AUSTRALIAN COMMUNICATIONS AUTHORITY

Radiocommunications Act 1992

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003

The Australian Communications Authority, under section 60 of the Radiocommunications Act 1992, determines the following procedures to be applied in allocating spectrum licences by auction or pre-determined price.

Dated 12 November 2003.

Australian Communications Authority
AUSTRALIAN COMMUNICATIONS AUTHORITY

Radiocommunications Act 1992

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003

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PART 1—PRELIMINARY

Name of Determination

1.1. This Determination is the Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003.

Commencement

1.2. This Determination commences on 12 November 2003.

Application of Determination

1.3. (1) This Determination sets out a system for allocating spectrum licences by open outcry auction or, if there is only one applicant for the licence(s), for a pre-determined price.

(2) The ACA may allocate licences in accordance with this Determination only after it has published a notice under subsection 2.1(1).

Definitions

1.4. (1) In this Determination:

ABN has the same meaning as in the A New Tax System (Australian Business Number) Act 1999.

ACA means the Australian Communications Authority.

ACCC means the Australian Competition and Consumer Commission.

ACN or ARBN means the relevant registration numbers for a company or body under the Corporations Act 2001.


Application Information Package has the meaning given by section 2.4.

application form means the document approved by the ACA under section 2.3.

balance of the bid price means the highest bid made by the successful applicant, as defined in subsection 4.9(5), less the total of the deposit.

balance of the pre-determined price means the price referred to in section 5.2, less the total of the deposit.

bank transfer, for a payment, means making the payment by electronic funds transfer or by the real time gross settlement electronic payment system operated by the Reserve Bank of Australia.

bid price means the amount bid by or on behalf of the successful applicant pursuant to an allocation in accordance with Part 4.
business day means any day that is not a Saturday or Sunday or a public holiday in the Australian Capital Territory.
cheque means a bank cheque issued by a bank licensed to operate in Australia.
closing date means the date and time set by the ACA under subsection 2.2(c).
company has the same meaning as in the Corporations Act 2001.
Deed of Acknowledgement means the document at Schedule 1.
deposit means the amount payable by an applicant set by the ACA under subsection 2.2(d).
entry fee means the entry fee payable by an applicant set by the ACA under subsection 2.2(a).
Form of Authority means the document at Schedule 2.
pre-determined price means the price referred to in section 5.2.
registered applicant means an applicant who is registered under section 3.4.
registered bidder means an individual who is registered under section 4.8.
registrable body has the same meaning as in the Corporations Act 2001.
registration documents means the documents referred to in subsection 3.1(a).
reserve prices means the prices set by the ACA under subsection 2.2(b).
successful applicant has the meaning given by subsection 4.9(5) or subsection 5.3(1)(a).
verified telephone bidder means an individual or registered applicant whose identity has been verified under subsection 4.6(3).

(2) Headings and notes used in this Determination do not form part of the Determination.
PART 2—PREPARING FOR THE ALLOCATION

Publication of notice by ACA

2.1. (1) Before allocating licences under this Determination, the ACA must publish a notice in any way that the ACA considers appropriate:

(a) giving a brief description of the licences to be allocated in accordance with this Determination; and
(b) stating that licences will be allocated in accordance with this Determination and giving a brief description of the way the allocation will be conducted; and
(c) containing an invitation to apply for the licences to be allocated in accordance with this Determination; and
(d) stating the closing date and time for applications; and
(e) stating that further information (the Applicant Information Package) can be obtained from the ACA at the address given in the notice.

(2) If there is a change in a matter mentioned in the notice, the ACA must publish another notice giving details of the change in any way that the ACA considers appropriate.

(3) The ACA may also publish other information about allocations in any way that the ACA considers appropriate.

Entry fee, reserve price, closing date and deposit

2.2. Before the ACA publishes a notice pursuant to subsection 2.1(1) the ACA must, in writing, set:

(a) the amount of the entry fee; and
(b) the reserve prices; and
(c) the closing date and time for applications; and
(d) the amount of the deposit.

Approval of application form

2.3. The ACA must, in writing, approve an application form for subsection 3.1(a)(i).
Applicant Information Package

2.4. (1) The Applicant Information Package must contain the following information and documents:
   (a) a guide to the allocation process; and
   (b) this Determination; and
   (c) the application form, with instructions for completing and lodging the form; and
   (d) the amount of the entry fee set by the ACA under subsection 2.2(a); and
   (e) the reserve prices set by the ACA under subsection 2.2(b); and
   (f) the closing date and time set by the ACA under subsection 2.2(c); and
   (g) the amount of the deposit set by the ACA under subsection 2.2(d).

(2) The Applicant Information Package may also contain other information about the allocation.

Payments of monies due to ACA

2.5. (1) All payments to the ACA must be made in Australian currency.

(2) Monies due to the ACA for the following purposes must be paid by the date required by this Determination and in accordance with this Determination:
   (a) the entry fee; and
   (b) the deposit; and
   (c) the balance of the bid price; or
   (d) the balance of the pre-determined price.

(3) Monies due to the ACA for any of the purposes set out in subsection (2) must be paid:
   (a) by cheque; or
   (b) by bank transfer.

(4) If a payment is required to be made by a specific date, it is sufficient if, by that date, either:
   (a) the applicant gives the ACA a cheque for the amount of the payment; or
   (b) if paying by bank transfer, the applicant:
      (i) does everything necessary to make the payment; and
      (ii) gives the ACA evidence that the payment has been made.

(5) A payment by bank transfer must be paid into the ACA’s bank account, details of which are as follows:
   (a) Bank — Reserve Bank of Australia;
   (b) Branch — Canberra City;
   (c) BSB number — 092-009;
(d) Account number — 92276-5;
(e) Account name — Australian Communications Authority Clearing Account.

(6) Subject to subsection 2.5(4), the payment must be received in the ACA’s bank account on or before the required date. If it is not, the person’s application ceases to have effect and the person is not entitled to take part in the allocation or to obtain a licence under the allocation.

(7) The applicant must pay all bank charges and Government duties imposed on a payment, and a payment will not be regarded as having been made unless the full amount net of those charges is received by the ACA.
PART 3—REGISTERING FOR AN ALLOCATION

Applications

3.1. A person who wants to be allocated a spectrum licence under this Determination must:

(a) give the ACA the following documents (the registration documents):
   (i) a completed application form; and
   (ii) an executed Deed of Acknowledgement;

(b) pay the entry fee in accordance with section 2.5; and

(c) pay the deposit in accordance with section 2.5.

Note: Under section 2.5, the payments may be paid by cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account on or before the required date, the application will not be registered.

Deposit

3.2. (1) An applicant is not entitled to be allocated a licence unless the applicant has paid the correct deposit for the licence.
(2) The deposit(s) will be refunded if the applicant withdraws prior to the commencement of the auction or if the applicant is not a successful bidder in respect of a particular licence.
(3) The deposit is forfeited if the applicant defaults in respect of the applicant’s obligations under section 6.3.

Lodging of applications

3.3. (1) The registration documents must be lodged with the Canberra office of the ACA on or before the closing date.

(2) As soon as practicable after receiving the registration documents, the ACA must confirm receipt by facsimile or by letter (if the ACA does not know the applicant’s facsimile number) noting particulars of the applicant’s:
   (a) name; and
   (b) address; and
   (c) if the applicant is a company or a registrable body—the applicant’s ABN, ACN or ARBN.

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003

Federal Register of Legislative Instruments F2005B00213
Register of applicants

3.4. (1) The ACA must maintain a register of applicants.

(2) The register may be in electronic form.

(3) For each applicant, the register must contain details of:
   (a) the name and address of the applicant; and
   (b) the applicant’s telephone and facsimile numbers; and
   (c) if the applicant is a company or a registrable body—the applicant’s
       ABN, ACN or ARBN.

(4) The register may also contain any other information that the ACA considers
    necessary for the running of the allocation.

(5) The ACA must make the changes to the register that the ACA considers
    necessary or convenient as soon as practicable after:
    (a) an applicant tells the ACA of any change of name, address, or
        telephone or facsimile numbers; or
    (b) the ACA becomes aware that any information on the register is not
        correct.

(6) Except as authorised by this Determination, or as otherwise authorised by
    law, the ACA must ensure that any details about applicants are not disclosed
    until the allocation is finalised.

(7) Before the start of an auction the ACA may in any manner it considers
    appropriate publish the name of each registered applicant and the licences
    for which they are eligible to bid.

Registration of applicants

3.5. The ACA must register an applicant only if the applicant has:
   (a) lodged completed registration documents; and
   (b) paid the entry fee in accordance with subsection 3.1(b); and
   (c) paid the deposit in accordance with subsection 3.1(c).

Initial assessment of applications

3.6. (1) Within 15 business days after the closing date, the ACA must consider each
    application and decide whether a licence or licences can be allocated without
    having to conduct an auction.

(2) In deciding for subsection 3.6(1) whether it may be able to allocate licences
    without an auction, the ACA may only have regard to:
(a) the applicant’s indication, in the application form, of the licences the applicant wishes to be allocated; and
(b) such other information about the licences applied for that the applicant provides to the ACA.

(3) Subject to subsection 3.2(1), the ACA may offer to allocate a licence to an applicant at a frequency range other than the applicant has applied for. If the applicant accepts the offer, the ACA will proceed to allocate the licence in accordance with Part 5. If the applicant does not wish to accept the offer, then the allocation will proceed in accordance with this Determination.

Allocation of licences by auction or pre-determined price

3.7. (1) Where the ACA concludes that it can allocate a licence or licences without having to conduct an auction, it will proceed to allocate the licence in accordance with Part 5.

(2) Where the ACA concludes that the licences the applicants require in an area cannot be allocated without having an auction, the ACA will proceed to allocate the licences in that area in accordance with Part 4.
PART 4—ALLOCATION BY AUCTION WHERE THERE IS MORE THAN ONE APPLICANT FOR A LICENCE

Application of Part 4

4.1. This Part applies if there is more than one applicant for a licence and the ACA concludes under subsection 3.7(2) that the licence cannot be allocated without having an auction.

Holding an auction

4.2. The ACA must set the starting time, date and place of the auction to allocate the licence in accordance with this Determination.

Appointment of auctioneer

4.3. The ACA must appoint a person as auctioneer to conduct the auction.

Notice to applicants

4.4. (1) Within 15 business days after the closing date, the ACA must give each registered applicant for the licence:

(a) a notice setting out:

(i) that there is more than one applicant for the licence; and
(ii) that the ACA will conduct an auction in relation to the licence; and
(iii) the licences for which the applicant is eligible to bid; and
(iv) the date by which the applicant must confirm his or her intention to participate in the auction and by which a Form of Authority must be lodged; and
(v) whether the ACA will allow telephone bidding at the auction; and
(vi) the starting time and date and place of the auction; and
(vii) the time that bidder registration will commence; and

(b) a Form of Authority to be completed for each person authorised by the applicant to represent the applicant at the auction.

Note: Only individuals can bid at an auction. If an applicant is a company, or if an applicant wishes another individual to represent them at the auction, then a Form of Authority must be lodged for each individual authorised to act on behalf of the applicant.
(2) The ACA:
   (a) may change the details of information mentioned in subsection 4.4(1)(a); and
   (b) must tell all affected applicants of the change, in writing, as soon as practicable after making the change.

(3) The ACA must not change the starting date of the auction to an earlier date.

Confirmation of intent to participate in auction

4.5. (1) By the date specified under subsection 4.4(1)(a)(iv), the applicant must either:
   (a) give the ACA:
       (i) written confirmation of their intention to participate in the auction; and
       (ii) a Form of Authority (if necessary); and
       (iii) written notification of their wish to bid by telephone (if allowed); or
   (b) advise the ACA in writing that their application has been withdrawn.

(2) If the applicant fails to comply with subsection 4.5(1), the applicant will be taken to have withdrawn the application.

(3) It is the applicant’s responsibility to ensure that the ACA has received the documents mentioned under subsection 4.5(1) by the date specified.

Telephone bidding

4.6. (1) The ACA may allow bidding at an auction to be conducted by telephone.

(2) Registered applicants who wish to bid by telephone must advise the ACA in accordance with subsection 4.5(1)(a)(iii).

(3) Where telephone bidding has been allowed, the ACA will issue to each registered applicant, or individual for whom a Form of Authority has been submitted, who wishes to bid in such a manner, a password and a four digit identification number which the registered applicant or authorised individual must provide to the ACA immediately prior to the commencement of the auction to verify his or her identity (verified telephone bidder).

Lodgement of another Form of Authority

4.7. (1) This section applies if:
   (a) a registered applicant wishes to have an individual represent the applicant at an auction; and
(b) the individual is not a person for whom the applicant has given the ACA a Form of Authority under subsection 4.5(1)(a)(ii).

(2) The applicant must give the ACA a duly completed Form of Authority for the individual no later than 2 hours before the starting time of the auction.

**Bidder identification as a registered bidder**

4.8. (1) A registered applicant, other than a verified telephone bidder, or any person in respect of whom a Form of Authority has been lodged by a registered applicant, who wishes to bid at the auction in person must register as a bidder (a registered bidder) and must present to the ACA no later than one hour prior to the commencement of the auction evidence of the individual’s identity.

(2) For the purposes of subsection (1), an Australian driver licence or a passport will be sufficient evidence of that person’s identity.

(3) On registering an individual as a bidder, the ACA must give each registered bidder a bidder’s paddle.

**Bidding in an auction**

4.9. (1) Only a registered bidder or a verified telephone bidder may bid for a licence.

(2) A registered bidder or verified telephone bidder may bid for a licence only:

(a) where the registered bidder or verified telephone bidder is the registered applicant; or

(b) where the registered applicant has provided the ACA with a Form of Authority for the registered bidder or the verified telephone bidder under subsection 4.5(1)(a)(ii) or subsection 4.7(2); and

(c) in an area nominated by the registered applicant in the registration documents and for which a deposit has been paid; and

(d) if the registered applicant has not been allocated a licence that meets the applicant’s requirements in the application form.

(3) The auctioneer will:

(a) invite bids for the licence; and

(b) identify the registered bidder or verified telephone bidder who makes the highest bid for the licence.

(4) In the event of a disputed bid:

(a) the auctioneer is the sole arbiter; and

(b) the auctioneer’s decision is final.
(5) If the highest bid made for a licence is at least equal to the reserve price for the licence, the registered applicant by or for whom the highest bid is made is the successful applicant for the licence.

Identification and verification to ACA

4.10. Immediately after a registered bidder or a verified telephone bidder is identified as the highest bidder:

(a) if the highest bidder is a registered bidder—the highest bidder must meet with the ACA to identify himself or herself to the ACA; or

(b) if the highest bidder is a verified telephone bidder—the highest bidder must verify his or her identification by telephone.

Close of auction

4.11. (1) The auction in relation to a particular licence is closed after the highest bidder has identified himself or herself to the ACA.

(2) The ACA will notify each successful applicant for each licence, by receipted mail, of the balance of the bid price.

(3) A successful applicant must pay the balance of the bid price within ten business days after the date of the notice in accordance with section 2.5.

Licence offered at auction but not allocated

4.12. (1) Subject to subsection 4.12(2), if a licence is not allocated at the auction, applications for that licence cease to have effect.

(2) If a successful applicant is in default of his or her financial obligations to the ACA and the licence is treated as unallocated pursuant to subsection 6.3(1)(d) the ACA may, with the consent of an unsuccessful applicant, treat the registration documents lodged by an unsuccessful applicant in relation to that particular licence as valid registration documents in any future allocation under this Determination.

Refund of deposit

4.13. The ACA must refund the deposits to all unsuccessful applicants or applicants who have withdrawn or who are deemed to have withdrawn from an auction under section 4.5 as soon as practicable.
PART 5—ALLOCATION OF A LICENCE BY PRE-DETERMINED PRICE

Application of Part 5

5.1. This Part applies where the ACA concludes under subsection 3.7(1) that it can allocate a licence or licences that an applicant has applied for without having to conduct an auction.

Amount of pre-determined price

5.2. For the purposes of this Part, the pre-determined price for a licence is the reserve price for the licence.

Notice to registered applicant

5.3. (1) As soon as practicable after the closing date, the ACA must give each registered applicant to whom a licence can be allocated under this Part a notice, by receipted mail, setting out:

(a) that the applicant is the successful applicant for the licence; and

(b) the amount of the balance of the pre-determined price for the licence.

(2) Within ten business days after the date of the notice the successful applicant must either:

(a) pay the balance of the pre-determined price for the licence in accordance with section 2.5; or

(b) advise the ACA in writing that the application has been withdrawn.

Default by a successful applicant

5.4. If a successful applicant, whose application has not been withdrawn, fails to comply with subsection 5.3(2)(a), the application ceases to have effect and the applicant is not entitled to be allocated the licence.
PART 6—ISSUE OF A LICENCE TO A SUCCESSFUL APPLICANT

Form of licence

6.1. (1) The licence must be substantially in accordance with the sample licence in the relevant marketing plan.

(2) The licence comes into force on the day specified in the licence as the day it comes into force.

(3) The licence remains in force for the period specified in the licence.

Note: This is a maximum of 15 years – see section 65 of the Act.

Issue of licence to successful applicant

6.2. (1) Subject to subsection (2), the successful applicant shall be issued a licence if the successful applicant pays the balance of the bid price for the licence in accordance with subsection 4.11(3) or pays the balance of the pre-determined price in accordance with subsection 5.3(2)(a).

Note: In issuing the licence, the ACA must comply with Part 3.2 of the Act.

(2) If the ACA has terminated an advertised allocation under section 7.5, all successful applicants shall cease to be entitled to be issued a licence.

Liability for failure to comply with auction payment requirements

6.3. (1) If a successful applicant does not pay the balance of the bid price in accordance with this Determination:

(a) the applicant ceases to be entitled to be allocated the licence; and
(b) the deposit is forfeited to the ACA; and
(c) the applicant is taken to be in default of its financial obligations to the ACA under this Determination and is liable to pay to the ACA the default amount which shall be 25 percent of the balance of the bid price; and
(d) the licence may be treated as an unallocated licence under section 4.12.

(2) The total of the default amount payable to the ACA under this section is:

(a) a debt due to the ACA; and
(b) recoverable by the ACA from the successful applicant in a court of competent jurisdiction.
PART 7—MISCELLANEOUS

ACA not liable under the allocation system

7.1. The ACA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in this Determination.

Information provided by applicant

7.2. (1) A document given to the ACA by a person for the purposes of the allocation procedures set out in this Determination (including a document that contains intellectual property) becomes the property of the ACA.

(2) Subsection (1) does not apply to a document that is given to the ACA to establish an individual’s identity.

(3) The ACA may use information provided by an applicant for the purposes of the ACA.

(4) Where the ACCC has requested specified information in relation to any applicant, the ACA must provide that information to the ACCC.

Recovery of damages by ACA

7.3. This Determination does not affect any right of action or remedy that the ACA has or may have against any person which arose or arises under the Deed of Acknowledgement, statute, common law, equity or otherwise.

Giving of information by ACA

7.4. The ACA may announce, or publish a notice of:

(a) the name of each person to whom a licence is to be issued; and

(b) the price bid or paid for the licence.

Termination of an advertised allocation

7.5. The ACA may terminate an advertised allocation under this Determination at any time before a licence is issued if the ACA considers it is appropriate to do so.

Refund of payments to ACA

7.6. If the ACA terminates an allocation under section 7.5, the ACA must refund:

(a) any entry fee paid by an applicant under subsection 3.1(b);

(b) any deposit paid under subsection 3.1(c);
(c) the balance of the pre-determined price paid for a licence under subsection 5.3(2)(a)
(d) the balance of the bid price paid for a licence under subsection 4.11(3).
NOTES ON COMPLETION

Persons completing this Deed of Acknowledgement (the ‘Deed’) should read the Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003 (the ‘Determination’) and seek appropriate advice. The Deed affirms the statutory obligations imposed upon applicants by the Determination in respect of their participation in any auction or allocation for a pre-determined price conducted in accordance with the Determination. The Deed also requires that applicants, in addition to their statutory obligations owed under the Determination, agree to be bound by the same obligations under contract. Prospective applicants should clearly understand these obligations before completing the Deed.

All sections of this Deed must be completed. The applicant(s) referred to in this Deed must be the same as on the related Application Form.

In the event that 2 or more persons decide to apply as joint applicants, then:

- each joint applicant must be named and described at the beginning of the Deed; and
- each joint applicant must execute the Deed.
Deed of Acknowledgement

This DEED OF ACKNOWLEDGEMENT is made this __________ day of __________ 200____.

In favour of the AUSTRALIAN COMMUNICATIONS AUTHORITY (‘ACA’) a body corporate continued in existence under the Australian Communications Authority Act 1997 (Cth)

by

(the ‘applicant(s)’) (Insert name and ABN/ACN/ARBN if applicable)

of

(Insert address)

PURPOSE:

A. The Australian Communications Authority (‘ACA’) proposes to allocate spectrum licences using a price based allocation. The ACA has determined the procedures to be applied in allocating these licences, by auction or pre-determined price, in the Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003 (the ‘Determination’).

B. The applicant wishes to submit bids for a licence or be offered the opportunity to acquire a licence for the pre-determined price in the event that there is only one applicant for that licence.

C. The applicant has agreed to compete for licences, and to participate in any allocation for a pre-determined price, in accordance with the terms and conditions set out in the Determination and in this Deed.

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003
OPERATIVE PART:

PART 1: GENERAL UNDERTAKING

ACKNOWLEDGEMENT & AGREEMENT THAT APPLICANT WILL BE BOUND

1.1 The applicant understands and acknowledges that it will be bound by the statutory obligations contained in the Determination, and in addition by this Deed agrees to be contractually bound to strictly comply with each and every provision of the Determination.

1.2 The remaining clauses of this Deed do not in any way limit this acknowledgement by the applicant that it will be bound by all applicable statutory obligations contained in the Determination.

1.3 The remaining clauses of this Deed supplement, and do not in any way limit, the applicant’s contractual duty to perform or satisfy its statutory obligations contained in the Determination.

1.4 Notwithstanding anything in this Deed, neither the applicant’s obligations under this Deed nor the binding effect of this Deed shall in any way be affected or impaired by the Determination or both, being void or otherwise unenforceable in whole or in part.

1.5 The applicant has read and understood all information made available by the ACA in relation to the allocation under this Determination, including but not limited to the Applicant Information Package.
PART 2: ALLOCATION WHERE THERE IS MORE THAN ONE APPLICANT FOR A LICENCE

DETERMINATION OF LICENCES

2.1 The applicant acknowledges and agrees that the mechanisms described in the Determination are acceptable to determine when the ACA should allocate a licence by auction in accordance with Part 4 of the Determination.

APPLICANT BOUND BY REGISTERED BIDDER

2.2 The applicant acknowledges and agrees that the applicant will be bound by the actions of the applicant’s registered bidder or verified telephone bidder at the auction.

PAYMENT OF THE DEPOSIT

2.3 The applicant agrees to pay the deposit as required by subsection 3.1(c) of the Determination.

FAILURE TO PAY THE DEPOSIT

2.4 If the applicant fails to pay the deposit as required by subsection 3.1(c) of the Determination the applicant acknowledges that subsection 2.5(6) of the Determination applies.

PAYMENT OF THE BALANCE OF THE BID PRICE

2.5 The applicant, on becoming the successful applicant in relation to a licence, agrees to pay the balance of the bid price as required by subsection 4.11(3) of the Determination.

FAILURE TO PAY THE BALANCE OF THE BID PRICE

2.6 If on becoming the successful applicant in relation to a licence, the applicant fails to pay the balance of the bid price as required by subsection 4.11(3) of the Determination the applicant acknowledges that section 6.3 of the Determination applies and agrees to perform and satisfy its obligations which arise from, or are described in, section 6.3 in the manner set out in the Determination.

2.7 The rights and obligations referred to in this clause will survive the expiration or termination of this Deed.

BIDS

2.8 The applicant acknowledges and agrees that the mechanisms described in the Determination are acceptable to authenticate bids as bids submitted by the

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applicant, and that the applicant will be bound by any bids that satisfy those authentication checks, whether or not those bids were submitted by the applicant or with the applicant's authority.

2.9 The applicant acknowledges and agrees that it will be responsible for its acts and omissions, and the acts and omissions of its officers, employees, agents, subcontractors and associates in relation to any bid for a licence.

PART 3: ALLOCATION OF A LICENCE IF THERE IS ONLY ONE APPLICANT

OFFER OF A LICENCE FOR THE PRE-DETERMINED PRICE

3.1 The applicant acknowledges and agrees that if there is only one registered applicant for a licence the ACA will allocate that licence for the pre-determined price in accordance with Part 5 of the Determination.

PAYMENT OF THE PRE-DETERMINED PRICE

3.2 The applicant agrees to pay the pre-determined price for the licence in accordance with subsection 5.3(2)(a) of the Determination or to advise the ACA that the application has been withdrawn in accordance with subsection 5.3(2)(b).

FAILURE TO PAY THE PRE-DETERMINED PRICE

3.3 If the applicant does not act in accordance with section 5.3 of the Determination, then the applicant acknowledges and agrees that section 5.4 of the Determination applies and the application ceases to have effect.

PART 4: GENERAL

NO RELIANCE

4.1 The applicant undertakes that it has made its own independent inquiries about the use and effectiveness of all potential licences which it wishes to be allocated or for which it proposes to bid in an auction. The applicant acknowledges that it has not relied on any representation made by the ACA or its officers, employees or agents in relation to its application for, or the allocation of, the right to apply for a spectrum licence.
RELEASE AND INDEMNITY

4.2 The applicant agrees to indemnify the ACA from and against any:

(a) liability sustained or incurred by the ACA; or

(b) loss of or damage to property of the ACA; or

(c) loss or expense sustained or incurred by the ACA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the ACA;

arising from:

(d) any act or omission by the applicant, its officers, employees, agents, subcontractors or associates in connection with the applicant’s participation in an allocation process conducted under the Determination;

(e) any breach by the applicant of its obligations or warranties under this Deed, or the Determination, or both;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

4.3 The applicant’s liability to indemnify the ACA under clause 4.2 will be reduced proportionately to the extent that any negligent act or omission of the ACA contributed to the relevant liability, loss or damage, or loss or expense.

4.4 The right of the ACA to be indemnified under this clause 4.2 is in addition to, and not exclusive of, any other right, power or remedy of the ACA which arises under statute, common law, equity or otherwise.

4.5 The applicant releases the ACA from and against all demands, claims, actions or proceedings arising from the acts or omissions of any person in relation to the allocation procedures set out in the Determination.

4.6 The rights and obligations referred to in this Deed will survive the expiration or termination of this Deed.

JOINT AND SEVERAL LIABILITY

4.7 Where two or more persons have executed this Deed as joint applicants the liability of each person under this Deed is both joint and several.
APPLICANT MUST MEET ITS OWN COSTS

4.8 The applicant agrees that its participation in any stage of procedures referred to in the Determination shall be at its sole risk, cost and expense.

CONFIDENTIAL INFORMATION

4.9 The applicant and its respective officers, employees, agents, advisers and associates must not take steps to obtain, or use in any unauthorised way, or disclose confidential information of the ACA relating to the ACA’s activities or the auction process other than information which is publicly available or made available by the ACA to registered applicants during the auction process.

RETURN OF INFORMATION TO THE ACA

4.10 The ACA reserves the right, in its absolute discretion, to require that any written information provided to the applicant (and copies of the information) be returned to the ACA at any stage, at the applicant’s sole expense.

CONFLICT OF INTEREST

4.11 The applicant and its respective officers, employees, agents and advisers must not place themselves in a position which may, or does, give rise to a conflict of interest (or a potential conflict of interest) between the interests of the ACA (on the one hand) and any other interests (on the other hand) during the auction process.

GOVERNING LAW

4.12 This Deed is governed by the laws in force in the Australian Capital Territory.

4.13 The applicant irrevocably submits to the non exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

DEFINITIONS AND INTERPRETATION

4.14 This Deed shall be interpreted in accordance with the provisions of the Determination and the Radiocommunications Act 1992 (the “Act”). Unless otherwise provided, terms in this Deed shall have the same meanings as provided in that Determination or Act.

4.15 In this Deed, unless the contrary intention appears:

(a) Words importing a gender include any other gender.
(b) Words in the singular number include the plural and words in the plural number include the singular.

(c) A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.

(d) ‘ACA’ includes the officers, employees, subcontractors and agents of the ACA.

**NO VARIATION UNLESS AGREED**

4.16 No variation of this Deed is binding unless it is agreed in writing between the applicant and the ACA.
EXECUTED AS A DEED

[If more than 1 person is applying as joint applicants then each person should complete an appropriate execution block.]

[Appropriate execution block if the applicant is an individual: ]

SIGNED, SEALED AND DELIVERED

by __________________________

(Print Name of the applicant)

in the presence of

Signature __________________

[Appropriate execution block if the applicant is a company: ]

SIGNED, SEALED AND DELIVERED

for and on behalf of

_____________________________

(Print Name of the Company)

ABN, ACN or ARBN

_____________________________

(Print ABN, ACN or ARBN)

by authority of the Directors:

______________________________

(Print name of Director)

______________________________

(Signature of Director)

______________________________

(Print name of Director/Secretary)

______________________________

(Signature of Director/Secretary)

[If the applicant is a statutory authority or other body corporate, then please execute in the appropriate manner a Deed.]
SCHEDULE 2
Form of Authority

Australian Communications Authority
Form of Authority

NOTES ON COMPLETION

Persons completing this Form of Authority (the Authority) should read the Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003 (the Determination) and, if necessary, seek appropriate advice. The Authority confers certain powers and obligations on the representatives which applicants and applicant representatives should understand clearly before completion. This Authority may not be altered.

This Authority must be completed where an individual is to represent an applicant at the auction. A separate Authority must be completed for each applicant representative representing an applicant. Applicants who are individuals need not complete an Authority if they are to represent themselves at auction.

To complete this Authority all sections must be completed unless they are optional. Optional sections are the telephone and facsimile contacts of the applicant representative.

The applicant(s) referred to in this Authority must be the same as on the related Application Form. Where there are joint applicants each party to the application must duly sign or execute this Authority. The addresses of all applicants will be taken to be the same as provided in the Application Form. If there is insufficient space please attach necessary details.

If another individual is to represent the applicant at the auction another Form of Authority must be given to the ACA no later than two hours before the auction starts.

There must be a separate Authority for each individual authorised to act for the applicant.

This Authority must contain original signatures (or other form of execution) of the applicant and applicant representative.

For joint applicants, all persons who signed the Application Form as applicants must sign or execute this Authority.

☐ I submit this Form of Authority in conjunction with written confirmation of my intention to participate in the auction.

☐ I submit this Form of Authority in substitution for the Form of Authority previously lodged with the ACA.

☐ I submit this Form of Authority in addition to the Form of Authority previously lodged with the ACA.

THIS AUTHORITY is made this                day of                200

by

Insert Name and ABN, ACN or ARBN if applicable (Applicant)

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003

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Introduction

A. The Australian Communications Authority has made the Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003 (the Determination) under section 60 of the Radiocommunications Act 1992.

B. The applicant wishes to apply for one or more licences that are to be allocated by the Australian Communications Authority under the Determination.

C. The applicant wishes to appoint the person described below to act on the applicant's behalf in relation to the allocation of licences under the Determination.

1. AUTHORISATION

1.1 The applicant authorises

(Full Name)

of

(Address)

('the applicant representative')

who may be contacted by Telephone at ( )

(if applicable)

and Facsimile at ( )

(if applicable)

to do on the applicant's behalf, all acts, and execute all documents that are necessary for the applicant to be issued with a licence under the Determination, including:

(a) to bid for a licence at an auction held in accordance with the Determination; and

(b) to pay the balance of the bid price.

1.2 The terms set out on the back of this Authority are part of this Authority.

THE APPLICANT HAS EXECUTED THIS AUTHORITY on the day and year written above.

(Print name of applicant)

(Signature of applicant)

in the presence of

(Print name of witness)

(Signature of witness)

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OR, if the applicant is a company:
SIGNED SEALED AND DELIVERED
for and on behalf of

ABN ACN or
ARBN

by authority of the Directors

(Print name of Director) (Print name of Director/Secretary)

(Signature of Director) (Signature of Director/Secretary)

If insufficient space, please attach details on a separate sheet of paper.

OR, in any other case (eg incorporated association or statutory authority) please execute in the appropriate form (attach if necessary).

2. ACKNOWLEDGEMENT
2.1 The applicant has authority to appoint the applicant representative.
2.2 The applicant must ensure that the applicant representative is made aware of the duties and obligations that apply to the applicant representative under the Determination.
2.3 The applicant is responsible for ensuring that the applicant representative attends at the place where the auction will be held during the auction. The Commonwealth, its officers, servants and agents accepts no responsibility for the failure of an applicant or an applicant representative to so attend during the auction or any failure of an applicant or an applicant representative to comply with the Determination.

3. DURATION
This Authority remains in force until the auction has been completed, or until the ACA receives from the applicant a notice of revocation executed by the applicant in the same manner and with the same formality as this Authority.

4. NO SUB-DELEGATION
The applicant representative is not authorised under this Authority to appoint any substitutes, delegates or other representatives to act on the applicant’s behalf under this Authority.

5. AMENDMENTS
This Authority cannot be amended.

6. SEVERABILITY
If any provision of this Authority is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Determination 2003
7. INDEMNITY

7.1 The applicant agrees to indemnify the ACA from and against any:

(a) liability sustained or incurred by the ACA;
(b) loss of or damage to property of the ACA; or
(c) loss or expense sustained or incurred by the ACA in dealing with any claim against it including legal costs and expenses on a solicitor/client basis and the cost of time spent, resources used or disbursements paid by the ACA;

arising from:

(d) any act or omission by the applicant, its officers, employees, agents, subcontractors or associates in connection with the applicant’s participation in an allocation process conducted under the Determination; or

(e) any breach by the applicant of its obligations or warranties under this Authority, or the Determination, or both;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

7.2 The applicant’s liability to indemnify the ACA under clause 7.1 will be reduced proportionately to the extent that any negligent act or omission of the ACA contributed to the relevant liability, loss or damage, or loss or expense.

7.3 The right of the ACA to be indemnified under this clause 7 is in addition to, and not exclusive of, any other right, power or remedy of the ACA which arises under statute, common law, equity or otherwise.

7.4 The applicant releases the ACA from and against all demands, claims, actions or proceedings arising from the acts or omissions of any person in relation to the allocation procedures set out in the Determination.

7.5 The rights and obligations referred to in this clause 7 will survive the expiration or termination of this Authority.

8. RATIFICATION

The applicant undertakes to ratify all acts that the applicant representative purports to do in accordance with the authority given by the applicant under this Authority.

9. DEFINITIONS AND INTERPRETATION

9.1 In this Form of Authority, unless the contrary intention appears:

“ACA” means the Australian Communications Authority.


“applicant” means the person identified at the commencement of this Authority as the applicant.

“Authority” means this Form of Authority.

“balance of the bid price” has the same meaning as in the Determination.

“Commonwealth” means the Commonwealth of Australia including the ACA.


“Licence” has the same meaning as in the Determination.

9.2 Words importing a gender include any other gender.

9.3 Words in the singular number include the plural and words in the plural number include the singular.