

EXPLANATORY STATEMENT

Radiocommunications Spectrum Marketing Plan (500 MHz Band) 2003 Variation (No. 1) 2007

Made by the authority of the Australian Communications and Media Authority under section 42 of the *Radiocommunications Act 1992*

Legislative provisions

Section 42 of the *Radiocommunications Act 1992* (the Act) provides that the Australian Communications and Media Authority (ACMA) may, at any time, vary a marketing plan. Part 2.2 of the Act covers the making of marketing plans and applies to variation of marketing plans under section 42.

Purpose

The purpose of the *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 2003 Variation (No. 1) 2007* (the 2003 Marketing Plan Variation) is to amend the *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 2003* (the 2003 Marketing Plan) so licences that are expiring this year can be offered for sale.

The spectrum licences will be allocated under the *Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined price) Determination 2006*. If there is competition for a licence an open outcry auction will be held, otherwise the licence will be sold at the reserve price.

The 2003 Marketing Plan Variation also updates the 2003 Marketing Plan for administrative changes that have occurred since it was made.

The 2003 Marketing Plan specifies the spectrum lots available for sale, the procedures by which they are allocated and the conditions that apply to the spectrum licences created from them. The 2003 Marketing Plan was made to allocate unsold lots from the 1997 allocation process for 500 MHz spectrum licences.

Background

Spectrum licences in the 500 MHz band were initially issued for a period of 10 years from 1997 to 2007. In response to an amendment to the Act in 1996, which extended the maximum spectrum licence period from 10 to 15 years, ACMA's predecessor, the Australian Communications Authority (the ACA), offered 500 MHz spectrum licensees the chance to increase their licence term to 15 years (that is 1997–2012). Most licensees chose to accept that offer. However, four licensees decided to continue with the 10 year licence term and their spectrum licences will expire on 31 May 2007 (expiring licences).

The expiring licences were originally offered for sale in 1997, under the *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 1996* (the 1996 Marketing Plan).. However, as the expiring licences are to be offered under the 2003 Marketing Plan to reflect the 2003 licence conditions and allocation process, the 1996 Marketing Plan must also be varied to remove the expiring licences and avoid

the conflict of having the licences offered in two different marketing plans at the same time.

The 2003 Marketing Plan Variation is being made to include these expiring licences in the 2003 Marketing Plan.

Consultation

In February 2006, ACMA published a notice in the *Commonwealth Gazette* in accordance with section 78 of the Act. The notice invited expressions of interest for the expiring 500 MHz licences.

ACMA received three written responses to the notice. One licensee advised they intend to let their licences lapse on expiry in 2007. Another licensee expressed interest in acquiring a licence in Brisbane and has since traded with the licensee above. This increased the number of licensees with 2007 expiring licences to five. A third licensee responded indicating there was little interest in these licences and contended the value of this band is low, based on the factors of limited equipment in the band, short licence duration and limited spectrum aggregation opportunities.

The Office of Best Practice Regulation (OBPR, formerly the Office of Regulation Review) advised that a Regulation Impact Statement (RIS) was not required for the Marketing Plan Variations. The OBPR notes that a RIS is not required as the proposed Variations are of a minor or machinery nature and do not substantially alter existing arrangements (RIS ID: 8779).

As there has been limited interest in the band and the expiring licences and the OBPR has provided a RIS exemption, no consultation on the 2003 Marketing Plan Variation was undertaken by ACMA under subsection 40(1) of the Act.

Legal and other requirements

Variations to marketing plans are made under section 42 of the Act and are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. All legal and other requirements for the making of this Marketing Plan Variation have been met.

Attachments

Details of the 2003 Marketing Plan Variation are set out in Attachment 1.

Notes on sections

SECTION 1 NAME OF VARIATION

This section gives the citation of the 2003 Marketing Plan Variation.

SECTION 2 COMMENCEMENT

This section states when the Variation commences.

SECTION 3 VARIATION OF *RADIOCOMMUNICATIONS SPECTRUM MARKETING PLAN (500 MHZ) 2003*

This section specifies that Schedule 1 amends the 2003 Marketing Plan.

SCHEDULE 1 VARIATIONS

Item 1 Subsection 1.3 (1)

This item updates the subsection by replacing 'the ACA' with 'ACMA' and restructures section 1.3.

Item 2 Subsection 1.3 (2)

This item continues to describe the parts of the spectrum that the original 2003 Marketing Plan did not cover because they were covered by the 1996 Marketing Plan, but now adds an exception for the expiring licences from the 1996 Marketing Plan that will now be allocated under the 2003 Marketing Plan.

Item 3 After subsection 1.3 (2)

This item moves the equivalent of the 2003 Marketing Plan's subsection 1.3 (2) to subsection 1.3 (3) to allow for the restructuring above.

Item 4 Subsection 1.4 (1), before definition of *Act*

This item adds the definition for ACMA.

Item 5 Subsection 1.4 (1), before definition of *population*

This item changes how a reference is made to Schedule 3.

Item 6 Subsection 1.4 (1), at the foot

This item makes changes to reflect that there is only one note rather than a list.

Item 7 Subsection 1.4 (1), note

This item removes the term ACA from the list of terms defined in the *Radiocommunications Act 1992*. This is because the ACA became ACMA on 1 July 2005 and the definition for ACMA was added to the main body of the definitions in subsection 1.4 (1).

Item 8 Schedules 3, 4 and 5

This item provides new tables for the Schedules 3, 4 and 5.

Schedule 3 Description of areas containing available spectrum for allocation

The table in Schedule 3 has been amended to insert the additional geographic areas that are being made available for the allocation under the varied 2003 Marketing Plan. In addition, the population figures have been updated from the Australian Bureau of Statistics 2001 census figures to provide the most recent view of the population numbers in the spectrum licence areas.

Schedule 4 Coordinates of geographical areas

Schedule 4 includes the coordinates for all the geographic areas where lots are available for allocation at this time, including the 2007 expiring licences. It also improves the formatting for all the geographic areas' coordinates, including numbering each geographic area and itemising each coordinate pair. This is intended to provide an easier system to reference each geographic area and the individual coordinates.

Schedule 5 Description of available spectrum

This schedule provides a revised table of the bands in each geographic area which are available for allocation. The list includes the lots for the expiring licences and excludes lots that were sold in previous allocations.

Item 9 Schedule 6, Licence Schedule 3, item 1

This item replaces the reference to a section of the *Australian Communications Authority Act 1997* with the relevant section in the *Australian Communications and Media Authority Act 2005*.

Item 10 Schedule 6, Licence Schedule 3, subitem 2 (1) and subitem 2 (2)

This item corrects the terminology from 'section' to 'subsection'.

Item 11 Schedule 6, Licence Schedule 3, note after subitem 4

This item corrects the terminology from 'section' to 'subsection'.

Item 12 After Schedule 9

This item inserts a new schedule, Schedule 10.

Schedule 10 500 MHz Licences expiring on 31 May 2007

Schedule 10 is a table providing details about the expiring licences that are to be offered under the varied 2003 Marketing Plan.

Item 13 Further amendments

This item lists each provision that requires updating the Authority's name from 'ACA' to 'ACMA'.