



Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2015

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 106(1) of the *Radiocommunications Act 1992*.

Dated 4th September 2015

Chris Chapman
[signed]
Member

Richard Bean
[signed]
Member / ~~General Manager~~

Australian Communications and Media Authority

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Part 1 Preliminary

1.1 Name of Determination

This Determination is the *Radiocommunications (Allocation of Transmitter Licences - Low Power Open Narrowcasting Licences) Determination 2015*.

1.2 Commencement

This Determination commences on the day after it is registered.

Note All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.

1.3 Purpose

This Determination sets out a price-based allocation system for allocating lots that entitle a person to apply for a transmitter licence for the provision of an LPON service.

1.4 Application of Determination

The ACMA may allocate lots and issue transmitter licences only in accordance with the price-based allocation system set out in this Determination.

1.5 Definitions

(1) In this Determination:

ACMA means the Australian Communications and Media Authority.

application form means the document approved by the ACMA under paragraph 2.4 (a).

auction deposit, for a lot, means the amount payable by an applicant set by the ACMA under paragraph 2.2 (d).

auctioneer means the person appointed as auctioneer under section 4.3.

balance of the bid price, for a lot, means the highest bid made by the successful applicant in an auction under Part 4, less the total of the auction deposit.

bank transfer, for a payment, means making the payment by electronic transfer or by the real time gross settlement electronic payment system operated by the Reserve Bank of Australia.

bid price, for a lot, means the amount bid by or on behalf of the successful applicant in an auction under Part 4.

business day means any day that is not a Saturday or Sunday or public holiday in the Australian Capital Territory.

cheque means a cheque — either personal or issued by a bank licensed to operate in Australia.

closing date means the date and time advertised in the notice published by the ACMA under paragraph 2.1 (1) (c) as the date and time by which a person may give the ACMA an application form.

company has the same meaning as in the *Corporations Act 2001*.

Deed of Acknowledgment means the document approved by the ACMA under paragraph 2.4 (b).

entry fee, for an application for a lot, means the entry fee payable by an applicant set by the ACMA under paragraph 2.2 (a).

Form of Authority means the document approved by the ACMA under paragraph 2.4 (c).

lot means the right to be allocated a transmitter licence authorising the operation of a transmitter on the frequency and from the site nominated by an applicant, in accordance with this Determination.

LPON Applicant Information Package has the meaning given by section 2.3.

LPON service means a low power open narrowcasting service as defined in the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* as in force from time to time, or by any legislative instrument that replaces that Determination, as in force from time to time.

registered applicant means an applicant who is registered under section 3.4.

registered bidder means an individual who is registered under section 4.10.

registrable body has the same meaning as in the *Corporations Act 2001*.

registration documents means the documents set out in subsection 3.1 (2).

reserve price means the price set for a lot by the ACMA under paragraph 2.2 (c).

successful applicant has the meaning given by subsection 4.11 (6) or subsection 5.2 (1), as the case may be.

the Act means the *Radiocommunications Act 1992*.

the planning model means the ACMA published model on the operation of LPON services, available at the ACMA website: <http://www.acma.gov.au/>, as in force from time to time.

transmitter licence means an apparatus licence that authorises the operation of an LPON service in an area that the ACMA has decided is consistent with the planning model under section 3.6.

verified telephone bidder means a registered applicant whose identity has been verified under subsection 4.8 (3).

- (2) Unless the contrary intention appears, an expression used in this Determination and in the *Radiocommunications (Interpretation) Determination 2015*, or in the *Radiocommunications Regulations 1993*, has the same meaning in this Determination as in those instruments.
- (3) Headings and notes used in this Determination do not form part of the Determination.

1.6 Revocation of previous Determination

The *Radiocommunications (Broadcasting (Low Power Open Narrowcasting) Transmitter Licence — Allocation) Determination 2001* (Federal Register of Legislative Instruments No. F2005B00309) is revoked.

Part 2 Preparing for the allocation

2.1 Publication of notice by the ACMA

- (1) Before holding an allocation, the ACMA must publish a notice in any way that the ACMA deems appropriate:
 - (a) containing an invitation to apply for potential transmitter licences for LPON services to be determined under the planning model;
 - (b) giving a brief description of the way the allocation will be conducted;
 - (c) stating the closing date and time for applications;
 - (d) stating that the lots will be determined and allocated in accordance with this Determination;
 - (e) stating that an applicant may bid only on a lot that has been nominated by that applicant in response to the invitation and determined under the planning model; and
 - (f) stating that further information (the LPON Applicant Information Package) can be obtained from the ACMA at the address given in the notice.
- (2) If there is a change in a matter mentioned in the notice, the ACMA must publish another notice giving details of the change in any way that the ACMA deems appropriate.
- (3) The ACMA may also publish other information about allocations in any way that the ACMA deems appropriate.

2.2 Entry fee, closing date, reserve price and auction deposit amount

Before the ACMA publishes a notice pursuant to subsection 2.1 (1) the ACMA must, in writing, set:

- (a) the amount of the entry fee in respect of an application for a lot;
- (b) the closing date and time for applications;
- (c) the reserve price for each lot; and
- (d) the amount of the auction deposit for each lot.

2.3 LPON Applicant Information Package

- (1) The LPON Applicant Information Package must contain the following information and documents:
 - (a) a guide to the allocation system;
 - (b) this Determination;
 - (c) the application form, with instructions for completing and lodging the form;
 - (d) the Deed of Acknowledgment;
 - (e) the Form of Authority;

- (f) the amount of the entry fee set by the ACMA under paragraph 2.2 (a);
 - (g) the closing date and time set by the ACMA under paragraph 2.2 (b);
 - (h) the reserve price amounts set by the ACMA under paragraph 2.2 (c);
 - (i) the auction deposit amounts set by the ACMA under paragraph 2.2 (d);
and
 - (j) the address of the auction centre.
- (2) The LPON Applicant Information Package may also contain other information about the allocation.

2.4 Approval of forms and documents

The ACMA must, in writing, approve the following documents:

- (a) an application form for paragraph 3.1 (2) (a);
- (b) a Deed of Acknowledgment for paragraph 3.1 (2) (b); and
- (c) a Form of Authority for paragraph 4.5 (1) (b).

2.5 Payment of monies due to the ACMA

- (1) All payments to the ACMA, on behalf of the Commonwealth, must be made in Australian currency.
- (2) Monies due to the ACMA, on behalf of the Commonwealth, for the following purposes must be paid by the date required by this Determination and in accordance with this Determination:
- (a) the entry fee;
 - (b) the auction deposit; and
 - (c) the balance of the bid price.
- (3) Monies due to the ACMA, on behalf of the Commonwealth, for any of the purposes set out in subsection (2) must be paid:
- (a) by cheque; or
 - (b) by bank transfer.
- (4) If a payment is required to be made by a specific date, it is sufficient if, by that date, either:
- (a) the applicant gives the ACMA, on behalf of the Commonwealth, a cheque for the amount of the payment; or
 - (b) if paying by bank transfer, the applicant:
 - (i) does everything necessary to make the payment; and
 - (ii) gives the ACMA evidence that the payment has been made.
- (5) A payment by bank transfer must be paid into the following bank account:
- (a) Bank — Australia and New Zealand Banking Group Limited;
 - (b) Branch — Belconnen, Australian Capital Territory;
 - (c) BSB number — 012-951;
 - (d) Account number — 837924272;
 - (e) Account name — ACMA Official Administered Receipts Account.
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- (6) Subject to paragraph 2.5 (4) (b) the payment must be received in the bank account mentioned in subsection (5) on or before the required date. If it is not, the person's application ceases to have effect and the person is not entitled to take part in the allocation or to obtain a transmitter licence.
- (7) The applicant must pay all bank charges and Government duties imposed on a payment, and a payment will not be regarded as having been made unless the full amount net of those charges is received by the ACMA on behalf of the Commonwealth.

Part 3 Registering for an allocation

3.1 Applications

- (1) A person who wants to register for a lot to obtain a transmitter licence must pay an entry fee in respect of each application for a lot comprising the licence sought by that person.
- (2) The person must give the ACMA the following documents (the *registration documents*) in respect of each transmitter licence sought by that person:
 - (a) a completed application form; and
 - (b) a completed Deed of Acknowledgment.
- (3) An entry fee for each application for a lot must accompany the registration documents and be paid in accordance with section 2.5.

Note In accordance with section 2.5, the payments may be paid by cheque or bank transfer. If the payment is not in the ACMA's account on or before the required date, the application ceases to have effect, subject to subsection 2.5(4).

- (4) The application form must specify the transmitter site and frequency nominated by the applicant for a transmitter licence.

3.2 Lodging of applications

- (1) The registration documents must be lodged with the ACMA on or before the closing date.
- (2) As soon as practicable after receiving the registration documents, the ACMA must confirm receipt in writing, noting particulars of the applicant's:
 - (a) name;
 - (b) address; and
 - (c) if the applicant is a company or a registrable body — the applicant's ABN or ARBN.

3.3 Register of applicants

- (1) The ACMA must maintain a register of applicants.
- (2) The register may be in electronic form.
- (3) For each applicant, the register must contain details of:
 - (a) the name and address of the applicant; and
 - (b) the applicant's telephone and fax numbers; and
 - (c) if the applicant is a company or a registrable body — the applicant's ABN or ARBN; and
 - (d) the proposed LPON service transmitter site and frequency nominated by the applicant.

- (4) The register may also contain any other information that the ACMA considers necessary for the running of the allocation.
- (5) The ACMA must make the changes to the register that the ACMA considers necessary or convenient as soon as practicable after:
 - (a) an applicant tells the ACMA of any change of name, address, or telephone or fax numbers; or
 - (b) the ACMA becomes aware that any information on the register is not correct.
- (6) Except as authorised by this Determination, or as otherwise authorised by law, the ACMA must ensure that any details about applicants are not disclosed until the allocation is finalised.
- (7) No later than 5 business days before the start of an auction under Part 4 the ACMA may in any manner it considers appropriate publish the name of each registered applicant and the lots for which they are eligible to bid.

3.4 Registration of applicants

- (1) The ACMA must register an applicant only if:
 - (a) the applicant has lodged completed registration documents; and
 - (b) paid the entry fee(s) in accordance with subsection 3.1 (3) and section 2.5.
- (2) Within 5 business days after the closing date, the ACMA must, in writing, tell each registered applicant that the applicant has been registered.

3.5 Initial assessment of potential transmitter licence for LPON service

Within 20 business days after the closing date, the ACMA must consider each proposed transmitter site and frequency nominated by an applicant and decide whether the proposed site and frequency is consistent with the planning model as if each applicant were the only applicant for that site and frequency.

3.6 Determination of lots

- (1) Where the ACMA decides that an application is consistent with the planning model, it will assign a lot number in relation to that application.
- (2) Where two or more applicants nominate transmitter sites that are within the minimum separation distances specified in the planning model, and the applications are for the same frequency, the ACMA will assign all such applications the same lot number.

Part 4 Allocation where there is more than one applicant for the lot

4.1 Application of Part 4

This Part applies if there is more than one applicant for a particular lot.

4.2 Holding an auction

The ACMA must hold an auction for allocation of the lot(s) in accordance with this Determination.

4.3 Appointment of auctioneer

The ACMA must appoint a person as auctioneer to conduct the auction.

4.4 Eligibility of applicants to participate in an auction for a lot

A registered applicant is eligible to participate in an auction only for a lot that includes the proposed transmitter site and frequency details nominated by that applicant in the applicant's registration documents.

4.5 Notice to registered applicant

- (1) Within 25 business days after the closing date, the ACMA must give each registered applicant who is eligible to participate in an auction for a particular lot:
 - (a) a notice setting out:
 - (i) that there is more than one registered applicant eligible to participate in the auction for the lot and the number of applicants for the lot;
 - (ii) that the ACMA will conduct an auction in relation to that lot;
 - (iii) the starting time and date and place of the auction;
 - (iv) the auction deposit amount for that lot; and
 - (v) the date by which the auction deposit for the lot must be paid and by which the Form(s) of Authority must be lodged; and
 - (b) a Form of Authority to be completed for each person authorised by the applicant to bid at the auction.
- (2) The ACMA:
 - (a) subject to subsection (3), may change the details of information mentioned in subparagraphs 4.5 (1) (a) (i) and (iii); and
 - (b) must tell all affected applicants of the change, in writing, as soon as practicable after making the change.
- (3) The ACMA must not change the starting date of the auction to an earlier date.

- (4) If an auction deposit is not paid by a registered applicant by the date set out in the notice in subparagraph 4.5 (1) (a) (v), the application for that lot will be taken to be withdrawn.

4.6 Payment of auction deposit

- (1) Registered applicants intending to bid at auction must pay an auction deposit for each lot they are eligible to bid for and that they intend to bid on.
- (2) The auction deposit will be determined under paragraph 2.2 (d) and must be paid in accordance with section 2.5 by the date specified by the ACMA under subparagraph 4.5 (1) (a) (v).
- (3) An auction deposit will be fully refundable if the applicant withdraws prior to the commencement of the auction or if the applicant is not a successful bidder in respect of a particular lot.
- (4) An auction deposit is forfeited if the applicant defaults in respect of the applicant's obligations under section 6.3.
- (5) Only registered applicants who have paid an auction deposit for a particular lot will be eligible to bid on that lot.

4.7 Confirmation of registration for auction

Within 15 business days before the commencement of the auction the ACMA will confirm in a notice to each registered applicant:

- (a) the applicant's payment of the auction deposit for each lot;
- (b) each person (if any) in respect of whom a Form of Authority has been lodged by that applicant;
- (c) each lot that the applicant is eligible to bid for; and
- (d) whether the ACMA will allow telephone bidding at the auction.

4.8 Telephone bidding

- (1) The ACMA may allow bidding at an auction to be conducted by telephone.
- (2) Registered applicants who wish to bid by telephone must advise the ACMA in writing no later than 5 business days before the commencement of the auction.
- (3) Where telephone bidding has been allowed, the ACMA will issue to each registered applicant who wishes to bid in such a manner a password and a 4 digit identification number which the applicant must provide to the ACMA immediately prior to the commencement of the auction to verify the applicant's identity (*verified telephone bidder*).

4.9 Lodgement of another Form of Authority

- (1) This section applies if:
 - (a) a registered applicant wishes to have an individual represent the applicant at an auction other than by telephone; and
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- (b) the individual is not a person for whom the applicant has given the ACMA a Form of Authority under paragraph 4.5 (1) (b).
- (2) The applicant must give the ACMA a duly completed Form of Authority for the individual no later than two hours before the starting time of the auction together with confirmation that the individual for whom a Form of Authority had previously been given is no longer authorised to bid on behalf of that applicant if that is the case.

4.10 Bidder identification as registered bidder

- (1) A registered applicant, or any person in respect of whom a Form of Authority has been lodged by a registered applicant, who wishes to bid at the auction in person must register as a bidder (a *registered bidder*) and must present to the ACMA no later than one hour before the commencement of the auction evidence of the individual's identity.
- (2) For the purposes of subsection (1), an Australian Drivers Licence or a passport will be sufficient evidence of that person's identity.
- (3) On registering an individual as a bidder, the ACMA must give each registered bidder a bidder's paddle.

4.11 Bidding in an auction

- (1) Only a registered bidder or a verified telephone bidder may bid for a lot.
- (2) A registered bidder may only bid for a lot:
 - (a) where the registered bidder is the registered applicant; or
 - (b) where the registered applicant has provided the ACMA with a Form of Authority for the registered bidder under paragraph 4.5 (1) (b) or subsection 4.9 (2);
 - (c) and the lot is nominated by the registered applicant in the registration documents and for which an auction deposit has been paid.
- (3) A verified telephone bidder may only bid for a lot nominated by the registered applicant in the registration documents and for which an auction deposit has been paid.
- (4) The auctioneer will:
 - (a) invite bids for the lot; and
 - (b) identify the registered bidder or verified telephone bidder who makes the highest bid for the lot.
- (5) In the event of a disputed bid:
 - (a) the auctioneer is the sole arbiter; and
 - (b) the auctioneer's decision is final.
- (6) If the highest bid made for a lot is at least equal to the reserve price for the lot, the registered applicant by or for whom the highest bid is made is the successful applicant (the *successful applicant*) for the lot.

4.12 Identification and verification to the ACMA

Immediately after a registered applicant is identified as the successful applicant:

- (a) if the successful applicant is a registered bidder — the successful applicant must meet with the ACMA to identify himself or herself to the ACMA; or
- (b) if the successful applicant is a verified telephone bidder — the successful applicant must verify the successful bidder's identification by telephone to the ACMA as being that of the successful applicant; or
- (c) if the successful applicant is not a registered bidder — a registered bidder who has a Form of Authority from the successful applicant must meet with the ACMA to identify himself or herself to the ACMA.

4.13 Close of auction

- (1) The auction in relation to a particular lot is closed after the successful applicant has been identified or verified to the ACMA.
- (2) The ACMA will notify each successful applicant for each lot, by receipted mail, of the balance of the bid price.
- (3) A successful applicant must pay the balance of the bid price within 10 business days after the date of the notice in accordance with section 2.5.

4.14 Lot offered at auction but not allocated

- (1) Subject to subsection 4.14 (2) if a lot is not allocated at the auction, applications for that lot cease to have effect.
- (2) If a successful applicant is in default of its financial obligations to the ACMA and the lot is treated as unallocated pursuant to paragraph 6.3 (1) (d), the ACMA may, with the consent of an unsuccessful applicant, treat the registration documents lodged by an unsuccessful applicant in relation to that particular lot as valid registration documents in any future allocation for that lot under this Determination.

4.15 Refund of auction deposit to unsuccessful applicant(s)

The ACMA must refund the auction deposit(s) to all unsuccessful applicants for a lot as soon as practicable after an auction.

Part 5 Allocation of a lot if there is only one applicant

5.1 Application of Part 5

This Part applies if there is only one applicant for a particular lot.

5.2 Notice to registered applicant

- (1) Within 25 business days after the closing date, the ACMA must give the registered applicant for the particular lot a notice, by receipted mail, setting out:
 - (a) that the applicant is the successful applicant (the *successful applicant*); and
 - (b) the amount of the reserve price for the lot.
- (2) Within 10 business days after the date of the notice the successful applicant must either:
 - (a) pay the reserve price for the lot in accordance with section 2.5; or
 - (b) advise the ACMA in writing that the application has been withdrawn.

5.3 Default by successful applicant

If the successful applicant fails to comply with paragraph 5.2 (2) (a), the application ceases to have effect and the applicant is not entitled to obtain a transmitter licence in relation to that particular lot.

Part 6 Issue of a licence to a successful applicant

6.1 Form of licence

- (1) The transmitter licence must be substantially in accordance with the sample transmitter licence in Schedule 1.
- (2) The transmitter licence comes into force on the day specified in the licence as the day it comes into force.
- (3) The transmitter licence remains in force for the period specified in the licence, starting on the day specified in the licence as the day it comes into force.

Note This is a period of up to of 5 years — see section 103 of the Act.

6.2 Issue of licence to successful applicant

- (1) Subject to subsection (2) the successful applicant shall be issued a transmitter licence if the successful applicant:
 - (a) pays the balance of the bid price for the lot in accordance with subsection 4.13 (3) or pays the reserve price in accordance with paragraph 5.2 (2) (a), as the case may be, and in accordance with section 2.5; and
 - (b) applies for the licence under section 99 of the Act within 10 business days after the date of a notice issued to the successful applicant pursuant to subsection 4.13 (2) or subsection 5.2 (1), as the case may be; and
 - (c) pays the transmitter licence tax under the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

Note In issuing the licence, the ACMA must comply with Part 3.3 of the Act.

- (2) If the ACMA has terminated an advertised allocation under this Determination all successful applicants shall cease to be entitled to be issued a transmitter licence.

6.3 Liability for failure to comply with auction payment requirements

- (1) If a successful applicant does not pay the balance of the bid price, in accordance with this Determination:
 - (a) the applicant ceases to be entitled to be allocated the lot and the transmitter licence in relation to the lot;
 - (b) the auction deposit is forfeited; and
 - (c) the applicant is taken to be in default of its financial obligations to the ACMA, on behalf of the Commonwealth, under this Determination and is liable to pay to the ACMA, on behalf of the Commonwealth, the default amount which shall be 10 percent of the bid price; and

- (d) the lot may be treated as an unallocated lot under section 4.14.
- (2) The total of the default amount payable to the ACMA, on behalf of the Commonwealth, under this section:
 - (a) is a debt due to the ACMA, on behalf of the Commonwealth; and
 - (b) is recoverable by the ACMA, on behalf of the Commonwealth, from the successful applicant in a court of competent jurisdiction.

Part 7 **Miscellaneous**

7.1 ACMA not liable under the allocation system

The ACMA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in this Determination.

7.2 Information provided by applicant

- (1) A document given to the ACMA by a person for the purposes of the allocation procedures set out in this Determination (including a document that contains intellectual property) becomes the property of the Commonwealth, represented by the ACMA.
- (2) Subsection (1) does not apply to a document that is given to the ACMA to establish an individual's identity.
- (3) The ACMA may use information provided by an applicant for the purposes of performing its functions or exercising its powers under this Determination.

7.3 Recovery of damages by the ACMA

This Determination does not affect any right of action or remedy that the ACMA has or may have against any person which arose or arises under the Deed of Acknowledgment, statute, common law, equity or otherwise.

7.4 Giving of information by the ACMA

Before the ACMA issues a transmitter licence, it may announce, or publish a notice of:

- (a) the name of each person to whom a licence is to be issued; and
- (b) the highest final price bid or reserve price for the lots comprising the licences.

7.5 Termination of advertised price-based allocation system

The ACMA may terminate an advertised allocation under this Determination at any time before a transmitter licence is issued if the ACMA considers it is appropriate to do so.

7.6 Refund of payments to the ACMA

If the ACMA terminates an allocation under this Determination, the ACMA must refund:

- (a) any entry fee paid by an applicant;
- (b) any reserve price paid under subsection 5.2 (2);
- (c) any auction deposit paid under section 4.6;

- (d) the balance of the bid price paid under subsection 4.13 (3).

Schedule 1 Sample transmitter licence

(subsection 6.1 (1))

Client number

Date of issue Date of effect Date of expiry

Name of Licensee
Address of Licensee

Licence Type: **Broadcasting**

Licence Number:

Callsign:

Spectrum Access:

Carrier Frequency:
Bandwidth (Chargeable) 200 kHz

STATION:

Site ID:

Site Name:

AMG Co-ordinates: Zn: E: N:

Operating Mode: Transmit
Emission Designator: 200KF8EGF

Radiation Pattern:

Start Angle Stop Angle Max ERP General Pol.

SPECIAL CONDITIONS APPLYING TO LICENCE [insert licence number]

This licence can only be used to provide a low power open narrowcasting service.

This licence is issued or renewed only for the period for which the frequency has been made available under section 34 of the *Broadcasting Services Act 1992*.

This licence can only be issued in accordance with the ‘use it or lose it’ condition contained within section 4.11 of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* as in force from time to time, or equivalent provision contained in any legislative instrument that replaces that Determination, as in force from time to time.

OTHER CONDITIONS APPLYING TO LICENCE [insert licence number]

Conditions applicable to the operation of narrowcasting service station(s) authorised under this licence can be found in the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* and the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998*. Copies of these determinations are available from www.comlaw.gov.au.