

## CHAPTER 7

### RADIOCOMMUNICATIONS AMENDMENT BILL 1996

7.1 The Radiocommunications Amendment Bill 1996 amends the *Radiocommunications Act 1992* (the Principal Act). Among other things, the Bill:

- provides a mechanism for the auctioning of encumbered radiofrequency spectrum and the later clearance of incumbents;
- extends the maximum period for spectrum licences from 10 to 15 years;
- defines the issue of a licence as the acquisition of an asset and thereby brings radiocommunications licences within the scope of the rules in the *Trade Practices Act 1974* relating to anti-competitive acquisitions; and
- enables the Minister to set limits for the acquisition of spectrum or licences.

The primary intention of the amendments is to make spectrum available for mobile services and for new technologies which will provide the basis for new services, and greater choice of service, for consumers.<sup>1</sup>

#### **Reallocation of encumbered spectrum**

7.2 Item 46 of the Bill inserts a new Part 3.6 - Reallocation of encumbered spectrum into the Principal Act. The new Part would enable encumbered spectrum (spectrum in which there are incumbent holders of apparatus licences) to be sold by auction to a spectrum licensee following a declaration by the Minister. Clause 153B(4) would give incumbents a minimum of 2 years following declaration to either negotiate access arrangements with the spectrum licensee or relocate to a different part of the radiofrequency spectrum.

7.3 The Committee received a number of submissions from incumbent users of the 1.8 gigahertz band concerned about the re-allocation of the band.

---

<sup>1</sup> Explanatory Memorandum, Radiocommunications Amendment Bill 1996, p 2.

Incumbent users of this band include transport authorities, electricity authorities, emergency services, carriers and television broadcasters.<sup>2</sup>

7.4 Ms Christine Goode, the Chief Executive Officer of the Spectrum Management Agency (SMA), confirmed that it was the Agency's intention to apply the minimum re-allocation period of two years in the case of the 1.8 gigahertz band.<sup>3</sup>

7.5 The 1.8GHz Microwave Users Forum claimed that:

Two years, or less from the time of the spectrum auction, is not enough time to vacate the spectrum. ... If the current expectations ... hold true, eventually over 1300 systems will have to be replaced at a cost of over \$400M. Users have utilised microwave equipment on the basis that the economic life is at least 15 years.<sup>4</sup>

7.6 The Committee believes that the incumbent users of 1.8GHz spectrum have made a strong case that they potentially face a substantial loss on investment. The Committee does not believe that the problem should be dealt with through amendments to the Bill, but it does believe that the Minister consider the incumbents' case when making any re-allocation declaration in regard to the 1.8 gigahertz spectrum. These considerations should include the period for clearance, the amount of spectrum allocated against that retained for continuing use of the incumbents, and the making available of other spectrum for incumbents.

7.7 The public hearings also revealed a difference of opinion between incumbents on the one hand, and the SMA on the other, about the effective period of notice incumbents had had on the need for clearance of 1.8 gigahertz spectrum.<sup>5</sup> The 1.8GHz Users' Forum suggested that clauses 153D and 153H should be amended to:

... place the onus on the SMA to ensure that affected incumbents are fully informed about any impacts from spectrum licences upon

---

<sup>2</sup> Incumbent users, and entities making submissions on their behalf, included Airservices Australia, Submission 17, Vol 1, p 170; the Public Transport Corporation, Victoria, Submission 18, Vol 1, p 175; the 1.8GHz Microwave Users' Forum, Submission 22, Vol 2, p 267; the State Rail Authority, NSW, Submission 27, Vol 2, p 247; Queensland Rail, Submission 29, Vol 2, p 267; Electricity Supply Association of Australia, Submission 37, Vol 2, p 325; the Australian Telecommunications Users Group, Submission 41, Vol 3, p 384; the Government of Western Australia, Submission 42, Vol 3, p 425; Telstra Corporation Ltd, Submission 43, Vol 3, p 435; the Australian Telecommunications Industry Association, Submission 45, Vol 3, p 520; the Australian Broadcasting Corporation, Submission 52, Vol 3, p 622; and the Federation of Australian Commercial Television Stations, Submission 54, Vol 4, p 449.

<sup>3</sup> Ms Christine Goode, Chief Executive Officer, Spectrum Management Agency, *Committee Hansard*, p 45.

<sup>4</sup> 1.8GHz Microwave Users Forum, Submission 22, Vol 2, p 203.

<sup>5</sup> *Committee Hansard*, pp 41-42.

their operations, and not require incumbents to rely upon notices in the Press.<sup>6</sup>

7.8 The Committee agrees that affected licensees ought to be notified individually of the making of a re-allocation declaration.

#### RECOMMENDATION 7.1

The Committee recommends that clauses 153D and 153H of the Radiocommunications Amendment Bill 1996 be amended to require the Spectrum Management Agency to give to each affected licensee a copy of a notice of the making of a re-allocation declaration.

### **The 900 megahertz Band Plan**

7.9 Clause 153C of the Bill links the allocation timetable of 800 megahertz spectrum to the 900 megahertz Band Plan. Telstra submitted that the re-allocation period and the re-allocation deadline should be set in the same manner as for other parts of the spectrum<sup>7</sup>.

7.10 The Committee understands that clause 153C was included in the Bill at the request of the SMA, but that the circumstances which prompted the request no longer apply. That being the case, the Committee agrees there is no longer a need for the clause to be included in the Bill.

#### RECOMMENDATION 7.2

The Committee recommends that clause 153C, concerning the 900 Megahertz Band Plan, be deleted from the Radiocommunications Amendment Bill 1996.

### **Class licensed spectrum**

7.11 In a submission to the Committee, Mr Stewart Fist noted technological developments which are enabling super high frequencies (SHF) to be used for short-range radio links for voice, video and data. Mr Fist argued that these

---

6 1.8GHz Microwave Users Forum, Submission 22, Vol 2, p 208.

7 Telstra Corporation Ltd, Submission 43a, Vol 4, p 782.

services, operated by equipment known as SuperNIC devices, are self-policing and self-allocating:

...they don't need any 'authority' to allocate spectrum or control access to the system.<sup>8</sup>

7.12 He recommended that Australia adopt the approach being taken in the United States of America where it has been decided:

...to set aside 350MHz (about 1.2% of the SHF band) for unlicensed (or rather 'class licensed' like CB-radios) use for data traffic with what are called "SuperNIC" devices.<sup>9</sup>

7.13 In evidence before the Committee, the SMA advised that:

...we have set aside [spectrum] under a class licence exactly the way Mr Fist is proposing... This was done last year.<sup>10</sup>

7.14 The Committee is satisfied that the ongoing management of spectrum for uses such as those described by Mr Fist is appropriately a matter for the Spectrum Management Agency.

---

8 Mr Stewart Fist, Submission 8, Vol 1, p 44.

9 Mr Stewart Fist, Submission 8, Vol 1, p 43.

10 Ms Christine Goode, Chief Executive Officer, Spectrum Management Agency, *Committee Hansard*, p 54.