

**COMMONWEALTH OF AUSTRALIA**

*Australian Communications Authority Act 1997*

**AUSTRALIAN COMMUNICATIONS AUTHORITY (LPON TRANSMITTER  
LICENCES) DIRECTION NO. 2 OF 2000**

I, RICHARD KENNETH ROBERT ALSTON, Minister for Communications, Information Technology and the Arts, give the following Direction to the Australian Communications Authority under subsection 12(1) of the *Australian Communications Authority Act 1997*.

Dated        20 December 2000

RICHARD ALSTON

Minister for Communications, Information Technology and the Arts

**1.    Name of Direction**

This Direction may be cited as the Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000.

**2.    Commencement**

This Direction commences on 1 March 2001.

**3.    Definitions**

In this Direction:

*apparatus licence* has the same meaning as in the *Radiocommunications Act 1992*.

*associate* in relation to a person, means:

- (a)    for a body corporate:

- (i) a director or secretary of the body; or
- (ii) a related body corporate; or
- (iii) a director or secretary of a related body corporate; or
- (iv) a business partner of the body; or
- (v) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
- (b) for an individual:
  - (i) a business partner of the individual; or
  - (ii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
  - (iii) a body corporate of which the individual is a director or secretary; or
  - (iv) a body corporate that is related to a body corporate of which the individual is a director or secretary.

**authorised person** means a person authorised by the licensee under section 114 of the *Radiocommunications Act 1992* to operate the radiocommunications devices under the licence.

**licensee** has the same meaning as in the *Radiocommunications Act 1992*.

**low power open narrowcasting service** means an open narrowcasting service operated under a transmitter licence which authorises the operation of a transmitter at:

- (a) a carrier frequency within the range 87.5 to 88.0 MHz (inclusive); and
- (b) a maximum power which does not exceed:
  - (i) if the transmitter is operated in a residential area – 1 watt;
  - (ii) if the transmitter is operated in a non-residential area – 10 watts.

**open narrowcasting service** has the same meaning as in the *Broadcasting Services Act 1992*.

**related body corporate** has the meaning given by the Corporations Law.

**relative** in relation to a person, means any of the following, namely:

- (a) the person's:
  - (i) spouse; or
  - (ii) parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child; or

- (b) the spouse of any person specified in subparagraph (a)(ii).

*spouse* in relation to a person, includes a person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the spouse of the person.

*transmitter* means a radiocommunications transmitter within the meaning of the *Radiocommunications Act 1992*.

*transmitter licence* has the same meaning as in the *Radiocommunications Act 1992*.

#### **4. Direction – authorised person**

This Direction also applies to any authorised person in relation to a low power open narrowcasting service.

#### **5. Direction – current LPON licences**

The ACA must make any apparatus licence for a low power open narrowcasting service issued before the commencement of this Direction subject to conditions that have the effect of requiring a licensee of a low power open narrowcasting service to:

- (a) commence to provide a service using a transmitter authorised under the licence within 6 months of the imposition of the condition unless the licensee has a reasonable excuse for not doing so; and
- (b) continue to provide a service throughout the term of the licence with reasonable regularity; and
- (c) maintain records of the commencement, hours of operation and provision of a service under the licence.

#### **6. Direction – new LPON licences**

The ACA must make any apparatus licence for a low power open narrowcasting service issued (other than upon renewal) on or after the commencement of this Direction subject to conditions that have the effect of requiring a licensee of a low power open narrowcasting service to:

- (a) commence to provide a service using a transmitter authorised under the licence within 6 months of the issue of the licence unless the licensee has a reasonable excuse for not doing so; and
- (b) continue to provide a service throughout the term of the licence with reasonable regularity; and
- (c) maintain records of the commencement, hours of operation and provision of a service under the licence.

## **7. Direction – renewal of LPON licences within 6 months**

The ACA must make any apparatus licence for a low power open narrowcasting service issued upon renewal within 6 months of the commencement of this Direction subject to conditions that have the effect of requiring a licensee of a low power open narrowcasting service to:

- (a) commence to provide a service using a transmitter authorised under the licence within 6 months of the renewal of the licence unless the licensee has a reasonable excuse for not doing so; and
- (b) continue to provide a service throughout the term of the licence with reasonable regularity; and
- (c) maintain records of the commencement, hours of operation and provision of a service under the licence.

## **8. Direction – extension of 6 month start-up period**

(1) The ACA may allow for an extension of the 6 month period referred to in clause 5(a), 6(a) or 7(a) if in the ACA's opinion there is a valid reason for a delay by a licensee complying with those clauses.

(2) The following, inter alia, shall not constitute valid reasons for a delay:

- (a) the licence has been obtained within the 6 month period pursuant to a transfer to a relative or associate; or
- (b) financial reasons; or
- (c) the licence is subject to an arrangement contingent on the disposal of another licence held by the licensee.

(3) To remove any doubt, subsection (2) is not exhaustive and there may be other reasons that do not constitute valid reasons for a delay in commencing to provide a service.

## **9. Direction – renewal of LPON licences after 6 months**

The ACA must make any apparatus licence for a low power open narrowcasting service issued upon renewal 6 months after the commencement of this Direction subject to conditions that have the effect of requiring a licensee of a low power open narrowcasting service to:

- (a) provide the service using a transmitter authorised under the licence throughout the term of the licence with reasonable regularity; and
- (b) maintain records of the commencement, hours of operation and provision of a service under the licence.

## 10. Direction – cancellation of LPON licences

(1) The ACA may consider cancelling an apparatus licence for a low power open narrowcasting service for contravention of any conditions included in the licence because of section 5, 6, 7 or 9 where it has received a written statement from any person (“*the complainant*”) specifying the following details:

- (a) the name and contact details of the complainant and their interest in the matter; and
- (b) the purported breach of condition and the supporting evidence.

(2) The statement must be made on the form approved by the ACA for this purpose (*the complaint form*) and must be accompanied by a statutory declaration as to the truth of the contents of the statement.

(3) The ACA must give the licensee written notice that it has received a complaint and must provide details of what is contained in the complaint which gives the licensee a clear understanding of the substance of the complaint. The licensee must be given 30 days from the date on which the licensee is advised of the complaint in which to respond.

(4) In considering whether or not to cancel an apparatus licence for a low power open narrowcasting service for contravention of any conditions included in the licence because of sections 5, 6, 7 and 9 of this Direction, the ACA must have regard to:

- (a) arrangements made by the licensee for access and use of a site for the purpose of providing the service;
- (b) ownership, purchase, lease or hire, or other arrangements made by the licensee for the use of a transmitter on the site for the purpose of providing the service;
- (c) arrangements made by the licensee to obtain programs for use in providing the service;
- (d) the regularity and continuity of programs broadcast by the licensee from the site;
- (e) the nature of the service to which the licence relates and which is being provided by the licensee;
- (f) the maintenance of records of the commencement, hours of operation and provision of a service under the licence; and
- (g) other such matters as the ACA considers relevant.

(5) In considering whether a condition included in an apparatus licence because of clauses 5(b), 6(b), 7(b) or 9(a) requiring continued provision of a service has been complied with, the ACA must have regard to:

- (a) the period for which a service has not been provided in relation to the period in which it could have been provided;
- (b) whether any circumstances existed which gave rise to a failure to continue to provide a service that were beyond the reasonable control of the licensee or persons with whom arrangements existed under paragraph 10(4)(b);
- (c) the number of other apparatus licences for low power open narrowcasting services held by the licensee and the level of services provided under those licences;
- (d) such other matters as the ACA considers relevant.

#### **11. Direction – no issue of a licence on similar terms**

The ACA must not grant an apparatus licence for a low power open narrowcasting service on similar terms or including similar details to that of an existing licence during the period in which a complaint is being assessed in relation to the existing licence. This applies to an application by any person.

#### **12. Direction – exercise of powers**

The ACA must not exercise its powers under the *Radiocommunications Act 1992* in a manner that is inconsistent with this Direction and any conditions imposed on licences because of this Direction.