The Manager
Spectrum Licensing Policy Section
Australian Communications and Media Authority
PO Box 13112 Law Courts
Melbourne VIC 8010

29 July 2024

Dear Ms Van der Weyde

We are writing to you as co-chairs of the First Nations Digital Inclusion Advisory Group (Advisory Group).

The Advisory Group was established in January 2023 by the Minister for Communications, the Hon Michelle Rowland MP, to provide advice on supporting progress towards Outcome 17 of the National Agreement on Closing the Gap (the National Agreement). Outcome 17 seeks to ensure that First Nations Australians have access to information and services enabling participation in informed decision-making regarding their own lives. Aligned to this is Target 17, which aims for First Nations people to have equal levels of digital inclusion by 2026.

We understand that the Australian Communications and Media Authority (ACMA) is undertaking a number of processes relating to the use and allocation of spectrum, including on the Draft Five-Year Spectrum Outlook 2024-29 (draft Spectrum Outlook) and a review of Expiring Spectrum Licenses (ESL). We believe these processes provide an important opportunity to provide the ACMA with our views on how spectrum use and allocation can impact on First Nations digital inclusion, including in terms of connectivity access in remote communities. We note this aligns with one of the five policy objectives of the Ministerial Policy Statement issued in May 2024, regarding connectivity and investment in regional and remote areas to deliver improved services to end users.

First Nations people are some of the most digitally excluded members of the Australian population. Digital inclusion is a deeply complex issue, with access, affordability and digital ability all playing a role in the extent to which Australians can connect to services and each other using digital technologies. For First Nations people and communities, digital inclusion is a critical enabler of not just informed decision making, but of a number of other Closing the Gap outcomes. Connectivity has the capacity to provide enormous economic and social opportunity for First Nations Australians, including improved access to health, education, financial and government services.

While there are several components to improving digital inclusion for First Nations people, access to spectrum provides opportunities for First Nations people to have greater access to telecommunications and broadcasting services, which is critical to achieving Outcome 17.

The Advisory Group has identified a number of recommendations which we ask that the ACMA considers in progressing its work on spectrum. Our advice is based on the fundamental principle that connectivity is a human right, and that all First Nations Australians should have access to affordable and

reliable telecommunications, regardless of where they live. In consultation with our stakeholders, the Advisory Group considers that the following spectrum reforms are needed to to progress Target 17:

- use it or lose it/use it or share it obligations should be included in future spectrum allocations/reallocations
- a certain percentage (e.g. 20 per cent) of spectrum should be reserved or dedicated for town camps, remote and very remote First Nations communities and homelands
- spectrum allocations should be considered from a position of place-based solutions and in consultation with community
- recognition must be given to First Nations air rights in consideration of spectrum matters
- allocation of spectrum and licenses for First Nations community radio stations in Canberra, Adelaide and Hobart should be considered a priority, as is the establishment of Indigenous broadcasting licenses
- infrastructure funding should be provided for communities or bespoke operators who seek to use 'set aside' allocation to facilitate place-based solutions
- the ACMA should establish a more substantial Indigenous liaison and engagement mechanism, including to support communities to understand and engage with spectrum matters.

Further information on these recommendations is provided in the appendix to this letter. More generally, the Advisory Group thinks it is important that the ACMA considers how to ensure First Nations views and perspectives are included in its approach to issues such as spectrum. In this regard, we have been pleased to engage with the ACMA via its Consumer Consultative Forum and look forward to seeing its renewed Terms of Reference soon.

If you would like clarification on any of our comments raised in this letter or would like to meet with us, please contact our secretariat at firstnationsdigitalinclusion@infrastructure.gov.au.

Yours sincerely

Ms Dot West OAM
Co-chair
First Nations Digital Inclusion Advisory Group

Associate Professor Lyndon Ormond-Parker
Co-chair
First Nations Digital Inclusion Advisory Group

APPENDIX

The Advisory Group supports the inclusion of use it or lose it/use it or share it obligations in future spectrum allocations/reallocations.

The Minister has requested the ACMA to consider the use of a range of alternative licence conditions, including rollout obligations and use it or lose it/share it conditions to achieve broader coverage and more efficient spectrum use. The Advisory Group believes that in considering these issues, it is important that the ACMA explores how these alternative mechanisms can support greater digital inclusion for First Nations Australians.

In particular, the Advisory Group is supportive of use it or lose it/use it or share it allocations/reallocations to prevent available spectrum laying dormant when it could be made accessible to First Nations communities who wish to access it to facilitate connectivity and its associated benefits. We understand that this issue will be considered through consultations on ESL.

The Advisory Group supports a certain percentage (e.g. 20 per cent) of spectrum being reserved or dedicated for town camps, remote and very remote First Nations communities and homelands.

Having access to spectrum may introduce new options to work with carriers other than the three major MNOs that have currently have usable low band-spectrum. We note that dedicated spectrum arrangements exist internationally and could be used as a model for a similar approach in Australia. These international arrangements include:

- In New Zealand, 20 percent of 5G spectrum has been allocated to the Interim Māori Spectrum Commission, which oversees this resource allocation as an opportunity to accelerate Māori economic, cultural, social and environmental benefits
- In the United States of America, the Federal Communications Commission has enabled tribal authorities to directly access spectrum under the 2.5GHz Rural Tribal Window policy
- In Canada, the government is currently developing an Indigenous Priority Window for spectrum allocation which aims to improve Indigenous access to spectrum and support Indigenous-led connectivity solutions.

The Advisory Group considers that a similar approach could be implemented in Australia, to help ensure First Nations Australians can access the spectrum they need to facilitate economic development and employment opportunities on country.

We urge government and industry to work together to provide third party access in locations such as town camps and remote communities.

Spectrum allocations should be considered from a position of place-based solutions and in consultation with community.

Priority Reform 1 of the National Agreement outlines the need for place-based solutions and shared decision making. Providing communities with influence or control over some spectrum is consistent with this Priority Reform and will enable communities to make decisions regarding spectrum to support the connectivity solutions which work best for them.

Recognition must be given to First Nations air rights in consideration of spectrum matters

The Advisory Group believes First Nations people should have the same rights to the traditional ownership of airspace as they do to land and sea. We note the United Nations Declaration on the Rights of Indigenous People (UNDRIP), of which Australia is a signatory, provides that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

As part of the domestic framework for realising Australia's obligations under the Declaration, delivery of the National Agreement, as it relates to Target 17, needs to consider First Nations air rights including on spectrum matters.

The allocation of spectrum and licenses for First Nations community radio stations in Canberra, Adelaide and Hobart is a priority, as is the establishment of Indigenous broadcasting licenses.

First Nations Media Australia (FNMA) has identified that 50 per cent of the First Nations population, including around 100,000 very hard to reach people in remote Indigenous communities, listen to First Nations community radio on a weekly basis. However, this is tempered by a historic lack of available FM spectrum for First Nations community radio stations in Canberra, Adelaide and Hobart.

This is compounded by the Low Power Open Narrowcasting (LPON) licence red tape and disruptions to Remote Indigenous Broadcasting Services (RIBS) and Remote Indigenous Media Organisations (RIMOs) narrowcasting services in remote areas of Australia. The high cost of maintaining and repairing broadcasting infrastructure, coupled with the cost of complying with ACMA licensing regulations is having an impact on the financial viability and sustainability of the sector. Noting the relationship between the allocation of broadcasting licences and access to spectrum, the Advisory Group recommends the creation of a special licence class (provided on a regional basis) for First Nations broadcasters. This would help address the issues raised above by removing the requirement for RIMOs to manage multiple licences across their transmission sites.

We note that there have been numerous government and parliamentary inquiries examining First Nations broadcasting all of which have recommended the creation of a special licence for First Nations Radio, including the 2021 Watson Review. Such a licence is not without precedence; internationally, special status and licensing provisions for First Nations radio exist in New Zealand, Canada and the United States. We also note that our comments are consistent with that of other peak bodies in the sector.

Infrastructure funding should be provided for communities or bespoke operators who seek to use 'set aside' allocation to facilitate place-based solutions.

The lack of connectivity infrastructure in some remote and regional areas is impeding progress towards Target 17 of the National Agreement. We note findings by the Australian Competition and Consumer Commission (ACCC) Regional Mobile Infrastructure Inquiry 2022-23 that the availability of spectrum is not inherently a barrier to providing services to regional and remote Australia but that smaller MNOs "do not currently have access to the same suite of spectrum bands as the 3 largest mobile network operators, in particular low-band spectrum."

Following on from this, the Advisory Group recommends the ACMA considers how effectively smaller MNOs can access spectrum and, more broadly, how this aligns with targeted funding of infrastructure to support place-based solutions. We also urge government to design programs and grants that promote place-based solutions for First Nations communities.

The ACMA should establish a more substantial indigenous liaison and engagement mechanism, including to support communities to understand and engage with spectrum matters.

The Advisory Group understands that a dedicated First Nations seat has been allocated in the revised ACMA Consumer Consultative Forum (CCF) but do not consider that a single voice in a general consumer forum is adequate to address the National Priority Reforms. We consider that the establishement of a standalone First Nations advisory body within the ACMA is essential if National Priority Reforms 1, 3 and 4 of the National Agreement are to be achieved in this space.

We suggest that any such advisory mechanism within the ACMA would need capacity to raise awareness in First Nations communities about spectrum availability, and the mechanisms and processes which communities need to understand to properly engage with spectrum matters.