



Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2005 (No.1)

The AUSTRALIAN COMMUNICATIONS AUTHORITY makes this Determination under paragraph 107 (1) (f) of the *Radiocommunications Act 1992*.

Dated 22 April 2005

R. HORTON
Chair

A. HORSLEY
Deputy Chair

Australian Communications Authority

1 Name of Determination

This Determination is the *Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2005 (No.1)*.

2 Commencement

This Determination commences on the day after it is registered.

3 Amendment of *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*

- (1) Schedule 1 amends the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*.

- (2) The *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*, as amended by Schedule 1, is further amended by omitting, from section 11M:

<the commencement of this Part>

and inserting the date on which this Determination commences.

Schedule 1 Amendments

(section 3)

[1] Paragraph 2 (1) (b)

after

paragraph (ba)

insert

or (bb)

[2] After paragraph 2 (1) (ba), including the note

insert

(bb) every fixed licence (point to multipoint station) for a station that operates in the 1900–1920 MHz or 2010–2025 MHz frequency band is subject to the conditions in Part 3D;

[3] Part 3, heading

substitute

Part 3 Conditions for fixed licences (point to multipoint station) except licences for stations used to provide distance education or stations that operate in the 1900–1920 MHz or 2010–2025 MHz frequency band

[4] Section 6

after

distance education services

insert

or a station that operates in the 1900–1920 MHz or 2010–2025 MHz frequency band

[5] **After Part 3C**

insert

Part 3D **Conditions for fixed licences (point to multipoint station) for stations that operate in the 1900–1920 MHz or 2010–2025 MHz frequency band**

11M **Conditions**

For paragraph 107 (1) (f) of the Act, every fixed licence (point to multipoint station) for a station that operates in the 1900–1920 MHz or 2010–2025 MHz frequency band, being a licence that:

- (a) is issued after <the commencement of this Part>; or
- (b) renews a licence mentioned in paragraph (a)

is subject to the conditions in this Part.

NOTE Parts 3A, 3B and 3C do not apply to a fixed licence (point to multipoint station) for a station that operates in the 1900–1920 MHz or 2010–2025 MHz frequency band.

11N **Definitions for Part 3D**

In this Part:

access, for a transmitter site, includes access for the purpose of installing, operating or maintaining equipment.

broadband wireless access service means a radiocommunications connection to an Internet service provider's, or carriage service provider's, network or a Local/Wide Area Network provided by a fixed point to multipoint service that is capable of delivering:

- (a) a minimum effective asymmetric data rate of 256/64 kbit/s; or
- (b) a minimum effective symmetric data rate of 256 kbit/s.

end user includes a single user accessing a service on behalf of another user or other users.

issue, for a licence:

- (a) means issue under section 100 of the Act; and
- (b) does not include issue under section 130 of the Act following an application for renewal.

licensee includes a person acting on behalf of, or with the authorisation of, the licensee.

rollout goals means the rollout goals specified in section 11P.

11O **Rollout goals to be met by licensee**

- (1) A licensee must, within the times mentioned in subsection (2), meet the rollout goals in relation to the licence.

- (2) The times are:
 - (a) for rollout goal 1 — not later than 12 months after the issue of the licence, or within such longer period as the ACA specifies by notice to the licensee; and
 - (b) for rollout goal 2 — not later than 24 months after the issue of the licence, or within such longer period as the ACA specifies by notice to the licensee
- (3) If a licence (the *old licence*) is renewed by the ACA issuing a new licence to the holder of the old licence, the rollout goals are taken to continue in force as conditions of the new licence.
- (4) Subsection (3) has effect even if, at the time of renewal:
 - (a) the holder has not met a rollout goal; or
 - (b) the holder has already met a rollout goal or both rollout goals.

NOTE 1: For monitoring the meeting of the rollout goals, the ACA may specify, as the period for which a licence remains in force, a period less than the maximum period permissible under subsection 103 (3) of the Act.

NOTE 2: The ACA intends to monitor compliance with the rollout goals primarily at the time of licence renewal and such compliance will constitute one of the matters the ACA considers when making its decision on whether to renew the licence.

11P Rollout goals

- (1) The rollout goals are as follows:

Rollout goal 1

The licensee must:

- (a) either:
 - (i) have acquired a transmitter to be operated from the site specified in the licence; or
 - (ii) have placed a genuine order for a transmitter intended to be operated from the site specified in the licence; and
- (b) either:
 - (i) have lawful access to the transmitter site specified in the licence; or
 - (ii) have entered into a binding agreement to gain lawful access to the transmitter site specified in the licence; or
 - (iii) have obtained all necessary planning or other governmental permission to establish a transmitter at the site specified in the licence.

Rollout goal 2

The licensee must be lawfully providing a broadband wireless access service.

11Q Evidence of meeting rollout goals

- (1) A licensee must, before the end of the period mentioned in subsection (2), give the ACA:
 - (a) a statutory declaration setting out what the licensee has done to meet the rollout goals in relation to the licence; and
 - (b) the information and documents in support of the claims made in the statutory declaration, as specified in Schedule 3.
- (2) For subsection (1), the period is:
 - (a) for rollout goal 1 — the period starting on the issue of the licence and ending:
 - (i) 12 months after the issue of the licence to the licensee; or
 - (ii) when the licensee applies for renewal of the licence;
 whichever comes first; and
 - (b) for rollout goal 2 — the period starting on the issue of the licence and ending:
 - (i) 24 months after the issue of the licence to the licensee; or
 - (ii) when the licensee applies for renewal of the licence;
 whichever comes first.
- (3) The ACA may require further verification or evidence of the claims made in the statutory declaration.

[6] After Schedule 2B

insert

Schedule 3 Evidence of meeting rollout goals for a fixed licence (point to multipoint station) for a station that operates in the 1900–1920 MHz or 2010–2025 MHz frequency band

(section 11Q)

Claim made in a statutory declaration	Information or documents to be provided
<i>Rollout goal 1</i>	
The licensee has acquired a transmitter to be operated from the site specified in the licence	Details of the transmitter, the supplier and the date on which the licensee took delivery of the transmitter. Any plans or schematics to demonstrate how the transmitter has been or will be installed at the site
The licensee has placed a genuine order for a transmitter intended to be operated from the site specified in the licence	Documentary evidence indicating when and with whom the order was placed, and the expected delivery date. Any plans or schematics to demonstrate how the transmitter will be installed at the site

The licensee has lawful access to the transmitter site specified in the licence

Evidence of the licensee's ownership of the transmitter site or its existing statutory or other right to access the transmitter site

The licensee has entered into a binding agreement to gain lawful access to the transmitter site specified in the licence

A copy of the agreement. Dollar amounts can be excluded

The licensee has obtained all necessary planning or other governmental permission to establish a transmitter at the site specified in the licence

The date on which permission was granted and by whom

Rollout goal 2

The licensee is lawfully providing a broadband wireless access service in accordance with the licence conditions in Part 3D

Details about the availability of the service including:

- (a) a declaration that the service is being provided at least at the minimum data rate specified in the definition of ***broadband wireless access service*** in Part 3D. For the purposes of this declaration, the ACA will accept evidence that the minimum data rate is being provided over 90% of the intended coverage area. The evidence may include coverage maps showing signal contours; and
- (b) evidence of the infrastructure established to provide the service; and
- (c) evidence that the licensee has sought or is actively seeking end users, either publicly (through advertisements in the local media, via a website, or both) or, in the case of a closed user group, through private networks such as club or association newsletters or websites