

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 1)

Purpose

The purpose of the *Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 1)* (the Determination) is to fix spectrum access charges payable by licensees for the re-issue of expiring spectrum licences in the 1800 MHz band.

Legislative Provisions

Subsection 82(1) of the *Radiocommunications Act 1992* (the Act) provides for the Australian Communications and Media Authority (the ACMA) to re-issue a spectrum licence to the person to whom it was previously issued if the licence was used in the provision of a service included in a class of services specified in a determination under subsection 82(3) of the Act; or the ACMA is satisfied that special circumstances exist as a result of which it is in the public interest for that person to continue to hold the licence.

Subsection 82(3) of the Act provides for the Minister to determine, by written instrument, a specified class of services for which re-issuing spectrum licences to the same licensees would be in the public interest.

Subsection 294(1) of the Act empowers the ACMA to make determinations to fix spectrum access charges payable by licensees for re-issuing spectrum licences and specify the times when spectrum access charges are payable.

Subsection 294(2) of the Act allows the Minister to give written directions to the ACMA about the matters dealt with in determinations.

The Determination is a legislative instrument under the *Legislative Instruments Act 2003*.

Background

Spectrum licences in the 1800 MHz band were auctioned from 1998 onwards and will expire in two tranches. The tranche of current spectrum licences covered by the Determination expire on 17 June 2013.

Under the Act, there are two options available to the ACMA for handling these spectrum licences upon expiry. The ACMA may either:

- re-issue licences to the same licensees without undertaking a price-based allocation process, if:
 - the licence is used to provide a service which is included in the class of services for which the Minister determines re-issuing licences to the same licensees would be in the public interest (paragraph 82(1)(a) of the Act); or
 - it is satisfied that special circumstances exist as a result of which it is in the public interest for the existing licensee to continue to hold the licence (paragraph 82(1)(b) of the Act); or
- undertake a market-based re-allocation process (generally via auction) in accordance with section 60 of the Act.

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy (the Minister) made a 'class of services' determination (*Radiocommunications (Class of Services) Determination 2012*). In this class of services determination, the Minister determined a specified class of services for which re-issuing spectrum licences to the same licensees would be in the public interest. The class of services include:

- mobile voice and data communications services in the 800 MHz, 1800 MHz and 2 GHz bands;
- wireless broadband services in the 2.3 GHz and 3.4 GHz bands; and
- satellite services in the 27 GHz band.

The making of this class of services determination allowed the ACMA to consider, under paragraph 82(1)(a) of the Act, whether a licence has been used to provide a relevant service. In this assessment the ACMA consulted with the existing licensees and relied on information they provided, including:

- the number of registered and deployed devices under each relevant licence;
- maps detailing the cumulative coverage area of the services offered by the licensee;
- information on the types of equipment and technology deployed; and
- links to promotional material regarding relevant services provided by the licensee.

The licensees for the licences covered by the Determination have established use for the purposes of paragraph 82(1)(a) of the Act enabling the ACMA to further progress re-issue.

On 9 February 2012 the Minister gave the ACMA a direction under subsection 294(2) of the Act (*Radiocommunications (Spectrum Access Charges) Direction 2012*) (the Ministerial Direction) detailing certain specified amounts that must be reflected in spectrum access charges fixed by the ACMA under subsection 294(1) of the Act. These amounts were the Minister's considered view of the value of the spectrum in the relevant bands. These amounts were determined by the Minister after extensive consultation with relevant licensees and a period for public comment and having regard to all relevant matters including advice received from the Department of Broadband, Communications and the Digital Economy (DBCDE); advice from a specially established inter-departmental Evaluation Committee; expert independent advice from Plum Consulting and the values currently established by the market for relevant spectrum bands. The Minister was also guided by the objects of the Act.

The Ministerial Direction defines a formula for fixing the spectrum access charge payable by a licensee in relation to a re-issued spectrum licence. The formula is based on a "\$/MHz/Pop" calculation where:

- \$ = Australian dollars;
- MHz = the bandwidth of spectrum authorised for use in the relevant licence area; and
- Pop = the population of the licence area, to be determined by the ACMA at the time the ACMA determines the spectrum access charges under subsection 294(1) of the Act having regard to the available population data at that time.

Consultation

The Ministerial Direction which defines the formula for fixing the spectrum access charge payable by a licensee in relation to a re-issued spectrum licence was the subject of extensive consultation with licensees and the public. As specified in the Explanatory Statement to the Ministerial Direction DBCDE provided licensees and the public with valuation reports concerning the 800 MHz and 1800 MHz band, a synopsis describing the methodology employed by Plum Consulting (which provided expert advice to DBCDE about the value of the spectrum licences) and the draft direction for their comment. As noted in the consultation section of the Explanatory Statement for the Ministerial

Direction, comments received during the consultation process were taken into consideration by the Minister in the making of the direction.

In complying with the Ministerial Direction the ACMA has employed an open and consultative approach with all licensees impacted by the Determination. All licensees were consulted in relation to the making of the Determination. The details of the calculation of the spectrum access charge for each licence were provided to the licensees who will be required to pay the spectrum access charges set out in the Determination. The ACMA sought comment about matters pertaining to the calculation of the spectrum access charges, the amounts of the spectrum access charges for each of the licences and the payment date. The comments the ACMA received were considered in the making of the Determination.

Regulation impact

In relation to the Determination the ACMA consulted with the Office of Best Practice Regulation (the OBPR) on the requirement for a Regulation Impact Statement (RIS). The OBPR advised that the Determination does not warrant the preparation of a RIS because it is likely to have only minor and machinery impacts. The reference for the OBPR's assessment is ID 14048.

Detailed description of the Determination

Details of the Determination are set out in **Attachment A**.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is **Attachment B**.

ATTACHMENT A

DETAILS OF THE RADIOCOMMUNICATIONS (SPECTRUM ACCESS CHARGES – 1800 MHz BAND) DETERMINATION 2012 (No.1)

Section 1 – Name of Determination

This section provides that the Determination is to be cited as the *Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 1)*.

Section 2 - Commencement

This section states that the Determination will commence on the day after it is registered.

Section 3 – Definitions

This section defines the terms used in the Determination.

Section 4 - Population of a licence area for a spectrum licence

This section provides population estimates for a spectrum licence in each licence area.

Population data from the most recently conducted Census for which data have been released by the Australian Bureau of Statistics (ABS) (August 2011) are overlaid with the boundaries of each licence area to derive an estimated population count in each licence area at the time of the Census. Estimates of the population in each licence area are based on aggregating the total population count in each Census Statistical Area Level 1 (the smallest available geographic area) that is part of the relevant licence area. This derives an estimated population count for each licence area consistent with the population count and dispersion enumerated in Census 2011¹.

The Ministerial Direction requires the ACMA to apply population estimates for each licence area at the time the Determination is made. To comply with the Ministerial Direction the ACMA has considered how population numbers have grown across the intervening period (i.e. between the most recent available Census and a time proximate to the making of the Determination).

Estimates of resident population at the national level are published by the ABS on a quarterly basis. At the time of consulting with the licensees about the proposed spectrum access charges and preparing the Determination for the ACMA's Authority to consider, the available national estimate of resident population related to March 2012.² Given the quarterly release cycle of updated population estimates from the ABS, the ACMA has applied a population forecast as at the end of the most recent complete quarter – that is, a population forecast as at September 2012 has been applied. The forecast is also based on calendar year end population forecasts published in the Commonwealth Budget released in May 2012³.

¹ Australian Bureau of Statistics, *Census 2011, Basic Community, Aboriginal and Torres Strait Islander Peoples (Indigenous) and Time Series Profiles* (catalogue number 2069.0.30.008)

² Australian Bureau of Statistics, *Australian Demographic Statistics, March 2012*, catalogue 3101.0, released 27 September 2012.

³ Budget Paper No 3, *Australia's Federal Relations 2012-13*; 8 May 2012, page 141

The ratio of the projected national resident population at September 2012 to the Census 2011 national population count of 21,507,713 provides an indicator of how population has grown across the intervening period (i.e. between the most recent available Census and a time proximate to the date of the Determination). This ratio is then applied to the estimate of population in each licence area at August 2011 to derive an estimate of population in each licence area as at September 2012. An example of the population calculation for a licence area is provided in the following table:

Population metric	National		Licence Area
Census 2011 population count in Licence Area <i>Source: ABS Census 2011 and ACMA GIS analysis</i>			6,109,358 A
Census 2011 national population count <i>Source: ABS Census 2011</i>	21,507,713		B
ABS estimate of national population (March 2012) <i>Source: ABS, Australian Demographic Statistics, 3101.0</i>	22,596,482		C
Annual population growth rate applied in short-term <i>Source: Commonwealth Treasury, Budget Paper No 3, 2012-13</i>	1.46258%		D
Extrapolated estimate of national population at September 2012 <i>Source: ACMA analysis</i>	22,761,128	$E = C * (1 + D)^{0.5}$	
Ratio of estimated national population at September 2012 to Census 2011 national count <i>Source: ACMA analysis</i>	1.05828x	$F = E / B$	1.05828x
Estimated population in Licence Area at September 2012 <i>Source: ACMA analysis</i>			6,465,396 G = A * F

Section 5 - Spectrum access charges payable by Telstra Corporation Limited

This section provides the amount of spectrum access charge payable by Telstra Corporation Limited for the re-issue of each spectrum licence and the relevant spectrum licence details. The note used in section 5 clarifies that the amount payable is compliant with the Ministerial Direction and is calculated by multiplying the unit value of the spectrum in relation to the 1800 MHz band (being \$0.23) by the population of the licence area for the spectrum licence (as determined in accordance with section 4) by the bandwidth authorised for use in the licence area. The bandwidth applied in the calculation of spectrum access charges in the Determination is based on information obtained from the *Register of Radiocommunications Licences* accessible [from the ACMA website](#).

Section 6 - Spectrum access charges payable by Vodafone Australia Pty Limited

This section provides the amount of spectrum access charge payable by Vodafone Australia Pty Limited for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence.

Section 7 - Spectrum access charges payable by Singtel Optus Pty Limited

This section provides the amount of spectrum access charge payable by Singtel Optus Pty Limited for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence

Section 8 - Spectrum access charges payable by Rail Corporation New South Wales

This section provides the amount of spectrum access charge payable by Rail Corporation New South Wales for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence

Section 9 - Spectrum access charges payable by Victorian Rail Track

This section provides the amount of spectrum access charge payable by Victorian Rail Track for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence.

Section 10 - Spectrum access charges payable by Queensland Rail Limited

This section provides the amount of spectrum access charge payable by Queensland Rail Limited for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence.

Section 11 - Spectrum access charges payable by Department of Planning, Transport and Infrastructure (South Australia)

This section provides the amount of spectrum access charge payable by the Department of Planning, Transport and Infrastructure (South Australia) on behalf of the State of South Australia for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence.

Section 12 - Spectrum access charges payable by Public Transport Authority of Western Australia

This section provides the amount of spectrum access charge payable by the Public Transport Authority of Western Australia for the re-issue of each spectrum licence. Similar calculations as those set out in section 5 are applied for each licence.

Section 13 – When spectrum access charge is payable

This section provides the date that payment is required for spectrum access charges. The ACMA has determined that full payment of the spectrum access charge for each licence to be re-issued is to be made on or before 5 June 2013.

Section 14 – Expiry

This section provides that the Determination ceases to have effect at the end of 17 June 2013 when the current licences expire.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Spectrum Access Charges – 1800 MHz Band)

Determination 2012 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Subsection 82(1) of the *Radiocommunications Act 1992* (the Act) provides for the Australian Communications and Media Authority (the ACMA) to re-issue a spectrum licence to the person to whom it was previously issued if the licence was used in the provision of a service included in a class of services specified in a determination made under subsection 82(3) of the Act; or the ACMA is satisfied that special circumstances exist as a result of which it is in the public interest for that person to continue to hold the licence.

Subsection 82(3) of the Act provides for the Minister to determine, by written instrument, a specified class of services for which re-issuing spectrum licences to the same licensees would be in the public interest.

Subsection 294(1) of the Act empowers the ACMA to make determinations to fix spectrum access charges payable by licensees for re-issuing spectrum licenses and specify the times when spectrum access charges are payable. Subsection 294(2) of the Act allows the Minister to give written directions to the ACMA about the matters dealt with in determinations.

The *Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 1)* (the Determination) fixes spectrum access charges payable by licensees for the re-issue of certain expiring spectrum licences in the 1800 MHz band.

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

Human Rights Implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.