ATTACHMENT C

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications Authority

Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996 (Amendment No. 12)

Radiocommunications Act 1992

Legislative Provisions

Section 106 of the Radiocommunications Act 1992 (the Act) allows the Australian Communications Authority (ACA) to determine in writing a price-based allocation system for allocating and/or issuing specified transmitter licences.

Purpose of Amendment

An amendment to the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996 is made to specify the transmitter licences proposed to be offered by the Australian Broadcasting Authority (ABA) for allocation. The Determination has been drafted so that each time it is used for a new licence allocation round, the only change necessary is to amend it by adding the details of new apparatus licences to be offered including the locations and frequencies.

Background

Transmitter licences are issued by the ABA under the delegation of the ACA’s power, described in subsection 238(3) of the Act.

The Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996 governs the price-based allocation system under which open narrowcasting broadcasting transmitter licences will be issued and is made by the ACA for the ABA under section 106 of the Act.

Each time the ABA offers for sale transmitter licences to operate open narrowcasting radio services planned by the ABA in Licence Area Plans, it must request that the ACA make an amendment to the Determination specifying the new licences to be allocated.

Discussion of Issues

The ABA has completed planning Licence Area Plans (LAPs) for different parts of Australia in which new broadcasting services have been identified as being available for allocation. Amongst the new services available in LAPs are open narrowcasting radio services.
Providers of open narrowcasting services do not require a service licence under the *Broadcasting Services Act 1992* (the BS Act), however they do need to obtain a transmitter licence, which is issued under the Act. Due to the level of interest in, and potential value of, transmitter licences for service providers, the ABA has decided that in the interests of equity, most, if not all of the transmitter licences that are issued to provide open narrowcasting services available in LAPs, will be issued using a price-based allocation system, determined under s106 of the Act.

The Spectrum Management Agency (SMA) delegated the power to issue transmitter licences (and to impose conditions on those licences) to the ABA. That delegation is still effective since the establishment of the ACA. However, the power to determine a section 106 price-based allocation system cannot be delegated.

The Determination has been drafted so that each time it is to be used the only change necessary is to amend it by adding the details of the new location and frequencies to the existing Schedule to specify the transmitter licences to which the particular amendment will apply, and a new signature page.

**Consultation**

The Office of Regulation Review (ORR) has advised the ABA that a Regulation Impact Statement (RIS) was not required for the amendment to the Determination, as the major issues are decided in the relevant LAP prepared by the ABA, for which a RIS must be submitted. Consultation to amend the Determination is unnecessary and inappropriate. The proposed amendment is minor and purely machinery flowing from a LAP.

At the time that the ABA prepares or varies a LAP, it is required under section 27 of the BS Act to consult widely with the public. It does this by way of public notice in relevant newspapers and by inviting written submissions on proposed changes. All submissions received are considered by the ABA before determining the final LAP or LAP variation.

Further, external consultation is not considered necessary, given the ABA will advertise for applications for the available licences in a national newspaper. A public auction will be conducted in instances where more than one application is received. All successful applicants will be noted in a news release and on the ABA’s website.

**Other Documents Incorporated in this Instrument by Reference**

Section 34 of the *Broadcasting Services Act 1992* states, amongst other things, that if broadcasting services bands spectrum is available in a licence area but has not been made available for a commercial radio broadcasting licence then the ABA may, by written instrument, determine that part of the radiofrequency spectrum concerned is available for allocation for a period specified by the ABA to providers of open narrowcasting services.

**Attachments**

Details of the Amendment Determination are at Appendix 1
Notes about instrument

Section 1 Amendment

This section provides for the amendment of the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No.1 of 1996.

Section 2 Schedule (Available transmitter areas and ranges of frequencies)

This schedule provides for

(a) the date of the decision made by the ABA under section 34 of the Broadcasting Services Act 1992; and
(b) the list of available transmitter areas and ranges of frequencies.

Commencement

The Amendment Determination commences the day after it is registered.