



AUSTRALIA

Submission by Free TV Australia

ACMA consultation paper:

- **Approach to expiring
spectrum licences**

July 2023

Summary

- Free TV Australia welcomes the opportunity to respond to the Australian Communications and Media Authority (**ACMA**) on its May 2023 consultation paper, 'Approach to expiring spectrum licences'.
- Free TV Australia is the peak industry body for Australia's commercial free-to-air (**FTA**) television broadcasters. Television depends on dedicated access to Television Outside Broadcasting (TOB) spectrum to cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.
- The 2.5 GHz 'mid-band gap' spectrum licences are a special case and raise different public interest issues from other expiring spectrum licences. The licences were allocated to TV networks as part of a holistic, long-term TOB solution that enabled TV services to vacate other parts of the 2.6 GHz band. In recognition of the public interest nature of the allocation, use of the licences was restricted to TOB.
- Similarly, a holistic, viable and sustainable vision for the future of television outside broadcasting and electronic newsgathering should inform any process for settling the future of the 2.5 GHz 'mid-band gap' licences after 2029.
- While the technologies employed for outside broadcasting production are evolving, for the foreseeable future there are no satisfactory or affordable alternatives to TOB. Public telecommunications networks using 4G or 5G technology appear unlikely to replace it, although there have been some tests globally of outside production using private 5G networks and dedicated spectrum.
- In Australia, the future utility of the 2.5 GHz band for TOB is closely linked to future arrangements for the 2 GHz and 2.2 GHz bands. These are currently apparatus licensed to broadcasters under TOB Network apparatus licences, which are renewed annually.
- Rather than 20-year renewal of the 2.5 GHz 'mid-band gap' spectrum licences with full up-front payment, broadcasters may prefer licensing and payment arrangements that are more consistent with those in the related 2 GHz and 2.2 GHz bands.
- End-of-term arrangements for the 2.5 GHz 'mid-band gap' licences should take account of the public interest in a viable, sustainable free-to-air broadcasting sector that is able to bring breaking news and events of national significance into Australian homes as they happen.
- In construing its proposed public interest criterion 5, 'Supports relevant policy objectives,' the ACMA should have regard to the following in the December 2022 Ministerial Statement of Expectations:
 - '... supporting the work to reform the media regulatory framework to support a viable, sustainable and diverse media sector that supports the public interest and meets the needs of Australian audiences.'

2. INTRODUCTION

Free TV Australia is the peak industry body for Australia's commercial free-to-air television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Australia's commercial free-to-air broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

The TV industry employs significant amounts of mid- and high-band spectrum for television outside broadcasting (TOB). Spectrum for TOB is critical to live coverage of breaking news and major sports. It supports the wireless cameras needed for free-to-air coverage of major events and allows TV to create temporary communication channels over long distances, crucial for bringing real-time images of breaking news stories to national audiences, however remote the location.

3. DISCUSSION

3.1 Background to the 2.5 GHz 'mid-band gap' licences

The allocation of the 2.5 GHz 'mid-band gap' spectrum licences to free-to-air TV networks arose from an agreement by which broadcasters obtained assistance from the Commonwealth to move their TOB operations out of other parts of the 2.5 GHz band, to the current bundle of 2, 2.2 and 2.5 GHz mid-band gap frequencies they use today. During this process, part of the spectrum previously apparatus-licensed to TV broadcasters was converted to 15-year spectrum licences.

The price agreed for the 15-year spectrum licences was levied up-front but calculated with reference to the formulas previously applied to TOB Network licences in the 2.5 GHz band. (The same formulas were also applied to the new apparatus-licensed TOB spectrum allocations in 2 GHz and 2.2 GHz.) In recognition of the public interest nature of the new dispensations, the spectrum licences were made subject to a special condition that restricted their use to provision of a television outside broadcast service.

3.2 Future of TOB in 2.5 GHz spectrum

As September 2029 is still several years away, only preliminary observations are possible about the situation after the 2.5 GHz 'mid band gap' spectrum licences expire:

- Current indications are that TOB technology using dedicated spectrum will remain indispensable to TV network operations for the foreseeable future, although the mix of uses of TOB will continue to evolve.
- The 2 GHz, 2.2 GHz and 2.5 GHz bands should be viewed as a package, as current TOB equipment relies on all three bands. 2.5 GHz spectrum provides the back-channel to the news or production team operating in the field. It has the great advantage over other bands of being available for use, including by helicopters, virtually Australia-wide. However, an important corollary is that the future utility of 2.5 GHz spectrum for TOB will depend on continuing access to 2 GHz and 2.2 GHz spectrum.
- TOB technology using dedicated spectrum bands has retained its utility to date and looks set to do so for the foreseeable future, notwithstanding considerable advances in technology since 2014.
- Looking ahead, the global production industry is experimenting with 5G technology for some outside production roles, just as 4G-enabled devices now play a significant role in electronic newsgathering. However, 5G should not be seen as a mature substitute for TOB, nor as synonymous with public 5G networks. Outside TV production requires very high, reliable uplink speeds and contention is a fatal objection to using commercial 5G services in crowded venues.
- ‘Network slicing’ to address this challenge remains a theoretical possibility rather than a practical solution. Even if this were to change in future, price (and, in particular, the high guaranteed uplink speeds TOB requires) may also prove an obstacle. According to a recent report from industry think-tank Digital Production Partnership (DPP), ‘the capability and the business case may not align for slicing public networks’ⁱ. It is noteworthy that trials of outside production using 5G to date have focused on private 5G networks using separate, dedicated spectrum.

In developing its thinking in relation to expiry of the 2.5 GHz ‘mid-band gap’ licences, the ACMA should have regard to the Australian TV and production industries’ ongoing requirement for dedicated spectrum for electronic newsgathering, the inter-relationship of TOB operations using 2 GHz, 2.2 GHz and 2.5 GHz spectrum, and the current lack of any proven and affordable substitutes that are able to match the capabilities of TOB technology using dedicated spectrum.

3.3 The suitability of spectrum licensing for TOB

Spectrum licences have different properties from apparatus licences, not all of which necessarily suit TOB. Similarly, end-of-licence arrangements that suit telecommunications services in relation to other bands, may not suit the TV industry in relation to 2.5 GHz.

On the positive side, spectrum licences confer strong tenure and technological flexibility, though in the case of the 2.5 GHz licences, this is constrained by the special condition on TOB use.

On the negative side, up-front payment for the expected 20-year life of spectrum licences is unlikely to suit TV networks, which currently pay an annual apparatus licence fee for other TOB spectrum. As we expect the value of 2.5 GHz for TOB to depend on continuing access to 2 and 2.2 GHz spectrum, there are arguments for better aligning 2.5 GHz tenure and taxation arrangements with those applicable to 2 GHz and 2.2 GHz. Both bands are currently licensed via multi-band TOB Network apparatus licences and subject to an annual fee.

For these reasons, very long-term renewal of the current 2.5 GHz spectrum licences may not be the preferred outcome for TV licensees. Preferable options might include use of the current TOB Network (apparatus) licences to authorise 2.5 GHz use, or the issue of spectrum licences for shorter periods or for an annualised fee.

3.4 The Proposed Public Interest Criteria

The ACMA's proposed Criterion 5 is 'Supports relevant policy objectives'. The Authority notes that the policy objectives ACMA will have regard to will include those in the December 2022 Statement of Expectations to the ACMA.

In considering which policy objectives are relevant to the expiry of the 2.5 GHz 'mid-band gap' licences, the ACMA should take into account the critical public services free-to-air broadcasting provides that TOB enables. This includes the coverage of live events and breaking news. From the Australian Open to the big bushfires of 2019, Australians expect live, free-to-air coverage of the events that matter to them, and this contributes to the status of commercial (and national) TV as among our most trusted sources of news and information. Relevantly, policy objectives in the December 2022 Statement of Expectations include:

- supporting the work to reform the media regulatory framework to support a viable, sustainable and diverse media sector that supports the public interest and meets the needs of Australian audiences.

Future arrangements for the 2.5 GHz 'mid-band gap' should take account of this objective. Unlike (most) other spectrum licences, the public interest in post-expiry arrangements for these licences should not be solely concerned with the promotion of broadband connectivity across the continent or with the public interest benefits of spectrum moving to its highest value use. They should also take into account the public interest in a viable, sustainable free-to-air broadcasting sector that is able to bring breaking news and events of national significance into Australian homes as they happen. This is not (necessarily) an argument for the renewal, on current terms, of spectrum licences in the 2.5 GHz 'mid-band gap'. But a holistic, viable and sustainable vision for the future of television outside broadcasting and electronic newsgathering needs to inform any process for settling the long-term future of the 2.5 GHz 'mid-band gap'.

3.5 Response to ACMA's 'Issues for Comment'

1. What are your views on the proposed public interest criteria? Are there other criteria we should consider?

Free TV's comments at 3.4 relate. In considering the public interest in relation to end-of-licence arrangements for the 2.5 GHz 'mid-band gap' licences, the ACMA should take account of the government's public interest objectives that are of particular relevance to media regulation. This includes the viability, sustainability and diversity of Australia's media sector and its capacity to support the public interest and meet the needs of Australian audiences for high quality, real-time coverage of news and major events.

2. What are your views on the proposed 4-stage approach to undertaking the ESL process?

Free TV has no comment at this stage.

3. Are there any band-specific issues that we should consider as part of this ESL process?

As set out at 3.1 to 3.3 of this submission, the 2.5 GHz ‘mid-band gap’ raises quite different issues from the majority of other spectrum licences, which are principally used for wireless broadband. Unlike the situation with other spectrum licence holders, renewal of licences for a full, 20 year term, with upfront payment, may not be optimal for TOB operators, whose future requirements for 2.5 GHz spectrum are closely linked to future access to 2 GHz and 2.2 GHz spectrum.

In considering end-of-term arrangements for the 2.5 GHz ‘mid-band gap’ licences, the ACMA’s approach needs to be informed by a holistic, viable and sustainable vision for the future of television outside broadcasting and electronic newsgathering.

4. Are there any other matters that we should consider in connection with the ESL process?

For the reasons given at 3.2, above, the future of TOB operations in 2 GHz and 2.2 GHz spectrum is relevant to future TOB requirements for 2.5 GHz ‘mid-band gap’ spectrum.

5. What are your views on the proposed approaches to valuing the spectrum and payment arrangements?

The ACMA paper recognises that 2.5 GHz ‘mid-band’ gap’ spectrum licences raise different and unique issues compared to most other spectrum licences, citing the historical limitation on the use of the licences.

It should also be remembered that price paid on creation of the 2.5 GHz ‘mid-band gap’ licences was based on what broadcasters previously paid for apparatus licences to use the same and other 2.5 GHz spectrum for TOB. The same pricing approach was applied to the ‘new’ TOB spectrum bands at 2 GHz and 2.2 GHz. The government did not, for example, attempt to ‘price in’ the potential utility of the 2.5 GHz ‘mid-band gap’ spectrum for other possible uses (e.g. TDD wireless broadband, for which the spectrum was internationally harmonised), and the ACMA limited the potential uses of the licences to TOB. Whether or not this should be viewed as a form of public interest pricing, similar approaches would be appropriate if the ACMA concludes that the spectrum is required for TOB operations after September 2029.

Free TV’s comments at 3.3, above, are relevant to the issue of future payment arrangements for 2.5 GHz ‘mid-band gap’ spectrum.

6. What are your views on the proposed approach to examining use under existing spectrum licences?

The ACMA's examination of use needs to take account of the particular use characteristics of services using each spectrum-licensed band. 2.5 GHz 'mid-band gap' spectrum supports nomadic scheduled and unscheduled use of the band across much of the continent, but actual usage outside of areas of intensive outside production is highly sporadic. It is also likely to map closely to TV industry usage of 2 GHz and 2.2 GHz spectrum. Any consideration of ongoing use of 2.5 GHz 'mid-band gap' spectrum should take sympathetic account of the nature of TOB operations.

ⁱ 'Demand vs Supply: What's the score? An industry assessment from the NAB Show 2023,' DPP Limited, 2023, page 32.