



## Consultation note

# Exposure Draft Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Band One) Direction 2016

The exposure draft Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Band One) Direction 2016 (the draft direction) would be made under:

- Subsection 60(10) of the *Radiocommunications Act 1992* (Act);
- Subsection 294(2) of the Act; and
- Subsection 14(1) of the *Australian Communications and Media Authority Act 2005* (ACMA Act).

Section 60 of the Act sets out procedures for allocating spectrum licences.

- Subsection 60(1) requires the Australian Communications and Media Authority (ACMA) to determine, in writing, the procedures to be applied in allocating spectrum under Subdivision B of Part 3.2 of the Act. The subsection provides that spectrum may be allocated by auction, tender or for a pre-determined price or a negotiated price.
- Subsection 60(4) provides, amongst other matters, that the procedures determined under subsection 60(1) may deal with the way in which prices are to be determined.
- Subsection 60(5) provides that procedures determined under subsection 60(1) may impose limits on the aggregate of the parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Part 3.2 of the Act, may be used by any one person or specified person or members of a specified group of persons.
- Subsection 60(6) sets out the manner in which limits imposed under subsection 60(5) of the Act may be expressed to apply, that is, to any or all of a specified part of the spectrum, a specified area or a specified population reach. Subsection 60(6A) allows limits of nil to be imposed.
- Subsection 60(9) of the Act provides that this power to determine limits may only be exercised if the ACMA is directed to do so by the Minister under subsection 60(10) of the Act.
- Subsection 60(10) of the Act enables the Minister to give written directions to the ACMA in relation to the exercise of its power to determine procedures imposing a limit mentioned in subsection 60(5) of the Act.

Subsection 294(2) of the Act enables the Minister to give written directions to the ACMA about the matters dealt with in spectrum access charges determinations made under subsection 294(1) of the Act. Those determinations may:

- fix spectrum access charges payable by licensees for issuing spectrum licences; and
- specify the times when spectrum access charges are payable.

Section 14 of the ACMA Act enables the Minister to give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers (subject to certain conditions which are not relevant here).

## Background

700 MHz spectrum is highly valued for 4G LTE mobile broadband services due to its technical propagation characteristics and benefits associated with international harmonisation. 700 MHz spectrum is available under nation-wide spectrum licences, and forms a key element of a national mobile broadband network.

In 2013, the ACMA held the 'digital dividend' spectrum auction to re-allocate 2 x 45 MHz parts of the spectrum in the 700 MHz band. This spectrum had been vacated by analogue television transmission services.

The auction reserve price for these lots was \$1.36/MHz/pop. Only two carriers participated in the auction, with the following results:

- Telstra purchased 2 x 20 MHz of 700 MHz spectrum; and
- Optus purchased 2 x 10 MHz of 700 MHz spectrum.

Following the digital dividend auction, 2 x 15 MHz of 700 MHz spectrum remained unsold. The ACMA's allocation procedures for the digital dividend auction provided that any unsold 700 MHz spectrum lots might later be offered for allocation by a procedure, and at a time, to be determined by the Australian Communications and Media Authority (ACMA).

The ACMA has stated that, as is the case for unallocated spectrum generally, interested parties may provide expressions of interest in the unsold spectrum to either the ACMA or the Government. The Government had not received any expressions of interest in relation to the unsold 700 MHz spectrum since the digital dividend auction. In 2014, the ACMA consulted with industry and concluded that there was no market demand for this spectrum.

The Government has received an unsolicited proposal from VHA for acquisition of 2 x 10 MHz of the unsold 700 MHz spectrum. VHA has proposed to acquire this spectrum for a licence term of 11 years and 9 months, for \$594.3 million, payable in three instalment payments over three years.

## Australian Government Spectrum Policy

The sale of 2 x 10 MHz of the unsold 700 MHz spectrum to VHA would be consistent with the object of the Commonwealth Government's spectrum policy, which is outlined in the Act.

Paragraph 3(a) of the Act provides that an aim for the management of the radiofrequency spectrum is to maximise the overall public benefit derived from the spectrum, to be achieved by ensuring its efficient allocation and use. Unsold spectrum is not providing a benefit to the public, is not generating revenue for the Commonwealth and is losing value over time. Therefore, the sale to VHA would bring this spectrum into economically productive use.

There are three mobile network operators (MNOs) providing voice and high speed 3G and 4G/LTE mobile broadband services in Australia: Telstra, Optus and Vodafone Hutchison Australia (VHA). As at 30 June 2013, Telstra had approximately 58 per cent of the mobile market share, Optus had 17 per cent, VHA had 10 per cent and others (including iiNet, iPrimus and TPG) had 16 per cent.

VHA is the newest entrant in the Australian mobile broadband market and currently has the smallest market share of the MNOs. The sale of spectrum to VHA should assist in facilitating VHA becoming a stronger competitor in the mobile broadband market in the long term. Stronger competition should deliver a range of benefits to consumers, such as lower prices, improved quality and coverage of services and technological innovation.

## Proposed Direction

The draft direction addresses the following matters with respect to 2 x 10 MHz of the unsold 700 MHz spectrum (referred to as residual 700 MHz band one in the draft direction):

1. Setting of allocation limits;
2. Fixing of spectrum charges; and
3. Allocation and issuing spectrum licences.

### 1. Allocation limits

Allocation limits are imposed to prevent a single provider of mobile broadband services acquiring such a large proportion of the available spectrum that its downstream retail prices are not constrained by other acquirers of spectrum. In summary, allocation limits are intended to prevent monopolisation by a single operator.

It is proposed that the Minister, under subsection 60(10) of the Act, impose allocation limits for the spectrum in residual 700 MHz band one. Specifically, it is proposed that the following limits would apply for each of the parts of that spectrum:

- VHA—10 MHz; and
- All other persons—nil.

These allocation limits are proposed to give effect to the Government's decision for the ACMA to allocate spectrum to VHA.

### 2. Spectrum access charges

It is proposed that the Minister, under subsection 294(2) of the Act, direct the ACMA, when setting spectrum access charges in respect of the residual 700 MHz band one, to deal with the following matters in its spectrum access charges determination under subsection 294(1) of the Act:

#### Minimum value of the spectrum

It is proposed that the spectrum access charge reflect a price of no less than \$1.25/MHz/pop, for a licence with a duration of 11 years and 9 months (noting the comments on the determination of population below). In preparing briefing on the amount that the Minister may consider as being the minimum value of the spectrum, the following matters have been considered:

- On 14 December 2012 the former Minister for Broadband, Communications and the Digital Economy directed the ACMA to set as the reserve price for the digital dividend auction, an amount of \$1.36/MHz/pop for lots in the 700 MHz band (*Australian Communications and Media Authority (Allocation Procedures—Reserve Prices) Direction No.2 of 2012*).
- All 700 MHz spectrum, including sold and unsold lots, is licenced for 15 year terms, expiring on 31 December 2029. As unsold lots carry the same expiry date, their value reduces as the life of the licence shortens.

- The ACMA has a publicly-available model that it uses for adjusting prices for shorter licence terms. The model results in an 11.75 year licence being valued at between \$527.9 million and \$572 million, with a mid point of \$549.9 million. The top of this range (ie: \$572 million) equates to \$1.25/MHz/pop.

It is proposed that \$1.25/MHz/pop is the minimum value of this spectrum for a licence with a duration of 11 years and 9 months.

In the draft direction, it is proposed to set the 'pop' as 22,872,578, being the projected population determined by the ACMA when setting the initial price used for the previous allocation of spectrum licences in the 700 MHz band in 2013, in accordance with the *Australian Communications and Media Authority (Allocation Procedures—Reserve Prices) Direction No. 2 of 2012*.

The amount offered by the ACMA as the pre-determined price for the allocation of the spectrum licence will be determined in accordance with the allocation procedures described at the end of this document.

### Payment in instalments

It is proposed that the ACMA be directed to permit VHA to pay spectrum access charges fixed by it in a charges determination in instalments, as long as the instalments meet the following conditions:

- the spectrum access charges must be payable in three instalments; and
- the instalments must become payable on the following dates:
  - 31 January 2018;
  - 31 January 2019; and
  - 31 January 2020.

If payment is to be by instalments, the amount of these instalments will be determined in accordance with the allocation procedures described below.

### Miscellaneous

It is proposed that the draft direction will not prevent the ACMA from considering other relevant matters in making a determination under subsection 294(1) of the Act.

## 3. Allocation and issue of spectrum licences

It is proposed that the Minister direct the ACMA under subsection 14(1) of the ACMA Act to take such action as it considers necessary to allocate and issue a single spectrum licence for the entirety of the residual 700 MHz band one in the designated area. Specific matters that are proposed to be included in the draft direction are set out below.

### Method of allocation

Subsection 60(1) of the Act provides that spectrum may be allocated by auction, tender or for a pre-determined or negotiated price. Consistent with this provision, it is proposed that the spectrum allocation to VHA be made by way of a pre-determined price.

### Duration of licence

As previously noted, VHA has proposed a licence term of 11 years and nine months. It is proposed that this spectrum licence will commence on 1 April 2018 and expire on 31 December 2029.

### Way in which the price is to be determined

It is proposed that the spectrum licence will be offered for a pre-determined price which differs depending on whether the payment of the spectrum access charges is to be upfront or in instalments. For payment upfront, the price at which the allocation of the licence will be offered will be \$571,814,450, being the minimum value of the spectrum. If payment is to be in instalments (such instalments meeting the conditions described above), the price at which the allocation of the licence will be offered will be \$594,300,000, consisting of the following instalments:

- \$274,500,000;
- \$159,900,000; and
- \$159,900,000.

The price to be offered by the ACMA for payment by instalments is based on the minimum value of the spectrum, taking into account the value of money over time and discounting the instalments payable after 31 January 2018 at a rate of 5% per annum for the period from that date.