

# 1. What is Being Offered?

## In this Chapter...

- a description of the areas in which spectrum is being offered
- a description of the bandwidth parcels that are being offered in each area
- 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 this auction of spectrum licences in the 2 GHz band. It describes the spectrum parcels that are available, and the areas in which they will be available. 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. There are 58 lots on offer in this auction, and applicants are able to bid on any lot or any combination of lots up to their own pre-declared limit (their eligibility), which must be within the limits determined by the Minister.

## Available Spectrum

The Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, has given the ACA a copy of a Spectrum Re-allocation Declaration that he has made under section 153B of the Act, as a result of which the ACA must re-allocate the following parts of the spectrum by issuing spectrum licences:

- **20 MHz from 1900-1920 MHz in all State and Territory capitals;**
- **2x60 MHz from 1920-1980/2110-2170 MHz in Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney;**
- **2x45 MHz from 1935-1980/2125-2170 MHz in Canberra; and**
- **2x20 MHz from 1960-1980/2150-2170 MHz in regional areas (as defined in the Declaration).**

The Declaration came into effect on 11 October 2000.

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

## 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. There will be 58 separate lots in this auction.

The ACA is going to use a simultaneous ascending bid auction system to allocate the spectrum allocation lots (or “lots”). Lots are like “building blocks” of spectrum. The auction process allocates lots to the applicants who, in economic terms, value them most highly. Adjacent lots may then be 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. “Sydney-1”).

Each lot has a *lot rating* which is a measure of its relative value. Lot ratings have been set by the ACA for each lot. Lot ratings are set in the *Radiocommunications Spectrum Marketing Plan (2 GHz Band) 2000*.

Lot ratings are important to the auction system because they provide a basis for applying activity rules which prevent the auction from stalling (See **Chapter 2 - How is it being allocated?**).

### **Paired bands**

The majority of lots in this allocation consist of paired bands. Since this spectrum is being re-allocated primarily to promote competition in the telecommunications market and facilitate the provision IMT-2000 services (the so-called third generation services), it is being configured in a way which facilitates 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 22**) and the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination (No. 2) 2000* (**Attachment 8**.) All trading is subject to the requirement that it be undertaken in terms of standard trading units (STUs) of spectrum space, and a minimum aggregation of bandwidth (see **Chapter 4 - Spectrum Licensing**).

### **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. 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 4 - Spectrum Licensing**. An overview of the technical framework applying to spectrum licences in the 2 GHz band, and the operation of the Determinations under section 145 and Advisory Guidelines under section 262 of the Act are all contained in **Chapter 5 - 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 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 will be 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 determinations 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 declaration known as the re-allocation period. For

incumbent services in the 2 GHz band, the re-allocation period ends on 11 October 2002.

## **Details of existing licensees**

Details of current apparatus licensees in the bands 1900-1980 MHz and 2110-2170 MHz 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 20**.

Applicants need to be aware that, while the ACA has taken reasonable steps to confirm device details recorded in the Register, 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.

## **Competition/Bidding Limits**

The ACA has powers to determine the procedures to be applied in allocating spectrum licences, and as part of these procedures can determine limits on aggregate parts of the spectrum that may be used by any one person, or a specified person, as a result of an allocation. The Minister has given written directions to the ACA about the exercise of this procedure making power in relation to this auction, and a copy of those directions is at **Attachment 2**.

### **IMPORTANT NOTE**

*The ACA has implemented the Minister's directions by effectively placing limits on bidding, referred to in this information package as 'bidding limits'. In summary, the limits do not permit a bidder to acquire more than 2x15+5 MHz in State and Territory capital cities, and 2x10 MHz in designated regional areas.*

The Minister's directions apply limits to applicants and their associates. The ACA has put in place procedures to deal with this aspect of the Minister's directions, and information on those procedures is set out in **Chapter 3 - How to get a Licence**.

Licences will be allocated to successful bidders, subject to compliance with the limits. Post auction trading of licences will be monitored by the Australian Competition and Consumer Commission (ACCC).

## **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, in any area or any band, within the limits set by the Minister. 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, s.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 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 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 its 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 application 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 authorized 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 enquiries 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 issue of licences. Applicants should make their own enquiries as to the obligations (including obligations in relation to industry development and to contribute to the cost of meeting the universal service obligation) that are imposed on 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](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 is used, installed ready for use, or intended for use on the customer side of the boundary of a telecommunications network. 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**

The Australian Defence Force and the Department of Defence are large users of the radiofrequency spectrum.

Under the Act and the Radiocommunications Regulations, a wide range of defence and national security use 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 licensed 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 5 - 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 5 - 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**

Licences will be auctioned for a fixed term of fifteen (15) years from 12 October 2002. Fifteen years is the maximum term allowable under the Act. There is no automatic right of renewal.