

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licences – Auction) Amendment Determination 2010 (No. 2)

Radiocommunications Act 1992

Purpose

The purpose of the *Radiocommunications (Transmitter Licences – Auction) Amendment Determination 2010 (No. 2)* (the Amendment Determination) is to include specified frequency ranges within the 3.6 GHz band (3575-3700 MHz) to be allocated via a price-based allocation process in geographic areas incorporated in the Amendment Determination by reference.

Legislative Provisions

Subsection 106 (1) of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may make written determinations for allocating and/or issuing specified transmitter licences via a price-based allocation (PBA) system. The PBA system may apply in respect of a particular area; for a specified frequency range and may require the payment of an application fee.

Subsection 314A(2) of the Act provides that an instrument made under the Act may make provision in relation to a matter by applying, adopting or incorporating matter contained in any other instrument or writing as in force from time to time or even if other instrument or writing does not yet exist at the time the instrument is made.

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

Subsection 33 (3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

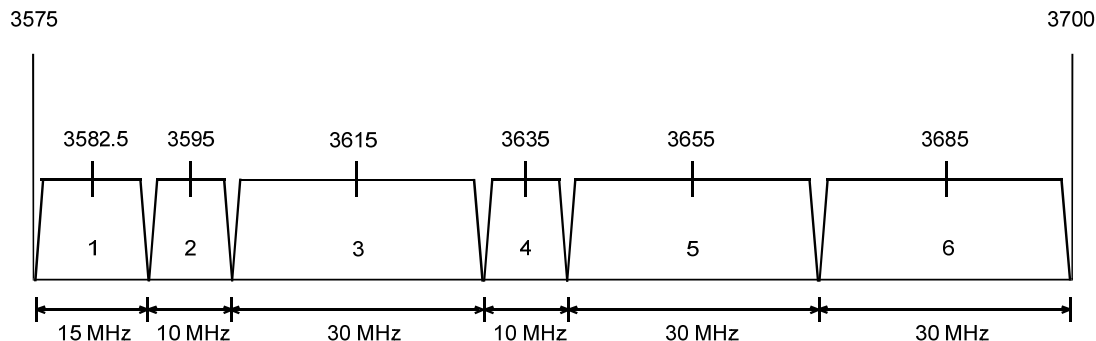
Background

The *Radiocommunications (Transmitter Licences – Auction) Determination 2006* (the Auction Determination) provides a price based allocation process for apparatus licences. The scope of the Auction Determination is currently limited to the 2010-2025 MHz band. Although developed for the issue of point-to-multipoint apparatus licences, the Auction Determination may be amended to provide for other licence types and frequency bands to be included.

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 conducted further analysis into the current use of the 3.6 GHz band in 2009/2010 and found evidence to suggest that either a small number of point to point links (or none) are operating in certain segments, or channels, in the 3.6 GHz band leaving them relatively clear for allocation. These channels are 1, 4 and 5 in the channel plan at Figure 1 below. The ACMA believes these channels are likely to be the most desirable by applicants seeking apparatus licences in the band.

Figure 1 Channel plan for WAS in the 3.6 GHz band



As a result, the ACMA is including the following frequency ranges in the scope of the Auction Determination for allocation via a PBA process:

- 3575-3590 MHz
- 3630-3670 MHz

The 3575-3790 MHz frequency range is a single channel with 15 MHz bandwidth; and the 3630-3670 MHz frequency range is made up of two channels with a 10 MHz and 30 MHz bandwidth respectively.

The ACMA has determined that there are a number of specific geographic areas that the above frequency ranges, or channels, can be allocated within via a PBA process. These geographic areas are to be incorporated into the Auction Determination by reference to a separate document. In this case, the ACMA has determined that a Register of Auction Areas (the Register) will list geographic areas to be allocated via PBA will be developed and made available on the ACMA's website (www.acma.gov.au). The Register will include details of the geographic area, including coordinates, as well as the type of apparatus licence available and frequency range of operation.

The development and use of a Register will provide the ACMA with increased flexibility in relation to the allocation or issue of apparatus licences as it will mean that the PBA process may only apply to the allocation of apparatus licences in the specific frequency range within the identified geographic area, rather than on an Australia-wide basis as occurred with previous allocations of the 1.9 GHz band.

Operation

The amendment to the Determination will:

- Include specific frequency ranges of the 3.6 GHz band into the scope of the Auction Determination; and
- Provide for the incorporation of identified geographic areas into the scope of the Determination by reference to a Register of Auction Areas to be allocated via PBA.

Consultation

Section 17 of *Legislative Instruments Act 2003* requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

Details of the proposed amendments to the Auction Determination were included for consultation in a package of regulatory proposals to support wireless access services (WAS) arrangements for the 3.6 GHz band.

The package was released on the ACMA website for consultation for the period 1 April to 15 May 2009 and was accompanied by a media release. 21 submissions were received in relation to the package. The respondents to the 3.6 GHz consultation process were supportive of the proposed changes to the Auction Determination. The Authority considered the information provided in submissions when making the Amendment Determination.

Regulatory Impact Statement

The ACMA obtained advice from the Office of Best Practice Regulation (OBPR) that the Amendment Determination has no or low impact. For those reasons the OBPR has determined that there is no need to prepare a Regulation Impact Statement in this instance. The RIS Exemption number provided is 11589.

Attachment

Further details of the Amendment Determination are set out in the Attachment.

NOTES ON SECTIONS

Section 1 – Name of Determination

This section provides the name of the Amendment Determination.

Section 2 – Commencement

This section provides that the Amendment Determination commences on the day after it is registered.

Section 3 – Amendment of *Radiocommunications (Transmitter Licences – Auction) Determination 2006*

This section provides that Schedule 1 amends the *Radiocommunications (Transmitter Licences – Auction) Determination 2006*.

Schedule 1 Amendments

Item [1] Schedule 1, Subsection 1.4 (1)

This section expands the scope of the *Radiocommunications (Transmitter Licences – Auction) Determination 2006* to provide that point to multipoint stations in the frequency ranges 3575-3590 MHz and 3630-3670 MHz in the geographic area or areas that are set out in the Register of Auction Areas may be allocated via a price-based allocation process.

Item [2] Schedule 1, Subsection 1.5 (1), after the definition of pre-determined price

This section includes a new definition in the Auction Determination. The definition of **Register** refers to the Register maintained by the ACMA on its internet site (www.acma.gov.au) for the purposes of the Auction Determination.