



22 September 2014

Ms Nikki Vajrabukka
Director, Spectrum Access
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

Via email: spectrum@communications.gov.au; nikki.vajrabukka@communications.gov.au

Dear Ms Vajrabukka,

CONSULTATION ON DRAFT DIRECTION TO USE 3.5 GHZ BAND SPECTRUM FOR THE NBN SPECTRUM GAP

Optus welcomes the opportunity to provide comment on the draft Ministerial Direction to the Australian Communications and Media Authority (ACMA) on the 3.5 GHz band (draft Direction).

Optus holds 77% of the spectrum-licensed assets in the 3.5GHz band and therefore has a keen interest in proposals, including an allocation to the NBN that the draft Ministerial Direction would give effect to, that may impact the future use, allocation and licensing arrangements of these assets.

While Optus does not oppose the proposed allocation to the NBN, it provides the following comments to inform the development of the draft Direction.

EXPECTATION OF SPECTRUM LICENCE RE-ISSUE

Optus does not have certainty on whether it will be offered the option to re-issue its expiring spectrum licences in the 3.5GHz band as the outcome of the ACMA's Consultation Paper on 'Transitioning the 3.5GHz band for future opportunities' - which proposes a preferred licensing outcome that would remove any prospect of Optus' expiring licences being re-issued - is unknown.

This uncertainty exists despite the fact that a detailed assessment of the public interest of the re-issue of the 3.5GHz spectrum band has been undertaken over a number of years that resulted in the band:

- being declared as a class of services for which re-issuing spectrum licences to the same licensee is in the public interest as per the *Radiocommunications (Class of Services) Determination 2012*; and
- forming part of the *Radiocommunications (Spectrum Access Charges) Direction 2012*, which set the spectrum access charge at \$0.03MHz/Pop.

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Optus' view is that the proposed differential arrangements for the NBN in the 3.5GHz band should not affect or rule out spectrum licensing in the band or the offer of the re-issue of expiring licences for incumbents like Optus.

Also, Optus notes that the intent of the draft direction is to provide NBN with business certainty on its spectrum allocation for fixed wireless services. Optus would also appreciate certainty on the prospect of re-issue of its expiring spectrum licences in the 3.5GHz band and suggests that this may be able to be included in any directional comments by the Minister at the time when the direction is finalised.

SPECTRUM ACCESS CHARGES

When setting the apparatus licence tax that would apply to the proposed NBN allocation, Optus supports the proposals in the draft Direction for the ACMA to:

- refer to the spectrum access charges set by the *Radiocommunications (Spectrum Access Charges) Direction 2012*;
- consider 'an amount of tax that reflects a market price in respect of a transmitter licence for the relevant spectrum'.

In the event that the spectrum licence re-issue process progresses and Optus' licences in the 3.5GHz band are renewed, it is Optus' view that the price set for the proposed NBN allocation should be set no lower than the \$0.03 MHz/Pop as per the *Radiocommunications (Spectrum Access Charges) Direction 2012*.

This will ensure that any Optus' investment in the re-issue of its spectrum licences in the 3.5GHz band is not undermined by a comparative pricing differential between spectrum and apparatus licences in the band.

RESTACK OPTIONS

Optus' discussions with the ACMA have concluded that the re-stack of the 3.5GHz band is being viewed as a long term objective. That is, there are very limited options to re-stack the band prior to licence expiry of the band in December 2015.

In terms of the proposed allocation for NBN, Optus strongly suggests that the NBN be encouraged and/or required to implement spectrum agile technology for the fixed wireless services it will deploy in the 3.5GHz band. This flexibility will ensure that future re-planning and re-stack options for the band is not limited.

Please contact Michelle Phillips, michelle.phillips@optus.com.au (03) 9033 4239, if you require any additional information on Optus' response.

Yours sincerely



Gary Smith
Head of Regulatory Compliance