



Digital Radio Multiplex Transmitter Licences Procedural Rules 2008

Radiocommunications Act 1992

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes these Rules under section 118PO of the *Radiocommunications Act 1992*.

Dated 21 May 2008

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

Part 1 Preliminary

1 Name of Rules

These Rules are to be known as the *Digital Radio Multiplex Transmitter Licences Procedural Rules 2008*.

2 Commencement

These Rules commence on the day after they are registered on the Federal Register of Legislative Instruments.

3 Object of Rules

The object of these Rules is to promote the expeditious and efficient exercise of the ACCC's functions and powers under Division 4B of Part 3.3 of the Act.

4 Definitions

The dictionary in Schedule 1 of these Rules defines terms used in these Rules.

5 Relief from Rules

The ACCC may dispense with compliance with any of the requirements of these Rules before or after the occasion for compliance arises.

Part 2 Documents

6 Documents given to the ACCC

- (1) Supporting documents and annual reports given to the ACCC by a licensee in connection with an access undertaking or variation of an access undertaking may be:
 - (a) electronic; or
 - (b) non-electronic.
- (2) Submissions given to the ACCC by a member of the public in connection with an access undertaking or variation of an access undertaking may be:
 - (a) electronic; or
 - (b) non-electronic.

Electronic documents

- (3) Electronic documents may be provided to the ACCC by any of the following means:
 - (a) delivering a CD or DVD containing the documents to an office of the ACCC;
 - (b) emailing the documents to the email address specified by the ACCC for that purpose.
- (4) A CD or DVD provided to the ACCC under paragraph (3)(a) must contain a text-searchable index which clearly describes the subject matter of each individual document.
- (5) Where a licensee or member of the public gives an electronic document to the ACCC in relation to which confidentiality is requested either in whole or in part, the electronic document must be endorsed with the words “Confidential Restriction on Publication Claimed”.

Non-electronic documents

- (6) Non-electronic documents may be provided to the ACCC by delivering the documents to an office of the ACCC.
- (7) Non-electronic documents provided to the ACCC must contain an index which clearly describes the subject matter of each individual document.
- (8) Where a licensee or member of the public gives a non-electronic document to the ACCC in relation to which confidentiality is requested

either in whole or in part, the non-electronic document must be given in an envelope endorsed with the words “Confidential Restriction on Publication Claimed”.

7 Form of documents

- (1) To the extent it is practicable to do so, a licensee or member of the public must provide an electronic document referred to in rule 6 to the ACCC.
- (2) Any electronic document provided to the ACCC must:
 - (a) be text-searchable and in a readable format;
 - (b) be capable of being printed; and
 - (c) allow text and images to be copied from the document.
- (3) To the extent it is practicable to do so, a licensee or member of the public must provide that electronic document in a preferred electronic format.
- (4) To the extent it is practicable to do so, a licensee or member of the public must also provide a copy or version of that electronic document in an accessible electronic format.

Note The copy or version of the document provided in an accessible electronic format need not be an exact copy of the document. For example, a version of a signed expert report in Microsoft Word format that does not contain the expert's signature, but contains the text of the report.

- (5) This rule does not prevent a licensee or member of the public from also providing a copy or version of that electronic document in another format.
- (6) In this rule:

preferred electronic format means:

- (a) for word-processed documents (including submissions, expert reports, and witness statements):
 - (i) plain text;
 - (ii) Microsoft Word format;
 - (iii) Rich Text Format;
 - (iv) text-searchable Portable Document Format (PDF);
- (b) for spreadsheets, Microsoft Excel format;
- (c) for presentations, Microsoft PowerPoint format.

accessible electronic format means, for word-processed documents:

- (a) plain text;
- (b) Microsoft Word format; or
- (c) Rich Text Format.

8 Supporting documents and submissions

- (1) A licensee must provide supporting documents to the ACCC at the time of giving an access undertaking or variation of an access undertaking.
- (2) The ACCC may determine the periods that are reasonably necessary for the lodging of submissions by a member of the public in regard to:
 - (a) an access undertaking; or
 - (b) a variation of an access undertakingand may require that submissions be lodged within those periods.
- (3) The ACCC must consider any submission received in a period determined under subrule (2) and it may (but is not obliged to) consider any submission received outside the period.

Part 3 Information & alterations

9 Information to be provided

(1) The following information must be provided to the ACCC by a licensee in connection with an access undertaking given under section 118ND of the Act or a variation of an access undertaking given under paragraph 118NH(2)(a) of the Act:

- (a) the name of the licensee;
- (b) the names of each member of the licensee that constitutes the eligible joint venture company;
- (c) the name of a person who is the contact for the licensee (the ***nominated person***);
- (d) the nominated person's contact details;
- (e) details of the services to which access is to be provided under the access undertaking (if applicable);
- (f) details of the services to which the variation relates (if applicable);
- (g) the reasons for which the licensee requires a variation to the access undertaking (if applicable).

(2) In this rule:

contact details, in relation to the nominated person, means:

- (a) position or office held;
- (b) contact telephone number;
- (c) fax number (if applicable);
- (d) email address;
- (e) an address in Australia for delivery of documents; and
- (f) such other contact information as the ACCC may require from time to time.

10 Requests for further information

(1) This rule applies if the ACCC requests a licensee to give the ACCC further information about:

- (a) an access undertaking under subsection 118NE(2) of the Act; or
- (b) a variation of an access undertaking under subsection 118NI(2) of the Act.

(2) The ACCC may specify in a request for further information the time limit for complying with that request.

- (3) If the ACCC does not specify in a request for further information the time limit for complying with the request, the time limit for complying with the request is:
 - (a) 14 days from the date of the request; or
 - (b) if the request is not dated, 14 days from the date on which the ACCC gave the request to the licensee.
- (4) If the time limit for complying with a request for further information passes, without the information request being fully complied with, the ACCC may reject the access undertaking or variation of an access undertaking relating to that request by giving written notice to the licensee.
- (5) The ACCC may reject an access undertaking or variation of an access undertaking even if the requested information is given to the ACCC after the time limit for complying with a request for further information has passed.
- (6) The ACCC may extend the time limit for complying with a request for further information either before or after the time limit for complying with the request has passed.
- (7) The ACCC may not extend the time limit for complying with a request for further information if the access undertaking or variation of an access undertaking has been rejected under subrules (4) or (5).

11 Altered access undertakings and altered variations of access undertakings

- (1) This rule applies if the ACCC gives a licensee a written notice in regard to:
 - (a) an altered access undertaking under subsection 118NF(4) of the Act; or
 - (b) an altered variation of an access undertaking under subsection 118NH(5) of the Act.
- (2) The ACCC may specify in the written notice the time limit for complying with that notice.
- (3) If the ACCC does not specify in the written notice the time limit for complying with the notice, the time limit for complying with the notice is:
 - (a) 14 days from the date of the notice; or
 - (b) if the notice is not dated, 14 days from the date on which the ACCC gave the notice to the licensee.
- (4) The ACCC may extend the time limit for complying with the notice either before or after the time limit for complying with the notice has passed.

Part 4 Confidential information

12 Documents that must not contain any confidential information

The following documents must not contain any confidential information:

- (a) an access undertaking;
- (b) a variation of an access undertaking.

13 Confidential information contained in supporting documents, annual reports, or submissions

- (1) The ACCC may make any supporting documents, annual report or submissions given in connection with an access undertaking or variation of an access undertaking, publicly available on the ACCC's Internet site.
- (2) At the time of giving supporting documents or an annual report a licensee may request that the ACCC not make the whole or a part of a document or report publicly available on the ACCC's Internet site because of confidential information in the document or report.
- (3) At the time of giving submissions a member of the public may request that the ACCC not make the whole or a part of a submission publicly available on the ACCC's Internet site because of confidential information in the submission.
- (4) At the time of making a request under either subrule (2) or (3) a licensee or member of the public must provide the ACCC with:
 - (a) reasons why the information is claimed to be confidential; and
 - (b) an unmarked copy of the document, report or submission including the parts in which confidentiality is claimed; and
 - (c) a copy of the document, report or submission, marked up so as to show clearly the parts in respect of which confidentiality is claimed; and
 - (d) a copy of the document, report or submission, with the parts in respect of which confidentiality is claimed masked so that these parts are not disclosed and may be published on the ACCC's Internet site.
- (5) After considering:
 - (a) a request made under either subrule (2) or (3); and
 - (b) the reasons the licensee or member of the public has given under subrule (4) in relation to the request;

the ACCC may decide not to make publicly available so much of the document, report or submission that contains confidential information that the ACCC thinks should not be so given.

Part 5 Use of information

14 Purported limitations

- (1) A licensee or member of the public who gives supporting documents, an annual report or submissions to the ACCC in connection with an access undertaking or variation of an access undertaking may not impose, or purport to impose, any limitation on the ACCC's use of the supporting documents, annual report or submissions other than a permitted limitation.
- (2) Any condition imposed, or purportedly imposed, in contravention of subrule (1) is of no effect.
- (3) In this rule:

permitted limitation means:

- (a) an accepted request for confidentiality under Part 4 of these Rules; or
- (b) a limitation agreed to in writing by the ACCC before the supporting documents, annual report or submissions are given.

15 Provision of information by the ACMA to the ACCC

- (1) The ACMA must give to the ACCC within 14 days:
 - (a) a copy of any written instrument issued to a licensee (including the applicable licence conditions) under section 100 of the Act permitting the operation of a digital radio multiplex transmitter;
 - (b) notice of any written determination made under subsection 109B(2) of the Act regarding implementation plans;
 - (c) notice of any written instrument made under subsection 109B(6) of the Act regarding the continuity of transmission;
 - (d) a copy of any notice changing the licence conditions of a digital radio multiplex transmitter licence under section 111 of the Act;
 - (e) notice of any written determination made under section 115 of the Act limiting authorisation of third party users;
 - (f) a copy of any notice issued under subsection 118NQ(7) of the Act transferring standard access entitlements to the ACMA;
 - (g) a copy of any notice given to a licensee under section 126 of the Act suspending the operation of a digital radio multiplex transmitter licence;
 - (h) a copy of any notice given to a licensee under section 128 of the Act cancelling the operation of a digital radio multiplex transmitter licence;
 - (i) a copy of any application made by a licensee under section 131AA of the Act for transfer of a digital radio multiplex

transmitter licence;

- (j) notice of any written instrument made under section 131AC of the Act that determines a digital radio multiplex transmitter licence is not transferable in certain circumstances.

- (2) The ACMA must also give to the ACCC details of any suspected contravention of a licence condition of a digital radio multiplex transmitter licence as soon as is reasonably practicable.

16 Provision of information by the ACCC to the ACMA

- (1) The ACCC must give to the ACMA within 14 days, a copy of:
 - (a) any access undertaking or variation of an access undertaking accepted by the ACCC under subsection 118NF(2) or subsection 118NH(3) of the Act;
 - (b) any notice given to a licensee rejecting an access undertaking or variation of an access undertaking under subsection 118NF(8) or subsection 118NH(9) of the Act;
 - (c) any notice received under subsection 118NQ(4) of the Act;
 - (d) any notice issued under subsection 118NQ(6) of the Act;
 - (e) any notice issued under subsection 118PA(2) of the Act and subsequent audit report;
 - (f) an annual report under subsection 118PN of the Act.
- (2) The ACCC must give to the ACMA details of any access undertaking it has refused to consider under rule 17, as soon as is reasonably practicable.

17 Refusal to consider an access undertaking

The ACCC may refuse to consider an access undertaking if:

- (a) the ACCC is satisfied that the access undertaking:
 - (i) is frivolous; or
 - (ii) is vexatious; or
 - (iii) was not given in good faith; or
- (b) the ACCC has reason to believe that the access undertaking was given for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of Division 4B of Part 3.3 of the Act.

Part 6 Annual Reports

18 Matters to be included in annual reports

- (1) In accordance with section 118PN of the Act, a licensee must, within 60 days after the end of a financial year give the ACCC an annual report.
- (2) An annual report given to the ACCC under subrule (1) must include details of the following matters:
 - (a) compliance during that financial year with the access undertaking;
 - (b) compliance during that financial year with standard access obligations (if any) applicable to the licence;
 - (c) compliance during that financial year with excess-capacity access obligations (if any) applicable to the licence;
 - (d) compliance during that financial year with obligations that are applicable to the licence under section 118NP;
 - (e) any non-compliance (including reasons) with matters listed in paragraphs (a) to (d);
 - (f) steps taken to rectify non-compliance with matters listed in paragraphs (a) to (d);
 - (g) expected completion dates for matters requiring rectification;
 - (h) changes to the membership of the eligible joint venture company that have occurred during that financial year;
 - (i) any authorisation of third party users.
- (3) The ACCC may make an annual report given to the ACCC under subrule (1) publicly available on the ACCC's Internet site.

Schedule 1 Dictionary

(rule 4)

ACCC means the Australian Competition and Consumer Commission.

access undertaking means an undertaking under section 118ND of the Act.

ACMA means the Australian Communications and Media Authority.

Act means the *Radiocommunications Act 1992*.

annual report means a document containing details of the matters listed in accordance with rule 18.

category 1 digital radio multiplex transmitter licence has the meaning given by section 5 of the Act.

category 2 digital radio multiplex transmitter licence has the meaning given by section 5 of the Act.

confidential information means information in a document that a licensee or member of the public claims is confidential.

digital radio multiplex transmitter licence means:

- (a) a category 1 digital radio multiplex transmitter licence; or
- (b) a category 2 digital radio multiplex transmitter licence.

electronic document means a document that is a computer file.

eligible joint venture company has the meaning given by subsections 102C(5) and 102D(5) of the Act.

excess-capacity access obligations has the meaning given by section 118NM of the Act.

financial year means a period of 12 months commencing on 1 July.

licensee means a holder of a digital radio multiplex transmitter licence or any person authorised by the holder of the licence to operate multiplex transmitters under the licence.

non-electronic document means a document that is not an electronic document and includes:

- (a) paper documents; and
- (b) documents sent by fax transmission.

standard access obligations has the meaning given by section 118NL of the Act.

submission means any document provided by a member of the public in connection with an access undertaking or variation of an access undertaking under section 118NF and section 118NH of the Act.

supporting document means any document provided by a licensee in connection with an access undertaking or variation of an access undertaking except for information obtained by the ACCC under section 118NE or section 118NI of the Act.

variation of an access undertaking means a variation of an access undertaking under section 118NH of the Act.