



Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016

*Australian Communications and Media Authority Act 2005
Radiocommunications Act 1992*

I, MITCH FIFIELD, Minister for Communications, give the following direction.

Dated 11 December 2016

MITCH FIFIELD
Minister for Communications

1 Name

This is the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

2 Commencement

- (1) Except as provided in subsection 2(2), this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.
- (2) Sections 9 and 10 commence on a single day fixed in a notifiable instrument made by the Minister for the purposes of this subsection.

3 Authority

This instrument is made under:

- (a) subsection 14(1) of the ACMA Act;
- (b) subsection 60(10) of the Radiocommunications Act; and
- (c) subsection 294(2) of the Radiocommunications Act.

4 Interpretation

- (1) In this instrument:

2x10 MHz lot means the following parts of the spectrum:

- (a) 738 MHz to 748 MHz; and
- (b) 793 MHz to 803 MHz.

2x5 MHz lot means the following parts of the spectrum:

- (a) 733 MHz to 738 MHz; and
- (b) 788 MHz to 793 MHz.

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

allocation procedures means any procedures that are determined under section 60 of the Radiocommunications Act.

associate, in relation to a person, means:

- (a) for a body corporate:
 - (i) a director or secretary of the body; or
 - (ii) a related body corporate; or

- (iii) a director or secretary of a related body corporate; or
 - (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
- (b) for an individual:
- (i) the individual's spouse; or
 - (ii) the individual's de facto partner (within the meaning of the *Acts Interpretation Act 1901*); or
 - (iii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
 - (iv) a body corporate of which the individual is a director or secretary; or
 - (v) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
- (c) in any case—any other person (other than the ACMA) who has a relevant agreement with the person that:
- (i) is for the use by a party to the agreement of spectrum licensed to either of those parties under a spectrum licence for residual 700 MHz spectrum in the designated area; or
 - (ii) relates to the acquisition of a spectrum licence for residual 700 MHz spectrum in the designated area.

carrier has the same meaning as in the *Telecommunications Act 1997*.

charges determination means a determination that is made under subsection 294(1) of the Radiocommunications Act and that either fixes spectrum access charges payable by licensees for issuing spectrum licences for residual 700 MHz spectrum in the designated area, or specifies the times when those spectrum access charges are payable, or both.

designated area means the area to which the re-allocation declaration applies, as described in subsection 4(2) of the re-allocation declaration.

marketing plan means any plan that is made under section 39A of the Radiocommunications Act in accordance with the re-allocation declaration.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

Radiocommunications Act means the *Radiocommunications Act 1992*.

radiocommunications device has the same meaning as in the Radiocommunications Act.

re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*.

related body corporate has the meaning given by the *Corporations Act 2001*.

relevant agreement means an agreement, arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights,

other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

residual 700 MHz spectrum means the following parts of the spectrum:

- (a) 733 MHz to 748 MHz; and
- (b) 788 MHz to 803 MHz.

roaming services agreement means an agreement between carriers for the principal purpose of enabling end-users of public mobile telecommunications services supplied by one carrier to use public mobile telecommunications services supplied by another carrier, in

geographic locations where the first-mentioned carrier's public mobile telecommunications services are not available.

specified group of persons means an applicant for a spectrum licence and all associates of the applicant, or any 2 or more such groups of persons that have at least 1 member in common.

spectrum licence has the same meaning as in the Radiocommunications Act.

valid expression of interest means an expression of interest for a spectrum licence which may be allocated in accordance with section 10 and which complies with section 10 and any other requirements specified by the ACMA as contemplated by section 10.

- (2) In this instrument, a reference to a part of the spectrum includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.
- (3) In this instrument, a figure expressed as \$x/MHz/pop means a unit amount to be applied in accordance with this instrument to determine the reserve price or pre-determined price for the allocation of spectrum licences, where:
 - (a) \$x = an amount of Australian dollars;
 - (b) MHz = the bandwidth of the part of the spectrum to be specified in a spectrum licence in which operation of radiocommunications devices is authorised; and
 - (c) pop = 22,872,578.

5 Repeal of prior instruments

The following instruments are repealed:

- (a) *Radiocommunications (Spectrum Licence Limits) Direction No. 1 of 2012*; and
- (b) *Radiocommunications (Spectrum Access Charges – 700 MHz Band) Direction No. 1 of 2013*.

6 Direction—allocation limits

- (1) This direction is given to the ACMA under subsection 60(10) of the Radiocommunications Act.
- (2) I direct the ACMA to determine allocation procedures that impose limits on the aggregate of the parts of the spectrum that may be used as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Radiocommunications Act, in accordance with subsection 6(3).
- (3) The limits must:
 - (a) apply to the allocation of spectrum licences for residual 700 MHz spectrum in the designated area; and
 - (b) apply in relation to the entire 700 MHz band, being the following parts of the spectrum, in the designated area:
 - (i) 703 MHz to 748 MHz; and
 - (ii) 758 MHz to 803 MHz; and
 - (c) ensure that no person or specified group of persons may use more than 20 MHz of either part of the spectrum described in paragraph 6(3)(b) in the designated area.

7 Direction—spectrum access charges payable by instalments

- (1) This direction is given to the ACMA under subsection 294(2) of the Radiocommunications Act.

Payment by instalments

- (2) I direct the ACMA that persons be permitted to pay spectrum access charges fixed by it in a charges determination relating to spectrum licences for residual 700 MHz spectrum allocated and issued in accordance with this instrument in instalments, if the instalments meet the conditions set out in subsections 7(3) to 7(6). Nothing in this instrument otherwise limits the ACMA's power to make a charges determination, where the exercise of the power is consistent with the relevant parts of the instrument.

Conditions for payment by instalments

- (3) The first instalment payment must be payable at least 2 months before the commencement of the spectrum licence.
- (4) The present value of the total spectrum access charges fixed for issuing a spectrum licence must be the same (when rounded to the nearest \$1,000) as the amount determined in accordance with the allocation procedures, after adding together the present value of each instalment calculated in accordance with subsection 7(5).
- (5) The present value of the first instalment payment must be calculated as being the same as the amount of that payment. The present value of any subsequent instalment payment must be calculated as being the amount of that instalment payment reduced at the rate of 5% per annum for the period from the date that instalment payment is payable to the date the first instalment payment is payable.
- (6) If a spectrum licence is allocated in accordance with an allocation process conducted by the ACMA in accordance with the direction in section 8, the spectrum access charges must be payable in no more than three consecutive annual instalments.

Example: Spectrum access charges may be payable on 1 January 2018, 1 January 2019 and 1 January 2020.

8 Direction—primary allocation process

- (1) This direction is given to the ACMA under subsection 14(1) of the ACMA Act.

Direction

- (2) I direct the ACMA to take such action as it considers necessary or convenient to allocate and issue spectrum licences, authorising the operation of radiocommunications devices in residual 700 MHz spectrum in the designated area, in a manner that is consistent with the requirements of this instrument.

Allocation instruments

- (3) In giving effect to this direction, the ACMA must, as it considers necessary or convenient, make or amend a marketing plan and determine allocation procedures that are consistent with the requirements of this instrument. Nothing in this instrument otherwise limits the ACMA's power to make or amend a marketing plan, or determine allocation procedures, where the exercise of the power is consistent with the relevant parts of the instrument.

Examples: The ACMA may charge an application fee or require financial security be given prior to the allocation of a licence.

Lot configuration and order of allocation

- (4) Spectrum licences allocated in accordance with this section must be offered as two products sequentially (and not concurrently) in the following order:
- (a) first product—2x10 MHz lot;
 - (b) second product—2x5 MHz lot.

Method of allocation

- (5) Subject to subsection 8(6), spectrum licences allocated in accordance with this section must be allocated by way of auction.

Alternative method of allocation

- (6) If the ACMA considers that it can identify a person willing to make the highest value payment for the allocation a spectrum licence that may be allocated in accordance with this section, then the licence may instead be allocated for a pre-determined price that is calculated as specified in subsection 8(8).

Duration of licences

- (7) Spectrum licences allocated in accordance with this section must be issued to come into force on 1 April 2018 and expire on 31 December 2029.

Reserve price

- (8) The reserve price for an auction, or the pre-determined price (if not allocated by way of auction), for each spectrum licence allocated in accordance with this section must be \$1.25/MHz/pop (rounded to the nearest \$1,000).

Payment of spectrum access charges by instalments – amounts secured by guarantee

- (9) If the ACMA requires a person paying spectrum access charges by instalments for a spectrum licence allocated in accordance with this instrument to provide a bank guarantee, the following conditions apply:
- (a) the bank guarantee is only required to be provided for the period during which any spectrum access charges remain owing by that person; and
 - (b) the maximum amount that may be claimed by the Commonwealth under the bank guarantee must not at any time exceed 5% of the amount of the spectrum access charges owing to the Commonwealth at that time.

9 Repeal of provisions of this instrument

The following provisions of this instrument are repealed:

- (a) section 6; and
- (b) section 8.

10 Direction—secondary allocation process

- (1) This direction is given to the ACMA under subsection 14(1) of the ACMA Act.

Direction

- (2) I direct the ACMA to take such action as it considers necessary or convenient to allocate and issue spectrum licences, authorising the operation of radiocommunications devices in any part of residual 700 MHz spectrum in the designated area for which a spectrum

Section 10

licence has not been allocated as at the commencement of sections 9 and 10 of this instrument, in a manner that is consistent with the requirements of this instrument.

Allocation instruments

- (3) In giving effect to this direction, the ACMA must, as it considers necessary or convenient, make or amend a marketing plan and determine allocation procedures that are consistent with the requirements of this instrument. Nothing in this instrument otherwise limits the ACMA's power to make or amend a marketing plan, or determine allocation procedures, where the exercise of the power is consistent with the relevant parts of the instrument.

Examples: The ACMA may assess the validity of an expression of interest against determined criteria, charge an application fee or require financial security be given prior to the allocation of a licence.

Lot configuration

- (4) Spectrum licences which may be allocated in accordance with this section must, to the extent not allocated as at the commencement of sections 9 and 10, be offered as the following two products:
 - (a) first product—2x10 MHz lot;
 - (b) second product—2x5 MHz lot.

Method of allocation

- (5) Spectrum licences allocated in accordance with this section must be allocated for a pre-determined price or by way of tender.
- (6) The ACMA must publish an offer seeking expressions of interest in the conduct of a tender for the allocation of spectrum licences in accordance with this section. That offer must be published not later than 30 days after the date this section commences and must remain open, in respect of a spectrum licence covered by the offer, until the first to occur of:
 - (a) the date on which the first valid expression of interest is received by the ACMA in respect of that spectrum licence;
 - and

- (b) 6 months.
- (7) An expression of interest from a person responding to an offer for the allocation of a spectrum licence referred to in subsection 10(6) will only be valid if:
 - (a) it identifies the spectrum licence which the person wishes to be allocated, which is a spectrum licence which may be allocated in accordance with this section;
 - (b) it states the licence period which the spectrum licence is sought, which must be consistent with subsection 10(11);
 - (c) it states that the person is willing to pay, for the issue of the spectrum licence, at least the reserve price determined in accordance with subsection 10(12); and
 - (d) it otherwise complies with any requirements specified by the ACMA in the offer published in accordance with subsection 10(6).
- (8) If the ACMA receives a valid expression of interest for a spectrum licence in response to the standing offer, then the ACMA must, as soon as is practicable after receiving the first valid expression of interest, conduct a tender for the allocation of the licence which is open for a period of 30 days.
- (9) A tender conducted in accordance with subsection 10(8) must offer the relevant spectrum licence that, when issued, would have the longest licence period included in any valid expression of interest received by the ACMA for that spectrum licence. The spectrum licence is to be allocated to the person who submits a valid tender for the highest present value for the relevant spectrum licence, subject to any method determined by the ACMA for allocating that licence where two equal tenders are received.
- (10) If the ACMA does not receive a valid expression of interest for a spectrum licence in response to the offer, then the ACMA may allocate the licence for a licence period that is consistent with subsection 10(11) and a pre-determined price that is calculated as specified in subsection 10(12).

Duration of licence

- (11) A spectrum licence allocated in accordance with this section must be issued to:
- (a) come into force no later than the date which is 18 months after:
 - (i) if allocated by way of tender—the first valid expression of interest for the licence is received by the ACMA; or
 - (ii) if allocated for a pre-determined price—the request for the allocation of the licence is received by the ACMA; and
 - (b) expire no later than 31 December 2029.

Pre-determined price or reserve price

- (12) The reserve price or pre-determined price (depending on the method of allocation) for a spectrum licence allocated in accordance with this section must be:
- (a) if the licence is to be issued to commence on 1 April 2018—\$1.25/MHz/pop (rounded to the nearest \$1,000); or
 - (b) if the licence is to be issued to commence on a later date—\$1.25/MHz/pop reduced to reflect the shorter period (and rounded to the nearest \$1,000) as determined by the ACMA.

Payment of spectrum access charges by instalments – amounts secured by guarantee

- (13) If the ACMA requires a person paying spectrum access charges by instalments for a spectrum licence allocated in accordance with this instrument to provide a bank guarantee, the following conditions apply:
- (a) the bank guarantee is only required to be provided for the period during which any spectrum access charges remain owing by that person; and
 - (b) the maximum amount that may be claimed by the Commonwealth under the bank guarantee must not at any

time exceed 5% of the amount of the spectrum access charges owing to the Commonwealth at that time.