

## EXPLANATORY STATEMENT

### **Issued by the Authority of the Australian Communications and Media Authority *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) Amendment Guidelines 2010 (No. 1)* *Radiocommunications Act 1992***

#### **Purpose**

The purpose of the *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) Amendment Guidelines 2010 (No. 1)* (the Amendment Guidelines), and related instruments, is to delete legislative references to the MDS (Multipoint Distribution Station) Apparatus licence type.

The MDS Apparatus licence type is redundant. There have been no MDS licences on issue since March 2004. There is no identifiable need to issue any MDS licences in the future.

The Amendment Guidelines also include mechanical amendments to reflect the July 2005 merger of the Australian Communications Authority (ACA) and Australian Broadcasting Authority (ABA) to form the Australian Communications and Media Authority (the ACMA).

The Amendment Guidelines amend the *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2000*.

#### **Legislative Provisions**

Subsection 262 (1) of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may make written advisory guidelines about any aspect of radiocommunications or radio emission.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that when exercising its power to make written instruments under an Act, the ACMA also has the power to repeal, rescind, revoke, amend, or vary such instruments.

Advisory guidelines made under subsection 262(1) of the Act are a legislative instrument.

#### **Background**

MDS Apparatus licences were issued originally by the Spectrum Management Agency (the SMA) in 1994 in the bands 2076-2111 MHz (the A-Band) and 2302-2400 MHz (the B-Band) to authorise the transmission of a broad range of sound and video services, including subscription television services.

In March 1999, the SMA's successor organisation, the Australian Communications Authority (ACA), released a discussion paper entitled "Future Uses of the Multipoint Distribution System (MDS) Bands". This paper was released in response to the impending expiry of many MDS licences and developments concerning the 3G mobile telecommunications service.

On 29 June 1999, the ACA announced that MDS A-Band licences would only be renewed until 25 July 2002, with the spectrum then to be reallocated for 3G mobile

telecommunications and fixed point to point services.<sup>1</sup> Notwithstanding this, the *2.1 GHz Band Frequency Band Plan 2002* made provision for some regional MDS services to operate until 31 March 2004.

The ACA also announced that MDS B-Band licences were only to be renewed until 25 July 2004. Consequently, on 14 January 2000 the B-Band spectrum was designated by the Minister for Communications, Information Technology and the Arts for allocation under spectrum licences. Existing MDS B-Band Apparatus licences were converted to spectrum licences.

Legislative references to the MDS Apparatus licence type could not be deleted at that time because the spectrum licences that replaced the MDS licences contained a reference to a 'technical framework' provision of some MDS instruments.

On 3 February 2009, the ACMA made the *Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) 2009*. On 26 March 2010, the relevant spectrum licences were varied to include conditions that reflected a new 'technical framework' that did not include references to MDS instruments. This allowed for these MDS instruments to be repealed and for references to the MDS licence type to be removed.

### **Package of Legislative Instruments**

The Amendment Guidelines form part of a package of instruments made simultaneously to remove all legislative references to the MDS licence type from subordinate legislation. Other instruments forming part of this package include the:

- *Radiocommunications Licence Conditions (MDS Licence) Repeal Determination 2010*;
- *Radiocommunications (Allocation of Multipoint Distribution Station Licences) Repeal Determination 2010*;
- *Radiocommunications (Spectrum Access Charge) Repeal Determination 2010*;
- *Radiocommunications Spectrum Conversion Plan (2302 - 2400 MHz Band) Repeal Plan 2010*;
- *Radiocommunications (Interpretation) Amendment Determination 2010 (No. 3)*;  
and
- *Radiocommunications (Transmitter and Receiver Licences) Amendment Determination 2010 (No. 1)*.

References to MDS Apparatus licences also appear in three other pieces of legislation not made by the ACMA. These instruments are the *Radiocommunications (Coordination) Regulations*, the *Broadcasting Services Act 1992* and the *Telecommunications (Consumer Protection and Services Standards)(Special Digital Data Services) Regulations 1999*. It is anticipated that these instruments will be amended to remove references to the MDS licence type in due course.

### **Consultation**

In accordance with subsection 17(3) of the *Legislative Instruments Act 2003*, the ACMA invited submissions to be made on the proposed Amendment Guidelines. Notification seeking public comment about the proposed Amendment Guidelines was published on the ACMA website. No submissions were received.

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<sup>1</sup> The *2.1 GHz Band Frequency Band Plan 2002* made on 23 April 2002.

## **Regulatory Impact**

The ACMA has undertaken a preliminary assessment of the regulatory impact in accordance with the requirements of the Office of Best Practice Regulation. It has been determined that amending the *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2000* would have no direct or significant indirect impact on business or the economy. For those reasons, an exemption from the need to provide a Regulatory Impact Statement (RIS) and Business Cost Calculator Report has been obtained. The ACMA RIS exemption reference number is ACMA 128.

## **Guideline Details**

Details of the Amendment Guidelines are provided in Attachment A.

**Notes on Guidelines****Section 1      Name of Guidelines**

Section 1 provides the name of the Guidelines.

**Section 2      Commencement**

Section 2 provides that the Guidelines commence on the day after they are registered.

**Section 3      Amendment of *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2000***

Section 3 provides that Schedule 1 amends the *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2000*.

**Schedule 1      Amendments (section 3)****[1]              Background, second paragraph, third dot point**

Item 1 omits the Background, second paragraph, third dot point.

**[2]              Subclause 1.3 (2)**

Item 2 replaces a reference to the ACA, in subclause 1.3 (2), with a reference to the ACMA.

**[3]              Subclause 1.4 (1), definition of *RALI FX-3***

Item 3 replaces each mention of the ACA, in the definition of *RALI FX-3*, with a reference to the ACMA.

**[4]              Subclause 1.4 (1), definition of *RALI MS-25***

Item 4 replaces each mention of the ACA, in the definition of *RALI MS-25*, with a reference to the ACMA.

**[5]              Subclause 1.4 (1), note**

Item 5 replaces a reference to the ACA, in subclause 1.4 (1), note, with a reference to the ACMA.

**[6]              Clause 2.2, third dot point**

Item 6 replaces a reference to the ACA, in clause 2.2, third dot point, with a reference to the ACMA.

**[7]              Clause 3.4**

Item 7 replaces a reference to the ACA, in clause 3.4, with a reference to the ACMA.

**[8]              Clause 3.5**

Item 8 replaces a reference to the ACA, in clause 3.5, with a reference to the ACMA.

**[9]              Part 4**

Item 9 omits Part 4, 'Multipoint Distribution Systems'.

**[10]**

**Clause 5.4**

Item 10 replaces a reference to the ACA, in clause 5.4, with a reference to the ACMA.

**[11]**

**Clause 6.1**

Item 11 replaces a reference to the ACA, in clause 6.1, with a reference to the ACMA.

**[12]**

**Clause 6.2**

Item 12 replaces a reference to the ACA, in clause 6.2, with a reference to the ACMA.