IPA Submission to

*Future use of unassigned television channels*

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Australian spectrum policy is largely characterised by a ‘command and control’ approach to allocation. Government allocates rights, conditions of their use, and the services which may be provided. Such rights can rarely be traded, and are subject to continuous government supervision and regulation.

Such a top-down approach is ill-suited to managing the implementation and diffusion of technological innovations, nowhere more so than in the field of communications and information technology. While such a framework may satisfactorily – although certainly not ideally – manage a limited and static array of services, its capacity to manage the allocation of new and future technologies is limited.

Centrally planned licenses, regardless of whether they are auctioned off or simply distributed, require detailed comprehensive studies and consultations with regard to demand, public policy objectives, technical obstacles and cost factors. Such a detailed system rigidly defines the parameters and extent of the spectrum rights, but at the cost of restricting flexibility, experimentation and innovation on the part of the licensee.

While extremely difficult to estimate, it is certain that this framework costs consumer welfare enormous amounts of money. For instance, looking at the delays in mobile telephony rollout in the United States caused by regulatory spectrum allocation, Jerry Hausman estimated that the cost to American economic welfare exceeded US$85 billion in 1990 dollars. It is particularly hard to estimate the cost of foregone investment, but it is clear that inefficient allocation of spectrum costs Australian consumers similarly. With only an extensive consultation process as a means to second guess market outcomes, regulators are unable to reliably respond to consumer demands and the potential benefits of uncertain new technologies.

This ‘command and control’ approach of government policy towards spectrum, particularly in the Broadcasting Services Band is a government intervention designed to prevent one user of the electromagnetic spectrum from interfering with another.

However, it has been well recognised in the economic literature on spectrum rights that management of the electromagnetic spectrum would be best conducted under a secure property rights framework. Highly regarded from the time of its first enunciation (1959) is Ronald Coase’s demonstration of how well-defined and transparent property rights would result in spectrum being allocated to its highest value uses, regardless of the manner in which it was first distributed.

Such a system would include clear and unambiguous initial definition of interference rights in terms of power limits, subject to negotiated changes by rights holders. Spectrum rights would be flexible in their use – no restriction would be placed outside interference limitation, international agreements and economy-wide competition law. Rights would be transferable and exclusive.

In Australian radiocommunications policy, only “spectrum” licenses approach this ideal. While initially allocation of such licences may not be in practice technologically neutral, given an active secondary trading, the market would allocate technologies to its best use area of spectrum.

In contrast, “Apparatus” Licenses are a highly prescriptive and inflexible method of allocating rights to the electromagnetic spectrum. Apparatus license require regulators to predict and usher in new technologies and services, a task which they are ill-suited to perform satisfactorily under the best of circumstances.

Potential uses
The availability of these channels represents a rare opportunity for media companies of all sizes to experiment with a variety of services if they feel it is in their com-
mercial interest. But given the rapid development of on-the-shelf and future technologies and their uncertain reception in the Australian public, it is not possible to reliably forecast future demand for services.

For instance, datacasting seems to have no role in an Australia being blanketed with internet coverage, but may have temporary use for rural and regional areas poorly served by telephonic and broadband communications technologies. Similarly, subscription television and mobile television may only have temporary appeal, as bandwidth increases and online services, still in their embryonic stage, develop. DTL restrictions on certain genres of television programs and audio content could further reduce forecasted demand for services on these channels.

But to develop policy on such predictions, and to then allocate scarce resources based on those policies, invites policy failure.

If government is serious about providing new media and content for Australian citizens, it should introduce flexible, consumer-responsive services on these two channels. Ideally, these channels would not be allocated as DTLs at all, but instead as spectrum licences. Whether this would result in two new free-to-air commercial broadcasters, or as experimental internet delivery mechanisms, or as subscription television networks, is a question that the market, aided by a strong institution of spectrum property rights, should be left to answer. Anything else invites significant inefficiencies leading to a loss of consumer welfare.

**Competition Issues**

Given the above, and that the two new potential services have not yet been utilised, it makes little sense to restrict licence acquisition beyond economy-wide competition law. ACMA and competition regulators should treat potential new services as part of a wide, and steadily increasing, media market which includes traditional media services like FTA television, radio and print media as sharing its market with subscription television and internet media. Even more useful would be to also factor in mediums like DVDs and other time-shifting and recordable devices.

Media ownership regulations are already extensive, even if recent DCITA proposals are implemented in full. It is not necessary to supplement them with extra provisions for the two new television services – instead of encouraging competition and new services, doing so would have a contrary effect.

Similarly, ‘use-it-or-lose-it’ provisions needlessly restrict flexibility on licence usage. Given the challenge posed by new technologies and media for incumbent broadcasters, companies that have invested in rights to the new television channels will have an incentive to utilise them in whatever way they find most commercially viable. With an increasingly insatiable public demand for audiovisual entertainment and information, it is highly unlikely that it would deem restricting supply the best way to compete with subscription television or online entertainment.

**Conclusion**

Not all the recommendations above are under the jurisdiction of the ACMA. However, as the regulatory body with the most expertise and an advisory role, the ACMA must push further for a strong, property rights focused and consumer responsive regulatory regime. Regulatory bodies are ill-suited to predict the development of new technologies and are unlikely to result in equitable and efficient outcomes.

**Recommendations**

- Regulators should not attempt to second guess consumer demand and market outcomes of implementation of the new channels.
- Licencess should be given maximum flexibility to experiment with services, business models and technologies.
- New services require no special competition regulation.
References


4. It may also be necessary to institute special provisions for low-power devices–cordless telephones, wi-fi networks etc. Evan Kwerel & John Williams, “A proposal for a rapid transition to market allocation of spectrum”, p3-8