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Rachel Blackwood

A/g Assistant Secretary / Spectrum &
Telecommunications Deployment Policy Branch
Department of Infrastructure, Transport, Regional Development
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Re: Exposure draft of Radiocommunications Legislation Amendment (Reform and Modernisation) Bill

Dear Rachel

Communications Alliance welcomes the opportunity to comment on the *2020 Radiocommunications Reform Consultation Paper*. This reform is an important opportunity to modernise and streamline interaction with the legal process required of industry stakeholders. The Consultation Paper also proposes some timely and significant changes to apparatus licence tenure. These recognise the reality of investment in the satellite industry and, if implemented, will go a long way to delivering the assurance required by the industry when planning for long-term investment in Australia.

This submission primarily represents the views of the Satellite Services Working Group (SSWG), with additional contributions from other members of Communications Alliance, particularly those with an interest in the new framework to determine technical regulation requirements with the introduction of equipment rules.

In our view, a number of areas deserve some further consideration, as follows.

Licence Duration

A longer licence duration of 20 years for both spectrum and apparatus licences is a very significant step forward which recognises the long life of orbital resources and the large investment required to launch and operate these assets. It will deliver greater certainty to licensees, as well as moving Australia's licensing regime in line with that of many other countries.

The SSWG believes these changes will serve to attract investment into the Australian market and leverage significant economic activity, in terms of both satellite launch and operation, but also through the vital services satellite systems provide to all Australians regardless of where they reside or do business. It should be noted also that, for satellite constellations in particular, there will be a continual refreshment process with shorter duration satellite hardware.

We support the creation of default renewal application periods for apparatus licences, as set out in section 129(3) of the draft Bill. With the introduction of longer licence durations, we recommend the default renewal application period for apparatus licences with a duration of 10 years or more should be 2 years, rather than 6 months. This would improve investment certainty for licensees who have made long-term licence commitments, by allowing them to apply for their licence to be renewed ahead of the last 6 months of that licence's term. We support the proposed 6-month renewal application period for apparatus licences with a duration of less than 10 years.

Public Interest Test

With the introduction of longer licence durations and renewals, the proposed legislation also introduces a public interest test for renewals of 10 years or more and for renewals of licences for which a public interest statement has been included in the licence. The purpose of such a test appears to be to prevent spectrum being locked up in uses that are no longer considered the 'highest value use.' While this a valid consideration, this must be balanced against the high upfront and long-lasting investments that are typically made – especially in the satellite sector – for the provision of valuable services to the public.

In addition, the SSWG submits that 'market testing' should not be applied to apparatus licensing for satellite systems. Satellite spectrum can be reused in the same spectrum space numerous times by different operators. Market based allocation is valid where there is high demand for sole use but does not fit the multi-user satellite model.

The SSWG would also question continued reliance on 'highest value use' of spectrum, as the touchstone for 'public interest' evaluations, at least when the concept is applied on a narrow band-by-band, service-by-service basis. The proposed legislation's renewed emphasis on the 'long-term public interest derived from the use of spectrum' requires a holistic view that accommodates the spectrum needs of the full range of spectrum users, common spectrum usage and the benefits this can bring to the public.

'Highest value use' seems to imply that a single service would be more value than a mix and that high-density services are more valuable than distributed services. The SSWG believes that other value indicators should be affirmatively taken into account. Satellite, for example, is capable of providing the same service in both Sydney and the Simpson Desert. If Government values the contribution of Australians living and working in rural and remote areas, then it is important that all these uses be taken into account when implementing spectrum policy. The current value set favours high population areas, often to the detriment of those living in the bush and therefore in contradiction with Parliament's policy objectives for communications as set out in the *Telecommunications Act*, s3 (2)(a)(i).

Mixed licensing considerations

The SSWG welcomes a legislative framework that provides the ACMA with the flexibility to devise radio licensing regimes that consist of spectrum licenses, apparatus licenses and/or a mix of both in any given band. It should be recognized, however, that putting different services in the same band under a mix of licensing arrangements may not always be desirable. Many services (including satellite services) need access to spectrum in which they can deploy ubiquitously in order to meet user demands. The legislative flexibility to create mixed licensing regimes gives the ACMA an additional and valuable tool for managing spectrum, but it should not be seen as the only tool, or the tool that is always the most appropriate. We believe the ACMA should still develop differentiated licensing frameworks that are appropriate and adapted to the different services in question; this should be considered on a case-by-case basis.

Trial licences and equipment exemptions

The type of apparatus licence used for scientific (or trial) purposes, and exemption from equipment rules which allow new services, technology or equipment to be evaluated or market tested is a subset of regulatory conditions which the SSWG in general supports. The SSWG recommends that an extended period (beyond one year) would be appropriate in circumstances where warranted e.g. because of supply shortfalls or market developments.

However, the SSWG does not support evaluation of equipment or services which are not designated for a particular band in Australia. The SSWG is quite comfortable with current Defence and Law Enforcement exemptions.

Regulatory Safeguards

The proposed amendments would delegate a range of increased powers and discretion to the ACMA – the objectives of which include a desire to promote regulatory flexibility and to speed-up decision-making.

While such objectives are laudable, there is a need to ensure that an appropriate balance is struck between discretionary power and transparency.

The proposed amendments mandate consultation with the ACCC, for example, on spectrum allocation limits, while leaving it open for the ACMA to consult with industry and others 'as it considers appropriate' when determining work programs, as noted in the Consultation Paper. Rather than giving the ACMA an option not to consult if it deems this inappropriate, the SSWG sees no reason why the ACMA should not be required to publicly consult on legislatively mandated work programs, in the same way that it consults on its FYSO work programs today in order to ensure continued transparency of the ACMA's spectrum planning process.

The SSWG recommends that the Department gives some attention to cross-checking the provision of safeguards against the issues raised in the submission and which may accompany Parliament's requirements of the Work Program.

Equipment Rules

The SSWG notes that Part 4.1 of the *Radiocommunications Act* is proposed to be replaced with a new framework that will determine technical regulation requirements through equipment rules. It is acknowledged that the changes are designed to reduce the burden on suppliers and manufacturers, reflect modern supply chains by including intermediaries, and for the ACMA to better target those within the supply chain that are responsible for different aspects of compliance with a range of graduated responses to non-compliance.

The SSWG believes that this framework provides the necessary flexibility and recognition of the wide variety of supply models and the roles of the parties in modern supply chains and will assist in promoting innovation and industry development opportunities within Australia.

ACMA annual work program

With regard to Question 1 of the Consultation paper, the SSWG has been a longstanding contributor to the consultations arranged by the ACMA with its Five Year Spectrum Outlook (FYSO) process. This has been a very useful communication activity with the industry and the SSWG hopes to be seen to have nurtured its growth and development.

More recently, the ACMA has taken the opportunity to annex a Work Program to the FYSO, perhaps as a consequence of anticipating the way the legislation is likely to develop. The SSWG has also appreciated this and it has led to better predictability of regulation and its timing, which assists industry planning. Therefore, the SSWG supports a legislative underpinning

of the Work Program. It is hoped that the future Work Program and FYSO presentation can develop as succinctly and clearly as possible in the future through appropriate editing. To date, the FYSO and Work Program are showing grown and duplication beyond manageable proportions and need to be streamlined.

Compliance and Enforcement

With regard to Question 4 of the Consultation paper, the SSWG welcomes the creation of a framework of more granular compliance tools that can facilitate more graduated compliance and enforcement responses by the Regulator, particularly when dealing with minor potential breaches.

Communications Alliance looks forward to ongoing engagement with the Department as the reforms to the Radiocommunications legislation progresses. If you wish to follow up on any of the issues raised in this response, please contact Mike Johns on (02) 9959 9125.

Yours sincerely,



John Stanton
Chair, SSWG

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance.

For more details about Communications Alliance, see:

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