

16 October 2001

Productivity Commission
Radiocommunications Inquiry
LB2 Collins Street East
MELBOURNE VIC 8003
ATTN: Mr Paul Belin, Assistant Commissioner

Dear Sir

Radiocommunications Inquiry

Thank you very much for the opportunity to provide comments to your inquiry into Radiocommunications.

This submission is lodged on behalf of ntl Australia and its affiliated company, ntl Telecommunications. By way of background:

- ntl Australia is the major provider of broadcast transmission services in Australia, and owns and operates the National Transmission Network (NTN) which it acquired from the Commonwealth in 1999. ntl Australia's major customers are the national broadcasters, ABC and SBS, to which services are provided from approximately 600 terrestrial transmission sites around Australia. ntl Australia is the local subsidiary of NYSE-listed NTL Inc, which is a major international telecommunications and broadcasting company, operating in the UK, Europe and Australia.
- ntl Telecommunications is a provider of wholesale telecommunications services along the eastern seaboard of Australia, and is jointly owned by ntl Australia, WIN Corporation and Southern Cross Broadcasting. ntl Telecommunications is

currently in the final stages of deploying the first phase of a microwave-based, regional telecommunications access network along the eastern part of Australia stretching from North Queensland to Tasmania.

From ntl's perspective the management of spectrum is a key issue and fundamental to its core activity of providing transmission infrastructure and services to the broadcasting and telecommunications industry. Consequently we have a keen interest in the issues being addressed.

However, rather than addressing all the issues raised in the discussion paper we would wish to confine our comments to the following:

1. Role of ACA and ITU

ntl supports the current approach taken by the ACA in relation to spectrum planning and its involvement in the development of and consequent adoption of, ITU policies. ntl believes that a significant level of international consistency is essential particularly given the small size of the Australian market and the problems an independent Australian approach would cause the local industry, given that most telecommunications and broadcasting equipment is manufactured and supplied from the larger European and American markets.

However, we do have some concerns that the approach to spectrum planning taken in ITU forums tends to reflect the views of the countries which experience the most congested spectrum environments, due both to geographical proximity to other countries and to their approach to interference and spectrum planning. Consequently, we believe that Australia should look closely at some of the policies being adopted by the ITU so that their relevance and practicality is assessed in the context of the Australian environment.

In particular, ntl was concerned that the ACA recently sought to change the usage of ch69 (which has historically been allocated to the Broadcasting Services Band (BSB)) for use by land mobile, in order to be consistent with ITU policy. This change was introduced at a time when the demand for spectrum in the BSB was (and is) at an all time high due to the conversion of analogue to digital television transmissions and, potentially, radio and the need to simulcast analogue and digital transmissions for a period of 8 years. ntl understands that this move by the ACA was motivated by a desire to bring Australia into line with the ITU spectrum plan, despite the fact that there is no spectrum shortage in Australia for land mobile and significant difficulty in obtaining all the spectrum required for the simulcast of broadcasting services.

This approach was at odds with the wishes of the broadcasting industry and could well be the result of the division of responsibility for broadcasting between the ACA and ABA (ie. the ACA may be less well-informed about the priorities and issues associated with the BSB because spectrum management responsibility vests with the ABA).

2. Licensing

Apparatus Licence

ntl supports a continuation of the current arrangements for apparatus licences but proposes the introduction of an anti-hoarding "use it or lose it" licence condition. This would ensure that spectrum is available for new entrants and prevent existing industry participants from "tying up" spectrum without any economic benefits. It is ntl's view that any spectrum not utilised within 2 years should be forfeited and handed back for re-usage of spectrum.

Spectrum Licences

ntl has major concerns with the current approach taken by the ACA of allocating spectrum licences in the more sought after areas (ie capital cities and major regional centres) via an auction process. It is our view, that this approach results in artificially high prices being paid for spectrum, favouring incumbent players and skewing the process against new entrants. Further, the auction process appears to be driven by the desires of incumbent governments to maximise revenue rather than to facilitate the rollout of broadcasting and telecommunications services. The auction process in fact mitigates against this, jeopardising the economic viability of rolling out new infrastructure due to the artificially high cost of spectrum and consequent impact on cost structure. ntl notes that Hong Kong has recently adopted a "beauty contest" plus fixed fee based approach for 3G spectrum presumably in response to recent problems being faced world-wide by the telecommunications industry.

ntl propose that the government re-assess the use of spectrum auctions as a "money raiser" and adopt a more conservative approach to pricing spectrum for example, the use of a hybrid system which incorporates both financial and non-financial criteria. Such a system could involve a system similar to the Hong Kong approach or a traditional tender process incorporating the usual quantitative and qualitative criteria. Such a process would incorporate a form of "beauty contest" which takes account of the financial strength and history of tendering parties as well providing for competition in the price paid. It would also allow assessment of tenderers on the basis of the policy objectives of the government of the day.

It is our view that such a process would result in a more level playing field while at the same time provide a market return to government for a scarce resource. It would also avoid the pitfalls of encouraging and riding a volatile market which can be a barrier to entry for new industry participants). Such a system

could also avoid imposing a huge cost impost on industry participants and result in spectrum being allocated to companies with an established track record. This process would not be applicable in markets where the demand for spectrum is low.

Class Licences

While ntl supports the use of class licences, ntl has consistently voiced its concern about the potential for class licensees to cause interference to other transmissions. This is particularly relevant to class licences in the BSB such as biomedical telemetry devices. Consequently, ntl believes that the allocation of class licences must be supported by an effective compliance regime to ensure the potential for interference is avoided.

3. Licence Tenure

ntl supports secondary trading in spectrum licences for broadcasting services. It is ntl's view that given the length of tenure of 10 + 5 years and the scarcity of spectrum it is appropriate that organisations which have been unable to utilise their licence as envisaged should have the capacity to on-sell. This would enable them to obtain some recompense for their initial expenditure. Further, it is our view that this should be required of licensees who have not utilised the spectrum within a specified period eg 2 years.

4. Re-allocation and conversion

ntl believes that integral to its spectrum planning role, the ACA has an important responsibility to facilitate the development of new and competitive communications services. It is important that the allocation of spectrum not stifle that process.

Conversely, while recognising the need for the ACA to convert and re-allocate spectrum, it is our view that existing spectrum holders in particular those providing telecommunications services, should not be disadvantaged as a result of this process and consequently should be given a substantial notice period when re-allocation is required. ntl believes a notice period of 10 years is warranted where no compensation is provided. Should a lesser period be required, then compensation should be provided to the licence holder.

5. Responsibility for Broadcasting

The current spectrum management arrangements result in a split of responsibilities, under which the BSB has been carved out of the ACA's overall spectrum plan and responsibility and given to the ABA to manage.

ntl shares the concerns of the Productivity Commission in its recent Broadcasting report that division of responsibility for spectrum management between two agencies may be leading to less than optimal overall spectrum management outcomes. Given its in-house resources and capabilities, the ACA is probably best-placed to take sole responsibility for spectrum management in Australia, including the BSB.

Additionally, ntl believes that there is merit in contracting out some spectrum planning functions from government agencies to the private sector. As the Commission would be aware, spectrum planning is a highly technical engineering function, and it is ntl's view that it is a function best fulfilled by the private sector in accordance with government policy and oversight. In the UK, for example, spectrum planning for broadcasting is carried out by a panel of qualified private sector organisations, including ntl. While there is some ad hoc contracting out of spectrum planning in Australia (eg. current television black spots program), further clarity and consistency

on government's intentions in this area (ie. a definitive policy of contracting out) would assist companies like ntl develop and maintain the necessary resources to fulfil this function.

Thank you again for the opportunity to comment on these matters. Please do not hesitate to contact me on (02) 9425 4600 or e-mail tom.bennie@ntla.com.au should you require any clarification on the issues raised.

Yours sincerely

Tom Bennie
Managing Director