

31 March 2015

Manager  
Services and Regulation Section  
Media Branch  
Department of Communications  
GPO Box 2154  
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**By email: [dtvreview@communications.gov.au](mailto:dtvreview@communications.gov.au)**

Dear Sir/Madam,

### **Consultation on digital television regulation**

Telstra welcomes the opportunity to provide comments in response to the Department of Communications consultation paper on proposed changes to digital television regulation<sup>1</sup>.

Telstra supports the need for a review of digital television regulation but is concerned the proposals in the current review are too narrowly focused on the activities of FTA broadcasters, and do not go far enough in the case of the spectrum related reforms. Our comments on these matters are set out below.

#### **Broadening the review**

Technology and market developments, in particular the growth of the internet, are driving constant change in the media industry in Australia. Consumers now have more choices in the range of content they can access and the platforms and services they use to consume it, and greater flexibility to choose from different combinations of content, platform and service. However, regulatory and policy frameworks have remained largely static, which can put at risk some of the benefits from new technologies and innovation.

Telstra strongly supports reducing the burden of regulation across the economy and believes there are significant opportunities to reform regulation in the media industry as a whole, especially in light of the ongoing impact of the internet on media delivery. In this context, Telstra is concerned that the reform proposals in the Consultation Paper are practically limited to free-to-air (FTA) broadcasting only. Telstra recommends that the scope of the review be expanded to consider the impact of regulatory changes on all broadcasters, including opportunities for reducing the regulatory burden on non-FTA broadcasters.

Any relaxation of the regulations applying to FTA broadcasters should also consider the effect those regulations have in the context of the regulatory environment as a whole, including restrictions on premium content acquisition in the form of the anti-siphoning regime. Telstra is concerned the effect of the proposals could be to deliver additional commercial and technical freedoms to FTA broadcasters without also addressing aspects of the regulated environment which limit their exposure to competition from other FTA and non-FTA broadcasters.

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<sup>1</sup> Available at [http://www.communications.gov.au/television/consultation\\_paper\\_digital\\_television\\_regulation](http://www.communications.gov.au/television/consultation_paper_digital_television_regulation)

## The licensing of digital television spectrum needs to be fundamentally reformed

Spectrum is a scarce resource that plays a critical role in the delivery of economic and social outcomes to Australians. Telstra relies on access to this resource to be able to continue delivering the latest mobile and wireless technologies to its customers.

A key objective of spectrum management is for spectrum to be put to its highest value use. To achieve this, Telstra believes it is important to build flexibility into the spectrum licensing framework so that spectrum can more easily be moved to higher value uses over time – by allowing current users to implement new uses and allowing them to transfer or share their spectrum with other users. Telstra considers that the use of market forces and trading, along with service and technology neutral spectrum licensing, are key tools for achieving this flexibility.

Telstra has been concerned for some time that the current disparate spectrum management regime for broadcasting is not consistent with the above approach. In particular, the current regime:

- imposes constraints on the types of service or technology that can be deployed,
- does not require broadcasting licensees to pay a market price consistent with the approach to the allocation and pricing of other commercial spectrum,
- constrains the transfer of spectrum to other parties (either broadcasting or non-broadcasting); and
- creates an unlevel playing field between the users of broadcasting spectrum and other spectrum users.

The proposals in this review to enable broadcasters to use spectrum more flexibly and efficiently are a step in the right direction but in Telstra's view they do not go far enough and must be coupled with a more fundamental reform of the broadcast spectrum licensing framework to properly address the issues identified above. Telstra believes the special arrangements for the licensing of broadcast spectrum should be dismantled so it can be licensed in the same manner as other spectrum under the *Radiocommunications Act 1992 (Cth)*. Without this broader reform it is unlikely the current proposals would move the spectrum to its highest value use and there is a risk they will simply exacerbate the unlevel playing field that exists between broadcast spectrum users and other spectrum users.

For example, paragraph 2.2 of the consultation paper proposes allowing current broadcast licensees to 'rent' space on their multiplex to third parties on a commercial basis. This is similar in effect to the third party authorisation mechanism for non-broadcast spectrum currently permitted under sections 68 and 114 of the *Radiocommunications Act 1992 (Cth)*. However, the assignment of broadcast spectrum is not subject to market pricing, unlike the market-driven approach to other spectrum that is used for commercial purposes under the Radiocommunications Act. This means the potential prices and returns from the renting of broadcasting spectrum are also likely to be different to those for non-broadcasting spectrum, due to the cost of the underlying spectrum being determined via discretionary Ministerial powers and without reference to its true market value.

Telstra notes the Department is also running a parallel spectrum review process which is investigating fundamental changes to the spectrum management framework. Telstra believes this spectrum review process should be used to explore the above opportunity to fundamentally reform the broadcast spectrum licensing framework, and that it would be prudent to await the outcome of that process before making any further deliberations about the specific proposals in this review of digital television regulation.

