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Department of Broadband, Communications and the Digital Economy

Digital Dividend

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Dear Sir/Madam

Re: Exposure Draft - Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

The Australian Mobile Telecommunications Association (AMTA) welcomed the Minister's direction in July to the ACMA to clear 126 MHz of spectrum between 694 MHz and 820 MHz inclusive (the Digital Dividend) and welcomes the opportunity to comment on the *Exposure Draft – Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011* (the Draft Bill).

One of the most important aspects of delivering the Digital Dividend from industry investment and operational perspectives is the timing of access to the new spectrum. It is essential that spectrum availability be reasonably aligned with relevant technology roadmaps as well as growth in market demand for services reliant on access to the new spectrum.

AMTA has serious concerns that the Draft Bill (sub-section 26(1K)) identifies the '*designated re-stack day*' – being the day by which all re-stacking should be completed – as 31 December 2014. This is a full year after the cessation of analogue broadcasting services with the potential for further delay.

Against this background, AMTA has urged the ACMA in its December 2010 submission on Spectrum Reallocation in the 700 MHz band to commit to a band clearance timetable that recognises the considerable opportunity costs that will result from failure to ensure national availability of digital dividend spectrum to mobile operators immediately on completion of digital switchover by 31 December 2013.

The mobile industry contributes significantly to the Australian economy. An AMTA-sponsored Access Economics report, [*Economic Contribution of Mobile Telecommunications in Australia \(2010\)*](#), found that the mobile telecommunications industry contributed \$17.4 billion to the Australian economy in 2008-09 with the rapid uptake of mobile data services, including mobile broadband, delivering productivity gains across the entire economy.

An AMTA-commissioned research report undertaken in mid-2010 by [Network Strategies](#) examined the links between mobile broadband, productivity and the impact of new spectrum becoming available in the 700 MHz and 2.5 GHz bands.

Network Strategies estimated that the gross productivity benefits from mobile broadband in Australia over the period 2013 to 2020 to be around \$143 billion – provided that sufficient spectrum in appropriate bands is available. Network Strategies further estimates that by 2020 there will be almost 20 million mobile broadband subscriptions on handsets together with another 6.3 million data-cards (under a moderate growth scenario). In addition, Australian mobile traffic would reach 1360 million Gigabytes by 2014.

These analyses demonstrate strong expectations for growth in demand for mobile broadband services and the potential economic, social and environmental opportunities that these services present for Australia. Timely access to new spectrum in the 700 MHz band is required if mobile operators are to come close to meeting future mobile broadband demand and if Australia is to realise the full productivity potential of the Digital Dividend.

AMTA's specific concerns are as follows -

- **“Designated re-stack day” in the Draft Bill**

In this context, AMTA is concerned that the subsection 26(1K) of the Exposure Draft nominates 31 December 2014 as the “designated re-stack day”.

- 26(1K) For the purposes of this Act, the *designated re-stack day* for an area is:**
- (a) 31 December 2014; or**
 - (b) if the Minister, by writing, specifies a later day for the area—that later day.**

This date is much later than previously indicated and a full year after AMTA's preferred date of 1 January 2014.

In particular, AMTA also draws attention to the Minister's published statement,

“The Government intends that the digital dividend spectrum be cleared as soon as possible after the switch-off of analog television services on 31 December 2013.”(Media Release by Senator Conroy, “Size and Location of the *Digital Dividend*”, 24 June 2010)

AMTA recognises that the “designated restack day” is the last date on which the Digital Dividend Spectrum will be cleared by restacking and the coming into force of the proposed Television Licence Area Plans (TLAPs), and that in principle the TLAPs could come into force as early as 1 January 2014 following the end of the simulcast period. However, the Draft Bill does not currently provide any incentive for the existing broadcaster licensees to undertake and complete the re-stacking process in a timely fashion. The likely consequence is that completion of the re-stack will be delayed until the last possible moment and the Digital Dividend Spectrum will remain idle without delivering benefits to the Australian community.

AMTA considers that such a lengthy clearance timetable is not necessary or justified – particularly given that 75% of the Australian population already has access to digital TV at

this time¹. AMTA urges the DBCDE and the ACMA to adopt a band clearance timetable that recognises the considerable opportunity costs and delayed industry investment that will result from failure to ensure national availability of digital dividend spectrum to mobile operators immediately upon completion of the analogue switch off on 31 December 2013. The Draft Bill should be amended to ensure that, as a matter of policy, there is encouragement for the end of the simulcast period and the designated re-stack day to occur as close together as is reasonably practicable for all coverage areas.

- **Minister's power to delay the designated re-stack day**

Under the Draft Bill, the Minister would have the power to delay the designated re-stack day for an area if the Minister is satisfied that compliance with the date of 31 December 2014 would be likely to result in significant technical or engineering difficulties for broadcasters (proposed subsections 26(1K)(b) and 26(1L)).

In AMTA's view, the Minister's decision about whether to delay the designated re-stack day should not be based exclusively on consideration of technical and engineering issues related to broadcasting. The Minister should also consider the interests of new licensees in gaining timely access to the Digital Dividend Spectrum, particularly given the commitment of capital expenditure and detailed planning that will have been invested by mobile network operators and their suppliers working toward an anticipated firm spectrum access date. This need for balanced consideration, including consultation with new licensees, is particularly important given that the Minister's deferral of the designated re-stack day would not be a legislative instrument under the Draft Bill and therefore would not be subject to consultation or disallowance (see proposed subsection 27(12)).

AMTA considers that allowing new spectrum licensees to gain access to the Digital Dividend Spectrum as early as possible after it is vacated is consistent with the objects of the *Radiocommunications Act* and the ACMA's *Principles for Spectrum Management* in enabling efficient use of spectrum for the public benefit. However, it is necessary for both the reallocation process and the new regulatory arrangements (in the form of the proposed TLAPs) to support new licensees gaining access to freed spectrum as soon as possible in each area. In fact, rather than being constrained by an earliest date of 1 January 2014, there is no reason why the TLAPs should not be able to commence earlier than the end of a simulcast period in an area. This would then allow new licensees to access the spectrum as soon as it was vacated by the broadcasters in that area.

AMTA would be glad to discuss these concerns further with the DBCDE and the ACMA as required.

Yours sincerely,

Chris Althaus

Chief Executive Officer

¹ See DBCDE (19 Oct 2010), "DIGITAL TRACKER: Summary Report for Quarter 3, July to September 2010", http://www.digitalready.gov.au/media/DigitalTrackerReport_Qtr_3_2010.pdf