

## **Radiocommunications (Spectrum Access Charges) Direction 2012**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Direction under subsection 294(2) of the *Radiocommunications Act 1992*.

Dated 2012

STEPHEN CONROY  
Minister for Broadband, Communications and the Digital Economy

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### **1. Name of Direction**

This Direction is the *Radiocommunications (Spectrum Access Charges) Direction 2012*.

### **2. Commencement**

This Direction commences on the day after it is made.

### **3. Cessation**

This Direction ceases at the end of 31 December 2017.

### **4. Application**

This Direction applies only to the Re-issued Spectrum Licences.

### **5. Definitions**

In this Direction:

*ACMA* means the Australian Communications and Media Authority.

*Act* means the *Radiocommunications Act 1992*.

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

*Re-issued Spectrum Licence* means a spectrum licence that is to be re-issued in accordance with subsection 82(1) of the Act to the person to whom it was previously issued.

*\$/MHz/Pop* means, in Column 3 of Table 1, the unit amount to be applied by the ACMA in calculating the spectrum access charges payable by a licensee in relation to a Re-issued Spectrum Licence, where:

- (a) \$ = Australian dollars;
- (b) MHz = the bandwidth of spectrum authorised for use in the Licence Area; and
- (c) Pop = the population of a Licence Area, to be determined by the ACMA at the time the ACMA determines the spectrum access charges under subsection 294(1) of the Act having regard to available population data at that time.

## 6. Direction—ACMA Spectrum Access Charges

- (a) I direct the ACMA that the spectrum access charges fixed by it in any determination under subsection 294(1) of the Act (a *Spectrum Access Charges Determination*) must reflect the amounts specified in Column 3 of Table 1 below, being the amounts that I consider to be the value of the spectrum in relation to the spectrum bands specified.

**Table 1:**

Column 1: Spectrum Band	Column 2: Frequency range	Column 3: \$/MHz/Pop
800 MHz	825–845 MHz and 870–890 MHz	1.23
1800 MHz	1710–1785 MHz and 1805–1880MHz	0.23
2 GHz	1920–1980 MHz and 2110–2170 MHz	0.625
2.3 GHz	2302–2400 MHz	0.03
3.4 GHz	3425–3492.5 MHz and 3542.5–3575 MHz	0.03
27 GHz	26.5–27.5 GHz	0.00214

- (b) I direct the ACMA that, with respect to spectrum licences in the 800 MHz and 1800 MHz spectrum bands that expire in 2013, any Spectrum Access Charges Determination must not require full payment of the spectrum access charges to be made before 1 June 2013.
- (c) For the avoidance of doubt, nothing in this Direction prevents the ACMA from considering other relevant matters in making a Spectrum Access Charges Determination.

## EXPLANATORY NOTE

### *Radiocommunications (Spectrum Access Charges) Direction 2012*

**Issued by the authority of the Minister for Broadband, Communications and the Digital Economy**

#### **Purpose**

The Radiocommunications (Spectrum Access Charges) Direction 2012 (the **Direction**) is made under subsection 294(2) of the *Radiocommunications Act 1992* (the **Act**). This Direction is not a legislative instrument (subsection 294(5) of the Act refers).

Subsection 294(2) of the Act allows the Minister to give written directions to the Australian Communications and Media Authority (the **ACMA**) about the matters dealt with in determinations made by the ACMA pursuant to subsection 294(1) of the Act.

Subsection 294(1) of the Act provides that the ACMA may, by written instrument, make determinations:

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

The purpose of the Direction is to specify the amount that the Minister considers to be the value of the spectrum in relation to the spectrum bands specified and direct the ACMA that the spectrum access charges, in respect to re-issued licences, fixed by it in a determination made under subsection 294(1) of the Act reflect that amount.

#### **Background**

On 4 March 2010, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy (the **Minister**), announced the Australian Government's approach to the re-issue of certain 15-year radio frequency spectrum licences (**Spectrum Licences**).

These are the spectrum licences primarily used by telecommunications carriers to provide 2G and 3G mobile phone and wireless services to millions of Australian consumers.

The Spectrum Licences are due to expire in the period between 2013 and 2017.

The Minister requested that the Department conduct an information gathering process in relation to the possible re-issue of Spectrum Licences held by Telstra Corporation, SingTel Optus, Vodafone Hutchison Australia, and vividwireless (**Renewal Process**). The process commenced in May 2010. As part of this Renewal Process, all participants were requested to specify how they had satisfied, and continued to meet, the public interest and detail the use (or proposed use) of the licences for which they sought renewal. Participants were also asked to state the amounts that they would be willing to pay, as spectrum access charges, for the re-issue of the Spectrum Licences.

Expert advice on the value of the Spectrum Licences was obtained by the Department from a leading international firm, Plum Consulting, based in London. A synopsis of the Plum Consulting Report was made available to the Renewal Process participants on 18 February 2011. The synopsis described the methodology employed by Plum Consulting and identified the value range

for the spectrum bands. Later in the Renewal Process the participants were provided with updated valuation reports for the 800MHz and 1800MHz bands. These reports together with the synopsis were also made available to the public at the time the Direction was released for public consultation.

An inter-Departmental committee (**Evaluation Committee**) was established by the Minister on 23 December 2010 to evaluate the detailed materials provided by Renewal Process participants in relation to the public interest criteria, the spectrum access charges each had proposed, and all other matters raised by the Renewal Process participants in their submissions. The final report of the Evaluation Committee with its recommendations was provided to the Minister in December 2011.

Having regard to all relevant matters including advice received from the Department and the Evaluation Committee, the expert advice of Plum Consulting and the values currently attributed by the market for the spectrum bands, the Minister has made the Direction. The Minister was also guided by the object of the Act.

### **Consultation**

The ACMA has been consulted in relation to the making of this Direction. A draft of this Direction was made available to the Renewal Process participants in October 2011 prior to releasing the Direction to the public for consultation on 23 December 2011. Comments received during the consultation process were taken into consideration by the Minister in the making of the Direction.

### **Notes on clauses**

The Direction commences on the day after it is made and ceases at the end of 31 December 2017.

Clause 4 makes clear that the Direction only applies to a subsection 294(1) determination made by the ACMA in relation to spectrum licences that are re-issued to the person to whom it was previously issued in accordance with subsection 82(1) of the Act. This means the Direction applies whether the licences are re-issued by the ACMA in accordance with paragraph 82(1)(a) (on the basis the licence was used in the provision of a service included in a class of services determination) or paragraph 82(1)(b) (the ACMA is satisfied that special circumstances exist).

Clause 5 defines the terms used in the Direction.

Subclause 6(a) directs the ACMA that the spectrum access charges fixed by it in any determination under paragraph 294(1)(a) of the Act must reflect the amounts specified in Table 1 of the Direction, being the amounts that the Minister considers to be the value of the spectrum.

Subclause 6(b) directs the ACMA that, with respect to Spectrum Licences in the 800MHz and 1800MHz spectrum bands which are due to expire in 2013, the spectrum access charges fixed by the ACMA in a subsection 294(1) determination must not be required to be paid in full before 1 June 2013. This direction is intended to enable licensees in these spectrum bands sufficient period of time to arrange for payment of the spectrum access charges given these licences have the earliest expiry dates amongst the Re-issued Spectrum Licences. In the event of an agreement with the ACMA, this direction does not prevent a licensee from paying the spectrum access charge for a Re-issued Spectrum Licence in either of these spectrum bands in advance of the date specified in the Spectrum Access Charges Determination made by the ACMA.

Subclause 6(c) makes clear that nothing in the Direction prevents the ACMA from considering other relevant matters in making a determination under subsection 294(1) of the Act.

In calculating the actual spectrum access charges for each Spectrum Licence, it is understood that the ACMA will first multiply the figure specified in column 3 of Table 1 (being the \$/MHz/Pop amount) by the amount of the MHz for the relevant spectrum band, and will then multiply this amount by the population of the Licence Area, having regard to the relevant population data at the time the ACMA determines the spectrum access charges. For example, the spectrum access charge for a Re-issued Licence with 15 MHz of spectrum in the 1800 MHz spectrum band in a Licence Area with a population of 100,000 at the time of making a determination under subsection 294(1) of the Act is calculated as:

$$\$0.23 \times 15 \times 100,000 = \$345,000.$$

### **Other**

Capitalised terms used in this Explanatory Note that are not defined in this Explanatory Note have the meaning given to them in the Direction.