



Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)

Telecommunications Act 1997

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under section 463 of the *Telecommunications Act 1997*.

Dated 11th May 2007

Chris Chapman
[signed]
Chair

Marcus Bezzi
[signed]
General Manager

Australian Communications and Media Authority

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Section 1.1

Part 1 Introduction

1.1 Name of Determination

This Determination is the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*.

1.2 Commencement

This Determination commences on the day after it is registered.

1.3 Purpose and application of Determination

- (1) This Determination sets out the procedures for allocating freephone and local rate numbers by an ascending bid auction.
- (2) This Determination does not apply to:
 - (a) the allocation of a number for emergency purposes, as set out in section 3.75T of the Numbering Plan; or
 - (b) the allocation of a number to a charity within the meaning of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*.

Note The allocation of freephone and local rate numbers to charities is dealt with in the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*.

1.4 Interpretation

- (1) In this Determination, unless the contrary intention appears:

Act means the *Telecommunications Act 1997*.

allocation application form means the document approved by ACMA under paragraph 1.5 (1) (b).

auction means an auction held by ACMA in accordance with this Determination to allocate a freephone or local rate number.

auction day means a day fixed by ACMA under section 2.14 as a day when an auction will take place.

auction manager means:

- (a) a person appointed under section 1.6; or
 - (b) if:
 - (i) a person was appointed as an auction manager (however described), before the commencement of this Determination, under a determination made under section 463 of the Act; and
 - (ii) that appointment has not been revoked;
- that person.

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auction system means the information technology system used by ACMA to facilitate the operation of the auction website.

auction website means the website containing Internet accessible information and services made available by ACMA to facilitate the auction process.

bank transfer, for a payment, means making the payment by electronic transfer.

CSP means a carriage service provider.

declared FLRN means a FLRN included in a declaration referred to in subsection 3.75D (1) of the Numbering Plan.

electronically means using guided and/or unguided electromagnetic energy, other than facsimile.

FLRN means a freephone or local rate number within the meaning of the Numbering Plan.

former successful bidder means a bidder identified under:

- (a) subparagraph 4.3 (1) (b) (ii); or
- (b) paragraph 4.3 (3) (c); or
- (c) paragraph 4.4 (a).

Numbering Plan means the *Telecommunications Numbering Plan 1997*.

operative participation notice means a valid participation notice that has not been:

- (a) rejected under subsection 2.9 (1) or 2.10 (1); or
- (b) withdrawn under section 2.11.

original eligible amount means an amount bid by the first successful bidder at a particular auction.

participation notice form means the document approved by ACMA under paragraph 1.5 (1) (c).

participation notice withdrawal form means the document approved by ACMA under paragraph 1.5 (1) (d).

registration application form means the document approved by ACMA under paragraph 1.5 (1) (a).

registered CSP means a CSP registered under section 3.44 of the Numbering Plan.

registered person means:

- (a) a person registered under section 2.2 of this Determination;
- (b) a person registered under section 2.2 of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)*; or
- (c) a person taken, by subsection 5.11 (1) of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)*, to have been registered under section 2.2 of that Determination; or

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- (d) an eligible charity registered under section 2.2 of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*; or
- (e) an eligible charity registered under section 2.2 of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)*; or
- (f) an eligible charity taken, by subsection 5.11 (1) of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)*, to have been registered under section 2.2 of that Determination.

rights of use means the rights set out in section 3.75E of the Numbering Plan

starting bid means a bid made in accordance with subsection 3.4 (2).

subsequent successful bidder means a bidder who becomes a successful bidder after a successful bidder has become a former successful bidder.

successful bidder has the meaning given by section 3.10.

valid application has the meaning given by subsection 2.4 (1).

unique identifier has the meaning given by section 2.1.

valid participation notice means a notice given in accordance with section 2.8.

working day means a day that is not a Saturday, a Sunday or a public holiday in Victoria.

Note The following terms, used in this Determination, are defined in section 7 of the Act:

- ACMA
- carriage service provider.

- (2) In this Determination:
 - (a) a reference to time is a reference to that time in Victoria; and
 - (b) a reference to the time an act is done:
 - (i) for an act done using the auction system, is the time that the auction system records the act as being done; and
 - (ii) in any other case, is the time ACMA records the act as being done; and
 - (c) a reference to an amount of money is a reference to that amount in Australian currency.
- (3) If an amount worked out in accordance with this Determination is not a whole number:
 - (a) the number is to be rounded to the nearest whole number; and
 - (b) a number with 5 in the first decimal place is to be rounded up to the nearest whole number.

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1.5 Approval of forms

- (1) ACMA must, in writing, approve the following documents:
 - (a) a registration application form;
 - (b) an allocation application form;
 - (c) a participation notice form;
 - (d) a participation notice withdrawal form.
- (2) ACMA may approve more than 1 form of a document.

1.6 Auction manager

ACMA may, in writing, appoint a person (the *auction manager*) to manage an auction.

1.7 Ways in which ACMA gives information

ACMA may give any information to a person under this Determination:

- (a) by placing the information on the auction website; or
- (b) by facsimile; or
- (c) electronically.

1.8 Method of payment of moneys to ACMA

- (1) All payments to ACMA must be made in Australian currency.
- (2) Unless otherwise provided in this Determination, moneys due to ACMA under this Determination must be paid by the date required by the relevant provision of this Determination.
- (3) If a payment is required to be made by a specific date, it is sufficient if, by that date:
 - (a) for a payment made by a cheque or cash:
 - (i) the applicant has delivered the amount of the payment to ACMA (by hand, post or other means); and
 - (ii) ACMA has received the cheque or cash; or
 - (b) for a payment made by BPay — ACMA has received the payment into an account nominated or made available for that purpose by ACMA or the Commonwealth; or
 - (c) for a payment made by another means notified by ACMA — ACMA has received the payment into an account nominated or made available for that purpose by ACMA or the Commonwealth.
- (4) For this Determination, a payment is not made to ACMA unless ACMA receives the full amount of the payment, net of:
 - (a) any bank fees or charges; and
 - (b) any Government duties or other imposts.

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Part 2 Preparing for the auction**2.1 Unique identifiers and fees**

- (1) A unique identifier is:
 - (a) a username and password issued by ACMA; or
 - (b) an electronic certificate or signature issued by ACMA; or
 - (c) any other means of secure identification issued by ACMA for use by the recipient as a unique identifier.
- (2) ACMA may at any time revoke a unique identifier and re-issue or replace it.
- (3) If ACMA has not already done so under this Determination or the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*, ACMA must:
 - (a) allot each registered CSP a unique identifier; and
 - (b) give the CSP details of its unique identifier.
- (4) ACMA may set:
 - (a) the amount of the registration fee; and
 - (b) the amount of the application fee.
- (5) ACMA must publish these amounts on the auction website.

2.2 Registration

- (1) A person interested in obtaining the rights of use in relation to a declared FLRN may apply to ACMA to be registered.

Note ACMA may declare that specified FLRNs are only to be allocated by auction — see sections 3.39 and 3.75D of the Numbering Plan.
- (2) The application must be made electronically, using the registration application form and the auction website.
- (3) After the registration fee (if any) has been paid and, if ACMA has not already given the registered person a unique identifier under this Determination or the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*, ACMA must give the registered person a unique identifier.
- (4) A registered person may change the person's contact details and password (if any).
- (5) A registered person is entitled to access ACMA's auction website using the person's unique identifier.
- (6) A CSP may apply and be registered under this section.

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- (7) If a registered person wants to change the name in which it has applied for or been granted registration, the registered person must make a new application for registration in the new name.

2.3 Allocation applications

- (1) A registered person who wants to obtain the rights of use in relation to a declared FLRN under this Determination must apply jointly to ACMA with a registered CSP for the FLRN to be allocated to the CSP.

Note This Determination does not apply to the allocation of declared FLRNs in emergency situations — see section 3.75T of the Numbering Plan.

- (2) The application may be for a specific declared FLRN or for several declared FLRNs.
- (3) The application must:
- (a) be lodged by the CSP; and
 - (b) be made:
 - (i) electronically, using the allocation application form and the auction website; and
 - (ii) using the CSP's unique identifier and the person's unique identifier.

Note Under the Numbering Plan, a FLRN must be applied for by a registered CSP and can only be allocated to a registered CSP.

- (4) A CSP may apply for the rights of use in relation to a declared FLRN under this section. This is an application by a CSP as user.
- (5) An application by a registered CSP as user does not need to be a joint application, but a CSP that is not a registered CSP must apply jointly with a registered CSP.
- (6) ACMA may refuse an application if the registered person or the relevant CSP has not complied with or agreed to any terms and conditions notified under section 5.2.
- (7) ACMA may cancel an application if ACMA is satisfied in all the circumstances that it is appropriate to do so.

2.4 Valid applications

- (1) An application becomes a *valid application*:
- (a) if it was made in accordance with section 2.3; and
 - (b) after payment of the application fee (if required) is received by ACMA.
- (2) ACMA will issue the registered person with a receipt that shows the date of the valid application and each number in the person's valid application.

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- (3) A valid application:
 - (a) remains valid for 12 months from the date of the receipt (the *application period*); and
 - (b) entitles the registered person to start the auction process by giving ACMA a participation notice, as set out in section 2.8, at any time during the application period; and
 - (c) entitles a registered person to bid in an auction.
- (4) A valid application ceases to be a valid application if:
 - (a) the application period has ended and the applicant has not given a valid participation notice for the FLRN in question; or
 - (b) the CSP withdraws the application under section 2.6; or
 - (c) the application is cancelled under subsection 2.3 (7).

2.5 Changes during the application period

If, during the application period, a registered person wants to change the name in which the person has made an application or the number for which the person has made an application, the registered person must make a new application under section 2.3 with a registered CSP.

2.6 Withdrawing application

A joint applicant who wishes to withdraw an application for a particular FLRN may, at any time before the relevant registered person has given a participation notice for that FLRN, apply for a cancellation under subsection 2.3 (7).

2.7 CSP ceases to be registered

- (1) If a registered CSP who is a joint applicant ceases to be registered:
 - (a) before the registered person gives an operative participation notice; or
 - (b) if the person did not give an operative participation notice — before making a bid for a FLRN in the application;then:
 - (c) the application is no longer a valid application; and
 - (d) the registered person must apply again under section 2.3 with a registered CSP.
- (2) If a registered CSP who is a joint applicant ceases to be registered:
 - (a) after the registered person has given an operative participation notice; or
 - (b) if the person did not give an operative participation notice — after the person makes a bid for a FLRN in the application;then:
 - (c) the application continues to be a valid application; and

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- (d) the registered person may make a bid or continue to bid.
- (3) However, if a registered person is the successful bidder in the auction after bidding in accordance with subsection (2), the person must obtain another registered CSP within 14 days of the close of the auction.
- (4) A failure to obtain another registered CSP within 14 days is a default by the bidder in accordance with Division 2 of Part 4.

2.8 Participation notice

- (1) A registered person with a valid application may give ACMA a participation notice for a FLRN listed in the application.
- (2) A participation notice may be given at any time before the auction of the FLRN starts.
- (3) The participation notice must:
 - (a) state the FLRN the person wants to obtain the rights of use for; and
 - (b) be lodged using the person's unique identifier; and
 - (c) if the person wants the person's starting bid to be higher than the reserve price, state the amount of the starting bid; and
 - (d) be given electronically, using the participation notice form and the auction website.
- (4) The person must give a separate participation notice for each FLRN applied for.

2.9 Rejection of participation notice — the 'first notice only' rule

- (1) ACMA must reject a participation notice (a *later notice*) given for a particular FLRN if:
 - (a) ACMA has already received a participation notice (the *first notice*) for the FLRN; and
 - (b) at the time the later notice is given, the first notice has not been rejected or withdrawn.
- (2) If ACMA rejects a later notice in accordance with this section, publication of the first notice on the auction website is taken to be sufficient notice of that decision.
- (3) If, after the rejection of a later notice under this section, the first notice is withdrawn, the withdrawal is not taken to revive the later notice.

Note A person who lodges a participation notice that is rejected under this section may still bid in the auction — see section 3.4.

Section 2.10**2.10 Rejection of participation notice — other reasons**

- (1) ACMA must reject a participation notice if:
 - (a) the person's application is no longer a valid application; or
 - (b) a participation notice has been given for the FLRN under the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*; or
 - (c) ACMA has directed registered CSPs that the FLRN is only available for application for administrative allocation.
- (2) If ACMA rejects a participation notice in accordance with this section, ACMA must advise the decision, through the auction system, to the registered person who gave the notice.

2.11 Withdrawing a participation notice — cooling off period

- (1) A participation notice that is not rejected under subsection 2.9 (1) or 2.10 (1) is subject to the cooling off period set out in subsection (5).
- (2) A registered person may withdraw a participation notice only if the person advises ACMA of the withdrawal before the cooling off period expires.
- (3) The withdrawal of a participation notice must:
 - (a) be lodged electronically, using:
 - (i) the registered person's unique identifier; and
 - (ii) the participation notice withdrawal form; and
 - (iii) the auction website; and
 - (b) identify the FLRN listed in the participation notice that is being withdrawn.
- (4) If a person withdraws a participation notice in accordance with this section, ACMA must notify that fact on the auction website.
- (5) For this section, the cooling off period:
 - (a) starts on the day on which the participation notice is given in accordance with section 2.8; and
 - (b) ends 10 working days before the nominal auction day for the FLRN listed in the notice.

Note A registered person who has withdrawn a participation notice under this section is not prevented from giving another participation notice for the FLRN under section 2.8.

- (6) In this section:
nominal auction day, for an FLRN that is listed in an operative participation notice that is being withdrawn under this section, means the day worked out under subsection 3.1 (1) as if the notice that is being withdrawn was the notice mentioned in that subsection.

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2.12 Effect of operative participation notice

An operative participation notice:

- (a) allows the registered person to bid in the auction for the FLRN listed in the notice; and
- (b) starts the auction for that number on the date fixed under section 3.1; and
- (c) when the auction starts, constitutes a first bid for the number at the reserve price or, if the person has stated in the participation notice the amount of the person's higher starting bid, at that higher amount.

2.13 Reserve prices and increments

- (1) ACMA must from time to time set the reserve price and minimum bid increment that is to apply to each declared FLRN.
- (2) The reserve price and minimum bid increment for a particular FLRN for an auction are the reserve price and minimum bid increment that were in place at the date when the operative participation notice that will start the auction in accordance with paragraph 2.12 (b) was given.
- (3) The reserve prices and minimum bid increments must be notified on the auction website at least 10 working days before the start of the period in which they apply.

2.14 Auction days

ACMA must, from time to time:

- (a) fix a day as the auction day; and
- (b) notify this on the auction website at least 10 working days before the auction day.

Note For example, ACMA may fix a particular day in each month.

2.15 Auction limits

ACMA may, from time to time:

- (a) specify the maximum quantity of numbers that may be auctioned on a particular auction day; and
- (b) notify this on the auction website at least 10 working days before the auction day from which the maximum quantity will apply.

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Part 3 Auctions

3.1 Auction

- (1) If:
 - (a) a valid participation notice that is an operative participation notice is given for the FLRN; and
 - (b) the notice does not cease to be an operative participation notice;
the auction of the FLRN must be held on the next auction day that is at least 10 working days after the date the notice was given.

Note For *operative participation notice* — see subsection 1.4 (1).

- (2) If the maximum quantity of numbers for auction on a particular auction day set under section 2.15 has already been reached, ACMA may:
 - (a) auction the FLRN on the next auction day; or
 - (b) fix another auction day for auctioning the remaining FLRNs; and
 - (c) notify this on the auction website 3 working days before the first auction day.

3.2 Period of auction

- (1) An auction starts and closes in accordance with subsections (2) to (7), although the auction may be resumed in accordance with subsection 3.8 (12).

Note Subsection 3.8 (12) refers to circumstances in which an auction is resumed if the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

- (2) An auction starts at 11 am on the auction day set under section 3.1.
- (3) The auction closes at 4 pm on the auction day unless a bid is made after 3 pm on the auction day.
- (4) If a bid is made after 3 pm on the auction day, the auction will end for the day at 4 pm and continue at 11 am on the next working day (**Day 2**).
- (5) If a bid is placed after 3 pm on Day 2, the auction will end for the day at 4 pm and continue at 11 am on the next working day.
- (6) This process is to continue until the auction closes under subsection (7).
- (7) If an auction continues as set out in subsections (3), (4) and (5), the auction will close at 4 pm or on the next hour that is at least one full hour since the last bid, whichever is the earlier.
- (8) The period from 11 am on the auction day until the closure of the auction is the *auction period*.

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- (9) Bidding can take place between the hours of 11 am and 4 pm during the auction period.

Example An auction starts at 11 am on auction day. The auction will run until 4 pm on that day, unless a bid is made after 3 pm on that day. If a bid is placed after 3 pm, the auction will continue at 11 am on the next working day (Day 2), and, unless a bid is placed before 12 noon, the auction will close at 12 noon on Day 2. If a bid is placed between 11 am and 12 noon on Day 2, the auction continues to run until the next full chronological hour (eg 1.00 pm, 2.00 pm, 3.00 pm) that is at least 60 minutes after the last valid bid. If a bid is made after 3 pm, the auction ends for the day at 4 pm and continues at 11 am on the next working day. This cycle will continue until a winning bid is determined.

3.3 How to take part in the auction

All bidding at an auction must be done electronically using the auction website.

3.4 Bidding

- (1) A registered person with a valid application may make a bid for a FLRN listed in the application, whether or not the person has given a participation notice.
- (2) A starting bid must be:
 - (a) an amount equal to the reserve price; or
 - (b) if the bidder stated a higher amount in the bidder's participation notice, that higher amount.
- (3) A bid for a FLRN must:
 - (a) be made using the person's unique identifier; and
 - (b) for a bid after the starting bid, be at least 1 minimum bid increment above the existing highest bid.
- (4) A bid that does not comply with these requirements is of no effect.

3.5 Automatic re-bidding

- (1) ACMA may make provision on the auction website for a person who is entitled to bid in an auction to make automatic re-bids in that auction, using the auction website.
- (2) If this is done, a bidder may make automatic re-bids using the auction website.
- (3) The bidder must tell ACMA:
 - (a) that the bidder wants to make automatic re-bids; and
 - (b) the maximum amount the bidder is prepared to bid to (the *maximum bid amount*).
- (4) Each automatic re-bid will be 1 minimum bid increment above the existing highest bid.

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- (5) A bidder's automatic re-bids cease if the amount of the next automatic bid would exceed the bidder's maximum bid amount.

3.6 No withdrawal of bids

A bidder may not withdraw its bid.

3.7 Revocation or suspension of registration or participation in auction

- (1) ACMA may suspend a registered person's registration or exclude a bidder from participating in an auction if the registered person:
- has been the successful bidder at another auction; and
 - is in default of the payment of the eligible amount.
- (2) ACMA may revoke a registered person's registration or exclude a bidder from participating in an auction if the registered person has made a false statement to ACMA within the meaning of subsection 136.1 (1) of the *Criminal Code*:
- in the registered person's application for registration; or
 - in the registered person's joint application for allocation; or
 - in the registered person's participation notice; or
 - in connection with an auction.
- (3) If ACMA is reasonably satisfied in all the circumstances that a person has engaged in, or is likely to engage in, conduct that is prejudicial to the efficient and fair operation of the auction process (including but not limited to disguising the person's true identity), ACMA may exclude that person from participation in any or all future auctions.

Note Nothing in this provision is intended to affect a person's ability to use an agent or representative to secure a number.

- (4) ACMA must tell the person the reason for the suspension, revocation or exclusion.

3.8 Suspension or cancellation of auction

- (1) ACMA may suspend or cancel an auction:
- if it has excluded or suspended a person from participating in an auction; or
 - because of a technical failure in the auction website or auction system; or
 - because of an event beyond the control of ACMA; or
 - to give ACMA time to investigate an irregularity in the auction; or
 - if ACMA is satisfied that in the circumstances it is appropriate to do so.

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- (2) If an auction is suspended, ACMA may:
 - (a) resume the auction, subject to subsections (3), (4) and (5); or
 - (b) cancel the auction.
- (3) If:
 - (a) an auction is suspended due to the exclusion or suspension of a person; and
 - (b) ACMA resumes the auction;
the auction may be resumed at the point immediately prior to the excluded or suspended person's first bid.
- (4) If an auction is suspended because of a technical failure in the auction website or auction system:
 - (a) ACMA may resume the auction when the technical failure is fixed; and
 - (b) if ACMA resumes the auction, the auction may continue from the last valid bid recorded in the auction system.
- (5) If ACMA resumes an auction under this section, the auction must not resume until at least one full working day has elapsed since ACMA has told all participants of the date and time when the auction is to resume.
- (6) If ACMA resumes an auction from the last valid bid, and no further bids are made, the registered person who made the last valid bid recorded in the auction system prior to the suspension (the *provisional high-bidder*) has the option to either:
 - (a) confirm the person's bid; or
 - (b) apply to ACMA for a cancellation of the auction.
- (7) An application for cancellation of an auction under subsection (6) must be accompanied by written reasons for the request.
- (8) If the provisional high bidder applies for a cancellation of the auction and provides written reasons, ACMA may, after consideration of all the circumstances, cancel the auction.
- (9) If the auction is cancelled, ACMA may again make the FLRN available for allocation by auction.
- (10) Nothing in subsection (1) requires ACMA to consider whether it will exercise its power to suspend or cancel an auction.
- (11) In addition to subsection (1), if:
 - (a) ACMA is satisfied that the details of a winning bid in relation to an auction have been irretrievably lost because of a technical failure in the auction website or auction system; and
 - (b) the auction has closed in accordance with section 3.2;
ACMA may resume the auction in accordance with subsection (12), or treat the auction as not having been held in accordance with subsection (13).

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Note ACMA will decide whether it can resume an auction as soon as practicable after being satisfied that the details of the winning bid have been irretrievably lost. However, the time that ACMA will need to identify any valid bids in relation to an auction, and to notify the bidders at the auction, will vary depending on the circumstances of that auction.

- (12) If ACMA is able to identify 1 or more valid bids in relation to an auction mentioned in subsection (11):
- (a) the auction is taken not to have closed in accordance with section 3.2; and
 - (b) ACMA must take the highest of the valid bids that ACMA can identify as the last valid bid, and resume the auction in accordance with subsections (4) to (9); and
 - (c) each bidder who bid at the auction after the highest of the valid bids that ACMA can identify is taken not to have made that bid for the FLRN; and
 - (d) the CSP who was the joint applicant with the highest bidder at the auction is taken not to be the successful applicant for the allocation of the FLRN; and
 - (e) the resumed auction closes in accordance with section 3.2; and
 - (f) ACMA must, as soon as practicable, notify each registered person in relation to the auction that:
 - (i) the details of the winning bid have been irretrievably lost; and
 - (ii) a valid bid has been identified; and
 - (iii) this subsection applies in relation to the FLRN.

Note The bidder who made the highest of the valid bids that ACMA can identify has the option of applying to ACMA to cancel the auction — see subsection (6).

- (13) If ACMA is unable to identify any valid bids in relation to an auction mentioned in subsection (11):
- (a) the auction is taken not to have been held; and
 - (b) each bidder who bid at the auction is taken not to have made a bid for the FLRN; and
 - (c) the CSP who was the joint applicant with the highest bidder at the auction is taken not to be the successful applicant for the allocation of the FLRN; and
 - (d) each participation notice given under section 2.8 in relation to the auction is taken to have no effect; and
 - (e) ACMA may make the FLRN again available for allocation by auction; and
 - (f) ACMA must, as soon as practicable, notify each registered person in relation to the auction that:
 - (i) the details of the winning bid have been irretrievably lost; and
 - (ii) no valid bid has been identified; and
 - (iii) this subsection applies in relation to the FLRN.

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3.9 Closing of auction

- (1) ACMA may, on giving 2 working days notification on the auction website, close an auction of a FLRN at a particular time.
- (2) If an auction is not closed under subsection (1), the auction of a FLRN closes at the time specified in subsection 3.2 (3) or (6).
- (3) ACMA must notify the closure on the auction website.
- (4) No bids will be accepted after the auction has closed.

3.10 Successful bidder

Subject to subsections 3.8 (12) and (13), the bidder who is the highest bidder for the FLRN at the close of an auction is the successful bidder for the FLRN.

Note Subsections 3.8 (12) and (13) refer to circumstances in which the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

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Part 4 After the auction

Division 1 The successful applicant

4.1 Successful applicant and eligible amount

For the purposes of subsection 463 (6) of the Act, but subject to subsections 3.8 (12) and (13):

- (a) the CSP who was the joint applicant with the successful bidder at an auction of a FLRN is the successful applicant for the allocation of the FLRN; and
- (b) the amount of the highest bid in an auction for a FLRN is taken to be the eligible amount in relation to the allocation of the FLRN.

Note 1 Subsection 463 (6) of the Act requires the successful applicant for the allocation of a FLRN, and the eligible amount in relation to that FLRN, to be determined by reference to the results of the auction.

Note 2 Subsections 3.8 (12) and (13) refer to circumstances in which the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

4.2 Payment of eligible amount

- (1) The successful bidder must pay the eligible amount to ACMA on behalf of the CSP within 30 days of the close of the auction.
- (2) The amount must be paid in accordance with section 1.8.

Note If the successful bidder does not pay the eligible amount to ACMA within the 30 days, Division 2 will apply.

Division 2 Successful bidder with unpaid eligible amount or without a registered CSP

4.3 Successful bidder with unpaid eligible amount

- (1) If the successful bidder does not pay the eligible amount within 30 days of the close of the auction (the *first period*), the bidder is entitled to a further 30 days (making a total period of 60 days after the close of the auction) to pay the eligible amount, unless ACMA:
 - (a) is satisfied that it would not be appropriate in the circumstances for the bidder to be entitled to the further 30 days; and
 - (b) as soon as practicable after the end of the first period:
 - (i) allows the bidder a further period after the end of the first period, specified by ACMA (but not more than 29 days), to pay the eligible amount; or

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- (ii) decides to treat the bidder as having ceased to be the successful bidder, and as having become the *former successful bidder*, at the end of the first period.

Note If the successful bidder does not pay the eligible amount within the first period, ACMA's preference is for the successful bidder to have a further period of 30 days. However, there may be circumstances in which:

- (a) ACMA considers that a shorter period is appropriate; or
 - (b) ACMA is not satisfied that the bidder could pay the eligible amount within any further period; or
 - (c) ACMA is otherwise satisfied that its dealings with the bidder should be terminated.
- (2) The further period of 30 days, or the further period allowed under subparagraph (1) (b) (i), is the *further period* for the successful bidder.
- (3) If a further period applies:
- (a) the bidder must pay the eligible amount to ACMA on behalf of the CSP within the further period; and
 - (b) the amount must be paid in accordance with section 1.8; and
 - (c) if the successful bidder does not pay the eligible amount within the further period — the bidder ceases to be the successful bidder at the end of the further period and becomes the *former successful bidder*.
- (4) If the bidder becomes the former successful bidder:
- (a) the bidder is not entitled to the rights of use in relation to the FLRN as a result of the completed auction; and
 - (b) the bidder's CSP is not entitled to the allocation of the FLRN as a result of the completed auction; and
 - (c) the FLRN will be regarded as a defaulted FLRN, and the bidder will be taken to be in default of its financial obligations to ACMA under this Determination.

Example 1

Bidder A wins a number at auction but fails to pay within 30 days of the auction due to genuine error. ACMA does not set a further period or treat Bidder A as having ceased to be the successful bidder.

ACMA receives the winning bid amount on the 60th day after the close of the auction.

ACMA will treat the winning bid amount as having been paid within time and the entitlements under section 4.9 will accrue to Bidder A and Bidder A's CSP.

Example 2

Bidder A wins a number at auction but fails to pay within 30 days of the auction due to genuine error. On the 31st day, ACMA allows the bidder a further 10 days from the date of its decision to pay the eligible amount.

ACMA receives the winning bid amount on the 41st day after the close of the auction.

ACMA will treat the winning bid amount as having been paid within time and the entitlements under section 4.9 will accrue to Bidder A and Bidder A's CSP.

Example 3

Bidder A wins a number at auction but fails to pay within 30 days of the auction. On the 32nd day, ACMA decides to treat the bidder as having ceased to be the successful bidder.

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Bidder A and its CSP will not be eligible for the entitlements granted under section 4.9. ACMA may decide to re-auction the number, allocate the number in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan or allocate the number under section 3.75T of the Numbering Plan.

Note Subject to section 3.7, if a successful bidder does not pay the eligible amount within the further period, and the FLRN is re-auctioned, the former successful bidder is eligible to bid for the FLRN again at that auction.

4.4 **Successful bidder without a registered CSP**

If the successful bidder for a FLRN does not obtain another registered CSP as required by subsection 2.7 (3):

- (a) the bidder ceases to be the successful bidder and becomes the *former successful bidder*; and
- (b) the bidder is not entitled to the rights of use in relation to the FLRN as a result of the completed auction; and
- (c) the bidder's CSP is not entitled to the allocation of the FLRN as a result of the completed auction; and
- (d) the FLRN will be regarded as a defaulted FLRN, and the bidder will be taken to be in default of its financial obligations to ACMA under this Determination.

Note If a successful bidder does not obtain another registered CSP, and the FLRN is re-auctioned, the former successful bidder is eligible to bid for the FLRN again at that auction.

Division 3 **Consequences of ceasing to be successful bidder**

4.5 **Defaulted FLRN**

- (1) If a FLRN becomes a defaulted FLRN under paragraph 4.3 (4) (c) or 4.4 (d), ACMA may:
 - (a) make the FLRN available by holding a new auction (a subsequent *auction*) in accordance with this Determination or the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*; or
 - (b) make the number available for allocation in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; or
 - (c) allocate the FLRN in accordance with an allocation under section 3.75T of the Numbering Plan.
- (2) ACMA is not required to take action under subsection (1) within any particular period after the FLRN becomes a defaulted FLRN.
- (3) For the purposes of subsection 463 (6) of the Act, if ACMA allocates a defaulted FLRN in accordance with paragraph (1) (a), the amount of the highest bid in the subsequent auction is taken to be the eligible amount in relation to the allocation of the FLRN.

Note Subsection 463 (6) of the Act requires the eligible amount in relation to the allocation of a FLRN to be determined by reference to the results of the auction.

4.6 Recovery of unpaid eligible amount

- (1) Any eligible amount that has not been paid by a bidder is a debt due to the Commonwealth, and is recoverable by ACMA from the bidder in any court of competent jurisdiction, whether or not another eligible amount has been identified in accordance with subsection 4.5 (3).
- (2) However:
 - (a) if an eligible amount is paid for the defaulted FLRN in accordance with a subsequent auction; or
 - (b) an amount is paid for an allocation of the defaulted FLRN in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; the amount of the former successful bidder's debt in relation to the defaulted FLRN must be reduced by the total of the amounts paid by any subsequent successful bidder for the FLRN.

Note See paragraph 4.1 (b) and subsection 4.5 (3) for the eligible amount.

- (3) For subsection (2), if the total of the amounts paid by a subsequent successful bidder is greater than the amount of the former successful bidder's debt, the amount of the former successful bidder's debt is taken to be reduced to zero.

Example 1

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). At the subsequent auction, Bidder B wins the auction with a high bid of \$7 500 and pays the amount within time.

Bidder A's debt to the Commonwealth is reduced by the \$7 500 paid by Bidder B. Bidder A therefore owes the Commonwealth \$2,500.

Example 2

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). At the subsequent auction, Bidder B wins the auction with a high bid of \$12 500 and pays the amount within time.

Because the amount received from Bidder B is more than Bidder A's debt, Bidder A's debt is reduced to zero.

4.7 Refund to former successful bidder

- (1) If a former successful bidder pays the original eligible amount, ACMA must pay an amount to the former successful bidder as soon as practicable.

Note A successful bidder who pays an eligible amount, but:

- (a) did not pay it by the end of the appropriate payment period; or

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(b) does not have a registered CSP in accordance with this Determination; ceases to be the successful bidder, becomes a former successful bidder, and does not receive the rights of use in relation to the FLRN. See paragraphs 4.3 (1) (b), 4.3 (3) (c) and 4.4 (a).

(2) The amount is the lesser of:

(a) either:

- (i) the eligible amount paid by a subsequent successful bidder for the defaulted FLRN in accordance with a subsequent auction; or
- (ii) an amount paid for the allocation of the defaulted FLRN in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; and

(b) the original eligible amount paid by the former successful bidder.

Example 1

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). Prior to the subsequent auction, Bidder A pays \$10 000. However, the \$10 000 has been paid out of time, so Bidder A remains the former successful bidder.

At the subsequent auction, Bidder B wins the auction with a high bid of \$7 500 and pays the amount.

The lesser of the original \$10 000 paid out of time and the \$7 500 paid as the result of the subsequent auction is \$7 500. ACMA refunds \$7 500 to Bidder A.

Example 2

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1)(a). Prior to the subsequent auction, Bidder A pays \$10 000. However, the \$10 000 has been paid out of time, so Bidder A remains the former successful bidder.

At the subsequent auction, Bidder B wins the auction with a high bid of \$12 500 and pays the amount.

The lesser of the original \$10 000 paid out of time and the \$12 500 paid as the result of the subsequent auction is \$12 500. ACMA refunds \$10 000 to Bidder A.

4.8 Status of former successful bidder

Unless section 3.7 applies, a bidder who becomes a former successful bidder is not prevented from:

- (a) participating in any subsequent auction under this Determination or the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*; or
- (b) being allocated a FLRN in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; or
- (c) being allocated a FLRN in accordance with an allocation under section 3.75T of the Numbering Plan.

Division 4 Entitlements after payment of eligible amount

4.9 Entitlements

If the eligible amount has been paid to ACMA in accordance with subsection 4.2 (1) or 4.3 (3):

- (a) the registered CSP who was the joint applicant with the successful bidder, or who has been obtained by the successful bidder pursuant to subsection 2.7 (3), must be allocated the FLRN in accordance with section 3.75E of the Numbering Plan; and
- (b) the successful bidder has the right to be issued the FLRN in accordance with section 3.75G of the Numbering Plan; and
- (c) the CSP has the right to have the FLRN surrendered if the CSP indicated in the application that the CSP wanted the FLRN to be surrendered; and
- (d) the successful bidder acquires the rights of use in accordance with section 3.75E of the Numbering Plan.

Note 1 Sections 3.75A to 3.75T of the Numbering Plan deal with the allocation, issue and surrender of FLRNs.

Note 2 As well as the rights of use attached to all FLRNs, the additional rights of use attached to auctioned FLRNs are set out in section 3.75E of the Numbering Plan.

Part 5 Miscellaneous

Division 1 Arrangements relating to auction process

5.1 Review of decisions

- (1) Application may be made to the Administrative Appeals Tribunal for review of the following decisions:
 - (a) a decision by ACMA under subsection 2.3 (7) to cancel an allocation application;
 - (b) a decision by ACMA under section 3.7:
 - (i) to revoke or suspend a registered person's registration; or
 - (ii) to exclude a bidder from participating in an auction;
 - (c) a decision by ACMA to suspend or cancel an auction under subsection 3.8 (1);
 - (d) a decision by ACMA under subparagraph 4.3 (1) (b) (i):
 - (i) to specify a particular further period in which a successful bidder must pay the eligible amount; or
 - (ii) to treat a bidder as having ceased to be the successful bidder.
- (2) If ACMA makes a decision mentioned in subsection (1), ACMA must give notice electronically of the decision to a person whose interests it affects.
- (3) The notice must include a statement to the effect that:
 - (a) subject to the *Administrative Appeals Tribunal Act 1975*, a person dissatisfied with the decision may apply to the Tribunal for a review of the decision; and
 - (b) the person may request a statement under section 28 of that Act in relation to the decision.

5.2 Terms and conditions of use

- (1) Subject to subsection (3), ACMA may notify on the auction website terms and conditions related to:
 - (a) use of the auction website; and
 - (b) registration; and
 - (c) application; and
 - (d) participation in the auction process; and
 - (e) the payment of monies; and
 - (f) the publication of the information set out in section 5.6; and
 - (g) the use of numbers allocated as the result of the auction process; and
 - (h) any other matter that ACMA considers appropriate for the operation of the auction system.

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- (2) ACMA may require persons to agree to any such terms and conditions prior to use of the auction website or the registration or application processes.
- (3) The terms and conditions notified under subsection (1) must not be inconsistent with any provision in:
 - (a) this Determination; or
 - (b) the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*; or
 - (c) the Numbering Plan.

5.3 Liability of ACMA

ACMA is not liable to pay damages or costs arising from an act or omission of any person in relation to the auction process set out in this Determination.

5.4 Recovery of damages by ACMA

This Determination is without prejudice to any right of action or remedy which ACMA has or may have against any person which arose or arises under statute, common law, equity or otherwise.

5.5 ACMA may obtain information from applicants

- (1) This section applies to an applicant if ACMA has reason to believe that the applicant has information or documents that are relevant to the performance of any of ACMA's functions under this Determination.
- (2) ACMA may, by written notice to an applicant, require the applicant to give ACMA that information and those documents, within the period and in the manner and form specified in the notice.
- (3) An applicant must comply with a requirement under subsection (2).

5.6 ACMA may publish or release information

- (1) ACMA may publish or release information which pertains to the auction process on the auction website or elsewhere.
- (2) The information which may be published or released includes, but is not limited to, the following:
 - (a) the personal details of any person participating in the auction process, including registered persons, applicants and bidders;
 - (b) the amount of any bid;
 - (c) the time any bid is placed; and
 - (d) the time and manner of payment of the eligible amount.

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Division 2 Transitional and savings

5.7 Definition for Division 2

In this Division:

commencement day means the day on which this Determination commences.

5.8 Revocation of *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)*

The *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)* is revoked.

5.9 Transitional — participation notice given before commencement day

Despite the revocation of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)* (the *revoked Determination*) by section 5.8 of this Determination, if:

- (a) a valid participation notice was given for a FLRN before the commencement day; and
- (b) the notice does not cease to be a valid participation notice after the commencement day;

the revoked Determination, as in force immediately before the commencement day, continues to apply in relation to the FLRN, including in relation to any auction of the FLRN and any arrangements relating to the auction process (whether those arrangements apply before, during or after the auction process).