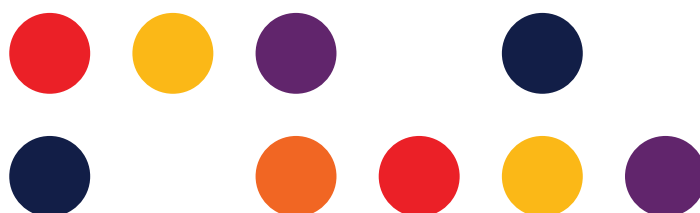


Expiring spectrum licences: stage 2 Information gathering, and views on uses of frequency bands and alternative licence conditions

TPG supplementary submission to
ACMA

June 2024

Public submission



Summary

TPG Telecom Limited (**TPG**) welcomes the opportunity to provide this supplementary submission to the ACMA's ongoing inquiry regarding Expiring Spectrum Licences (**ESL**).

This submission makes the following key points:

1. 'Use-it-or-lose-it' (**UIOLI**) licence conditions are very likely to lead to inefficiencies, including reduced terrestrial mobile network investment, and/or reduced competition in the mobiles market. This will result in a denigration of the public interest.
2. The benefits of introducing alternative users of ESL spectrum will be substantially outweighed by harm it would cause to existing users of public mobile networks that currently use the ESL bands.

Given the above, TPG remains opposed to the introduction of UIOLI (or UIOSI) licence conditions in ESL spectrum bands. TPG also opposes any 'reservation' of ESL spectrum for alternative use cases.

In addition, TPG reiterates its view that promotion of the public interest criteria would be best achieved by offering existing ESL holders an opportunity to renew their expiring spectrum licences. TPG wishes to re-emphasise the significance of any ACMA decision in relation to pricing of spectrum. This is reflected in comments from other submitters. Relevantly:

- NBN recommends the ACMA take a conservative approach to pricing.
- Optus has submitted ESLs should be offered for renewal at a nominal price, given that ESL spectrum is used to supply critical and essential services.
- Telstra considers renewal prices should be set conservatively and should factor in industry sustainability.
- AMTA encourages the ACMA and the Government to carefully consider the implications of high renewal prices on the long-term sustainability of a sector that operates critical infrastructure and supplies essential services.

A key component of industry sustainability is ensuring any pricing decisions made by the ACMA facilitate a level playing field for MNOs. This favours adopting a progressive fee structure rather than a fixed \$/MHz/pop unit price, as TPG has outlined in its initial submission.

The imbalance is clear when the total cost paid for the ESLs and recent new spectrum allocations is compared to the mobile service revenue of each MNO. Based on publicly available information, TPG calculated a like-for-like comparison of each MNO's total spectrum costs¹, amortised over 15-years, as a proportion of each MNO's FY23 mobile service revenue. This modelling shows Telstra's annual spectrum amortisation cost is only 4% of its FY23 mobile services revenue, but in comparison while TPG's annual spectrum amortisation

¹ Total spectrum costs include the amount paid for the expiring spectrum licences and prices achieved in the low band auction (2021), 26 GHz auction (2021) and 3.4/3.7 GHz auction (2023).

cost is 11% of its FY23 mobile service revenue – almost three times as much as Telstra on a proportionate basis.

There is clear imbalance in the relative cost of spectrum which the ACMA should take this opportunity to correct. On a relative basis, the consequence of the asymmetric impact of spectrum costs is TPG has less to spend on infrastructure (particularly regional mobile infrastructure) and is less able to compete compared to an outcome where the distribution of spectrum costs is more equitable.

TPG reiterates its view renewal costs should be commensurate with a licence holder's market position, for example via service revenue or market share.

This supplementary submission should be read in conjunction with TPG's initial submission dated 5 June 2024.

Use-it-or-lose-it licence conditions

Various stakeholder submissions have argued in favour of UIOLI licence conditions for low band ESL spectrum. However, there is a significant divergence in their reasoning for supporting UIOLI conditions. This suggests the policy rationale for introducing UIOLI licence conditions is confusing and, if implemented, will likely harm the public interest. TPG does not believe such licence conditions are warranted and strongly opposes any such conditions (including UIOSI) in low band ESL spectrum.

The incoherence of the policy rationale behind UIOLI is clearly illustrated by the opposing positions of the ACCC and Telstra. While the ACCC and Telstra state their support for the concept of UIOLI licence conditions, their reasons for adopting such conditions are in direct conflict.

The ACCC submits that it supports UIOLI/UIOSI because '*smaller, regional-focused* operators want access to low band spectrum. The ACCC also repeats the claim that national MNOs are underutilising spectrum in areas those operators may want access. The ACCC believes the ESL process is suitable for investigating the '*possibility of new entry and explore future arrangements that reduce barriers to new entry*'.

TPG's experience is other users are typically interested in using spectrum in areas immediately adjacent to or within the area of existing public mobile networks. An alternative use of low band spectrum in those areas would cause interference to existing public mobile networks and real end-user harm. These emission issues are enduring and cannot be managed or addressed through regulation.

The fact MNOs do not show coverage at a location on a coverage map does not mean there are no radio emissions in that area. Co-channel interference impacts both operators and can create large spectrum dead zones – an issue the ACMA is aware of, given the significant

dead zones in 2.3 GHz and 3.4 GHz bands.²

In comparison to the ACCC's view, Telstra argues in favour of a version of UIOLI licence conditions that would see Telstra gain access to 100% of low band spectrum in areas where it has monopoly mobile coverage. This is directly opposed to the ACCC's position and other stakeholders' positions that are in favour of UIOLI conditions.

Such an outcome would reduce incentives for every MNO, including Telstra, to invest in terrestrial mobile infrastructure in those areas to zero. These negative incentives would bleed into areas where there is competing mobile network infrastructure given Telstra's network advantage, which is built with significant government subsidies. If adopted, the negative impact on competition would be so significant the ACCC must consider requiring Telstra to provide open access to its regional network to competitors in that scenario.

If the ACMA were to introduce UIOLI conditions, they must be designed in a way that would promote the public benefit. This means the ACMA cannot create a situation where Telstra is able to monopolise spectrum, nor can it create a situation where spectrum dead zones become an issue impacting existing public mobile networks.

Given the different and conflicting policy objectives UIOLI is attempting to address, there is a high risk of poor outcomes if such conditions were imposed. TPG continues to oppose such licence conditions in the ESL spectrum bands and the low band spectrum bands, in particular.

Alternative use cases do not trump existing users on public mobile networks

A number of non-ESL holders have asserted their need for access to ESL spectrum. They generally support licence conditions such as UIOLI/UIOSI obligations. Broadly, they fall into two categories:

- some stakeholders want dedicated spectrum access for alternative uses in areas where MNOs are using spectrum for public mobile networks, and
- some stakeholders want dedicated spectrum access for alternative uses in areas where MNOs are not using spectrum for public mobile networks.

The first category of submitters cannot be helped via the ESL process. Where MNOs are using their spectrum to operate a public mobile network, it would not be in the public interest to reduce spectrum available on those networks to facilitate niche applications.

Given the exponential growth in mobile data use and the forecasted capacity challenges, our public mobile networks need more spectrum not less. The consumer harm caused by reducing the available spectrum on public mobile networks would substantially outweigh any

² TPG notes similar experiences in managing third-party requests for spectrum access, as the research and case studies detailed in Optus' submission to the ACMA ESL stage 2 process.

benefits gained in allocating ESL spectrum to alternative use cases.

These alternative users can only be helped via allocation of new spectrum. If the ACMA believes there are underserved users of spectrum in areas where public mobile networks operate, these can be appropriately considered through allocation processes of unused spectrum. However, TPG notes it would be unusual to find the overall public benefit derived from niche applications is greater than those derived from serving the needs of the general public via public mobile networks.

The second category of submitters have made various assertions MNOs are underutilising their low band spectrum, and/or have made high level claims there are alternative use cases that could achieve a superior outcome in the use of spectrum.

As mentioned above, in TPG's experience, third parties wishing to use low band spectrum tend to seek access in areas where co-channel interference would become an issue. In areas where co-channel interference risk is limited, TPG has authorised third-party use of low band spectrum.

To that end, alternative users can approach the MNOs and seek access to low band spectrum. TPG is not aware of access being withheld other than for legitimate reasons of interference management and planned use.

TPG lastly notes there does not appear to be a lot of specificity in stakeholder submissions that clearly demonstrates alternative use cases in areas where there would be limited co-channel interference.