

Commonwealth of Australia

Radiocommunications Act 1992

**Radiocommunications (Allocation of Multipoint
Distribution Station Licences) Determination No. 1 of 1997**

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 24 September 1997

A.J. SHAW
Chairman

R. HORTON
Deputy Chairman

AUSTRALIAN COMMUNICATIONS AUTHORITY

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Summary of allocation system

The ACA proposes to allocate apparatus licences for the operation of MDS transmitters by a price-based allocation system determined under s. 106 of the Act. The allocation system set out in the determination is a simultaneous multiple round auction. Each lot in the auction will represent one MDS licence. If applicants' needs for licences in a particular area can be met without going to auction, the licences will be allocated for a pre-determined price.

People wishing to obtain a licence in this process must register and make a refundable proportional eligibility payment, based on the lots that the person nominates in their application for registration. The eligibility payment is held as a performance bond over the applicant.

Applicants may bid on any number of lots, provided that their bidding activity does not exceed their eligibility. Applicants may nominate to be eligible for all lots, but they must make the necessary eligibility payment. Applicants interested in specific lots, need only make a sufficient eligibility payment to cover these.

Bids may be lodged in accordance with the Determination by facsimile (fax) or, in certain circumstances, by telephone.

Bidding will take place over several rounds with the results of each round being notified to applicants by the ACA. Applicants may withdraw bids from a previous round during a round, but may forfeit some or all of their eligibility payment if the lot ultimately sells for less than the bid that was withdrawn.

Applicants will be required to be active on a percentage of their eligibility. Applicants not meeting the activity requirements will have their eligibility reduced.

At the end of the allocation process, the ACA will issue MDS licences to the successful bidders.

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PART 1 - INTRODUCTION

Title

1.1 This determination is called the Radiocommunications (Allocation of Multipoint Distribution Station Licences) Determination No. 1 of 1997.

Commencement

1.2 This determination commences on 8 September 1997.

Application of the Determination

1.3 (1) This determination determines a price-based allocation system for allocating MDS licences for the Alice Springs area and the Norfolk Island area:

- (a) by a simultaneous multiple round auction; and
- (b) for a pre-determined price.

(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 licence that:

- (a) was issued under this determination, or another determination made under subsection 106 (1) of the Act, or under the Act; and
- (b) is in force on the day on which the application is made.

Interpretation

1.4 (1) In this determination, unless the contrary intention appears:

Act means the *Radiocommunications Act 1992*;

ACCC, means the Australian Competition and Consumer Commission;

activity target, for a round means the smallest whole number which, when divided by the percentage of eligibility as fixed under paragraph 4.7 (2) (b) for the stage in which the round occurs, gives a result that, when rounded to the nearest whole number, is greater than or equal to the eligibility for the round;

Alice Springs area means the area within a circular contour:

- (a) whose centre is grid reference 53 383310 7375865 located at West Gap, near Alice Springs in the Northern Territory; and
- (b) whose radius is 50 kilometres;

Applicant Information Package has the meaning given by clause 2.2;

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Application Form means the document approved by the ACA under paragraph 1.5 (a);

auction means an auction held by the ACA in accordance with this determination to allocate lots;

Auction Centre means that part of the Canberra Central Office of the ACA occupied by the staff of the ACA who are responsible for administering an allocation in accordance with this determination;

auction manager means the person appointed under clause 1.6;

balance of the bid price means the amount worked out in accordance with clause 5.2;

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

bidder identification number means the number assigned to an applicant by the ACA under subclause 2.8 (2);

closing date means the date mentioned as the closing date in the notice published under subclause 2.1(1);

Deed of Acknowledgement means the document approved by the ACA under paragraph 1.5 (b);

eligibility, in relation to a registered applicant, means the registered applicant's initial eligibility rounded to the nearest whole number as varied during the auction;

eligibility payment means the eligibility payment payable under clause 2.6;

initial eligibility means an applicant's initial eligibility determined in accordance with clause 2.5;

licence means an MDS licence as defined in the Radiocommunications (Definitions) Determination No. 2 of 1993;

lot means a licence that authorises the operation of a transmitter on a frequency within the frequency band referred to in column 3 of an item in Schedule 2 in the area referred to in column 4 of the item;

lot rating means, in relation to a lot referred to in an item in Schedule 2, the rating set out in column 5 of the item;

Norfolk Island area means the area within a circular contour:

- (a) whose centre is a point located at latitude 29 degrees, 2 minutes South and longitude 167 degrees, 57 minutes and 12 seconds East; and
- (b) whose radius is 50 kilometres;

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pre-determined price in relation to a licence, means the price for the lot determined under clause 3.2;

register means the register of applicants maintained by the ACA under clause 2.7;

registered applicant means an applicant registered under clause 2.8;

stage means a group of successive rounds of an auction to which the same percentage of eligibility, fixed under paragraph 4.7 (2) (b), applies;

starting bid has the meaning given by paragraph 2.9 (1) (b);

successful applicant has the meaning given by clause 5.1;

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

[Note: The following terms, used in this determination, are defined in the *Radiocommunications Act 1992* and have the meanings given to them by that Act:

- frequency band
- ACA]

(2) In this determination:

- (a) a reference to time is a reference to that time in the Australian Capital Territory; and
- (b) a reference to an amount of money is a reference to that amount in Australian dollars; and
- (c) the range of numbers that identifies a frequency band includes the higher, but not the lower, number.

(3) If a calculation of an amount of money made under this determination results in an amount that includes a part of a dollar, the amount is:

- (a) if the part of a dollar is less than 50 cents-the amount reduced to the nearest whole dollar; or
- (b) if the part of a dollar is 50 cents or more-the amount increased to the nearest whole dollar.

(4) A registered applicant is active on a lot in a round when:

- (a) the registered applicant makes a bid on a lot in that round that equals or exceeds the minimum bid on the lot, worked out in accordance with clause 4.8; or
- (b) the registered applicant holds the highest bid on the lot from the previous round, and does not withdraw the bid.

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Approval of forms

1.5 The ACA must approve, in writing, the following documents:

- (a) an Application Form;
- (b) a Deed of Acknowledgement, that includes a statement to the effect that, if the applicant is the successful applicant in respect of a lot, he or she agrees to pay the ACA the balance of the bid price for the lot as required by clause 5.3.

Auction manager

1.6 The ACA must appoint in writing a person (the *auction manager*) to manage the auction.

Giving of information

1.7 The ACA may give any information to a person for the purposes of this determination:

- (a) by telephone; or
- (b) by fax; or
- (c) using the internet.

Communicating with the ACA

1.8 Once an auction has started, a form or notice required to be given to the ACA in relation to the auction must be given by fax.

[NOTE: Bidding must be by fax or by telephone - see clause 4.1]

Information to be given to the ACCC

1.9 The ACA must provide copies of all Application Forms lodged with the ACA in accordance with subclause 2.4 (1) to the ACCC.

PART 2 - PREPARING FOR THE AUCTION

Publication of notice by the ACA

2.1 (1) At least one month before holding an auction, the ACA must publish a notice in a newspaper circulating nationally in Australia:

- (a) describing the lots to be auctioned; and
- (b) giving a brief description of the way the auction will be conducted; and
- (c) inviting people to apply to the ACA to take part in the auction; and
- (d) stating the closing date and time for applications; and
- (e) stating that licences will be auctioned in accordance with this determination; and

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- (f) stating that further information (the ***Applicant Information Package***) can be obtained from the ACA at the address given in the notice.

(2) If a matter mentioned in the notice changes, the ACA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.

(3) The ACA may publish other information about auctions and may publish that information, and the notices mentioned in subclauses (1) and (2), in other ways.

Applicant Information Package

2.2 (1) The Applicant Information Package must contain:

- (a) an Information Memorandum; and
- (b) a copy of this determination; and
- (c) a copy of the Application Form, with instructions for completing the form; and
- (d) a copy of the Deed of Acknowledgement; and
- (e) the increments set by the auction manager under clause 2.9; and
- (f) the closing date and time for applications; and
- (g) the address of the Auction Centre in Canberra.

(2) The Applicant Information Package may also contain other information about the auction.

Applications

2.3 (1) A person who wants to obtain an MDS licence under this determination must apply to the ACA for registration.

(2) The person must give the ACA the following documents (the “**application documents**”):

- (a) a completed Application Form; and
- (b) a completed Deed of Acknowledgement.

(3) The application documents must have with them:

- (a) an eligibility payment, worked out in accordance with clause 2.6; and
- (b) an entry fee of \$250.00.

(4) The eligibility payment and entry fee must be paid by bank cheque.

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Lodging of applications

2.4 (1) The application documents, eligibility payment and entry fee must be lodged with the ACA, at the Auction Centre in Canberra, by the closing date.

(2) As soon as practicable after receiving the application documents, the ACA must confirm by fax or, if the ACA does not know the applicant's fax number, by letter, to the applicant the details shown on the Application Form.

(3) If the applicant wishes to change these details, the applicant must do so by written notice to the ACA (accompanied by a further eligibility payment if this is required) within 5 working days of the date of the fax or letter.

Initial eligibility

2.5 (1) When completing the Application Form, an applicant must work out his or her initial eligibility by aggregating the lot ratings for the lots that he or she nominated in the Application Form. The result is the applicant's initial eligibility.

[NOTE: Eligibility should cover all of the lots that the applicant hopes to win]

(2) The applicant's initial eligibility cannot be increased during the auction process.

[NOTES: 1. An applicant cannot bid so as to exceed his or her eligibility - see clause 4.13 - but nothing prevents an applicant from obtaining eligibility to cover all lots on offer at the auction, as long as the applicant pays the eligibility payment based on this.

2. Subject to the limits set by clause 4.13, an applicant may bid on any combination of lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the Application Form.]

Eligibility payment

2.6 (1) The amount of eligibility payment payable by an applicant is the amount in dollars worked out by multiplying \$50.00 by the applicant's initial eligibility, worked out in accordance with subclause 2.5 (1).

(2) In spite of subclause (1), the minimum eligibility payment is \$250.00.

Register of applicants

2.7 (1) The ACA must maintain a register of applicants. The register may be in electronic form.

(2) The register must contain:

- (a)** the name and address of each applicant; and
- (b)** the applicant's telephone number and fax number during business hours;
- (c)** the applicant's eligibility; and
- (d)** the applicant's bidder identification number.

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(3) The register may also contain any other information that the ACA thinks necessary or convenient for the running of the auction.

(4) The ACA must make the changes to the register that the ACA considers necessary or convenient as soon as practicable after:

- (a) an applicant notifies the ACA of any change in the information on the register about the applicant; or
- (b) the ACA becomes aware that any information on the register is not correct.

(5) Except as authorised by clause 2.8, the ACA must not disclose any details about applicants until the auction is closed.

Registration of applicants

2.8 (1) The ACA must register an applicant only if the applicant has lodged completed application documents, and paid the entry fee and eligibility payment, as required by clause 2.3.

[NOTE: Registration is subject to compliance with other limitations on apparatus licensing]

(2) The ACA must assign to each registered applicant:

- (a) a bidder identification number; and
- (b) a password.

(3) At least 5 working days before the start of the auction, the ACA must in writing notify each registered applicant:

- (a) that the applicant has been registered; and
- (b) of the applicant's initial eligibility, as shown on the register; and
- (c) of the starting date and time of the first round of the auction; and
- (d) of the ACA's fax and telephone numbers available for use by registered applicants; and
- (e) of the applicant's bidder identification number and password; and
- (f) of each applicant's name, if the applicant is:
 - (i) a company; or
 - (ii) an individual who has consented to the publication of his or her name; and
- (g) of the initial eligibility of all applicants; and
- (h) of the bidder identification numbers of all applicants.

(4) After notifying an applicant in accordance with subclause (3), the ACA may disclose the information contained in paragraph (f), (g) or (h) to the public.

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Increments and starting bids

- 2.9 (1)** The auction manager must set:
- (a) the dollar increment; and
 - (b) the starting bid for each lot; and
 - (c) the percentage of high bid increment.

PART 3 - ALLOCATION FOR A PRE-DETERMINED PRICE

Allocation for a pre-determined price

3.1 (1) If, for each area, the total number of lots nominated for the area by all applicants for the area is equal to or less than the number of lots available for that area, the ACA may offer to allocate licences that correspond to the lots 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

3.2 (1) The pre-determined price for a licence is the starting bid.

(2) The balance of the pre-determined price payable by an applicant is the sum of the pre-determined prices for all licences offered to the applicant less the amount of the eligibility payment paid by the applicant.

(3) If the amount of the pre-determined price is less than the eligibility payment paid by an applicant, the ACA will return to the applicant the difference in the amounts.

Offer of licence

3.3 (1) The ACA will offer each applicant a licence in the area nominated by the applicant.

- (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 area nominated by the applicant; and
 - (ii) the amount of the pre-determined price payable for the licence; and
 - (iii) the amount of the eligibility payment made by the applicant and held by the ACA; and

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- (iv) the balance of the pre-determined price payable; and
- (v) that the offer is conditional on each other applicant accepting the licence offered to him or her.

(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 every applicant accepts the licence offered to him or her, each applicant is entitled to be allocated the licence offered on payment of the balance 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. 62 of the *Radiocommunications Act 1992*.]

Payment of balance of pre-determined price

3.4 The balance of the pre-determined price is payable:

- (a) at the Auction Centre within 10 working days of the date of the letter; and
- (b) in one payment by bank cheque.

Withdrawal of offers

3.5 (1) Subject to subclause (2), if an applicant does not accept a licence in relation to an area offered to him or her:

- (a) the offer of all other licences that relate to the 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 he or she no longer seeks to obtain a licence in relation to an area nominated in the applicant's application for registration:

- (a) subclause (1) does not apply; and
- (b) the licence offered to him or her is to be treated as an unsold lot under clause 6.1.

Default

3.6 If an applicant does not pay the balance of the pre-determined price for a licence in accordance with clause 3.4:

- (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 eligibility payment made by the applicant is forfeited to the Commonwealth; and

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- (c) the allocation of licences under this Part to other applicants is not affected; and
- (d) the licences are to be treated as unsold lots under clause 6.1.

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PART 4 - THE AUCTION

Ways of bidding

4.1 (1) A registered applicant may only bid at an auction in the following ways:

- (a) by fax to the ACA, on a fax number made available by the ACA and notified by the ACA under subclause 2.8 (3); or
- (b) by telephone to the ACA, on a telephone number made available by the ACA and notified by the ACA under subclause 2.8 (3).

(2) A registered applicant may only bid by telephone if:

- (a) the applicant bids on no more than 20 lots in a round; or
- (b) the applicant is unable to send bids by fax because of technical problems with the equipment used for bids by fax.

Fax bidding procedure

4.2 (1) The procedure for fax bidding is as follows:

- a registered applicant will use the fax number notified by the auction manager as the number for fax bidding;
- the registered applicant will transmit a fax that quotes the bidder identification number and password, as described in Schedule 1, assigned to him or her by the ACA;
- the registered applicant must meet any additional identification requirements imposed by the ACA, as set out in Schedule 1;
- the ACA will process the bid.

[NOTE: Details of the auction procedure are in Clause 4.5.]

(2) Details of the bid transmission and authentication requirements for fax bidding are in Schedule 1.

Telephone bidding procedure

4.3 (1) The procedure for telephone bidding is as follows:

- a registered applicant will use the telephone number notified by the auction manager as the number for telephone bidding;
- the registered applicant's call will be taken by an ACA operator;
- the registered applicant will quote the bidder identification number and password, as described in Schedule 1, assigned to him or her by the ACA;
- the registered applicant must meet any additional identification requirements imposed by the ACA, as set out in Schedule 1;
- the ACA will process the bid.

[NOTE: Details of the auction procedure are in Clause 4.5.]

(2) Details of the bid transmission and authentication requirements for telephone bidding are in Schedule 1.

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Auction manager to set schedule and notify registered applicants

4.4 (1) The auction manager:

- (a) must set the schedule for the first round in sufficient time to enable notification of all registered applicants under subclause 2.8 (3); and
- (b) must set the schedule for the next round, and notify all registered applicants of this in the results of the round; and
- (c) during a round, may give registered applicants any other information that the auction manager thinks necessary for the smooth running of the auction.

(2) In setting the schedule for a round, the auction manager must take into account any comments received from registered applicants under subclause 4.5 (3).

(3) The schedule set for each round must:

- (a) include the starting date and time, and the time when each round ends; and
- (b) be in accordance with clauses 4.5 and 4.6.

Auction procedure

4.5 (1) An auction is to consist of a number of rounds. The auction opens, and the first round starts, at the starting date and time set under clause 4.4.

(2) Each round of an auction is made up of the following periods and activities:

1. The bidding period - registered applicants make and withdraw their bids.

[NOTE: Withdrawal may be subject to penalties, as set out in clause 4.19.]

2. The results and analysis period - the auction manager works out the highest bids on each lot offered. At the end of the calculation period, the auction manager notifies all registered applicants of:

- the results for the round; and
- the information for the next round; and

registered applicants analyse the results.

(3) A registered applicant may comment on the proposed schedule for the next round within the period specified in the information for the next round.

(4) In this clause:

information for the next round means:

- the schedule for the next round; and
- the minimum bid on each lot for the next round; and
- each registered applicant's eligibility; and
- any information about the next stage of the auction that is required by

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- clause 4.7; and
- any other information necessary for the proper running of the auction; and

results for the round means:

- all bids made during the round; and
- all bids withdrawn during the round; and
- the amount of the highest bid on each lot, and the Bidder Identification Number of each highest bidder.

Auction schedule

4.6 (1) Once the auction opens, there will be at least 1 round each working day.

(2) No round on a day will start before 9.30. a.m.

(3) If after the end of a round the auction manager thinks that there will be time to finish another round before 5.00 pm on that day, he or she may decide to hold another round for that day.

(4) The auction manager may vary the schedule at any time if he or she considers it is necessary, because of unforeseen circumstances, to do so to ensure the smooth running of the auction. In doing so, the auction manager must give registered applicants as much notice of the variation as reasonably possible.

[NOTE: The auction manager must notify all registered applicants of the schedule for a round before the end of the previous round - see clause 4.4.]

Stages of auction, eligibility percentage and waivers

4.7 (1) An auction consists of a number of stages. Each stage consists of a number of rounds.

(2) After the closing date but at least 5 working days before the start of the auction, the auction manager must:

- (a) fix the number of stages for the auction; and
- (b) fix a percentage of eligibility as the percentage to be applied during each stage of the auction; and
- (c) notify all registered applicants of these matters.

(3) The auction manager may at any time propose that the auction should move to the next stage.

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- (4) If the auction manager proposes this, he or she must:
 - (a) notify the registered applicants that he or she proposes that the auction will move to the next stage at the start of the round he or she specifies ; and
 - (b) ask for registered applicants' comments on this; and
 - (c) take registered applicants' comments into account in deciding whether to move to the next stage; and
 - (d) if the auction manager decides to move to the next stage - notify all registered applicants, at the end of the round after their comments are made, that the auction will move to the next stage and specify the round when the change will take effect.

Starting and minimum bids

4.8 (1) A bid on a lot below the starting bid for that lot will not be accepted.

[NOTE: For starting bids, see clause 2.9.]

(2) After the starting bid is made on a lot in a round, a bid that is less than the minimum bid for the round will not be accepted.

(3) For subclause (2), the minimum bid is the sum of the highest bid on the previous round and the greater of:

- (a) the dollar increment set under clause 2.9; and
- (b) the percentage of high bid increment set under clause 2.9, multiplied by the highest bid.

(4) If a bid on a lot in an auction is withdrawn, the minimum bid is:

- (a) if the withdrawn bid was the only bid for the lot in the auction-the starting bid; or
- (b) in any other case, the next highest bid for the lot in the auction.

(5) A registered applicant who had the previous highest bid on a lot in a round is not required by subclause (2) to raise his or her own highest bid, but may do so.

Changing starting and minimum bids

4.9 (1) In spite of clause 4.8, at any time during the auction the auction manager may change the increments fixed under clause 2.9:

- (a) to vary the amount of the starting bid on a lot, if there are no bids on the lot; or
- (b) to vary the minimum bid on a lot.

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- (2) Before changing the increments, the auction manager must:
 - (a) notify registered applicants of the proposed change; and
 - (b) give registered applicants the opportunity to comment on the proposal.

(3) In changing an increment, the auction manager must have regard to registered applicants' comments.

(4) The auction manager must notify all registered applicants of the new increments for a round before the commencement of the round in which the change takes effect.

All lots on offer simultaneously

4.10 All of the lots on offer at an auction will be open for bidding in each round of the auction.

Identification of registered applicants

4.11 (1) A registered applicant must use his or her bidder identification number when bidding, and must comply with the other identification requirements set out in Schedule 1.

(2) If the auction manager decides that registered applicants should use additional identification, they must do so.

General rules

4.12 (1) Subject to clauses 4.13 and 4.14, a registered applicant may bid on any lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the Application Form.

(2) In a round, a registered applicant may bid only once on each lot. A registered applicant must lodge all bids at the one time.

(3) The ACA will enter a telephone bid as soon as practicable after the bid is received by the ACA.

(4) If two or more registered applicants make identical bids on the same lot, the registered applicant whose bid is recorded as being made first is the highest bidder on the lot for that round.

- (5) If a bid is disputed:
 - (a) the auction manager is the sole arbiter; and
 - (b) the auction manager's decision is final.

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- (6) If a person who is not a registered applicant makes a bid for a lot:
 - (a) the bid is to be ignored; and
 - (b) the bid does not, by itself, affect further bidding on that lot.

Bidding cap

4.13 (1) A registered applicant is not entitled to bid in such a way that the total of the lot ratings of the lots on which he or she is active in any one round exceeds his or her eligibility at the time of the bid.

- (2) If the total of a registered applicant's bids exceeds this eligibility, the ACA:
 - (a) will process the bids in lot number order, starting with the lowest lot number; and
 - (b) will cease processing the bids when the next bid in lot number order would result in the applicant's eligibility being exceeded; and
 - (c) will treat the unprocessed bids as not having been made.

Bidding activity targets

4.14 Subject to the waiver provisions in clause 4.16, a registered applicant must bid in such a way during a round that the total of the lot ratings on the lots on which he or she is active in that round is equal to or greater than his or her activity target for the round.

[NOTE: A registered applicant who does not do so is liable to lose eligibility, in accordance with clause 4.15.]

Loss of eligibility

- 4.15 (1)** If:
 - (a) a registered applicant does not meet his or her activity target in a round; and
 - (b) the registered applicant does not exercise a waiver in that round, nor is a waiver exercised on the applicant's behalf under subclause 4.16 (4);

the registered applicant's eligibility for the next round will be reduced to an amount worked out in accordance with subclause (2).

- (2) The amount of a registered applicant's eligibility for the next round is to be worked out as follows:

$$E = \frac{R}{P},$$

where:

E is the registered applicant's eligibility for the next round; and

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R is the sum of the lot ratings of the lots on which the registered applicant was active in the current round; and

P is the percentage of eligibility (fixed by the auction manager under clause 4.8) that applied in the round.

Example: A registered applicant's eligibility at the start of a round is 100 units. The percentage of eligibility for the round is 80%. In the round, the registered applicant's activity is only 50 units and he or she has not exercised a waiver, so eligibility will be reduced as a penalty for under-activity.

The registered applicant's new eligibility will be current activity (50) divided by the current eligibility percentage (0.8) which equals 63 units. There is nothing the registered applicant can do once the auction is underway to recover eligibility.

(3) A registered applicant who loses eligibility in a round is only entitled to bid in future rounds in such a way that the total lot ratings of the lots on which he or she is active does not exceed his or her eligibility as reduced in accordance with this clause.

Waiver

4.16 (1) Each applicant has two waivers.

(2) During the bidding period of a round, a registered applicant who would otherwise not meet his or her activity target may exercise a waiver. A registered applicant may continue to exercise waivers until he or she has used all his or her waivers.

(3) A registered applicant who exercises a waiver will not lose eligibility in that round.

(4) If:

- (a) a registered applicant bids in such a way that, but for this clause, he or she would not meet his or her activity target; and
- (b) the registered applicant has waivers that have not been exercised;

the auction manager will exercise a waiver on the registered applicant's behalf unless the registered applicant notifies the auction manager, during the bidding period of that round, that the waiver is not to be exercised.

(5) If:

- (a) there are no bids in a round (and, as a result, the round would be regarded as the final round); and
- (b) a registered applicant exercises a waiver in that round;

the round will not be regarded as the final round.

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Withdrawal of bids

4.17 (1) During a round, a registered applicant may withdraw his or her bid from a previous round if the bid is the highest bid on that lot.

- (2)** If a registered applicant withdraws a bid in a round:
- (a) the ACA is taken to be the highest bidder in that round for the lot, at the next highest bid (whether the next highest bid was made in that round or a previous round); and
 - (b) the ACA will be identified by the bidder identification number 9999; and
 - (c) the minimum bid for the lot in the next round is equal to that next highest bid or, if there is no other bid, the starting bid; and
 - (d) the registered applicant may bid again on that lot in a later round; and
 - (e) the registered applicant may lose eligibility, as set out in clause 4.18.

Loss of eligibility on withdrawal

4.18 If a registered applicant withdraws a bid in a round:

- (a) the bid is taken never to have been made; and
- (b) the lot rating of the lot will be deducted from his or her eligibility for the round; and
- (c) because of this, the applicant may lose eligibility.

[Note: The method of calculating loss of eligibility is set out in clause 4.15]

Withdrawal penalty

4.19 (1) If a registered applicant withdraws a bid on a particular lot, the applicant is liable to a penalty (the *withdrawal penalty*) equal to the difference between the withdrawn bid and the successful bid price.

- (2)** If:
- (a) a registered applicant withdraws a bid on a particular lot; and
 - (b) the bid is the highest bid for the lot; and
 - (c) the lot is not sold at the auction;

the applicant is liable to a withdrawal penalty equal to the difference between the withdrawn bid and:

- (d) the next highest bid for the lot made by another bidder; or
- (e) if there is no other bid for the lot - zero.

(3) A registered applicant may withdraw a bid on a particular lot more than once, but he or she is liable to a withdrawal penalty each time.

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(4) The amount of all withdrawal penalties imposed on an unsuccessful applicant is to be deducted from the applicant's eligibility payment before it is refunded. If the amount exceeds the eligibility payment, the balance is a debt due to the Commonwealth.

[NOTE: If a withdrawal penalty is incurred by a successful applicant, the amount of the penalty is to be added to the balance of the bid price calculated in accordance with clause 5.2.]

Suspension or cancellation of auction

4.20 (1) The ACA or the auction manager may suspend or cancel an auction, or a round of an auction, at any time:

- (a) if the Minister directs the ACA or the auction manager to do so; or
- (b) because of technical failure of the telecommunications system being used for the auction; or
- (c) if the ACA, or the auction manager, is satisfied that there has been, or is likely to be, a breach of these auction procedures of a kind that could compromise the auction; or
- (d) if the ACA, or the auction manager, is satisfied that in the circumstances it is appropriate to do so.

(2) If the auction is suspended, the ACA or the auction manager may:

- (a) resume the auction from the start of the round during which it was suspended; or
- (b) resume the auction from the start of a previous round; or
- (c) cancel the auction.

(3) If the auction is cancelled:

- (a) all eligibility payments paid by registered applicants will be refunded; and
- (b) the entry fee will not be refunded; and
- (c) this determination ceases to apply to the lots referred to in Schedule 2 that were to be allocated in the auction.

[NOTE: The ACA may make determinations under s. 106 (1) of the Act about allocations other than by auction.]

Closing of auction

4.21 (1) The rounds of the auction are to continue until:

- (a) the auction is in its last stage; and
- (b) no bid is made on any lot on offer; and
- (c) no bidder exercises a waiver.

Once this happens, the auction is considered closed, and the auction manager must notify all registered applicants of this.

[Note: For suspension and cancellation of the auction, see clause 4.20. For the exercise of waivers, see clause 4.16.]

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(2) If bidding is continuing after 20 rounds, the auction manager may consider it necessary, to achieve a result, to close the auction at the end of a round he or she specifies (the *specified round*). In this case, the auction manager must:

- (a) at least 2 rounds before the proposed closing time, notify all registered applicants that he or she proposes to close the auction after the specified round, and ask for their comments on this by the time (being no less than one hour from the time of the request) nominated by the auction manager; and
- (b) take registered applicants' comments into account in deciding whether to close the auction, or close the auction at the end of the specified round; and
- (c) if the auction manager decides to close the auction:
 - (i) notify all registered applicants of the proposed closing time; and
 - (ii) at the end of the round after which the auction is to be closed, notify all registered applicants that the auction is closed.

(3) If the auction is closed under subclause (2), the registered applicant who is the highest bidder on a lot at the close of the auction is taken to have made the highest final bid on the lot and to be the successful applicant in relation to that lot.

PART 5 - AFTER THE AUCTION

Allocation of lot to highest bidder

5.1 The registered applicant who makes the highest final bid on a lot (the *successful applicant*) is entitled to be allocated that lot if the applicant pays the balance of the bid price, calculated in accordance with clause 5.2, due to the ACA in accordance with clause 5.3.

Calculation of balance of bid price

5.2 (1) The balance of the bid price to be paid by a successful applicant is to be worked out as follows:

- the ACA will add up the highest final bids made by the successful applicant
- the ACA will add up the value of the bid withdrawal penalties imposed on the applicant under clause 4.19
- the ACA will add the total of the highest bids and the total of the bid withdrawal penalties
- the ACA will deduct the applicant's eligibility payment from this total.

The amount remaining is the balance of the bid price.

(2) If the applicant's eligibility payment is greater than the total of the highest bids and bid withdrawal penalties:

- (a) the ACA will refund the difference; and

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- (b) the applicant is entitled to be allocated a lot without further payment to the ACA.

Payment of balance of bid price

5.3 (1) The ACA will notify each successful applicant, by receipted mail, of the balance of the bid price.

(2) A successful applicant must pay the balance of the bid price to the ACA no later than 10 working days after the auction is closed.

(3) If a notice under subclause (1) contains a material error, the ACA will give the successful applicant a revised notice by receipted mail.

(4) If the ACA gives a successful applicant a revised notice, the successful applicant must pay the balance of the bid price no later than 10 working days after the date of the revised notice.

- (5)** Each payment is to be made:
 - (a) at the Auction Centre; and
 - (b) in one payment by bank cheque.

[NOTE: For the issue of licences, see s. 62 of the *Radiocommunications Act 1992*.]

Default

5.4 If a successful applicant does not pay the balance of the bid price in accordance with clause 5.3:

- (a) the applicant ceases to be entitled to any lot on which the applicant has made the highest final bid (a ***defaulted lot***); and
- (b) all highest bids made by the applicant will be treated as withdrawn bids and the applicant will be penalised in accordance with clause 4.19; and
- (c) the total of the applicant's bid withdrawal penalties will be deducted from the eligibility payment made by the applicant; and
- (d) if the applicant's bid withdrawal penalties exceeds the amount of the applicant's eligibility payment, the difference is a debt due to the Commonwealth.

Defaulted lots are unsold lots

5.5 The ACA will treat the defaulted lots as unsold lots.

[NOTE: Unsold lots are dealt with in clause 6.1]

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Refunds to unsuccessful applicants

5.6 An unsuccessful applicant is entitled to a refund of his or her eligibility payment, less the amount of any withdrawal penalty imposed in accordance with clause 4.19.

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PART 6 - MISCELLANEOUS

Unsold lots

6.1 If a lot that is offered at an auction is unsold, this determination ceases to apply to the lot.

[NOTES: 1. Unsold lots include defaulted lots - see clause 5.5;
2. The ACA may issue apparatus licences administratively under s. 100 of the Act, or make determinations under s. 106 (1) of the Act about allocations other than by auction.]

Liability of Commonwealth and ACA

6.2 (1) The Commonwealth is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in this determination.

(2) This determination does not affect any right of the Commonwealth to recover an amount of damages from:

- (a) a registered applicant or any other person, in relation to the failure to pay the balance of the bid price in accordance with clause 5.3; or
- (b) a person allocated a licence for a pre-determined price or any other person, in relation to the failure to pay the balance of the pre-determined price in accordance with clause 3.4.

Giving of information by ACA

6.3 After the ACA allocates a licence, it may announce, or publish a notice of:

- (a) the name of the person to whom the licence is to be allocated; and
- (b) the highest final bid price for the licence, or the pre-determined price for the licence, as appropriate; and
- (c) the channel number or numbers assigned to the licensee.

Information provided by applicant

6.4 (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. This does not apply to a document that establishes an individual's identity.

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

SCHEDULES

SCHEDULE 1

Clauses 4.2, 4.3 and 4.12

PROCEDURES FOR BID TRANSMISSION AND AUTHENTICATION

1. Passwords

The ACA will prepare a password for use by each registered applicant only in authenticating his or her bids.

No two passwords will be the same.

Each password will consist of 8 randomly generated letters. The case of the letters will not be significant to their use.

The ACA will retain a copy of each password and identify that password as having been issued to the registered applicant.

2. Using Passwords

Registered applicants must identify each bid, or withdrawal instructions, to the ACA using their password. Registered applicants must write the password on their fax bid, or quote the password to the ACA operator when asked.

When the ACA receives bid or withdrawal instructions from a registered applicant, the ACA will authenticate the instructions using the password by:

- looking up the password for that registered applicant; and
- comparing the password provided by the registered applicant with the password on the list.

If the password matches, the communication will be regarded as authentic.

Any other password will be regarded as invalid. Any communication containing an invalid password will be ignored. The ACA will advise the registered applicant by telephone that the communication has been ignored. The registered applicant must then re-make the bid using the correct password. If the re-made bid is made using the incorrect password, the ACA will ignore the bid and may suspend the registered applicant's participation until a new password can be delivered. The ACA will notify the registered applicant that the bid will be ignored and of any suspension of bidding.

3. Distributing Passwords

Passwords will be distributed by receipted mail to the address nominated by the applicant.

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If the registered applicant has any suspicion that the integrity of the password has been compromised in transit, he or she must advise the ACA immediately so that a new password can be prepared. Depending on the nature of the tampering, a replacement password may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. It may also be held for collection at an ACA office, where it may be collected by the person nominated by the registered applicant as the contact person for the auction on presentation of the following evidence of identity:

- photographic evidence, being a driver's licence or passport; or
- 2 forms of other identification (such as a birth certificate or credit card), one of which must include the signature of the person presenting the identification.

4. Storing Passwords

Registered applicants will be responsible for protecting the password from unauthorised use.

The ACA will protect its copy of each registered applicant's password by appropriate internal security arrangements. The ACA will restrict access to the area where the password is being used to authenticate bids to all but persons authorised by the ACA or escorted by a person authorised by the ACA.

If a registered applicant discovers that his or her password has been compromised (through break-in, unauthorised access or any other reason), the registered applicant must immediately inform the ACA. The ACA will then prepare a new password for that registered applicant and forward it to the registered applicant.

The ACA may at any time issue a new password to a registered applicant, or to all registered applicants, if it comes to believe that the integrity of the auction may have been compromised.

In the period between a registered applicant notifying the ACA that the password has been compromised and the ACA providing the registered applicant with a replacement password, the registered applicant's participation in the auction will be suspended, without incurring a waiver. However, the auction will proceed during any period of suspension of one or more registered applicants.

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SCHEDULE 2

Subclause 1.4 (1)

TABLE OF LOTS FOR ALLOCATION

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Lot number	Frequency band	Area	Lot Rating
1	1	2076 MHz to 2083 MHz	Norfolk Island area	1
2	2	2083 MHz to 2090 MHz	Norfolk Island area	1
3	3	2090 MHz to 2097 MHz	Norfolk Island area	1
4	4	2097 MHz to 2104 MHz	Norfolk Island area	1
5	5	2104 MHz to 2111 MHz	Norfolk Island area	1
6	6	2302 MHz to 2309 MHz	Norfolk Island area	1
7	7	2309 MHz to 2316 MHz	Norfolk Island area	1
8	8	2316 MHz to 2323 MHz	Norfolk Island area	1
9	9	2323 MHz to 2330 MHz	Norfolk Island area	1
10	10	2330 MHz to 2337 MHz	Norfolk Island area	1
11	11	2337 MHz to 2344 MHz	Norfolk Island area	1
12	12	2344 MHz to 2351 MHz	Norfolk Island area	1
13	13	2351 MHz to 2358 MHz	Norfolk Island area	1
14	14	2358 MHz to 2365 MHz	Norfolk Island area	1
15	15	2365 MHz to 2372 MHz	Norfolk Island area	1
16	16	2372 MHz to 2379 MHz	Norfolk Island area	1
17	17	2379 MHz to 2386 MHz	Norfolk Island area	1
18	18	2386 MHz to 2393 MHz	Norfolk Island area	1
19	19	2393 MHz to 2400 MHz	Norfolk Island area	1
20	20	2083 MHz to 2090 MHz	Alice Springs area	13