

Explanatory Statement

Radiocommunications Act 1992

Radiocommunications (Spectrum Designation—3.4 GHz Band) Notice 2020

Issued by the authority of the Minister for Communications, Cyber Safety and the Arts

Purpose

The purpose of the *Radiocommunications (Spectrum Designation – 3.4 GHz Band) Notice 2020* (the Notice) is to designate the specified parts of the spectrum with respect to the specified areas to be allocated by issuing spectrum licences.

The following parts of the spectrum are designated with respect to the corresponding specified areas in the 3.4 GHz Band:

- 3400 – 3425 MHz in Adelaide, Ballarat and Bendigo, Brisbane, Canberra, Melbourne, Perth, Regional NSW, Regional Qld, Regional SA, Regional Vic, Regional WA, Remote WA, Sydney, Toowoomba.
- 3425 – 3442.5 MHz in Regional NSW, Regional Qld, Regional SA, Regional Vic, Regional WA, Remote WA.
- 3442.5 – 3475 MHz in Remote WA.
- 3492.5 – 3510 MHz in Adelaide, Ballarat and Bendigo, Brisbane, Canberra, Melbourne, Perth, Sydney, Toowoomba.
- 3510 – 3542.5 MHz in Adelaide, Ballarat and Bendigo, Brisbane, Canberra, Melbourne, Perth, Regional NSW, Regional Qld, Regional SA, Regional Vic, Regional WA, Sydney, Toowoomba.

The Notice will have the effect of requiring the Australian Communications and Media Authority (ACMA) to undertake a process in accordance with the *Radiocommunications Act 1992* (the Act) to offer spectrum licences to replace existing apparatus licences in the specified parts of the spectrum, with respect to the areas specified in the Notice.

Authority

Subsection 36(1) of the Act enables the Minister for Communications, Cyber Safety and the Arts (the Minister), after consultation with ACMA, to give to ACMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.

Subsection 36(2) of the Act provides that the Notice may be expressed to apply with respect to one or more specified areas.

Background

Current arrangements in the 3.4 GHz band limit the ability of licensees to maximise the efficiency and utility of their holdings in the band without regulatory intervention. Licensees' holdings are fragmented throughout the band with the mixture of spectrum and apparatus licensing arrangements creating various regulatory, commercial and technical barriers to defragmentation. Converting certain apparatus licences in the band to spectrum licences would remove most of these obstacles and enable licensees to take steps to use their spectrum more efficiently.

The specified parts of the 3.4 GHz band covered by the Notice encompass apparatus licences held by NBN Co Ltd (NBN Co). The making of the Notice will require ACMA to commence a process to offer spectrum licences to replace NBN Co's apparatus licences in the band.

The making of the Notice will support the object of the Act, as set out in section 3 of the Act. Establishing more uniform licensing arrangements in the 3.4 GHz band will enable more flexible and responsive spectrum management of the band and allow for licence trades or variations by NBN Co and other licensees. This will enable licensees to increase the contiguity of their holdings in the band. Following the defragmentation of spectrum licences in the band, it is expected ACMA will work with NBN Co to make underutilised spectrum in inner-metropolitan areas of NBN Co's spectrum licences available for licensing by other operators, subject to the development of appropriate interference management criteria and assessment of the utility of the spectrum. This will ultimately maximise the public benefit derived from the use of this spectrum by improving the efficiency of the allocation and use of spectrum.

The Notice would also support the communications policy objectives of the Government. Increased spectrum contiguity in the band will enable NBN Co to enhance the performance of its fixed-wireless network and support the Government's policy objective of providing fast broadband to all Australians. NBN Co's fixed-wireless network is very important to the connectivity of Australians in rural, regional and outer-urban areas. This was emphasised during the COVID-19 pandemic when many Australians became reliant on NBN Co's networks to facilitate working, learning and socialising from home. Achieving greater spectrum contiguity in its 3.4 GHz holdings will provide NBN Co greater flexibility and capacity for the development of its fixed-wireless network.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted about the making of the Notice. OBPR noted the changes arising from the Notice were considered in a certified independent review conducted by ACMA, provided to OBPR in March 2020 (Optimisation of arrangements in the 3400 – 3575 MHz Band) and that no further regulatory impact statement was required. The OBPR reference number for the Notice is 25773.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) conducted a public consultation on an exposure draft (ED) of the Notice between 23 September and 20 October 2020. The Minister considered responses to this consultation in deciding whether or not to make the Notice, and the terms on which it should be made.

The Minister consulted with ACMA prior to making the Notice in accordance with subsection 36(1) of the Act.

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*.

The Notice is made under subsection 36(1) of the Act and designates the specified parts of the 3.4 GHz Band in the specified areas for allocation by issuing spectrum licences. The Notice has been issued after consultation with ACMA and the public. NBN Co is the only licensee in the 3.4 GHz band whose licences are impacted by the notice.

The Notice 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*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

Notes on Sections

Section 1 – Name of instrument

This section provides that the name of the Notice is the *Radiocommunications (Spectrum Designation—3.4 GHz Band) Notice 2020*.

Section 2 – Commencement

This section provides that the Notice commences on the day after it is registered on the Federal Register of Legislation, which may be accessed online at www.legislation.gov.au.

Section 3 – Authority

This section provides that the notice is made under subsection 36(1) of the *Radiocommunications Act 1992*.

Section 4 – Interpretation

This section sets out a number of definitions for the purposes of the Notice. The section also notes that some terms, such as ACMA and spectrum, are defined in the *Radiocommunications Act 1992* and that a reference to a part of the spectrum includes all frequencies greater than the lower frequency, up to and including the higher frequency.

The term ‘Act’ is defined to mean the *Radiocommunications Act 1992*.

The term ‘Hierarchical Cell Identification Scheme’ or ‘HCIS’ is defined to mean the Hierarchical Cell Identification Scheme used as part of the Australian Spectrum Map Grid 2012 published by ACMA, as the document existed at the time this instrument was made.

Section 5 – Designation

Subsection 5(1) of the Notice designates the parts of the spectrum in the 3.4 GHz band specified in column 1 of items 1 to 5 of the table to be allocated by issuing spectrum licences, with respect to the corresponding areas named in column 2 of the table. The note to the subsection informs readers that the named areas in column 2 are to be ascertained in accordance with subsection 5(2).

Subsection 5(2) defines the fourteen geographical areas named in column 2 of the table in subsection 5(1) with reference to HCIS identifiers. The note to this subsection explains to readers that these HCIS identifiers can be converted into a Placemark file, viewable in Google Earth or similar applications, through a facility on ACMA’s website.