

Australian Communications Authority

Radiocommunications Act 1992

**Radiocommunications (Allocation of Multipoint
Distribution Station Licences - Hobart) Determination
No. 1 of 1999**

THE AUSTRALIAN COMMUNICATIONS AUTHORITY ('the ACA') determines the following price-based allocation system under subsection 106(1) of the *Radiocommunications Act 1992* ('the Act').

Dated 6 August 1999.

A.J SHAW
Chairman

R HORTON
Deputy Chairman

AUSTRALIAN COMMUNICATIONS AUTHORITY

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PART 1—PRELIMINARY

Citation

1. This Determination may be cited as the Radiocommunications (Allocation of Multipoint Distribution Station Licences - Hobart) Determination No. 1 of 1999.

Interpretation

2. (1) In this Determination, unless the contrary intention appears:

“**additional allocation**” means an additional allocation under clause 27;

“**allocation period**” means the period or periods referred to in a notice published under subclause 4 (1), (2) or (3);

“**Applicant Registration Form**” means the document approved under paragraph 6 (1) (a);

“**bank cheque**” means a bank cheque issued by a bank licensed to operate in Australia;

“**bid co-ordinator**” means a person appointed under clause 7;

“**Bidder’s Acknowledgment**” means the document approved under paragraph 6 (1) (d);

“**Bidder Identification Form**” means the document approved under paragraph 6 (1) (c);

“**bid price**” means the amount bid by or on behalf of a nominated applicant;

“**channel**”, in relation to the Hobart area, means a frequency sub-band referred to in the item in the Schedule that relates to the area;

“**cheque**” means a cheque issued by a bank licensed to operate in Australia;

“**company**” means:

- (a) a company within the meaning of the Corporations Law; or
- (b) a foreign corporation within the meaning of the Constitution;

“**Deed of Acknowledgement**” means the document approved under subclause 6 (2);

“**Deed of Guarantee**” means the document approved under subclause 6 (3);

“**Form of Authority**” means the document approved under paragraph 6 (1) (b);

“**grid reference**” means an Australian Map Grid reference;

“**Hobart area**” means the area within a circular contour:

- (a) whose centre is grid reference 55 519236 5250428, located at Mount Wellington, Hobart; and
- (b) whose radius is 50 kilometres;

“**licence**” means an MDS licence that authorises the holder of the licence to operate one or more transmitters on a channel in the Hobart area;

“**MDS licence**” has the meaning given by the Radiocommunications (Definitions) Determination No. 2 of 1993;

“**nominated applicant**” means an applicant referred to in subclause 21(4);

“**registered applicant**” means an applicant who is registered under clause 16;

“**registered bidder**” means an individual who is registered under clause 19;

“**reserve price**”, in relation to a licence, means the amount determined for the licence under clause 5;

“**the Act**” means the *Radiocommunications Act 1992*;

“**transmitter**” includes a station used for the reception and automatic retransmission of radio transmissions from another station the operation of which is authorised by an MDS licence.

(2) Unless the contrary intention appears, an expression that is:

- (a) defined in the Radiocommunications Regulations; and
- (b) used in this Determination;

has the meaning given by those Regulations.

(3) A note that is used in this Determination does not form part of the Determination.

Application of the Determination

3. (1) This Determination applies to the allocation and issue of licences for the Hobart area.

(2) This Determination does not apply to an application for the issue or renewal of a licence in relation to a transmitter that the applicant is authorised to operate under:

- (a) a licence that:

- (i) was issued under the system set out in the Radiocommunications (Allocation of Multipoint Distribution Station Licences) Determination No. 1 of 1994 or this Determination, or under the Act; and
 - (ii) is in force on the day on which the application is made; or
- (b) a licence that:
- (i) was granted under the *Radiocommunications Act 1983*; and
 - (ii) is in force on the day on which the application is made.

PART 2—PREPARATIONS FOR THE ALLOCATION OF LICENCES

Publication of invitation and other information

4. (1) The ACA must publish, in relation to an allocation, the following information in an Australian newspaper:

- (a) an invitation to apply for licences by registering as an applicant;
- (b) notice of the last day on which a person may give the ACA an Applicant Registration Form;
- (c) details of how to obtain forms that are necessary for taking part in the allocation process;
- (d) notice of the period or periods in which bids are to be invited for licences;
- (e) a statement that licences will be allocated in accordance with the system set out in this Determination;
- (f) the place at which the allocation will be held;
- (g) the address of the ACA to which documents must be sent.

(2) If the ACA decides to arrange an additional allocation, it must publish the following information in an Australian newspaper:

- (a) a statement to the effect that only persons who have previously been registered applicants for any of the licences may bid for the licences in the additional allocation;
- (b) an invitation to those persons to bid for the licences included in the additional allocation;
- (c) details of how to obtain forms that are necessary for taking part in the licence allocation process;
- (d) notice of the period or periods in which bids are to be invited for licences;
- (e) a statement that licences will be allocated in accordance with the system set out in this Determination;
- (f) the place at which the allocation will be held;
- (g) the address of the ACA to which documents must be sent.

(3) If a matter referred to in subclause (1) or (2) is changed, the ACA must publish details of the change in an Australian newspaper.

(4) The ACA may cancel an allocation period, or a part of an allocation period, that it has advertised.

(5) The ACA must not act under subclause (4) if a bid co-ordinator has invited bids for licences in the area to which the allocation relates.

(6) The ACA may:

- (a) publish the material referred to in subclauses (1), (2) and (3) in other places; and
- (b) publish other information relating to the allocation of a licence.

[NOTE: It is the responsibility of an applicant to be familiar with all relevant legislation, including the Act, Regulations under the Act and determinations and guidelines made under the Act.]

Reserve prices

5. The ACA may determine in writing a reserve price for a licence.

Application fee

5A. (1) The ACA must, in writing, decide that an amount is:

- (a) the fee for an application for a licence; or
- (b) the single fee for any number of applications for licences made by one person.

(2) In deciding the amount of the application fee, the ACA must take into account its administrative costs in allocating licences under this Determination, including the likely costs of the allocation of the licences.

Entry fee

5B. An entry fee of \$250 must be paid by all applicants who wish to take part in the auction.

Approval of forms

6. (1) The ACA must approve, in writing, the following documents:

- (a) an Applicant Registration Form for the purposes of paragraph 14 (2) (a); and
- (b) a Form of Authority for the purposes of paragraph 14 (2) (b) or 18 (2) (a); and
- (c) a Bidder Identification Form for the purposes of clause 17.
- (d) a document, to be called the Bidder's Acknowledgment, for the purposes of paragraph 19 (3) (c), that includes a statement to the effect that an individual who wishes to be registered as a bidder acknowledges that the individual has agreed to act for a particular applicant:
 - (i) in accordance with this Determination; and

(ii) in the manner set out in the document.

(2) The ACA must approve, in writing, a document to be called the Deed of Acknowledgment that includes statements to the effect that:

- (a) the applicant to whom the Deed of Acknowledgment relates has applied for a licence in reliance on the applicant's judgement and investigations; and
- (b) the applicant acknowledges that the applicant will only be issued with a licence in accordance with this Determination and after payment of the full bid price; and
- (c) the applicant acknowledges that the applicant is subject to this Determination and to the terms and conditions of the Deed of Acknowledgment.

(3) The ACA must approve, in writing, a document, to be called the Deed of Guarantee, that includes a statement to the effect that the guarantor named in the Deed guarantees to pay to the ACA, in the circumstances described in the Deed:

- (a) an amount equal to a deposit that is required to be tendered under clause 22; and
- (b) an amount of damages referred to in subclause 26 (2) or (3).

[NOTE: Clause 15 contains provisions about the persons who may be named as guarantor in a Deed of Guarantee.]

Bid co-ordinator

7. The ACA must appoint in writing one or more persons to manage the making of bids during an allocation period.

PART 3 - ALLOCATION FOR A PRE-DETERMINED PRICE

Allocation for a pre-determined price

8. (1) If, for the Hobart area, the total number of licences nominated for the area by all applicants for the area is equal to or less than the number of licences available for the area, the ACA may offer to allocate licences for the area for a pre-determined price, as set out in this Part.

(2) The offer of each licence will be conditional on payment of the pre-determined price.

The pre-determined price

9. (1) The pre-determined price for a licence is the reserve price.

Offer of licence

- 10. (1)** The ACA will offer each applicant a licence in the Hobart area.
- (2)** The ACA will send each applicant, by receipted mail:
- (a) a draft of the licence; and
 - (b) a notice stating:
 - (i) that the applicant is offered a licence in the Hobart area; and
 - (ii) the amount of the pre-determined price payable for the licence; and
 - (iii) that the offer is conditional on each other applicant accepting the licence offered to the other applicant or telling the ACA that the applicant withdraws its application for a licence.

(3) An applicant who wishes to accept the ACA's offer must do so by notifying the ACA in writing within 10 working days of receiving the offer, agreeing to pay the pre-determined price.

(4) If an applicant withdraws, the ACA may proceed to allocate licences to the other applicants in accordance with subsection (5).

(5) If every applicant accepts the licence offered to that applicant, each applicant is entitled to be allocated the licence offered on payment of the pre-determined price in accordance with this Determination. The ACA will write to each applicant confirming this.

[NOTE: For the issue of licences, see s. 100 of the *Radiocommunications Act 1992*.]

Payment of pre-determined price

- 11.** The pre-determined price is payable:
- (a) at the ACA's office in Sydney, Melbourne, Canberra or Hobart; and
 - (b) within 10 working days of the date of the letter sent under subclause 10(2); and
 - (c) in one payment by bank cheque.

Withdrawal of offers

12. (1) Subject to subclause (2), if an applicant does not accept a licence in relation to the Hobart area offered to the applicant, and does not withdraw its application:

- (a) the offer of all other licences that relate to the Hobart area is taken to be withdrawn; and
- (b) all of those licences will be allocated by auction, in accordance with this Determination.

(2) If an applicant notifies the ACA within the period for acceptance of offers that the applicant no longer seeks to obtain a licence in relation to the Hobart area:

- (a) subclause (1) does not apply; and
- (b) the ACA may include the licence in an additional allocation.

Default

13. If an applicant does not pay the pre-determined price for a licence in accordance with clause 11:

- (a) the applicant ceases to be entitled to be allocated any licences that the applicant has been offered for a pre-determined price; and
- (b) the allocation of licences under this Part to other applicants is not affected; and
- (c) the ACA may include the licence in an additional allocation.

PART 4—REGISTRATION OF APPLICANTS AND BIDDERS

Applicant registration

14. (1) A person who wishes to be issued with a licence may not bid for the licence unless the person's name is on a register maintained by the ACA.

- (2) The person may seek registration by giving the ACA:
 - (a) a completed and legible Applicant Registration Form; and
 - (b) a completed and legible Form of Authority for each individual (if any) whom the person wishes to represent the person in the allocation process; and
 - (c) in the case of a company that is required to give the ACA a Deed of Guarantee in accordance with clause 15—a completed and legible Deed of Guarantee; and
 - (d) a bank cheque for the amount of the application fee decided by the ACA under subclause 5A (1) and for the amount of the entry fee in clause 5B.
- (3) In complying with subclause (2):
 - (a) if the person is an individual—the person must sign each document; and
 - (b) if the person is a company—each document must be executed in accordance with section 127 of the Corporations Law; and
 - (c) if the person is not an individual or a company—the person must duly execute each document; and
 - (d) if persons jointly apply—each person must sign or otherwise duly execute each document; and
 - (e) a person that is not an individual must give the ACA at least one Form of Authority.

- (4) The documents to be given under subclause (2) must be given to the ACA:
- (a) at the ACA's address referred to in a notice published under subclause 4 (1), (2) or (3); and
 - (b) no later than 4 p.m. Australian Eastern Standard Time on the last day for submission of an Applicant Registration Form referred to in a notice published under subclause 4 (1), (2) or (3).

(5) For the avoidance of doubt, a document given to the ACA by a person must have on it the person's original signature or other means of execution.

Requirements for giving a Deed of Guarantee

15. (1) A company (other than a foreign company) that wishes to be issued with a licence must give the ACA a Deed of Guarantee unless:

- (a) the company satisfies the ACA that the company has a paid-up capital of a value of at least \$5,000,000 in Australian currency; or
- (b) the company satisfies the ACA that the company is an authority of the Commonwealth, a State or a Territory; or
- (c) the company satisfies the ACA that the company is a subsidiary, within the meaning of the Corporations Law, of an authority of the Commonwealth, a State or a Territory; or
- (d) the ACA decides, under paragraph (2) (a), that the company is not required to give the ACA a Deed of Guarantee.

(2) If a company (other than a foreign company) satisfies the ACA that it does not carry on business for profit, the ACA:

- (a) may decide that the company is not required to give the ACA a Deed of Guarantee; and
- (b) must, as soon as practicable after making the decision, tell the company, in writing, of the decision.

(3) A foreign company that wishes to be issued with a licence must give the ACA a Deed of Guarantee.

(4) A Deed of Guarantee must be executed by the person named in the Deed as the guarantor.

(5) If a company gives the ACA a Deed of Guarantee that is executed by an individual as the guarantor, the company must satisfy the ACA that the guarantor is a director of the company that wishes to be issued with the licence.

(6) If a company gives the ACA a Deed of Guarantee that is not executed by an individual as the guarantor, the company must satisfy the ACA that the guarantor is:

- (a) a company (other than a foreign company) that has a paid-up capital of a value of at least \$5,000,000 in Australian currency; or

- (b) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
- (c) a body corporate:
 - (i) incorporated under a law of the Commonwealth, a State or a Territory; and
 - (ii) in which the Commonwealth, a State or a Territory has a controlling interest.

Registration of applicant by ACA

- 16. (1)** The ACA must register a person who seeks registration only if:
- (a) the person complies with clause 14; and
 - (b) the ACA is satisfied that the guarantor named in a Deed of Guarantee (if required) is a person referred to in subclause 15(5) or a company or body referred to in subclause 15(6); and
 - (c) the Applicant Registration Form states that, in the period of two years immediately before the person gives the ACA the Applicant Registration Form, the person has not held an apparatus licence, issued under the Act or the *Radiocommunications Act 1983*, that has been cancelled otherwise than by the operation of section 153H or 307 of the Act (which deal with the cancellation or surrender of licences).
- (2)** If:
- (a) the person who seeks registration:
 - (i) does not comply with clause 14; or
 - (ii) satisfies the ACA, by a false or misleading representation, that it is not required to give the ACA a Deed of Guarantee; or
 - (iii) satisfies the ACA, by a false or misleading representation, that the guarantor named in the Deed of Guarantee (if required) is a person referred to in subclause 15(5) or a company or body referred to in subclause 15(6); or
 - (iv) falsely makes the statement referred to in paragraph (1) (c); and
 - (b) the ACA includes the person's name in the register;
- the inclusion of the person's name has no effect.
- (3)** The ACA may maintain the register in electronic form.

Distribution of Bidder Identification Forms

- 17. (1)** If a registered applicant is an individual, the ACA must make available to the applicant:
- (a) a Bidder Identification Form for the applicant; and
 - (b) a Bidder Identification Form for each individual (if any) for whom the applicant provided a Form of Authority (other than a Form of Authority that the ACA does not accept under subclause 18 (3)).

(2) If a registered applicant is not an individual, the ACA must make available to the applicant a Bidder Identification Form for each individual for whom the applicant provided a Form of Authority (other than a Form of Authority that the ACA does not accept under subclause 18 (3)).

(3) The ACA may, at any time, replace a Bidder Identification Form that it has issued if it is satisfied that the Form it issued has been lost, destroyed or cannot reasonably be made available to the ACA.

Lodgment of Form of Authority in special circumstances

18. (1) This clause applies if:

- (a) a registered applicant wishes to have an individual represent the applicant in an allocation period; and
- (b) the individual is not a person for whom the applicant has given the ACA a Form of Authority under paragraph 14 (2) (b).

(2) The applicant must:

- (a) give the ACA a completed and legible Form of Authority for the individual no later than 4 p.m. Australian Eastern Standard Time two business days before the first day of the relevant allocation period; and
- (b) if the applicant is an individual—sign the Form; and
- (c) if the applicant is a company—execute the Form in accordance with section 127 of the Corporations Law; and
- (d) if the applicant is not an individual or a company—duly execute the Form; and
- (e) if applicants jointly apply—sign or otherwise duly execute the Form; and
- (f) include with the Form of Authority the reason, in writing, for not having given the ACA a Form of Authority for the individual in accordance with paragraph 14 (4).

(3) The ACA must accept the Form of Authority if it considers that it was not given to the ACA in accordance with subclause 14 (4) because of special circumstances.

(4) For the avoidance of doubt, a Form of Authority given to the ACA by a registered applicant must have on it the applicant's original signature or other means of execution.

Registration of bidders by ACA

19. (1) If an individual for whom the ACA has issued a Bidder Identification Form for an allocation period wishes to bid for a licence the individual must register as a bidder with the ACA.

(2) The individual must register:

- (a) in the period of 1 hour that ends 30 minutes before bids are expected to be invited for the first licence on the day on which the individual wishes to bid; or
 - (b) if the ACA extends that period—before the end of the period set by the ACA.
- (3)** When registering, the individual must:
- (a) either:
 - (i) show the ACA the Bidder Identification Form issued for the individual; or
 - (ii) satisfy the ACA that the Bidder Identification Form issued for the individual has been lost, destroyed or cannot reasonably be made available to the ACA; and
 - (b) show the ACA the evidence of the individual's identity referred to in the Bidder Identification Form; and
 - (c) complete and sign the Bidder's Acknowledgment given to the individual by the ACA.

[NOTE: Under subclause 17 (3), the ACA may, at any time, replace a Bidder Identification Form that it has issued if it is satisfied that the Form it issued has been lost, destroyed or cannot reasonably be made available to the ACA.]

(4) The individual is registered by signing the Bidder's Acknowledgment as directed by the ACA.

(4A) If the individual signs a Bidder's Acknowledgment, and:

- (a) the individual has not registered by the time required under subclause (2); or
 - (b) the individual has not complied with subclause (3);
- the bidder's acknowledgment has no effect.

(5) If:

- (a) the individual:
 - (i) does not register by the time required under subclause (2); or
 - (ii) does not comply with subclause (3); and
 - (b) the individual signs the register;
- the individual's signature has no effect.

(6) The ACA must give each registered bidder a bidder's paddle for use on a day in the allocation period on which bids for licences will be invited.

(7) If the individual shows the ACA more than one Bidder Identification Form issued for the individual, the ACA must:

- (a) register the individual separately for each Bidder Identification Form; and

- (b) give the individual a different bidder's paddle for each Bidder Identification Form.

PART 5—CONDUCT OF THE ALLOCATION SYSTEM

Holding an allocation

20. (1) The ACA must hold an allocation of licences during the period or periods, and at the place, referred to in a notice published under subclause 4 (1), (2) or (3) unless the ACA cancels the allocation period.

[NOTES: Before the bid co-ordinator invites bids, the ACA may cancel part or all of the allocation period: see subclause 4 (4).

A notice under subclause 4 (2) relates to an additional allocation. Under clause 7, an additional allocation will only be held if the ACA considers it necessary.]

(2) The allocation of a licence must be carried out in accordance with this Determination.

Bidding for a licence

21. (1) Only a registered bidder may bid for a licence.

(2) The bid co-ordinator will:

- (a) invite bids for licences; and
- (b) identify the registered bidder who makes the highest bid for each licence.

(3) In the event of a disputed bid:

- (a) the bid co-ordinator is the sole arbiter; and
- (b) the bid co-ordinator's decision is final.

(4) If the highest bid made for a licence is at least equal to the reserve price for the licence, the registered applicant by whom, or on whose behalf, the highest bid is made is the nominated applicant for the licence.

(5) If an unregistered bidder bids for a licence, the making of the bid does not, by itself, affect the validity of:

- (a) the identification of the registered bidder who makes the highest bid for the licence; or
- (b) the allocation of the licence.

Execution of the Deed of Acknowledgment and tender of deposit

22. (1) Immediately after an applicant is identified as the nominated applicant for a licence:

- (a) if the nominated applicant is a registered bidder—the nominated applicant must meet with the ACA; or
- (b) if the nominated applicant is not a registered bidder—a registered bidder who has signed a Bidder's Acknowledgment in relation to the nominated applicant must meet with the ACA.

(2) The individual who meets with the ACA must, as directed by the ACA:

- (a) identify himself or herself by:
 - (i) showing the ACA the correct Bidder Identification Form; or
 - (ii) showing the ACA the correct bidder's paddle; or
 - (iii) verifying the bidder's name and signature as they appear on the relevant Bidder's Acknowledgment; and
- (b) execute the Deed of Acknowledgment; and
- (c) tender a deposit of 10% of the amount of the bid price.

(3) The individual who meets with the ACA must tender the deposit in one payment consisting of cash in Australian currency, a cheque in Australian currency, or both.

(4) The individual who meets with the ACA must not pay an amount of cash that is equal to or greater than the amount referred to in the definition of "significant cash transaction" in subsection 4 (1) of the *Financial Transaction Reports Act 1988*.

[NOTE: At 1 July 1999, the amount was \$10,000.]

(5) In addition to any other provision of this Determination, the amount of a deposit that is:

- (a) not tendered under paragraph (2) (c); or
- (b) tendered but not paid;

is a debt due to the Commonwealth, and may be recovered by the Commonwealth in a court of competent jurisdiction.

Application for a licence ceases to have effect if nominated applicant does not comply with clause 22

23. (1) Subclauses (2) and (3) apply if a nominated applicant does not execute the Deed of Acknowledgment as directed by the ACA.

- (2) Without affecting the operation of clause 26:
 - (a) the nominated applicant's application for the licence ceases to have effect from the time at which the applicant fails to comply with the ACA's direction to execute the Deed of Acknowledgment; and
 - (b) if the nominated applicant has paid the deposit for the relevant licence—the deposit is forfeited to the Commonwealth; and

- (c) the bid co-ordinator may invite new bids for the licence during the allocation period; and
- (d) the ACA may include the licence in an additional allocation.

(3) Without affecting the operation of clause 26, if the ACA is not satisfied that the nominated applicant has a reasonable excuse for not executing the Deed of Acknowledgment:

- (a) the applicant is not permitted to bid for that licence or another licence referred to in the Schedule; and
- (b) a registered bidder representing the applicant is not permitted to bid, on behalf of the applicant, for that licence or another licence referred to in the Schedule; and
- (c) the ACA must, as soon as practicable, inform the applicant:
 - (i) that the ACA is not satisfied that the nominated applicant has a reasonable excuse; and
 - (ii) of the reason why the ACA is not satisfied.

(4) Subclauses (5) and (6) apply if:

- (a) a nominated applicant does not tender the deposit required by clause 22; or
- (b) a deposit is tendered but not paid.

(5) Without affecting the operation of clause 26:

- (a) the nominated applicant's application for the licence ceases to have effect from the time at which the nominated applicant did not tender or pay the deposit as directed; and
- (b) the bid co-ordinator may invite new bids for the licence during the allocation period; and
- (c) the ACA may include the licence in an additional allocation.

(6) Without affecting the operation of clause 26, if the ACA is not satisfied that the nominated applicant has a reasonable excuse why the deposit was not tendered or paid:

- (a) the applicant is not permitted to bid for that licence or another licence referred to in the Schedule; and
- (b) a registered bidder representing the applicant is not permitted to bid, on behalf of the applicant, for that licence or another licence referred to in the Schedule; and
- (c) the ACA must, as soon as practicable, inform the applicant:
 - (i) that the ACA is not satisfied that the nominated applicant has a reasonable excuse; and
 - (ii) of the reason why the ACA is not satisfied.

Payment of balance of the bid price

24. (1) A nominated applicant must pay the bid price (less the amount of the deposit) to the ACA:

- (a) at the ACA's office in Sydney, Melbourne, Canberra or Hobart; and
- (b) no later than 4 p.m., at the place at which the nominated applicant is to pay the bid price, on the business day following the day on which the relevant Deed of Acknowledgment is completed; and
- (c) in one payment consisting of cash in Australian currency, a bank cheque in Australian currency, or both.

(2) The applicant must not pay an amount of cash that is equal to or greater than the amount referred to in the definition of "significant cash transaction" in subsection 4 (1) of the *Financial Transaction Reports Act 1988*.

[NOTE: At 1 July 1999, the amount was \$10,000.]

Application for a licence ceases to have effect if nominated applicant does not comply with clause 24

25. (1) Subclauses (2) and (3) apply if a nominated applicant does not comply with clause 24.

(2) Without affecting the operation of clause 26:

- (a) the nominated applicant's application for the licence ceases to have effect from the time by which the applicant is required to comply with clause 24; and
- (b) the deposit paid for the relevant licence is forfeited to the Commonwealth; and
- (c) the bid co-ordinator may invite new bids for the licence during the allocation period; and
- (d) the ACA may include the licence in an additional allocation.

(3) Without affecting the operation of clause 26, if the ACA is not satisfied that the nominated applicant has a reasonable excuse for not complying with clause 24:

- (a) the applicant is not permitted to bid for that licence or another licence referred to in the Schedule; and
- (b) a registered bidder representing the applicant is not permitted to bid, on behalf of the applicant, for that licence or another licence referred to in the Schedule; and
- (c) the ACA must, as soon as practicable, inform the applicant:
 - (i) that the ACA is not satisfied that the nominated applicant has a reasonable excuse; and
 - (ii) of the reason why the ACA is not satisfied.

PART 6 — CONSEQUENCES OF AN UNSUCCESSFUL APPLICATION

Liability for failure to comply with requirements of this Determination

26. (1) Subclauses (2) and (3) apply if:

- (a) a nominated applicant, or a registered bidder representing the applicant, does not comply with a requirement or a direction under subclause 22 (1) or (2); or
- (b) the nominated applicant does not pay a bid price in accordance with clause 24.

(2) This Determination does not affect any right of the Commonwealth to recover an amount of damages (including an amount that is greater than the amount of the highest bid price, but not including an amount paid as, or recovered in relation to, a deposit) from the nominated applicant, or any other person, in relation to the failure to comply with clause 22 or 24.

(3) To avoid doubt, this Determination does not affect any existing or future right of the Commonwealth to recover from a nominated applicant, or any other person, an amount of damages equal to the difference between:

- (a) the bid price that relates to the nominated applicant; and
- (b) if another nominated applicant is identified for the licence—the bid price that relates to that applicant.

Additional allocation

27. (1) The ACA may arrange for one or more additional allocations to be held in relation to a licence if:

- (a) the bid co-ordinator invites bids for the licence; and
- (b) either:
 - (i) the bid co-ordinator receives no bids for the licence; or
 - (ii) the application made by the nominated applicant in relation to the licence has no effect or ceases to have effect; or
 - (iii) subclause 12(2) or clause 13 applies.

(2) The only persons who may bid for the licences in the additional allocation are persons who were, in a previous allocation, registered applicants for any of the licences included in the additional allocation and to whom clause 25 does not apply.

PART 7—ALLOCATION OF LICENCES

Licence not to be issued in certain circumstances

28. (1) The ACA will not issue a licence to a nominated applicant if, in the two years immediately before the application, the applicant held an apparatus licence, issued under the Act or the *Radiocommunications Act 1983*, that has been cancelled otherwise than by the operation of section 153H or 307 of the Act (which deal with the cancellation and surrender of licences).

(2) The ACA must not issue a licence that is inconsistent with:

- (a) the Australian spectrum plan; or
- (b) a relevant frequency band plan.

(3) If:

- (a) a person pays a deposit, or a bid price, for a licence in accordance with this Determination; and
- (b) the ACA does not issue the licence because of subclause (1) or (2);

the ACA must repay to the person the amount of the payment.

Issue of a licence

29. (1) The ACA must issue, as soon as practicable, a licence to a nominated applicant if:

- (a) the applicant, or a registered bidder representing the applicant, complies with the requirements in clause 22; and
- (b) the applicant pays the bid price in accordance with clause 24; and
- (c) none of the circumstances in clause 28 exist.

(2) The ACA:

- (a) must issue the licence by instrument in writing; and
- (b) may issue more than one licence in one instrument.

(3) The licence comes into force on the day on which it is issued.

(4) A licence does not give authority to the licensee to occupy the place at which the licensee proposes to operate the relevant transmitter.

Duration of a licence

30. A licence is in force for a period commencing on the day on which it is issued and ending on 25 July 2002.

PART 8—MISCELLANEOUS

Notices

31. (1) At any time before the ACA issues a licence to a nominated applicant, it may announce, or publish a notice setting out:

- (a) the name of the nominated applicant; and
- (b) the bid price that the applicant bid for the licence.

[NOTE: The ACA is also required to publish a similar notice in the *Gazette* after it has issued the licence: see subsection 106 (13) of the Act.]

(2) The ACA may give any notice for the purposes of this Determination by facsimile transmission.

(3) For the purposes of this Determination, a notice is taken to have been given to an applicant by the ACA:

- (a) when the ACA delivers the notice to the address nominated by the applicant; or
- (b) if the applicant nominates another address after submitting the application—when the ACA delivers the notice to the other address; or
- (c) if:
 - (i) the applicant is a corporation; and
 - (ii) the ACA is unable to deliver the notice to the address nominated in the application;when the ACA delivers the notice to the applicant's registered office; or
- (d) if the notice is given by facsimile transmission—on production by the dispatching facsimile machine of a transmission control report showing:
 - (i) the relevant number of pages comprising the document to have been sent to the correct destination; and
 - (ii) that the notice has been transmitted successfully.

Liability under the allocation system

32. The ACA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation system set out in this Determination.

Information provided by applicant

33. (1) A document given to the ACA by a person for the purposes of the allocation system set out in this Determination (including a document that contains intellectual property) becomes the property of the Commonwealth.

(2) Subclause (1) does not apply to a document that is given to the ACA to establish an individual's identity.

(3) The Commonwealth may use information provided by an applicant for the purposes of the Commonwealth.

SCHEDULE

Subclause 2 (1)

LICENCES FOR ALLOCATION

Item. no.	Area	Channel no.	Frequency sub-bands (MHz)
1	Hobart Area	2	2083 - 2090
2	Hobart Area	5	2104 - 2111