

22 September 2014

Brian Kelleher
Manager Spectrum Policy
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

By email: spectrum@communications.gov.au

Dear Mr Kelleher,

Consultation on draft Direction to use 3.5 GHz spectrum for the NBN spectrum gap

Telstra welcomes the opportunity to provide comments on the draft ministerial direction *"Australian Communications and Media Authority (3.5 GHz frequency band) Direction 2014"*¹ which directs the ACMA to put in place arrangements by 30 April 2015 for apparatus licences to be issued to NBN Co in the 3400 - 3425 MHz and 3492.5 - 3542.5 MHz frequency ranges

Telstra notes that the 3400 - 3600 MHz frequency band (the 3.5 GHz band) is one of the prime candidate bands to be identified for the future expansion of mobile broadband services under Agenda Item 1.1 of the ITU 2015 World Radio Conference. It is one of the few bands being considered that is likely to be approved for mobile use on a global scale. This band is ideal for small mobile cell deployment and Telstra believes it will end up being an important band in Australia for the expansion of mobile network capacity in metropolitan areas.

Telstra recognises that NBN Co needs to find suitable solutions for its customers that are not easily served within the vicinity of metropolitan areas. However, Telstra is concerned that the premature assignment of additional 3.5 GHz licences to NBN Co in these areas could constrain the future utility of this spectrum for mobile broadband services and the ability of mobile operators to meet the ongoing growth in demand from their customers for such services. In particular it may not allow Australia to be harmonised with the technical plan for the band that is to be agreed at the World Radio Conference in December 2015. Harmonisation is important for international roaming and ensuring that Australia can take full advantage of equipment that is manufactured for global scale.

For these reasons, Telstra recommends that any direction to assign additional spectrum to NBN Co in this band is deferred until after the outcome of the World Radio Conference is known and an optimal longer term plan for the band has been agreed for Australia. However, if the Minister considers that the direction cannot be delayed, Telstra recommends that it be modified to incorporate either or both of the following two options:

Option 1: Direct the ACMA to identify alternative spectrum in the 3600 – 3700 MHz band

This option would require the ACMA to identify the additional apparatus licences for NBN Co from the 3600 – 3700 MHz band. This band has similar propagation characteristics to the 3400 – 3600 MHz band and is already used for the licensing of fixed wireless access services

¹ Available at http://www.communications.gov.au/consultation_and_submissions/nbn_spectrum

in regional and remote areas, subject to coordination with fixed links and satellite earth stations.

Telstra notes the 3600 – 3700 MHz band will also be considered for allocation to mobile broadband services at the 2015 World Radio Conference but it is less likely to be adopted on a global basis. Consequently, Telstra believes the assignment of spectrum to NBN Co in this band would be a more acceptable solution, as this band is likely to be less critical for future mobile broadband deployment in Australia.

Option 2: Direct the ACMA to add a retuning condition to any licences issued in the 3400 – 3600 MHz band

This option would require the ACMA to issue apparatus licences to NBN Co in the 3400 – 3600 MHz band on a conditional basis. The relevant licence condition would give the ACMA power to require NBN Co to retune its transmitters to different frequencies at a later date, in order to implement an optimal longer term plan for the band which takes the outcome of the World Radio Conference into account.

Amendment to the schedule

In addition to the above, Telstra recommends the “Matters to which the ACMA must have regard” in the schedule be amended to include an additional item which requires the ACMA to recognise:

- the importance of mobile broadband for economic productivity;
- that access to radiofrequency spectrum underpins the delivery of mobile broadband; and
- the licensing arrangement should not hamper Australia’s ability to implement the decisions of the ITU 2015 World Radio Conference (under Agenda Item 1.1) concerning the future use of the 3400 – 3600 MHz band for mobile broadband services.

Telstra’s understanding of section 3 of the *Radiocommunications Act 1992* (the Object provision) is that there is no prescribed hierarchy between the eight objects that are listed. Although item 7 in the draft Direction’s Schedule identifies sub-section 3(f) of the *Radiocommunications Act* as a particular matter to which the ACMA must have regard, other objects of the Act include maximizing the overall public benefit through efficient allocation of spectrum and encouragement of the use of efficient radiocommunications technologies. The ACMA is required to conduct a weighing exercise in the event that a particular regulatory action would preference one object in conflict with another object. In this case, the reservation of specific 3.5 GHz spectrum in a manner that would potentially preclude its use for mobile broadband in the future may be in conflict with other objects of the Act that would support optimal harmonisation of Australian spectrum with internationally adopted standards. While the Minister undoubtedly may issue policy directions to the ACMA such as the draft Direction under section 14 of the *ACMA Act*, and further may direct the ACMA to have regard to provisions in the *Radiocommunications Act*, the ACMA is still required to discharge its obligations under statute which will include a weighing of the objects under section 3. Telstra suggests the ACMA should be directed to have regard to the additional factors set out in the proposed amendment above, so as to ensure that the relevant considerations are taken into account. This would not affect the desired objective of making available the spectrum needed to provide NBN fixed wireless broadband services to around 80,000 homes and businesses located near major cities, which could still be achieved.

We would appreciate the opportunity to discuss this matter with you before a final decision is made. Brian Miller (General Manager Regulatory Operations) will contact you accordingly. Please do not hesitate to contact Brian if you wish to clarify any aspect of this submission or require further information. He can be contacted by telephoning +61 3 8649 5953 or emailing him at brian.miller@team.telstra.com.

Yours sincerely,



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