

KEY POINTS

- **Spectrum for commercial activities should be subject to price-based allocation processes, particularly where commercial entities that use spectrum for the delivery of their services are in direct competition.**
- **Spectrum should not be allocated to particular commercial entities or industry sectors on terms that give those entities or industry sectors a competitive advantage.**
- **Increasing spectrum scarcity could mean that new approaches to encourage greater spectrum sharing and coordination may also be necessary to maximise spectrum efficiency.**

BACKGROUND

ASTRA's general position on spectrum management and policy

ASTRA recognises that spectrum management and policy needs to balance at times competing public policy objectives, ensuring sufficient spectrum capacity is available for the effective operation of essential services, defence and other public interest needs, while ensuring sufficient flexibility for the market to efficiently and effectively determine allocations appropriate to the evolving needs of a communications environment constantly developing new technologies and services. Spectrum allocation policy also needs to reflect international agreements on technical standards and uses for particular frequencies, particularly given international moves toward spectrum use harmonisation may impact on the certainty required for long-term infrastructure investment.

ASTRA firmly believes that spectrum for commercial activities should be subject to price-based allocation processes, particularly where commercial entities that use spectrum for the delivery of their services are in direct competition. Market-based pricing of spectrum for commercial use is more likely to encourage the most efficient use of spectrum to provide the services that consumers of media and communications services want. Conversely, exclusive use of spectrum for commercial activities allocated by means other than market-based mechanisms may not necessarily provide the same incentive for efficient spectrum use.

In a converging media and communications environment that is bringing once distinct industry sectors into greater direct competition in the delivery of services and content, the allocation of spectrum for commercial activities by means other than a market-based approach will almost inevitably preference particular industry sectors to the commercial detriment of other participants. Spectrum allocated for carriage of commercial FTA television services represents perhaps the most significant example of spectrum allocation for commercial activities on distinctly non-commercial terms:

- Analysis undertaken by Deloitte Access Economic for ASTRA in 2011 estimated that access to spectrum for the commercial FTA broadcasters was worth approximately \$505 million per year, with the value of access to spectrum for national FTA broadcasters a further \$352.4 million.

- In 2012-13 the commercial FTA broadcasters paid license fees of \$294 million, but effectively paid just \$151 million after receiving the rebate. The cost to the taxpayer of this rebate over the period 2012-13 to 2015-16 is \$761 million.

The results of the auction of the digital dividend spectrum in April 2013 revealed a market value of \$1.36 per MHz/pop for digital dividend spectrum. If these results are used as a guide, the market value of the spectrum held by FTA broadcasters could be considerably higher. While the value for the specific spectrum bands still held by FTA broadcasters after the completion of switchover is difficult to estimate with any precision – due to the uncertainty over future designations of these bands for uses such as mobile broadband – applying this market value suggests that the FTA broadcasters' remaining holdings of 210 MHz may hold a value of approximately \$6.5 billion.

Government's review of the spectrum management framework

On 23 May 2014, the Minister for Communications announced a review of the spectrum policy and management framework. The purpose of the review is to examine what policy and regulatory changes are needed to meet current challenges, and ensure the framework will serve Australia well into the future.

In line with the Government's deregulation agenda, the review is seeking to simplify the framework, with the intention of making it easier to administer as well as increase accessibility and reduce compliance costs for users. The review will consider opportunities for reducing regulation and non-legislative reform approaches where possible.

Priority issues for spectrum management and policy

ASTRA considers there are a number of issues in spectrum management and policy that are becoming increasingly important:

- The media and communications environment is evolving rapidly through technological and other developments, leading to an emerging need for more innovative and novel approaches to licensing spectrum use – this could include licensing according to the type of service that is to be provided, with an emphasis on interference management to enable more effective and efficient use of increasingly scarce spectrum;
- Spectrum used for commercial activities should be allocated according to market-based mechanisms – in particular, spectrum should not be allocated to particular commercial entities or industry sectors on terms that give those entities or industry sectors a competitive advantage;
- Close consideration should be given to existing legislative arrangements that mean spectrum for some forms of commercial use are treated differently to others, and whether (particularly in light of an increasingly convergent media and communications environment) such differentiation continues to be appropriate or necessary;
- Australia, through both the ACMA and the Federal Government, should strive for greater participation and engagement in international fora – the harmonisation of spectrum use is of critical long-term importance, and it is vital that Australia's interests be strongly represented in the international radiocommunications arena.

Simplifying the spectrum management framework

ASTRA supports simplifying the spectrum regulatory framework, including the objects of the *Radiocommunications Act 1992 (Cth)* (Radcomms Act), provided efficient use of spectrum and consistent treatment across the different sectors of spectrum users is enshrined in any

future framework. The planning, allocation, licensing and re-issuing processes within the Radcomms Act, and the array of supporting legislative instruments, are highly complex. To some extent, complexity is unavoidable, given Australian spectrum management must be consistent with international radiocommunications management frameworks while also addressing allocation, interference and other operational issues specific to Australia. Even so, scope exists to simplify these processes, and to reduce unnecessary regulatory compliance costs associated with technical regulation and interference management requirements.

Efficient spectrum use and spectrum sharing

A market-based approach to allocating spectrum for commercial activities has been highly effective in promoting the most efficient and effective use of spectrum. A revised spectrum management framework should ensure that market-based approaches are the fundamental underlying principle of spectrum allocation for commercial use. As an example, allocation of the 'sixth channel' of broadcast spectrum by open auction (and including the possibility of that spectrum being allocated for new commercial television broadcasting licences) would encourage more efficient use of both the 'sixth channel' and broadcast spectrum generally. Subject to appropriate technical parameters to manage interference with adjacent services, radiocommunications and broadcasting legislation should not unnecessarily limit the types of new services that could make use of spectrum currently reserved for the transmission of broadcasting services.

Spectrum licensing gives significant flexibility in terms of the types of use permitted within allocated spectrum. However, it does not necessarily lend itself to enabling spectrum sharing where such use could lead to more effective and efficient spectrum use. Increasing spectrum scarcity could mean that new approaches to encourage greater spectrum sharing and coordination may also be necessary to maximise spectrum efficiency, with interference management becoming increasingly important with more services required to operate in the same bands.

Similarly, the framework for issuing apparatus licences should also be examined with a view to implementing alternative allocation and licensing processes – such as parameters-based licensing – that could enable licensing of a system of related apparatus, as opposed to the more resource intensive process of licensing individual devices. A new licence type that defines use based on the service being provided may prove effective in enabling spectrum sharing while ensuring greater certainty to licensees through appropriate ongoing interference management.

Private band management

ASTRA considers there is scope for investigating more innovative and novel approaches to encouraging more efficient spectrum use, particularly where spectrum is allocated to multiple users providing a specific type of service. We see significant merit in examining, for example, the feasibility of private band management as a means of developing and administering effective and efficient spectrum sharing arrangements. Private band management would also create the opportunity for businesses to have more flexibility in planning spectrum and choosing technologies.

This is particularly the case for spectrum use for short-term event-based operations, such as spectrum for television outside broadcast (TOB) operations, that can be planned and coordinated in advance. ASTRA has previously proposed a 'private park' arrangement for TOB spectrum that could include a simple online event booking system, with the administration for managing the frequencies and the booking system outsourced to an independent entity as spectrum band manager. As competing spectrum demands increase,

the capacity for unmanaged self-coordination between users will be increasingly challenging (both in relation to TOB events and for other spectrum uses generally). A coordinated system under a 'private park' model would provide more certainty to all users of a particular spectrum band and could also future-proof accessibility for other users, such as ad hoc international users, and new market entrants.

Consistency in compliance mechanisms, technical regulation and the planning and licensing of spectrum

ASTRA fully supports the objective of creating a level regulatory playing field for spectrum users by treating users consistently and transparently. The Review should critically examine whether certain commercial services should continue to receive differentiated treatment compared to other commercial operators under existing legislation. Specifically, this Review provides a timely opportunity to reassess the regulation of broadcast spectrum under radiocommunications and broadcasting legislation, and to consider whether the rules that limit access to broadcast spectrum continue to be appropriate and relevant in the post-switchover environment.

Consideration could be given to limiting the ACMA's broadcasting spectrum planning powers to technical and transmission issues, at least to the extent it relates to commercial and national FTA broadcasters. ASTRA acknowledges that, where there are government policy objectives for the terrestrial provision of national broadcasting and other non-commercial broadcasting services, the ACMA's planning powers may continue to need to make specific provision for spectrum required for these services. However, ASTRA questions the continuing need for the ACMA to have regard to matters such as the social, economic and demographic characteristics of a particular geographically defined market, or the "demand for new services" in a particular market, in its broadcasting planning processes, as is currently required under section 23 of the BSA, in relation to commercially-based services. ASTRA submits that the extent to which there is a "demand" for additional services in a particular geographic location is best left for the market to determine. While there would be a continuing role for the ACMA to minimise interference between services and to ensure adequate reception for consumers, the nature of the services themselves should be left the market (and ultimately the consumer) to decide.