

Broadband Wireless Spectrum: an impressive solution

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Freeing up spectrum for new needs, can be problematic. The Minister and MED have spearheaded a successful transition for broadband wireless, using new approaches.

Managing radio spectrum is a difficult task, as the Minister and MED juggle commercial, economic and social drivers in a world of changing technologies and uses.

If spectrum at suitable frequencies couldn't be allocated for new broadband wireless applications, such as WiMax, these developments would be held back.

The rights for a suitable frequency range (2.3 GHz) come up for renewal in 2010. In accordance with usual practice, how the rights are to be allocated is decided several years ahead. What makes allocation to the new technologies easier is that existing uses of this spectrum are becoming obsolete¹. Allocation of existing 8 MHz rights doesn't fit with optimal broadband wireless allocation of at least 5 or 10 MHz channel plans.

However, the situation is still complicated.

Late last year, the Minister made his decision on how to handle the position on renewal.² Most of the 2.3 GHz spectrum is to be made available by auction.

16 MHz of the available 96 MHz is to be set aside for a managed spectrum park, which is a new option. The rest is to be sold at auction, potentially in contiguous blocks of 10, 20 or 30 MHz, according to preference.

To ensure that there will be competition for broadband wireless, there are to be spectrum

¹ The spectrum is allocated for a type of terrestrial TV broadcasting service and hasn't been used.

² The position is outlined in the relevant Cabinet paper at <http://www.rsm.govt.nz/spp/bwa/cabinet-paper/cabinet-paper.pdf>. Decisions on other spectrum ranges were made but these are not considered in this article. The most significant development is the 2.3GHz range.

caps on the spectrum to be auctioned. No provider will be able to buy more than a certain amount of spectrum, so that there will be at least 3 providers.

This is continued recognition (going back to the 3G cellular spectrum auction) that the Commerce Act does not adequately meet competition problems in relation to spectrum.

MED is also adopting a "use it or lose it" regime (and if it is lost, the management right holder does not get compensation). This recognizes the problem that much spectrum, which is a scarce resource, is not being used. These regimes are used overseas even though they are difficult to craft. MED has yet to work up the detail of this approach.

The managed spectrum park is a new concept. The park will be accessible to anyone, provided they comply with park rules. The number of users would be limited to ensure quality of service. The park will not be limited to any particular technology, but there will be technical measures (eg; to enable efficient spectrum sharing).

The park should be useful for commercial opportunities for local and regional enterprises.

There's a real stand-out feature of what happened here: MED worked proactively with the industry to facilitate a transition which is likely to free up spectrum for broadband wireless before the 2010 renewal date. It discussed and negotiated with those right holders to achieve this outcome. The exception was Woosh, and so the Minister had to decide whether to roll-over its rights or put them up for auction along with other providers. The Minister decided to do the latter.

We think that MED's role in this is excellent and proactive. MED and the Minister are undertaking a regulatory function. So, they must exercise care in how far they go when negotiating arrangements with stakeholders. However, handled carefully, as appears to have happened here, the regulatory requirements are being met, while at the same time there is a pragmatic outcome which should lead to freeing up of the spectrum earlier than the normal renewal date.

Commercial resolution is an appropriate policy feature of many successful regulatory structures. It's often said that commercial

solutions (where one party does not wield excessive market power) are better than the blunt-edged weapon of regulation. Here, of course, there is an overarching regulatory solution anyway (in particular the auction and the managed park).

In conclusion, MED and the Minister are moving into increasingly improved ways of resolving difficult spectrum issues, which can otherwise act as a barrier to new services (such as broadband wireless access in this instance).

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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