

EXPOSURE DRAFT



Radiocommunications (Spectrum Licence Limits—850/900 MHz Band) Direction 2021

I, Paul Fletcher, Minister for Communications, Urban Infrastructure, Cities and the Arts, give the following direction to the Australian Communications and Media Authority.

Dated

DRAFT NOT FOR SIGNATURE

Paul Fletcher
Minister for Communications, Urban Infrastructure, Cities and the Arts

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1 Name

This instrument is the *Radiocommunications (Spectrum Licence Limits—850/900 MHz Band) Direction 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 60(10) of the *Radiocommunications Act 1992*.

4 Interpretation

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) ACMA;
- (b) spectrum;
- (c) spectrum licence.

- (1) In this instrument:

800 MHz band means the following parts of the spectrum:

- (a) 825 MHz to 845 MHz;
- (b) 870 MHz to 890 MHz.

850/900 MHz band means the parts of the spectrum that are subject to re-allocation under the re-allocation declaration.

Act means the *Radiocommunications Act 1992*.

associate means:

- (a) in relation to a person that is a body corporate:

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- (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) 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) in relation to a person that is an individual:
- (i) the individual's spouse; or
 - (ii) the individual's de facto partner within the meaning of the *Acts Interpretation Act 1901*; or
 - (iii) 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
 - (iv) a body corporate of which the individual is a director or secretary; or
 - (v) a body corporate that is a related body corporate in relation to a body corporate of which the individual is a director or secretary; or
- (c) in relation to any person (the **first person**)—any other person (other than the Commonwealth when represented by the ACMA) who is party to a relevant agreement with the first person that either or both:
- (i) is for the use by one party to the agreement of spectrum licensed to another party to the agreement under a spectrum licence for a part of the spectrum referred to in the re-allocation declaration;
 - (ii) relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declaration.

carrier has the same meaning as in the *Telecommunications Act 1997*.

designated area means the named area listed in item 1 of the table in subsection 5(4) of the re-allocation declaration.

marketing plan means the marketing plan made by the ACMA for section 39A of the Act in relation to the 850/900 MHz band, as in force on its commencement.

metropolitan area means the area:

- (a) that is identified as the metropolitan area in the marketing plan; and
- (b) the boundaries of which are identified in the marketing plan.

Note: The **metropolitan area**, for this instrument, will be a single area identified by the ACMA in the marketing plan and will include geographic areas generally corresponding to the metropolitan areas of Adelaide, Brisbane, Canberra/Sydney, Melbourne and Perth.

Optus means Optus Mobile Pty Limited (ACN 054 365 696).

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation—850/900 MHz Band) Declaration 2020*.

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regional area means the area:

- (a) that is not, and does not overlap with, the metropolitan area; and
- (b) that is identified as the regional area in the marketing plan; and
- (c) the boundaries of which are defined in the marketing plan.

related body corporate has the same meaning as in the *Corporations Act 2001*.

relevant agreement means an agreement, arrangement or understanding:

- (a) whether formal or informal, or partly formal and partly informal; and
- (b) whether written or oral, or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

relevant associate, in relation to a person that is a body corporate (the **first person**), means a person who is an associate of the first person because of subparagraph (a)(ii) or paragraph (c) of the definition of **associate**.

relevant bands means the following parts of the spectrum in the designated area:

- (a) 895 MHz to 915 MHz;
- (b) 940 MHz to 960 MHz.

relevant group of persons means either of the following:

- (a) a person and all associates of that person;
- (b) subject to subsection (3)—any 2 or more groups referred to in paragraph (a) that have at least one member in common.

roaming services agreement means an agreement between two or more carriers for the principal purpose of enabling the supply of public mobile telecommunications services by one of those other carriers, in geographic locations where another of those carriers' public mobile telecommunications services are not available.

sub-1 GHz band means the part of the spectrum up to 1 GHz.

TPG Telecom means TPG Telecom Limited (ACN 096 304 620).

- (2) In this direction, 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.

- (3) For the purposes of paragraph (b) of the definition of **relevant group of persons**, an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (**relevant person**) and the associates of that relevant person where all of the following apply:

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- (a) the individual is providing services as a company secretary (*company secretarial services*) to one or more related bodies corporate of the relevant person in each of the groups;
- (b) the individual is providing the company secretarial services through a person or entity (*third party service provider*) that:
 - (i) is not in any of the groups; and
 - (ii) carries on a business for the provision of professional services, including company secretarial services; and
 - (iii) has, in the ordinary course of carrying on that business, been separately and independently engaged by an entity within each of those groups, under a contract or other legally binding arrangement, to provide the company secretarial services;
- (c) the individual is not, otherwise than by reason of providing the company secretarial services, an associate of any of the relevant persons;
- (d) each of the related bodies corporate to which the individual is providing the company secretarial services is incorporated outside Australia.

5 Direction

- (1) I direct the ACMA to determine allocation procedures under subsection 60(1) of the Act that impose limits, in accordance with sections 6 and 7, on the aggregate of the parts of the spectrum that may, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, be used by any one person or by the groups of persons specified in those sections.
- (2) The limits imposed must apply to the allocation of spectrum licences in the 850/900 MHz band enabled by the re-allocation declaration.

6 Limits applying to groups of persons other than Optus, TPG Telecom and their relevant associates (spectrum set-aside for Optus and TPG Telecom)

- (1) For this section the limits imposed must:
 - (a) apply in relation to the relevant bands in the designated area; and
 - (b) ensure that, in the circumstance specified in column 2 of an item in the table, the members of the group of persons specified in column 3 of that

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item may, in total, use no more than an aggregate of the amount of spectrum in the relevant bands that is specified in column 4 of that item.

Column 1	Column 2	Column 3	Column 4
Item	The limits imposed by the ACMA in the allocation procedures must ensure that in this circumstance...	... the members of this group of persons...	... may, in total, use no more than an aggregate of this amount of spectrum in the relevant bands.
1	Both Optus and TPG Telecom have elected to take up the spectrum set-aside	(a) every person other than Optus, TPG Telecom and their relevant associates	20 MHz
		(b) every person other than Optus and its relevant associates	30 MHz
		(c) every person other than TPG Telecom and its relevant associates	30 MHz
2	Optus has elected to take up the spectrum set-aside but TPG Telecom has not	every person other than Optus and its relevant associates	30 MHz
3	TPG Telecom has elected to take up the spectrum set-aside but Optus has not	every person other than TPG Telecom and its relevant associates	30 MHz

- (2) For subsection (1), a person *has elected to take up the spectrum set-aside* in the allocation of spectrum licences in the 850/900 MHz band if all of the following apply:
- (a) either the person or a body corporate of which the person is a member (in either case, the *participant*) has applied to be registered with the ACMA for the allocation in accordance with the allocation procedures;
 - (b) if, under the allocation procedures, there is a period of time during which an application for registration may be withdrawn—that period has ended and the participant has not withdrawn their application;
 - (c) if the allocation procedures provide for circumstances in which an application for registration is taken to be withdrawn—those circumstances do not apply to the participant;
 - (d) if, under the allocation procedures, in order to take up the spectrum set-aside, a person is required to do any of the following:
 - (i) pay to the ACMA an entry fee, a participation fee, or an application fee (however described);
 - (ii) give the ACMA notification in writing that the person elects to take up the spectrum set-aside;

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the participant has complied with any such requirements;

- (e) if:
 - (i) the allocation procedures provide for circumstances in which, having complied with any requirements of the kind referred to in paragraph (d), a person may withdraw their election to take up the spectrum set-aside; and
 - (ii) those circumstances have arisen;the participant has not withdrawn their election.

7 Limit applying to all persons and relevant groups of persons

- (1) For this section:
 - (a) the limits imposed must apply in relation to the sub-1 GHz band in the metropolitan area and the regional area; and
 - (b) the limits imposed must ensure that no person or relevant group of persons may use more than an aggregate of 82 MHz of the sub-1 GHz band under spectrum licences in:
 - (i) the metropolitan area; or
 - (ii) the regional area; and
 - (c) where, immediately prior to any allocation of a spectrum licence that is enabled by the spectrum re-allocation declaration:
 - (i) a person or relevant group of persons holds a relevant spectrum licence that authorises the operation of radiocommunications devices in one or more parts of the metropolitan area (but not the entire metropolitan area); and
 - (ii) the population of that part of the metropolitan area, or the aggregate population of those parts of the metropolitan area, is insignificant;the relevant spectrum licence is to be treated as if it did not apply in the metropolitan area.
- (2) For the purposes of paragraph (1)(c):
 - (a) a **relevant spectrum licence** is a spectrum licence in the 800 MHz band that is in force immediately before the deadline for applications for registration under the allocation procedures; and
 - (b) the population of a part of the metropolitan area is **insignificant** if, and only if, the population of that part of the metropolitan area is less than 15% of the total population of the metropolitan area determined in accordance with the most recent data in the HCIS – List of Population document published by the ACMA on its website, as that document existed at the time this instrument was made; and
 - (c) the aggregate population of parts of the metropolitan area is **insignificant** if, and only if, the aggregate population of those parts of the metropolitan area is less than 15% of the total population of the metropolitan area determined in accordance with the most recent data in the HCIS – List of Population document published by the ACMA on its website, as that document existed at the time this instrument was made.

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Note: The HCIS – List of Population Data document is a document published by the ACMA which identifies each Australian Spectrum Map Grid 2012 (ASMG) cell and block by its HCIS identifier and lists the corresponding population based on Census data. The HCIS is a naming convention for areas on the ASMG, which is a system used by the ACMA to define geographic areas for radiocommunications licensing. The document could, at the time this instrument was made, be found on the ACMA's website (<http://www.acma.gov.au>).

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