

ATTACHMENT 2

REGULATION IMPACT STATEMENT

BROADBAND WIRELESS ACCESS ROLLOUT OBLIGATIONS DETERMINATION AND LICENCE CONDITIONS

1. INTRODUCTION

This regulation impact statement (RIS) relates to rollout obligations that the ACA intends to impose on all mobile and point-to-multipoint apparatus licences issued in the 1900-1920 MHz and 2010-2025 MHz bands after 13 February 2005.

Section 107(1)(f) of the *Radiocommunications Act 1992* (the Act) allows the ACA to make a determination in relation to conditions attached to particular types of apparatus licences.

An *apparatus licence* permits the use of a particular apparatus to undertake a certain type of service. The type of service must be allocated in accordance with the *Australian Radiofrequency Spectrum Plan* (ARSP) and any frequency band plan.

To encourage the deployment of BWA services, on 15 December 2004, the ACA issued a Frequency Band Plan allocating the 1900-1920 MHz and 2010-2025 MHz bands to Fixed point-to-multipoint and Mobile services on an equal primary basis after 17 December 2005. From that same date, both new and existing fixed point-to-point services will have a secondary status in these bands.

Manufacturers, equipment suppliers and potential operators have approached the ACA seeking spectrum for BWA. They have indicated they are unable to access incumbents' spectrum (especially in regional areas). The ACA has previously allocated unpaired spectrum suitable for BWA in 1900-1920 MHz (an IMT-2000* band in the capital cities that was part of the 2 GHz allocation in 2001). Telstra, Vodafone and Personal Broadband Australia were each allocated 5 MHz in the eight capital cities whilst Optus has 5 MHz in the mainland state capitals.

The ACA is also intending to auction spectrum licences in the 2010-2025 MHz band in state-based market areas. Remote areas will be excluded from these market areas and subject to apparatus licensing.

2. PROBLEM/ISSUE

In Australia there has been growing interest in the potential of broadband wireless access (BWA) technologies to deliver a range of services. Demand for higher speed internet access is one of the key drivers. BWA can provide higher data rates over greater distances using wireless means and may be more rapidly deployed than current copper cable (DSL) technologies. These features, combined with the falling cost of equipment, are generating increasing interest in spectrum suitable for wireless

* IMT-2000 (also known as Future Public Land Mobile Telecommunications System or FPLMTS) bands including 1885-2025 MHz were identified at WARC-92.

broadband, particularly in regional Australia which has hitherto been poorly served by existing broadband delivery methods.

In public consultation that the ACA undertook in 2004 on the demand for spectrum for BWA services, several small, regionally based telecommunications companies expressed frustration at their inability to obtain spectrum to operate wireless broadband services. They argued that larger companies holding spectrum licences were not deploying services to their local areas. They also argued that auctions and other price-based allocation methods tended to deny small operators the opportunity to obtain affordable spectrum.

In response to this, the ACA is proposing to allocate 'over-the-counter' apparatus licences covering small geographic areas in the 1900-1920 MHz and 2010-2025 MHz bands. These licences will not be subject to a price-based allocation and will instead be allocated on a 'first come, first served' basis. Standard ACA apparatus licence fees and charges will apply.

Rollout Obligations

In the approach to licensing that the ACA has proposed, two major risks have been identified. Because of the relatively low cost nature of the apparatus licences and the potentially high value of the spectrum involved, licensees may take out a licence:

- in the hope that another interested party will purchase the licence at a higher price; or
- to prevent competitors from operating services.

The ACA feels that such behaviour would defeat the objective of its licensing proposals (see below). To minimise this risk, the ACA is considering imposing rollout obligations on apparatus licences issued in these bands. The ACA has also indicated that in the event that other bands are opened up to apparatus licensing for BWA, the ACA would look to apply similar rollout obligations.

3. OBJECTIVES

The main objectives of government action are to encourage the rapid deployment of BWA services in regional and remote areas and to promote competition in communications services.

In dealing with this matter, the ACA must balance the following issues:

- (a) the need for the licensing and planning arrangements to be reasonably flexible;
- (b) the need for the licensing and planning arrangements to give effect to the ACA's policy on use of the 1900-1920 MHz and 2010-2025 MHz bands;
- (c) the interests of incumbent licensees in the 1900-1920 MHz and 2010-2025 MHz bands;
- (d) the interests of prospective providers of services using the 1900-1920 MHz and 2010-2025 MHz bands; and
- (e) the interests of consumers of relevant services in regional and remote areas.

The above objective accords with the objectives of the Act set out at section 3, especially in relation to:

- (a) maximising, by efficient allocation and use of the spectrum, the overall public benefit derived from using the spectrum (section 3(a));
- (b) providing a responsive and flexible approach to meeting the needs of users of the spectrum (section 3(c));
- (c) encouraging the use of efficient radiocommunications technologies so that a wide range of services of an adequate quality can be provided (section 3(d)); and
- (d) supporting the communications policy objectives of the Commonwealth Government (section 3(f)), e.g. in relation to competition.

4. OPTIONS

The ACA considered the following options for meeting the above objective:

Option 1: Do nothing

Under option 1, the ACA would not impose any obligations on an apparatus licence holder to deploy a service or equipment within a certain timeframe.

Option 2: Impose rollout obligations on future mobile and point-to-multipoint apparatus licence holders in the 1900-1920 MHz and 2010-2025 MHz bands

Under option 2, the ACA would require new mobile and point-to-multipoint licence holders in the bands to meet the following two rollout goals, in addition to all other licence conditions that normally apply to apparatus licences, and renewal of the licence would be conditional on meeting these goals:

Rollout Goal 1

Twelve months after the issue of the licence the licensee must provide a statutory declaration to the ACA stating that the licensee has met the following two licence conditions:

Condition 1A

- The licensee has acquired a transmitter to be operated from the site specified in the apparatus licence;
The licensee must provide details of the transmitter, the supplier and the date on which the licensee took delivery of the transmitter. The licensee must also provide plans and/or schematics to demonstrate how the transmitter has been or will be installed at the site.

OR

- The licensee has placed a bona fide order for a transmitter to be operated from the site specified in the apparatus licence.
The licensee must provide documentary evidence indicating when and with whom the order was placed, and with what expected delivery date. The licensee must also provide plans and/or schematics to demonstrate how the transmitter will be installed at the site.

AND

Condition 1B

- The licensee has existing access to the transmitter site specified in the apparatus licence;
The licensee must provide evidence of its ownership of the relevant site or its existing statutory or other right to access the transmitter site.

OR

- The licensee has entered into a binding agreement to gain access to the transmitter site specified in the apparatus licence;
The licensee must provide a copy of the agreement. Dollar amounts can be excluded.

OR

- The licensee has obtained necessary planning permission to establish a transmitter at the site specified in the apparatus licence.
The licensee must specify the date on which permission was granted and by whom.

The ACA may require the licensee to provide further verification and/or evidence of the claims made in the statutory declaration.

Rollout Goal 2

Twenty-four months after the issue of the original licence the licensee must provide a statutory declaration to the ACA stating that the licensee has met the following licence condition:

Condition 2

- The licensee is lawfully providing a broadband wireless access (BWA) service.
The licensee must provide details about the availability of the service including:
 - *a declaration that the BWA service is being provided at least at the minimum data rate specified in the definition. For the purposes of this declaration, the ACA will accept evidence that the minimum data rate is capable of being provided over 90% of the intended coverage area. The evidence may include coverage maps showing signal contours;*
 - *evidence of the infrastructure established to provide the service; and*
 - *evidence that the licensee has sought and/or is actively seeking end users – either publicly – through advertisements in the local media and/or via a website or, in the case of a closed user group, through private networks such as club or association newsletters or websites.*

The ACA may require the licensee to provide further verification and/or evidence of the claims made in the statutory declaration.

Both of the options above are considered viable.

5. IMPACT ANALYSIS

The main groups affected by arrangements to achieve the objective referred to in point 3 are:

- (i) the Government, in so far as it has an interest in the 1900-1920 MHz and 2010-2025 MHz bands being allocated in a way that promotes competition in broadband services;
- (ii) persons currently authorised to use 1900-1920 MHz band under spectrum licences in capital cities, in relation to the flexibility of operation of devices under such licences;
- (iii) future providers of BWA services, in relation to their the use of the 1900-1920 MHz and 2010-2025 MHz bands;
- (iv) future providers of fixed point-to-point services, in relation to their rights concerning use of the 1900-1920 MHz and 2010-2025 MHz bands;
- (v) providers of space services in so far as they have an interest in use of the 2010-2025 MHz band not causing interference to space services; and
- (vi) consumers of services provided using the 1900-1920 MHz and 2010-2025 MHz bands.

The ACA's has made available the 1900-1920 MHz band in regional and remote areas and the 2010-2025 MHz band in remote areas for mobile and fixed point-to-multipoint services.

In making a judgment on whether the demand for the 1900-1920 MHz and 2010-2025 MHz bands is sufficient to justify the current policy on these bands, the ACA will take account of all relevant considerations, including the likely growth of non-BWA services using the band, the geographic areas in which such growth was likely to occur and possibly the scale of and investment in existing BWA band services and the number of customers to whom the BWA services are provided.

Licensees will pay charges in keeping with other apparatus licences. As at 19 November 2004, an apparatus licensee operating a point-to-multipoint service will pay an issue charge of \$507.10 with an annual tax (for a 5 MHz channel) of \$861 for a licence in a high density area, \$398 for a licence in a medium density area and \$200 for a licence in a low density area. It should be noted that the fees and charges the ACA imposes include a cost recovery component and a component to ensure a return to the community for the private use of a scarce natural resource. This will ensure that any apparatus licensing proposal does not act as a drain on government resources.

Impact on incumbents

The ACA does not intend to impose any rollout obligations on existing licences (generally fixed point-to-point licences) within the two bands.

Option One: Do Nothing

Pros

The main advantage of option one is that it would be administratively simpler because it would not require any compliance activities on the part of the ACA.

It would also be less burdensome on business because they could roll out equipment in their own time.

Cons

There are several disadvantages in pursuing this option, including that:

- there are few incentives to rapidly deploy services; and
- there is a risk that licensees could ‘squat’ on a licence area in the hope of making financial gain or blocking competitors from entering a market, rather than seeking to deploy services. This would significantly disadvantage regional consumers and undermine the ACA’s policy objective of encouraging a rapid deployment of wireless broadband services.

Option Two: Introduce a Rollout Obligation

Pros

Option two offers a number of advantages over option one including:

- ensuring that licensees will take the necessary steps to establish a service;
- reducing the risk that licence holders might acquire licences purely for speculative or anti-competitive purposes;
- reducing the number of frivolous or vexatious applications for licences suitable for BWA; and
- reducing the number of incumbent fixed point-to-point licences that may need to be cleared (through the operation of the Frequency Band Plan) as a result of such frivolous or vexatious applications for licences; and

Cons

The main disadvantages of this option are that:

- it would impose some compliance costs on both licensees and the ACA;
- it would be more administratively complex than option one; and
- it may be difficult to determine what is an appropriate level of service delivery.

Option two would be more effective in providing support than option 1 to encourage the deployment of BWA services. While some compliance costs would be imposed by the rollout obligations, genuine service providers would need to take these steps anyway to allow a service to be provided. This means that the overall burden of compliance will be small.

Overall, option two would appear to be a more attractive option than option one for potential BWA service providers and consumers of services provided by them to meet the government’s aim of encouraging the rapid deployment of BWA in regional Australia.

Preferred option

Of the two options, option two would be the most effective in supporting an ACA policy decision to encourage the rapid deployment of BWA services in regional and remote areas.

In terms of meeting the objectives at point three, the ACA regards option two as the preferred option for the following reasons:

- Licensees genuinely interesting in providing a service would need to take the measures contained in the rollout obligations anyway; and
- Collation of the information required by the rollout goals is not considered onerous as it is generally an administrative by-product of the establishment of the service.

Option two would appear to represent a reasonable balancing of the interests of prospective suppliers of BWA services and consumers of these services.

6. CONSULTATION

In response to a discussion paper released in November 2004 containing a framework of the proposed rollout obligations, the ACA received eleven submissions. Most respondents to this discussion paper favoured imposing some kind of rollout obligation. Personal Broadband Australia, IQ Networks, the Australian Telecommunications Users Group, Phonevision, Countrytell and Freecor were among those in favour of the concept, ranging from broad endorsement to strong support. Telstra suggested that such rollout obligations could be achieved within existing legislation.

In response to this consultation, the ACA has incorporated many of the suggestions of respondents into the drafting instructions for the rollout obligations in order to make them less susceptible to misuse by operators seeking licences for speculative or anticompetitive purposes.

The comments received in response to the November discussion paper build on comments received in response to two earlier discussion papers canvassing licensing options for BWA. In these papers, a number of local councils (such as the Whitsunday Hinterland and Mackay Bowen Regional Organisation of Councils, the Geelong Regional Alliance and the City of Wagga Wagga among others) and regional telecommunications companies expressed concern that spectrum licence holders were deploying new services in large metropolitan areas much more rapidly than in regional and remote areas.

7. CONCLUSION AND INTENDED ACTION

The ACA proposes to impose rollout obligations on new point to multipoint and mobile apparatus licences issued in the 1900 – 1920 MHz band and the 2010-2025 MHz band. In particular, the rollout obligations would encompass:

1. at 12 months, a licensee should have either acquired or ordered a suitable transmitter and arranged the necessary site access and planning permission to install the transmitter on the specified site; and
2. at 24 months, the lawful provision of a BWA service.

The ACA may, at a later date, impose similar rollout obligations in other bands suitable for BWA services.

8. IMPLEMENTATION AND REVIEW

The ACA proposes to impose rollout obligations via a written determination made pursuant to paragraph 107(1)(f) of the Act and via licence conditions contained within the licences themselves pursuant to paragraph 107(1)(g) of the Act, once the proposed obligations have been approved by the ACA and the embargo on the issue of new apparatus licences has been lifted.

If a decision is made to allocate apparatus licences suitable for BWA in other bands, the ACA will take account of its experience in preparing and applying the rollout obligations to the 1900-1920 MHz and 2010-2025 MHz band to which this RIS relates. The ACA will also review the effectiveness and impact of these rollout obligations twenty-four months after their commencement.

Summary of Comments Received on the Proposed Rollout Goals

The ACA received submissions on the November 2004 discussion paper from:

1. Australian Telecommunications Users Group Limited (ATUG)
2. Broadcast Australia Pty Ltd (BA)
3. Freecor International Pty Ltd
4. IQ Networks Pty Limited and IQ Connect Pty Ltd (IQN)
5. Murray River Regional Telecommunications Company t/a CountryTell
6. Personal Broadband Australia Pty Limited (PBA)
7. Phonevision Australia Pty Ltd
8. SingTel Optus Pty Ltd (Optus)
9. SPI PowerNet Pty Ltd
10. Telstra
11. WA Department of Industry and Resources

The concept of imposing a Rollout Obligation.

Most respondents were in favour of imposing a Rollout Obligation on apparatus licences for BWA services.

Optus said the initiative was timely and welcome, but commented that the imposition of conditions in apparatus licences was neither an efficient nor effective method of encouraging rollout and preventing hoarding. The obligation would require the ACA to develop a reporting and auditing capability, but no detail is offered by the ACA about how this would work.

Telstra commented that the ACA could achieve the same end within existing powers, noting that, in deciding whether to renew an apparatus licence, the ACA *must have regard to all matters that it considers relevant*, and that this could logically extend to whether the licensee had made genuine efforts toward actually deploying a BWA service.

Broadcast Australia commented that the general approach has merit and supported the general thrust. However, the obligations should only apply to the spectrum referenced in the paper – any proposal to extend the obligations to additional spectrum should only be taken after consultation with the industry.

The WA Dept of Industry and Resources supports the ACA's direction in this area, but suggests some additional clarity in the terminology used.

PBA, IQ, ATUG, Phonevision, Countrytell and Freecor were in favour of the concept, ranging from broad endorsement to strong support.

Definitions

In its discussion paper, the ACA proposed working definitions for:

- Broadband wireless access;
- End user; and

- Licensee.

Most respondents did not comment on the definitions, but some suggested modifications.

Definition of “Broadband wireless access”.

Optus suggested that “core” be defined, or replaced with “carriage service provider’s”, and commented that PSTN and ISDN are not broadband networks and the terms should be deleted. The term “higher data rate services” needs to be tightened – someone could [incorrectly] argue that 96 kbit/s is a “higher data rate service”. The phrase “mobile or fixed point-to-multipoint means” should be replaced with “customer equipment that is fixed at a location or transportable to various locations within the point-to-multipoint coverage area”.

Phonevision suggested the following definition: Systems operating in licensed or unlicensed spectrum capable of delivering asymmetric speed of 256/64 kbit/s, and with latency performance capable of supporting Voice over IP telephony, Virtual Private Networks (VPNs) and streaming video.

Telstra commented that “higher data rate” needs to be defined, and suggested that the definition should specify a minimum effective data rate over some proportion (say, 90%) of the nominal coverage area using a device in the fixed P-MP licence category based on a recognised BWA technology.

The WA Dept of Industry and Resources commented that the term “higher data rate services” needs to be stated in relation to a recognised speed or standard, or be removed, as it is ambiguous. The last statement of fixed point to multipoint does not allow for point-to-point configurations and, therefore, should be clarified as either one or more end points.

Definition of “end user”.

ATUG commented that the proposed definition “includes a single user accessing services on behalf of multiple users” and takes this to mean wholesale end users who will supply retail services to customers. However, there appears to be a different definition of end users in rollout condition 2A, which refers to “intended end users of the service”, implying retail customers because of the reference to media advertising and association networks.

Phonevision suggested the following definition: A customer of an ISP receiving a broadband service over a BWA set up for such a purpose on a commercial basis – with or without any external subsidy such as HiBIS.

Freecor commented that the definition seems only to include a user accessing services on behalf of other users, and fails to define an end user as being a retail subscriber to a telecommunications service or services delivered over the broadband wireless last mile infrastructure.

The WA Dept of Industry and Resources commented that the definition seems fair and reasonable.

Definition of “licensee”.

Phonevision suggested the following definition: A holder of an apparatus licence for a BWA system operation in accordance with the rollout provisions of such licence – committing to delivering a BWA service to a defined community or Local Government Area in regional, rural or outer metropolitan areas of Australia.

Freecor commented that the definition should be simple, but more specific and restrictive, and suggested the following definition: The licensee is the holder of the apparatus/spectrum licence.

The WA Dept of Industry and Resources commented that the definition seems fair and reasonable.

Rollout Goal 1: Acquired a transmitter or placed a bona fide order for a transmitter; and entered into an agreement to gain access to a site or commenced negotiations to gain access; or obtained planning permission or taken all reasonable steps to obtain planning permission.

Respondents considered the conditions were too loosely phrased and open to abuse by unscrupulous operators.

IQ commented that the condition would be ineffective unless the ACA could ensure that the licensee could not specify the same transmitter for other sites. Moreover, a licensee could place a bona fide order for a transmitter, then subsequently cancel the order. A more viable condition would be one that requires that at least one transmitter be actually delivered in respect of each licence, unless circumstances arose which were beyond the licensee's or deliverer's control. "Access" must extend to conferring rights to install, operate and maintain equipment for a BWA service. Any commercial-in-confidence material should be capable of being withheld, not only dollar amounts. The fact that planning permission has been granted does not mean that a right of access has necessarily been secured; moreover, the condition would be satisfied in a case where a licensee has taken all reasonable steps, but planning permission has been denied.

Optus commented that the condition was meaningless – a purchase order for a transmitter can be reneged once the ACA has granted compliance. In addition, the condition is an unnecessary distraction to technology or vendor selection, which may not be completed within the first 12 months.

Freecor submitted that this condition could be satisfied within a ten day period on the basis of no more than a purchase order to the value of \$2,500. The timeframes and conditions are too loose, flexible and able to be exploited by dishonourable interests. A licensee can get a 12 month quarantining of spectrum simply by placing an order with a vendor and commencing negotiations to gain access to a transmitter site.

Telstra commented that scope exists for unscrupulous operators to represent that bona fide negotiations have commenced, while otherwise subtly undermining the progress of those negotiations through various means.

The WA Dept of Industry and Resources commented that Rollout Goal 1 only requires an entity to have placed an order or have equipment and a location, or arrangements for a location in place. This will provide an opportunity for hoarding.

Rollout Goal 2: Providing or capable of providing a bona fide BWA service; and holds a carrier licence or has applied for a carrier licence, or owns a network unit or is not using a network unit to supply a service; and is a carrier service provider or has a bona fide agreement with a carrier service provider to provide a BWA service or operates the BWA service solely for the purposes of non-public supply.

Respondents queried whether the conditions would result in the supply of a bona fide BWA service.

Telstra commented that these conditions do not require a licensee to actually *supply* a bona fide BWA service.

IQ queried the meaning of bona fide in this context. Neither coverage maps nor a description of intended users necessarily provide any indication of whether a licensee is either providing or is capable of providing a BWA service. In addition, the proposed conditions fail to recognise existing industry structures, eg a carrier may be part of a group of companies which includes a CSP which it is intended should be the sole carriage service provider, making it impossible to comply with proposed condition 2A. It is CSPs who necessarily advertise for end users, not carriers. While the existence of such structures is recognised by the third limb of proposed condition 2C, the two conditions are in direct conflict. IQ opposes part of proposed condition 2B – the licensee has applied for a carrier licence – on the grounds that if a licensee does not fall within any of the other limbs of condition 2B, it cannot provide a BWA service because to do so would be a breach of the carrier licensing provisions. Moreover, what is to occur if the application for a carrier licence is refused or withdrawn? IQ states that two years is more than sufficient for an application for a carrier licence to be made and dealt with by the ACA.

Optus queried the suitability of the details to be provided to determine a bona fide service, as listed under proposed condition 2A, and commented that a spectrum hoarder could meet all the conditions and then set BWA prices so high that there would be no customers. Optus suggested other factors to determine a bona fide service, such as the number of end users; the data rates; downtime limits for end users; reliability of the service; and the lead time between ordering and delivery of the service. With regard to the fourth limb of proposed condition 2B – the licensee is not using a network unit(s) to supply a service to the public – Optus queries how one can have broadband access if the spectrum is not in use to provide a BWA service to the public, and asks where is the “core network” referred to in the BWA definition. Optus submits that a licensee should not be allowed to get any BWA spectrum unless it is a carrier or a CSP.

Freecor commented that the conditions were too loose, and opposed the addition of another condition to proposed condition 2C to provide for licensees who operate the BWA service solely for the purposes of non-commercial supply. Freecor submits that it would represent an inappropriate use of spectrum and comments that spectrum in other bands (ISM, LMDS) or more appropriate technologies (P-P, or P-MP microwave) could deliver such services.

ATUG submitted that conditions 2B and 2C should be as broad as possible, allowing non-carriers to provide BWA services in regional and remote areas, where local councils may wish to develop self-help options without the obligations and fees associated with carrier licences.

The WA Department of Industry and Resources queried the use of “capable” in the condition. Does it mean technically, financially or legislatively capable, or does it have some other meaning? In addition, the three options in proposed condition 2C do not cater for not-for-profit organisations or community cooperative arrangements.

Should additional rollout goals be included?

Optus commented that interoperable systems and open standards may also be considered as a potential rollout obligation (albeit a technology oriented obligation).

Phonevision and **Countrytell** submitted that licensees that can demonstrate the in-principle or active support of local government should be given priority in the allocation of BWA spectrum and local government should be engaged in assessing the progress of rollout.

Freecor suggested a different set of rollout goals and timeframes, which focuses on a progressive allocation of bandwidth to a licensee depending on progress made in delivering a BWA service.

The suitability of timeframes.

The proposed timeframes appear to be reasonable.

Telstra had no particular concerns with the proposed timeframes, and **Optus** commented that two years is an acceptable timeframe to launch a BWA service.

Freecor submitted that two years was too generous and subject to abuse, and suggested six months for settling transmitter arrangements and 12 months for delivering a service.

Licence renewal for five years.

Some respondents appear to have misunderstood this proposal. There appears to be some confusion between the duration of access to spectrum and the duration of apparatus licences.

Optus commented that if a CSP takes two years to get organised, it effectively gets seven years access to the spectrum, but if an operator is organised from day 1, it gets only five years' access. Optus also asks whether a licensee is given first option to renew the licence for a further five years.

IQ queried the wording in the discussion paper on this matter, claiming it is inaccurately phrased.

The WA Department of Industry and Resources commented that a licensee should not be able to apply for a five year licence until a service is actually being provided.

Ability of 'failed' licensees to reapply for a licence.

IQ opposed the idea that failed licensees should be able to reapply for a licence immediately, commenting that it would render the entire 'use it or lose it' regime redundant, and give the failed licensee a timing advantage over other applicants. **IQ** proposed that a failed licensee should not be permitted to reapply within six months.

Whether the ACA should have discretion to extend timeframes.

There is general, but qualified, agreement that the ACA should have discretion to extend timeframes in exceptional circumstances.

IQ is opposed to a general discretion, but recognises that there may be circumstances beyond the licensee's control, eg late or non-delivery of equipment. However, a full investigation should be required, the licensee should bear the cost and only one extension should be able to be sought.

Phonevision commented that any extension of time should be accompanied by hard evidence and limited to three months. The request for an extension should be received no less than three months in advance of the expiry of the particular rollout goal.

Freecor commented that the ACA should have discretion, which should be broad and flexible, but that there is a need for a clear and unambiguous test of “exceptional circumstances”. Freecor listed the matters which might qualify as exceptional (Acts of God, death of a family member, etc).

The WA Dept of Industry and Resources agreed that the ACA should have discretion to extend timeframes, but only in unforeseen circumstances which are out of the control of the service provider (eg settling native title claims).

Whether the proposed rollout provision should be applied via a determination or contained within the licences themselves.

IQ, Telstra and Freecor commented that a determination is more appropriate, while **Phonevision** opted for a licence condition.