

1. What is Being Offered?

In this Chapter...

- a description of the spectrum that is being offered
- a description of the bandwidth parcels that are being offered
- a description of spectrum allocation lots being offered
- other important information about the spectrum being offered.

This part describes the spectrum being offered for allocation in the spectrum auction for 800 MHz band spectrum. This spectrum, in regional and remote areas of Australia, was not included in the ACA's auctions of 800 MHz band spectrum in May and September 1998 because of the need to preserve options for a "residual" AMPS service.

Two spectrum allocation lots will be allocated using the open outcry auction method. Each combination of band and area will be regarded as a spectrum allocation lot; that is, a lot that will be open to bidding in the auction.

Available Spectrum

The Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, has given the ACA copies of a Spectrum Re-allocation Declaration that he has made under section 153B of the *Radiocommunications Act 1992*, as a result of which the ACA must re-allocate

- **2x5 MHz from 830-835/875-880 MHz outside the five major metropolitan areas of Australia.**

The Declaration came into effect on 11 October 2000.

A copy of the Minister's declaration is at **Attachment 1**.

Allocation Areas

For the purposes of the auction, the ACA will offer one national area consisting of aggregated regional and remote areas of Australia, excluding the five major mainland State capital cities, based on market areas defined for previous allocations of spectrum licences in the 800 MHz band.

The notional population of the aggregated area is 5,716,000 based on an estimate derived from census collection data from 1991.

Spectrum Allocation Lots

The radiofrequency bands on offer are being allocated as spectrum *lots* which may be aggregated through the allocation process to form spectrum licences. The ACA will allocate the spectrum in the aggregated market area in two parcels of 2.5 MHz.

The ACA will use an English open oral outcry auction process to allocate the spectrum allocation lots. Lots are like “building blocks” of spectrum. The auction process allocates lots to the applicants who, in economic terms, value them most highly. The lots are then aggregated after the auction to form licences.

Each combination of *allocation area* and *spectrum parcel* will be regarded as a *spectrum allocation lot*. Each lot will be numbered sequentially and will have a “name” which combines the area name and the band number (e.g. “Regional Australia-1”).

Table 1 shows the availability of spectrum allocation lots by area and band.

Table 1

Lot No.	Band No.	Lot Name	Lower MHz	Upper MHz	Lower MHz	Upper MHz	Bandwidth MHz
1	1	Regional Australia-1	830	832.5	875	877.5	2x2.5
2	2	Regional Australia-2	832.5	835	877.5	880	2x2.5

Paired bands

All lots in this allocation consist of paired bands. Since this spectrum is being re-allocated primarily to promote competition in the mobile telecommunications market, it is being configured in a way that facilitates mobile telecommunications use. However, pairs could be broken or ‘subdivided’ if a licensee were able to find a buyer if a secondary market in spectrum were to develop. (For information on trading see the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 1998 – Attachment 7*). All trading is subject to the requirement that it be undertaken in terms of standard trading units (STUs) of spectrum space (see **Chapter 3 - Spectrum Licensing**).

Any person wishing to bid for spectrum in configurations that do not require the regular pairing imposed by the operating arrangements for mobile telephony would be able to bid for spectrum pairs and then seek to offer for sale any unused parts of the spectrum if any secondary market were to develop.

No “combinatorial” bidding

The ACA does not provide for “combinatorial bidding”. This means that registered applicants will not be able to bundle lots together and offer a single bid representing the amount of money they would be prepared to pay for the bundle. Applicants interested

in establishing an operation that covers more than one allocation area or more than one band should consider bidding on as many lots as they believe necessary to support their proposed operation.

Other Information about the Spectrum Being Offered

Spectrum subject to spectrum licensing

Spectrum licences will be issued to applicants who are the highest bidder on lots in this auction and who pay the bid price. Spectrum licences authorise the use of spectrum space in a particular band and over a particular area, rather than the use of specified devices.

People interested in the auction are urged to read and understand all of the provisions related to spectrum licensing set out in the *Radiocommunications Act 1992*.

An overview of spectrum licensing and how it works is provided in **Chapter 3 - Spectrum Licensing**. An overview of the technical framework applying to spectrum licences in the 800 MHz bands and applied through the section 145 Determination and section 262 Advisory Guidelines is contained in **Chapter 4 - Technical Framework**.

Applicants should, on their own responsibility, take whatever steps they consider necessary to ensure that they have access to appropriate technical or other specialist advice independent of the ACA concerning their applications, operation of radiocommunications equipment and services, or other matters relevant to the proposed licence allocation system and operation of transmitters and services under the licences. These enquiries should include, but not be limited to, engineering assessment, availability of transmission sites, environmental and health considerations and Commonwealth, State and Local Government planning requirements.

Applicants should be aware that they will need to co-ordinate services to be operated under the spectrum licences with both existing and future apparatus licensed services within and outside the spectrum to be allocated. Furthermore, in some cases spectrum licensees will have to co-ordinate their services with other spectrum licensees, and the **ACA will not play a role in that co-ordination**. The co-ordination requirements are set out in section 145 Determinations and section 262 Advisory Guidelines as issued and varied from time to time by the ACA. Copies of the section 145 Determination and section 262 Advisory Guidelines that will be applied from the time of the spectrum allocation are included in the attachments to this package of documents.

Spectrum to be allocated while encumbered

Prospective applicants should be aware that the spectrum allocation lots will be allocated and become the subject of spectrum licences while the spectrum in these bands is encumbered; that is, certain apparatus licensed services will be able to continue to operate in the spectrum that is to be allocated in this auction during the re-allocation period. The procedure for encumbered allocation is set out in Part 3.6 of the

Radiocommunications Act 1992 (the Act). Applicants should familiarise themselves with the provisions of this Part.

The Act guarantees continuity for these incumbent services until the end of the period set out in the Minister's re-allocation declarations, known as the re-allocation period. For incumbent services in the 800 MHz bands, the re-allocation period ends on 11 October 2002.

IMPORTANT NOTE

The effect of the re-allocation provisions of the Act is that whilst a spectrum licence may be issued for spectrum in a particular area, the spectrum licensee may not be able to use spectrum that may still be used by an incumbent apparatus licensee until the end of the relevant re-allocation period.

Prospective applicants should note that this may mean that they will obtain unrestricted access to spectrum under a spectrum licence at different times, and should carefully examine the potential effect of the re-allocation declarations on their proposed acquisitions of spectrum.

Details of existing licensees

Details of current apparatus licensees are contained in the ACA's public Register of Apparatus Licences. A CD-ROM extract from this Register is available from the ACA for AUD\$117.70 (including GST). More current information can be obtained by search of the ACA's live database from ACA area offices. A set of order forms and end-user agreements, together with instructions for purchasing a copy of the CD-ROM, is at **Attachment 21**.

Applicants need to be aware that, while the ACA has taken reasonable steps to confirm device details recorded in the Register by writing to licensees, the ACA cannot give any guarantee as to the accuracy of the data. Applicants should make their own enquiries about existing spectrum users.

The ACA offers internet access to its Register but the facility is limited to record-sets of only 100 records.

Nothing in the auction procedures prevents a successful bidder in the auction from approaching incumbent licensees and entering into negotiations for the incumbent to vacate the spectrum before the end of the re-allocation period.

Advisory Guidelines for Protecting Incumbents

The ACA has made advisory guidelines under section 262 of the Act for the protection of services of incumbent apparatus licensees from interference while their licence continues under a re-allocation declaration (see **Chapter 4 - Technical Framework**).

Application of the *Trade Practices Act 1974*

In this auction, an applicant can nominate to bid on any lot, or any combination of lots on offer. Applicants should be aware that under the *Radiocommunications Act 1992*

certain provisions of the *Trade Practices Act 1974* (TPA) apply to aspects of radiocommunications licensing. In particular, section 71A of the Act deems the issue of a spectrum licence to a person to be an acquisition by the person of an asset of another person for the purposes of section 50 of the TPA. Similarly, section 68A of the Act deems the authorisation, in accordance with section 68(1) of the Act, of a person to operate radiocommunications devices under a spectrum licence to be an acquisition by the person of an asset of another person for the purposes of section 50 of the TPA.

The acquisition of assets within Australia is subject to provisions contained in Part IV of the TPA. The TPA prohibits (section 50) acquisitions of shares or assets where the acquisition is likely to have the effect of substantially lessening competition in a substantial market. Such acquisitions can nevertheless be authorised under the TPA if the Australian Competition and Consumer Commission (ACCC) is satisfied that they would result in such benefit to the public that they should be allowed to take place. Alternatively, undertakings can be given to the ACCC under the TPA, where appropriate, to resolve matters where the proposed acquisition is, in the ACCC's view, likely to contravene the TPA.

The ACCC's approach to the administration and enforcement of the acquisition provisions of the TPA is outlined in its revised Merger Guidelines published in June 2000. A copy of the merger guidelines may be obtained from the ACCC for a small fee and can be ordered from the ACCC's web site at:

<http://www.accc.gov.au/pubs/catalog.htm>

There is no formal requirement for proposed acquisitions to be notified to the ACCC. However, the ACCC would encourage parties interested in acquiring spectrum licences to consider whether the acquisition is likely to raise issues under the TPA. If this is the case, then the ACCC would encourage the parties to approach the ACCC on an informal and confidential basis prior to participating in the sale process.

The ACA will be providing details of all applicants in this allocation to the ACCC.

Applicants should therefore seek such legal or other advice as they consider necessary as to their ability to use spectrum for the purposes intended. Information on the ACCC can be found on their home page at:

<http://www.accc.gov.au>

Goods and Services Tax (GST) DOES NOT apply

IMPORTANT NOTE

Under the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No.2)*, price-based allocated spectrum licences and all payments made for such licences are exempt from the applications of the GST.

Taxation Treatment of Spectrum Licences other than via the GST

Subsection 69A(1) of the *Radiocommunications Act 1992* requires that a spectrum licence include a condition that, at all times when the licensee derives income, profits or gains from operating radiocommunications devices under the licence or from authorising others to do so, either the licensee is to be an Australian resident, or the income, profits or gains are to be attributable to a permanent establishment in Australia through which the licensee carries on business. A similar provision applies to the case where persons have been authorised to use spectrum licences under section 68 of the Act. The objective of the provisions is to ensure that Australian tax applies to income, profits or gains which are attributable to a spectrum licence.

The ACA is not able to provide any further advice on the treatment that may be accorded spectrum licences under Australian taxation laws. Applicants should seek such specialist advice as they consider necessary on how spectrum licences may be treated under tax laws.

Foreign Investment Approval

Foreign applicants intending to establish a business in Australia may need prior approval under the Government's foreign investment policy and the *Foreign Acquisitions and Takeovers Act 1975*.

The Government's foreign investment policy is framed and administered with a view to encouraging foreign investment and ensuring that such investment is consistent with the needs of Australia. The Government recognises the substantial contribution foreign investment makes to the development of Australia's industries and resources.

The types of proposals by foreign interests to invest in Australia that require prior approval and should be notified to the Australian Government include (but are not limited to) the following:

- acquisitions of substantial interests in existing Australian businesses with total assets of \$50 million or more or where the proposal values the business at more than \$50 million;
- plans to establish new businesses involving a total investment of \$10 million or more;
- direct investments by foreign governments or their agencies irrespective of size;
- certain acquisitions of real estate.

With regard to the telecommunications sector specifically, prior approval is required for foreign involvement in the establishment of new entrants to, or investment in existing businesses in, the telecommunications sector. Proposals above the notification thresholds will be dealt with on a case by case basis and will be normally approved unless judged contrary to the national interest. In a press release by the Treasurer of 14 August 1997, the Government noted that it:

considers it important from a competition viewpoint that participants in the telecommunications sector not be unnecessarily constrained by foreign investment regulation.

Foreign applicants are encouraged to make their own inquiries about foreign investment approval. Detailed information is available from the Treasury website at:

<http://www.treasury.gov.au/>

Further information can also be obtained from, or submissions made to:

The Executive Member
Foreign Investment Review Board
C/o The Treasury
CANBERRA ACT 2600 AUSTRALIA

Telephone: (02) 6263 3795 (international + 612 6263 3795)

Fax: (02) 6263 2940 (international + 612 6263 2940)

Licensing under the *Telecommunications Act 1997*

The *Telecommunications Act 1997* introduces a regulatory regime designed to achieve full and open competition in the Australian telecommunications market. A key element of the new arrangements introduced in the Act is that there is no limit on the number of carriers permitted to enter the market.

Under this regime, any person may install and operate telecommunications facilities and networks. A carrier licence, however, must generally be held by any person owning specific infrastructure (referred to as 'network units') where those facilities are used to supply carriage services to the public.

A carrier licence need not be held where the network units are used solely or principally for exempt purposes (such as defence, and certain transport, electricity supply or broadcasting activities) or where another person who holds a carrier licence accepts the carrier related responsibilities for the facilities through the 'nominated carrier declaration' provisions.

There are four categories of network unit set out in the Act, one of which deals with radiocommunications facilities.

A designated radiocommunications facility is a network unit if it is used, or is for use, to supply a carriage service between a point in Australia and one or more other points in Australia (notwithstanding whether the supply involves the use of a satellite or a line or other facility outside Australia). Broadly speaking, the following kinds of facility are designated radiocommunications facilities for the purposes of the *Telecommunications Act 1997*:

- a base station for the supply of public mobile telecommunications services;

- a base station that is part of a terrestrial radiocommunications customer access network;
- a fixed radiocommunications link;
- a satellite based facility;
- a radiocommunications transmitter or receiver of a kind specified in a Ministerial Determination.

Carriers are individually licensed, subject to initial application and annual licence charges intended to recover the costs of regulating the industry.

Persons wishing to apply for carrier licences including applicants for spectrum licences which could be used to provide carriage services under that Act, are urged to familiarise themselves with the provisions of the Act, not just those pertaining to the granting of licences. Applicants should make their own enquiries as to the legislative and other obligations (including industry development obligations) that are imposed on carriers and those declared to be nominated carriers.

Further advice on the requirements relating to the carrier licensing and nominated carrier declaration schemes can be obtained from the:

Licensing and Infrastructure Team
Australian Communications Authority
PO Box 13112
Law Courts PO
MELBOURNE VIC 8010

Levels 11-14
200 Queen Street
MELBOURNE VIC 3000

Telephone: (03) 9963 6813 (international + 613 9963 6813)

Fax: (03) 9963 6979 (international + 613 9963 6979)

A guide and applicant information on carrier licences can also be found on the ACA's website at the following address:

http://www.sma.gov.au/licence/_carrier_index.htm

Telecommunications Standards

Under section 376 of the *Telecommunications Act 1997* the ACA may make standards relating to specified customer equipment. Customer equipment is equipment that operates in connection with a carriage service beyond the network boundary of a carrier or carriage service provider. If the licensee is a carrier and is offering an air interface to customers, the customer's equipment will be subject to technical standards under section 376. All customer equipment is subject to TS001 (safety) and AS/NZS2772.1 (Radiofrequency radiation). Except for certain technology specific standards for Customer Equipment, (GSM, AMPS, CT2 CAI, DECT, PHS, & Mobilesat) there are no applicable mandatory standards for the air interface.

Further information on technical standards can be obtained from:

Executive Manager
Standards and Compliance Group
Australian Communications Authority
PO Box 13112
Law Courts PO
MELBOURNE VIC 8010

Telephone: (03) 9963 6860 (international + 613 9963 6860)

Fax: (03) 9963 6970 (international + 613 9963 6970)

Defence use of the Spectrum

Under the Act and the Radiocommunications Regulations, a wide range of defence and national security uses of the spectrum is exempt from the application of the Act.

All spectrum users need to be aware that they may, from time to time, have to share use of the spectrum with agencies engaged in activities associated with defence and national security and whose services are exempt from the Act in this way ('exempt services'). The ACA can give no guarantee that the use of spectrum by such exempt services will not cause interference, and prospective applicants should note that civil proceedings under section 50 of the Act will not lie if interference is caused by exempt services to spectrum licensees.

Co-ordination with existing radiocommunications services

Nothing in the ACA's spectrum licensing approach absolves licensees from the obligation to avoid interfering with services provided by other legitimate users of the radiofrequency spectrum. This may require a spectrum licensee to co-ordinate proposed new devices with existing apparatus licences, and with the devices operated by other spectrum licensees (see **Chapter 4 - Technical Framework**).

Protection for Adjacent Services

The ACA has made advisory guidelines under section 262 of the Act for protecting from interference, devices that are operated under apparatus licences in spectrum adjacent to spectrum that is the subject of spectrum licences issued as a result of the auction (see **Chapter 4 - Technical Framework**).

Protection for the MOST

The Molonglo Observatory Synthesis Telescope (MOST) is a scientific research facility located at Bungendore about 30 km from Canberra. This facility is engaged in research into weak cosmic sources in the 800 MHz band. All spectrum licensees are required to provide protection to the MOST facility until 31 December 2008 (see **Chapter 4 - Technical Framework**).

Imposition of Licence Conditions

The ACA reserves the right at all times to impose on spectrum licensees such licence conditions as it considers necessary to allow the ACA to fulfil its statutory obligations regarding the management of radiofrequency spectrum. In particular, Australia is a signatory to the International Telecommunication Constitution and Convention and will impose any licence conditions necessary to enable Australia to fulfil its international treaty obligations.

Duration of licences

Under the Act licences are issued for a fixed term not exceeding fifteen (15) years. This is the maximum allowable under the Act. There is no automatic right of renewal. However, the ACA intends that all licences in the 800 MHz band have end-dates which coincide, and since licences in the previous allocations will expire in June 2013, these licences will be issued with an expiry date of 17 June 2013.