



Radiocommunications (Trading Rules for Spectrum Licences) Determination 2023

The Australian Communications and Media Authority makes the following determination under subsection 88(1) of the *Radiocommunications Act 1992*.

Dated: 16 February 2023

Chris Jose
[signed]
Member

Linda Caruso
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

1 Name

This is the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2023*.

2 Commencement

This instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation is available, free of charge, at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 88(1) of the *Radiocommunications Act 1992*.

4 Repeal

The *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* [F2012L01718] is repealed.

5 Interpretation

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

Act means the *Radiocommunications Act 1992*.

Australian Spectrum Map Grid means the Australian Spectrum Map Grid 2012, published by the ACMA.

Note: The Australian Spectrum Map Grid is available, free of charge, from the ACMA's website at www.acma.gov.au.

frequency core condition, for a spectrum licence, means the condition referred to in paragraph 66(1)(a) of the Act.

geographic area, for a spectrum licence, means the area within which operation of a radiocommunications device is authorised under the licence.

HCIS means the cell grouping hierarchy scheme used to describe areas in the Australian Spectrum Map Grid.

Note: HCIS stands for hierarchical cell identification scheme.

HCIS identifier means an identifier used to describe an area in the HCIS.

Level 1 cell means a five minute of arc square cell in the Australian Spectrum Map Grid, identified by an HCIS identifier.

minimum contiguous bandwidth: see Schedule 1.

standard trading unit means the combination of:

- (a) a geographic area corresponding to a Level 1 cell; and
- (b) a part of the spectrum, where the lower and upper limits of the part are integers when described in Hertz.

Trading Form: see subsections 8(1) and (4).

- Note: A number of other expressions used in this instrument are defined in the Act, including the following:
- (a) AAT;
 - (b) accredited person;
 - (c) ACMA;
 - (d) frequency band;
 - (e) licensee;
 - (f) part (in relation to a spectrum licence);
 - (g) radiocommunications device;
 - (h) Register;
 - (i) spectrum licence.

- (2) In this instrument, unless the contrary intention appears, a reference to a part of the spectrum or frequency band includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

6 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: See section 314A of the Act.

7 Application

This instrument applies in relation to the assignment of a spectrum licence, other than the assignment of a spectrum licence that, immediately before the assignment, both:

- (a) is issued to the Department of Defence; and
- (b) specifies, in the frequency core condition, a part of the spectrum in either of the following frequency bands:
 - (i) 20.2 GHz to 21.2 GHz;
 - (ii) 30 GHz to 31 GHz.

8 Provision of information about assignments

- (1) The ACMA must approve, in writing, a form that complies with subsection (2), for the provision of information about an assignment mentioned in subsection 86(1) of the Act (**Trading Form**).
- (2) A Trading Form must require the parties to an assignment mentioned in subsection 86(1) of the Act to provide the ACMA with the following information:
 - (a) the licence number of the licence;
 - (b) whether the assignment is for the whole of the licence, or part of the licence;
 - (c) the name and postal address of the assignee;
 - (d) if only part of the licence is assigned – a description of:
 - (i) the standard trading units making up the part of the licence being assigned;
 - and

- (ii) the standard trading units making up the part of the licence not being assigned;
- (e) if the whole licence is assigned – for each radiocommunications device to be operated under the licence, any new certificate issued by an accredited person under subsection 145(3) of the Act in relation to registration of the device in the Register;
- (f) if only part of the licence is assigned:
 - (i) for each radiocommunications device to be operated under the part of the licence being assigned – any new certificate issued by an accredited person under subsection 145(3) of the Act in relation to registration of the device in the Register; and
 - (ii) for each radiocommunications device to be operated under the part of the licence not being assigned – any new certificate issued by an accredited person under subsection 145(3) of the Act in relation to registration of the device in the Register.

Note 1: If a certificate mentioned in paragraph (e) or (f) is not provided in relation to a radiocommunications transmitter proposed to be operated under the relevant licence or part of the licence, the ACMA may refuse to include in the Register details of the transmitter, in accordance with subsections 145(1) and (3) of the Act.

Note 2: Subsection (2) does not limit the information that may be required by a Trading Form.

- (3) The parties to an assignment mentioned in subsection 86(1) of the Act must give the ACMA a copy of the Trading Form with the information required by the Trading Form.

Note: The ACMA may require information, whether or not included in the Trading Form, under subsection 86(1).

Transitional

- (4) If:
 - (a) the ACMA approved a form under section 6 of the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012 (the old form)*; and
 - (b) the old form was still the approved form under that section immediately before that instrument was repealed;the old form is a **Trading Form** during the period:
 - (c) commencing when this instrument commences; and
 - (d) ending the day after the ACMA publishes on its website a form approved under subsection (1).

9 Rules about assignments

- (1) An assignment of a part of a spectrum licence must be for one or more whole standard trading units.
- (2) Subject to subsection (3), a licensee must not assign a part of a spectrum licence if the assignment would result in a spectrum licence that specifies, in the frequency core condition, a part of the spectrum that is less than the minimum contiguous bandwidth for the frequency band within which the spectrum licence would authorise the operation of radiocommunications devices.
- (3) Subsection (2) does not prevent the assignment of a part of a spectrum licence if the ACMA has given the licensee permission to assign the part of the licence under section 10.
- (4) A licensee must not assign a spectrum licence, or a part of a spectrum licence, for the purpose of providing security for a loan.

10 Permission for assignment resulting in less than the minimum contiguous bandwidth

Application for permission

- (1) A licensee may apply, in writing, to the ACMA for permission to assign a part of a spectrum licence held by the licensee, where the assignment would result in a spectrum licence that specifies, in the frequency core condition, a part of the spectrum that is less than the minimum contiguous bandwidth for the frequency band within which the spectrum licence would authorise the operation of radiocommunications devices.
- (2) An application under subsection (1) must be:
 - (a) in a form approved by the ACMA (if any); and
 - (b) made in a manner approved by the ACMA (if any); and
 - (c) accompanied by the charge determined by the ACMA (if any) under section 60 of the *Australian Communications and Media Authority Act 2005*.
- (3) The ACMA may approve one or more forms for the purposes of paragraph (2)(a).
- (4) The ACMA may approve one or more manners of applying, for the purposes of paragraph (2)(b).

Decision whether to give permission

- (5) If a licensee makes an application under subsection (1), the ACMA must decide whether to give permission within 90 days after the application is made, or such longer period as agreed between the ACMA and the licensee.
- (6) The ACMA may:
 - (a) give permission to assign the part of the spectrum licence within a period specified by the ACMA; or
 - (b) refuse permission to assign the part of the spectrum licence.

Note: See subsection 88(3) of the Act.

- (7) For the purposes of paragraph (6)(a), the period specified must not be:
 - (a) less than 45 days; or
 - (b) greater than 90 days.
- (8) The ACMA must, within 14 days after the decision under subsection (6) is made, give the licensee a written notice of:
 - (a) the decision; and
 - (b) if the decision is to refuse permission:
 - (i) the reasons for the decision; and
 - (ii) the licensee's right to request a reconsideration of the decision under subsection (9).

Reconsideration of refusal

- (9) A licensee may apply, in writing, for the ACMA to reconsider a decision to refuse permission under subsection (6) (**original decision**).
- (10) An application under subsection (9) must:
 - (a) be made in writing; and
 - (b) set out the reasons for the application; and
 - (c) be given to the ACMA within 30 days after the licensee is notified of the original decision.

- (11) The ACMA must, within 90 days after the application under subsection (9) is received, reconsider the original decision and either:
 - (a) affirm the original decision; or
 - (b) revoke the original decision, and give permission to assign the part of the spectrum licence.

- (12) The ACMA must, within 14 days after the decision under subsection (11) is made, give the licensee a written notice of:
 - (a) the decision; and
 - (b) if the decision is to affirm the original decision:
 - (i) the reasons for that decision; and
 - (ii) the licensee's right to have that decision reviewed under subsection (13).

Review

- (13) If a decision under subsection (11) is to affirm the original decision, the licensee may apply to the AAT for review of that decision.

Schedule 1—Minimum contiguous bandwidth

(section 5)

1 Minimum contiguous bandwidth

- (1) In this instrument, the *minimum contiguous bandwidth* for a frequency band, other than a band specified in an item of column 1 of the table below, is 5 MHz.
- (2) In this instrument, the *minimum contiguous bandwidth* for a frequency band specified in an item of column 1 of the table is specified in the corresponding entry in column 2:

Item	Column 1	Column 2
	Frequency band	Minimum contiguous bandwidth
<i>1</i>	3400 MHz–3800 MHz	10 MHz
<i>2</i>	25100 MHz–27500 MHz	50 MHz