

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications (Spectrum Access Charges — 2.5 GHz Mid-band Gap) Determination 2013

Purpose

The purpose of the *Radiocommunications (Spectrum Access Charges — 2.5 GHz Mid-band Gap) Determination 2013* (**the Determination**) is to fix spectrum access charges for spectrum licences in the frequency band 2570-2620 MHz (**the 2.5 GHz Mid-band Gap**).

Legislative Provisions

Subsection 294(1) of the *Radiocommunications Act 1992* (**the Act**) provides that the Australian Communications and Media Authority (**the ACMA**) may, by written instrument, make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the times when spectrum access charges are payable.

Background

On 13 December 2012, the ACMA made the *Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012* (**Conversion Plan**). The Conversion Plan sets out how existing apparatus licence holders in the 2500-2690 MHz frequency band (**the 2.5 GHz band**) will be converted into spectrum licences in the 2.5 GHz Mid-band Gap. The Conversion Plan also sets out the timetable for conversion and the conditions that apply to those spectrum licences. It is part of a set of legislative instruments which give effect to the spectrum licence framework applicable to the 2.5 GHz Mid-band Gap. That framework defines a spectrum licensee's rights and obligations and provides an interference management framework for the 2.5 GHz Mid-band Gap.

Section 14 of the Conversion Plan provides that a spectrum access charge is payable by a licensee for the issue of a spectrum licence to replace the licensee's existing apparatus licence.

Licensees in the 2.5 GHz Mid-band Gap

There will be 4 spectrum licensees in the 2.5 GHz Mid-band Gap. The licensees are the free-to-air broadcasters and the Australian Broadcasting Corporation who will be using the spectrum in the 2.5 GHz Mid-band Gap for television outside broadcasting (**TOB**). The spectrum licences will authorise the operation of radiocommunications devices for the purpose of the provision of a TOB service only (see, for example, condition 1 in Licence Schedule 4 of the sample licence at Schedule 2 of the Conversion Plan).

Two licences in the 2.5 GHz Mid-band Gap will authorise access to 15 MHz of spectrum (those at the lower and upper ends of the 2.5 GHz Mid-band Gap), and two licences will authorise access to 10 MHz of spectrum (those in the middle of the 2.5 GHz Mid-band Gap). The technical parameters and licence conditions applying to licences in the 2.5 GHz Mid-band Gap will limit the types of transmitters and receivers that the 15MHz licensees can operate at the upper 5MHz and lower 5MHz ends of the 2.5 GHz Mid-band Gap. All licensees will therefore, in effect, be restricted to the use of only 10 MHz of spectrum each.

These technical parameters and licence conditions include, for example:

- All licence holders will be subject to a core condition (core condition 18 in Licence Schedule 2) which restricts the maximum permitted level of radio emissions by transmitters operating in the lower 5 MHz range 2570-2575 MHz to only 3 dBm per 30 kHz EIRP (for all other ranges the maximum permitted level of radio emissions will be 43 dBm per 30 kHz EIRP). The effect of this condition is that the frequency range 2570-2575 MHz cannot be used in the provision of a TOB service because to provide a TOB service would generally emit power at a level greater than 3 dBm per 30 kHz EIRP.
- Section 4.3 of the *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – the 2.5 GHz Mid-band Gap) 2012* specifies that receivers operating in the upper 5MHz and lower 5 MHz ends of the 2.5 GHz Mid-band Gap (i.e. at the frequency ranges 2570-2575 MHz and 2615-2620 MHz) will not be afforded protection from interference. This lack of protection means receivers operating at each of the 5MHz ends of the 2.5 GHz Mid-band Gap are therefore unsuitable for the provision of a TOB service.
- The non-spurious out of band emission limits that are specified in spectrum licences for transmitters that operate in spectrum adjacent to the 2.5 GHz Mid-band Gap (i.e. in the 2.5 GHz band) are such that those transmitters may cause interference to transmitters and receivers if they were to provide TOB services in the upper 5MHz and lower 5 MHz ends of the 2.5 GHz Mid-band Gap. The potential interference from emissions in the neighbouring bands mean that the upper 5MHz and lower 5MHz of the 2.5 GHz Mid-band Gap cannot be used for the provision of a TOB service.

Spectrum access charge

The spectrum access charge that has been calculated in the Determination represents a compensatory amount that is payable by licensees. The licensees have previously paid apparatus licence taxes for the use of spectrum across the entire 2.5 GHz band and following the implementation of the Conversion Plan, will be limited to using 10 MHz of spectrum for TOB services within the 2.5 GHz Mid-band Gap.

Under apparatus licences in the 2.5 GHz band, the television outside broadcast network (TOBN) licence tax is a fixed or per licence tax calculated independently from the amount of spectrum used by licensees. In April 2012 the licence tax was \$363,564 per TOBN licence.¹ To calculate the basis for the annual value of 10 MHz in the 2.5 GHz band, the ACMA used the annual tax on what would be typically charged using the “assigned licence tax formula”.²

The ACMA uses the assigned licence tax formula to set its annual taxes where the amount of spectrum used by licensees varies. To compensate the licensees for the issue of spectrum licences for less spectrum than the licensees had previously been issued under the apparatus

¹ See *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2011 (No. 3)*, Schedule 1, Item 8. Item 8 substituted Table 702 in Schedule 2, Part 7 of the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)*. Item 5 in the substituted Table 702 specified the licence tax in respect of a TOBN service.

² Information about the formula is available on page 38 of the Apparatus Licence Fee Schedule 5 April 2013. A copy can be found at <http://www.acma.gov.au/theACMA/About/Making-payments/Apparatus-licence-fees/apparatus-licence-fees-acma>.

licences, the ACMA has decided to calculate the spectrum access charge on a value that would be equivalent to the use of 10 MHz in the 2.5 GHz band for a TOBN licence.

Net present value of the annual taxes

The ACMA used the net present value of a 15 year stream of annual taxes for 10 MHz of spectrum in the 2.5 GHz band using April 2012 figures (i.e. \$24,622.98 per annum) as a basis to calculate the proposed spectrum access charge. To undertake the net present value calculation ACMA has also used the following assumptions:

- a) CPI Inflation value = 3%
- b) Discount rate to reflect the present value of the stream of annual taxes made in the future = 8%
- c) Tax adjusted to give a June 2012 figure.

Implementation

Following consultation with free to air broadcasters and the Australian Broadcasting Corporation, it is proposed that each spectrum licence in the 2.5 GHz Mid-band Gap be subject to a spectrum access charge of \$259,403.20. The Determination reflects this charge and has been drafted in accordance with section 294(1) of the Act for the following licensees:

- Australian Broadcasting Corporation (ABN 52 429 278 345)
- Channel Seven Sydney Pty Limited (ACN 000 145 246)
- Nine Network Australia Pty Ltd (ACN 008 685 407)
- Network TEN (Sydney) Pty Limited (ACN 008 664 962).

Regulation Impact

The ACMA has obtained the advice of the Office of Best Practice Regulation (**OBPR**) that a Regulation Impact Statement is not required for the Determination in respect of the 2.5 GHz Mid-band Gap spectrum access charge. The OBPR reference number is 13730.

Consultation

Section 17 of the *Legislative Instruments Act 2003* requires the ACMA to be satisfied that any consultation it considered to be appropriate and reasonably practicable to undertake has been undertaken.

Targeted consultation has occurred with impacted broadcasters about the calculation of the spectrum access charge, the resulting amount and the proposed payment date. The ACMA has taken into account the broadcasters comments in making this Determination.

Detailed Description of the Determination

Details of the Determination are set out in Attachment 1.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human - Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment 2.

**DETAILS OF THE RADIOCOMMUNICATIONS (SPECTRUM ACCESS CHARGES
– 2.5 GHZ MID-BAND GAP) DETERMINATION 2013**

Section 1 – Name of Determination

This section provides that the Determination is to be cited as the *Radiocommunications (Spectrum Access Charges — 2.5 GHz Mid-band Gap) Determination 2013*.

Section 2 – Commencement

This section states that the Determination will commence on the day after it is registered.

Section 3 – Definitions and interpretation

This section provides definitions for terms used in the Determination.

Section 4 - Spectrum access charge payable

This section provides that the amount of spectrum charge payable by each licensee listed in the table for the issue of a spectrum licence in the bandwidths mentioned in column 2 of the table, and for the geographic areas specified in Schedule 1 to the *Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012*, is \$259,403.20.

Section 5 – When spectrum access charge is payable

This section provides the date that payment is required for spectrum access charges. The ACMA has determined that full payment of the spectrum access charge for each licence to be issued is to be made on or before 1 August 2014.

Section 6– Expiry

This section provides that the Determination ceases to have effect at the end of 2 October 2014.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Spectrum Access Charges — 2.5 GHz Mid-band Gap) Determination 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Radiocommunications (Spectrum Access Charges — 2.5 GHz Mid-band Gap) Determination 2013* (the **Determination**) is a legislative instrument made under subsection 294(1) of the *Radiocommunications Act 1992*. The Determination fixes the spectrum access charges for licensees in the frequency band 2570-2620 MHz and also specifies when the spectrum access charges are payable.

Human rights implications

This Determination does not engage any of the applicable rights or freedoms.

Conclusion

This Determination is compatible with human rights as it does not raise any human rights issues.