

Ms Gina Cass-Gottlieb  
Chair  
Australian Competition and Consumer Commission  
Canberra ACT 2601

ACMA file reference: ACMA2022/723

Dear Ms Cass-Gottlieb <sup>Gina</sup>

### **Consultation on allocation limits: 3.8 – 3.95 GHz band apparatus licences**

The ACMA is preparing to allocate spectrum in the 3.8 – 3.95 GHz band, in metropolitan and regional areas, as ‘area-wide’ apparatus licences (AWLs). This allocation is intended to support the deployment of local area wireless broadband (LA WBB) use, as well incumbent and future use of point-to-point (PTP) and fixed space satellite (FSS) services. Our intention is to conduct public consultation in Q2 2023 on proposed arrangements, to inform an administrative allocation of licences proceeding in Q1 2024.

As required under subsection 102G(6) of the [Radiocommunications Act 1992](#) (the Act), I am consulting with the Australian Competition and Consumer Commission (ACCC) on:

- whether allocation limits should be imposed on apparatus licences to be issued in the 3.8 – 3.95 GHz band in metropolitan and regional areas; and, if so;
- the nature of those limits.

The ACMA’s decisions in relation to allocation processes for the 3.4-4.0 GHz band are guided by the Object of the Act, which is to promote the long-term public interest derived from the use of the spectrum. In addition, on 10 February 2022, the former minister made a [ministerial policy statement \(MPS\) in relation to the 3.4 – 4.0 GHz band](#), to which we are required to have regard when making decisions regarding the planning and allocation of this spectrum. The policy objectives set out in the MPS are:

- Supporting the deployment of new and innovative technology, including 5G;
- Supporting a wide range of use cases and users;
- Supporting digital connectivity and investment in regional Australia; and
- Promoting competitive markets.

The 3.8 – 3.95 GHz band allocation will be the third of a suite of four allocations for the broader 3.4 – 4.0 GHz frequency range as outlined in Figure 2 of Attachment A to this letter. The ACMA considers that the different allocations, and different licensing approaches, are important to achieve the objective of supporting a range of users and use cases.

The ACCC has already provided its views on allocation limits for the administrative issue of apparatus licences in remote Australia in the

3.4 – 4.0 GHz frequency range and, more recently, the price-based allocation of spectrum licences in metropolitan and regional areas in the 3.4 GHz and 3.7 GHz bands.

While this AWL allocation is intended to support a mix of existing and new use cases, we expect that this spectrum is also likely to be of interest to wide-area wireless broadband (WA WBB) providers such as mobile network operators (MNOs), (that is, Telstra, Optus and TPG Telecom) as well as NBN Co.

Given the limited quantum of available spectrum (150 MHz in metropolitan and immediately surrounding areas and 200 MHz in regional areas), we consider that the available spectrum is not likely to be sufficient in all areas to support the expected demand for LA WBB, PTP and FSS services as well as WA WBB services. This being the case, and noting that WA WBB service operators will be given the opportunity to acquire spectrum through the 3.4/3.7 GHz spectrum auction scheduled for Q4 2023, the ACMA considers that some form of allocation limits/policy settings are likely to be appropriate to prioritise the 3.8 – 3.95 GHz band for LA WBB, PTP and FSS use cases.

The ACMA considers that the primary objective of allocation limits for the 3.8-3.95 GHz band would be to support a range of users and use cases in particular localised contexts.

Our current view is to propose allocation limits of the following nature, using the ACMA's power under s102G of the Act:

- impose an allocation limit of zero MHz on NBN Co and MNOs for a specified period of time (for example, 6 months), from the commencement of the allocation process.
  - This nil limit is intended to preclude NBN Co, MNOs and associated parties from acquiring AWLs for the specified period and thereby provide the LA WBB providers with a priority access period.
- following the cessation of the proposed zero limit, impose cross band limits on MNOs and NBN Co and associated parties of 140 or 160 MHz in the 3.4 – 3.95 GHz band, for a period greater than 12 months beginning at the first time NBN Co and the MNOs are able to apply for spectrum in these bands.
  - Such a limit would reduce the risk that any one party is able to exhaust any remaining spectrum following the initial priority access period.
  - It is proposed that this limit align with any allocation limits to be applied for the purposes of the 3.4/3.7 GHz spectrum auction. Should an MNO or NBN Co successfully bid to the limit imposed for the auction, they would be precluded from acquiring further 3.8 – 3.95 GHz AWL licensed spectrum.

We intend to present a proposal on allocation limits to stakeholders in our May 2023 consultation on a draft Applicant Information Pack (AIP).

In addition to the proposed allocation limits, the ACMA intends to consult on a proposal to apply an allocation quantum policy to in-band spectrum for a period of 12 months from the commencement of the initial application window on all applicants. Such a policy has been proposed for use in the allocation of AWLs in 3.4 – 4.0 GHz in remote areas. This would indicate a maximum aggregate of spectrum that could be used by a licensee under an AWL (we intend to consult

on a limit of between 50 and 70 MHz). Such a policy provides the decision-maker with flexibility to issue a licence of greater than this amount if the situation justifies doing so.

The ACMA is interested in the ACCC's views on these proposals. We welcome any preliminary ACCC views by 27 March 2023 to enable the ACMA to consider these views when developing public consultation material on the draft AIP. Substantive advice from the ACCC would be appreciated by 30 September 2023, to allow the ACMA to finalise the AIP for this allocation in Q4 2023 to support the commencement of the allocation process in Q1 2024.

I have asked my staff to continue to work closely with ACCC staff on this matter, to ensure the ACCC remains aware of the ACMA's timeframes and relevant deliberations.

Yours sincerely



Nerida O'Loughlin PSM

8 February 2023

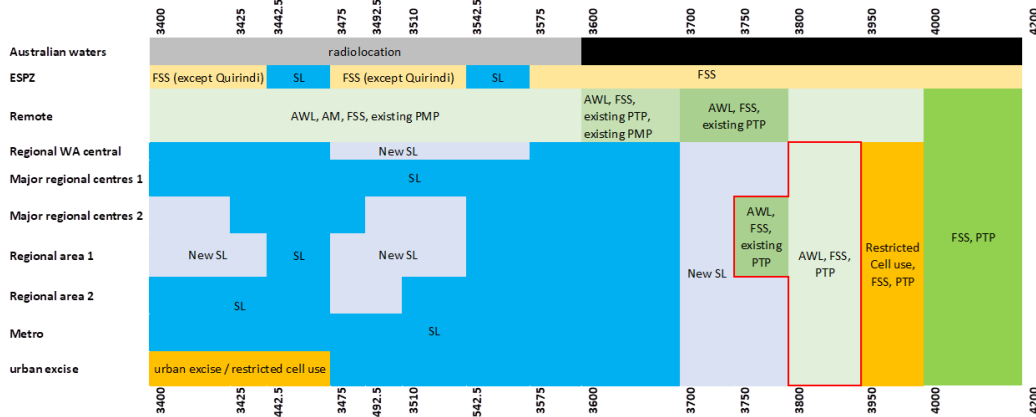
cc: Ms Anna Brakey, Commissioner, ACCC.

# Attachment A: 3.4 – 4.0 GHz planning and allocation approach

## Spectrum to be made available

Under planning arrangements, we are proposing to allocate relevant parts of the 3.4–4.0 GHz bands through a mixture of spectrum and apparatus licensing.

Figure 1: Proposed overall planning arrangements for 3.4 – 4.2 GHz band



Note: in figure 1 above the red highlight depicts the areas and spectrum to be allocated through this AWL allocation process.

Figure 2 outlines the 4 different allocation processes.

Figure 2: Summary of upcoming 3.4-4.0 GHz band allocations

Allocation type	Band/area	Timing	Next Steps
AWLs, administrative allocation	3.4-4.0 GHz band - remote areas	Q2 2023	Release of Applicant Information Pack (AIP) in Q2 2023
Spectrum licences, price-based allocation	3.4/3.7 GHz bands - metropolitan and regional areas	Q4 2023	Consultation on draft instruments in February 2023
AWL (subject of this paper)	3.8 GHz band: <ul style="list-style-type: none"> <li>3815 – 3950 MHz - metropolitan and immediate surrounding areas</li> <li>3765 – 3950 MHz - other regional areas</li> </ul>	Q1 2024	Consultation on draft AIP in Q2 2023.
Restricted cell apparatus licence	3.95 – 4.0 GHz frequency range - regional and metropolitan areas 3.4 – 3.475 GHz frequency range - 'urban excise' areas <sup>1</sup>	TBD	Consultation on technical arrangements in Q1-Q2 2023

<sup>1</sup> Urban excise areas include inner metropolitan areas in Melbourne, Sydney, Brisbane, Adelaide and Perth where NBN Co surrendered part of its 3.4 GHz spectrum licences.