



**Australian
Communications
Authority**

**PRODUCTIVITY COMMISSION
REVIEW OF THE RADIOCOMMUNICATIONS ACTS**

**THE AUSTRALIAN COMMUNICATIONS AUTHORITY'S (ACA)
Supplementary Submission to the Productivity
Commission's Draft Report on Radiocommunications**

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PRODUCTIVITY COMMISSION DRAFT REPORT ON RADIOCOMMUNICATIONS

SUPPLEMENTARY SUBMISSION FROM THE AUSTRALIAN COMMUNICATIONS AUTHORITY

Introduction

Since the Australian Communications Authority made a submission (DR324) to the Productivity Commission on the draft report on Radiocommunications, we have become aware of a number of claims made about the ACA's policies and practices during the draft report hearings. The ACA believes that it would be useful to clarify some of the issues raised in these claims.

MDS Conversion

At pages 147 of the transcript from the draft report hearings held in Melbourne on 24 April, Ms Barbara Phi of FuturePace Solutions makes certain comments about the MDS conversion. The ACA would like to take this opportunity to set the record straight on this issue.

MS PHI: *"The auction for the MDS licence has actually been conducted in 1990 and the conversion was in, what 2000?"*

This is incorrect. The MDS auctions were conducted in 1994 and 1995 (although a small number of licences were allocated *after* this time).

"and we understand a set of – a clear understanding that the licences were not for renewal".

This also is incorrect. The provision under "Licence Renewal" on page 53 in the information provided to bidders in the MDS auction stated:

"The SMA can make no commitment about the renewal of licences, and the cost of such renewals. Where the SMA refuses to renew an apparatus licence or renews the licence on different conditions, the SMA must comply with the Act. In accordance with subsection 130(5) of the Act, the SMA must give the licensee a written notice stating that it is renewing the licence on different conditions, together with a statement of its reasons. Refusals to renew apparatus licences and changes to licence conditions on renewal are reviewable under Part 5.6 of the Act.

The Determination does not apply to the renewal of licences issued under the Determination (clause 3 of the Determination refers)."

(Note that the second paragraph here actually specifically contemplates *renewal* rather than *re-auction*.)

Rather than making it clear that licences would not be renewed, this advice specifically links these licences to normal apparatus licence practice (ie the ACA may or may not choose to renew). While it does not promise renewal, it certainly does not provide “a clear understanding that the licences were not for renewal”.

“The issue is: why wasn’t it auctioned?”

In fact, *conversion* of the MDS licences had been foreshadowed well before conversion took place. As far back as February 1995, the Spectrum Management Agency (SMA) in its discussion paper “*Implementing Spectrum Licensing*” wrote on page 56:

“the SMA proposes to recommend to the Minister that the:

- 501-505/511-515 MHz;
- **2076-2111 MHz**;
- **2300-2450 MHz**; and
- 27.5-29.5 GHz

bands of the radiofrequency spectrum, should be given priority for designation by the Minister for Communications and the Arts for conversion to spectrum licensing.” (Emphasis added: the 2076-2111 MHz band is the ‘MDS A band’ and 2300-2450 MHz includes the ‘MDS B band’.)

To avoid any doubt about the meaning of this statement, it should be noted that as the Radiocommunications Act stood at the time of that paper (ie before the Part 3.6 re-allocation provisions were included in the Act in 1997), the SMA would have been required to offer existing licensees the opportunity to convert. Moreover as the Productivity Commission makes clear in its draft report, conversion is a valid route to spectrum licensing.

It is also worth noting that the ACA did in fact decide *not to renew* (and as a result not to subsequently offer to convert) many of the MDS licences. (Consultation on the future of the MDS bands, including possible conversion, began before the first 5 year licences were due to expire in mid 1999.) Licensees lost access to the MDS A band licences (5 out of the 19 MDS channels held by most licensees in most areas). The ACA took this action because this spectrum was required for a fixed link channel plan, in part to accommodate displaced links from other spectrum licensed bands (1.8 and 2 GHz bands).

In deciding whether to offer conversion or re-auction the MDS B band licences, the ACA took into account:

- the SMA’s public statement about conversion of MDS licences;
- the fact that MDS documentation prior to the auction in 1994 left open the question of renewal;
- the fact that approximately \$100 million had been paid for MDS licences in auctions as recently as 1994-95, and a total of about \$50m was paid in annual licence fees over the subsequent 5 years; and
- the fact that, for good spectrum management reasons, MDS A band spectrum would not continue to be available to licensees.

“ACA Assigned”

During the ACA’s appearance at the hearings, the Commission drew our attention to the statement by Mr Whittaker that the ACA *“can write, and does write, ACA assigned status in the database and provides a lesser level of technical specifics than is demanded by the ACA of the industry it accredits.”* (Page 134 of the transcript.)

The ACA would like to comment upon this assertion. It is true that from time to time staff do write the notation “ACA assigned” into the database, and may fill in less detail. There are several reasons for the use of the “ACA assigned” licence type. However, rather than being ACA assignments done in competition with accredited persons, this licence type is most commonly used as the actual mechanism by which the ACA can reserve assignment details *for an accredited assigner* for up to ten working days before receiving a formal application for the service. (This prevents the particular frequency being worked on by an accredited assigner being “gazumped” while data is being entered through the current manual process available to accredited assigners and while the classified register is being checked by the ACA.).

In addition, the “ACA assigned” licence type is used to provide a useful indication of VHF test and demonstration channels, which are available to equipment retailers for demonstration of devices at trade shows etc. An accredited person can use these channels for testing purposes in the same way as ACA assigning staff. This licence type is also used to ‘reserve’ channels for band clearance licensing action (an administratively efficient technique which is available to accredited persons in the same way as for ACA assigners).

It is probably true that there have been some other instances where ACA assigners have not input to the RADCOM database as much detail as has been supplied by a licensee (ie apart from the ACA assigned licence type). The ACA is aware that this has happened in relation to GSM 900 MHz assignments. However, the ACA disputes that this is a result of anti-competitive behaviour. The situation has arisen because of special arrangements in place for GSM 900 licences, in recognition of the fact that licensees were taking on a greater responsibility for managing their own interference environment. GSM licensees plan their own networks within their spectrum space (in this regard the band is perhaps more akin to a spectrum licensed band rather than an apparatus licensed band). Location of base stations are entered into the ACA’s database, rather than frequencies needing to be ‘assigned’ in the conventional apparatus licensing sense, and typical device operating parameters are then assumed for the many GSM devices. At any rate, the bulk of these entries were made before the accreditation scheme started or while it was in its infancy.

The ACA is also aware that FuturePace has raised concerns that ACA staff are not entering some details supplied by accredited persons on frequency assignment certificates into the RADCOM database. Normally, data is directly entered as supplied, but where data is not entered, this matter is discussed with the accredited person concerned and the reasons for any omission or alteration is explained. The ACA accepts that this practice could make ownership and responsibility for the data indistinct, which is undesirable. In any case, the situation will resolve itself later this month when accredited persons have direct on line access to the database. However,

by definition, this practice is not anti-competitive because accredited assigners are doing the work.

IMT2000 (2 GHz) technical framework

At page 151 of the transcript, some comments were made about the technical framework developed for the 2 GHz spectrum auction. Once again, the ACA would like the opportunity to correct this information.

MS PHI: *“IMT 2000 we thought could have gone much further; it could have been much more flexible. The ACA have said in their own documents that it will need to be renegotiated. We were concerned that that really wasn’t up-front in the marketing plan. It is a note in a schedule to a guideline or something that really I think is not – it perhaps had not as much clarity as we would have liked.”*

The ACA believes this statement is inaccurate. First, the ACA *does not believe* that the 2 GHz technical framework does need to be renegotiated. In fact in a Note to the *Radiocommunications Advisory Guidelines (Managing Interference from Apparatus-licensed and Class-licensed Transmitters – 2 GHz Band) 2000* the ACA stated:

*“Schedule 1 specifies the anticipated receiver performance based on the most current information provided by industry at the time of issue of this guideline. These performance requirements **are able to** be amended in the future, **if it can be demonstrated** that the parameters of typical equipment intended to be deployed in the band readily meet any proposed changes. Such changes would be introduced in consultation with 2GHz band licensees.”* (Emphasis added).

This note merely says that if licensees wished to change the framework it could be renegotiated. There is nothing exceptional or exceptionable in such a statement. It does not constitute a statement or admission that it *will* need to be renegotiated. The reason that this Note was included was because of a query during the course of the Technical Liaison Group, convened to consider the Technical Framework, about the ACA’s attitude to changing the technical framework if more information became available. The ACA’s position, as expressed in this note, is no more than it would be prepared to say in connection with any technical framework if more information became available that enabled the spectrum to be used more productively. Naturally any such change would only be introduced after close consultation with affected licensees.

The ACA is concerned that Ms Phi’s statement could cause unnecessary alarm to spectrum licensees in this band, and therefore wishes to take this opportunity to set the record straight.

As for the general comment that the framework could have been more flexible, the ACA accepts that there may be a range of views on this issue. The ACA welcomes the views of FuturePace and other interested parties on such matters. We do note, however, that intending bidders were involved in a technical liaison group that agreed on the framework.