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The Project Manager
Spectrum Review
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Dear Manager,

SPECTRUM REVIEW – POTENTIAL REFORM DIRECTIONS – CONSULTATION PAPER

The Australian Industry Group welcomes the opportunity to provide feedback on the Consultation Paper. Our members are potentially affected by these reforms in several different ways: as suppliers of devices and appliances that receive or transmit; as providers of communications, broadcast and information services that rely on spectrum allocations; and as customers who use such devices and services to carry out and improve their business.

The Consultation Paper sets out 11 significant reforms at a high level of abstraction, with a focus on principles and flexibility. This is not inappropriate for a directions paper. However, each reform raises important practical questions that will need full consultation on the basis of much more specific and fleshed-out proposals. Considerably more time will be required to consult than the two weeks allowed for responses to the current paper. We look forward to that consultation should the Government move towards translating the current proposals into legislation.

That said, the reform directions highlighted in the Consultation Paper are broadly positive. We offer specific comment on only a few elements of the Paper that are particularly urgent or potentially problematic.

The reform **principles** of transparency, efficiency, flexibility, certainty and simplicity are appropriate and if achieved would plausibly maximise public benefit from spectrum policy. However, whether these principles are achieved depends on a level of detail and practical implementation that is beyond the scope of the current paper.

For instance, there is typically a tension between the pursuit of flexibility and certainty. The paper foreshadows a great deal of flexibility, discretion and expansion of available tools for ACMA, and this may well be the best course. The foreshadowed emphasis on transparency will be very important to ensure that this flexibility is exercised predictably within a clear

framework. The next level of implementation detail will make the difference between arbitrary power and sensible operational flexibility.

This issue is particularly relevant to **Proposal 3** (More flexible allocation and reallocation processes). The elements of this proposal – greater flexibility for ACMA to manage spectrum without Ministerial intervention, use license terms rather than legislative processes, and allocate encumbered spectrum – are sensible and supported in the abstract. We welcome the proposal that ACMA provide clear annual guidance on proposed allocations and reallocations. This guidance, and the license terms that ACMA seeks pertaining to duration and reallocation, need to provide adequate practical clarity of the scope for, and a workable timeline to plan for, commercially significant change. From the current proposals it is unclear whether the sorts of license term the Government has in mind to facilitate replanning involve regular gateways for reconsidering the allocation, set license-by-license with greater flexibility than legislation would provide; or alternately more general provisions that would allow reallocation at any time.

We support the proposal that potential reallocation of encumbered licenses should not alter incumbents' existing rights. Achieving this will require that license terms and conditions are of adequate length and certainty to create confidence that if a reallocation is proposed, affected users and businesses will have commercially realistic time to plan for the change.

Proposal 8 (Facilitate greater user involvement in spectrum management) is well worth support and further development. A managed and considered delegation of some of ACMA's spectrum management duties would be in line with international best practice.

Proposal 9 (Develop more principles-based device supply regulation) includes an intention to reform the definitions related to supply to oblige all persons in the supply chain to ensure devices supplied are compliant. This is an appropriate goal and we support its achievement. However its implementation has the potential to create a significant regulatory burden, depending on how supply chain participants interpret the requirement to 'take reasonable steps'. The past experience of manufacturers and importers has been that major retailers can take a very conservative approach to compliance with similar requirements, requiring new documentation and guarantees of compliance for each model of device supplied to the market, often in forms that differ substantially from retailer to retailer. The introduction of the Australian Consumer Law in 2011 saw a large bulge in the compliance paperwork that market participants required from other market participants to do business. Regulatory burdens have an economic impact whether they are imposed directly by government or arise through private parties in response to higher level regulation. Given the Government's strong emphasis on deregulation and minimising red tape, the practical implementation of reform to the supply definitions needs to pay careful attention to these impacts.

Proposal 10 (Improve regulation by extending the suite of enforcement measures available to the ACMA) would provide more flexibility to ACMA in enforcement. This is broadly very positive, allowing a more light-handed approach where that is more appropriate than criminal penalties or the cancellation of a license. The availability of lower impact options should mean that ACMA can enforce the law whenever needed with the minimum necessary force. However, this operational flexibility needs to be accompanied by strong guidance from ACMA as to how it will be used. This should include:

- Establishing a principle that the costs of enforcement action should be less than the benefits. A full cost-benefit analysis requirement would make regulatory action impractical, but there should be a formal principle for ACMA to take into account when deciding among response options.
- Establishing a clear hierarchy of responses – so that it is clear how ACMA will distinguish cases requiring a warning from those requiring cancellation, for instance, or how factors like time-sensitivity and impact will be taken into account in graduating from one level of response to another.
- In the case of product recalls, interim bans and warnings – ensuring consultation with affected businesses before action where practical, and targeting enforcement appropriately. These measures are vital options where a device presents risks of potentially dangerous interference. However they also have a major commercial impact. Where time and urgency allow, consultation with the supplier prior to action will help maximise the cost effectiveness of regulatory action. This can allow recalls and other action to be targeted as accurately as possible, including to specific batch numbers – limiting disruption to users and suppliers alike.

Proposal 11 (continuous review of higher value uses of spectrum) raises very important questions. Currently available standards offer tremendous potential to free up spectrum, improve consumer experience and enable innovation and valuable activity across Australia's economy. Future technologies will enable even greater gains. An approach of continually assessing higher value uses of spectrum and the barriers to achieving them is sensible. Several additional points should be addressed for this approach to be effective:

- The definition of 'Higher value uses' should take full account of wider economic and social costs and benefits, not just willingness to pay for spectrum at auction. Terrestrially delivered television and radio is a public good that is free at the point of consumption and reaches over 99.6% of the population informing, educating and entertaining the nation. The free to air platform nurtures a creative industry that shares unique Australian stories in a way that is not possible with any other medium. Similarly the emergency services agencies protect property, improve health outcomes and save the lives of both public and officers alike; these broader societal benefits should be included in any analysis of 'higher value uses.'
- ACMA should go beyond mere presentation of options, actively convening and participating in discussions between regulators, broadcasters and other spectrum users, and technology providers to:
 - consider all available options, including MPEG-4, DVB-T2, HEVC and H.265, for their ability to improve spectrum efficiency in the nearer term while minimising legacy issues in the longer term;
 - establish and update a widely understood technology roadmap around which industry can plan to implement these options; and
 - identify and break down barriers to these options and the higher value use of spectrum.
- The paper is correct to note that incentives will be needed to ensure that licenses move to alternative higher value uses. The Government should clarify the nature of the incentives to be considered, particularly if they are to include negative incentives

such as exercise of the flexibility and reallocation provisions flagged elsewhere in the Consultation Paper.

- A genuine continuous assessment process will require adequate resourcing for ACMA to carry out or commission the necessary technical work, economic modelling and market testing to develop, assess and implement options for reform.

Should you have further questions, please contact our adviser Tennant Reed on 03 9867 0145 or at tennant.reed@aigroup.asn.au.

Yours sincerely,

Innes Willox
Chief Executive