



# Radiocommunications (Transmitter Licences — Auction) Determination 2006

*Radiocommunications Act 1992*

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 106 (1) of the *Radiocommunications Act 1992*.

Dated 12<sup>th</sup> October 2006

CHRIS CHAPMAN  
Chairman

LYN MADDOCK  
Deputy Chair

Australian Communications and Media Authority

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**Section 1.1**

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**Part 1 Preliminary****1.1 Name of Determination**

This Determination is the *Radiocommunications (Transmitter Licences — Auction) Determination 2006*.

**1.2 Commencement**

This Determination commences on the day after it is registered.

**1.3 Purpose**

This Determination sets out a price-based allocation system for allocating lots and issuing transmitter licences of a kind specified in section 1.4.

**1.4 Application of Determination**

- (1) This Determination applies to:
  - (a) transmitter licences for point to multipoint stations in the 1900-1920 MHz frequency band; and
  - (b) transmitter licences for point to multipoint stations in the 2010-2025 MHz frequency band.
- (2) ACMA may allocate lots and issue transmitter licences specified in subsection (1) only in accordance with the price-based allocation system set out in this Determination.
- (3) ACMA may allocate lots and issue transmitter licences in a separate price-based allocation process for each kind of transmitter licence specified in subsection (1).

**1.5 Definitions**

- (1) In this Determination:

**ACMA** means the Australian Communications and Media Authority.

**Act** means the *Radiocommunications Act 1992*.

**Applicant Information Package** has the meaning given by section 2.3.

**application form** means the document approved by ACMA under paragraph 2.4 (a).

**assignment model** means the model, included in the Applicant Information Package, used to determine whether potential licences are compatible with other licences.

**auctioneer** means the person appointed as auctioneer under section 4.3.

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**auction deposit**, for a lot, means the amount payable by an applicant set by ACMA under paragraph 2.2 (1) (e).

**balance of the bid price**, for a lot, means the highest bid made by the successful applicant in an auction under Part 4, less the total of the auction deposit.

**balance of the reserve price**, for a lot, means the reserve price, less the total of the auction deposit.

**bank transfer**, for a payment, means making the payment by electronic transfer or by the real time gross settlement electronic payment system operated by the Reserve Bank of Australia.

**bid price**, for a lot, means the amount bid by or on behalf of the successful applicant in an auction under Part 4.

**business day** means any day that is not a Saturday or Sunday or public holiday in the Australian Capital Territory.

**cheque** means:

- (a) a personal cheque; or
- (b) a cheque issued by a bank licensed to operate in Australia.

**closing date** means the date and time advertised in the notice published by ACMA under paragraph 2.1 (1) (c) as the date and time by which a person may give ACMA an application form.

**company** has the same meaning as in the *Corporations Act 2001*.

**Deed of Acknowledgment** means the document approved by ACMA under paragraph 2.4 (b).

**entry fee**, for an application for a licence, means the entry fee payable by an applicant set by ACMA under paragraph 2.2 (1) (a).

**Form of Authority** means the document approved by ACMA under paragraph 2.4 (c).

**lot** means the right to be allocated 1 or more transmitter licences in accordance with Part 4 of this Determination.

**pre-determined price** means the price specified in paragraph 2.2 (1) (f) to be paid by a successful applicant for a licence allocated under section 4.8 or Part 5.

**registered applicant** means an applicant who is registered under section 3.4.

**registered bidder** means an individual who is registered under section 4.12.

**registrable body** has the same meaning as in the *Corporations Act 2001*.

**registration documents** means the documents set out in subsection 3.1 (2).

**reserve price** means the price set for a lot by ACMA under paragraph 2.2 (1) (d).

**successful applicant** has the meaning given by subsection 4.13 (6), subsection 4.8 (1) or section 5.2, as the case requires.

**transmitter licence** means an apparatus licence of a kind specified in subsection 1.4 (1).

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***verified telephone bidder*** means a registered applicant whose identity has been verified under subsection 4.10 (3).

*Note* A number of expressions used in this Determination are defined in the Act, the *Radiocommunications (Interpretation) Determination 2000* and the *Radiocommunications Regulations 1993*.

- (2) Headings and notes used in this Determination do not form part of the Determination.

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## Part 2                      Preparing for the allocation

### 2.1            Publication of notice by ACMA

- (1) Before holding an allocation, ACMA must publish a notice in any way that ACMA considers appropriate:
  - (a) containing an invitation to apply for potential transmitter licences to be allocated under this Determination; and
  - (b) giving a brief description of the way the allocation will be conducted; and
  - (c) stating the closing date and time for applications; and
  - (d) stating that the licences will be determined and allocated in accordance with this Determination; and
  - (e) stating that an applicant may bid only on a lot that includes a licence that has been applied for by that applicant in response to the invitation and permitted under the assignment model; and
  - (f) stating that additional information (the *Applicant Information Package*) can be obtained from ACMA at the address given in the notice.
- (2) If there is a change in a matter mentioned in the notice, ACMA must publish another notice giving details of the change in any way that ACMA considers appropriate.
- (3) ACMA may publish a separate notice for each kind of licence specified in subsection 1.4 (1) in relation to a particular allocation.
- (4) ACMA may also publish other information about allocations in any way that ACMA considers appropriate.

### 2.2            Entry fee, closing date, reserve price, auction deposit amount and pre-determined price

- (1) Before ACMA publishes a notice under subsection 2.1 (1), ACMA must, in writing, set:
  - (a) the amount of the entry fee in respect of an application for a licence; and
  - (b) the closing date and time for applications; and
  - (c) the number of days after the closing date within which ACMA must give a notice to each registered applicant under sections 4.5 and 5.3 of this Determination; and
  - (d) the reserve price for each lot; and
  - (e) the amount of the auction deposit for each lot; and
  - (f) the pre-determined price for each licence.

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- (2) ACMA may publish a separate notice for each kind of licence specified in subsection 1.4 (1).

**2.3 Applicant Information Package**

- (1) The Applicant Information Package must contain the following information and documents:
- (a) a guide to the allocation system;
  - (b) this Determination;
  - (c) how lots will be determined;
  - (d) the assignment model used to determine whether potential licences are compatible with other licences;
  - (e) the assignment details that are required to be submitted for each licence application;
  - (f) the application form, with instructions for completing and lodging the form;
  - (g) the Deed of Acknowledgment;
  - (h) the amount of the entry fee set by ACMA under paragraph 2.2 (1) (a);
  - (i) the closing date and time set by ACMA under paragraph 2.2 (1) (b);
  - (j) the number of days after the closing date within which ACMA must give a notice to each registered applicant set by ACMA under paragraph 2.2 (1) (c);
  - (k) the reserve price for each lot set by ACMA under paragraph 2.2 (1) (d);
  - (l) the amount of the auction deposit for each lot set by ACMA under paragraph 2.2 (1) (e);
  - (m) the address of the auction centre;
  - (n) a sample transmitter licence;
  - (o) the pre-determined price set by ACMA under paragraph 2.2 (1) (f).
- (2) The Applicant Information Package may also contain other information or documents relating to the allocation.
- (3) ACMA may publish a separate Applicant Information Package for each kind of licence specified in subsection 1.4 (1).

**2.4 Approval of forms and documents**

ACMA must, in writing, approve the following documents:

- (a) an application form for paragraph 3.1 (2) (a);
- (b) a Deed of Acknowledgment for paragraph 3.1 (2) (b) substantially in accordance with Schedule 1;
- (c) a Form of Authority for subsection 4.11 (2).



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**Section 2.5****2.5 Payments of monies due to ACMA**

- (1) All payments to ACMA must be made in Australian currency.
- (2) Monies due to ACMA for the following purposes must be paid by the date required by this Determination and in accordance with this Determination:
  - (a) the entry fee;
  - (b) the auction deposit for each lot allocated under Part 4 of this Determination;
  - (c) the balance of the bid price for each lot allocated under Part 4 of this Determination;
  - (d) the pre-determined price for each licence allocated under subsection 4.8 (2) or (3) or Part 5 of this Determination;
  - (e) the balance of the reserve price for each lot allocated under subsection 4.8 (4) of this Determination.
- (3) Monies due to ACMA for any of the purposes set out in subsection (2) must be paid:
  - (a) by cheque; or
  - (b) by bank transfer.
- (4) If a payment is required to be made by a specific date, it is sufficient if, by that date, either:
  - (a) the applicant gives ACMA a cheque for the amount of the payment; or
  - (b) if paying by bank transfer, the applicant:
    - (i) does everything necessary to make the payment; and
    - (ii) gives ACMA evidence that the payment has been made.
- (5) A payment by bank transfer must be paid into ACMA's bank account, details of which are as follows:
  - (a) Bank — Reserve Bank of Australia;
  - (b) Branch — Canberra City;
  - (c) BSB number — 092-009;
  - (d) Account number — 92276-5;
  - (e) Account name — ACMA Official Administered Receipts Account.
- (6) The applicant must pay all bank charges and Government duties imposed on a payment, and a payment will not be regarded as having been made unless the full amount net of those charges is received by ACMA.

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**Part 3 Registering for an allocation****3.1 Applications**

- (1) A person who wants to register for an allocation to obtain a transmitter licence must pay an entry fee in respect of each application form submitted to ACMA by that person.
- (2) The person must give ACMA the following documents (the *registration documents*):
  - (a) a completed application form in respect of each transmitter licence sought by that person;
  - (b) a completed Deed of Acknowledgment for the application form which the applicant has submitted, or each group of application forms which the applicant has submitted at the same time.
- (3) An entry fee for each application for a licence must accompany the registration documents and be paid in accordance with section 2.5.

*Note* In accordance with section 2.5, the payments may be paid by cheque or bank transfer.

- (4) The application form in respect of a licence must specify the transmitter site, frequency and other assignment details as specified in the Applicant Information Package.

**3.2 Lodgement of applications**

- (1) The registration documents must be lodged with the Canberra office of ACMA on or before the closing date.
- (2) As soon as practicable after receiving the registration documents, ACMA must confirm receipt in writing, noting particulars of the applicant's:
  - (a) name; and
  - (b) address; and
  - (c) if the applicant is a company or a registrable body — ACN or ARBN.

**3.3 Register of applicants**

- (1) ACMA must maintain a register of applicants.
- (2) The register may be in electronic form.
- (3) For each applicant, the register must contain the following details:
  - (a) the applicant's name and address;
  - (b) the applicant's telephone and fax numbers;

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- (c) if the applicant is a company or a registrable body — the applicant's ACN or ARBN;
  - (d) for each licence applied for — the proposed transmitter site, frequency and other assignment details as specified in the Applicant Information Package, that ACMA considers appropriate.
- (4) The register may also contain any other information that ACMA considers necessary or convenient for the running of the allocation.
- (5) ACMA must make the changes to the register that ACMA considers necessary or convenient as soon as practicable after:
- (a) an applicant tells ACMA of any change of name, address, or telephone or fax numbers; or
  - (b) ACMA becomes aware that any information on the register is not correct.
- (6) Except as authorised by this Determination, or as otherwise authorised by law, ACMA must ensure that any details about applicants are not disclosed until the allocation is finalised.

**3.4 Registration of applicants**

- (1) ACMA must register an applicant only if:
- (a) the applicant has lodged completed registration documents; and
  - (b) the applicant has paid the entry fee or fees in accordance with subsection 3.1 (3).
- (2) Within 5 business days after the closing date, ACMA must, in writing, tell each registered applicant that the applicant has been registered.

**3.5 Initial assessment of potential transmitter licence**

On receipt of an application for a transmitter licence, ACMA must:

- (a) consider the proposed transmitter site, frequency and other assignment details of each potential licence applied for by an applicant; and
- (b) decide whether the proposed transmitter site, frequency and other assignment details of the potential licence are consistent with the assignment model as if the applicant were the only applicant for that proposed site and frequency.

**3.6 Determination of lots**

- (1) ACMA may vary the details of an application prior to the assignment of lot numbers with the consent of the applicant.
- (2) If:
- (a) ACMA decides that the proposed transmitter site, frequency and other assignment details of 2 or more potential licences are consistent with the assignment model; and

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- (b) there is a conflict between the proposed transmitter site, frequency and other assignment details of these potential licences;

ACMA will assign a lot number in relation to the licences in accordance with the lot determination process referred to in paragraph 2.3 (1) (c), and will allocate the licences in that lot in accordance with Part 4.

*Note* ACMA will assign lot numbers as specified in the Applicant Information Package.

- (3) If:

- (a) ACMA decides that the proposed transmitter site, frequency and other assignment details of a potential licence are consistent with the assignment model; and

- (b) there is no conflict between the proposed transmitter site, frequency and other assignment details of the potential licence, and any other potential licences that have been applied for;

ACMA will not assign a lot number for this potential licence, but will allocate the licence in accordance with Part 5.

## **Part 4 Allocation if there is more than 1 applicant for the lot**

### **4.1 Application of Part 4**

This Part applies if there is more than 1 applicant for a particular lot.

### **4.2 Holding an auction**

ACMA must hold an auction for allocation of the lot in accordance with this Determination.

### **4.3 Appointment of auctioneer**

ACMA must appoint a person as auctioneer to conduct the auction.

### **4.4 Eligibility of applicants to bid for a lot**

A registered applicant is eligible to bid only for a lot that includes the potential licence applied for by that applicant, with the proposed transmitter site, frequency and other assignment details as specified in the applicant's registration documents, or as varied by ACMA under subsection 3.6 (1) with the applicant's consent.

### **4.5 Notice to registered applicant**

- (1) Within the number of business days after the closing date set by ACMA under paragraph 2.2 (1) (c), ACMA must give each registered applicant for a particular lot a notice setting out:
  - (a) that there is more than 1 registered applicant for the lot and the number of applicants for the lot; and
  - (b) that ACMA will conduct an auction in relation to that lot; and
  - (c) the starting time and date and place of the auction; and
  - (d) the auction deposit amount for that lot; and
  - (e) the date by which the auction deposit for the lot must be paid and by which each Form of Authority must be lodged; and
  - (f) the lot number for the lot; and
  - (g) the proposed transmitter site, frequency and other assignment details of all of the potential licences in the lot.
- (2) ACMA:
  - (a) may change the details of information mentioned in paragraphs 4.5 (1) (a) and (c); and

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- (b) must tell all affected applicants of the change, in writing, as soon as practicable after making the change.
- (3) ACMA must not change the starting date of the auction to an earlier date.

**4.6 Payment of auction deposit**

- (1) A registered applicant intending to bid at an auction must pay an auction deposit for each lot for which the applicant is eligible to bid and on which the applicant intends to bid.
- (2) The auction deposit will be determined under paragraph 2.2 (1) (e), and must be paid in accordance with section 2.5 by the date specified by ACMA under paragraph 4.5 (1) (e).
- (3) An auction deposit will be fully refundable if the applicant withdraws prior to the commencement of the auction or if the applicant is not a successful bidder in respect of a particular lot.
- (4) An auction deposit is forfeited if the applicant defaults in respect of the applicant's obligations under subsection 4.15 (3).
- (5) Only registered applicants who have paid an auction deposit for a particular lot will be eligible to bid on that lot.
- (6) If an auction deposit for a lot is not paid by a registered applicant by the date set out in the notice in paragraph 4.5 (1) (e), the application for licences in that lot will be taken to be withdrawn.

**4.7 Withdrawal from the allocation process**

- (1) This section applies to an applicant who has received a notice under subsection 4.5 (1), and wants to withdraw from the allocation process for licences in 1 or more lots.
- (2) A person who wants to withdraw from the allocation process for licences in 1 or more lots must submit an application to withdraw in respect of each lot.
- (3) Each application must be lodged with the Canberra office of ACMA, and must specify the lot number in respect of the licence or licences applied for, as specified in the notice under subsection 4.5 (1).
- (4) As soon as practicable after receiving the application, ACMA must confirm receipt in writing, noting particulars of the applicant's:
  - (a) name; and
  - (b) address; and
  - (c) if the applicant is a company or a registrable body — ACN or ARBN.
- (5) The entry fee is not refundable.

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- (6) If an application under subsection (2) is lodged after the auction deposit has been paid, ACMA must refund the auction deposit to the applicant as soon as practicable after receiving the application.

**4.8 Allocation of licences if only 1 applicant remains**

- (1) If an application under subsection 4.7 (2), or a deemed withdrawal under subsection 4.6 (6) results in 1 applicant remaining for a particular lot, the applicant is the successful applicant for the lot.
- (2) If an applicant is deemed to have withdrawn the applicant's application under subsection 4.6 (6):
- (a) the licences in the lot will be allocated to the successful applicant at the pre-determined price for each licence; and
  - (b) if the successful applicant has already paid the action deposit, the auction deposit will be refunded as soon as practicable; and
  - (c) no auction will be held.
- (3) If the application or applications under subsection 4.7 (2) were lodged on or before the date by which the auction deposit must be paid under paragraph 4.5 (1) (e):
- (a) the licences in the lot will be allocated to the successful applicant at the pre-determined price for each licence; and
  - (b) if the successful applicant has already paid the auction deposit, the auction deposit will be refunded as soon as practicable; and
  - (c) no auction will be held.
- (4) If the application or applications under subsection 4.7 (2) were lodged after the date on which the auction deposit was due, the licences in the lot will be allocated to the successful applicant at the the reserve price for the lot, and no auction will be held.
- (5) As soon as practicable, ACMA must give the successful applicant a notice, by receipted mail:
- (a) stating that the applicant is the successful applicant for the lot; and
  - (b) setting out the amount of the pre-determined price per licence (if allocated under subsection (2) or (3)), or the reserve price for the lot (if allocated under subsection (4)); and
  - (c) stating the date by which the successful applicant must pay the pre-determined price or the balance of the reserve price for the lot.
- (6) By the date specified in the notice under paragraph (5) (c), the successful applicant must either:
- (a) pay the amount due under the notice given under subsection 4.8 (5) for the lot in accordance with section 2.5; or
  - (b) advise ACMA in writing that the application has been withdrawn.

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- (7) If the successful applicant fails to comply with paragraph (6) (a):
  - (a) the application ceases to have effect and the applicant is not entitled to obtain a transmitter licence; and
  - (b) ACMA must refund the auction deposit, if any, to the applicant.

**4.9 Confirmation of registration for auction**

- (1) ACMA will confirm in a notice to each registered applicant:
  - (a) the applicant's payment of the auction deposit for each lot; and
  - (b) each person (if any) in respect of whom a Form of Authority has been lodged by that applicant; and
  - (c) each lot that the applicant is eligible to bid for; and
  - (d) whether ACMA will allow telephone bidding at the auction.
- (2) Not later than 5 business days before the start of an auction under Part 4 ACMA may in any manner it considers appropriate publish the name of each registered applicant and the lots for which they are eligible to bid.

**4.10 Telephone bidding**

- (1) ACMA may allow bidding at an auction to be conducted by telephone.
- (2) Registered applicants who wish to bid by telephone must advise ACMA in writing no later than 5 business days before the commencement of the auction.
- (3) If telephone bidding has been allowed, ACMA will issue to each registered applicant who wishes to bid in such a manner a password and a 4 digit identification number which the applicant must provide to ACMA immediately prior to the commencement of the auction to verify the applicant's identity (*verified telephone bidder*).

**4.11 Lodgement of Form of Authority**

- (1) This section applies if a registered applicant wishes to have an individual represent the applicant at an auction other than by telephone.
- (2) The applicant must give ACMA a duly completed Form of Authority for the individual no later than the date specified in paragraph 4.5 (1) (e).
- (3) The applicant may give ACMA another duly completed Form of Authority for another individual no later than 2 hours before the starting time of the auction.
- (4) If the applicant gives ACMA more than 1 Form of Authority, it must confirm in writing with ACMA which individual or individuals may bid at the auction.



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**4.12 Bidder identification as registered bidder**

- (1) A registered applicant, or any person in respect of whom a Form of Authority has been lodged by a registered applicant, who wishes to bid at the auction in person, must register as a bidder (a *registered bidder*) and must present to ACMA no later than 1 hour before the commencement of the auction evidence of the individual's identity.
- (2) For the purposes of subsection (1), an Australian Drivers Licence or a passport will be sufficient evidence of that person's identity.
- (3) On registering an individual as a bidder, ACMA must give the individual a bidder's paddle.

**4.13 Bidding in an auction**

- (1) Only a registered bidder or a verified telephone bidder may bid for a lot.
- (2) A registered bidder may only bid for a lot:
  - (a) if:
    - (i) the registered bidder is the registered applicant; or
    - (ii) the registered applicant has provided ACMA with a Form of Authority for the registered bidder under section 4.11; and
  - (b) if:
    - (i) an auction deposit has been paid for the lot; and
    - (ii) the lot is one for which the registered applicant would be eligible to bid under section 4.4; and
    - (iii) the registered applicant has not submitted an application to withdraw under section 4.7 in respect of the lot.
- (3) A verified telephone bidder may only bid for a lot if:
  - (a) an auction deposit has been paid for the lot; and
  - (b) the lot is one for which the registered applicant would be eligible to bid, under section 4.4; and
  - (c) the registered applicant has not submitted an application to withdraw under section 4.7 in respect of the lot.
- (4) The auctioneer will:
  - (a) invite bids for the lot; and
  - (b) identify the registered bidder or verified telephone bidder who makes the highest bid for the lot.
- (5) In the event of a disputed bid:
  - (a) the auctioneer is the sole arbiter; and
  - (b) the auctioneer's decision is final.

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- (6) If the highest bid made for a lot is at least equal to the reserve price for the lot, the registered applicant by or for whom the highest bid is made is the successful applicant for the lot.
- (7) If the highest bid made for a lot is lower than the reserve price for the lot, then there is no successful applicant for the lot, and no licences for that lot will be allocated.

**4.14 Identification and verification to ACMA**

Immediately after a registered applicant is identified as the successful applicant:

- (a) if the successful applicant is a registered bidder — the successful applicant must meet with ACMA to identify himself or herself to ACMA; or
- (b) if the successful applicant is a verified telephone bidder — the successful applicant must verify the successful bidder's identification by telephone to ACMA as being that of the successful applicant; or
- (c) if the successful applicant is not a registered bidder — a registered bidder who has a Form of Authority from the successful applicant must meet with ACMA to identify himself or herself to ACMA.

**4.15 Close of auction**

- (1) The auction in relation to a particular lot is closed after the successful applicant has been identified or verified to ACMA.
- (2) ACMA will notify each successful applicant for each lot, by receipted mail, of the balance of the bid price.
- (3) A successful applicant must pay the balance of the bid price within 10 business days after the date of the notice in accordance with section 2.5.

**4.16 Lot offered at auction but not allocated**

- (1) Subject to subsection (2), if a lot is not allocated at the auction, applications for licences for that lot cease to have effect.
- (2) If a successful applicant is in default of its financial obligations to ACMA and the lot is treated as unallocated under paragraph 6.3 (1) (d), ACMA may, with the consent of an unsuccessful applicant, treat the registration documents lodged by the unsuccessful applicant in relation to that particular lot as valid registration documents in any future allocation under this Determination.

**4.17 Refund of auction deposit to unsuccessful applicant or applicants**

ACMA must refund the auction deposit to each of the unsuccessful applicants for a lot as soon as practicable after an auction.

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## Part 5 Allocation of licences if there is only 1 applicant

### 5.1 Application of Part 5

This Part applies if:

- (a) ACMA decides that the proposed transmitter site, frequency and other assignment details of a potential licence are consistent with the assignment model; and
- (b) there is no conflict between the proposed transmitter site, frequency and other assignment details of the licence, and any other potential licence which has been applied for.

### 5.2 Allocation

- (1) The applicant is the successful applicant for the licence.
- (2) The licence will be allocated to that applicant at the pre-determined price for that licence, and no auction will be held.

### 5.3 Notice to registered applicant

- (1) Within the number of business days after the closing date set by ACMA under paragraph 2.2 (1) (c), ACMA must give the registered applicant for the licence a notice, by receipted mail:
  - (a) stating that the applicant is the successful applicant for the particular licence; and
  - (b) setting out the amount of the pre-determined price for the licence; and
  - (c) stating the date by which the successful applicant must pay the pre-determined price for the licence.
- (2) By the date specified in the notice under paragraph (1) (c), the successful applicant must either:
  - (a) pay the amount due under the notice given under subsection (1) for the licence in accordance with section 2.5; or
  - (b) advise ACMA in writing that the application has been withdrawn.

### 5.4 Default by successful applicant

If the successful applicant fails to comply with paragraph 5.3 (2) (a), the application ceases to have effect and the applicant is not entitled to obtain a transmitter licence.

**Section 6.1**

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## **Part 6**                      **Issue of a licence to a successful applicant**

### **6.1**            **Form of licences**

- (1) A transmitter licence issued to a successful applicant must be substantially in accordance with the sample transmitter licence provided in the Applicant Information Package.
- (2) A transmitter licence comes into force on the day specified in the licence as the day it comes into force.
- (3) A transmitter licence remains in force for the period specified in the licence, starting on the day specified in the licence as the day it comes into force.

*Note* This is a maximum of 5 years — see section 103 of the Act.

### **6.2**            **Issue of licences to successful applicant**

- (1) Subject to subsection (4), the successful applicant for each lot under section 4.13 (6) shall be issued the licences applied for by the applicant in that lot if the successful applicant:
  - (a) pays the balance of the bid price for the lot in accordance with subsection 4.15 (3) and in accordance with section 2.5; and
  - (b) pays the transmitter licence tax under the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

*Note* In issuing the licence, ACMA must comply with Part 3.3 of the Act.

- (2) Subject to subsection (4), the successful applicant for a licence under subsection 4.8 (2) or (3) or subsection 5.2 (1) shall be issued the licence applied for by the applicant if the successful applicant:
  - (a) pays the pre-determined price for the licence in accordance with subsection 4.8 (6) or paragraph 5.3 (2) (a), as applicable, and in accordance with section 2.5; and
  - (b) pays the transmitter licence tax under the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

*Note* In issuing the licence, ACMA must comply with Part 3.3 of the Act.

- (3) Subject to subsection (4), the successful applicant for each lot under subsection 4.8 (4) shall be issued the licences applied for by the applicant in that lot if the successful applicant:
  - (a) pays the balance of the reserve price for the lot in accordance with subsection 4.8 (6) and in accordance with section 2.5; and

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**Section 6.3**

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- (b) pays the transmitter licence tax under the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

*Note* In issuing the licence, ACMA must comply with Part 3.3 of the Act.

- (4) If ACMA has terminated an advertised allocation under this Determination, all successful applicants shall cease to be entitled to be issued a transmitter licence.

### **6.3 Liability for failure to comply with auction payment requirements**

- (1) If a successful applicant under subsection 4.13 (6) does not pay the balance of the bid price, in accordance with this Determination:
- (a) the applicant ceases to be entitled to be allocated transmitter licences in the lot; and
  - (b) the auction deposit is forfeited to ACMA on behalf of the Commonwealth; and
  - (c) the applicant is taken to be in default of its financial obligations to ACMA on behalf of the Commonwealth under this Determination and is liable to pay to ACMA on behalf of the Commonwealth the default amount which shall be 10 percent of the bid price; and
  - (d) the lot may be treated as an unallocated lot under section 4.16.
- (2) The total of the default amount payable to ACMA on behalf of the Commonwealth under this section:
- (a) is a debt due to ACMA on behalf of the Commonwealth; and
  - (b) is recoverable by ACMA on behalf of the Commonwealth from the successful applicant in a court of competent jurisdiction.

**Section 7.1**

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**Part 7                      Miscellaneous****7.1            ACMA not liable on behalf of the Commonwealth under the allocation system**

ACMA is not liable on behalf of the Commonwealth 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.

**7.2            Information provided by applicant**

- (1) A document given to ACMA by a person for the purposes of the allocation procedures set out in this Determination (including a document that contains intellectual property) becomes the property of the Commonwealth for the benefit of ACMA.
- (2) Subsection (1) does not apply to a document that is given to ACMA to establish an individual's identity.
- (3) ACMA may use information provided by an applicant for the purposes of ACMA.

**7.3            Recovery of damages by ACMA**

This Determination does not affect any right of action or remedy that the Commonwealth has or may have, for the benefit of ACMA, against any person which arose or arises under the Deed of Acknowledgment, statute, common law, equity or otherwise.

**7.4            Giving of information by ACMA**

Before ACMA issues a transmitter licence, it may announce, or publish a notice of:

- (a) the name of each person to whom a licence is to be issued; and
- (b) the highest final price bid, or the reserve price, for the lots containing the licences, or the reserve price or pre-determined price for a licence.

**7.5            Termination of advertised price-based allocation system**

ACMA may terminate an advertised allocation under this Determination at any time before a transmitter licence is issued if ACMA considers it is appropriate to do so.

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**Section 7.6****7.6 Refund of payments to ACMA**

If ACMA terminates an allocation under this Determination, ACMA must refund:

- (a) any entry fee paid by an applicant; and
- (b) any pre-determined price paid under subsection 5.3 (2); and
- (c) any auction deposit paid under section 4.6; and
- (d) the balance of the bid price paid under subsection 4.15 (3); and
- (e) the balance of the pre-determined price or the balance of the reserve price paid under subsection 4.8 (6).

## **Schedule 1      Deed of Acknowledgment**

(paragraph 2.4 (b))

### **Australian Communications and Media Authority Deed of Acknowledgment**

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#### **Notes on completion**

This Deed of Acknowledgment (the 'Deed') has been approved under paragraph 2.4 (b) of the *Radiocommunications (Transmitter Licences — Auction) Determination 2006* (the 'Determination'). Persons completing this Deed should read the Determination and, if necessary, seek appropriate advice. The Deed affirms the legislative obligations imposed upon applicants by the Determination in respect of their participation in any allocation of transmitter licences by an auction or for a pre-determined price, conducted under the Determination. The Deed also requires that applicants, in addition to their legislative obligations owed under the Determination, agree to be bound by the same obligations under a deed. Prospective applicants should clearly understand these obligations before completing the Deed.

A completed Deed must be submitted with each group of application forms submitted at the same time by a prospective applicant.

All sections of this Deed must be completed. The prospective applicant(s) referred to in this Deed must be the same as on the related application form(s).

In the event that 2 or more persons decide to apply as joint applicants, then:

- each joint applicant must be named and described at the beginning of the Deed; and
  - each joint applicant must execute the Deed.
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**Deed of Acknowledgment**

This DEED OF ACKNOWLEDGMENT is made this  day of  2006

in favour of the Commonwealth of Australia (the 'Commonwealth') and the Australian Communications and Media Authority ('ACMA') established under section 6 of the *Australian Communications and Media Authority Act 2005*.

by  (the 'Applicant(s)')

(Insert name and ACN/ARBN if applicable)

of

(Insert address)

**Purpose:**

- A. The Australian Communications and Media Authority ('ACMA') proposes to allocate transmitter licences using a price-based allocation system. ACMA has determined the procedures to be applied in allocating these transmitter licences, by auction or for a pre-determined price, in the *Radiocommunications (Transmitter Licences — Auction) Determination 2006* (the 'Determination').
- B. The Applicant wishes to submit bids for lots in the auction or be offered the opportunity to acquire a licence by pre-determined price in the event that ACMA considers that it can satisfy an application for a particular licence without proceeding to auction.
- C. The Applicant has agreed to compete for lots, and to participate in any allocation for a pre-determined price, in accordance with the terms and conditions set out in the Determination and in this Deed.

## **Operative Part:**

### **Part 1      General undertaking**

#### **Acknowledgment and agreement that applicant will be bound**

- 1.1      The Applicant understands and acknowledges that it will be bound by the legislative obligations contained in the Determination, and in addition by this Deed agrees to be bound to strictly comply with each and every provision of the Determination.
- 1.2      The remaining clauses of this Deed do not in any way limit this acknowledgment by the Applicant that it will be bound by all applicable legislative obligations contained in the Determination.
- 1.3      The remaining clauses of this Deed supplement, and do not in any way limit, the Applicant's duty to perform or satisfy its legislative obligations contained in the Determination.
- 1.4      Notwithstanding anything in this Deed, neither the Applicant's obligations under this Deed nor the binding effect of this Deed shall in any way be affected or impaired by the Determination being void or otherwise unenforceable in whole or in part.
- 1.5      The Applicant acknowledges and agrees that it shall ensure that its officers, employees, agents, contractors and associates comply with any obligations under this Deed.
- 1.6      The Applicant has read and understood each of the following documents:
  - (a) *Radiocommunications (Transmitter Licences — Auction) Determination 2006*;
  - (b) *Assignment Model*;
  - (c) *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*;
  - (d) The Applicant Information Package (including attachments).

### **Part 2      Allocation if there is more than 1 applicant for a lot**

#### **Determination of lots**

- 2.1      The Applicant acknowledges and agrees that the mechanisms described in the Determination and the Applicant Information Package are acceptable to determine lots and to determine when ACMA should allocate a lot by auction in accordance with Part 4 of the Determination.

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### **Applicant bound by registered bidder**

- 2.2 The Applicant acknowledges and agrees that the Applicant will be bound by the actions of the Applicant's registered bidder or verified telephone bidder at the auction.

### **Payment of the auction deposit**

- 2.3 The Applicant agrees to pay the auction deposit as required by section 4.6 of the Determination.

### **Failure to pay the auction deposit**

- 2.4 If the Applicant fails to pay the auction deposit as required by section 4.6 of the Determination, the Applicant acknowledges that subsection 4.6 (6) of the Determination applies.

### **Payment of the balance of the bid price**

- 2.5 The Applicant, on becoming the successful applicant in relation to a lot, agrees to pay the balance of the bid price as required by section 4.15 of the Determination.

### **Failure to pay the balance of the bid price**

- 2.6 If on becoming the successful applicant in relation to a lot, the Applicant fails to pay the balance of the bid price as required by section 4.15 of the Determination, the Applicant acknowledges that section 6.3 of the Determination applies and agrees to perform and satisfy its legislative obligations which arise from, or are described in, section 6.3 in the manner set out in the Determination.
- 2.7 The rights and obligations referred to in clause 2.6 will survive the expiration or termination of this Deed.

### **Bids**

- 2.8 The Applicant acknowledges and agrees that the mechanisms described in the Determination are acceptable to authenticate bids as bids submitted by the Applicant, and that the Applicant will be bound by any bids that satisfy those authentication checks, whether or not those bids were submitted by the Applicant or with the Applicant's authority.
- 2.9 The Applicant acknowledges and agrees that it will be responsible for its acts and omissions, and the acts and omissions of its officers, employees, agents, contractors and associates in relation to any bid for a lot.

## **Part 3 Allocation of a licence if there is only 1 applicant**

### **Offer of a licence for the pre-determined price**

- 3.1 The Applicant acknowledges and agrees that if:
- (a) ACMA decides that the proposed transmitter site, frequency and other assignment details of a potential licence are consistent with the assignment model; and
  - (b) there is no conflict between the proposed transmitter site, frequency and other assignment details of the licence, and any other potential licence which has been applied for;
- ACMA will allocate the licence to the Applicant for the pre-determined price in accordance with section 5.2 of the Determination.

### **Payment of the pre-determined price**

- 3.2 The Applicant agrees to pay the pre-determined price for each licence in accordance with paragraph 5.3 (2) (a) of the Determination or to advise ACMA that the application has been withdrawn in accordance with paragraph 5.3 (2) (b) of the Determination.

### **Failure to pay the pre-determined price**

- 3.3 If the Applicant does not act in accordance with section 5.3 of the Determination, then the Applicant acknowledges and agrees that section 5.4 of the Determination applies and the application ceases to have effect.

### **Offer of a licence for the reserve price or the pre-determined price**

- 3.4 The Applicant acknowledges and agrees that if an application under subsection 4.7 (2) of the Determination or a deemed withdrawal under subsection 4.6 (6) of the Determination results in the Applicant being the only applicant remaining for a particular lot, ACMA will allocate the licences in that lot to the Applicant for the pre-determined price in accordance with subsections 4.8 (2) or (3) or the reserve price under subsection 4.8 (4) of the Determination.

### **Payment of the pre-determined price or the balance of the reserve price**

- 3.5 The Applicant agrees to pay the pre-determined price or the balance reserve price, as the case requires, for each licence in accordance with paragraph 4.8 (6) (a) of the Determination or to advise ACMA that the application has been withdrawn in accordance with paragraph 4.8 (6) (b) of the Determination.

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### **Failure to pay the pre-determined price or the balance of the reserve price**

- 3.6 If the Applicant does not act in accordance with subsections 4.8 (5) and (6) of the Determination, then the Applicant acknowledges and agrees that subsection 4.8 (7) of the Determination applies and the application ceases to have effect.

## **Part 4 General**

### **No reliance**

- 4.1 The Applicant undertakes that it has made its own independent inquiries about the use and effectiveness of all potential licences which it wishes to have allocated or for which it proposes to bid in an auction. The Applicant acknowledges that it has not relied on any representation made by the Commonwealth or ACMA or its officers, employees or agents in relation to its application for, or the allocation of, a licence.

### **Release and indemnity**

- 4.2 The Applicant agrees to indemnify the Commonwealth and ACMA from and against any:
- (a) liability sustained or incurred by the Commonwealth or ACMA; or
  - (b) loss of or damage to property of the Commonwealth or occupied by ACMA; or
  - (c) loss or expense sustained or incurred by the Commonwealth and ACMA in dealing with any claim against the Commonwealth or ACMA including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth or ACMA;
- arising from:
- (d) any act or omission by the Applicant, its officers, employees, agents, contractors or associates in connection with the Applicant's participation in an allocation system conducted under the Determination; or
  - (e) any breach by the Applicant of its obligations or warranties under this Deed, or the Determination, or both;
- irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 4.3 The Applicant acknowledges and agrees that its liability to indemnify the Commonwealth and ACMA under clause 4.2 will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth or ACMA contributed to the relevant liability, loss or damage, or loss or expense.

- 4.4      The right of the Commonwealth and ACMA to be indemnified under clause 4.2 is in addition to, and not exclusive of, any other right, power or remedy of the Commonwealth or ACMA which arises under statute, common law, equity or otherwise.
- 4.5      The Applicant releases the Commonwealth and ACMA from and against all demands, claims, actions or proceedings arising from the acts or omissions of any person in relation to the allocation procedures set out in the Determination.
- 4.6      The rights and obligations referred to in Part 4 of this Deed will survive the expiration or termination of this Deed.

#### **Joint and several liability**

- 4.7      If 2 or more persons have executed this Deed as joint Applicants the liability of each person under this Deed is both joint and several.

#### **Applicant must meet its own costs**

- 4.8      The Applicant agrees that its participation in any stage of procedures referred to in the Determination shall be at its sole risk, cost and expense.

#### **Confidential information**

- 4.9      The Applicant and its respective officers, employees, agents, contractors and associates must not take steps to obtain, or use in any unauthorised way, or disclose confidential information of the Commonwealth or ACMA relating to the Commonwealth's or ACMA's activities or the auction process other than information which is publicly available or made available by the Commonwealth or ACMA to registered applicants during the auction process.

#### **Return of information to ACMA**

- 4.10     The Commonwealth and ACMA reserves the right, in its absolute discretion, to require that any written information provided to the Applicant (and copies of the information) be returned to ACMA at any stage, at the Applicant's sole expense.

#### **Conflict of interest**

- 4.11     The Applicant and its respective officers, employees, agents and advisers must not place themselves in a position which may, or does, give rise to a conflict of interest (or a potential conflict of interest) between the interests of the Commonwealth or ACMA (on the one hand) and any other interests (on the other hand) during the auction process.

### **Governing law**

- 4.12 This Deed is governed by the laws in force in the Australian Capital Territory, and any dispute relating to the construction, meaning or effect of this Deed is governed by those laws.
- 4.13 The Applicant irrevocably submits to the exclusive jurisdiction of the courts of the Australian Capital Territory and of the Federal Court except in so far as the High Court has jurisdiction to hear any matter involving the Commonwealth or ACMA.

### **Definitions and interpretation**

- 4.14 This Deed shall be interpreted in accordance with the provisions of the Determination and the *Radiocommunications Act 1992* (the 'Act'). Unless otherwise provided, terms in this Deed shall have the same meanings as provided in that Determination or the Act.
- 4.15 In this Deed, unless the contrary intention appears:
- (a) Words importing a gender include any other gender.
  - (b) Words in the singular number include the plural and words in the plural number include the singular.
  - (c) A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.
  - (d) 'ACMA' includes the officers, employees, contractors and agents of ACMA.

### **No variation unless agreed**

- 4.16 No variation of this Deed is binding unless it is agreed in writing between the Applicant and the Commonwealth through the Chief Executive of ACMA.

**EXECUTED AS A DEED**

*[If more than 1 person is applying as joint applicants then each person should complete an appropriate execution block.]*

*[Appropriate execution block if the Applicant is an individual: ]*

**SIGNED, SEALED AND  
DELIVERED** )  
)  
)  
)

by \_\_\_\_\_  
(Print Name of the Applicant)

Signature \_\_\_\_\_

in the presence of )  
)  
)

\_\_\_\_\_  
(Print Name)

Signature \_\_\_\_\_

*[Appropriate execution block if the Applicant is a company: ]*

**SIGNED, SEALED AND DELIVERED**

for and on behalf of

\_\_\_\_\_  
(Print Name of the Company)

ACN or ARBN \_\_\_\_\_  
(Print ACN or ARBN)

by authority of the Directors:

(Print name of Director)

(Print name of Director/Secretary)

(Signature of Director)

(Signature of Director/Secretary)

*[If the Applicant is a statutory authority or other body corporate, then please execute a deed in the appropriate manner.]*