

## EXPLANATORY STATEMENT

STATUTORY RULES 1990 NO. 449

ISSUED BY THE AUTHORITY OF THE MINISTER FOR  
TRANSPORT AND COMMUNICATIONS

Part IV of the *Radiocommunications Act 1983* (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 which makes provision for and in relation to the purpose or purposes for which the band may be used.

Subsection 19(2) allows for a frequency band plan to make special provisions for use of parts of the band (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 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

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.

Clause 3 of the Band Plan sets out the primary and secondary purposes for which the 2076 to 2111 MHz and 2300 to 2400 MHz bands 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 applications and there is strong demand for the release of frequencies for MDS.

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

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

Subclause 4(2) provides that during Stage 1 (1988-1990) up to 13 of the 19 channels may be allocated at each location with 6 reserved for future use. No services in category 5 (entertainment video,, including pay TV) are to be permitted during this period. Subclause 4(3) provides that during Stage II (1990 plus) all 5 categories are permissible and all 19 channels can be allocated at each location.

Section 24A of the Act prohibits the licensing of domestic pay television services. The prohibition may be lifted by the Proclamation of a date later than 1 September 1990.

The Government has not yet determined when or whether the moratorium on domestic pay television services is to be lifted. It is intended that the end of Stage 1 shall coincide with the lifting of the moratorium on pay television.

It is considered important that no entertainment video services for use in non-domestic premises be licensed under the MDS Band Plan before the moratorium on pay television is lifted, as those licensees would be advantaged over their competitors upon the introduction of pay television, bearing in mind that pay television is expected to involve primarily the transmission of video entertainment and it is likely that there will be a scarcity of available channels.

Accordingly, this amendment to the band plan changes the timing of the end of Stage I and the commencement of Stage II to the date the moratorium is to be lifted.

It was considered necessary to make the amendment as a matter of urgency. Otherwise, there may be grounds available to challenge any decision to refuse an application for an entertainment video MDS licence lodged before the band plan was amended. Without the making of the amendment before 1 January 1991, potential pay television operators could apply for entertainment video MDS licences between 1 January and the time the amendment actually commenced. Those obtaining such licences before the lifting of the moratorium would gain an unfair advantage over their potential competitors before the commencement of pay television.