it is allocated (including the NSW Government preferred approach of an allocation of 20 MHz (2 x 10 MHz paired) to states and territories).

To carry out the first principles assessment and spectrum review in isolation presents a risk that competing recommendations on the allocation of spectrum for PSMB may arise causing confusion and uncertainty. It may also adversely affect the community's expectation that our frontline law enforcement and emergency services personnel will have access to the tools they need to carry out their jobs effectively, an expectation that led to the 2003 inclusion of a requirement that spectrum be made available for public safety purposes in the *Radiocommunications Act*.

## General Issues

### Simplification, reducing red tape and reducing regulation

It is acknowledged that the current legislation governing spectrum management is over 20 years old; and that since its inception, the body of documentation supporting its implementation has grown significantly and become increasingly more complex. It is also important to understand that the legislation was drafted in an environment that could not foresee the exponential growth in spectrum demand that has occurred over the past two decades.

While it is easy to assume that the growth in regulation has been occurring unabated, it must be acknowledged that the Commonwealth has already undertaken a number of activities to reduce 'red tape' in relation to the regulation of spectrum in Australia. This includes the removal of regulation under the *Omnibus Repeal Day (Autumn 2014) Bill*.

The Telco Authority is generally supportive of activities to reduce the regulatory burden on licensees and to simplify the spectrum management process. However, in providing this support, it is recognised that regulation for the sector, in some form, will always be required. For example, the demand for spectrum means a method of rationing access continues to be necessary as does a framework to deal with those who use spectrum unlawfully and inappropriately (such as operating unlicensed and by causing interference). Likewise, there is a need to ensure that Australian spectrum arrangements closely align and support national and international standards.

The Terms of Reference therefore should adequately reflect that de-regulation needs to be carefully monitored to ensure it does not become counter-productive. Much of the communications related regulation recently removed by the ACMA has been redundant or focused around consumer protection arrangements.

Efforts to reduce the regulatory burden on how spectrum is allocated and managed have not occurred in any significant way and care should be taken as we determine how best to ensure efficiency gains are realised. It is noted, for example, that work has been undertaken to reform the management of the Harmonised Government Spectrum in the 400 MHz band with less regulatory intervention by the ACMA in the management of this spectrum a goal. While the ACMA considers this a type of deregulation, the costs to the states and territories have increased significantly, something that has not been recognised by the Commonwealth to date. In this case the benefits to the community are not necessarily an overall reduction in administrative costs or overall regulation, with the states and territories bearing a higher burden, but rather in a more efficient management of the spectrum by state agencies which are better able to determine the needs of public safety agency workers than the Commonwealth.

### **Public interest v economic/market considerations**

The ACMA has in several forums described the circumstances in which it would apply its version of a total welfare test, called a public interest test, in determining the allocation of spectrum and the pricing of spectrum. The ACMA public interest test provides a method of assessing the impact of a regulatory proposal on the public interest including for citizens, consumers, producers, government and the broader social impact.

While the ACMA generally takes a holistic view, it has previously indicated that “at times it may be appropriate to proceed with a regulatory intervention that delivers a certain outcome for society even if the cost is high”<sup>1</sup>. While such a scenario is based around taking regulatory action, it can also be applied to the allocation of spectrum where the benefits of assigning spectrum for emergency management and law enforcement purposes may be beneficial despite a high opportunity cost for other users of the spectrum.

It is noted that, where possible, the ACMA will consider quantitative aspects when making assessments under the public interest test<sup>2</sup>. To date, however, the Telco Authority is not aware of circumstances where the ACMA has been able to consider the data available demonstrating the positive benefits of properly equipping emergency services on insurance premiums and productivity levels during the recovery and rebuild after a natural disaster, etc when considering the allocation of spectrum for public safety mobile broadband purposes.

The ACMA also contends that the benchmark when undertaking a public interest assessment is not the ‘current situation’ or the ‘best outcome possible’, but rather the ‘general environment that will occur if the regulatory approach is taken as opposed to where it is not’<sup>3</sup>. Unfortunately, it is easy to discount the likelihood of a “one in 100 year” event on a basic level, however, the Australian community has been experiencing a series of “once in 100 year” events that have occurred one after another over recent years including 2009 Victorian Bushfires, the 2010/11 Queensland Floods and the October 2013 NSW Bushfires.

As stated previously, the Telco Authority’s primary concern is to ensure that the Terms of Reference are not designed in a way that ultimately leads to the requirement under the *Radiocommunications Act 1992* for the ACMA to lessen the provision of the allocation of sufficient spectrum for emergency services and law enforcement operational requirements. Following from this, there is also concern that requiring the ACMA to consider economic/market measures to value and allocate spectrum, unless constructed appropriately, may lead to spectrum being priced too high for public safety agency budgets. Alternatively, it may result in an allocation being made that may be ostensibly for public safety purposes, however the spectrum not being under the control of public safety agencies.

## Sector governance

The Telco Authority is generally supportive of the draft Terms of Reference surrounding governance and decision making in the sector (items 4, 5, 7, 8) and the issues they will eventually canvas.

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<sup>1</sup> Regulating in the public interest – Rebecca Burdon, ACMA, ACE Telecomm Summit, August 2008

<sup>2</sup> Regulating in the public interest – Rebecca Burdon, ACMA, ACE Telecomm Summit, August 2008

<sup>3</sup> Regulating in the public interest – Rebecca Burdon, ACMA, ACE Telecomm Summit, August 2008



Having said that, caution needs to be exercised to ensure that the balance of how responsibilities are attributed does not change in such a way that leads to uncertainty or a lack of clarity on who makes a decision or the way the decision maker applies the law in making a decision. For example, the Commonwealth Government's cost/benefits analysis for the allocation of spectrum to support a PSMB capability is in effect a change in the previously understood approach to allocating spectrum for government in the emergency management and law enforcement space. This uncertainty has led to confusion about responsibilities and hampered planning and the actual allocation of spectrum for PSMB uses.

Further, it is essential that safeguards built in to the existing arrangements, such as the ability of the Governor General to declare an emergency, are not diminished in any eventual change in decision making responsibilities.

