

Explanatory Statement

Radiocommunications Act 1992

Acts Interpretation Act 1901

Radiocommunications (Class of Services) Amendment (Removal of 27 GHz Band) Determination 2015

Issued by the authority of the Minister for Communications

Legislative Authority

Subsection 82(3) of the *Radiocommunications Act 1992* (Act) provides that the Minister for Communications (Minister) may determine a class of services for which reissuing spectrum licences to the same licensees would be in the public interest. Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides the Minister with the power to amend any notice made under subsection 82(3) of the Act.

Purpose

The purpose of this Notice is to amend the *Radiocommunications (Class of Services) Determination 2012* (Class of Services Determination).

The Class of Services Determination allows the ACMA to re-issue spectrum licences used to provide certain classes of services to existing licensees without following procedures determined under section 60 of the Act. Relevantly, the Class of Services Determination empowers the ACMA to re-issue spectrum licences authorising the operation of radiocommunications devices using the parts of the spectrum between 26.5 GHz and 27.5 GHz (the 27 GHz band), where those licences have been used to provide satellite services.

The ACMA is preparing to issue apparatus licences rather than spectrum licences for the 27 GHz band. The amendment of the Class of Services Determination to remove satellite services in this band will facilitate that process, ensuring that it is clear that the Minister is no longer satisfied that it is in the public interest for spectrum licences to be re-issued in the band.

Background

The Class of Services Determination was made in 2012 by the then Minister for Broadband, Communications and the Digital Economy under subsection 82(3) of the Act. This lists six classes of services in different spectrum bands where the Minister considered that it would be in the public interest for spectrum licences used to provide these services to be re-issued to the existing licensees. This allows the ACMA to re-issue relevant spectrum licences without following procedures

determined under section 60 of the Act, which the ACMA make to set market processes for the allocation of spectrum licences (e.g. by auction).

Separately, the Minister is repealing the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2000* dated 31 May 2000 (Designation Notice). The Designation Notice requires the ACMA to licence the band by issuing spectrum licences rather than apparatus licences. The Designation Notice is being repealed as the ACMA is preparing to issue apparatus licences in the 27 GHz band that will commence after current spectrum licences expire.

Spectrum licences in the 27 GHz band are currently held by XYZed LMDS Pty Ltd, IPSTAR Australia Pty Ltd and NBN Co Ltd and expire on 17 January 2016.

There is currently little demand for spectrum licences in the 27 GHz band. Reverting the 27 GHz band from wide area spectrum licencing to site-specific apparatus licensing will allow current licensees to continue to deliver services while making it possible for new services to be provided using this spectrum. That is, the spectrum may be put to more productive use in the economy.

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). As it is a solely amending instrument, it will be repealed by section 48A of the LIA on the day after it commences.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement is not required for the Determination (OBPR reference number 19151).

Statement of Compatibility with Human Rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Notice is compatible with human rights as it does not raise any human rights issues.

Consultation

The ACMA has undertaken a review of the 27 GHz band.

In August 2014, the ACMA released the discussion paper, *Review of Licensing Arrangements in the 27 GHz Band* (the Consultation Paper). The Consultation Paper reviewed the spectrum management arrangements in the 27 GHz band and put forward a preliminary view that a reversion from spectrum to apparatus licensing would be the most high value use of the bands. The purpose of the Consultation Paper was to stimulate discussion and gather information from stakeholders to assist the ACMA in determining/identify the most appropriate

licensing arrangements, which will maximise the overall public benefit and derive the highest value use from the spectrum in the future.

The Consultation Paper stated that the technical framework for spectrum licences in the 27 GHz band was optimised for Local Multipoint Distribution Services (LMDS). However, this technology has not been widely deployed either in Australia or internationally. In Australia, the 27 GHz band is currently used for satellite services. The ACMA's analysis indicates that the 27 GHz band is currently under-utilised, but demand for access to the band by a range of services, including space research, is increasing.

After the release of the Consultation Paper, the ACMA received seven submissions. These have been published on the ACMA website at www.acma.gov.au. All submissions agreed with the ACMA's view that licensing arrangements in the 27 GHz band should change from spectrum to apparatus licensing.

The ACMA separately consulted with the incumbent spectrum licence holders, seeking their views on the future of the spectrum licences. Incumbent spectrum licence holders did not oppose a reversion to apparatus licensing in the 27 GHz band provided continuity of service could be assured.

The ACMA considers the best utilisation of the 27 GHz band is to revert to apparatus licensing, following the expiry of the existing spectrum licences. International spectrum allocation suggests there is growing demand to use the 27 GHz band for fixed services and fixed satellite services. It is the ACMA's view that site-specific apparatus licensing allows for a more varied and cost-effective use of the 27 GHz band than area-wide spectrum licensing.

In accordance with subsection 36(3) of the Act, on 7 July 2015, the ACMA recommended to the former Minister that the Designation Notice be repealed. The Minister has accepted the ACMA's recommendation, and is making the *Radiocommunications (Spectrum Designation—27 GHz Band) Repeal Notice 2015* to repeal the Designation Notice.

The Minister is consequentially making this Determination to amend the Class of Services Determination to ensure that it is clear that the Minister is no longer satisfied that it is in the public interest for spectrum licences to be re-issued in the band.

The ACMA will work with incumbent spectrum licensees to enable the transition to apparatus licences in the 27 GHz band to ensure continuity of service where this is sought by current licensees.

Notes on Sections

Section 1 – Name

Section 1 provides that the name of the Notice is the *Radiocommunications (Class of Services) Amendment (Removal of 27 GHz Band) Determination 2015*.

Section 2 – Commencement

Section 2 provides that the Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Schedules

Section 3 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out by the applicable item, and all other items in a Schedule to this Determination have effect according to their terms.

Schedule 1—Amendments

Radiocommunications (Class of Services) Determination 2012

Item 1 – Section 6

Item 1 of Schedule 1 amends section 6 of the Class of Services Determination. The amendment omits satellite services provided in the 27 GHz band.

This amendment has the effect of ensuring that it is clear that the Minister is no longer satisfied that it is in the public interest for spectrum licences to be re-issued in the band. This is because apparatus licences are planned to be issued in this band rather than spectrum licences.