

Executive Summary

Context

FOXTEL supports the broad approach to spectrum advocated in the Discussion Paper because it aims to better manage spectrum.

It aims to manage spectrum to create the industries, products and jobs of the future, not to protect industries from the middle half of last century – although the approach in our view inappropriately retains many protections for the existing broadcasters.

However, the new approach generally represents a welcome change from past approaches – which regrettably have been to manage spectrum in the interests of an oligopoly of broadcasters and their commercial interests, not the public.

Over a long period broadcast spectrum, which is a critical public asset, has been poorly managed meaning: less investment, innovation and jobs as well as stopping Australians from enjoying new channels and products produced from robust competition.

Large amounts of spectrum have been locked-away to protect the broadcasters – undermining Australia's productivity and GDP.

Specifically, spectrum policy has been used to protect the broadcasters through the following mechanisms:

- Prohibiting the entry of a fourth commercial broadcaster – even though there is spectrum available.
- Restricting what available spectrum can be used for - which locked-out new companies providing new services to Australians.
- Doubling the spectrum allocation to some of the world's most historically profitable broadcasters – without any increase in their licence fee or any auction to drive new entrants into the market.
- Using a pricing methodology which encourages the broadcasters into some of the most wasteful spectrum use in the world.

- Reducing the (spectrum) licence fees broadcasters pay by more than \$500 million dollars.¹
- Providing spectrum to the national broadcasters (i.e. the ABC and SBS) at no licence fee whatever.

The winners from this protection have been the broadcasters and their owners. The spectrum licence fees deliver broadcasters many unique benefits in the Australian landscape including the following:

- Access to a public asset which provides them with protected access to virtually 100% of the Australian population.
- The greatest protections in Australian commercial life (i.e. prohibition on new entry, gifted spectrum and the sports anti-siphoning list).
- \$260 million worth of reductions in their licence fees to assist them in the transition to digital.
- \$160 million worth of assistance committed to ensure their viewers in 'black spot' areas can see their digital signals.²

In addition, the Government recently reduced the commercial broadcasters licence fee by 33% in 2010 and 50% in 2011, with no conditions being attached at all.

The public benefit of this gift to a protected oligopoly of substantial, successful and mostly foreign-owned, corporations is not apparent.

Contrast this with what new entrants, such as FOXTEL, face.

- FOXTEL does not have access to public spectrum and 100% of the population. FOXTEL has to win and retain each and every customer.
- FOXTEL and Austar pay close to \$200 million a year for cable and satellite capacity to get their channels to customers – which is more than, for instance, the estimated \$43 million Network Ten will pay in licence fees in 2010 and the \$38 million it will pay in 2011³
- FOXTEL does not get any protection from new competitors – a subscription television licence is, subject to compliance procedures and thresholds, freely available across the desk from the ACMA.
- FOXTEL is severely hobbled from competing with the commercial networks by all the protections they enjoy.

¹ \$260 M under the previous governments Regional Equalisation plan plus almost \$250 M under the rebate announced by the Government its Press Release of 7 February *Government to Protect Australian Content on Commercial Television*, Press Release

² On 5 January the Government announced it would commit \$160 over four years to provide digital television in black spots, Media Release, *Digital Television Australia*, 5 January 2010

³ UBS Investment Research, Ten Network Holdings, License Fee Rebates Announced, February 9, 2010, summary earnings changes, TV sales revenue, pg 3

- FOXTEL has not had any public subsidies to assist it in moving its customers from analogue to digital – a task completed in a world record time of 32 months (completed in January 2007)
- FOXTEL is required by law to earn less than 50% of its revenue from advertising (another protection to the commercial broadcasters)

FOXTEL has spent over \$1.6 billion on its digital platform and transferred all its customers to its digital services in world record time without such Government protection.

The losers from this protection of broadcasters are the Australian public. The public has been short changed by poor spectrum management:

- New companies have been stopped from entering the market to provide new investment, channels and jobs in Australia.
- The networks were gifted public spectrum on the basis they switch off analogue television in 2008 – but they did not deliver (or even come close to it as the new switch off date is 2013)
- Productivity and GDP has been undermined because large tracts of useful spectrum have been locked away to protect the broadcasters in the equivalent of an old fashioned land grab.
- The anti-siphoning list has been abused by the commercial broadcasters to limit the amount of live sport Australians see.

The time to manage this spectrum in the public interest is long overdue.

FOXTEL Policy Position on Digital Dividend

FOXTEL therefore generally supports the approach to spectrum advocated in the Discussion Paper because it aims to better manage spectrum.

It aims to manage spectrum to create the industries, products, services and jobs of the future, not to protect industries from the middle half of last century.

This kind of approach is a big step forward.

That said, the Discussion Paper unfortunately still supports policies which protect the old broadcasters:

1. The Discussion Paper essentially rules out a 4th commercial network. This is at odds with its own market-based principles.
2. The new approach to spectrum leaves the broadcasters with 224 Mhz of spectrum. This is more spectrum than they need, if they ran an

efficient system. The Discussion Paper does not contemplate approaches to ensure this is efficiently utilised.

If Australian broadcasters adopted the efficient broadcasting approach being implemented in the UK they would be able to increase the capacity of their remaining substantially. In the UK once MPEG 4 and DVB-T2 transition is complete it is estimated spectrum efficiency will increase by 2.6 times.⁴

3. There is no talk in the Discussion Paper of moving to a more rational pricing system for broadcast spectrum – so that broadcasters have an incentive to use spectrum efficiently rather than wastefully.

FOXTEL believes that the Department should commence a review of the broadcasters' use of the remaining spectrum along the lines of the review Ofcom completed into facilitating efficiency in use of Digital Terrestrial Television (DTT) spectrum.

The significant problems outlined above aside, FOXTEL agrees with the key proposals outlined in the Discussion Paper including:

1. 126 Mhz of spectrum should be set aside for the services of the future such as wireless broadband and mobile television.

This is the gifted spectrum the networks were loaned (for no additional fee) on the clear basis they would return it after analogue switch off.

2. This spectrum should be auctioned off. The market should be permitted to decide what services go onto the spectrum.

In the United States comparable spectrum raised almost US \$20 billion at auction. It is now being used for 4G wireless services.

3. One block of spectrum could be reserved for television services such as Community TV – as intimated by the Discussion Paper.

Critically if the Government does reserve a block of spectrum for community television it must ensure this block is not used wastefully.

This spectrum can support at least five television channels if it is managed as a 'multiplex' (and it is critical to recognise even more channels if they are transmitted with MPEG 4/DVB-T2 protocols). The spectrum should be used for community-like television channels including the following.

1. Community Television, which is currently broadcast on Channel A. The Discussion Paper intimates that Community Television will transition to the one block of spectrum reserved for television.

⁴ Ofcom, Digital Television: Enabling New Services: Facilitating Efficiency on DTT, (2008)

2. A-PAC – which is Sky News’ public affairs channel devoted to covering Australian and international speakers forums, major public events and parliamentary debates and deliberations, including covering all Australian federal and state elections, New Zealand elections, and the Prime Minister’s Community Cabinet sessions.
3. NITV - this channel showcases Indigenous and Torres Strait Islander creativity and talent. One of the recommendations of the 20:20 Summit was that NITV receive national terrestrial distribution.

This Community Spectrum would make a significant contribution to helping in the great project of facilitating debate, democracy and discussion, showcasing community and indigenous talent and contributing to reconciliation.

This block of spectrum must be professionally managed to ensure the spectrum is used as efficiently as possible.

Costs and benefits of the Digital Dividend

The Discussion Paper is concerned to understand the benefits of redeploying (and restacking) spectrum versus the costs.

It is unequivocally the case that the benefits of redeploying spectrum (following a ‘restack’) outweigh the costs.

The benefits of redeploying the spectrum are huge. It will create the investment, innovation, products, services and jobs of the future.

The Australian Mobile Telecommunications Association (AMTA) has estimated the economic benefit to the nation at between \$7-10 billion⁵. Benefits include the deployment of new services, more efficient use of networks, increased productivity and the creation of new jobs.

On the other hand, the cost of redeploying (and restacking) spectrum is comparatively low when set against these billion dollar benefits:

- There are costs in upgrading some translators
- Consumers will have to retune their television sets

In relation to these costs it is critical to keep in mind that:

- The networks have *already* been compensated for the costs of shifting to digital transmission through things such as the gifted spectrum and the reduction in their licence fees to the tune of \$260 million.⁶

⁵ Getting the most out of the digital dividend in Australia: Allocating UHF Spectrum to maximise the economic benefits to Australia, April 2009, Spectrum Value Partners & Venture Consulting, pg

⁶ \$260 M over 13 years under the previous governments Regional Equalisation plan to assist the networks to upgrade their networks for digital

It is unclear what the recent unconditional gift of \$250 million to the broadcasters is for. But one explanation that has been provided by Government is that it is to assist in digital transition.

- The consumer costs of restacking the spectrum can be minimised if the broadcasters made some simple changes to their networks and crossed carried 'Service Information' (SI) because most Australian households have television sets capable of automatically retuning to find television channels that may have been shifted in the re-stack.

Finally, it is critical to understand that even after the re-deployment and restack the commercial broadcasters will retain 224 Mhz of spectrum.

This is a substantial amount of spectrum. It is enough spectrum to allow them to transition to the new transmission standard (DVB-T/MPEG 4) as well as to launch new services – if they decided to operate as an efficient, coordinated network.

However, if the broadcasters believe they need more spectrum – they can participate in the auction of the redeployed spectrum - like everyone else.

The reason the broadcasters have not run efficient, coordinated broadcasting networks in the past is because successive Governments have allocated them too much spectrum, not charged correctly for it, protected them from competition and rewarded them for failing to meet their obligations.