

ACMA, Expiring spectrum licences, stage 2 – reply to comment

Submission of NBN Co

28 June 2024

Final (Public)



nbn welcomes the opportunity to provide feedback and respond to the views made in the submissions responding to stage 2 of the expiring spectrum licences (**ESLs**) consultation process as published by the Australian Communications and Media Authority (**ACMA**).¹

In our review of the submissions, we observed that the ACMA received a range of views regarding the consideration of use-it-or-lose-it (**UIOLI**) and use-it-or-share-it (**UIOSI**) licence conditions.

In our stage 2 submission to the ACMA, we provided evidence to support our view that the existing spectrum management framework enables the long-term public interest derived from the spectrum to be achieved efficiently without recourse to UIOLI and UIOSI conditions. Among other things, we noted our successful use of the secondary market to promote the long-term public interest derived from the spectrum. This included a recent trade with Optus to defragment the 2.3 and 3.4 GHz band and a recent trade with Telstra which enabled capacity increases to fixed wireless (**FW**) users in the Darwin area.

However, given the views raised by other parties in their stage 2 submissions to the ACMA regarding consideration of UIOLI and UIOSI conditions, we would like to take this opportunity to reiterate the following:

- That the ACMA could investigate the criterion of use as part of a renewal policy for renewed licences.
- The interplay between the statutory infrastructure provider (**SIP**) regime and our use of spectrum.
- The limited opportunity for dynamic spectrum access arrangements to be used in conjunction with our FW network given the always ‘on’ nature of providing a broadband service as required by customers and contractual obligations.

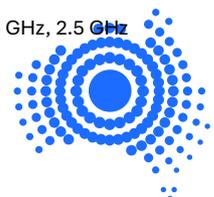
The criterion of use for the future renewal of renewed licences

We consider that the ACMA could investigate as a form of a UIOLI condition that the renewal policy for any *renewed* licences specify that use should be a criterion for future further renewal. The approach to examining use should be consulted on, noting that the ACMA will be examining the approach to use for the 28 GHz band AWLs.

The use of 2.3 and 3.4 GHz band spectrum to deliver on our legislated SIP obligations

Without our existing 2.3 and 3.4 GHz spectrum, **nbn** would be forced to meet its legislated SIP obligations using alternative, more economically inefficient means. This could involve incurring extraordinary costs to build fixed-line connections to premises currently reliant on the FW network or could instead mean migrating FW end-users to a satellite network – a network which has a finite amount of available bandwidth to share among all end users. We consider that there is no evidence that the reallocation of our 2.3 and 3.4 GHz band spectrum to a different use and / or user would be in the public interest when weighed up against:

¹ Spectrum licences due to expire between 2028 and 2032 in the 700 MHz, 850 MHz 1800 MHz, 2 GHz, 2.3 GHz, 2.5 GHz, 2.5 GHz mid-band gap, and 3.4 GHz bands



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- The consequence of non-renewal for **nbn**'s FW network end users and our retail service providers (**RSPs**) with continuity of supply impacts.
- The extraordinary costs that would be incurred by **nbn** in establishing an alternate service to meet its SIP obligations in what would be a resource intensive and lengthy process.
- The significant impact on **nbn**'s FW RSPs in transitioning their end users to a new **nbn** service (with the potential that some of the affected RSPs do not offer **nbn** services on the technology over which the end user would need to transition to receive a **nbn** service).
- The significant investments that **nbn** has made and continues to make including with the Federal Government as part of the \$750 million FW and Satellite Upgrade Program and with State and Federal Government as part of regional co-investments.

Without the renewal of our 2.3 and 3.4 GHz band spectrum licences, there would be no continuity of service and significant disruption to our RSPs and Australians using our FW network, with there being currently ~400,000 active services across the peri-urban, regional and rural areas.

The limited opportunity for dynamic spectrum access arrangements to be used in conjunction with our FW network

We note the views made in other submissions regarding the potential for dynamic spectrum access arrangements as part of a UIOSI regime.

We previously made a submission to the ACMA on dynamic sharing arrangements responding to the ACMA's August 2019 consultation on 'Spectrum sharing, Overview and new approaches'. However, given the submissions made supporting the consideration of dynamic sharing arrangements, we would like to reiterate that the use of spectrum by our FW network is generally not suited to proposed dynamic spectrum access techniques. The use of FW services by our end users is neither itinerant or sporadic in nature, and the network's ability to tolerate interference is low given contractual obligations and customer experience expectations.

We understand that dynamic spectrum access approaches, such as that used by the US Citizen Broadband Radio Service generally rely on a hierarchical approach for access to spectrum involving lower-tier users making way for higher-tier uses wherever, and whenever, that spectrum is required for use and that in many cases this would not provide the level of certainty needed to meet a lower-tier user's business requirements. We consider that tiered sharing works best when accommodated uses are complementary. That is, lower-tier status users must alter / cease operation where and when notified of pending use by higher-tier users that are itinerant, nomadic or sporadic in their use of spectrum. The delivery of FW services on **nbn**'s FW network is not compatible with a hierarchical approach for access to spectrum given the always 'on' nature of providing a broadband service as required by customers and contractual obligations.



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The significant investments made by **nbn** in its FW network are underpinned by, and rely on, **nbn**'s 2.3 and 3.4 GHz band spectrum. The renewal of the entirety of our 2.3 and 3.4 GHz spectrum is critical to **nbn** and, by extension, to the RSPs and Australians that rely on the **nbn** network.

We look forward to engaging further with the ACMA as part of their expiring spectrum licences consultation.

