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Australia's  
broadband  
network

29 April 2016

The Project Manager  
Spectrum Reform  
Department of Communications and the Arts  
GPO Box 2154  
CANBERRA ACT 2601

By email: [spectrumreform@communications.gov.au](mailto:spectrumreform@communications.gov.au)

Dear Sir / Madam,

## Legislative Proposals Consultation Paper – Radiocommunications Bill 2016

Thank you for the opportunity to provide comments on the Government's proposed approach to developing a new Radiocommunications Bill (Bill) as set out in the Legislative Proposals Consultation Paper, March 2016 (Paper).

As previously submitted to the Department as part of its Spectrum Review, **nbn** considers that the Australian spectrum management framework can and should be modernised to address increasing demand and to reflect current and emerging changes in technology, markets and consumer preferences. With this objective in mind, **nbn** supports the Government's decision to implement the main recommendations of the Spectrum Review<sup>1</sup>.

We note that the Paper provides a high level position only on the Government's approach to key areas for the proposed Bill. In general, **nbn** supports the high level proposed approach subject to the comments provided below. However, **nbn**'s views are subject to further detail on the Government's approach to implementing reform (including release of the exposure draft of the Bill, proposals in respect of pricing) being made available for comment.

- *'1. Objects and span' and '5. Radiofrequency planning'*

**nbn** notes the following proposals in the Paper:

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<sup>1</sup> As set out in the report released by the then Department of Communications in May 2015:

- Replace the current legislative arrangements with new legislation that removes prescriptive process and streamlines licensing, for a simpler and more flexible framework.
- Better integrate the management of public sector and broadcasting spectrum to improve the consistency and integrity of the framework.
- Review spectrum pricing to ensure consistent and transparent arrangements to support the efficient use of spectrum and secondary markets.



- The stated object of the Bill will be ‘...to promote the long-term public interest derived from the use of radiofrequency spectrum by: facilitating efficient, flexible and innovative allocation and use of spectrum; and providing arrangements for the provision of spectrum for public or community purposes.’
- ‘...the Bill will continue to specify that plans may provide for parts of the spectrum to be reserved for the provision of public or community services.’

**nbn** notes that no further detail is provided in the paper regarding the arrangements to be made for the provision of spectrum for public or community purposes. For instance, there is no discussion of whether spectrum reserved for the provision of public or community purposes should be acquired through a market-based pricing mechanism or otherwise.

- ‘3. Ministerial direction powers, policy guidance and accountability’

The Paper notes that the establishment of a new Ministerial policy statement mechanism is expected to reduce the need for the Minister to actively intervene in spectrum management by exercising the existing section 14 directions power.

Part 8 of the Paper indicates that the ACMA could determine competition limits for licence issue without having to be directed by the Minister (although the Minister’s section 14 power to direct the ACMA on limits would remain). The paper also notes that the existing prohibition on acquisitions of assets likely to have the effect of substantially lessening competition<sup>2</sup> would not apply to a particular licence issue where limits have been set by the ACMA (whether as directed, or on the ACMA’s own initiative). **nbn** notes that this approach is intended to improve certainty of allocation processes while ensuring competition issues are addressed. It would, however, be particularly useful to consider the scope, application and potential effect of this proposed approach in more detail in the context of the consultation on the draft Bill.

It is also proposed that the ACMA be required (perhaps by means of a Ministerial policy statement), to identify information requirements to support the spectrum market and facilitate spectrum sharing, taking an open-data approach. As further discussed overleaf in respect of Part 15 of the Paper, the nature and extent of such information, and both the costs and benefits involved in its collection will need to be carefully considered, and **nbn** welcomes the proposal that the ACMA consult with spectrum users on this aspect.

- ‘4. Annual spectrum work plan’

**nbn** considers that an annual spectrum work plan for the ACMA should include the level of resourcing provided by the ACMA to each area of work. This could assist industry in identifying potential areas for greater user involvement (see ‘16. User involvement: accreditation, delegation, industry codes).

Further, **nbn** suggests that an annual spectrum work plan should identify the work being conducted in preparation for international fora (such as ITU and WRCs) including the ACMA’s short and long term objectives in those spheres.

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<sup>2</sup> In s 50 of the *Competition and Consumer Act 2010* (CCA)



- *'5. Radiofrequency planning'*

The Paper proposes that marketing plans (currently used to set the process for issuing spectrum licences) would, in future, be effected as a matter of administrative practice. As marketing plans currently provide the process for issuing spectrum (not apparatus) licences, the role and effect of administrative (as opposed to legislated) plans under a single licensing framework will need to be considered carefully in the context of the actual text proposed in the Bill.

- *'6. Licensing of spectrum'*

**nbn** notes the proposal that the ACMA retain the legislative power to set licence conditions so as to provide the flexibility to tailor licences to suit different uses. It will be important to seek to ensure that the ability to tailor licences is appropriately balanced in the new framework with the goal of enhanced tradability, particularly the extent to which tailored licences are likely, by definition, to be less attractive to potential acquirers than more general licences.

**nbn** also notes that is proposed to authorise the ACMA to issue licences, or make authorisations, in parts of the spectrum for which licences have already been issued or authorisations provided, as long as arrangements are in place to manage interference. The nature and extent of this authorisation will need to be considered closely. It is not clear that only interference management is required to ensure existing user's rights are protected. The paper notes, for example, that third party authorisations would also be simplified and licensees will continue to be able to authorise other persons to operate devices under their licence. The commercial and other impacts on actual and potential third party authorisations of a proposed new environment where the ACMA could issue a licence in spectrum it has already licensed, will need to be considered.

- *'7. Licence issue'*

**nbn** supports proposals to streamline and simplify arrangements for issuing licences and looks forward to considering the detail of the proposals contained in the draft consultation Bill, including in respect of the proposed 'licence issue scheme' legislative instruments, and the related administrative documents setting out issue processes (including auction type, advertising and participation instructions).

We would also be interested in the proposed circumstances in which the ACMA would issue licences on written application as opposed to in accordance with a licence issue scheme.

- *'9. Licensing—renewal rights'*

**nbn** agrees that the current spectrum reissue process is uncertain and time consuming and would benefit from greater clarity, balancing planning flexibility with certainty of licensees' rights

It may be that mandatory licence provisions outlining the right to, and circumstances of, renewal would assist with this, and nbn looks forward to considering the precise proposals in the Bill in this regard.

- *'11. Spectrum authorisations (class licences)'*

**nbn** notes that it is proposed that class licences be replaced by ACMA 'spectrum authorisations', potentially including conditions about technical requirements, frequencies, purpose, area and periods of operation, allowing the use of devices outside the licensing framework. Consideration of this approach will require assessment of the precise framework proposed in the consultation Bill.



*‘12. Interference management’ and ‘14. Compliance and enforcement’*

**nbn** generally supports the proposal for enhanced scope for licensees to resolve interference and disputes, without recourse to the ACMA. Further, **nbn** supports a more effective and graduated compliance and enforcement regime being implemented to enhance the ACMA ability to react to breaches in a timely and more flexible manner.

However, in the event that the proposals in these areas are implemented, **nbn** cautions against a subsequent view being formed on that basis alone that fewer resources therefore need to be allocated to the ACMA for enforcement purposes. **nbn** considers that the ACMA has investigative powers and skills that would enable it in particular scenarios to be more effective at resolving breaches than industry itself.

- *‘13. Equipment regulation’*

**nbn** understands that it is proposed that the current standards / supplier -based approach to device regulation would be replaced with a new model under which the ACMA would be empowered to make ‘equipment rules’ including to ensure EME compatibility, contain interference and protect safety by imposing quality, testing labelling and record-keeping obligations. **nbn** looks forward to considering the detail of this proposal.

- *‘15. Information provision’*

**nbn** notes the proposal to enable the ACMA to require persons to provide ‘... the value of the consideration paid in respect to licence trades or third party authorisations. This information would be able to be published by the ACMA so as to improve information available to the market. The ACMA would have the discretion to also publish the information in aggregate or a form not likely to enable the identification of the licensee’.

**nbn** notes that, as previously submitted, any authority provided to the ACMA to collect further information from industry<sup>3</sup> would need to be carefully considered including to ensure that it fosters the market, does not impose any unnecessary additional burden on industry and does not have unintended consequences. **nbn** considers that further details regarding the costs and benefits of the proposal should be provided to industry for consideration.

Further, **nbn** is concerned that simply providing the ACMA with discretion to publish requested information in aggregate may not result in confidentiality concerns (in relation to the identification of the licensee and other considerations) being adequately resolved.

- *‘16. User involvement: accreditation, delegation, industry codes’*

As previously submitted, **nbn** considers that the ACMA should take a phased approach to greater user involvement, with operational aspects such as fee collection, interference management and dispute resolution considered in the first instance.

- *‘19. Transitional arrangements’*

**nbn** notes the proposal that ‘...apparatus licences will transition to the new framework over a period of time in a staged approach’.

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<sup>3</sup> Including by way of a proposed Ministerial policy statement (as contemplated in section 3 of the Paper) or otherwise.



**nbn** supports the above proposal noting that, as previously submitted, transitional timeframes should be considered in the context of existing licence durations. That is, longer transition times may be appropriate for licences valid for more than 5 years.

**nbn** looks forward to continuing to work with the Department on Australia's spectrum management framework. If you have any queries in respect of this submission or other issues relevant to the Government's decision to implement the main recommendations of the Spectrum Review, please do not hesitate to contact me.

Regards

[Redacted Signature]

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