To

The Federal Department of Communications Spectrum Review

December 2014

AUSTRALASIAN RAILWAY

ASSOCIATION SUBMISSION

# THE ARA

The Australasian Railway Association (ARA) is a not-for-profit member-based association that represents rail throughout Australia, New Zealand and Indonesia.

Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector.

We contribute to the development of industry and government policies in an effort to ensure Australia’s passenger and freight transport systems are well represented and will continue to provide improved services for Australia’s growing population.

The ARA is comfortable with the publication of this submission.

The ARA thanks Department of Communications for the opportunity to comment of the Spectrum Review Potential Reform Directions Paper.

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SUBMISSION

**Overview**

The Australian Rail Industry’s supports the reform principles and believes the eleven potential reform proposals present a well-founded approach to Spectrum Policy arrangements.

The Industry also notes that many of the proposed reforms were or are currently being worked through in our very positive dealings with ACMA.

However, the industry notes the paper raises many complex questions in relation to the detail underlying the reform proposals and their implementation. This particularly applies to proposals 4 and 11 as outlined below.

The industry also believes further information about the timing of any implementation of the proposals and if there is to be a transition period should be provided.

**Specific comments**

***Proposal 1 Implement a clear and simplified framework of policy accountability***

This is supported by the ARA and its members.

It is important the Minister and ACMA have clear roles and responsibilities and the Minister retains powers in regard to decisions where there are major public policy implications. The rail industry would like to be consulted in regards to ACMA’s annual work program.

***Proposal 2 Establishing a single licencing framework***

This is supported by the ARA and its members.

The reduction in red tape (and one assumes costs) and increase in flexibility for the ACMA is seen as a positive way forward. For certainty a maximum licence term of 15 years is seen as acceptable but consideration could be given to extending this to 25 years.

***Proposal 3 More flexible allocation and reallocation processes***

The ARA and its members support this proposal.

***Proposal 4 Pricing and market information***

The Australian Rail Industry considers that the proposed market-based approach to allocating spectrum may not deliver the desired outcomes in spectrum efficiency and value.

It will be important when developing mechanisms to facilitate spectrum reaching its highest value use, the market for allocating spectrum cannot be considered in isolation. Markets where spectrum is an input (i.e. mobile broadband) and the effect the initial allocation of spectrum has on these markets must also be considered.

A number of factors can drive the ‘value’ of spectrum through market-based mechanisms that are not efficient, distort markets and create negative externalities (i.e. spectrum being purchased at a premium, further entrenching a monopoly). This is especially a concern in an already highly concentrated mobile broadband market where spectrum can affect long-term infrastructure investment decisions and create significant barriers to entry as well as other market distortions.

The Australian Rail Industry considers that using an unchecked market-based spectrum allocation approach without the express consideration of competition effects could reduce long-term competition. It is important that the spectrum management and allocation process should support an efficient telecommunications market sustaining competition across both the infrastructure, wholesale and retail layers. The lack of consideration for secondary market effects can have a particularly significant impact on consumers and State based entities as a procurer.

***Proposal 5 Structuring payment schedules for licences***

The ARA and its members support this proposal.

***Proposal 6 The ACMA to take an open data approach to substantially improve the range, availability and quality of information provided to support and efficient spectrum market***

The greater level of open source data is welcomed to support spectrum management. However this needs to be balanced against the need for security in regard to assigned spectrum, channels, locations and nature of use, which can play a crucial role as part of critical infrastructure control systems. Of particular note are the provisions being sought under the Australian Governments Critical Infrastructure Resilience Strategy and the Roadmap for Victorian Critical Infrastructure Resilience

***Proposal 7 Payment of compensation for resuming all or part of a licence***The ARA and its members are supportive of this proposal

***Proposal 8 Facilitate greater user involvement in spectrum management***

While supportive of this proposal, the ARA believes there should be recognition of the added financial burden of the delegation of spectrum management functions to organisations such as the ARA with the continued oversight of the ACMA. This is said in the context of the ARA playing an active role and fully supporting that role in spectrum allocation and management.

***Proposal 9 Develop more principles-based device supply regulation***

The ARA and its member support this proposal.

***Proposal 10 Improve regulation by extending the suite of enforcement measures available to the ACMA***

The ARA and its members support this proposal

***Proposal 11 The ACMA to continually review options for allocating spectrum to alternative/higher value users and to ensure barriers to achieving this a reviewed and removed where appropriate***

The ARA and its members have concerns about this proposal if it is to mean the highest bidder wins.

The Australian Rail Industry has worked closely with and made submission to the Commonwealth Government in the past emphasising the public interest value of spectrum for the Rail Industry. These submissions highlighted the significant public interest value of spectrum, the need for a robust methodology and framework to value this spectrum and a requirement for an appropriate allocation of spectrum for public interest uses such as the delivery of rail transport services.

It is noted that the Commonwealth’s proposed spectrum reforms recognise the importance of spectrum’s public interest value and that the public benefit derived from spectrum must be an important consideration of the review and the principles for reform. The acknowledgement of the significant public benefit resulting from the use of spectrum (which is not necessarily reflected in its market value) is crucial to realising ‘highest value’ use and recognising that this cannot always be facilitated through purely a market based approach and maximising spectrum’s financial return.

The Australian Rail Industry looks forward to working with the Commonwealth to clarify how public interest use of spectrum will be treated within the spectrum allocation and management framework.   
  
Particular points of note include:

* the review process should establish the principles for identifying public interest uses for spectrum, ascribe a value to the use and then determine an appropriate value for the necessary allocation of spectrum that reflects its public interest use
* decisions on spectrum allocation for public interest purposes should not be the sole domain of communication portfolio agencies but should be informed by whole of government guidance and coordination with State and Commonwealth governments
* strategic issues for State service planning and the impact of potential spectrum reforms on service delivery should be considered
* there needs to be transparency and clarity around revenue constructs and where subsidies are deployed.

Spectrum management and allocation decisions should be driven by a principle of ‘value’, with the anticipation that allocations of spectrum, outside of a market based approach, for the delivery of low revenue, high public benefit services may be necessary in order for the spectrum to achieve its ‘highest value’ use.

The ARA and its members would also like to comment briefly on Case Study A. While the industry agrees with many of the statements made it would raise the following issues:

* **How will up-links be protected since they cannot be registered (except for fixed stations)?**
* Will conditions governing power and guard bands for rail-only spectrum be specified to enable coverage and C/I to be engineered?
* Will this complicate deployment of 'emergency BTS trailers'?

In Case Study B, would the ARA be considered a private band manager under current arrangements or future arrangements?

# Conclusion

The ARA and its members are very appreciative of the collaborative and open relationship with the ACMA and in broad terms supports proposals for reform that are in line with a more efficient, flexible and responsive organisation.

As outlined above, with some limited but important concerns in regard to proposals 4 and 11, the industry believes the proposals will be helpful for the ACMA and their stakeholders.

While we broadly support market-based mechanisms and the allocation of spectrum in a way that delivers it highest-value use, how public interest spectrum is treated and valued is critical. The rail industry has demonstrated economic value (including the public interest benefit) in its pursuit of spectrum for rail and the financial arrangements reflect an understanding industry will contribute but at a level which demonstrates Government’s acknowledgement that non-financial benefits and externalities are realised with the spectrum. The Federal Government needs to balance the drive to an efficient and high-value spectrum with the public interest aspects as it has done and must continue to do with the rail industry.

We have appreciated the opportunities for open dialogue and the transparent manner in which the ACMA has worked with the rail industry.

The ARA on behalf of Australian Rail Industry Spectrum Licensees looks forward to continuing past collaboration with the Commonwealth and the ACMA in the further development of the potential reform proposals to improve the mechanisms for spectrum access.

If you have any queries in relation to this submission please do not hesitate to contact Mr Phil Allan, Director Policy and Advocacy, Australasian Railway Association on (02) 6270 4507.