



**2020 Radiocommunications Reform
Consultation paper**

July 2020

Response by Pivotel

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A/g Assistant Secretary

Spectrum & Telecommunications Deployment Policy Branch

Department of Infrastructure, Transport, Regional Development and Communications

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1. Pivotel's General Comments

Pivotel is pleased to provide a response to the Department of Infrastructure, Transport, Regional Development and Communications consultation paper regarding the proposed 2020 Radiocommunications Reform amendments.

Much of Pivotel's business is underpinned by its access to spectrum, that in turn allows the company to provide tailored voice, messaging and data solutions to regional, rural and remote communities in Australia. This is achieved through our strategic satellite holdings, and LTE (4G) mobile networks, and as a reseller of other wireless-based communication services.

Pivotel operates a mobile and satellite telecommunications network pursuant to a carrier licence issued by the ACMA in accordance with the Telecommunications Act 1997 (Cth) (Telco Act) and operates ground infrastructure in Australia, making it the fourth public mobile carrier in the country. It is the only Australian carrier with direct connection to all four major mobile satellite networks: Iridium, Inmarsat, Thuraya and Globalstar and is also a reseller of the NBN Sky Muster and BSS satellite services

The company's suite of mobile satellite technologies enable remote connectivity via satellite phones, satellite data modems, personnel and asset trackers, docking kits, machine to machine data terminals and specialist maritime communication devices. These mobile services are complemented by a range of fixed VSAT satellite services.

Pivotel's 4G LTE mobile network solution, ecoSphere®, extends its carrier network to deliver complementary terrestrial wireless services to rural and remote Australians. Using our innovative off-grid ecoCell™ base station technology and network architecture, ecoSphere® can cost effectively delivery wide area mobile broadband and IoT coverage to remote communities, transport corridors, mining, agriculture and pastoral properties using satellite or terrestrial backhaul complemented by our satellite high-speed data and IoT services.

Pivotel has over 130 staff and has Australian offices located in the Gold Coast, Sydney, Dubbo and Perth in addition to a number of overseas locations. In regional Australia, Pivotel supports over 160 dealers and 50 value added resellers.

2. Pivotel's Detailed Comments

Pivotel Response to the DoITR&C 'Questions for consideration'

Question 1

Given the established administrative practice of ACMA preparing the Five-Year Spectrum Outlook on an annual basis, does the proposed legislative ACMA annual work program provide stakeholders any additional benefit in terms of certainty and transparency?

Pivotel's view is that the ACMA five-year spectrum outlook (FYSO) process provides a good general mechanism to engage with industry and seek feedback on upcoming work programs. It is imperative that the industry continues to have an opportunity to provide feedback and help shape areas of focus for the ACMA's work program in both the immediate term (12 months) and longer term (5 years). Equally important is the need to retain the ability for individual spectrum users to engage directly with the ACMA regarding their specific requirements for spectrum access.

The proposed legislative annual work program appears to seek to retain and build on the existing FYSO process and Pivotel is supportive of this approach. Having further visibility of the detailed work program for the upcoming financial year and plans over a five-year time frame where the ACMA is required to consult with government, industry, and other stakeholder groups prior to finalising its work program are welcome clarifications and adjustments.

With regard to the annual work program, and as stated in the consultation paper, Pivotel considers the FYSO to be one of the key drivers. However, we consider that the ACMA should also report annually on how and why it has reached its decisions and be able to demonstrate that it has followed the five 'Principles for spectrum management'¹ in so doing. This would provide transparency and help meet the objective "*that work programs will be consistent with, and guided by, Ministerial policy statements*" and because the interpretation of some principles appears subjective.

Question 2

Under the reforms, there will be several legislative mechanisms to provide transparency, clarity and, potentially, review rights to existing licence holders where ACMA is seeking to re-allocate spectrum (such as the annual work program and licence renewal statements). In these circumstances, does the spectrum re-allocation declaration process continue to be of use to stakeholders?

Pivotel is broadly supportive of the need to increase flexibility and autonomy with respect to spectrum allocation and re-allocation and further simplifying the process for allocating unencumbered spectrum by removing the prescription related to designation notices and conversion processes from the Act.

Pivotel is also very supportive of the proposal to remove the general prohibition on the ACMA issuing apparatus licences in the same bands of frequency in which it is able to issue spectrum licences,

¹ <https://www.acma.gov.au/sites/default/files/2019-10/Principles%20for%20spectrum%20management%20-%20202009.PDF>

providing the ACMA with *“the discretion to license parts of the spectrum by spectrum licence, apparatus licence, or a combination of both”*.

This is a critically important evolution as recently highlighted in Pivotel’s submission to the ACMA’s consultation paper on the proposed re-allocation of 850/900MHz spectrum. Pivotel advocates for a combination of spectrum licence for more populous and high traffic areas combined with apparatus licensing for regional and remote Australia, as opposed to a blanket national spectrum licence approach. Pivotel’s view is that a more dynamic and flexible approach is necessary to recognise the different needs and characteristics of Australia’s unique and geographically dispersed population.

As such Pivotel is supportive of the removal of the prohibition preventing *“bands from becoming locked into spectrum licensing, which currently removes flexibility and limits ACMA’s discretion to make licensing decisions as circumstances change”*.

To provide some additional context, Pivotel’s proposal for 850/900MHz reallocation would see spectrum licences focussed on areas where there is existing mobile coverage, that is where incumbent operators have generated value from their spectrum holdings and have effectively ceased extending their coverage without some form of government subsidy. Areas outside of these spectrum licences therefore would be open to existing incumbents and other smaller providers to deliver more targeted and innovative approaches, which are required to service these low population density areas and more unique locations. Further, it should be noted that irrespective of the proposed reallocation, the incumbent operators will retain existing Australia-wide allocations in the 700MHz and 800 MHz bands for the next ten years, and therefore the proposed approach would not limit their ability to service these areas should they wish to do so.

This approach would still meet the objective protecting incumbent licensees’ right to unencumbered spectrum, however the ACMA would have to be flexible and open to issuing apparatus licences in parts of the reallocated spectrum, currently proposed by the ACMA to be allocated using spectrum licences.

Pivotel is supportive of the proposal to *“empower (the) ACMA to become the decision-maker for re-allocation processes. This means that ACMA would have the power to issue, vary and revoke spectrum re-allocation declarations, after conducting consultation as appropriate and reasonably practicable, and informed by policy guidance from the Minister”*. It is crucial that relevant stakeholder feedback is sought and considered to ensure the most efficient and optimal re-allocation of spectrum and ensure adherence with the fundamental principle of allocating spectrum to the highest value use (HVV). The determination of the HVV for a range of spectrum requires a flexible and dynamic approach that reflects the usage and application across all geographies and types of users.

Pivotel has no specific issues with spectrum and apparatus licence terms of up to 20 years on the basis that this does not become the default, and there is an ability to adjust timeframes dependent on specific circumstances and use. This approach is foreshadowed in the consultation paper where *“The length of particular licences will be informed by a range of factors, such as the licence purpose, technology and investment cycles, and long-term spectrum planning requirements”*.

As a result of these extended licence terms, Pivotel would like to ensure there are adequate protections against 'spectrum hoarding / squatting' to avoid spectrum being held but not utilised. For example, where a licence holder has been issued with spectrum, but evidence shows that it has not been used or planned to be used, the ACMA should have a discretion to review the licence with the ability to withdraw and re-allocate spectrum where appropriate.

Pivotel is supportive of the provision of renewal statements which should *"provide greater clarity for licence holders around timeframes and the prospect of renewal, as well as helping ACMA consider and communicate its expectations or requirements early on"*.

Similarly, Pivotel is supportive of the application of the *"public interest test (which) will now apply to the issuing of both further apparatus licences and further spectrum licences, where the further licence is for a period of 10 years or more. This means that ACMA cannot issue this further licence unless it is satisfied that it is in the public interest to do so. The public interest test is designed to ensure that spectrum is being used efficiently, by preventing it being locked up in uses that are no longer the highest-value use."* Whilst the public interest test is somewhat of a subjective test it is an important over riding test that should consistently be applied to ensure spectrum continues to meet the HVU principle.

Question 3

The reforms are intended to permit ACMA to facilitate the development and testing of banned devices in Australia through the exemptions framework provided for in relation to the revised Part 4.1 of the Act, while still protecting existing licence holders from interference. Do the proposed exemption provisions achieve this aim?

No comment.

Question 4

The reforms introduce graduated compliance mechanisms for ACMA to regulate and enforce the provisions of the Act. Are ACMA's proposed powers appropriate and are there any additional regulatory tools that stakeholders would like to see be made available to ACMA to perform its spectrum management functions?

Pivotel is supportive of the graduated compliance mechanisms proposed in the consultation paper which seek to *"introduce a greater range of graduated enforcement mechanisms that will allow ACMA to respond to breaches in proportionate and targeted ways, meaning that minor breaches can be dealt with more quickly and efficiently"* and which *"include remedial directions, forfeiture notices and public warning notices"*.

Pivotel views this as a common-sense approach, the mechanisms for which could also be applied to other prospective enforcement mechanisms such as the prevention of spectrum hoarding referred to earlier.

Question 5

Are there any additional transitional matters or grandfathering of processes that should be considered? For example, do you consider that any additional existing processes or provisions should be retained for current licences, with the new provisions only applying to licences issued after the reforms commence?

Pivotel recognises the need to effect the transition to new arrangements in a manner that is cognisant of the disruption and additional costs that would impact existing licence holders. However, we do not consider that a blanket grandfathering of processes would be necessary or desirable, as this could introduce unnecessary delays in transitioning to new arrangements, potentially negating the benefits sought by streamlining the spectrum allocation and re-allocation processes.

Question 6

Are there any additional reforms the Department should consider as part of the proposed amendments to the Act, or that should be considered further as part of future reforms to the spectrum management framework?

As described in our response to Question 1, Pivotel considers that the Department should have an obligation to periodically review the ACMA's activities to ensure compliance with the principles for spectrum management, together with any policy statements or directives issued by the Minister.

For any questions in relation to this submission please contact:

Gary Bhomer
Government and Industry Liaison

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Pivotel is looking forward to working collaboratively with the Department and discussing the contents of our submission at your earliest convenience.

Yours sincerely

Pivotel Group Pty Limited