

28 November 2017

Eleanor Kay

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Spectrum Licensing Policy Section
Spectrum Management Policy Branch
Australian Communications and Media Authority
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Dear Eleanor,

RE: RE: Draft spectrum reallocation recommendation for the 3.6 GHz band

The Communications Alliance Satellite Service Working Group (SSWG) welcomes the opportunity to provide this response to the Draft spectrum reallocation recommendation for the 3.6 GHz band - Metropolitan and regional areas of Australia Discussion Paper released in October by the Australian Communications and Media Authority (the ACMA).

Recognising that the Discussion Paper is primarily focused on the technical, licensing and auctioning aspects for the reallocation of the 3.6 GHz band, the SSWG wishes to contribute the following observations of specific interest to the satellite services community, acknowledging that further work is still required to be carried out in detailed suitability studies for this band, including site coordination and interference.

The SSWG strongly recommends that the ACMA initiates as much industry involvement as possible in both the technical radio features and networking needs of the zones, together with flexibility for negotiations between incumbents and incoming licensees over use of the spectrum.

Earth Station Protection Zones

The SSWG supports the principle of Earth Station Protection Zones (ESPZ) as described on page 14 of the Discussion Paper.

The SSWG believes that, in conjunction with the identification of the one or more ESPZ(s), a strategy for ongoing protection of these zones needs to be developed. The SSWG also believes that such a strategy must not be limited to the 3.6 to 3.7 GHz band or even the 3.4 to 4.2 GHz band, but needs to also consider future usage of satellite bands up to 86 GHz from that site in a manner similar to what has been adopted for Mingenew in Western Australia. Thus a piecemeal solution to the problem is less valuable than one with greater foresight.

At this time the SSWG considers that the areas around Quirindi, Moree and Roma should remain excised from the spectrum re-allocation until detailed studies determine the best location for such a zone, or whether two or even all three zones should remain excised. The ITU-R S.2368-0 Report provides some useful information for starting such work in the 3.4 to 4.2 GHz band. Work currently underway in ITU-R TG 5/1 supporting IMT identification in various bands (many of which have satellite allocations) up to 86 GHz, may also provide useful information on sharing requirements for these higher frequencies. In addition to these sites,

the SSWG believes that the ACMA should engage closely with industry on the site selection process that might identify other more suitable locations for ESPZ.

These studies are unlikely to be completed before this re-allocation process is completed. The SSWG is willing to track and input into any ACMA work on this matter as required.

At this time, the SSWG supports the possible excise areas detailed in Attachment D and shown graphically in Figure 13. The SSWG acknowledges that depending upon studies; these areas might need to be slightly modified to ensure adequate protection to future Earth Stations across a number of frequency bands.

The SSWG also takes this opportunity to remind the ACMA of its proposal in its input to previous papers i.e. to consider an Earth Station Protection Zone in Northern Australia and observes that the current 3.6 GHz re-allocation area does not impinge on that location.

With regards to the decision concerning Uralla, the SSWG is persuaded by the submission from Lockheed Martin to the Review and supports the position taken by the ACMA.

Reallocation period

With respect to the seven-year reallocation period proposed for regional areas (Area C), the SSWG suggests that if it is decided that certain zones are not considered suitable for protection after detailed studies, then these zones can sunset and revert to be included in Area C of the 3.6 GHz re-allocation.

Proposed area locations

The SSWG believes that the locations proposed by the ACMA need further investigation from both an economic and an engineering sense. The sites need to be near trunk fibre infrastructure to minimise the backhaul costs and network interactions necessary. The SSWG also suggests that a location on a flat plain relying on distance and earth curvature for protection needs further consideration to investigate the most appropriate viability and natural shielding that can be invoked.

Compensation for Re-location

Unlike other jurisdictions such as within the CEPT and North America, Australia has yet to successfully develop an approach to compensation for re-allocation and re-location. Historically this has been overlooked by the ACMA, with the implication that this is outside the scope of the ACMA's responsibilities.

However, it is not outside the mandate of the Minister and the attention of the Department. In the recent legislative development series of papers, DOCA has given its attention to the case for Government-owned spectrum compensation where re-allocation and re-location is involved. It is also considering the commercial sector and the implications of the 3.6 GHz review as a test precedent.

Given that the future program of bands for re-consideration for Mobile Broadband is looking quite extensive, re-location is set to be a growing issue. If a suitable solution to compensation is found going forward then the whole equation of spectrum management will be significantly affected.

The ACMA premise of economic outcomes of spectrum going to the highest value use (or users) should pave the way for a minor amount of that high value to be allocated to help meet the costs imposed on incumbents. For the incumbents, this seems to amount to paying

for locational costs a second time around and effectively subsidising the MBB industry at no cost to them. This is the result of an economic policy apparently favoured by the regulator, which is credible but lacks a genuinely balanced approach to competing interests.

The SSWG notes that a strong precedent has been set for compensation for spectrum clearance whereby the National and commercial FTA broadcasters were allocated in the 2012-2013 federal budget; \$143.2M over five years 'to support the process of restacking of television broadcasting services to new channels to release a digital dividend of 700 MHz spectrum' and \$53.5M over four years 'to assist with the purchase and deployment of electronic news gathering equipment to assist them to operate in alternative spectrum bands to clear for release the 2.5 GHz spectrum band'. Not only were these budget allocations made to compensate for the equipment required for the digital dividend band clearance but also a broadcast licence fee rebate was made to further compensate the broadcasters.

The SSWG recommends that the ACMA should give serious thought to compensation and the benefits which this would bring to its strategy implementation in MBB. High level interaction with the Department and the Minister would be most appropriate.

Communications Alliance has been closely involved previously in issues concerning regulatory burden and appropriate compensation from Government to industry. In the case of the Government's mandatory two-year data retention regime, for example, the Government provided \$128 million in industry grants to partially compensate carriage service providers for the cost of compliance.

We are interested, therefore, in understanding what the ACMA sees as the principles around potential requirements for compensation for re-allocation and re-location – and would welcome your advice on this.

Mechanics of the proposed Written Notice

The text explaining the re-allocation period and the re-allocation deadline could be better articulated. The draft Notice is, however, clear and establishes that the re-allocation deadline for each of Areas A, B and C is that pertaining to the first re-allocation deadline occurring in time (which is Area A). This gives additional time (in Areas B and C) after an auction for commercial negotiations to allow industry to come to amicable terms without regulatory intervention.

The ability to involve industry negotiations could be more strongly expressed – including the period beyond the re-allocation period. The ACMA needs to give industry greater flexibility in determining its own commercial priorities and spectrum solutions.

Terminology seems to be getting in the way of clear expression. The 'Re-allocation period' refers to incumbents – this is quite fine. However, the 'Re-allocation deadline' belongs to the auction process and the incoming provider, and seems to be a misnomer when it really means the deadline for the first licence granted in an area to an incoming licensee. Double-use of the word 're-allocation' seems to be the case here.

The SSWG also considers that a different auction methodology might both return the true highest value use of the band while compensating incumbents that are forced to move. The SSWG therefore requests the ACMA investigate the various auction methodologies open to it rather than simply selecting the process that has been used for the past two decades.

Reflections on the Proposed Auction Process

Considering the position of satellite incumbents in the 3.6 GHz process, it would seem a reasonable consideration to define a sub-lot or sub-lots of the auction offering where those sub-lots correspond to zones around the satellite incumbent facilities. In this way satellite incumbents would also be able to participate in the auction process. It is noted that Telstra and Optus do not support the proposal to introduce sub-lots.

Clearly, the full cost of re-location would determine the amount which a satellite incumbent would likely be prepared to bid. And with regard to the interests of other new MBB services, commercial negotiation would be available, except that the onus in this case is reversed. This would seem to satisfy the ACMA objectives of spectrum being applied to the highest value use, whilst giving industry the opportunity to negotiate.

Thank you for your consideration of this submission. If you have any questions with regards to this response, please contact Mike Johns on (02) 9959 9125.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Stanton', with a long, sweeping horizontal stroke extending to the left.

John Stanton
Chief Executive Officer