

Post-auction applicant guide for unsold spectrum from the multiband residual lots auction

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Important notice and disclaimer

The *Post Auction Applicant Information Package* (AIP) has been prepared by the ACMA in connection with the proposed allocation of the unsold spectrum lot from the recent multiband residual lots auction held in November 2017. Post auction, one lot remained unallocated in the 3.4 GHz band.

The ACMA must perform its spectrum allocation and management functions in accordance with relevant legislation, in particular the *Radiocommunications Act 1992* (the Act). The [Radiocommunications \(Spectrum licence allocation – Multi-band Auction\) Determination 2017](#) (the allocation determination) is made under sections 60 and 294 of the Act. Material that must be included in the AIP is set out in clause 4 of Schedule 4 of the allocation determination.

The allocation rules and procedures made by the ACMA are set out below under the heading 'legislative instruments'. These include the allocation instruments. Links to each instrument are provided in [section 1.3](#) of this guide. Interested persons should note that the allocation instruments have legal effect and are registered as legislative instruments on the [Federal Register of Legislation](#). In the event of any difference between the provisions of the allocation instruments and any other written or oral information made available, the allocation instruments prevail.

The material contained in the AIP, including this post-auction applicant guide, is for information only and should not be used as a substitute for independent advice on the allocation process, and the rights or regulatory responsibilities that attach to any spectrum licences that may be obtained. The AIP does not, and does not purport to, contain all the information that may be required to evaluate any allocation process or spectrum licence, or rights and obligations under the associated legislative instruments or applicable regulatory framework.

Prospective applicants should take whatever steps they consider necessary to obtain technical or other specialist advice independently of the ACMA concerning their application, the regulation and operation of radiocommunications devices and services, or any other matters relevant to the proposed spectrum licence allocation process. Applicants are also advised to seek advice independently of the ACMA on the treatment of spectrum licences and other investments under Australian taxation laws, and on the operation of foreign investment laws and policies on a proposed investment in communications in Australia.

Prospective applicants are urged to familiarise themselves with all the provisions of the Act, not just those pertaining to spectrum licensing, and should be aware that activities associated with radiocommunications may also be regulated by the *Competition and Consumer Act 2010* (the Competition and Consumer Act), the *Broadcasting Services Act 1992* (the Broadcasting Services Act) and the *Telecommunications Act 1997* (the Telecommunications Act). Depending on the activity undertaken when using spectrum under a licence, other Commonwealth, state and territory laws may apply.

The ACMA is a statutory authority established under the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to administer the Act, among other things.

The ACMA is also required by subsection 14(4) of the ACMA Act to perform its functions in a manner consistent with any directions given to the ACMA by the Minister administering that Act. The policies of the government may change from time to time.

In exercising its powers and functions, including those conferred on the ACMA by the ACMA Act, the Broadcasting Services Act, the Telecommunications Act and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the ACMA may also take into account its own policies, which may change from time to time.

The ACMA is also required under the *Public Governance, Performance and Accountability Act 2013* to manage its affairs in a way that promotes the efficient, effective, economical and ethical use of public resources, and must act in accordance with any rules and guidelines made under that Act.

Australia is a signatory to the International Telecommunication Union Constitution and Convention, and to other international instruments relating to communications. The administration of communications by the ACMA is undertaken having regard to these instruments.

The ACMA may change its process

The ACMA may in certain circumstances, under the Act and the allocation instruments, vary the processes that apply to the allocation process, including the processes that apply to the auction, or terminate the allocation process. The ACMA reserves the right, in its sole and absolute discretion, but without being under any obligation to do so, to add to, vary, amend, update or supplement the information, terms and procedures set out in the AIP and correct any inaccuracies.

Post Auction Applicants to meet own costs

Each post-auction applicant's participation in the post-auction allocation process will be at their sole risk, cost and expense.

Applications may be used, disclosed and retained by the Commonwealth

All application documents submitted in connection with the post-auction allocation process may be used and disclosed by the ACMA for the purposes of the Allocation Determination and in relation to spectrum licences issued, and may be retained by the ACMA for as long as necessary for the performance of the ACMA's functions and exercise of its powers under the Allocation Determination or the Act.

Release of information and documents by the ACMA

Information and documents obtained by the ACMA in the performance of its functions under the Allocation Determination may be released under the *Freedom of Information Act 1982* (unless an exemption applies) or disclosed to other parties under Part 7A of the ACMA Act. The ACMA may also release information and documents for other reasons including for the purpose of parliamentary processes or where otherwise required or authorised by law (for example, under a court subpoena). While the ACMA seeks to consult with submitters of confidential information before that information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

Confidential information

Applicants and their officers, employees, agents and advisers must not take steps to obtain, or use, confidential information of the ACMA relating to its spectrum allocation functions other than in accordance with the confidentiality requirements of the allocation determination.

Return of information to the ACMA

Applicants must, under the Deed of Acknowledgment form executed by applicants, at their sole expense, upon request by the ACMA in its absolute discretion, return to the ACMA any items or written information provided to the applicant (and copies of the information) at any stage.

Application of laws

The laws of the Australian Capital Territory and the Commonwealth of Australia apply to the allocation process pursuant to the Deed of Acknowledgment form executed by applicants.

1. General Information

1.1 Overview

The ACMA is offering spectrum that remained unsold after the November 2017 multiband residual lots auction. There is one unsold 3.4 GHz lot on offer for allocation by application.

A spectrum licence will be issued in accordance with schedule 4 of the allocation determination that will authorise licensees to operate radiocommunications devices for a fixed period, within a particular range within a particular geographic area.

This guide is designed to give prospective applicants information to help them apply for the unsold spectrum. The guide is structured as follows:

- > Chapter 1: General information: provides an allocation history of the 3.4 GHz band, relevant legislative instruments and information about spectrum licensing.
- > Chapter 2: The application process: provides information about the key dates, available spectrum, the application period and the application fee.
- > Chapter 3: Making an application: provides information about how to complete the application form and the Deed of Acknowledgement. It also provides information about whether an application can be withdrawn.
- > Chapter 4: Lodging documents: provides details about how to lodge an application.
- > Chapter 5: Queries: provides the contact details for the auction manager.
- > Attachments include:
 - > The application form (**Form 1**)
 - > The Deed of Acknowledgement (**Form 2**)

Together, the applicant guide and its attachments form the AIP for the post-auction allocation of the lot that remained unsold from the multiband residual lots auction.

1.2 Background to the 3.4 GHz band unsold lot

Allocation (auction), 2000

The Radiocommunications (Spectrum Re-allocation) Declaration 2000, available on the ACMA website, was made by the then Minister for Communications, Information Technology and the Arts and provided for specified parts of the 3.4 GHz band to be reallocated by the issue of spectrum licences.

An allocation of spectrum licences in the 3.4 GHz was completed in October 2000 (preceding 3.4 GHz allocation). There were 460 spectrum lots sold and 22 lots passed in. Bidders (any person or specified group of persons) were restricted as to the amount of spectrum they could acquire through the auction by allocation limits set out in the [Radiocommunications \(Spectrum Licence Limits - 3.4 GHz band\) Direction No.1 of 2000 \(3.4 GHz limits direction\)](#) made by the then Minister on 11 April 2000. It is possible that this band could be the subject of a future ministerial direction.

The 22 spectrum lots that remained unsold following the 3.4 GHz auction in 2000 were re-offered to market in 2002; however, they again remained unsold. These lots were offered for allocation on a quarterly basis from 2004 to 2008.

3.4 GHz spectrum licence reissue, 2015

On 9 February 2012, the then Minister for Broadband, Communications and the Digital Economy made the [Radiocommunications \(Class of Services\) Determination 2012](#) on the basis that it would be in the public interest to reissue licences to incumbent licensees who had used the licence to provide wireless broadband services in the 3.4 GHz band.

The original spectrum licences expired in December 2015. The majority of spectrum licences were reissued to the same licensees, with an expiry date of 13 December 2030.

Unallocated spectrum from the preceding 3.4 GHz allocation

The spectrum that was not reissued in 2015, and unsold lots from the preceding 3.4 GHz allocations, were made available for allocation by way of issuing spectrum licences in April 2017 when the then Minister for Communications and the Arts made the [Radiocommunications \(Spectrum Designation—2 GHz and 3.4 GHz Bands\) Notice 2017](#). At the time of the auction no allocation limits applied to this band.

In November 2017, the ACMA held a single allocation process for residual spectrum lots in the 1800 MHz, 2 GHz, 2.3 GHz and 3.4 GHz bands. There were 39 lots on offer. Spectrum licences were issued for all but one lot. One lot in the 3.4 GHz band remained unsold at the conclusion to the auction. The ACMA is now conducting a post-auction allocation process for the unsold spectrum lot in the 3.4 GHz band in accordance with section 76 and Schedule 4 of the allocation determination.

The auction guide for the multiband residual lots auction also contains further background to the allocation of multiband residual lots, spectrum licensing, technical framework and information about the legislative instruments and is available on the [ACMA website](#).

1.3 Legislative Instruments

The legislative instruments for the 3.4 GHz band are as follows:

Allocation instruments

[Radiocommunications \(Spectrum Licence Allocation – Multi-band Auction\) Determination 2017](#)

[Radiocommunications Spectrum Marketing Plan \(3.4 GHz unallocated lots band\) 2017](#)

Technical instruments

[Radiocommunications \(Unacceptable Levels of Interference – 3.4 GHz Band\) Determination 2015](#)

[Radiocommunications Advisory Guidelines \(Managing Interference from Spectrum Licensed Transmitters – 3.4 GHz Band\) 2015](#)

[Radiocommunications Advisory Guidelines \(Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band\) 2015](#)

Spectrum designation notice

[Radiocommunications \(Spectrum Designation – 2 GHz and 3.4 GHz Bands\) Notice 2017](#)

1.4 Spectrum licensing

A spectrum licence authorises the operation of radiocommunications within a specified frequency band, within a particular geographic area for a fixed period of up to 15 years. Licensees choose how they deploy devices within their spectrum space, the nature of the services they wish to deliver and the technology they use as long as the operation of devices is within the parameters of the conditions of the spectrum licence. Licensee's use of spectrum available under a spectrum licence is subject to several constraints, including:

- > compliance with the Act
- > compliance with a set of core licence conditions required to be included in the licence in accordance with subsection 66(1) of the Act (core conditions of spectrum licences)
- > compliance with statutory licence conditions required to be included in the licence in accordance with sections 67 (conditions about payment of charges), 68 (conditions about third-party use), 69 (conditions about registration of radiocommunications transmitters) and 69A (conditions about residency) of the Act
- > compliance with other conditions that the ACMA may include under section 71 of the Act
- > management of interference issues with reference to technical instruments established for the band under subsection 145(4) of the Act
- > awareness of, and compliance with, any advisory guidelines issued by the ACMA under section 262 of the Act
- > licensees may be permitted to make agreements with affected adjacent licensees to change emission limits within the parameters of the technical framework for the band.

Licence commencement will come into effect on the day stated in the applicant's completed post-auction application form, unless otherwise provided (see clause 11 of Schedule 4 of the allocation determination below)¹. The expiry date for the spectrum licence will align with the expiry date that applies to spectrum licences currently issued in the 3.4 GHz band, being 13 December 2030.

Under the Act, there is no right of renewal for spectrum licences. The rules for the reissuing of spectrum licences are set out in Division 4, Part 3.2 of the Act.

¹ Clause 11 Issue of licence

(1) If a licence is allocated to a post-auction applicant, the ACMA must issue the licence to the applicant.

(2) Subject to subclauses (3) and (4), if a licence is issued in accordance with this clause, it must specify that it comes into force on the day stated in the applicant's completed post-auction application form (proposed commencement day).

(3) Subject to subclause (4), if a licence is issued in accordance with this clause after the proposed commencement day, it must specify that it comes into force on the day it is issued.

Note: Under subsection 65(1) of the Act, a spectrum licence comes into force on the day on which it is issued or on such later day as specified in the licence. A licence will not specify a day earlier than the date it was issued. Accordingly, regardless of the proposed licence period for the licence, the licence issued will not specify a date it comes into force earlier than the date of issue.

(4) A licence must not specify that it comes into force on a day before 1 February 2018.

1.5 Applicant Information Package

The post-auction applicant information package is comprised of this guide and two forms:

- > the application form (Form 1)
- > the Deed of Acknowledgement (Form 2)

The ACMA will consider applications in order in which emails are received, that is, the 'first-in-time' order. The ACMA will time stamp each application it receives and will use this information to determine the order in which applications have been received. An email is deemed to have been received by the ACMA according to the date and time contained in the email time stamp applied by the server at the ACMA. A spectrum licence will be offered to the first receipted complete application in accordance with clauses 5 and 6 of Schedule 4 of the allocation determination.

2. The application process

A post-auction applicant (the applicant) must complete the two forms required to apply for a spectrum licence for the lot remaining at the conclusion to the multiband residual lots auction, held in November 2017. Information is provided at the beginning of each form about:

- > the purpose of the form
- > who must complete the form (including, where applicable, who can execute or witness the form)
- > when the completed form must be given to the ACMA, and by whom
- > any amount payable in association with the form
- > other relevant matters.

The allocation process will be conducted in accordance with the procedures in section 76 and Schedule 4 of the allocation determination.

2.1 Invitation to apply

The ACMA invites interested parties to apply for the unsold lot specified in Table 2.

2.2 Key dates

The key dates for the post-auction application process are set out in Table 1:

Table 1: Key dates for allocating the unsold lot

	Event	Key date
1	The ACMA advertises the post-auction allocation process and the Applicant information package on the ACMA website. Applications are welcome from when the application period opens and before the application period closes.	Monday 16 September 2019
2	Application period opens	10am Monday 30 September 2019
3	Application period closes By this date and time, any person wishing to be an applicant will need to: > submit a completed Form 1 (the application form) > submit a completed Form 2 (the Deed of Acknowledgement) The application period closes three months before the licence expiry date of 13 December 2030.	4pm Friday 13 September 2030

Note: The above timetable is subject to change. Any changes made to the timetable will be announced on the [ACMA website](#).

2.3 Available spectrum

The ACMA will allocate unsold spectrum from the multiband residual lots auction in accordance with Part 3 of Schedule 4 of the allocation determination. There is one unsold lot for allocation by application as set out below.

Table 2: The unsold lot for allocation

Band	Lot number	Lot name	Geographic area	Frequency (MHz)	Bandwidth (MHz)
3.4 GHz	29	CBRA02	Canberra A	3490–3492.5	2.5

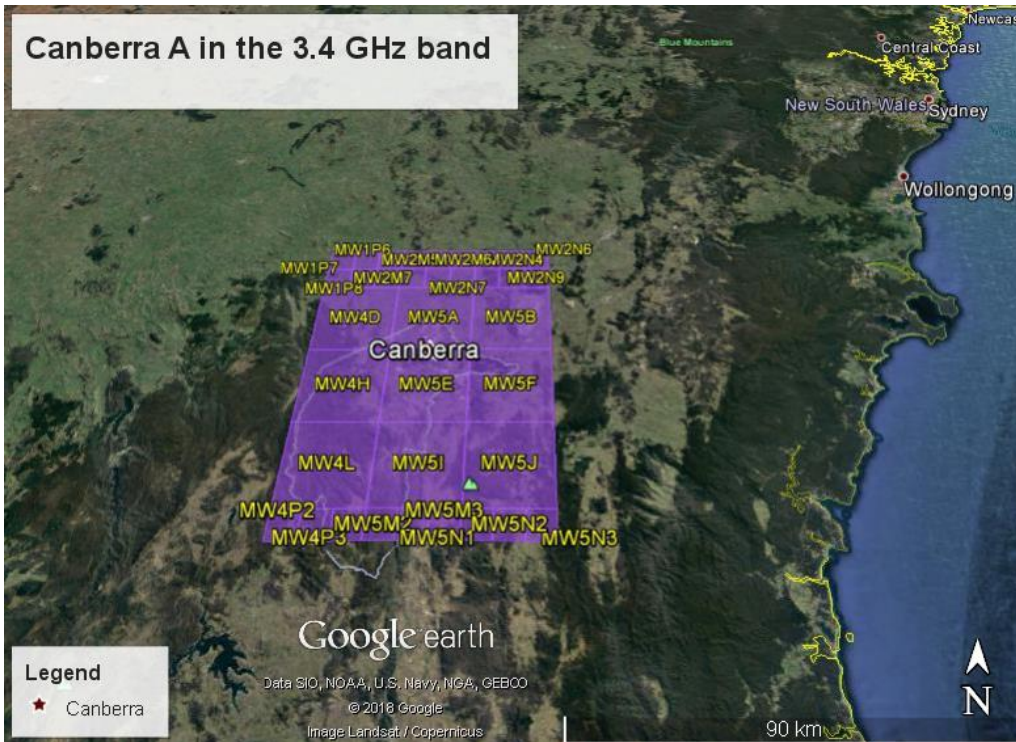
Table 3: HCIS identifiers for the spectrum licence

HCIS Identifiers for Canberra A in the 3.4 GHz band		
Band	Geographic area	HCIS identifier
3.4 GHz (3490–3492.5)	Canberra A (CBRA02)	MW4D, MW4H, MW4L, MW5A, MW5B, MW5E, MW5F, MW5I, MW5J, MW1P4, MW1P5, MW1P6, MW1P7, MW1P8, MW1P9, MW2M4, MW2M5, MW2M6, MW2M7, MW2M8, MW2M9, MW2N4, MW2N5, MW2N6, MW2N7, MW2N8, MW2N9, MW4P1, MW4P2, MW4P3, MW5M1, MW5M2, MW5M3, MW5N1, MW5N2, MW5N3

Map 1: Canberra A geographic area

The area shaded in Map 1 provides an indicative pictorial representation of the Canberra A geographic area.

The geographic area (region) for the unsold lot is also specified in Schedule 2 to the [Radiocommunications Spectrum Marketing Plan \(3.4 GHz unallocated lots band\) 2017](#).



Allocation limits

On the 6 July 2018 the then Minister made a direction, [Radiocommunications \(Spectrum Licence Limits – 3.6 GHz Band\) Direction 2018](#), specifying allocation limits for the 3400–3700 MHz frequency range for the purposes of the 3.6 GHz band auction. With the completion of the 3.6 GHz band auction, spectrum has been allocated and these allocation limits no longer have effect. This means that if you were a winning bidder in the 3.6 GHz band auction you can acquire the unsold lot without reducing the amount of spectrum you won in the 3.6 GHz band allocation.

2.4 Application period

Applications are accepted during the application period commencing 10 am Monday 30 September 2019 and closing at 4pm on 13 September 2030, being the date three months before the spectrum licence expiry date, 13 December 2030.

2.5 Application fee

The ACMA has determined there will be no application fee for making a post-auction application for the unsold spectrum lot in accordance with paragraph 4(1)(k) and subclause 4(3) of Schedule 4.

3. Making an application

The ACMA needs to receive two completed forms after the unsold spectrum notice is published on the website and within the application period:

- > Form 1—application form
- > Form 2—Deed of Acknowledgement

3.1 Completing forms

Before the application deadline applicants must print a paper copy of each relevant form, execute the form by hand and give the completed form to the ACMA by the applicable deadline in accordance with the lodgement procedures set out in the Lodging documents section of this guide.

3.2 The application form

3.2.1 Part 1: Applicant's details

The applicant is to provide details that can be included on the spectrum licence register should they be issued a spectrum licence. The applicant should be the same as the entity completing the Deed of Acknowledgement.

3.2.2 Part 2: Principal contact person

The applicant is to provide details of at least two people the ACMA can contact in relation to the post-auction application. The principal contact person should be the person making the application as an individual or on behalf of a body corporate and should have delegated authority to make payments on behalf of the applicant.

3.2.3 Part 3: Proposed spectrum licence commencement date

The applicant is to provide the date on which their spectrum licence would begin. This is subject to clause 11 of Schedule 4 of the allocation determination, as provided in section 1.4 of this applicant guide. The date must be no later than two months after the post-auction application is provided to the ACMA.² The commencement date will also be used for calculating the post-auction pre-determined price in Part 4 of the application.

3.2.4 Part 4: Post-auction pre-determined price (PAPDP)

The applicant is to provide:

- > the PAPDP amount they are offering for the spectrum licence
- > the calculations they used to arrive at the PAPDP amount.

Method for calculating the PAPDP

The post-auction price for a spectrum licence is calculated in accordance with subclauses 2(3) and 2(4) of Schedule 4 of the allocation determination, as set out below:

² Subclause 4(2) of the allocation determination.

- (3) For a spectrum licence that is to come into force on a day after 1 February 2018, the *post-auction pre-determined price* is worked out as follows:
- identify each lot to be included in the spectrum licence;
 - add up the starting prices for each of those lots (*primary amount*);
 - apply the formula in subclause (4) to the primary amount for the licence.
- (4) For the purposes of paragraph (3)(c), the formula is:

$$PAPDP = \frac{PAL}{\left(1 / \left((1+z)^n \left(\frac{1 - \left(\frac{(1+z)}{(1+r)} \right)^m}{1 - \left(\frac{(1+z)}{(1+r)} \right)^n} \right) \right) + \frac{1}{(1+r)^n} \right)}$$

where, for a spectrum licence:

m means the number of days in the relevant period for the licence.

n means the number of days in the period:

- commencing 1 February 2018; and
- ending on the day before the commencement of the relevant period for the licence.

PAL means the primary amount for the licence.

PAPDP means the post-auction pre-determined price for the licence.

r equals 0.0001467.

z equals 0.0000677.

The starting price for unsold lot 29 was set by the ACMA in accordance with section 26 of the allocation determination and is used for calculating the PAPDP amount. The starting price is listed in Table 4.

Table 4: Unsold lot starting price

Lot number	Lot name	Starting price for the lot (AUD)
29	CBRA02	\$6,000

3.2.5 Part 5: Declaration and signature

This part of the application form needs to be signed by, or on behalf of, the applicant and witnessed by a person over the age of 18.

3.3 The Deed of Acknowledgement

By completing the Deed of Acknowledgement (the deed), the applicant is stating they understand and agree to be bound by the provisions for the post-auction allocation set out in Schedule 4 of the allocation determination. Applicants should read Schedule 4 of the allocation determination and, if necessary, seek appropriate advice. Prospective

applicants should review and clearly understand their obligations under the allocation determination and the Deed of Acknowledgement before completing the Deed.

The Deed needs to be completed and executed for the application to be considered by the ACMA.

3.3.1 Who should execute the Deed of Acknowledgement?

Where the ACMA receives the Deed from an applicant that is a body corporate, it must be executed by either:

- > two directors
- > a director and a company secretary
- > if it is a proprietary company that has a sole director who is also the company secretary, that director
- > in accordance with section 127 of the *Corporations Act 2001*.

Where the ACMA receives the Deed from an applicant who is an individual person, it must be executed by that individual. The document is in the form of a Deed Poll.

3.3.2 Who can witness the Deed of Acknowledgement?

Where the Deed is executed by an individual, this must be witnessed by a person who is above the age of 18 and is not a party to the Deed. The witness must print their full name next to their signature.

3.4 Withdrawing an application

Paragraph 3(1)(f) of Schedule 4 of the allocation determination states that once an application is made it cannot be withdrawn.

3.5 An offer of a spectrum licence

The ACMA will consider applications in order of receipt and offer the licence to the first in date and time received complete application under clause 6 of Schedule 4 of the allocation determination.

Under paragraph 9(1)(c), if a post-auction applicant does not pay the post-auction pre-determined price for a spectrum licence by the date included in a notice, the spectrum licence is not allocated to the applicant. A new application notice may be published on the ACMA website inviting interested parties to apply for the unsold lot.

3.6 Lodging documents

Application documents may be given to the ACMA by email to:

Email: multibandauctionmanager@acma.gov.au

Clause 14 of Schedule 4 of the allocation determination sets out procedures for lodging documents by email and states:

14 Giving documents to the ACMA

- (1) A document in relation to a lot may be given to the ACMA under this Schedule by emailing the document to the email address specified in the post-auction applicant information package that relates to the lot in accordance with subsection (2)

(2) If a document is emailed:

- a. The document must be included as an attachment; and
- b. The document must be:
 - i. If the document is a deed or statutory declaration – in PDF format or another format approved by the ACMA; or
 - ii. If the document is not a deed or statutory declaration – in Word, RTF, or PDF format or another format approved by the ACMA.

The ACMA will consider applications in order in which emails are received, that is, the 'first-in-time' order. The ACMA will time stamp each application it receives and will use this information to determine the order in which applications have been received. An email is deemed to have been received by the ACMA according to the date and time contained in the email time stamp applied by the server at the ACMA. A spectrum licence will be offered to the first received complete application in accordance with clauses 5 and 6 of Schedule 4 of the allocation determination.

Queries

Queries about the application process may be directed to the auction manager by:

Email: multibandauctionmanager@acma.gov.au

Telephone: (02) 6219 5430