

**AUSTRALIAN COMMUNICATIONS AUTHORITY**

**Apparatus Licence Allocation**

**800 MHz Bands**

**APPLICANT INFORMATION PACKAGE**

5 March 1999



# Foreword

This Applicant Information Package (the Package) contains important information about the allocation which you must read and understand before taking part in the allocation process.

The Package contains:

- an overview of what is being allocated;
- a guide to the allocation process, including instructions for participating;
- all of the legal instruments under which the allocation will take place; and
- application documents which must be completed and forwarded by the closing date.

The closing time and date for applications is 5:00 pm on **Friday 9 April 1999**. **No late applications will be accepted after this date.** The date for the commencement of the auction will be set by the ACA after the closing date for applications.

To register for the auction the ACA must receive:

- your correctly completed application documents; and
- payment of the entry fee plus a Performance Payment, if you elect not to provide a Deed of Financial Security. **Bank cheques** for this amount should be made payable to “The Collector of Public Monies, Australian Communications Authority” and be crossed “Not Negotiable”. Alternatively, payment can be made by electronic funds transfer. Payment must be in Australian dollars. Personal or company cheques will not be accepted.

**BY: 5.00 pm AEST (Canberra Time) on Friday 9 April 1999.**

**AT: ACA Auction Centre  
Locked Bag 3321  
BMDC ACT 2617  
Australia.**

Questions about the the allocation process may be directed to Mr Ian Hayne, Manager, Spectrum Marketing Team on Tel. (02) 6256 5262 (international +612 6256 5262), by fax to (02) 6256 5122 (international +612 6256 5122), or by email to [ihayne@aca.gov.au](mailto:ihayne@aca.gov.au)



# Important Notice

The price-based allocation of apparatus licences is provided for by the *Radiocommunications Act 1992* ('the Act'). Persons wishing to apply are urged to familiarise themselves with all the provisions of the Act, not just those pertaining to apparatus licensing and should be aware that any activities associated with radiocommunications may also be regulated by the *Trade Practices Act 1974*, the *Broadcasting Services Act 1992*, and the *Telecommunications Act 1997*. Depending on the activity undertaken using the spectrum under a licence, other Commonwealth, State and Territory laws may apply.

The Australian Communications Authority ('the ACA') is a statutory authority established under the *Australian Communications Authority Act 1997* ('the ACA Act') to, amongst other things, administer the *Radiocommunications Act 1992*. The ACA is required by section 10 of the ACA Act to perform its functions in a manner consistent with any general policies of the Commonwealth notified, and with any directions given, to the ACA by the Minister administering that Act (sections 11 and 12 of the ACA Act respectively). The policies of the Commonwealth, a sovereign entity, may change from time to time. Furthermore, in exercising its powers and functions, including those conferred on the ACA by the *Radiocommunications Act 1992*, the ACA may be expected to apply its own policies which may also change from time to time.

This paper provides advice on how the ACA proposes to allocate apparatus licences. Nothing in this paper should be taken to bind the ACA to any particular course of action in relation to the allocation of licences in the spectrum under discussion. Interested persons should not rely on statements made in this document about the policies that may be followed by other authorities, nor about the effect of any legislation, but should take what steps they consider necessary to inform themselves on those matters independently of the ACA. The comments made in this paper about the *Radiocommunications Act 1992* and the *Telecommunications Act 1997* reflect the present policies of the ACA.

Australia is a signatory to the International Telecommunication Constitution and Convention and to other international treaties relating to communications. The administration of radiocommunications by the ACA is undertaken with respect to these conventions and treaties.

Prospective applicants should, on their own responsibility, take whatever steps they consider necessary to ensure they have access to appropriate technical or other specialist advice independently of the ACA concerning their application, 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. Applicants are also advised to seek advice independently of the ACA on the treatment of apparatus licences and other investments under Australian taxation laws, and on the operation of foreign investment laws and policy on proposed investment in communications in Australia.



# ACA Reservations

## ACA May Change Process

The ACA may, under the Act, vary or deviate from these processes, or terminate the auction process.

The ACA reserves to itself the right to add to, vary or amend the information, terms and procedures set out in this document, in its sole discretion.

## Other ACA Rights

The ACA reserves the right, in its absolute discretion at any stage of the auction process to do all or any of the following:

- (a) require additional information from any registered applicant; and
- (b) change the structure and timing of the auction process.

## Registered Applicants to Meet Own Costs

Registered Applicant's participation in any stage of the auction process shall be at the registered applicant's sole risk, cost and expense.

## Applications Become Property of the ACA

All application documents submitted in response to the Invitation document shall become the property of the ACA.

## Collusive Bidding

Registered applicants and their officers, employees, agents and advisers must not engage in any collusive bidding, anti-competitive conduct or any other similar conduct with any other registered applicants, or any other person in relation to the preparation or lodgement of applications or bids for a licence under the auction process.

## Confidential Information

Registered applicants and their respective officers, employees, agents and advisers must not take steps to obtain, or use, confidential information of the ACA relating to its businesses or the auction process other than information which is publicly available or made available by the ACA to registered applicants during the auction process.

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### **Return of Information to the ACA**

The ACA reserves the right, in its absolute discretion, to require that all written information provided to registered applicants (and copies of the information) be returned to the ACA at any stage.

### **Conflict of Interest**

Registered applicants and their respective officers, employees, agents and advisers must not place themselves in a position which may, or does, give rise to a conflict of interest (or a potential conflict of interest) between the interests of the ACA or the Commonwealth (on the one hand) or any interests (on the other hand) during the auction process.

### **Application of Laws**

The laws of the Australian Capital Territory apply to the auction process.



# Glossary

<i>ACA</i>	Australian Communications Authority, established on 1 July 1997. The ACA administers the <i>Radiocommunications Act 1992</i> , under which this allocation will be made.
<i>ACCC</i>	Australian Competition and Consumer Commission. The ACCC administers trade practices, competition and business conduct regulation.
<i>accredited person</i>	a person accredited by the ACA to issue Interference Impact Certificates (IICs) and Frequency Assignment Certificates (FACs).
<i>the Act</i>	the <i>Radiocommunications Act 1992</i> .
<i>AEST</i>	Australian Eastern Standard Time.
<i>applicant</i>	a person who has applied to participate in the auction in accordance with the Determination.
<i>Application Form</i>	the form approved by the ACA under clause 8 of the Determination, to be used by Applicants when applying for registration.
<i>auction</i>	an auction held by the ACA to allocate lots which entitle the successful applicant to be awarded apparatus licences.
<i>bank cheque</i>	a bank cheque issued by a bank licensed to operate in Australia.
<i>Bid Co-ordinator</i>	a person appointed to invite bids and identify the highest bidder.
<i>bidder</i>	an applicant or applicant representative who has registered to be a bidder on an allocation day (also known as a registered bidder).

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<i>Bidder Identification Form</i>	the form approved by the ACA under clause 8 of the Determination for the identification of authorised bidders in the auction.
<i>Bidder's Acknowledgement</i>	the form approved by the ACA under clause 8 of the Determination, to be signed by a bidder acknowledging their responsibilities under the Determination.
<i>bid price</i>	the amount that an applicant offers for a licence.
<i>closing date</i>	the date identified in the notice published by the ACA inviting people to apply to take part in an auction. This is the last date that Application Forms will be accepted by the ACA. The closing date for this allocation is <b>Friday 9 April 1999</b> .
<i>Commonwealth</i>	the Commonwealth of Australia.
<i>Deed of Acknowledgment</i>	the Deed approved by the ACA under clause 8 of the Determination to be executed by the applicant when applying to participate in this auction.
<i>Deed of Financial Security</i>	the Deed approved by the ACA under clause 8 of the Determination, guaranteeing the payment of undischarged liabilities that the ACA may claim if a nominated applicant defaults in its bid for a licence.
<i>Determination</i>	the <i>Radiocommunications (Apparatus Licence - Open Outcry Auction) Determination 1999</i> .
<i>Dollars or '\$'</i>	whole Australian dollars.
<i>EIRP</i>	equivalent isotropically radiated power.
<i>emission centre frequency</i>	the frequency midway between the lower and upper frequency limits of a transmitter's effective occupied bandwidth.
<i>entry fee</i>	an amount payable by an applicant to register for an auction. The ACA has set this amount at \$2,000. The entry fee is not refundable.

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<i>FAC</i>	frequency assignment certificate.
<i>Form of Authority</i>	the form approved by the ACA under clause 8 of the Determination that authorises an individual to act on behalf of an applicant.
<i>interference</i>	has the same meaning as ‘interference’ in the Act.
<i>ITU</i>	International Telecommunication Union.
<i>Licence</i>	means an apparatus licence that authorises the holder of the licence to operate 1 or more transmitters on a channel in an area.
<i>lot</i>	a right to have an apparatus licence allocated for a block of channels within 100 km of the Melbourne GPO, and described in the Schedule to the Determination.
<i>Nominated Applicant</i>	the applicant identified as offering the highest bid price for a lot.
<i>performance payment</i>	an amount of money held as a security which an applicant may elect to pay instead of providing a Deed of Financial Security.
<i>RADCOM</i>	the ACA’s computerised radiocommunications licensing management system.
<i>Registered Applicant</i>	an applicant who is registered under clause 17 of the Determination.
<i>Registered Bidder</i>	an Applicant or Applicant Representative who has registered to be a Bidder at an allocation under clause 23 of the Determination.
<i>RF</i>	radiofrequency.
<i>SMA</i>	Spectrum Management Agency. A predecessor of the ACA.
<i>successful applicant</i>	an applicant who makes the highest final bid on a lot.

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*working day*

a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

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# 1. What is Being Offered?

## In this Chapter...

- a description of lots being offered
- other important information about the opportunity.

## Allocation Lots

The ACA is offering two lots in this allocation. Each lot is an exclusive right to lodge an application for and be issued apparatus licences for a group of 5 channels planned for the trunked land mobile service (TLMS) within 100 km of the Melbourne GPO. Applications, once lodged, will be processed by the ACA as if they were received "over-the-counter".

If applications for licences are not lodged within 6 months of the date of the auction, this exclusive right will lapse and the ACA reserves the right to conduct as many further allocations as are necessary to optimise the efficient use of the 800 MHz TLMS spectrum in Melbourne.

The ACA will use an English open oral outcry style of auction process to allocate the two lots. The auction process allocates lots to the applicants who, in economic terms, value them most highly.

The auction procedure is set out in the *Radiocommunications (Apparatus Licence - Open Outcry Auction) Determination 1999* (the Determination). The two lots, "A" and "B" are defined in the Schedule to the Determination.

### Lot "A"

Lot "A" consists of 5 channels from Block 7 Group 2 of the 800 MHz Trunking Band Block, Group and Channel Structure set out in Table B4.1 of the Radiocommunications Assignment and Licensing Instruction LM-8 (RALI LM8) of 6 April 1998 (Sequence Number 129) (Attachment 3). The five channels are 27, 67, 107, 147 and 187 in Table B4.1

The Base TX and Base RX frequencies for these channels are set out in Table B4.2 of RALI LM-8, as follows:

Channel	Base TX	Base RX
27	865.6625 MHz	820.6625 MHz
67	866.6625 MHz	821.6625 MHz

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107	867.6625 MHz	822.6625 MHz
147	868.6625 MHz	823.6625 MHz
187	869.6625 MHz	824.6625 MHz

### Lot "B"

Lot "B" consists of 5 channels from Block 7 Group 4 of the 800 MHz Trunking band Block, Group and Channel Structure set out in Table B4.1 of the Radiocommunications Assignment and Licensing Instruction LM-8 (RALI LM8) of 6 April 1998 (Sequence Number 129) (Attachment 3). The five channels are 37, 77, 117, 157 and 197 in Table B4.1

The Base TX and Base RX frequencies for these channels are set out in Table B4.2 of RALI LM-8, as follows:

Channel	Base TX	Base RX
37	865.9125 MHz	820.9125 MHz
77	866.9125 MHz	821.9125 MHz
117	867.9125 MHz	822.9125 MHz
157	868.9125 MHz	823.9125 MHz
197	869.9125 MHz	824.9125 MHz

## Other Information About the Spectrum Being Offered

### New apparatus licences in this band subject to embargo

In order to protect the utility of the lots being offered in this allocation, the ACA has put in place an embargo (Embargo No. 29) (**Attachment 4**) on the issue of any new apparatus licences in the 800 MHz TLMS bands within 150 km of the Melbourne GPO. This embargo will be lifted once the right to apply for licences has been established through this allocation process.

### Spectrum subject to apparatus licensing

An apparatus licence for the trunked land mobile service may be issued to the applicant who is the highest bidder on a lot in this auction, provided they pay the full bid price and their licence application meets the normal coordination requirements for the trunked land mobile service as set out in RALI LM-8. Apparatus licences authorise the use of a device or devices at a defined site, and mobile devices which communicate with that defined site within a defined service area.

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

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 licences with existing users of the radiofrequency spectrum, and this may be done by the licensee arranging frequency assignment either (a) through an accredited person or (b) directly with the ACA. The ACA will charge a fee for any services provided. Further information about ACA accreditation is on the ACA web site at:

**<http://www.aca.gov.au/licence/accredit/index.htm>**

### **Apparatus Licence Fees**

In addition to any amount bid at auction for the right to apply for licences, applicants must pay all statutory apparatus licence fees, including application fees, as set out in the ACA Apparatus Licence Fee Schedule.

Further information about ACA Apparatus Licence Fees is available from the ACA web site at :

**<http://www.aca.gov.au/licence/fees/index.htm>**

### **Technical Framework for the Trunked Land Mobile Service**

The technical framework for the licences that will be issued to the successful applicants is set out in RALI LM-8 (**Attachment 3**).

Apparatus licences issued will contain the following special conditions:

*When the transmitter is coupled to an antenna the level of all discrete spurious components caused by the transmitter and measured at the connection to the antenna must not exceed -30 dBm. Broadband noise floor to the transmitter at the same point must not exceed -47 dBm in a 16 kHz bandwidth for frequency offsets greater than 300 kHz from the transmit frequency.*

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Apparatus licences will also carry the following Advisory Note:

*Conditions applicable to the operation of land mobile system station(s) authorised under this licence can be found in the Radiocommunications Licence Conditions (Apparatus Licence) Determination and the Radiocommunications Licence Conditions (Land Mobile Licence) Determination. Copies of these determinations are available from any ACA Office or from the ACA Home Page <http://www.aca.gov.au>*

### Details of existing licensees

Details of current apparatus licensees are contained in the ACA's public Register of Radiocommunications Licences. A CD-ROM extract from this Register is available from the ACA for AU\$109.00. More current information can be obtained by search of the ACA's live database from ACA area offices. Limited search capability is also available using the internet. Recordsets containing more than 100 records will not be returned by the internet facility. A set of order forms and end-user agreements, together with instructions for purchasing a copy of the CD-ROM, is at **Attachment 5**.

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.

### Application of the *Trade Practices Act 1974*

In this auction, an applicant can nominate to bid on either or both lots.

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.106A of the Act deems the issue of a licence to a person to be an acquisition by the person of an asset of another person for the purposes of s.50 of the TPA.

The acquisition of assets within Australia is subject to provisions contained in Part IV of the TPA. The TPA prohibits (s.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 July 1996. A copy of the merger guidelines may be obtained from the ACCC or downloaded from the ACCC's website.

There is no formal requirement for proposed acquisitions to be notified to the ACCC. However, the ACCC would encourage parties interested in acquiring 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 to the ACCC.

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

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

### **Taxation treatment of apparatus licences**

The ACA is not able to provide any advice on the treatment which may be accorded apparatus licences under Australian taxation laws. Applicants should seek such specialist advice as they consider necessary on how 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 \$5 million or more;
- plans to establish new businesses involving a total investment of \$10 million or more;

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- direct investments by foreign governments or their agencies irrespective of size;
- certain acquisitions of real estate.

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/FIRB>**

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)

### **Defence use of the Spectrum**

The Australian Defence Force is a large user of the radiofrequency spectrum.

Under the Act and the Radiocommunications Regulations, a wide range of defence and national security uses of the spectrum are 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.

### **Co-ordination with existing radiocommunications services**

Nothing in the ACA's 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 licensee to co-ordinate new devices with devices operated by other licensees.

### **Imposition of Licence Conditions**

The ACA reserves the right at all times to impose on 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 may be issued for a term up to five (5) years. Apparatus licences may be renewed on application, however, licensees should acquaint themselves with the provisions in the Act dealing with licence renewal, and with those that relate to band planning and replanning. Licensees should also be aware that spectrum may be subject to either designation notices (s.36) and re-allocation declarations (s.153B) which provide for the spectrum to be allocated by issuing spectrum licences.





## 2. How to Participate

### In this Chapter ...

- a step-by-step guide to the allocation process
- details about how to fill in the application form
- what will happen after you apply and the auction progresses.

### Introduction

#### *IMPORTANT NOTE*

*The following information is only intended to provide a general overview of the allocation scheme which is contained in the Radiocommunications (Apparatus Licence - Open Outcry Auction) Determination 1999 ('the Determination'). Potential applicants should not rely on this information, but should instead rely on the content of the Determination itself. Potential applicants are also urged to seek appropriate independent legal and other advice in relation to the Determination. A copy of the Determination is at Attachment 1.*

In this auction, applicants will compete for the right to be issued apparatus licences.

The lots on offer in the auction are defined in the Schedule to the Determination (Attachment 1), and are described in the **Chapter 1 - What is being offered?**

To get a licence, follow these steps carefully:

1. Inform yourself - read and understand all of the information in this Applicant Information Package!
2. Decide whether you wish to bid on one or both lots;
3. Apply to participate in the auction, lodge the required documents and pay the entry fee of \$2,000 before the closing time and date of **5:00 pm Canberra time on Friday 9 April 1999**;
4. Register bidders on the day of the auction - only registered bidders may bid for licences and act on the applicant's behalf at allocation days. Bidder registration will entail showing the ACA the Bidder Identification Form, showing identification and signing a Bidder's Acknowledgement Form.
5. Bid in the Auction - a Bid Co-ordinator will conduct an auction-style process to identify the highest bid price for each licence. Only registered bidders may bid for licences. The applicant who bids, or whose registered

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bidder bids, the highest amount for a licence will become the nominated applicant for that licence. The nominated applicant or a registered bidder representing the nominated applicant must then immediately tender a deposit of 10% of the bid price.

6. Pay for the lots won at auction - the nominated applicant will have 15 working days from the date of the allocation to pay the remainder of the bid price. Final payment can only be made at the ACA's offices in Canberra, Sydney or Melbourne by bank cheque or electronic funds transfer.
7. Apply for apparatus licences including undertaking frequency coordination.

### Step 1 - Inform yourself

Before participating in this auction make sure that you read and understand all of the material in this Package. Understand the opportunities and responsibilities that apparatus licensing entails. You are strongly urged to seek your own legal and engineering advice to help you do this.

### Step 2 - Work out How Many Licences You Want

How many lots you want will depend on what you want to do.

There are two lots on offer in this allocation, each lot consisting of 5 channels.

Whatever your circumstances, you need to think carefully about how many channels you need for your business.

When planning your requirements, the ACA recommends that you seek expert engineering advice regarding the spectrum availability and systems you want to operate. The ACA makes no representations about the suitability of the lots being offered for any particular use.

### Step 3 - Applying for the Auction

If, after you have considered your needs, you decide that you want to participate in this auction, you **MUST** register with the ACA by the closing time and date which is 5:00 pm AEST (Canberra time) on Friday 9 April 1999. **Late applications will not be accepted.**

You should register as early as possible. This will enable the ACA to contact any applicants who have not completed or submitted all the necessary forms and ask them to do so by the closing date.

Late Application Forms cannot be accepted.

## Applicant Information Package

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To register in this auction, you MUST:

- Fill out the application documents (included in **Attachment 6**).
- Pay an entry fee of \$2,000 for this allocation, which must be lodged at the time of application. The instrument setting the entry fee is at **Attachment 2**.
- Complete the Deed of Financial Security (included in the documents in **Attachment 6**), **OR** elect to remit a Performance Payment of \$20,000 if you are required to do so under the auction rules in the Determination.
- Complete the Deed of Acknowledgment (included in the documents in **Attachment 6**) in every case, which commits you to your actions in the auction.
- Submit the Application Form, and all appropriate Deeds to

ACA Auction Centre  
Australian Communications Authority  
Locked bag 3321  
BMDC ACT 2616

Street Address

ACA Auction Centre  
Australian Communications Authority  
Level 4, Purple Building  
Benjamin Offices  
Chan St  
Belconnen ACT 2617

Telephone: 02 6256 5262  
Facsimile: 02 6256 5122

by 5:00 pm (AEST) on Friday 9 April 1999.

**IMPORTANT NOTE**

***When submitting your application documents, you MUST PAY the entry fee of \$2,000 and, if you elect to pay a Performance Payment rather than submit a Deed of Financial Security, the amount of Performance Payment for the class of lots on which you intend bidding, in this case, \$20,000. Payment must be made by bank cheque or by electronic funds transfer. Late Application Forms cannot be accepted.***

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### The application form

#### *IMPORTANT NOTE*

*Take care in completing the application forms. These are important for establishing your right to participate and bid during the auction.*

Any individual or body that wishes to bid for a licence in this auction MUST complete the application form.

One copy of the application form is included in this Applicant Information Package at **Attachment 6**.

Further copies are available from the ACA and the ACA's world wide web site:

**<http://www.aca.gov.au>**

An application form jointly submitted by more than one person must be signed by each of those persons. Each party to an application is jointly and severally liable in respect of the application.

Where the applicant is a company, the application form must be executed under seal with a certification that the seal was duly affixed.

The application form must have an original signature or other means of execution. A facsimile or a copy of a completed application form cannot be accepted. The ACA can only accept application forms that are complete and legible. To assist legibility all forms should be completed in block letters, or be typed.

Applicants must also submit one or more Forms of Authority which authorise individuals to make bids at the auction. The ACA will require each person nominated in a Form of Authority to complete a Bidder Identification Form which identifies them when they attend the auction.

The ACA will only register an applicant if it receives the required entry fee and a Deed of Financial Security or Performance Payment for the correct amount, all the necessary forms, completed and legible, and all by the time and date published. The ACA will confirm receipt of the application documents and any money remitted.

The ACA will send registered applicants a Bidder Identification Form for the applicant (if an individual) and for any applicant representative(s) for whom the applicant has submitted Forms of Authority. The Bidder Identification Form enables an individual to register as a bidder on an allocation day.

### **Entry Fee**

To register in this auction, applicants MUST pay an Entry Fee of \$2,000 (Item G on the Application Form). The Entry Fee will not be waived. **The Entry Fee is not refundable.**

### Deed of Financial Security and Financial Security Amounts

Applicants have the option of providing either a Deed of Financial Security or a Performance Payment for their participation in the auction.

The Deed of Financial Security or the Performance Payment **MUST** be for the Financial Security Amount set by the ACA . The instrument setting the Financial Security Amount for this auction is set out in **Attachment 2**. **The amount is \$20,000.**

Applicants must nominate their preference of either submitting a Deed of Financial Security **OR** Performance Payment, and if they choose the Deed of Financial Security, it must accompany their application. If they elect to pay a Performance Payment, then the amount of the Performance Payment must be paid with their Entry Fee and all money must accompany the application documents. Note that if the funds are being deposited by electronic funds transfer, the amounts must be on deposit with the ACA bank account at the time the application forms are received and the mandatory notification requirements set out in the Determination must have been followed. If the procedures are not followed, the ACA may be unable to reconcile amounts in its bank account with your application, and may conclude that the requirements of the Determination have not been met, in which case you will be excluded from participation.

The Deed of Financial Security or Performance Payment guarantees and secures the payment of any moneys owing to the ACA by applicants under the Determination.

All applicants must provide a Deed of Financial Security or a Performance Payment **UNLESS** they satisfy the ACA that they:

- are an authority of the Commonwealth, or of a State or Territory; or
- are a subsidiary of an authority of the Commonwealth or of a State or Territory (within the meaning of the Corporations Law); or
- are an Australian company which does not carry on a business for a profit.

#### ***IMPORTANT NOTE***

***An applicant is not automatically exempt from the requirement to provide a Deed of Financial Security or a Performance Payment if it thinks it falls into one of these categories. The ACA must be satisfied that the applicant falls into one of these categories. An applicant must take action to satisfy the ACA that it meets the criteria. If the ACA is not satisfied, the applicant will have to provide a Deed of Financial Security or a Performance Payment.***

To be satisfied that the applicant falls into one of the exempt categories, the ACA requires that evidence produced be in the form of a properly made statutory declaration. The statutory declaration should:

- be made by a director, or a responsible officer of the governing body of the applicant; and

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- state the capacity in which the person is making the declaration; and
- state the matters relied upon in order to establish that the company or body is exempt.

Applicants should also provide full details of all other matters of which they are aware that may be relevant to the ACA's consideration of the issue.

### Guarantor must be qualified to give Deed

An applicant who provides a Deed of Financial Security must also satisfy the ACA that the guarantor is qualified to give the guarantee (as set out in clause 13 of the Determination).

To be satisfied that the guarantor is qualified the ACA requires that evidence be produced in the form of a properly made statutory declaration that:

- states the capacity in which the person is making the declaration; and
- states the specific status of the guarantor which satisfies the requirements in clause 13.4 of the Determination.

### Submitting a Deed of Financial Security

Deeds may be submitted only in the form approved by the ACA. A copy of the Deed form is included in the application documents included in this Applicant Information Package. You can obtain more Deeds from the ACA website.

Instructions for completing the Deed of Financial Security are provided on the form. These instructions should be followed carefully. The Deed must have an original signature or other means of execution. Photocopies and facsimile transmissions are not acceptable. A Deed of Financial Security must be complete and legible to be accepted by the ACA.

The originals of the statutory declaration attesting to the status of the guarantor must accompany Deeds of Financial Security that are submitted.

Deeds of Financial Security must be received by the ACA at the same time as the Application Form (before closing time on the closing date).

If a Deed of Financial Security has not been received from an applicant by the closing date, then the applicant will be excluded from participating in the auction unless it satisfies the ACA that it falls within one of the categories referred to in subclause 13(1) of the Determination.

### **Performance Payment and Total Amount Payable**

If you elect to pay a Performance Payment of \$20,000, which is the Financial Security Amount set by the ACA for this allocation (see **Attachment 2**), rather

## Applicant Information Package

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than submit a Deed of Financial Security, you must pay the amount of the Performance Payment at the time of application. The amount payable is at item F of the Application Form

To work out the total amount payable to the ACA in order to participate in this auction, add the amounts in boxes F and G and enter the amount in box H.

The Performance Payment may only be refunded to applicants after all financial obligations to the ACA arising from this allocation are discharged.

### ***IMPORTANT NOTE***

***When you lodge your Application Form with the ACA, the Form MUST be accompanied by a bank cheque made payable to the ACA for the amount in box H on the application form, or equivalent funds must have been lodged by electronic funds transfer in the ACA's bank account, in strict accordance with the reporting requirements set out in the Determination.***

### **Deed of Acknowledgment**

All applicants MUST complete a Deed of Acknowledgment. This Deed acknowledges, amongst other things, that an applicant will honour all bids that are made by them during the auction. A copy of the Deed of Acknowledgment is included in the application documents included in this Applicant Information Package.

Applicant registration will be complete only when the applicant has completed registration requirements and the ACA enters the names of the applicants in the register of applicants. The ACA must refuse registration if all required forms, the entry fee, and if nominated, the Performance Payment, are not provided in accordance with the Determination.

### **Confirmation of Registration**

The ACA will send a package of information by receipted mail to registered applicants in accordance with clause 17(2) of the Determination. This package, which will be sent at least 5 working days before the starting date of the auction set by the ACA, will contain:

- confirmation that the applicant has been registered;
- advice of the starting date and time of the auction;
- advice that the applicant is registered;
- the place of the auction;
- the class or class of lot for which the applicant can bid; and
- the amount of reserve price for each lot.

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### Completing and Submitting the Form of Authority

Forms of Authority are provided to permit an applicant to authorise an individual to act on the applicant's behalf in applying for a licence under the Determination. An individual applicant may authorise one or more persons to act on his or her behalf in an allocation, if the applicant wishes to do so. An applicant that is not an individual *must* authorise at least one individual to act on its behalf, for only individuals may bid in the auction.

Applicants should note that a Form of Authority authorises an individual to represent an applicant generally during the process. This will include bidding on the applicant's behalf and tendering money. (For details of the extent to which bidders are authorised see the Form of Authority). Applicants will be bound by any action of their representatives taken under the Form of Authority.

A copy of the Form of Authority is included in the application documents in **Attachment 6**. Forms of Authority are available from the ACA Auction Centre of the ACA. The authority must be in the form approved by the ACA.

There is no limit to the number of representatives an applicant may authorise to act on its behalf. Applicants must complete a separate Form of Authority for each individual.

The applicant named on the Form of Authority must be the same as on the Application Form. Where there are joint applicants, each applicant must execute the Form of Authority. In the case of a company applicant, the seal of the company must be duly affixed to each Form of Authority the company gives.

Individuals authorised to represent applicants do not need to sign the Form of Authority. It is the responsibility of applicants to make their representative aware of their duties and obligations.

A facsimile or a copy of a signed Form of Authority cannot be accepted. The ACA can only accept Forms of Authority that are both complete and legible. To assist legibility, Forms of Authority should be completed in block letters or typed.

Forms of Authority must be received by the ACA with the Application Form, unless submitted in special circumstances (see following section). In the case of applicants that are companies, *at least one* Form of Authority must be provided prior to the closing date in order for an applicant to be registered.

### Receipt of Late Forms of Authority in Special Circumstances

Registered applicants may be able to lodge Forms of Authority after the close of registration in special circumstances (clause 18 of the Determination). The ACA will decide whether special circumstances exist allowing for late lodgement. An example of special circumstances might be an illness that will prevent a previously authorised representative from attending an allocation period. The applicant must submit the additional Forms of Authority and set out the special circumstances in a letter accompanying the Forms of Authority.



No additional Forms of Authority may be accepted within two business days of the auction at which the applicant's representative intends to represent the applicant.

### Acceptance of Registration

Applicant registration will be complete only when the applicant has completed registration requirements and the ACA enters the names of applicants in the register of applicants (clause 17 of the Determination). The ACA must refuse registration if the Application Form, Entry Fee or required Forms of Authority and Deeds of Financial Security or Performance Payment or evidence of exempt status are not provided in accordance with the Determination.

Where all necessary and completed forms and Entry Fee have been received, and the applicants registered, the ACA will make available Bidder Identification Forms to registered applicants. A separate Bidder Identification Form will be issued for each applicant who is an individual, and for each individual authorised by a Form of Authority (clause 19 of the Determination).

Bidder Identification Forms will be sent to registered applicants. It will be the responsibility of the applicants to distribute the forms to their applicant representatives as necessary.

An original Bidder Identification Form must be presented by the individual named in it, in order to register as a bidder on the allocation day (see 'Bidder Registration' below).

## Step 4 - Register Bidders

**Bidders are advised *not* to leave their registration to the last moment.**

Individuals holding Bidder Identification Forms who wish to bid must register as a bidder on the day of the allocation. Only registered bidders may bid for a lot (clause 24 of the Determination). Any person who intends tendering a deposit on behalf of an applicant must also be registered as a bidder (clause 25 of the Determination).

Bidder registration will take place on the first day of the auction, as notified by the ACA, before bidding on the first lot is called.

Arrangements for bidder registration will be notified to all applicants. Once closed, bidder registration cannot be re-opened.

To become registered bidders, individuals must produce an original Bidder Identification Form provided to them and meet the other requirements of clause 23 of the Determination. Photocopies of the Bidder Identification Form will not be accepted. Persons wishing to register as Bidders must also provide the evidence

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of their identity referred to in the Bidder Identification Form. The evidence required is:

- photographic identification being either a driver's licence or passport;
- or
- two forms of other identification (such as a birth certificate or credit card), one of which must include a signature.

A photocopy of the identification will be retained by the ACA for records purposes.

After showing the ACA a Bidder Identification Form and identification, bidders will be asked to sign a Bidder's Acknowledgement stating, amongst other things, that they are the person authorised by the relevant applicant and they understand the obligation of bidders (clause 23(3)(c) of the Determination). A copy of the Bidder's Acknowledgement Form is included in the application documents at **Attachment 6**.

Persons who have not registered as applicants, and who have not given the ACA Forms of Authority for their representatives, can neither register as a bidder, nor have their representatives registered as bidders. Applicant representatives who do not show the ACA a Bidder Identification Form and identification on the allocation day will not be able to bid in the auction.

### Replacing Lost or Destroyed Bidder Identification Forms

Lost or destroyed Bidder Identification Forms can be replaced (subclause 19(3) of the Determination). The ACA can also replace a Bidder Identification Form if satisfied that the Form cannot reasonably be made available.

The ACA will accept a statutory declaration as evidence of loss or destruction, and of the reasons for unavailability. Prior to the auction, the ACA would prefer that applicants, rather than their representatives, seek replacement Bidder Identification Forms.

### **Bidder's Paddle**

Registered bidders will be provided with a bidder's paddle with which they may bid (clauses 23(5) of the Determination).

Only one paddle will be issued for each Bidder Identification Form presented.

## **Step 5 - Bid in the Auction**

### **Reserve Prices**

The ACA has set a reserve price for each lot of \$5,000. The Instrument setting the Reserve Prices is at **Attachment 2**.

## Process

The ACA will manage the allocation process.

A Bid Co-ordinator will be appointed by the ACA. The Bid Co-ordinator will conduct an auction-style allocation process in accordance with the Determination.

## Timetable

The timetable for the allocation, including for bidder registration, will be notified to applicants after applications close.

Any changes to this proposed timetable will be made known to registered bidders.

## Identifying the Highest Bidder

The Bid Co-ordinator will identify the registered bidder who bids the highest amount for a particular lot (subclause 24(2)(b) of the Determination).

To assist identification the Bid Co-ordinator will ask that bidder to show the bidder's paddle for the relevant Applicant.

Any bid below the reserve price will not be accepted. If the highest bidder is an applicant, he or she becomes the nominated applicant. If that person is an applicant representative, he or she represents the nominated applicant.

Persons intending to bid should note that s.302 of the Act provides that a person may be prosecuted for making a false or misleading statement for the purposes of or in connection with the Act.

## Payment of Deposit

Immediately on being identified, the nominated applicant or a registered bidder representing the nominated applicant must meet with ACA staff, and will be required to confirm using the correct Bidder Identification Form that he or she is registered to bid as, or on behalf of, the nominated applicant (clause 25(2)(a) of the Determination).

The nominated applicant or a registered bidder representing the nominated applicant must tender 10% of the bid price as a deposit. The deposit tendered must be in one payment and may consist of cash, personal/company cheque or a combination of these methods of payment. Any cash payment made must be less than \$10,000. Cheques should be made payable to the "Australian Communications Authority". Note: Personal/company cheques are accepted for the deposit because it is recognised that it may not be feasible to arrange a bank cheque in the time available. Personal/company cheques *are not* however acceptable for the balance of the bid price.

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Following payment of the deposit, the nominated applicant will be given a receipt.

Failure to tender the deposit as directed by the ACA will exclude the applicant from being allocated that lot. The ACA may offer the lot again on the same allocation (clause 26(b) of the Determination), or at another later allocation.

### Step 6 - Paying for Your Lots

The balance of the bid price must be paid within 15 working days after the end of the auction. Payment can be made only at the ACA's Canberra, Sydney or Melbourne Area Offices, or by electronic funds transfer.

Payment can be made *only* by bank cheque or electronic funds transfer. Bank cheques should be made payable to the "Collector of Public Monies - Australian Communications Authority".

#### ***IMPORTANT NOTE***

***Personal or company cheques cannot be accepted for payment of the balance of the bid price.***

If the nominated applicant fails to pay the full amount of the bid price by the specified time then the nominated applicant will have defaulted (Part 5 of the Determination).

As soon as practicable after payment of the balance of the bid price the ACA will issue a licence or licences.

The ACA will make the following information public with regard to allocated licences:

- name of licensee;
- the lot or lots assigned to the licensee;
- amount paid by the Applicant for the allocation of the licences; and
- contact name and address.

### Step 7 - Applying for Licences

If you are successful in this allocation, you will have the right to apply for licences. You should make your application directly to:

Mr Peter Young  
Area Manager - Victoria  
Australian Communications Authority  
Level 15  
200 Queens Street

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Melbourne VIC 3000

PO Box 13120

Law Courts

Melbourne VIC 8010

The Victoria Area Office of the ACA will process your application(s) and, provided that all coordination requirements are met, the Office will issue licences and an invoice for licence application and apparatus licence fees. Apparatus Licences are subject to a licence condition that all fees are paid.

### **Licence start dates**

Licence start dates will be the date of issue of the licence.

### **Default**

If a nominated applicant defaults by failing to pay the balance of the bid price, the allocation of the licence will be set aside (clause 28 of the Determination). A deposit paid will be forfeited. An amount equal to a deposit required to be paid but not paid will be recoverable as damages by the ACA.

In addition, the nominated applicant may be sued by the ACA for other or additional damages, including the cost of conducting another auction and compensation for lost revenue. The ACA may proceed under any relevant Deed of Acknowledgement, Deed of Financial Security, Statute, common law, equity or otherwise for the amount of the damages. If the nominated applicant lodged a Performance Payment, that Performance Payment will be called by the ACA in satisfaction of any amount owing.

### **Unallocated Lots**

Any unsold or defaulted lots may be allocated by the ACA by another auction or administratively if a person makes application for an apparatus licence.

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# Attachment 1

***Radiocommunications (Apparatus Licence -  
Open Outcry Auction) Determination 1999***

# Attachment 2

***Instrument Setting Entry Fee , Financial  
Security Amount and Closing Date and Time***

***Instrument Setting Reserve Prices***



# Attachment 3

## *Radiocommunications Assignment and Licensing Instruction LM-8*

# Attachment 4

*Embargo 29*

# Attachment 5

***Order Form and Information for the ACA CD-ROM Extract from the Register of Radiocommunications Licences***

# Attachment 6

## *Application Documents*