

Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015

*Radiocommunications Act 1992*

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under paragraph 107(1)(f) of the *Radiocommunications Act 1992*.

Dated  *18 September 2015*

*Chris Chapman*
 [signed]
Member

*Brendan Byrne*
[signed]
~~Member~~/General Manager

Part 1 Preliminary

1.1 Name of determination

 This Determination is the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015*.

1.2 Commencement

 This Determination commences the day after it is registered.

*Note*   All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See http://www.comlaw.gov.au.

1.2A Revocation

 The *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* [F2005B00426] is revoked.

1.3 Scope

 (1) This Determination sets out conditions to which a broadcasting licence is subject in the following manner:

 (a) every licence is subject to the conditions in Part 2;

 (b) every broadcasting licence (broadcast service) is also subject to the condition in Part 3;

 (c) every broadcasting licence (narrowcasting service) is also subject to the conditions in Part 4;

 (d) every broadcasting licence (narrowband area service) is also subject to the conditions in Part 5.

 (2) However, if a condition in this Determination is inconsistent with a condition specified in the licence, the condition specified in the licence applies.

1.4 Interpretation

 (1)In this Determination, unless the contrary intention appears:

***AM band*** means the frequency band from 526.5 kHz to 1606.5 kHz.

***broadcasting licence (broadcast service)*** means a broadcasting licence that authorises the holder to operate a broadcast service station.

***broadcasting licence (narrowband area service)*** means a broadcasting licence that authorises the holder to operate a narrowband area service station.

***broadcasting licence (narrowcasting service)*** means a broadcasting licence that authorises the holder to operate a narrowcasting service station.

***broadcasting service*** has the meaning given by the *Broadcasting Services Act 1992*.

***broadcasting station*** means:

 (a) a broadcast service station; or

 (b) a narrowcasting service station; or

 (c) a narrowband area service station;

as the context requires.

***broadcast service station*** means a station that is operated for providing national broadcasting services.

***community broadcasting service*** has the meaning given by the *Broadcasting Services Act 1992*.

***coverage area***, for a station,means the coverage area mentioned in the licence for the station.

***FM band*** means the frequency band from 87.5 MHz to 108 MHz.

***licence*** means:

 (a) a broadcasting licence (broadcast service); or

 (b) a broadcasting licence (narrowband area service); or

 (c) a broadcasting licence (narrowcasting service);

as the context requires.

***licence area*** has the meaning given by the *Broadcasting Services Act 1992*.

***licence area plan*** has the meaning given by the *Broadcasting Services Act 1992*.

***licensee*** means:

 (a) the holder of a licence; or

 (b) any person authorised under section 114 of the Act by the holder of the licence to operate a station under the licence.

***locality*** means an area designated by the Australian Bureau of Statistics as a locality at the 2001 Census.

*Note*   In broad terms, a ***locality*** corresponds to a population cluster of between 200 and 999 people.

***low power open narrowcasting service*** means an open narrowcasting service operating with an effective radiated power not exceeding 1 watt (W) in a residential area and and an effective radiated power not exceeding 10 W in a non-residential area.

***non-residential area*** means an area other than a residential area.

***open narrowcasting radio service*** has the meaning given by the *Broadcasting Services Act 1992*,

***open narrowcasting service*** has the meaning given by the *Broadcasting Services Act 1992*.

***residential area*** means the area within 20 km of the boundary of an urban centre or locality.

***Technical Planning Guidelines*** means the *Broadcasting Services (Technical Planning) Guidelines 2007*, as in force from time to time.

***television broadcasting service*** has the meaning given by subsection 26(13) of the *Broadcasting Services Act 1992*.

***TV bands*** means the frequency bands from 174 MHz to 230 MHz and 520 MHz to 694 MHz.

***urban centre*** means an area designated by the Australian Bureau of Statistics as an urban centre at the 2001 Census.

*Note 1*   In accordance with paragraph 13(1)(b) of the *Legislative Instruments Act 2003*, other expressions in this Determination have the same meaning as in the Act, including:

* ACMA (see section 5)
* broadcasting services bands licence (see section 5)
* commercial broadcasting service (see section 5)
* digital mode (see section 9B)
* frequency band (see section 5)
* national broadcasting service (see section 5)
* open narrowcasting television service (see section 5)

*Note 2*   Other terms used in this Determination may be defined in the *Radiocommunications (Interpretation) Determination 2015*, including:

* Act
* AM
* broadcasting licence
* broadcasting services bands
* FM
* harmful interference
* MF, or medium frequency
* narrowband area service station
* narrowcasting service station
* VHF, or very high frequency

*Note 3*   The definition of ***broadcast service station*** in this determination is different from the definition of ***broadcast service station*** in the *Radiocommunications (Interpretation) Determination 2015*.

*Note 4*   In broad terms, an ***urban centre*** corresponds to a population cluster of 1,000 or more people.

 (2) For this Determination, unless the contrary intention appears, a frequency band described using 2 frequencies starts immediately above the lower frequency and ends at the higher frequency.

Part 2 Conditions for every licence

2.1 Conditions

 For paragraph 107 (1) (f) of the Act, every licence is subject to the conditions in this Part relating to the operation of any broadcasting station under the licence by the licensee.

2.2 Licensee to advertise before commencing service

 Not later than 7 days before commencing to transmit a broadcasting service from a broadcasting station, the licensee must make the following statements and information available to the public:

 (a) a statement about the licensee’s intention to transmit a broadcasting service from the station in the licence area that relates to the broadcasting service;

 (b) the date and time of the commencement of transmission;

 (c) the frequency the station will use;

 (d) a statement that members of the public should contact the licensee if the transmission causes interference to services provided by other stations;

 (e) the address and telephone number of the licensee.

*Example*   The licensee may make these statements and this information available to the public by publishing the statements and information on its website or on an industry website.

2.3 Harmful interference

 (1) If the licensee operates a broadcasting station by transmitting on a frequency in the broadcasting services bands, the licensee must not operate the station if its operation causes harmful interference to a broadcasting service provided by another station:

 (a) if the service is a commercial broadcasting service or community broadcasting service — within the licence area of the broadcasting services bands licence for that other station; or

 (b) if the service is a national broadcasting service — within the coverage area mentioned in the licence for that other station; or

 (c) if the service is an open narrowcasting service (other than a low power open narrowcasting service) — within the coverage area mentioned in the licence for that other station.

 (2) If the licensee operates a broadcasting station by transmitting on a frequency outside the broadcasting services bands, the licensee must not operate the station if its operation causes harmful interference to a service already provided by a station.

2.4 Emission standard — AM sound broadcasting service

 If the licensee operates a broadcasting station on a frequency in the AM band, the station must comply with the requirements of Appendix 1 to the Technical Planning Guidelines.

2.5 Emission standard — FM sound broadcasting service

 If the licensee operates a broadcasting station on a frequency in the FM band, the station must comply with the requirements of Appendix 2 to the Technical Planning Guidelines.

2.5A Emission standard — digital television broadcasting service

 If the licensee operates a broadcasting station on a frequency in the TV bands to transmit a television broadcasting service in digital mode, the station must comply with the requirements of Appendix 4 to the Technical Planning Guidelines.

Part 3 Condition for broadcasting licence (broadcast service)

3.1 Condition

 (1) For paragraph 107 (1) (f) of the Act, every broadcasting licence (broadcast service) is subject to the condition in this Part relating to the operation of any broadcast service station under the licence by the licensee.

 (2) The condition in this Part is additional to the conditions in Part 2.

3.2 National broadcasting services

 The licensee must only operate the broadcast service station:

 (a) to provide national broadcasting services; or

 (b) for engineering test transmissions.

Part 4 Conditions for broadcasting licence (narrowcasting service)

4.1 Conditions

 (1) Subject to subsection (3), for paragraph 107 (1) (f) of the Act, every broadcasting licence (narrowcasting service) is subject to the conditions in this Part relating to the operation of any narrowcasting service station under the licence by the licensee.

 (2) The conditions in this Part are additional to the conditions in Part 2.

 (3) Sections 4.3, 4.4, 4.5 and 4.6 do not apply in relation to a narrowcasting service station operated by a licensee to provide a low power open narrowcasting service.

4.3 Operating requirements — open narrowcasting services

 If the licensee operates a narrowcasting service station, the licensee:

 (a) must only operate the station to provide an open narrowcasting service; and

 (b) must commence the service by the later of:

 (i) 6 months after the licence is issued; or

 (ii) the time specified by the ACMA in a written notice to the licensee; and

 (c) must comply with the start up procedure in Part 1 of the Technical Planning Guidelines as if a reference in the Part to:

 (i) a ‘licensee’ were a reference to ‘a holder of a licence to which section 4.3 of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015* applies’; and

 (ii) the ‘licence area of the licence’ were a reference to the ‘coverage area of the station authorised by the holder’s licence’.

4.4 Operating requirements — open narrowcasting services in the AM band

 (1) This section applies if the licensee operates a narrowcasting service station on a frequency in the AM band to provide an open narrowcasting radio service.

 (2) The licensee must:

 (a) operate the station:

 (i) if a licence area plan has planned the open narrowcasting service — in a manner that complies with the cymomotive force limits mentioned in the technical specifications for the service included in the plan; and

 (ii) in a manner that limits interference caused by the propagation of sky waves to broadcasting services provided by other stations operating on a frequency in the AM band; and

 (b) comply with guidelines 21 to 26 (inclusive) in Part 3 of the Technical Planning Guidelines, as if a reference in the guidelines to:

 (i) a ‘licensee’ were a reference to a ‘licensee mentioned in subsection 4.4(1) of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015*’;

 (ii) the ‘licence area’ or ‘licence area of the related licence’ were a reference to the ‘coverage area of the station authorised by the licensee’s licence’; and

 (iii) the ‘nominal location’, in relation to a transmitter, were a reference to the geographic coordinates of that transmitter mentioned in the advisory notes in the licence.

4.5 Operating requirements — open narrowcasting services in the FM band

 (1) This section applies if the licensee operates a narrowcasting service station on a frequency in the FM band to provide an open narrowcasting radio service.

 (2) The licensee must comply with guidelines 34, 36 to 42 (inclusive), and 44 to 47 (inclusive) of the Technical Planning Guidelines, as if a reference in the guidelines to:

 (a) a ‘licensee’ were a reference to a ‘licensee mentioned in subsection 4.5(1) of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015*’;

 (b) the ‘licence area’ or ‘licence area of the related licence’ were a reference to the ‘coverage area of the station authorised by the licensee’s licence’; and

 (c) the ‘nominal location’, in relation to a transmitter, were a reference to the geographic coordinates of that transmitter mentioned in the advisory notes in the licence.

4.6 Operating requirements — open narrowcasting services in the TV bands

 (1) This section applies if the licensee operates a narrowcasting service station on a frequency in the TV bands to provide an open narrowcasting television service.

 (2) However, this section does not apply if the licence authorising the operation of the station is subject to a condition that the licensee must only provide an open narrowcasting service that:

 (a) is provided for community and educational purposes; and

 (b) is not operated for profit or as part of a profit-making enterprise.

 (3) The licensee must comply with guidelines 81 to 89B (inclusive) of the Technical Planning Guidelines, as if a reference in the guidelines to:

 (a) a ‘licensee’ or ‘broadcasting licensee’ were a reference to a ‘licensee mentioned in subsection 4.6(1) of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015*’;

 (b) the ‘licence area’ or ‘licence area of the related licence’ were a reference to the ‘coverage area of the station authorised by the licensee’s licence’;

 (c) the ‘nominal location’, in relation to a transmitter, were a reference to the geographic coordinates of that transmitter mentioned in the advisory notes in the licence; and

 (d) a ‘digital television broadcasting service’ were a reference to a ‘open narrowcasting television service transmitted in digital mode’.

4.8 Low power open narrowcasting services

 If the licensee operates a narrowcasting service station to provide a low power open narrowcasting service, the licensee:

 (a) must only operate the station to provide a low power open narrowcasting service; and

 (b) if the station is operated in a residential area — must operate the station using a maximum transmitter power not exceeding 1 watt; and

 (c) if the station is operated in a non-residential area — must operate the station using a maximum transmitter power not exceeding 10 watts.

4.9 Low power open narrowcasting services — field strength in a residential area

 If the licensee operates a narrowcasting service station to provide a low power open narrowcasting service in a residential area, the field strength must not exceed 48dBV/m when measured at 10 metres above ground level at any location more than 2 kilometres from the station’s antenna.

4.10 Low power open narrowcasting services — field strength in a non-residential area

 If the licensee operates a narrowcasting service station to provide a low power open narrowcasting service in a non-residential area, the field strength must not exceed 48dBV/m when measured at 10 metres above ground level at any location more than 10 kilometres from the station’s antenna.

4.11 Certain low power open narrowcasting services — other conditions

 (1) A licence that authorises the operation of a narrowcasting service station at a carrier frequency within the range 87.5 to 88.0 MHz (inclusive) to provide a low power open narrowcasting service is subject to the following conditions:

 (a) if the licence is issued otherwise than upon renewal under section 130 of the Act – unless the licensee has a reasonable excuse for not doing so, the licensee must commence the service within 6 months beginning on the day the licence is issued;

 (b) subject to paragraph (a), the licensee must provide the service with reasonable regularity for the duration of the licence;

 (c) the licensee must maintain records of the commencement, hours of operation and provision of the service.

*Note*   See clauses 6 and 9 of the *Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000*.

 (2) The ACMA may extend the 6 month period referred to in paragraph 4.11(1)(a) if, in the ACMA’s opinion, there is a valid reason for a delay by a licensee in complying with that paragraph.

*Note*   See subclause 8(1) of the *Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000*.

 (3) For the purposes of subsection (2), valid reason for a delay does not include:

 (a) that the licence was obtained within the 6 month period within which to comply with the condition, pursuant to a transfer from a relative or associate of the licensee;

 (b) financial reasons;

 (c) that the licence is subject to an arrangement contingent on the disposal of another licence held by the licensee.

*Note*   See subclause 8(2) of the *Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000*. Subclause 8(3) provides that this list of matters that are not valid reasons for a delay “is not-exhaustive and there may be other reasons that do not constitute valid reasons for a delay”.

 (4) In this section:

***associate*** means:

 (a) in relation to a body corporate:

 (i) a director or secretary of the body corporate; or

 (ii) a related body corporate; or

 (iii) a director or secretary of a related body corporate; or

 (iv) a business partner of the body corporate; or

 (v) an individual who controls at least 15% of the voting power in, or holds at least 15% of the issued shares of, the body corporate; and

 (b) in relation to an individual:

 (i) a business partner of the individual; or

 (ii) a body corporate in which the individual controls at least 15% of the voting power or of which the individual holds at least 15% of the issued shares; or

 (iii) a body corporate of which the individual is a director or secretary; or

 (iv) a body corporate that is a related body corporate of a body corporate of which the individual is a director or secretary.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***relative***, in relation to a person, means:

 (a) the person’s spouse; or

 (b) the person’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child; or

 (c) the spouse of a relative mentioned in paragraph (b).

***spouse***, in relation to a person, includes a de facto partner of the person, within the meaning given by section 2D of the *Acts Interpretation Act 1901*.

*Note*  On 20 December 2000, the Minister gave to the Australian Communications Authority the *Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000* (***Direction***), under subsection 12 (1) of the *Australian Communications Authority Act 1997*. The Direction is continued in force under item 8 of Schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*. The Direction makes provision for how the ACMA exercises its powers and performs its functions in relation to imposing conditions on certain licences.

Part 5 Conditions for broadcasting licence (narrowband area service)

5.1 Conditions

 (1) For paragraph 107 (1) (f) of the Act, every broadcasting licence (narrowband area service) is subject to the conditions in this Part relating to the operation of any narrowband area service station under the licence by the licensee.

 (2) The conditions in this Part are additional to the conditions in Part 2.

*Note*   The spectrum plan provides for the issue of broadcasting licences in bands that are allocated for fixed services or for mobile services, and that are not allocated for broadcasting services. It is a policy of the ACMA that broadcasting licences issued in accordance with those provisions of the spectrum plan will be subject to conditions similar to those applied to stations in the same band that are allocated to a fixed service or a mobile service.

5.2 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz

 If the licensee operates a narrowband area service station on a frequency in the frequency band 1606.5 kHz to 1705 kHz, the licensee must not operate the station if its operation causes harmful interference to the reception of broadcasting transmissions in the AM band.

5.3 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz — commercial broadcasting service

 (1) Subject to section 5.4, a licensee that operates a narrowband area service station on a frequency in the frequency band 1606.5 kHz to 1705 kHz must not operate the station to provide a commercial broadcasting service unless:

 (a) the broadcasting licence (narrowband area service) to which the station relates was issued:

 (i) under section 100 of the Act before 6 November 2002; or

 (ii) under section 130 of the Act on or after 6 November 2002 by way of renewal of a licence referred to in subparagraph (i); and

 (b) the commercial broadcasting service is provided under a commercial licence allocated before 6 November 2002; and

 (c) the commercial broadcasting service commenced before 29 August 2004; and

 (d) the location of the station is:

 (i) within 10 kilometres of its location on 6 November 2002 (the ***old location***); or

 (ii) another location that is

 (A) more than 10 kilometres from the old location; and

 (B) specified in a licence issued by the ACMA in accordance with subsection (2A).

 (2) The licensee must provide any evidence required by the ACMA for the purposes of paragraph (1) (c).

 (2A) For sub-subparagraph (1) (d) (ii) (B), the ACMA may specify a location (the ***new location***) if the ACMA is satisfied that:

 (a) transmissions from the new location would provide a service to substantially the same intended audience as the audience that was intended to be covered from the old location; and

 (b) transmissions from the new location would not significantly interfere with any existing radiocommunications services.

 (3) In this section:

***commercial licence*** means a commercial radio broadcasting licence allocated under section 40 of the *Broadcasting Services Act 1992*.

***location***, of a station, means the geographic coordinates for the transmitter authorised by the relevant broadcasting licence (narrowband area service) as recorded on the Register of Radiocommunications Licences.

5.4 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz — commercial broadcasting service under subsequent licence

 (1) This section applies to a licensee if all of the following circumstances exist:

 (a) the licensee holds a broadcasting licence (narrowband area service) issued by the ACMA:

 (i) under section 100 of the Act; or

 (ii) under section 130 of the Act by way of renewal of a licence referred to in subparagraph (i);

 (the ***new licence***);

 (b) the licensee operated a narrowband area service station on a frequency in the frequency band 1606.5 kHz to 1705 kHz to provide a commercial broadcasting service in accordance with either:

 (i) section 5.3; or

 (ii) section 5.3 of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* (***the former section***);

 (c) the broadcasting licence (narrowband area service) to which section 5.3 or the former section applied (the ***former licence***) has expired;

 (d) the person did not apply for the renewal of the former licence.

 (2) The person may operate the narrowband area service station to provide a commercial broadcasting service under the new licence on the following conditions:

 (a) the operation of the narrowband area service station under the new licence is authorised only on:

 (i) the same frequency, in the frequency band 1606.5 kHz to 1705 kHz, which had been authorised by the former licence; or

 (ii) if the ACMA subsequently varies the new licence to specify another frequency in the frequency band 1606.5 kHz to 1705 kHz — that other frequency;

 (b) the commercial broadcasting service must be permitted by a commercial licence allocated before 6 November 2002;

 (c) the licensee must provide any evidence required by the ACMA relating to whether the circumstances mentioned in subsection (1) apply;

 (d) the location of the station specified in the new licence must be:

 (i) within 10 kilometres of its location on 6 November 2002; or

 (ii) if the ACMA is satisfied as to the matters specified in paragraphs 5.3 (2A) (a) and (b) — at another location that is specified by the ACMA;

 (e) if the licensee intends to operate the narrowband area service station to provide a commercial broadcasting service under the new licence, as permitted by this subsection, the licensee must notify the ACMA of that intention in writing at least 14 days before first operating the narrowband area service station for that purpose.

 (3) In this section:

***commercial licence*** has the meaning given by subsection 5.3 (3).

***location*** has the meaning given by subsection 5.3 (3).