

EXPLANATORY STATEMENT

Radiocommunications Spectrum Marketing Plan (500 MHz Band) 1996 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 the variation of marketing plans under section 42.

Purpose

The purpose of the *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 1996 Variation (No. 1) 2007* (the 1996 Marketing Plan Variation) is to amend the *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 1996* (the 1996 Marketing Plan) so that spectrum licences sold under the 1996 Marketing Plan that are expiring this year can be allocated to the market.

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

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).

As there were only a small number of expiring licences and the 1996 Marketing Plan sets out an allocation process that is appropriate where there is high demand for the licences, the expiring licences should be offered under an alternative marketing plan that specifies a different allocation process.

The *Radiocommunications Spectrum Marketing Plan (500 MHz Band) 2003* (the 2003 Marketing Plan) was made to offer to market those lots remaining unsold from the original allocation in 1997. It provides a suitable allocation process and current licence conditions for the re-allocation of the expiring licences. The 2003 Marketing Plan has been varied to include the lots for the expiring licences.

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 due to the minor nature of the variations, no consultation on the 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 1996 Marketing Plan Variations are in Attachment 1.

Notes on sections

SECTION 1 NAME OF VARIATION

This section gives the citation of the 1996 Marketing Plan Variation.

SECTION 2 COMMENCEMENT

This section states when the Variation commences.

SECTION 3 VARIATION OF *RADIOCOMMUNICATIONS SPECTRUM MARKETING PLAN (500 MHZ) 1996*

This section specifies that Schedule 1 varies the 1996 Marketing Plan.

SECTION 4 APPLICATION OF VARIATIONS

Section 4 states that the variations to the 1996 Marketing Plan do not affect the validity of spectrum licences issued before the 1996 Marketing Plan Variation.

SCHEDULE 1 VARIATIONS

This Schedule provides the Variations to the 1996 Marketing Plan.

Item 1 Subsection 3 (1), note 2

This item adds the geographic names for the areas which will not be dealt with under the varied 1996 Marketing Plan. The additional areas are those of the 2007 expiring licences that are to be re-allocated under the varied 2003 Marketing Plan.

Item 2 Subsection 3 (1), note 2

Item 2 makes a typographical correction.

Item 3 Subsection 3 (1), note 4

This item replaces 'the SMA' with the current Authority's acronym 'ACMA'.

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

This item adds the definition for ACMA.

Item 5 Paragraph 6 (2) (a) and (b)

Paragraph (a) in this item states that the 2007 expiring licences' areas are not to be issued under the varied 1996 Marketing Plan, as they are to be offered under the varied 2003 Marketing Plan.

Paragraph (b) in this item specifies the lots in Schedule 3 that may be issued under the *Radiocommunications Spectrum Conversion Plan (500 MHz Band) 1996* (the 1996 Conversion Plan).

Before the 500 MHz band was designated for spectrum licences by the Minister under the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996* (Minister's Designation), the band was apparatus licensed. Apparatus licensees affected by the Minister's Designation were offered the opportunity to convert their licences to 500 MHz spectrum licences under the 1996 Conversion Plan. The Authority then issued spectrum licences in accordance with the 1996 Marketing Plan for vacant spectrum and spectrum not taken up by existing apparatus licensees, except for certain areas.

Item 6 Subsection 7 (2), note

This item makes a typographical correction.

Items 7–33 Schedule 3, various tables, parts and lot numbers

Schedule 3 provides the relevant section of the geographic area and lists the details that uniquely identify each lot that makes up the expiring licences.

These items in Schedule 3, replace the existing details with the same details struck through. This ensures the expiring licences will not be available for allocation under the varied 1996 Marketing Plan.