



## **Radiocommunications (Spectrum Access Charges—26 GHz Band) Direction 2020**

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I, Paul Fletcher, Minister for Communications, Cyber Safety and the Arts, give the following direction to the Australian Communications and Media Authority.

Dated 19 October 2020

Paul Fletcher  
Minister for Communications, Cyber Safety and the Arts

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## 1 Name

This instrument is the *Radiocommunications (Spectrum Access Charges—26 GHz Band) Direction 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument.	On the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under:

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

## 4 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Radiocommunications Act, including the following:

- (a) ACMA
- (b) spectrum; and
- (c) spectrum licence.

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In this instrument:

**26 GHz band** means the part of the spectrum including all frequencies greater than 25.1 GHz up to and including 27.5 GHz.

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

**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 relevant spectrum licences, or specifies the times when those spectrum access charges are payable, or both.

**Radiocommunications Act** means the *Radiocommunications Act 1992*.

**re-allocation declaration** means the *Radiocommunications (Spectrum Re-allocation—26GHz Band) Declaration 2019*.

**relevant spectrum access charge** means a spectrum access charge payable by licensees for issuing relevant spectrum licences.

**relevant spectrum licence** means a spectrum licence the allocation of which is enabled by the re-allocation declaration.

**upfront payment amount** means the amount payable as the relevant spectrum access charge if the person by whom the charge is payable elects to pay the full amount of the charge prior to the issue of the licence.

## 5 Direction—spectrum access charge payable in 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, in making a charges determination that fixes a relevant spectrum access charge, to permit payment of that charge

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in instalments, subject to the terms set out in subsections (3) to (6) and so long as the precondition set out in section 6 is met.

Note: Paragraph 294(1)(b) of the Radiocommunications Act provides that the ACMA may, by written instrument, make determinations specifying the times when spectrum access charges are payable.

*Terms for payment by instalments*

- (3) If a person elects to pay a relevant spectrum access charge in instalments:
- (a) the full amount of the charge must be payable in five instalments;
  - (b) each instalment must equal 20.32% of the upfront payment amount; and
  - (c) each instalment must be payable in accordance with the timeframes set out in subsections (4) to (6).
- (4) The first instalment must be payable prior to the issue of the licence.
- (5) The second instalment must be payable by:
- (a) if the licence comes into force on the day on which it is issued—the day which is 12 months from that day; or
  - (b) if the licence comes into force later than the day on which it is issued—a day which is no earlier than 12 months from the day the licence is issued but no later than 12 months from the day the licence comes into force.
- (6) Each of the third, fourth and fifth instalments must be payable by:
- (a) for the third instalment—the first anniversary of the day by which the second instalment is payable;
  - (b) for the fourth instalment—the second anniversary of the day by which the second instalment is payable;
  - (c) for the fifth instalment—the third anniversary of the day by which the second instalment is payable.

Example 1: For a relevant spectrum licence proposed to be issued and to come into force on 1 August 2021, and for which the upfront payment amount is \$1,000,000, the instalments would be the following

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amounts payable by the following times, if an election to pay in instalments is made:

- (a) a first instalment of \$203,200 by 31 July 2021;
- (b) a second instalment of \$203,200 by 1 August 2022;
- (c) a third instalment of \$203,200 by 1 August 2023;
- (d) a fourth instalment of \$203,200 by 1 August 2024;
- (e) a fifth instalment of \$203,200 by 1 August 2025.

Example 2: For a relevant spectrum licence proposed to be issued on 1 August 2021 and to come into force on 1 November 2021, the date by which the second instalment must be paid must be no earlier than 1 August 2022 but no later than 1 November 2022. If the due date of payment of the second instalment is 31 October 2022, each of the third, fourth and fifth instalments must be paid by 31 October each year in 2023, 2024 and 2025 respectively.

## 6 Direction—bank guarantee for instalment payments

- (1) These directions are given to the ACMA under subsection 14(1) of the ACMA Act.

### *Payment of spectrum access charges in instalments—amounts secured by guarantee*

- (2) I direct the ACMA to require the provision of a bank guarantee at the time and on the terms set out in subsection (3) as a precondition to reaching an agreement for the payment of a relevant spectrum access charge in instalments as set out in section 5.

Note: Under subsection 62(2) of the Act, the ACMA is not required to issue a spectrum licence unless the person to whom it is allocated either pays the spectrum access charge for issuing the licence, or reaches an agreement with the ACMA for the payment of that charge.

- (3) For the purposes of subsection (2), the bank guarantee:
- (a) must be required to be provided prior to the day on which the relevant spectrum licence is issued;
  - (b) must be required to be provided by the person liable to pay the charge for, and only for, the period during which the whole or part of a relevant spectrum access charge remains owing by that person; and

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- (c) must provide security to the Commonwealth for an amount equal to 5% of the amount of the relevant spectrum access charge still owing to the Commonwealth at any point in time.

Example: If the second, third, fourth and fifth instalments total \$812,800:

- (a) prior to payment of any amount of the second instalment, the bank guarantee must provide security for an amount of \$40,640;
- (b) following payment of the second instalment amount, and prior to payment of any amount of the third instalment, the bank guarantee must provide security for an amount of \$30,480;
- (c) following payment of the third instalment amount, and prior to payment of any amount of the fourth instalment, the bank guarantee must provide security for an amount of \$20,320; and
- (d) following payment of the fourth instalment amount, and prior to payment of any amount of the fifth instalment, the bank guarantee must provide security for an amount of \$10,160.

*Licence condition to provide and maintain bank guarantee*

- (4) I direct the ACMA, in issuing a relevant spectrum licence for which the relevant spectrum access charge is to be paid in instalments as set out in section 5, to:
- (a) consider whether it thinks fit that the licence include a condition with the effect of requiring the licensee to ensure that a bank guarantee on the terms set out in paragraph 3(c) is in force at all times during the period referred to in paragraph (3)(b); and
  - (b) if the ACMA thinks fit that the licence include the condition referred to in paragraph (a)—include such a condition in that licence.

Note: Section 71 of the Act provides that the ACMA may include such other conditions (being conditions in addition to those referred to in sections 66 to 69A) as it thinks fit.

*Definition of bank guarantee*

- (5) In this section, **bank guarantee** means an irrevocable bank guarantee issued by an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) in a form that the ACMA considers appropriate.

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## **7 No limitation**

Nothing in this direction limits the ACMA's exercise of its powers or performance of its functions in a manner consistent with the terms of this direction.