

EXPOSURE DRAFT



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

*Australian Communications and Media Authority Act 2005
Radiocommunications Act 1992*

I, MITCH FIFIELD, Minister for Communications, give the following direction.

Dated

MITCH FIFIELD [EXPOSURE DRAFT ONLY – NOT FOR
SIGNATURE]
Minister for Communications

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Section 1

1 Name

This is the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Band One) Direction 2016*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

This instrument is made under:

- (a) subsection 60(10) of the *Radiocommunications Act*;
- (b) subsection 294(2) of the *Radiocommunications Act*; and
- (c) subsection 14(1) of the ACMA Act.

4 Interpretation

- (1) In this instrument:

ACMA means the Australian Communications and Media Authority.

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

allocation procedures means any procedures determined by the ACMA under section 60 of the *Radiocommunications Act*.

charges determination means any determination made by the ACMA under subsection 294(1) of the *Radiocommunications Act* fixing spectrum access charges payable by licensees for issuing spectrum licences in the residual 700 MHz band one in the designated area, and specifying the times when spectrum access charges are payable.

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designated area means the area to which the re-allocation declaration applies, as described in subsection 4(2) of the re-allocation declaration.

licence area means the area or aggregate of areas within which operation of radiocommunications is authorised by a spectrum licence.

licence period means the period commencing 1 April 2018 and expiring on 31 December 2029.

marketing plan means a plan made by the ACMA under section 39A of the *Radiocommunications Act* in accordance with the re-allocation declaration.

Radiocommunications Act means the *Radiocommunications Act 1992*.

re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*.

residual 700 MHz band one means the following parts of the spectrum:

- (a) 738 MHz to 748 MHz; and
- (b) 793 MHz to 803 MHz.

VHA means Vodafone Hutchison Australia Pty Limited (ACN 096 304 620), as the company exists from time to time (even if its name is later changed).

- (2) In this instrument, a reference to a part of the spectrum includes all frequencies that are greater than the lower frequency, up to and including the higher frequency.

Note: This means the lower number in the reference to a part of the spectrum is not included in the part of the spectrum.

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- (3) In this instrument, a figure expressed as \$/MHz/pop means a unit amount to be applied by the ACMA in fixing the spectrum access charges payable by a licensee in relation to a spectrum licence, where:
- (a) \$ = Australian dollars; and
 - (b) MHz = the bandwidth of spectrum authorised for use in the licence area by the spectrum licence; and
 - (c) pop = 22,872,578.

Note: This was 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*.

5 Revocation

The following instruments are revoked:

- (a) *Radiocommunications (Spectrum Licence Limits) Direction No. 1 of 2012*; and
- (b) *Radiocommunications (Spectrum Access Charges – 700 MHz Band) Direction No. 1 of 2013*.

Note: The *Radiocommunications (Spectrum Access Charges – 700 MHz Band) Direction No. 1 of 2013* is not a legislative instrument.

6 Direction—allocation limits

- (1) This direction is given to the ACMA under subsection 60(10) of the *Radiocommunications Act*.
 - (2) I direct the ACMA to determine allocation procedures that impose limits that ensure that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the *Radiocommunications Act*, each of the following persons or groups of persons may use no more than the specified amount of each of the parts of the spectrum in residual 700 MHz band one in the designated area:
 - (a) VHA—10 MHz; and
 - (b) all other persons—nil.
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Section 7

7 Direction—spectrum access charges

- (1) These directions are given to the ACMA under subsection 294(2) of the *Radiocommunications Act*.

Minimum value of the spectrum

- (2) I direct the ACMA that the spectrum access charges fixed by it in relation to residual 700 MHz band one in any charges determination must reflect no less than the amount of \$1.25/MHz/pop, being the amount that I consider to be the minimum value of the spectrum in residual 700 MHz band one for the licence period.

Note: The pre-determined price offered for allocation of the licence will be determined in accordance with subsection 8(6). If payment is made by instalments in accordance with subsection 8(6), the figure of \$1.25/MHz/pop applies after discounting the nominal amount of any deferred instalment to its value as at 31 January 2018 at a rate of 5% per annum.

Payment in instalments

- (3) I direct the ACMA that persons are to be permitted to pay spectrum access charges fixed by it in relation to residual 700 MHz band one in a charges determination in instalments, as long as the instalments meet the conditions set out in subsection (4).
- (4) The spectrum access charges must be payable in three instalments, with each instalment to become payable on the following dates:
- (a) first instalment—31 January 2018;
 - (b) second instalment—31 January 2019; and
 - (c) third instalment—31 January 2020.

Miscellaneous

- (5) For the avoidance of doubt, nothing in this section prevents the ACMA from considering other relevant matters in making a determination under subsection 294(1) of the *Radiocommunications Act*.

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Section 8

8 Direction—allocation and issue of spectrum licence

- (1) This direction is given to the ACMA under subsection 14(1) of the ACMA Act.
- (2) I direct the ACMA to take such action as it considers necessary to allocate and issue a single spectrum licence authorising the operation of radiocommunications devices in the entirety of residual 700 MHz band one in the designated area.
- (3) In giving effect to this direction, the ACMA must, as it considers necessary, make or amend a marketing plan and determine allocation procedures that are consistent with subsections (4) to (6).

Method of allocation

- (4) The spectrum licence allocated in accordance with this section must be allocated for a pre-determined price.

Period of licence

- (5) The spectrum licence issued in accordance with this section must be issued to be in force for the licence period.

Way in which the price is to be determined

- (6) The price to be offered for the allocation of the spectrum licence in accordance with this section must be determined as the following, depending on when the spectrum access charges to be fixed for the issue of the licence would become payable:
 - (a) in full before the commencement of the licence—\$571,814,450; or
 - (b) in instalments in accordance with subsections 7(3) and (4)—\$594,300,000, in the following instalments:
 - (i) first instalment—\$274,500,000;
 - (ii) second instalment—\$159,900,000; and
 - (iii) third instalment—\$159,900,000.