

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2009 (No.1)

Radiocommunications Act 1992

Purpose

The purpose of the *Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2009 (No. 1)* ("the Determination") is to expand the scope of the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* ("the Fixed LCD") to include, *inter alia*, licence conditions for wireless access services (WAS) and ensure that the conditions can be applied to new WAS systems that may be deployed in the frequency range 3400-3700 MHz.

The Determination also removes the application of roll out obligations in relation to point-to-multipoint apparatus licences issued in the 1900-1920 MHz and 2010-2025 MHz bands.

Legislative Provisions

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* ("the Act") provides that the Australian Communications and Media Authority ("the ACMA") may determine conditions to apply in relation to a particular type of apparatus licence.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* ("the LIA").

Background

The operation of radiocommunications equipment authorised by an apparatus licence is subject to conditions specified in the Act and in the licence itself; and conditions specified in the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* and any other determinations made by the ACMA under paragraph 107(1)(f) of the Act.

The ACMA released a discussion paper in April 2009 that sought comment from industry and interested parties on the proposed release of spectrum in the 3575-3700 MHz range ("the 3.6 GHz band"). The discussion paper also sought comment on the proposed amendments to legislative instruments that would be required to support the issue of fixed point-to-multipoint apparatus licences in the 3.6 GHz band for WAS. The ACMA sought comment on the following amendments related to the Fixed LCD. Following that consultation, the ACMA has made the Determination which:

- includes the frequency bands 1427-1535 MHz and 3400-3700 MHz into the scope of the Fixed LCD;
- includes a new definition for wireless access services (WAS) bands;
- amends the definition for the 2.5 GHz band;
- exempts stations that operate using WAS bands from the licence conditions detailed in Part 3 of the Fixed LCD;
- removes Part 3D and Schedule 3 regarding roll out obligations from the Fixed LCD;
- includes a "grandfathering" clause that continues the application of the roll out obligations to point-to-multipoint apparatus licences in the 1900-1920 MHz band issued on or before 15 February 2008; and

- includes a new Part 3E, that sets out conditions for fixed point-to-multipoint apparatus stations that operate in WAS bands.

Operation

The inclusion of the 1427-1535 MHz band is considered a minor amendment to the scope of the Fixed LCD. The band was previously included in conditions set out in the Fixed LCD, however was not mentioned in the scope of the Fixed LCD at paragraph 2(1)(b).

The amendment to the definition of 2.5 GHz band includes the frequency range 2500-2690 MHz. The amendment is intended to provide clarity as the frequency range was not provided in the Fixed LCD previously.

The inclusion of the 3400-3700 MHz band will ensure that the Fixed LCD applies to any frequency bands within this range that may also be made available for WAS into the future. The inclusion will support the imminent release of the 3.6 GHz band for WAS in regional and remote areas of Australia.

The new definition for WAS bands is aimed at increasing administrative efficiency by providing a collective definition for the frequency bands 1427-1535 MHz, 1900-1920 MHz, 2010-2025 MHz and 3400-3700 MHz respectively.

The amendment to Part 3D provides a “grandfathering” clause for the application of roll out obligations to point-to-multipoint apparatus licences issued in the 1900-1920 MHz band. Because some existing apparatus licences are currently subject to the roll out obligations, or in the process of providing evidence of meeting the roll out obligations, it is the ACMA’s view that the “grandfathering” clause provides certainty to current and future licensees in the band. The rationale for removing roll out obligations from apparatus licences issued in the 1900-1920 MHz band is because of an apparent decrease in the level of demand for access to the band.

The licence conditions previously set out in Radiocommunications Assignment and Licensing Instruction FX19 (RALI FX19) regarding remote stations, adjacent channel interference and adaptive transmit power control have been incorporated into Part 3E of the Fixed LCD. Part 3E applies to point-to-multipoint stations that operate in WAS bands. A copy of RALI FX19 can be obtained from the ACMA’s website at www.acma.gov.au.

Consultation

Pursuant to the requirements of section 17 of the LIA, the ACMA undertook consultation in relation to the Determination on the ACMA’s website beginning in April 2009. The Determination was made available for public comment from 1 April – 15 May 2009.

No submissions were received in relation to the Determination.

Regulatory Impact Statement

The ACMA obtained advice from its Best Practice Regulation Coordinator that the Determination has no or low impact on business or the economy. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation (OBPR), the ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement (RIS). The ACMA RIS exemption reference number is ACMA 109.

Detailed Description of the Instrument

Details of the Determination are set out in the Attachment.

NOTES ON SECTIONS

Section 1 – Name of Determination

This section provides for the name of the Determination.

Section 2 – Commencement

This section provides that the *Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2009 (No. 1)* commences on the day after it is registered.

Section 3 – Amendment to the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*

This section provides that Schedule 1 amends the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* (“the Fixed LCD”).

Schedule 1 Amendments

Item [1] Paragraph 2 (1) (b)

This section provides for the new paragraph (bc) to be included in the scope of the Fixed LCD.

Item [2] Paragraph 2 (1) (bb)

This section ensures that certain existing fixed point-to-multipoint stations that operate in the 1900-1920 MHz and 2010-2025 MHz bands are subject to the roll out goals set out in Part 3D of the Fixed LCD. This amendment also provides that any fixed point-to-multipoint stations that operate in the 1427-1535 MHz or 3400-3700 MHz bands are subject to the conditions set out in Part 3E of the Fixed LCD.

Item [3] Subsection 3 (1), definition of *2.5 GHz band*

This section provides a frequency range for the 2.5 GHz band.

Item [4] Subsection 3 (1), after definition of *13 GHz band*

This section provides a definition for the use of the word *Act* in the Fixed LCD. The definition describes the *Radiocommunications Act 1992*.

Item [5] Subsection 3 (1), after definition of *supplementary base station* and before the note

This section includes the definition of wireless access (WAS) bands to refer to the 1427-1535 MHz, 1900-1920 MHz, 2010-2025 MHz and 3400-3700 MHz frequency ranges.

Item [6] Part 3, heading

This section amends the heading of Part 3 by removing reference to an increasing list of frequency bands and refers to wireless access service (WAS) bands instead.

Item [7] Paragraph 6 (b)

This section removes reference to specific frequency bands and refers to wireless access services (WAS) bands instead.

Item [8] Subparagraph 11D (a) (i)

This section corrects a reference from the ACA to the ACMA.

Item [9] Paragraph 11M (a)

This section provides the “grandfathering” clause that will ensure that the roll out goals will continue to apply to existing point-to-multipoint stations that were issued after 27 April 2005 and before 15 February 2008.

Item [10] Subsections 11O (2) and (3)

This section corrects a reference from the ACA to the ACMA.

Item [11] Subsection 11O (4), including the notes

This section ensures that the roll out goals specified in Part 3D are applied to point-to-multipoint stations for the applicable time frames only. That is, after roll out goal 2 is met, Part 3D does not continue to have any effect on the apparatus licence.

Item [12] Subsection 11Q (1)

This section corrects a reference from the ACA to the ACMA.

Item [13] Subsection 11Q (3)

This section corrects a reference from the ACA to the ACMA.

Item [14] After Part 3D

This section provides for the inclusion of new Part 3E that sets out conditions for the operation of point-to-multipoint stations in wireless access services (WAS) bands. The types of conditions include the operation of remote stations; conditions regarding adjacent channel interference; and the use of adaptive transmit power control.