

7 August 2023



Submission to the ACMA

Proposed approach to expiring spectrum licences



Proposed approach to expiring spectrum licenses

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body of Australia's mobile telecommunications industry. Our purpose is to be the trusted voice of industry, promoting the adoption, monetisation and sustainability of mobile telecommunications technology for the benefit of all Australians.

AMTA members include the mobile network service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry.

AMTA welcomes the opportunity to provide this submission in response to the ACMA's consultation of the proposed approach to expiring spectrum licenses.

If you have any queries or comments in relation to the content of our submission, please contact [REDACTED], [REDACTED] on [REDACTED] or by email [REDACTED].



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Executive Summary

AMTA and its members welcome the opportunity to respond to the ACMA’s consultation paper, “**Approach to Expiring Spectrum Licences**” (ESLs). Mobile communications is a pivotal and integral part of Australia’s social fabric and economic prosperity, and roughly every decade, the technology progresses through a major evolution to a new generation. This means that in addition to ensuring spectrum is used to its maximum efficiency and efficacy, Australians can stay in touch with family and loved ones, conduct business anytime and anywhere, or call for assistance during times of emergency.

The Mobile Industry underpins Australia’s digital economy and will play a crucial role in helping the Government realise its long-term productivity and communications policy objectives.¹ Telecommunications services have been recognised as essential to our modern daily life and mobile networks are often considered national critical infrastructure.

AMTA submits that given that ESL spectrum is used to deliver essential and critical services to Australians there should be a presumption of renewal at a spectrum access charge that continues to incentivise long term network investment. It is in the public interest for Mobile Network Operators (**MNOs**) to be provided with sufficient certainty, sufficiently early, that any of the expiring spectrum licences currently held by MNOs will be renewed if an MNO applies for renewal.

Every day, Australians rely on access to fast, reliable mobile voice and data services, with ever-increasing demand for higher bandwidth and coverage. Underpinning this are the licences and the licensing framework that grants mobile operators the rights to use the spectrum, and provides the technical management framework governing its use.

Economic modelling undertaken by Deloitte Access Economics² for AMTA estimates that 5G will increase Australia’s GDP by \$67 billion in 2022 dollars by 2030, and that this could be increased by a further \$27 billion (to \$94 billion) if appropriate policy initiatives are implemented. The economic and social public benefits delivered by the mobile sector arise because of the investment made by MNOs. This investment relies on the high degree of certainty and exclusivity afforded to MNOs under spectrum licences.

Spectrum licensing is an indispensable element of the ongoing technical and economic viability of mobile networks, and the ESL process is a key opportunity for the Government to put in place foundations that will facilitate the ongoing viability and sustainability of the industry.

¹ Minister Rowland. Government’s Statement of Expectations 2022. 12 December 2022.
<https://www.infrastructure.gov.au/departments/media/publications/australian-communications-and-media-authority-statement-expectations>

² Deloitte Access Economics [5G Unleashed Report](#)

AMTA has called³ for a target of 8 GHz of IMT spectrum by 2030 to meet the growing demand for mobile services. Driving this is the recognition that mobile network data traffic grew 36 percent between Q1 2022 and Q1 2023, with the average monthly global data usage per smartphone expected to be 20GB at the end of 2023 and forecast to rise to 47GB by 2028.⁴ Renewal of the spectrum that is the subject of expiring spectrum licences in the coming years is fundamental to delivering on the market demand.

The annual cost of spectrum to industry continues to grow, while the industry faces declining return on invested capital. High spectrum access charges, while attractive to Government revenue, may negatively impact long term investment in 5G and 6G. Low spectrum access charges could generate returns for taxpayers through the increased GDP benefits of investment. The ACMA must take a long-term view of the public interest in designing its approach to ESLs. Spectrum access charges for renewal of ESLs should be set at a level that provides appropriate incentives for operators to continue to invest in providing services.

AMTA's preferred approach to ESLs

AMTA wishes to highlight the following for the ACMA to consider in its approach to ESLs:

1. Ongoing access to the spectrum currently utilised by the MNOs is essential for their ongoing ability to meet Australia's demand for mobile communications. As such, MNOs must be afforded the opportunity to renew *all* their existing holdings at their discretion.⁵
2. To this end, the ACMA must issue its preferred view (i.e., renewal, partial renewal or refusal) for all bands as soon as practicable (as may be accommodated under the Radiocommunications Act), and at a minimum, 12 months in advance of the commencement of the Renewal Application Period for 850 MHz and 1800 MHz spectrum licences (i.e., Q1 2025).
3. We broadly support the ACMA's proposal for a four-stage ESL process, and particularly welcome the proposal to conduct stages 1-3 once for all ESL bands, which will help reduce burden on industry and the ACMA. However, we are concerned the proposed timelines are too long, creating substantial risk that Applicant Information will not be available sufficiently in advance of the commencement of the initial Renewal Application Periods.
4. In a mature mobile market, we consider there is little rationale for ESLs to be auctioned as a vehicle to improve efficiency or promote competition. Therefore, the ACMA should state a preference for renewal via administrative allocation, rather than allocation by auction.

³ [AMTA Spectrum Policy Position Paper](#), November 2021.

⁴ [Ericsson Mobility Report June 2023](#).

⁵ Pivotal has a different view on this topic.

5. Spectrum access charges for renewal should also be designed to promote continuity of service, industry sustainability and maximise the utility of the spectrum with the increased forecast data demands from actual and forecast increased 5G use⁶ and in the transition to 6G.⁷ To that end, we support the ACMA undertaking consultation on the methodology and inputs involved in setting spectrum access charges early in the process.
6. Any assessment of spectrum use that may be used to determine the need for changes to arrangements governing the use of ESL spectrum, must be clear, objective and transparent. The ACMA must be mindful of the long-term consequences of further diluting the nature of spectrum licences and changing the terms of access.
7. The proposed public interest criteria do not yet provide incumbent licensees with sufficient certainty to incentivise ongoing investment. The ACMA needs to prioritise work to develop clear guidelines on the public interest criteria, along with the assessment framework that will be used to test incumbent licensees' ability to meet the criteria.
8. In the event other users and/or use cases are identified for the ESL spectrum, the ACMA should assess the public interest criteria and substantiate that the new user / use case satisfies the public interest criteria to at least the same degree of efficiency and efficacy as the incumbent licensee. To reassign spectrum to an equivalent or less efficient operator risks stranding capital that has been invested efficiently. Applicants for alternative use cases must provide compelling evidence to this effect.

The ACMA should apply sound project management principles to its approach to the ESL process. This will expedite the process and reduce the period of uncertainty for existing licence holders by delivering renewal decisions at the earliest possible time.

To support transparency and predictability in the ESL process, we recommend the ACMA strengthen its proposed process by setting key deliverables/milestones along with target delivery dates. We have developed what we consider to be key deliverables and target delivery dates in the Appendix.

AMTA members seek ongoing engagement with the ACMA throughout the ESL Process, to promote ongoing efficient utilisation of ESL spectrum, including through Technical Liaison Groups and spectrum Tune-ups for all expiry spectrum bands.

In summary, AMTA considers the ACMA must provide certainty to incumbent licensees by providing them with the opportunity to renew all their existing licence holdings at a level that provides appropriate incentives for operators to continue to invest in providing services and subject to the licensee meeting the public interest criteria. Ultimately this means that

⁶ 5G mobile subscriptions are set to reach 1.5 billion globally by the end of 2023 and reach \$4.6bn by the end of 2028. [Ericsson Mobility Report June 2023](#)

⁷ Pivotal has a different view on this topic.

the ACMA should publish its “preferred view” or policy position on its approach by Q1 2025 to enable operators to value and plan their business investment in ongoing network upgrade and deployment.

1 Introduction

AMTA welcomes the opportunity to make this submission to the Australian Communications and Media Authority's (ACMA) consultation on the Approach to Expiring Spectrum Licences (ESLs). Mobile communication is a pivotal and integral part of Australia's social fabric and economic prosperity. Mobile communication allows us to stay in touch with family and loved ones, conduct business anytime and anywhere, monitor our environment, provide security and call for assistance during times of emergency.

Roughly every decade, mobile technology progresses through a major evolution to a new generation, and the continual updating of mobile networks to the latest "G" ensures spectrum is used to the maximum efficiency and efficacy, with the latest engineering capabilities deployed in the major Australian networks soon after international standards are set.

Toward the end of this decade, several of the spectrum licences that provide mobile operators the necessary licences to operate their network will expire. The way in which the ACMA and the Government's policy positions manage the expiry of these licences will significantly influence the strategic and commercial operation of MNOs into the following decade.

Our submission sets out some key industry messages in response to what will be the first of many ACMA consultations on ESLs. Our submission is structured as follows:

- Section 2 explains our view that the renewal of the existing spectrum licences is in the public interest, by virtue of the economic and social benefits delivered to Australians through mobile networks.
- Section 3 outlines trends in the financial stability of the sector and explains why it is important to avoid increasing economic pressure on mobile operators.
- Section 4 contains our thoughts and some examples to demonstrate innovation leadership in the mobile industry.
- Section 5 answers the ACMA's consultation questions.

In the Appendix, we provide an outline of what AMTA considers to be some of the key steps within each of the four stages of the ACMA's proposed ESL process, along with target milestone dates. We offer these thoughts not as an exhaustive list of activities, but rather our view of the milestone schedule we (the ACMA and industry) will need to realise to provide licensees the certainty required for business planning and investment toward the end of this decade.

2 Spectrum renewal is in the public interest

Mobile networks supply essential communications services to Australians across the country, providing access to emergency, education, health, social and government services among others. Access to these services has become even more critical since the COVID-19 pandemic.⁸ The Government's Statement of Expectations for the ACMA confirms that the ACMA "has an important role to support industry and consumers in delivering and accessing essential communications services".⁹

AMTA commissioned Deloitte Access Economics to produce a report, 5G Unleashed¹⁰ to look at the economic impact 5G can have on Australia. Economic modelling in the report estimates 5G will increase Australia's GDP by \$67 billion by 2030 based on the current trajectory for adoption. However, an additional \$27 billion (a 40% uplift) can be realised over the same period if Australia maintains its current global leadership position in the deployment and adoption of 5G. The 5G Unleashed report goes on to identify 11 policy initiatives across three broad areas of infrastructure deployment, spectrum allocation and adoption.¹¹ While spectrum renewal is not explicitly called out in the report, the opportunity for licensees to retain existing holding beyond their expiry, i.e., the opportunity to renew their spectrum, is pivotal to the key tenant of the report, which is growing Australia's economic prosperity by facilitating 5G growth and adoption.

The demand for spectrum-based services will continue to grow. The ACCC tracks five sources of demand in its annual communications market report: pre-paid and post-paid mobile, mobile broadband, machine-to-machine (M2M) and home wireless broadband (or FWA). Exhibit 1 shows GB of downloads per service in operation (SIO) per month for each of these sources¹². The ACCC reports that mobile as-a-whole downloads increased by 7% and mobile broadband by 9%, between December 2021 and June 2022. In the latest Internet Activity Report for the period ending 31 December 2022, the average monthly volume of data downloaded per SIO on mobile services increased by 1.4 GB (or 13%) to 11.7 GB since the June 2022 reporting period.¹³ These rates equate to annual growth of nearly 21 percent.

⁸ ACMA Statement of Expectations, p.3

⁹ What consumers want – Consumer expectations for telecommunications safeguards A position paper for the telecommunications sector; July 2023; ACMA; p.2

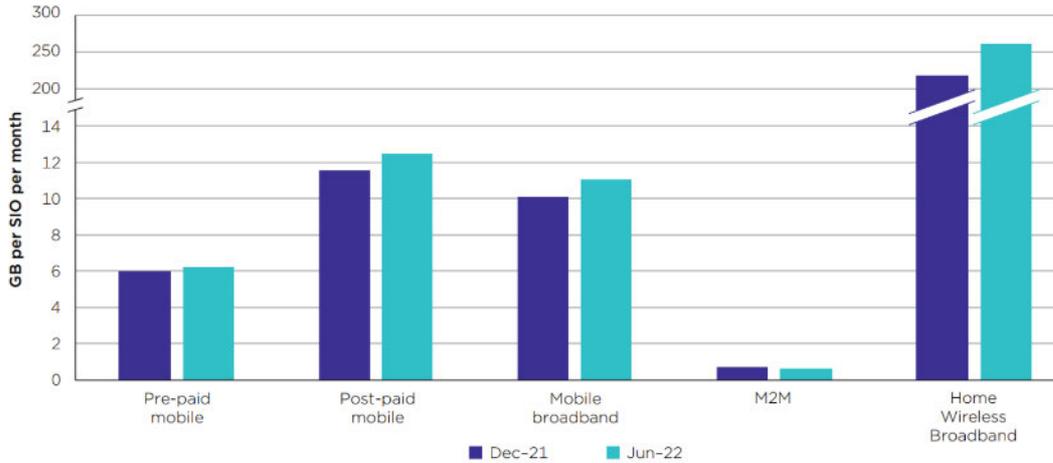
¹⁰ Deloitte Access Economics [5G Unleashed Report, 23 March 2022. https://www.deloitte.com/content/dam/assets-zone1/au/en/docs/services/economics/deloitte-au-dae-5g-unleashed-final-report-combined-230322.pdf](https://www.deloitte.com/content/dam/assets-zone1/au/en/docs/services/economics/deloitte-au-dae-5g-unleashed-final-report-combined-230322.pdf)

¹¹ Ibid, p.5.

¹² ACCC, Communications Market Report – 2021–22, page 12

¹³ Refer to www.accc.gov.au/system/files/Internet%20Activity%20Report%20-%20December%202022.pdf

Exhibit 1: Mobile network downloads from December 2021 to June 2022

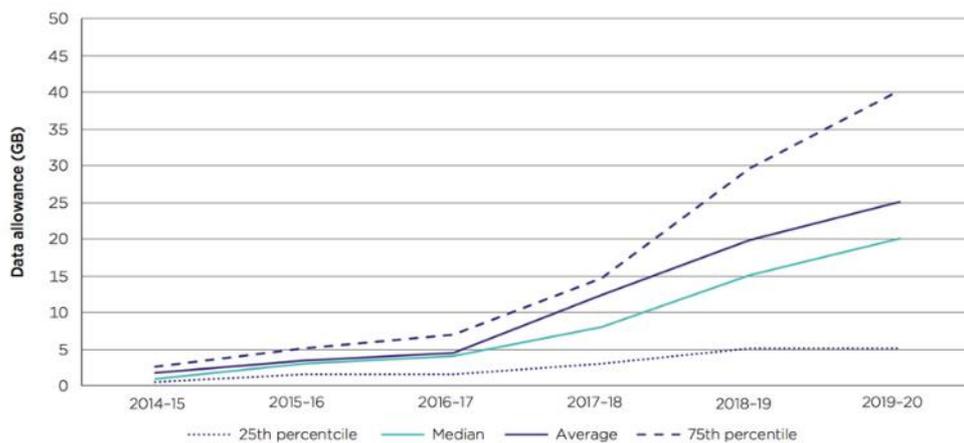


Source: ACCC, Communications Market Report 2021-22, page 12

Exhibit 2 shows the growth in data allowances for post-paid and prepaid mobile packages from 2014-15 to 2019-20. The ACCC commented that, “It is possible to observe a near exponential increase in post-paid data allowances for the period 2015-16 to 2019-20, with both the median and mean inclusion increasing more than tenfold. From 2018-19 to 2019-20, post-paid inclusions grew from a median and mean of 10 GB and 20 GB to 18 GB and 31 GB respectively.¹⁴ Since 2020, the median data allowance for post-paid mobile services has increased by 14% to 40 GB.¹⁵

Exhibit 2: Average, median, 25th percentile and 75th percentile data allowance for post-paid and prepaid mobile phone services from 2014-15 to 2019-20:

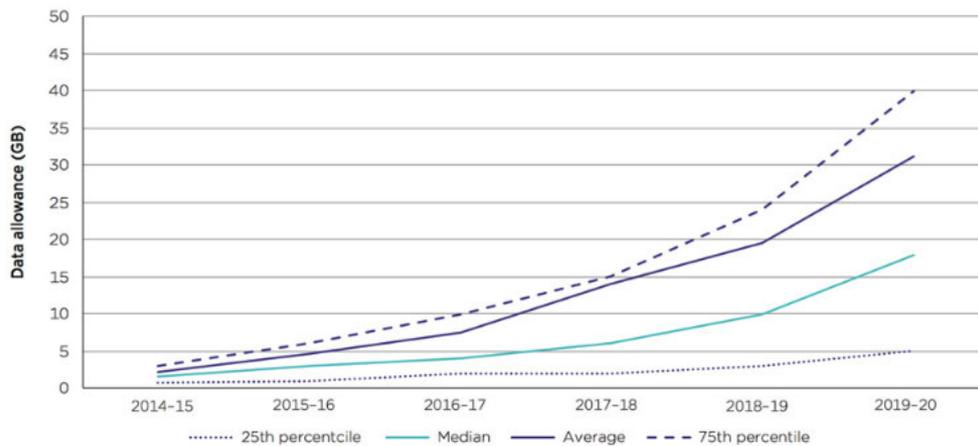
Post-paid



14 ACCC, Communications Market Report 2019-20, page 35

15 ACCC, Communications Market Report 2021-22, page 13

Prepaid



Source: ACCC, Communications Market Report 2019–20, page 36

The considerable public benefit delivered by licensees' utilisation of the spectrum licences subject to expiry militates in favour of their renewal. Using traffic delivered over spectrum as a proxy for socio-economic benefit, there is no more publicly beneficial use case for existing ESL spectrum than mobile and WBB services. There is no evidence that any other use of this spectrum produces or would produce such demonstrable and large public benefits.

Growth rates of these magnitudes also show the need for:

- The allocation of more spectrum.
- Ongoing capital expenditure on wireless infrastructure.
- Prompt implementation of new, more efficient technologies.

3 Financial sustainability of the mobile sector

From around 2010, with widespread smart phone adoption, the advent of ubiquitous over-the-top digital services, upgrades to new generations of mobile technology, and consumer uptake of spectrum-intensive services have transformed operators' relationship with customers and customers' relationship with spectrum. The mobile operators must provision more spectrum per customer than 10 or 15 years ago while, at the same time, revenue per customer has been steady or falling.¹⁶

The annual cost of spectrum to industry continues to grow, while industry returns on invested capital decline. A July 2023 study from the research firm Tefficient demonstrated that mobile data usage per SIM has increased more than 40% in Australia over the last year, resulting in average revenue per GB in Australia dropping 27%.¹⁷ In short, operators have been driven into a spectrum revenue squeeze by changes in technology and consumer behaviour.

Mobile networks are expensive to operate and are upgraded around every 10 years as a new 'G' of technology is introduced. The mobile operator businesses have a finite amount of capital to expend on technology upgrades, capacity augmentation, coverage growth, spectrum renewals and new spectrum, and industry profitability has been declining for many years.¹⁸ For example, the 2023 Venture Insights report, State of the Australian Telco Industry shows the three major mobile network operators are in ongoing EBITDA decline. While Return on Invested Capital (RoIC) has somewhat improved in the last two financial years, it has not historically been so low.¹⁹

These expenditures are finely balanced to enhance the experience of end customers. If the purchase of new spectrum licences and renewals take a larger share of capital, then less will be available for network upgrades and coverage augmentation. This in turn will impact the quality of service provided to Australians, or risks driving up the price of services.

AMTA contends that this means that unless the price per unit of spectrum falls, the financial viability of operators could be put at risk. Such increased risk also puts industry

¹⁶ Venture Insights. State of the Australian Telco Industry. 14 June, 2023, p.13. "Venture Insights estimates that average retail [mobile] ARPU fell from around \$35 in FY17 to only \$30 in FY22." Available at:

<https://www.ventureinsights.com.au/product/report-state-of-the-australian-telecommunications-industry/>

¹⁷ Tefficient industry analysis #2 2023 Mobile data – full year 2022 – excluding M2M/IoT - ARPU Growth almost always slower than inflation; p.7. <https://tefficient.com/wp-content/uploads/2023/07/Tefficient-industry-analysis-2-2023-mobile-data-usage-and-revenue-2022-per-country-excl-M2M-14-July-2023.pdf>

¹⁸ Accenture. Pathways to Profitability for CSPs. 26 Sept, 2022. Middle figure on Slide 5.

<https://www.accenture.com/content/dam/accenture/final/accenture-com/document/Accenture-Comms-Narrative-POV-final.pdf>

¹⁹ Venture Insights. State of the Australian Telco Industry. 14 June, 2023. See Figures 7 and 8, p.15 for data on FY17-FY22. While Figure 7 shows EBITDA decline has levelled out in the last two financial years (FY21 and FY22), this is driven solely by NBN; the other three major network operators, i.e., the mobile network operators, (thin green line) are still in EBITDA decline. However, RoIC (Figure 8) has levelled out for some operators in the last two financial years. Available at:

<https://www.ventureinsights.com.au/product/report-state-of-the-australian-telecommunications-industry/>

competitiveness at risk. This in turn may result in a digital investment gap, as network investment to accommodate increased demand for data cannot be sustained.

As articulated in the Deloitte Access Economics 5G Unleashed report, there is a substantial economic uplift provided through productivity improvements in very diverse sectors of the economy, if a healthy technologically advanced 5G eco-system is in-place.

High spectrum access charges, while attractive to Government revenue, may negatively impact long term investment in 5G and 6G. Low spectrum access charges could generate returns for taxpayers through the increased GDP benefits of investment. The ACMA must take a long-term view of the public interest in designing its approach to ESLs.

4 Mobile is an innovation leader

The Minister for Communications has indicated that the ACMA is expected to play a positive, industry development role “with particular expectations the regulator promote investment, innovation and the adoption of new and emerging technologies, while continuing to safeguard the interests of consumers and small businesses.”²⁰

The mobile sector and technology are exceptionally dynamic and remain innovation leaders. More than any other spectrum application, mobile continues to maximise the efficient use of spectrum. The Australian mobile sector is always very early, if not the first, globally to adopt new and more efficient standards of mobile technology that maximise the use of spectrum.

Each new technology provides a demonstrable increase in the amount of information that is delivered per unit of spectrum. The motivation to increase efficiency of spectrum is the insatiable appetite for content by mobile customers which drives the need to deploy new technologies to meet this increasing demand. The recent announcements of all the Australian MNOs shutting down 3G networks and repurposing that spectrum for 4G and 5G services is the latest step in this continual innovation adoption.

AMTA notes that the previous renewal processes coincided with the greater deployment of 4G and then the commencement of 5G. The success of the last renewal process was due to the certainty afforded by the Ministers’ Class of Services Determination 2012 which deemed the re-issue of certain listed services as in the public interest, as well as the Ministers’ Radiocommunications (Spectrum Access Charge) Direction 2012 and 2013 – specifying the \$/MHz/pop formula to be used for calculating the spectrum access charge.

While some innovation is accompanied by risk with many tales of stranded and wasted capital associated with wrong technology choices, e.g., Betamax vs VHS or, LTE vs WiMAX, the 3GPP based standards that underpin the continual innovation of mobile networks ensures it remains a safe, innovative, capital investment path. These standards are backed by a global community of infrastructure and device providers that ensures a diverse supply chain leveraging global economies of scale.

Australia is a small market relative to more populous markets and thus must conform to global standards to leverage these economies of scale; the cost of customisation is high for a small market. The ACMA, in renewing licences, should take care if the conditions of use are modified to such an extent that a ‘special version’ of network infrastructure or consumer device is required.

²⁰ Minister Rowland. Government’s Statement of Expectations 2022. 12 December 2022.

<https://www.infrastructure.gov.au/department/media/publications/australian-communications-and-media-authority-statement-expectations>

While the ACMA has a mandate to consider innovative new technologies and services in allocating spectrum, AMTA would recommend caution in supplying spectrum for use with unproven customised solutions, or is based on standards that have not been widely adopted, as there is a risk the spectrum may become stranded. While alternate solutions might initially look promising, they do not have the security that comes from the scale of globally adopted solutions.

As we have noted, roughly every decade mobile technology progresses through a major evolution to a new generation, and the continual updating of mobile networks to the latest “G” ensures spectrum is used to the maximum efficiency and efficacy. No other sector industry sector is more focused on innovation in spectrum utilisation and efficiency than the mobile industry.

5 Consultation Questions

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

The ACMA has noted that “there is no presumption of a particular outcome for ESLs” and that this “ESL process, therefore, poses an opportunity to review arrangements for the relevant spectrum to ensure that arrangements facilitate the long-term public interest into the future”.²¹

AMTA members agree that the design of the assessment framework for expiring spectrum licences presents a real opportunity to achieve just this – the certainty required to promote investment and innovation in the supply of critical communications networks and services for the long-term benefit of Australians.

The public interest criteria play a pivotal role in the level of certainty operators have in their licences being renewed. AMTA members consider that the public interest criteria need to be: 1) specific, 2) objective; 3) measurable; and 4) transparent. If they are too broad in scope, or are vague or subjective, a licensee can never have confidence in renewal and hence, will have reduced incentives to invest. AMTA members submit that the costs of uncertainty outweigh any benefit of enhanced flexibility in the ACMA’s decision making.

While AMTA members will provide their own individual submissions on the public interest criteria, our common view is that all licensees require certainty as early as possible regarding their respective tenure of the spectrum licences needed to support their significant long-term investment plans for their mobile networks²². While the criteria provide a sound basis for the development of the ACMA’s public interest assessment, significant clarification is required on the detail and manner in which these criteria will be implemented in order to provide incumbent licensees with sufficient certainty to incentivise investment.

AMTA requests the ACMA prioritise issuing draft guidelines on the ESL process, the public interest criteria, and the assessment framework for further consultation. To this end, the timetable we have developed in section 5.4 calls for a consultation to be conducted on the public interest criteria before the end of this calendar year.

As noted, it is AMTA’s view that mobile services remain the most economically efficient use for ESL spectrum. MNOs have strong incentives to use their spectrum efficiently by optimising the balance between the number of sites and maximum network coverage. The ACMA’s assessment of alternative uses for this spectrum must consider the use that maximises the benefits that consumers, businesses and other organisations derive from the spectrum. Service continuity must also be a priority of the ACMA’s assessment framework.

²¹ Approach to expiring spectrum licences, Consultation paper, ACMA, May 2023, p.1.

²² Pivotal has a different view on this topic.

In this context, AMTA does not consider that an auction of ESL spectrum will promote economic efficiency. Rather, it creates a disproportionate degree of risk to investment and innovation. On balance, renewal of ESL spectrum is in the public interest.

Public interest criteria should not only focus on the incumbent licensees demonstrating that they can satisfy a set of public interest criteria that they are capable of achieving the optimal use for the spectrum. To the extent other uses and/or users are identified for the spectrum, we consider there should be a burden of proof on those parties to demonstrate that they can satisfy the public interest criteria, in a manner that is at least as effective and efficient, if not, more than the incumbent licensees. To reassign spectrum to an equivalent or less efficient operator risks stranding capital that has been invested efficiently.

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

In this section, we outline our views on the ACMA's proposed four-stage approach. Overall, we agree with and support the ACMA's proposal. However, we have concerns about the duration of stages 2 and 3, where we consider the planned duration creates a significant risk that incumbent licensees will not receive renewal information from the ACMA in sufficient time for them to be able to complete internal business planning decisions prior to the commencement of the first renewal application periods (for 850 MHz and 1800 MHz). We outline these timing concerns, and how they can be resolved, in the following sections. The process for setting spectrum access charges only receives cursory mention in Stage 3, and we recommend the process for setting spectrum access charges be more defined.

The proposed process is backloaded for licensees. It does not provide regulatory certainty until late in the process. The proposed timeline and consequent lack of certainty could have a chilling effect on investment over the next two and a half years, particularly given the breadth of the ACMA's proposals. From a valuation perspective, given the interdependent substitutability of certain bands and the impact that the ACMA's preferred approach to one band may have on an operator's decision to utilise another, AMTA proposes that the ESL decision for all seven bands needs to occur simultaneously with a preliminary view published by Q3 2024 and a preferred view by Q1 2025.

Other regulatory mechanisms that the ACMA may consider utilising to deliver increased predictability relating to renewal of ESLs includes issuing:

- A spectrum access charge determination (under section 294 of the Act) for each expiring spectrum licence band.
- A licence renewal notice (under section 77B(10)(a) of the Act) to an incumbent spectrum licensee on the first day of the application window specifying a date for final payment (e.g., 6 months).

Stage 2 can be shortened by ensuring information gathering is fit-for-purpose

Stage 2 of the ACMA’s four-stage ESL process is scheduled to run for 12 months (Q1-Q4 2024). As the ACMA notes, “Stage 2 aims to refine and communicate the steps of the ESL process and confirm the assessment framework, including the public interest criteria.” The ACMA then goes on to outline that it may request an extensive range of information²³ from incumbent licensees and other stakeholders on a range of issues.

AMTA considers the ACMA’s data gathering should be limited to data necessary to assess the public interest, and to the extent possible, should draw on existing publicly available data. While some additional data may be needed to augment publicly available data, MNOs should not be required to re-report data already in the public domain.

Timely delivery of renewal application information

We consider the ACMA must provide existing licensees all relevant renewal information at least 12 months prior to the commencement of the Renewal Application Period (RAP). The Renewal Package must include:

- Whether the existing licensee will be offered the opportunity to renew all of their existing holdings;
- The Spectrum Access Charge²⁴ (i.e., the “renewal price”) for the spectrum; and
- Any licence conditions that will be applied when the licence is renewed.

The Renewal Package is required to give existing licensees the necessary information to make investment planning decisions and must be provided with sufficient time to assess the content and make informed and considered planning decisions. Changes to the quantity of spectrum a licensee holds, the introduction of new licence conditions, the removal of existing conditions and the renewal price for the spectrum (the Spectrum Access Charge) all have the potential to affect the value of the spectrum to the licensee and potentially affect the licensee’s ability to make an ongoing commercial return.

AMTA and its members would appreciate further engagement in the last two quarters of 2023 as the process is refined and the ACMA develops its approach to the process.

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

AMTA members will individually identify any band specific issues in their submissions. However, AMTA notes that members are open to engaging closely with the ACMA throughout the ESL Process to ensure that ESL spectrum licence technical frameworks

²³ Consultation paper, p.23.

²⁴ Preferably via a spectrum access determination issued under section 294(1) of the Radiocommunications Act, s.294(1).

remain optimised for 5G and future 6G services, while ensuring effective co-existence, coordination and cooperation arrangements are in place with neighbouring spectrum users.

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

Given the significant scope of work contemplated and the band specific considerations, provision must be made for close industry engagement. AMTA suggests that the ACMA consider the following:

- A combination of regular “Tune-Ups” to keep industry informed of the ACMA’s views at key milestones as well as Technical Liaison Groups (TLGs) for band specific issues.
- Engagement on broader strategic initiatives that may support defragmentation and help maximise the efficient use of spectrum among MNOs. This may entail discussion of any new licence conditions or technical framework governing use of the spectrum.
- Given the importance of spectrum access charges to the overall success of the ESL process, this should be dealt with as an individual work stream – this could involve issuing a separate spectrum access charges consultation paper on methodologies in Q4 2023, followed by a “preliminary view” consultation paper in Q2 2024. Given the interconnected nature of technical licence conditions and pricing it is submitted that they should occur concurrently.

To this end, in the Appendix we put forward our preliminary thoughts on a work schedule that will facilitate a good level of engagement as well as meeting the goal of ensuring incumbent licensees have all relevant renewal information at least 12 months prior to the commencement of the first Renewal Application Period (RAP). The table in the Appendix is offered as a preliminary view of the milestones we consider the ACMA, and industry will need to achieve, and AMTA and its members would welcome the opportunity to review the schedule and its elements with the ACMA.

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

While AMTA members will provide their own individual submissions on approaches to valuing spectrum, AMTA members consider it is essential the ACMA consult thoroughly and early on the methods it is considering and provide a high level of transparency in the way they arrive at the final approach for determining the value of the spectrum.

AMTA members also note the following as relevant to the ACMA’s approach to determining spectrum access charges:

1. The more capital spent on spectrum, the less capital available for investment elsewhere in the network.

2. Any short-term benefit of higher renewal fees to public finances should not override broader long term economic benefits that will flow from increased network investment supported by lower renewal prices.
3. Market-based allocation mechanisms are only relevant to allow spectrum to be allocated to those who value it the highest (i.e. the most efficient use).

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

As noted above, AMTA members are concerned about the administrative and resource implications of the ACMA's proposed approaches to assessing spectrum usage. The approaches proposed appear to raise the real prospect of imposing an administrative burden on stakeholders and the ACMA for very little apparent benefit.

To limit this burden, AMTA suggests that the ACMA use information from existing sources to the greatest extent possible, including that provided by carriers to the ACCC under the Infrastructure Record Keeping Rules (RKR) of the Competition and Consumer Act 2010.

Individual submissions from AMTA members provide further detail on each of the ACMA's proposed approaches to examining spectrum use. In general, AMTA is concerned that the methodologies outlined will result in a potentially arbitrary and overly granular analysis of spectrum use that may result in unfair or inappropriate conclusions on the technical efficiency of a particular use case in a particular frequency and/or geographic location.

More concerningly, however, are the potential consequences of such an analysis. AMTA's MNO members are particularly concerned about the potential for the ACMA's examination of spectrum use to result in:

1. The introduction of new or varied spectrum licence boundaries²⁵;
2. The reduction in the amount of spectrum available for current licensees to renew;
3. The revision of core conditions for coexistence and coordination; and
4. The potential for changes to licence types.

AMTA cautions against an approach that would dilute the exclusivity and certainty of spectrum access that has been afforded to spectrum licences to date. If the intention is to accommodate a "diverse range of use cases" to address perceived unmet demand for localised connectivity, then the ACMA must clearly substantiate its decision to re-allocate this spectrum based on highest value use and/or the public interest.

AMTA notes that if spectrum is allocated elsewhere and is not used or offered for sale, then spectrum may be stranded – particularly if it is not easily tradeable – threatening long term fragmentation and under-utilisation of the spectrum.

²⁵ Pivotel has a different view on this topic.

AMTA members reiterate their support for close engagement with the ACMA to ensure the long-term optimisation of spectrum licence technical frameworks for ESLs for 5G and 6G technologies.

Appendix

ACMA proposed ESL Process	ACMA timeframe	Suggested amendments to ESL Process	Suggested timeframes
<p><u>Stage 1: Consultation on process</u></p> <p>Stage 1 aims to:</p> <ol style="list-style-type: none"> 1. initiate stakeholder engagement with the ESL process 2. develop and consult on proposals for: <ul style="list-style-type: none"> ➤ the new ESL process ➤ proposed public interest criteria ➤ approaches to considering use under ESLs 	<p>Q2-4 2023</p>	<ol style="list-style-type: none"> 1. ACMA consultation on approach to ESL (current consultation) 2. ACMA issues draft guidelines on ESL Process, the public interest criteria and the assessment framework for further consultation 3. ACMA initial consultation on approaches and process to determine spectrum access charges, such as valuation methodologies and inputs required (2-month consultation period) 4. ACMA conducts Tune-up for interested stakeholders on preferred approach to “examining use” (if applicable)²⁶ 	<p>Q2 2023</p> <p>Q4 2023</p> <p>Q4 2023</p> <p>Q4 2023</p>

²⁶ AMTA members will provide their own individual submissions on the ACMA’s approach to “examining use”.

<p><u>Stage 2: finalise process and gather information</u></p> <p>Stage 2 aims to refine and communicate the steps of the ESL process and confirm the assessment framework, including the public interest criteria.</p> <p>ACMA may also request information from incumbent licensees and other stakeholders on a range of issues, in particular:</p> <ul style="list-style-type: none"> ➤ incumbent levels of use and alternative use-cases ➤ demand for the spectrum ➤ identifying any band specific issues or inefficiencies (for example, fragmentation of existing holdings) ➤ market and competition issues ➤ the public interest. 	<p>Q1-4 2024</p>	<ol style="list-style-type: none"> 1. Publish outcomes paper along with final version of ESL guidelines setting out: <ul style="list-style-type: none"> ➤ the ESL Process ➤ public interest criteria ➤ preferred approach to examining use 2. ACMA issues s.78 notices inviting expressions of interest and/or requests for relevant information from stakeholders 3. ACMA conducts Tune-up regarding approaches to pricing and valuation options for all ESL bands 4. ACMA conducts series of Tune-ups for interested stakeholders on licensing arrangements, including licence conditions, and allocation options for ESLs 5. ACMA coordinate series of Technical Liaison Groups (TLGs) to identify and address technical issues undermining efficient use of ESL spectrum bands 	<p>Q1 2024</p> <p>Q2 2024</p> <p>Q2 2024</p> <p>Q2 2024</p> <p>Q3 2024</p>
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<p><u>Stage 3: preliminary views</u></p> <p>In Stage 3, we will provide a preliminary view about the proposed future arrangements for spectrum subject to ESLs for each band for licences expiring between 2028 and 2032.</p> <p>During Stage 3, we are proposing to consider and form preliminary views on the appropriate arrangements for the spectrum. ACMA will examine:</p> <ul style="list-style-type: none"> ➤ Use-cases and users for the spectrum ➤ The appropriate licence arrangements ➤ Licence conditions and technical framework to facilitate efficient use and co-existence and to support relevant objectives, including the public interest. ➤ The value of the spectrum and payment terms should licences ultimately be renewed. ➤ Allocation options – renewal, refusal or partial renewal – with associated re-allocation processes <p>ACMA expect to consult on options if any substantive change is contemplated for how the spectrum is planned, licensed or allocated.</p>	<p>Q4 2024</p>	<ol style="list-style-type: none"> 1. ACMA issue consultation paper setting out <u>preliminary view</u> relating to <ul style="list-style-type: none"> ➤ whether it will renew, partially renew or refuse to renew ESLs in each band. ➤ Its comparative assessment of use cases against public interest criteria. ➤ pricing and valuation methodologies of spectrum for each ESL band 2. ACMA issues <u>preferred view</u> (and Outcomes Paper following preliminary views consultation) setting out administrative policy on: <ul style="list-style-type: none"> ➤ whether it will renew, partially renew or refuse to renew ESLs in each band ➤ its approach to pricing spectrum in each band 	<p>Q4 2024</p> <p>Q1 2025</p>
<p><u>Stage 4: renewal application and decision-making periods</u></p> <p>During 2025, we would release a response to submissions to the preliminary views’ consultation in Stage 3. This would outline our preferred views and policy on</p>	<p>Q2 2025</p>	<ol style="list-style-type: none"> 1. Issue spectrum access charges determination (under section 294(1) of the Act) for each ESL spectrum band 12 months prior to the opening of the renewal application window 	<p>Q2 2025</p>

planning, licensing and pricing relating to the relevant spectrum and licences.

Following this, in the period preceding the renewal application period for the relevant licences, we would (on a band-by-band basis):

- review if any changes are required to the established policy
- prepare draft sample licences and draft spectrum access charge determinations so that the general terms of renewal may be known (should the licence be renewed)
- prepare draft allocation instruments (for potential re-allocation)
- finalise any changes to the technical framework for the relevant band
- publish application forms and specify information and documents that must accompany a renewal application.

This will facilitate a licensee being able to apply for the renewal of their licence from the first day of the relevant renewal application period, identifying the terms and conditions of any potential renewal. Upon receiving an application, we would then begin considering whether to renew that licence, taking into consideration the application, our preferred views and any relevant objectives.

2. issue a licence renewal notice (under section 77B(10)(a) of the Act) to incumbent spectrum licensee on first day of application window specifying a date for final payment (e.g., 6 months)

3. Prioritise decisions relating to any ESL renewal applications submitted during the renewal application period and avoid undue extensions of time for requests for further information under section 77B