

23 September 2020



Mr Stephen Palethorpe

Secretary
Senate Environment and Communications Legislation Committee
Parliament House
Canberra, ACT 2600

Dear Mr Palethorpe and Committee Members

RE: Committee Inquiry into the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020, Radiocommunications (Receiver Licence Tax) Amendment Bill 2020, and Radiocommunications (Transmitter Licence Tax) Amendment Bill 2020

Communications Alliance is grateful for the opportunity to make a submission to the referenced Inquiry.

We have welcomed Government's reform process and see it as an important opportunity to modernise and streamline interaction with the legal process required of industry stakeholders.

The proposed amendments to the *Radiocommunications Act 1992* create some timely and significant changes to apparatus licence tenure. These recognise the reality of investment in the satellite industry and, if implemented, will go a long way to delivering the assurance required by the industry when planning for long-term investment in Australia.

This submission primarily represents the views of the Communications Alliance Satellite Services Working Group (SSWG) – comprised of 21 entities active in the Australian communications satellite market.

We take the opportunity to highlight several aspects of the reforms, for the consideration of the Committee.

Licence Duration

The proposed longer licence duration of 20 years, for both spectrum and apparatus licences is a significant step forward that recognises the long life of orbital resources (up to 25 years) and the large investment required to launch and operate these assets. It will deliver greater certainty to licensees, as well as moving Australia's licensing regime in line with that of many other countries.

The SSWG believes these changes will serve to attract investment into the Australian market and leverage significant economic activity – in terms of both satellite launches and operations – but also through the vital services that satellite systems provide to all Australians regardless of where they reside or do business. Sometimes satellite services provide the only alternative. It should also be noted that, for satellite constellations in particular, there will be a continual refreshment process with shorter duration satellite hardware (typically 5 years).

We support the creation of default renewal application periods for apparatus licences, as set out in section 129(3) of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020*. With the introduction of longer licence durations, we recommend

the default renewal application period for apparatus licences with a duration of 10 years or more should be 2 years, rather than 6 months. This would improve investment certainty for licensees who have made long-term licence commitments, by allowing them to apply for their licence to be renewed ahead of the last 6 months of that licence's term. We support the proposed 6-month renewal application period for apparatus licences with a duration of less than 10 years.

Public Interest Test

With the introduction of longer licence durations and renewals, the proposed legislation also introduces a public interest test for renewals of 10 years or more and for renewals of licences for which a public interest statement has been included in the licence.

The purpose of such a test appears to be to prevent spectrum being locked up in uses that are no longer considered the 'highest value use.' While this a valid consideration, this must be balanced against the high upfront and long-lasting investments that are typically made – especially in the satellite sector – for the provision of valuable services to the public.

In addition, the SSWG believes that 'market testing' should not be applied to apparatus licensing for satellite systems. Satellite spectrum can be reused and re-licensed in the same spectrum space numerous times by different operators, because many satellites can occupy the orbital space without mutual interference. Market based allocation is valid where there is high demand for sole transmitter use but this is not relevant to the multi-user, multi-satellite satellite model.

The SSWG also questions the continued reliance on 'highest value use' of spectrum, as the touchstone for 'public interest' evaluations, at least when the concept is applied on a narrow band-by-band, service-by-service basis. The proposed legislation's renewed emphasis on the 'long-term public interest derived from the use of spectrum' requires a holistic view that accommodates the spectrum needs of the full range of spectrum users, potential for common use of spectrum and the benefits of sharing this can bring to the public.

'Highest value use' seems to imply that a single service would be more value than a mix, and that high-density services are more valuable than distributed services. The SSWG believes that other value indicators should be affirmatively taken into account. Satellite, for example, is capable of providing the same service in both Sydney and the Simpson Desert, and alongside other services.

If Government values the contribution of Australians living and working in rural and remote areas, then it is important that all these uses be taken into account when implementing spectrum policy. The current value set tends to favour high population areas, to the potential detriment of those living in the 'bush' and therefore, apparently, in contradiction with Parliament's policy objectives for communications as set out in section 3(2)(a)(i) of the *Telecommunications Act 1997*.

Mixed licensing considerations

The SSWG welcomes a legislative framework that provides the ACMA with the flexibility to devise radio licensing regimes that consist of spectrum licences, apparatus licences and/or a mix of both in any given band. It should be recognised, however, that putting different services in the same band under a mix of licensing arrangements may not always be desirable. Many services (including satellite services) need access to spectrum in which they can deploy ubiquitously in order to meet user demands.

The legislative flexibility to create mixed licensing regimes gives the ACMA an additional and valuable tool for managing spectrum, but it should not be seen as the only tool, or the tool that is always the most appropriate. We believe the ACMA should still develop differentiated licensing frameworks that are appropriate and adapted to the different services in question; this should be considered on a case-by-case basis.

Trial licences and equipment exemptions

The type of apparatus licence used for scientific (or trial) purposes, and exemption from equipment rules which allow new services, technology or equipment to be evaluated or market tested is a subset of regulatory conditions which the SSWG in general supports. The SSWG recommends that an extended period (beyond one year) would be appropriate in circumstances where warranted, e.g. because of supply shortfalls or market developments. However, the SSWG does not support evaluation of equipment or services which are not designated for a particular band in Australia. The SSWG is quite comfortable with current Defence and Law Enforcement exemptions.

Equipment Rules

The SSWG notes that Part 4.1 of the *Radiocommunications Act 1992* is proposed to be replaced with a new framework that will determine technical regulation requirements through equipment rules. It is acknowledged that the changes are designed to reduce the burden on suppliers and manufacturers, reflect modern supply chains by including intermediaries, and for the ACMA to better target those within the supply chain that are responsible for different aspects of compliance with a range of graduated responses to non-compliance.

The SSWG believes that this framework provides the necessary flexibility and recognition of the wide variety of supply models and the roles of the parties in modern supply chains and will assist in promoting innovation and industry development opportunities within Australia.

Again, thank you for the opportunity to participate in the work of the Committee. We would be happy to provide further information, should that be helpful to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Stanton', written in a cursive style.

John Stanton
CEO, Communications Alliance Ltd
Chair, Satellite Services Working Group