



Submission in response to
ACMA Consultation Paper

**Implementation of
proposed changes to
apparatus licence pricing**

September 2023

RESPONSES TO ACMA CONSULTATION PAPER

1. Optus welcomes the opportunity to provide feedback to the Australian Communication and Media Authority's (ACMA) Consultation paper *Implementation of proposed changes to apparatus licence pricing – August 2023* (the Consultation Paper).
2. This consultation follows the ACMA's March 2023 consultation on apparatus licence pricing reform proposals including:
 - (a) A decrease in the tax rate for television outside broadcasting network (TOBN) licences
 - (b) Making annual adjustments to apparatus licence tax based on changes in population rather than inflation.
 - (c) Proposing to develop a work program to consider a range of interference protection pricing measures and changes to the application of the low- or micro-power discounts.
3. This Consultation Paper outlines the outcomes from the March consultation and seeks further feedback on the application of the proposed adjustments to apparatus licence tax rates, including the proposed amendments to the relevant tax determinations.¹
4. Optus is generally supportive of the ACMA's approach as set out in the Consultation Paper. Optus agrees with the ACMA that effective pricing structures can be used to incentivise efficient use of spectrum, in accordance with the legislative objectives of the Radiocommunications Act.²
5. However, Optus submits that the efficiency gains of potentially greater spectrum utilisation may be illusory to the extent that a proliferation of new devices, particularly those operating on a lower protection basis, leads to an increasingly complex spectrum management environment. This in turn means an increased risk of interference to existing licensees, and increased costs to manage that interference, adding to the overall costs of deploying networks essential to Australia's digital future.
6. It is in this context that Optus urges caution in relation to the ACMA's ongoing review of tax rates for apparatus licensed services below 5 GHz.³ While reductions in the taxation arrangements for certain services operating below 5 GHz may be justified in certain instances, the impact on incumbent WA WBB services of any resultant proliferation of apparatus licensed services below 5 GHz must be demonstrably in the public interest.
7. Optus refers the ACMA to the Australian Mobile Telecommunications Association (AMTA) submission in response to the Consultation Paper. Optus generally supports the position set out in the AMTA submission, other than to the extent that they may differ to the comments below.

¹ *Radiocommunications (Transmitter Licence Tax) Determination 2015* and the *Radiocommunications (Receiver Licence Tax) Determination 2015*

² Section 3

³ Consultation Paper, p.5 and Draft FYSO 2023-28, p.73

Proposed adjustments to apparatus licence tax rates

Issue for comment 1 – Do you have any comments on the proposed update to apparatus licence taxes in reference to changes in geography-specific population as outlined in Table 1 and Appendix A?

8. Optus continues to support the ACMA's proposal to update annual apparatus licence tax rates based on population growth specific to density areas, instead of CPI. Once implemented, Optus considers that tax adjustments will better reflect demand for spectrum in a particular area and as such should promote efficiency.
9. The ACMA's proposed use of the ABS dataset 'Population estimates by significant urban areas' (SUAs) should help ensure that the apparatus licence tax better reflects demand for spectrum in a specific area, which in turn should help promote efficient use of spectrum. We welcome the ACMA's explanation of how it will use the 110 SUAs to track population growth and then calculate annual adjustments to the apparatus licence tax based on changes to the normalisation factor.⁴
10. Overall, Optus considers that the proposed approach will result in greater consistency in the annual apparatus licence tax levied. That said, and as indicated in the Consultation Paper, potential changes to SUA figures in the ABS dataset, does introduce a degree of unpredictability into the calculation of the tax. Optus previously highlighted that there may be instances in which high density areas may be disproportionately affected by such changes.⁵ In this context, we note the ACMA's statement in the Consultation Paper that where SUAs are changed, or the populations rebased, the ACMA "expect similar population growth rates to the ABS estimates even if the original estimated population is different to the observed population".⁶
11. Ultimately, Optus acknowledges that annual increases in population are on average lower than the CPI and we support the ACMA's approach. Optus suggest the adjustment to the annual tax be aligned with the publication of the Apparatus Licence Tax Schedule around April each year. This would appear to be consistent with the ACMA's proposal to adopt the ABS 20 April 2023 dataset as the reference point for its annual adjustments.⁷

General comments on the outcomes of the March consultation

12. Optus raised concerns about the ACMA's proposed use of "interference based" pricing in response to the ACMA's March consultation.⁸ Based on stakeholder feedback, the ACMA appears to have decided not to pursue this proposal at this time. That said, the ACMA states that it intends to preserve the option of using interference protection pricing in the future, where the ACMA considers "it appropriate".
13. Optus understands that the underlying objective of this proposal may be to accommodate more bespoke arrangements into the spectrum pricing regime and ultimately to "create incentives for industry to invest in high-performing receivers that allow more efficient use of the spectrum".⁹ Optus does not consider it is clear that such an outcome would follow from the implementation of price signalling mechanisms that offer users the ability to opt for lower levels of protection. Rather than be incentivised to

⁴ As the ACMA explains at p.7 of the Consultation Paper; "the annual adjustments to the normalisation factor for a particular density area will take into account population changes in the SUAs that fall within that density area".

⁵ Optus May 2023 submission, p.3

⁶ Consultation Paper, p.4

⁷ Consultation Paper, p.7

⁸ Optus May 2023 submission, p.4

⁹ Draft FYSO 2023-28, p.73

introduce higher performing receivers, it may simply be that the user is content with lower levels of protection.

14. The effect may also be to promote a proliferation of apparatus licensed services within bands where such reduced prices are offered. This will complicate the interference environment, adding to the resources and costs that existing licensees may need to dedicate to manage this increased interference risk.
15. Optus reiterates that measures that erode the licence rights of spectrum licence holders must be demonstrably in the public interest. In this context, any efficiency benefits from applying this taxation method would need to outweigh the costs to incumbent licensees arising from the increase in the interference risk resulting from a proliferation of “lower protection” apparatus licensed services. Class licence arrangements already exist to cater to users that are willing to deploy on a “no interference, no protection” basis.
16. Further detail is required on the need for and the circumstances in which an interference-based pricing approach for receivers may be “appropriate”. Ideally this would include detail on the manner in which the ACMA may weigh the benefits of such pricing against the costs of potential increase in interference risk to existing licensed services. To this end, Optus welcome the ACMA’s confirmation that it will only implement such proposals as part of “individual planning, licensing or pricing reviews” where stakeholders have been provided with an opportunity to consider the matters in detail.