



TELSTRA CORPORATION LIMITED

Submission to

Senate Environment and Communications Legislation Committee Inquiry into Radiocommunications Bills 2020

23 September 2020



Introduction

We welcome the opportunity to respond to the Senate Environment and Communications Legislation Committee (**Committee**) Inquiry into the *Radiocommunications Bills 2020*. We are grateful for the opportunity we have had over the course of this year to provide contributions to the formation of the Bills, and we commend the Department and all others involved for their work in preparing the extensive set of amendments contained in the Bills now before parliament.

We support the Bills, and strongly encourage the Committee to recommend passage of them. The Bills contain reforms urgently needed by the communications industry to support timely investment in 5G and other new wireless technologies. Amendments such as increasing the maximum licence term from 15 years to 20 years, adding certainty to the licence renewal process, streamlining administrative processes for spectrum allocation, and improving the compliance and enforcement powers will all assist to maximise the value of the scarce spectrum resource for the economy and society more generally. They will enable industry to be more agile in introducing the latest wireless technology innovations to enhance domestic productivity and Australia's global competitiveness.

We support AMTA's submission

The mobile communications industry, through its industry body the Australian Mobile Telecommunications Association (AMTA) has developed a short list of further amendments to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Bill* to enhance its effectiveness, mainly in relation to providing industry with greater certainty for investment. We have contributed to the amendments proposed by AMTA and commend them to the Committee for its consideration and recommendation that they be adopted.

To avoid further delays in introducing the benefits of the Bills we are keen to see them complete passage through Parliament this calendar year. If that means not all of the recommendations of the Committee can be implemented within the available time, we would prefer the Bills to be passed with those recommendations excluded, rather than further delay this tranche of reforms. The process conducted to bring the current Bills before Parliament demonstrates that targeted incremental reforms to the *Radiocommunications Act* are a pragmatic and efficient approach to improving the regime, which we recommend be continued through ongoing cycles of review and targeted legislative reform.

A longer default licence renewal application period is required

There is one amendment proposed by AMTA that we wish to underscore. It relates to the default renewal application period for both spectrum and apparatus licence types. We propose the default renewal application period should be 5 years for spectrum licences and 2 years for apparatus licences. The Bill currently states that the default renewal application period for spectrum licences will be 2 years (s77A(3) of the Bill, in Item 44 of Schedule 3 Part 4), and 6 months for apparatus licences (s129(3) of the Bill, in Item 79 of Schedule 3 Part 4).

This prescribed default renewal application period of 2 years will apply to all existing spectrum licences that have been issued, some of which are due to expire as soon as 2028. This means that – in the absence of cumbersome ACMA intervention which we note below – consideration of renewal applications would only begin in 2026.

In the worst case, after allowing for the ACMA's decision making process, a 2 year default renewal application period for spectrum licences could mean a mobile network operator may receive notification



that a spectrum licence is not to be renewed with less than 1 year remaining on its licence term – during which time all services reliant on that spectrum licence would need to be cleared. This is insufficient notice for a mobile operator, with several million customers, to clear a band. For example, Telstra has provided more than 4 years' notice to its customers ahead of clearing the last remaining band in use for its 3G network (the 850 MHz band).¹ This is to ensure that all customers, which include business and enterprise customers using the 3G network for Internet of Things and Machine-to-Machine type devices which may have lifespans of many years, have sufficient notice to make plans to transition to devices using another band. It is important to recognise that mobile handsets with regular turnover are not the only devices that operate over mobile networks, and we highlight this point from the AMTA submission for the Committee's attention.

The most recent experience of spectrum licence re-issue, conducted a decade ago under the process in s82 of the current Act, suggests that at least twice the proposed 2-year period is required. That process ran from release of the first Departmental discussion paper in April 2009², through February 2012 when the relevant Ministerial instruments were issued,³ and then until mid-August 2012 when the licensees provided evidence of sufficient use of the spectrum licences to the ACMA to justify re-issue. The relevant spectrum access charge determinations were made by the ACMA in November 2012⁴ – meaning that the end-to-end process for licence renewal took more than three-and-a-half years.

We recognise that the default renewal application period is capable of extension by the ACMA exercising its power under the new s65A(12) to determine a period applicable to a class of spectrum licences. However, our view is that an appropriate default period of 5 years should be entrenched in s77A(3) of the Act at the outset, and the ACMA's power under the new 65A(12) should only be used if a particular class of spectrum licences has characteristics that justify a different time period. We also question why a time period which is known at this point to be insufficient, is being inserted into the Act in the knowledge and anticipation that it will have to be changed by a legislative instrument to be made by the ACMA. This appears to be cumbersome and unnecessary, and contrary to the simplification intent of the Bill.

Similar considerations apply in regard to apparatus licences, although the distinct characteristics of apparatus licences along with the smaller scale investments typically associated with the use of these licences, means that a default period of 2 years should be sufficient.

Last, we note that if the Committee recommends that longer default renewal application periods be adopted, these are simple amendments involving the changing of two numbers in the text, which should not cause delay in passage of the Bill.

¹ Nikos Katinakis, *Telstra Exchange*, "1, 2, 3, 4 and 5: the continuing evolution of our mobile network", 9 October 2019, available at: <https://exchange.telstra.com.au/1-2-3-4-and-5-the-continuing-evolution-of-our-mobile-network/>.

² Department of Broadband, Communications and the Digital Economy, "Public Interest Criteria for re-issue of Spectrum Licences", April 2009.

³ *Radiocommunications (Class of Services) Determination 2012* and *Radiocommunications (Spectrum Access Charges) Direction 2012*.

⁴ e.g. *Radiocommunications (Spectrum Access Charges - 800 MHz Band) Determination 2012 (No. 2)*.