

Commonwealth of Australia

Radiocommunications Act 1992

**Radiocommunications (Allocation of Multipoint
Distribution Station Licences) Determination
No. 1 of 1994 (Amendment No. 1 of 1995)**

I, CHRISTINE MARY GOODE, Spectrum Manager, acting on behalf of the Spectrum Management Agency, make the following Determination under subsection 106 (1) of the *Radiocommunications Act 1992*.

Dated 5 December 1995.

CHRISTINE M. GOODE
Spectrum Manager

1. Amendment

1.1 Radiocommunications (Allocation of Multipoint Distribution Station Licences) Determination No. 1 of 1994¹ is amended as set out in this Determination.

2. Clause 2 (Interpretation)

2.1 Subclause 2 (1) (definition of “**company**”):

Omit the definition, substitute:

“ ‘**company**’ means:

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

2.2 Subclause 2 (1) (definition of “**licence**”):

Omit the definition, substitute:

“ ‘**licence**’ means an MDS licence that authorises the holder of the licence to operate 1 or more transmitters on a channel in an area;”.

2.3 Subclause 2 (1) (definition of “**transmitter**”):

Omit the definition, substitute:

“ ‘**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.”.

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2.4 Subclause 2 (1):

Insert the following definitions:

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

‘reserve price’, in relation to a licence, means the amount decided for the licence by the SMA under clause 5;”.

3. New clause 5A

3.1 After clause 5, insert:

Application fee

“**5A. (1)** The SMA 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 SMA must take into account its administrative costs in allocating licences under this Determination, including the likely costs of the allocation of the licences.”.

4. Clause 6 (Approval of forms)

4.1 Subclause 6 (1):

Add at the end:

“; (d) a document, to be called the Bidder’s Acknowledgment, for the purposes of paragraph 13 (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.”.

5. Clause 8 (Applicant registration)

5.1 Subclause 8 (2):

Add at the end:

“; and (d) a bank cheque for the amount of the application fee decided by the SMA under subclause 5A (1).”.

5.2 Paragraph 8 (4) (b):

Omit “Australian Eastern Standard Time”, substitute “Australian Eastern Summer Time”.

6. Clause 9 (Requirements for giving a Deed of Guarantee)

6.1 Clause 9:

Omit the clause, substitute:

Requirements for giving a Deed of Guarantee

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

- (a) the company satisfies the SMA 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 SMA that the company is an authority of the Commonwealth, a State or a Territory; or
- (c) the company satisfies the SMA 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 SMA decides, under paragraph (2) (a), that the company is not required to give the SMA a Deed of Guarantee.

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

- (a) may decide that the company is not required to give the SMA 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 SMA 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 SMA a Deed of Guarantee that is executed by an individual as the guarantor, the company must satisfy the SMA that the guarantor is a director of the company that wishes to be issued with the licence.

“**(6)** If a company gives the SMA a Deed of Guarantee that is not executed by an individual as the guarantor, the company must satisfy the SMA 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.”.

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7. Clause 10 (Registration of applicant by SMA)

7.1 Paragraph 10 (1) (b):

Omit “a person or an authority referred to in paragraph 9 (3) (a), (b) or (c); and”, substitute “a person referred to in subclause 9 (5) or a company or body referred to in subclause 9 (6); and”.

7.2 Subparagraph 10 (2) (a) (iii):

Omit “a person or an authority referred to in paragraph 9 (3) (a), (b) or (c); or”, substitute “a person referred to in subclause 9 (5) or a company or body referred to in subclause 9 (6); or”.

8. Clause 12 (Lodgment of Form of Authority in special circumstances)

8.1 Paragraph 12 (2) (a):

Omit “Australian Eastern Standard Time”, substitute “Australian Eastern Summer Time”.

9. Clause 13 (Registration of bidders by SMA)

9.1 Subclause 13 (1):

Omit “on a particular day in the period”.

9.2 Subclause 13 (1):

Omit “on that day”.

9.3 Subclauses 13 (2), 13 (3) and 13 (4):

Omit the subclauses, substitute:

“(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 SMA extends that period—before the end of the period set by the SMA.

- “(3) When registering, the individual must:
- (a) either:
 - (i) show the SMA the Bidder Identification Form issued for the individual; or
 - (ii) satisfy the SMA that the Bidder Identification Form issued for the individual has been lost, destroyed or cannot reasonably be made available to the SMA; and
 - (b) show the SMA 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 SMA.

[NOTE: Under subclause 11 (3), the SMA 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 SMA.]

“(4) The individual is registered by signing the Bidder’s Acknowledgment as directed by the SMA.

“(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.”.

10. Clause 15 (Bidding for a licence)

10.1 Subclause 15 (2):

Omit the subclause, substitute:

- “(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.”.

10.2 Subclause 15 (4):

Omit the subclause, substitute:

“(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.”.

11. Clause 16 (Execution of the Contract of Acknowledgment and tender of deposit)

11.1 Subclause 16 (1):

Omit the subclause, substitute:

“**16. (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 SMA; 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 SMA.”.

11.2 Subclause 16 (2):

Omit “The nominated applicant (if the nominated applicant is a registered bidder), or the registered bidder,”, substitute “The individual who meets with the SMA”.

11.3 Subparagraph 16 (2) (a) (iii):

Omit the subparagraph, substitute:

“(iii) verifying the bidder’s name and signature as they appear on the relevant Bidder’s Acknowledgment; and”.

11.4 Subclause 16 (3):

Omit “The nominated applicant, or the registered bidder,”, substitute “The individual who meets with the SMA”.

11.5 Subclause 16 (4):

Omit “The nominated applicant, or the registered bidder,”, substitute “The individual who meets with the SMA”.

12. Clause 18 (Payment of balance of bid price)

12.1 Paragraphs 18 (1) (a) and (b):

Omit the paragraphs, substitute:

- “(a) at the SMA’s office in Sydney, Canberra or Darwin; 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 Contract of Acknowledgment is completed; and”.

13. Clause 23 (Statement of class of station)

13.1 Omit the clause.

14. Clause 24 (Issue of a licence)

14.1 Subclauses 24 (2) and 24 (3):

Omit the subclauses.

15. Schedule 2 (Frequencies and channels)

15.1 Item 5 of Schedule 2:

Omit the item, substitute:

“5. The Canberra Area described in item 5 of Schedule 1	10	2330 - 2337
	11	2337 - 2344
	12	2344 - 2351
	13	2351 - 2358
	14	2358 - 2365
	16	2372 - 2379
	18	2386 - 2393
	19	2393 - 2400”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 12 May 1994 and amended by Radiocommunications (Allocation of Multipoint Distribution Station Licences) Determination No. 2 of 1994.