

# **AUSTAR United Communications Limited**

**Submission to  
Australian Communications and Media Authority**

**Review of the 2.5 GHz Band and Long-Term  
Arrangements for Electronic News Gathering (ENG)**

**IFC 01/2010**



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## **A. INTRODUCTION**

AUSTAR welcomes the opportunity to respond to the Australian Communications and Media Authority (**ACMA**)'s issues for comment paper, "Review of the 2.5 GHz band and long-term arrangements for electronic news gathering (**ENG**)" (**Paper**).

AUSTAR United Communications Limited (**AUSTAR**) is one of regional Australia's leading subscription television providers, with more than 740,000 customers, or over 2.3 million regional Australians, enjoying our digital television service. Internet and mobile telephony complete AUSTAR's regional product offering. Additionally, AUSTAR holds the 2.3GHz and 3.4-3.5GHz spectrum licenses across most of its regional market footprint. Information about AUSTAR's spectrum and broadband activities can be found in Appendix A.

## **B. EXECUTIVE SUMMARY**

AUSTAR supports the principle of efficient spectrum management and recognises the value that efficient spectrum use can contribute to the Australian economy and its productivity. We acknowledge the value of spectrum as a scarce resource and the need for ACMA to ensure its efficient allocation and use into the future. However, other considerations must be considered by Government when analysing future efficient spectrum allocation including policy objectives (such as broader social benefits) and the need to ensure that existing ENG users, which includes some of our subscription television channel providers (directly and indirectly), are appropriately resourced and given certainty for their future needs.

AUSTAR has not commented in detail on the requirements for ENG operators or the suitability of the alternative band options for ENG in Chapter 4, however AUSTAR supports the submission made by Premier Media Group Pty Limited in regard to its future ENG requirements.

We note that the ACMA has identified four broad options for the future management of the 2.5GHz band. AUSTAR suggests that if there is to be a change to the current status quo of the 2.5GHz band arrangement and spectrum in this band is to be re-allocated or re-planned, then we support implementation of Option 4 with re-allocation of the band and the issue of spectrum licences. We believe the issue of spectrum licenses via an open price-based allocation process will allow the market to determine the highest value use for the 2.5GHz band.

We note that the ACMA's preferred policy outcomes at Chapter 5 of the Paper recommend combining conversion and re-allocation (ie conversion of the mid-band gap to spectrum licensing for ENG operators; and re-allocation of the remainder of the 2.5 GHz band to spectrum licensing for WAS). AUSTAR would support retention of the "mid-band gap" for ENG on a national basis, whilst re-allocating the 2 X 70MHz of paired spectrum (140 MHz total) via technology-agnostic spectrum licences, however we disagree with the ACMA's recommendations in two key areas:

1. Any re-allocation of the 140MHz of paired spectrum in the 2.5 GHz band via spectrum licences should be based on a **national licence** approach to ensure regional Australia does not continue to be disadvantaged and under- invested relative to metropolitan areas. We disagree with the ACMA's proposed band segmentation model based on a geographic split between metropolitan, regional and remote, as set out at Table 8 of Chapter 5.
2. The licensing of the mid-band gap should be retained for ENG however the current licences should not be converted to spectrum licences. The mid-band gap should be re-allocated through apparatus licences (linked specifically to ENG services) and via an administrative process open to all potential ENG operators (ie not just the current ENG incumbents, specifically the three commercial free-to-air broadcasters plus the ABC).

In addition to our key comments above, we note ACMA's comments in Chapter 4 of the Paper relating to the current licensees of the 2.3 GHz band and the band's relevance as an adjacent band to the potential use of the 2200 – 2300 band for ENG. AUSTAR is the current license holder of 98MHz of the 2.3GHz spectrum band across its market of regional Australia. We are deeply concerned at the apparent dismissal of interference issues with 2.3GHz license holders such as AUSTAR, and request that ACMA undertake an appropriate interference analysis to ensure appropriate measures are undertaken to limit, or compensate, the incumbent 2.3GHz licence holders should interference be a realistic concern .

### **C. NATIONAL LICENCE APPROACH TO THE RE-ALLOCATION OF 2.5 GHZ**

We note the ACMA's recommendation that a combined conversion and re-allocation approach be adopted based on the CEPT model for band segmentation. AUSTAR supports this approach in principle as highlighted in the Executive Summary above. However, AUSTAR disagrees with the ACMA's approach to the geographic split based on the outline in Figure 6 of Chapter 3, and the band segmentation options set out at Table 4 and Table 5 of Chapter 3.

The ACMA considers whether a national licence option might be appropriate on the basis of one national licence of 2 X 20 MHz of paired spectrum for WAS throughout Australia. AUSTAR contends that a national licence approach should be adopted for the entire 2 X 70MHz of paired spectrum to be re-allocated via spectrum licensing for WAS. Adopting a different approach to the licensing of the paired spectrum in the 2.5GHz band in metropolitan, regional and remote Australia will merely reinforce and exaggerate the digital divide facing regional and remote Australia today. If the highest value use for this paired spectrum in metropolitan areas is for IMT based WAS, then potential licensees should be encouraged to acquire and utilise this spectrum for the same purposes in regional and remote Australia. There are good public policy reasons for adopting this approach.

One of the reasons cited by ACMA for adopting separate apparatus licensing arrangements in regional and remote areas of Australia is that it would promote a Government policy objective of ensuring access to spectrum in these areas to provide localised broadband wireless services by regional ISPs. As AUSTAR has previously argued, we strongly believe that this policy objective must be weighed against equally important Government objectives of longevity and sustainability.

Scalability is an essential element to establish a viable business case beyond government support. To encourage localised WAS providers, who are unlikely to have sufficient access to capital to provide sustainable broadband solutions, will not deliver on the Government's objective to realise a robust and interoperable broadband infrastructure throughout Australia. The Government's continued support for this policy is further complicated by the Government's National Broadband Network (**NBN**) plans. The likelihood of localised access networks surviving once the NBN Co access network is rolled out is minimal due to the lack of scale and investment available to local providers compared to NBN Co.

In addition and as ACMA notes, there is already sufficient spectrum available in these areas through the recent release of apparatus licences in the 3.6GHz band. This is in addition to the potential availability of spectrum in AUSTAR's licensed bands of 2.3GHz and 3.5GHz, subject to commercial agreement.

#### **D. LICENSING OF MID-BAND GAP**

We agree with the ACMA that re-allocation of the entire 190MHz of bandwidth available in the 2.5GHz band as spectrum licences issued via a price-based allocation process would not provide sufficient certainty or clarity for ENG operators who would have to be successful in the re-allocation process to retain access. We therefore support the retention of the mid-band gap of 50MHz for ENG operations however we do not support the ACMA's recommendation that ENG access to the mid-band gap be retained via issuing new apparatus licences to the current incumbents and converting these licences to spectrum licences.

Firstly, the ACMA should make available licences to both the incumbents and any other interested parties for ENG purposes— we see no justification for issuing licences only to the current ENG incumbents.

Secondly, we do not support, and see no policy or spectrum principle justification for, converting these apparatus licences to spectrum licences and enabling ENG operators to trade them for other uses. We acknowledge that current users of the band for ENG (including users who are not currently licensed, such as certain of our subscription television channel providers, eg FOX SPORTS) do require some certainty if they are to be granted ongoing rights to the mid-band gap for ENG purposes. However we believe that Government policy and future ACMA planning activities can recognise this

tenure in the mid-band gap, and give suitable assurances to ENG operators. Security of tenure in itself does not justify the issue of spectrum licences, which would enable the current incumbents to unfairly benefit from the additional advantages obtained under spectrum licensing, for example the ability to trade the licence for alternative uses. As an IMT identified band, the 2.5 GHz spectrum in the mid-band gap will be valuable. The commercial and national FTAs have a history of benefiting from protections and subsidies provided to them by the Federal Government, for example the loaning of spectrum at no additional cost to enable digital television simulcasting; Federal Government funding of a digital satellite broadcasting service for digital television black-spots; and the recently announced provision of licence fee rebates for no additional obligations for 2010 and 2011. FTA broadcasters should not be entitled to benefit from the additional commercial advantages available under a spectrum licensing framework merely due to the fact that they have historically held apparatus licences in the 2.5GHz band.

#### **E. COMMENTARY ON 2.3 GHZ SPECTRUM LICENCES**

In section 4.2 of the discussion paper, the ACMA refers to 2.3 GHz spectrum licenses under the heading “Adjacent-band wireless Access Services”. AUSTAR is the current license holder of 98MHz of the 2.3GHz spectrum band, across its market of regional Australia.

Section 4.2 makes reference to two points that are of particular concern to AUSTAR:

1. That “the technical framework of the 2.3GHz band could be revised with minimal or no impact on existing services”; and
2. That the “registered ENG receivers would be protected from any 2.3 GHz base station transmitters...as a result of the ‘first in time’ principle”.

We are deeply concerned at the apparent dismissal of interference with 2.3GHz license holders such as AUSTAR being an issue for ENG operators. AUSTAR, as laid out in Appendix A, has made several attempts to deploy a national broadband network in this band over the past ten years, but each attempt has been arrested by Federal Government intervention in the form of national broadband network programs, or by prevailing external market conditions.

AUSTAR believes that the 2.3GHz band is a critical element of the Government’s plans for the wireless component of the NBN in regional and remote Australia. In the meantime, AUSTAR has deployed two test markets for a wireless broadband product in Wagga Wagga and Tamworth; has entered into commercial arrangements with a Victorian energy company, SP Ausnet; and is in talks with other organisations across regional Australia about other possible smart grid and other such deployments. Furthermore, AUSTAR is planning a 4G wireless technical trial in collaboration with various technology partners in several locations within our spectrum footprint.

The license holder of the 2.3GHz band in metropolitan markets, Vividwireless, has meanwhile launched services in the 2.3GHz band in Perth and is commencing its network build in other capital cities.

The assumption that ENG receivers will be deployed before any devices are deployed in the 2.3GHz band, and that the technical framework of the 2.3GHz band could be expected to be revised ignore the activity that is taking place currently and future activity planned for the 2.3GHz band including potential use by the NBN. We would expect that any interference issues be managed appropriately with respect to pre-existing license holders and device registrations. The assumptions made by the ACMA both with regard to amending the current 2.3 GHz licences, and with regard to the extent of 2.3GHz device deployment by the time ENG receivers are deployed, are concerning. These assumptions may adversely impact the value of our current licences. As highlighted in Appendix A, AUSTAR invested \$183 million to obtain the 2.3 GHz licences in 2000.

## F. CONCLUSION

AUSTAR recommends the following approach:

1. If the status quo is to be changed, then option 4 should be adopted for the 2X70 MHz of paired spectrum identified by ACMA for IMT purposes.
2. The 2 X 70 MHz of paired spectrum should be allocated via a price-based allocation process and spectrum licences be issued for the entire bandwidth on a **national** basis.
3. The ACMA should reserve part of the 2.5GHz band (50MHz mid-band gap) for ENG operations.
4. The ACMA should re-allocate **apparatus** licences in the mid-band gap for ENG purposes to ENG operators via a price-based administrative process enabling access to licences by other ENG interested parties not just the current ENG incumbents. These apparatus licences should not be converted to spectrum licences.
5. ACMA should ensure that future allocations of spectrum for ENG in alternative bands be offered on an open basis to all ENG interested parties not just the current incumbents.
6. Any changes to the conditions and/or technical framework of AUSTAR's current 2.3 GHz licences must be done in consultation with AUSTAR, and where any changes to the lower adjacent out of band emission limits are likely to have an adverse impact on the usable amount of spectrum under our licences, we must be appropriately compensated.

We would be happy to discuss or provide more detailed information on any of the issues raised in this submission.

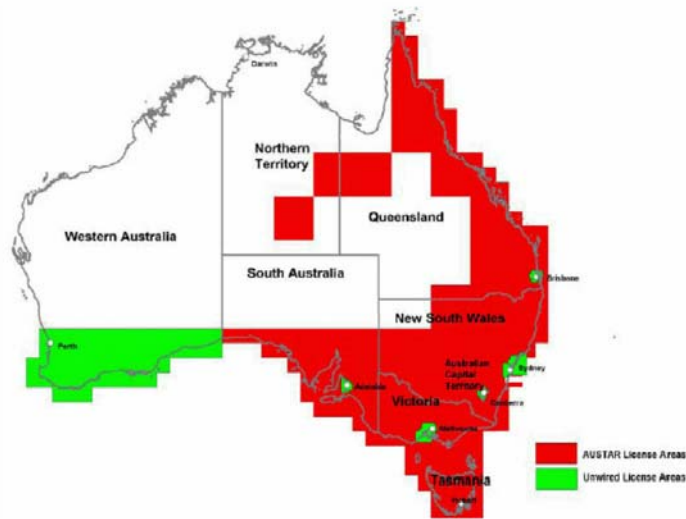
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## APPENDIX A

### AUSTAR's Broadband History

AUSTAR invested A\$183 million in 2000 to obtain spectrum licences covering 98Mhz of contiguous spectrum in the 2.3GHz band and, following a spectrum swap with Unwired in 2005, obtained 65Mhz in the 3.4-5Ghz band to consolidate the internationally recognised WiMAX spectrum licences into areas which broadly match its regional subscription TV coverage footprint as illustrated in figure 1.



**Figure 1: AUSTAR's Spectrum Holding**

AUSTAR's investment in spectrum was based on a strong view that our television customers would value the ability to purchase and bundle multiple products with AUSTAR, given our best-in-class customer service facilities and packaging capabilities. Although technology and market developments at the time prevented further investment, AUSTAR retained its interest in investing in a broadband solution, and in 2004-05, at the recovery of the business, began planning its own network. The following timeline demonstrates our history:

- In early 2006, AUSTAR commenced a phased roll out of wireless broadband services to 26 regional markets, launching services in Wagga Wagga and Tamworth.
- The Broadband Connect Infrastructure Program was announced and AUSTAR suspended its deployment in order to coordinate further investment with a broader solution.

- In 2006 AUSTAR established the *AUSalliance* consortium with Unwired and SOUL and presented a regional broadband solution which blended fibre, WiMAX and ADSL2+ access technologies.
- In 2007 the Broadband Connect program was awarded to OPEL.
- In 2007 AUSTAR entered into a spectrum sale agreement to facilitate OPEL's technology neutral approach to ensure that regional Australians would be provided efficient broadband access using a combination of fibre, DSL and WiMAX
- In 2008 the OPEL contract was terminated

We continue to believe that it is critical that the Australian government ensure rapid outcomes for consumers in regional Australia as part of any NBN network build.