

## **Multipoint Distribution System Band Plan (Amendment) 1992 No. 305**

### **EXPLANATORY STATEMENT**

#### **Statutory Rule 1992 No. 305**

Multipoint Distribution System Band Plan (Amendment)

Issued by the Authority of the Minister for Transport and Communications

Section 24A of the Radiocommunications Act 1983 (the Act) prohibits the licensing of domestic pay-television services. The Governor-General has made a Proclamation specifying that the prohibition (commonly referred to as the pay-television moratorium) will cease to apply from 1 October 1992.

Part IV of the Act provides a basis for planning the use of the radio frequency spectrum. The primary planning instrument is the spectrum plan which divides the radio frequency spectrum into a number of bands and specifies the general purpose or purposes for which each band may be used.

Subsection 19(1) of the Act provides that the Minister may prepare for each band a frequency band plan not inconsistent with the spectrum plan.

Subsection 19(2) allows for a frequency band plan to make provision for and in relation to the purpose or purposes for which the band may be used (including any particular frequency or frequency channel).

Subsection 19(3) provides that a frequency band plan may be made either generally or as otherwise provided and, in particular, may apply with respect to a specified area or a specified period.

Subsections 20(1) and (2) of the Act require publication of a proposed frequency band plan prior to promulgation, with an invitation for interested persons to make representations. The Minister is required to give due consideration to any representations.

Subsection 20(4) of the Act enables the Minister to prepare a plan without prior publication and consideration of representations if the Minister is satisfied that the preparation of the plan is a matter of urgency.

The Multipoint Distribution System Band Plan (the Band Plan) (Statutory Rules 1988 No 181) was notified in the Commonwealth of Australia Gazette on 8 July 1988. The Band Plan was amended by Statutory Rules 1992 No 56, which inserted clause 4A into the Band Plan and was notified in the Commonwealth Gazette on 3 June 1992.

Clause 3 of the Band Plan sets out the primary and secondary purposes for which the bands 2076 to 2111 MHz and 2300 to 2400 MHz may be used. The primary purpose is identified as "Fixed Service -Multipoint Distribution Systems only".

Multipoint Distribution Systems (MDS) allow transmissions on a bandwidth broad enough for sound and full-motion pictures to multiple receivers. As such, they allow a range of commercial application, including pay-television. When the pay-television embargo is lifted from 1 October 1992, there could be a strong demand for MDS channels to deliver such services.

Clause 4 of the Band Plan makes further provisions for and in relation to the purposes identified in clause 3.

Subclause 4(1) of the Band Plan divides the possible range of MDS services into five categories.

Subclause 4(2) of the Band Plan provides that during stage I (until a day specified in a Proclamation made under subsection 24A(3) of the Act) frequencies in the band may only be assigned for services in categories 1 to 4, up to a total of 13 frequencies at each location, with 6 frequencies at each location reserved for Stage II.

Subclause 4(3) of the Band Plan provides that during Stage II (from and including a day specified in a Proclamation made under sub-section 24A(3) of the Act) frequencies in the band may only be assigned at each location for services in categories 1 to 5.

The Government has decided that pay-television should be able to be provided using a range of technologies, including satellite, optical fibre and MDS.

The Broadcasting Services Act 1992 (the BSA) received Royal Assent on 14 July 1992. The BSA provides for a new licensing and regulatory regime for broadcasting services. Part 7 of the BSA, which would provide a regime for the licensing and regulation of subscription television broadcasting services, was excised from the BSA when it was before the Senate and was referred to a Senate Committee for consideration. The "subscription television broadcasting services" with which Part 7 is concerned are the BSA equivalent of the "domestic pay-television services" referred to in section 24A of the Act. The original intention was that Part 7 would commence on the same day that the pay-television embargo under section 24A of the Act was lifted so that a regulatory regime would be in place for such services. This will now not be possible.

Schedule 2 to the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992 (the Transitional Act) will insert new section 92A into the Act. The Transitional Act is expected to commence on 5 October 1992, the date on which the substantive provisions of the BSA are expected to be proclaimed to commence, under section 2(2) of that Act (refer to section 2 of the Transitional Act).

The purpose of inserting clause 4A into the Band Plan was to delay the granting of any MDS licences for new services until 1 October, the date on which it was then anticipated that section 92A would commence. This would then have enabled the Minister to make a determination under section 92A by 1 October in relation to MDS licences, thereby subjecting those licences to a similar allocation process as was to be provided by Part 7 of the BSA in relation to subscription television broadcasting services.

The amendment to the Band Plan extends the current temporary embargo by four days until 4 October 1992, which effectively prevents any new MDS licences being granted until 5 October, other than those being regranting or for which an application was lodged before commencement of the new clause.

The Minister for Transport and Communications, being satisfied that the preparing of amendments to the Multipoint Distribution System Band Plan was a matter of urgency, signed the amendments to the Band Plan on 23 September 1992.