
Submission

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Re: Expiring spectrum licences (stage 2) – information gathering, and views on uses of frequency bands and alternative licence conditions

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Communications and Media Authority (**ACMA**) for the opportunity to comment on Expiring spectrum licences (stage 2) consultation paper (**the Consultation Paper**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

The framework for planning and allocating spectrum underpins the efficient delivery of communications services in the interests of consumers, small businesses, and the broader community as end users of spectrum. Fit-for-purpose planning and allocation frameworks are critical to promote the public interest through the allocation of finite spectrum resources.

ACCAN supports the ACMA's finalised expiring spectrum licence (**ESL**) stage 2 information gathering framework and its public interest criteria (**PIC**) as outlined in the Consultation Paper. ACCAN recommends that the ACMA:

- Use mandatory information requests in instances where sufficient spectrum use information is not provided by licensees and that information is of material relevance to ACMA's spectrum planning and allocation activities.
- Consider the use of 'use it or lose it' (**UIOLI**), 'use it or share it' (**UIOSI**) licence conditions and rollout obligations to support the PIC and promote competition.
- Upon licence activation, issue mandatory spectrum use information requests to secondary licence holders.
- Consider the expansion of renewal statements which specify the achievement of rollout obligations and investment as a pre-requisite for consideration of licence renewal.
- Continue to maintain no presumption of licence renewal.
- Establish license conditions that provide the ACMA proportionate tools to respond to non-compliance.
- Establish a review process which allows the ACMA to alter the conditions of an in-force ESL.

As the expectations of communications consumers evolve and the use of spectrum expands to meet these needs, nuanced approaches are required to consider how licences and other tools can be used to produce public value, promote the long-term public interest and support spectrum end users.

Please see **Attachment A** for our response to the questions set out in the Consultation Paper.

We thank the ACMA for the opportunity to comment on the Consultation Paper. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at con.gouskos@accan.org.au.

Yours sincerely,

Con Gouskos
Policy Adviser

Attachment A

Spectrum use information requests

ACCAN supports the ACMA's proposal to request incumbent and prospective licensees demonstrate 'how their historical, current, and proposed use of the spectrum promotes the long-term public interest derived from the use of the spectrum'.¹ Ensuring that incumbent and prospective licensees adequately inform the ACMA of their spectrum use will improve the effectiveness and accountability of the spectrum planning and allocation framework. ACCAN supports the information gathering exercises proposed by the ACMA as a component of improving the competitiveness of the spectrum market, the facilitation of the PIC and providing greater value for telecommunications consumers as end users of spectrum.

The ACMA's access to accurate, timely and comprehensive information from incumbent and prospective licensees is critical to facilitating effective spectrum planning decision making. The ACMA's compliance and PIC objectives may be more comprehensively fulfilled through the use of mandatory spectrum use information requests. Mandatory information requests would have utility with respect to spectrum allocations of high value or competitive importance or in instances where the ACMA is not receiving adequate information from incumbent or prospective licensees.²

Mandatory information requests, provided in a commercial-in confidence manner would be an effective mechanism to support genuine consideration of the PIC by incumbent and prospective licensees in addition to supporting the ACMA in its regulatory activities. To facilitate this, the ACMA should give consideration to specifying which 'information and documents that must be provided when making an application.'³

The ACMA should give consideration to facilitating the standardisation of spectrum licence information to better facilitate the comparison and scrutinization of utilisation information provided by incumbent and prospective licensees. In combination with the implementation of mandatory information requests, the implementation of standardised licence information may grateful improve the ACMA's efficiency in undertaking future spectrum licence reviews.

ACCAN supports the questions that the ACMA seeks to ask incumbent and prospective licensees.⁴ Noting the Consultation Paper's request for evidence and analysis related to the 'uses of the spectrum that address digital inclusion for First Nations Australians', it is appropriate that the ACMA consider asking this question to relevant incumbent and prospective licensees on a mandatory basis to better collate perspectives on improving First Nations digital inclusion.⁵ Requiring appropriate incumbent and prospective licensees to address this question may produce significant benefits for relevant end users. ACCAN would support publicising this information where appropriate to foster greater community engagement with the spectrum planning process, in addition to enabling community and advocate stakeholders to examine the validity of the proposals of prospective and incumbent licence holders.

¹ ACMA. Expiring Spectrum Licenses Stage 2 (Consultation Paper, March 2024) 10.

² Ibid 12.

³ Ibid 18.

⁴ Ibid 12, 15.

⁵ Ibid 14.

Use It Or Lose It (UIOLI) and Use It Or Share It (UIOSI) licence conditions

ACCAN supports the consideration of a wide range of alternative licencing arrangements including rollout obligations, UIOLI and UIOSI licence conditions in addition to other licencing arrangements developed by the ACMA which support a public interest focussed and competitive spectrum market.⁶ ACCAN supports the use of these licencing arrangements in conjunction with mandatory requests for spectrum use information where appropriate. ACCAN considers that the adoption and use of a combination of these mechanisms may improve the efficiency of spectrum utilisation.

The minimum utilisation thresholds of UIOLI or UIOSI licence conditions will be critical to their effectiveness in promoting efficient spectrum use amongst licence holders. Minimum utilisation thresholds should be developed to ensure that the limit of genuine minimum utilisation sufficiently provides value to end users and satisfies the PIC. ACCAN supports the ACMA establishing a review process to ensure that the effects on end users are minimised where UIOLI licence conditions are met and licences are cancelled as a result.

The intended function of UIOSI conditions as outlined in the Consultation Paper is sound and ACCAN supports the ACMA giving further consideration to their use in the facilitation of a competitive spectrum market.⁷ Processes should be established to ensure that secondary licence holders are held to the same standards as the primary licence holder, in addition to being subject to mandatory spectrum use information requests upon the sharing of the licence to a secondary holder. This will enable the ACMA to have a timelier understanding of any spectrum sharing undertaken.

ACCAN considers that under a UIOLI regime, where there are no alternative spectrum users to engage in spectrum sharing, that a review process be undertaken to reallocate the spectrum to another user, noting that in some instances no users may be available and that 'there can be productive, allocative and dynamic dimensions to this perceived inefficiency'.⁸ In instances where no users may be available, it may be appropriate to utilise the spectrum for interference mitigation purposes.

ACCAN supports the ACMA exploring the implementation of disaggregated licences to facilitate the use of UIOLI licence conditions such that UIOLI conditions can be activated if partial use of a licence is identified. This would promote greater practicable spectrum efficiency through encouraging licence holders to comprehensively utilise their spectrum holdings.⁹ Where it sees a practicable benefit to doing so, ACCAN supports the ACMA varying 'an in-force ESL, or a spectrum licence not subject to the ESL process, by including a rollout obligation or a UIOLI condition prior to licence expiration' provided that this facilitates the PIC and promotes spectrum utilisation.¹⁰ With respect to this process, ACCAN considers that it will likely take place in instances where a change in spectrum use and anticompetitive conduct has occurred, and should be undertaken with careful consideration as the Consultation Paper outlines.¹¹

ACCAN would support the ACMA giving consideration to introducing licence conditions which allow for the alteration of the duration of a licence without the cancellation of the licence. The ACMA should have the ability to reduce the duration of a licence and therefore bring forward licence

⁶ ACMA. Expiring Spectrum Licenses Stage 2 (Consultation Paper, March 2024) 24.

⁷ Ibid 25.

⁸ Ibid 27.

⁹ Ibid 31.

¹⁰ Ibid 31.

¹¹ Ibid.

renewal where a review process determines that the licensee has not complied with the appropriate licence conditions. This review process should set a period to allow for the phasing out of the license and provide adequate notice to the licensee. ACCAN considers that it is appropriate that the ACMA developed a review process for amending the licence conditions of in-force licences.

ACCAN considers that the ACMA should be responsible for assessing third party proposals under a UIOSI regime. ACCAN supports the ACMA's detailed consideration of the regulatory settings of a UIOSI system as outlined in the Consultation Paper, including the expansion of the apparatus licence system under a UIOSI regime.¹²

ACCAN supports the ACMA engaging with the international examples of spectrum rollout obligations noted in Appendix C: International examples of alternative licence conditions of the Consultation Paper.¹³ In particular, ACCAN supports the consideration of implementing "keep what you serve" licence considerations and would encourage the ACMA to create a review process surrounding the use of this licence condition.¹⁴ Introducing this condition to licences where appropriate may improve spectrum competition and utilisation as unused spectrum may be shared, reallocated or used for interference mitigation.

Licence Conditions

The use of licence conditions which allow for compliance action to be taken within the term of a licence would improve the ability of the ACMA to undertake its compliance activities.¹⁵ For longer spectrum licenses, the ability for the regulator to undertake compliance activities during the term of a licence, which may last as long as 20 years, is more favourable than only undertaking these activities at licence renewal.

The ACMA is currently limited in its ability to intervene during the term of a licence in any form outside of cancelling the licence, which the ACMA noted is a blunt enforcement activity.¹⁶ This is not an outcome which facilitates value for end users of spectrum, nor does it contribute to the effectiveness and competitiveness of the spectrum market.¹⁷ Additionally, licence timeframes as long as 20 years present a significant hurdle to achieving appropriate responses to non-compliance.

Licence conditions which allow for compliance action to be taken within the term of a licence would allow for the ACMA to have greater discretion with respect to the licences that are unlikely to be cancelled in their entirety due to various factors and externalities. ACCAN has previously supported the ACMA considering the issuing of shorter spectrum licences.¹⁸ Should the use of longer licence periods (15-20 years) be the sole timeframe available for spectrum licences, ACCAN considers that the use of licence conditions which allow for compliance action to be taken within the term of a licence may present a proportionate and timely solution to non-compliance with licence conditions. Introducing these licence conditions alongside the use of shorter-term spectrum licences would positively contribute to expanding the enforcement capabilities of the ACMA.

¹² ACMA. Expiring Spectrum Licenses Stage 2 (Consultation Paper, March 2024) 32.

¹³ Ibid 48.

¹⁴ Ibid 49.

¹⁵ Ibid 29.

¹⁶ Ibid 29.

¹⁷ Ibid 29, 30.

¹⁸ ACCAN. ACCAN response to the ACMA consultation on the draft FYSO 2024-29.

ACCAN considers that the ACMA should explore the use of renewal statements which specify the ‘achievement of a UIOLI condition or rollout obligation as a circumstance that must be met before the ACMA would consider whether to renew the licence’. Should this be utilised in combination with UIOLI conditions or rollout obligations, they may encourage greater interaction with the PIC, the promotion of more efficient uses of spectrum and positive outcomes for spectrum end users.

Promoting discretion and proportionality in the ACMA’s response to non-compliance with licence conditions would improve the efficiency of the ACMA and of the market as a whole, as compliant licences may stand to benefit from the reallocation or sharing of the spectrum of non-compliant licensees.

ACCAN considers that with respect to a graduated approach to spectrum enforcement, the ACMA should have the compliance mechanisms required to adequately and proportionally respond to non-compliance within the term of a spectrum licence. ACCAN considers that enforcement actions such as civil penalties, remedial directions and enforceable undertakings be explored by the ACMA in addition to the existing enforcement mechanisms of licence cancellation and non-renewal.¹⁹ While a graduated approach to enforcement of spectrum licences may be appropriate in some instances, ACCAN suggests that there be limited or no barriers present in escalating the enforcement response of the ACMA to non-compliance with licence conditions, where the ACMA deems such actions appropriate. Should these mechanisms be introduced in addition to the ability for the regulator to revoke licences, this would improve the responsiveness and functionality of the ACMA’s enforcement ability.²⁰

ACCAN considers that in response to singular or repeated non-compliance with licence conditions, the ACMA should be empowered to increase supervision of the licensee with use information given to the ACMA on request as part of a monitoring arrangement. This monitoring arrangement should be undertaken on a cost recovery basis so that enforcement action does not impose costs on broader, compliant licensees.

As noted in the Expiring Spectrum Licences: Finalised framework and response to submissions, ACCAN supports maintaining the absence of a presumption of licence renewal for each ESL.²¹ We consider that this absence would support competition within spectrum market, as it encourages spectrum holders to integrate their use of spectrum with the PIC and generate value for end users. Where appropriate, the ACMA should assist incumbent or prospective licence holders in making representations with respect to the renewal of their licence.²² ACCAN supports this absence being maintained due to the unique factors which may be present with respect to each licence’s relevance to the public interest due to geographical factors or other externalities.²³

The Australian Communications Consumer Action Network (ACCAN) is Australia’s peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia’s past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)

¹⁹ ACMA. Expiring Spectrum Licences – Finalised framework and response to submissions. (Consultation Paper, December 2023) 30.

²⁰ Ibid 30.

²¹ Ibid 6.

²² Ibid.

²³ Ibid 18.