

Commonwealth of Australia

Telecommunications Act 1991

Licence to operate as a public mobile carrier

I, KIM CHRISTIAN BEAZLEY, Minister of State for Transport and Communications, under section 57 of the *Telecommunications Act 1991*:

- (a) grant Mobilcom (Australia) Pty Limited care of the Australian Government Solicitor, Robert Garran Offices, National Circuit, Barton in the Australian Capital Territory, Australian Company No. 054365696, a public mobile carrier licence to do all or any of the acts the holder of a public mobile licence is permitted to do under the *Telecommunications Act 1991*; and
- (b) declare, under section 65 of that Act, that the licence is subject to the conditions specified in the Schedule.

SCHEDULE

Commencement

1.1 This licence comes into force on 26 November 1991

Term of licence

2.1 If not sooner revoked, this licence ceases to have effect on 31 December 2016.

[NOTE: This clause may, with the written consent of the licensee, be varied by a further declaration under section 65 of the Act.]

[NOTE: a public mobile carrier licence is transferable, in accordance with the provisions of section 59 of the Act.]

Limitation on scope of licence

3.1 The licensee must not install or operate an AMPS network.

[NOTE: It is intended that the licensee be able to purchase AMPS air-time from the mobile carrier that operates an AMPS network.]

Network rollout

4.1 No later than 31 December 1997, the licensee must have offered, and be in a position to supply, services by means of digital facilities to not less than 80% of the population of Australia.

Dated  22/11 1991.

Minister of State for Transport and Communications

EXPLANATORY STATEMENT

PUBLIC MOBILE LICENCE ISSUED TO MOBILCOM (AUSTRALIA)

TELECOMMUNICATIONS ACT 1991

Issued by the Authority of the Minister for Transport and Communications

The Telecommunications Act 1991 ("the Act") provides for a licensing mechanism for general telecommunications and public mobile carriers. This mechanism enables the Minister for Transport and Communications to grant licences and to declare licence conditions. Part 5 of the Act contains the major provisions relating to licensing and general obligations of carriers. This Part provides that general carriers are to be the primary providers of Australia's line-based and satellite-based public telecommunications capacity, and the primary suppliers of telecommunications services by the use of line links and satellite-based facilities. Mobile carriers are to be the primary suppliers of public mobile telecommunications services.

Section 56 provides that an eligible corporation may apply to the Minister for Transport and Communications (the Minister) for a general telecommunications or public mobile licence. An "eligible corporation" is defined in section 5 of the Act to mean a body corporate that is, for the purposes of paragraph 51(20) of the Constitution, a trading corporation, or a financial corporation, formed within the limits of the Commonwealth.

Initially, a general licence will be issued to each of Telecom and OTC to enable each to continue its current operations, and a mobile licence will be issued to Telecom for its MobileNet service. A general telecommunications licence and a public mobile licences will also be issued to the Australian and Overseas Telecommunication Corporation (AOTC), but these licences will only become operational once Telecom and OTC have been merged. The party which acquires AUSSAT Pty Ltd will also receive a general telecommunications carrier and a public mobile carrier licence, and will become the second carrier in competition to AOTC.

The carrier licences are a significant component of the telecommunications regulatory framework. Receipt of a licence confers upon an eligible corporation the rights of a general telecommunications or public mobile carrier provided for under the Telecommunications Act. The licences also stipulate the Government's expectations regarding rights and privileges which carriers will extend

to each other, to consumers, and to other parties. The licences complement, reinforce, and elaborate upon provisions of the Telecommunications Act, and are therefore integral to the operation of the regulatory regime.

Provisions for making licence conditions

Section 62 of the Act provides that licences are subject to conditions that may be effected in several ways. The main ways in which conditions are notified to licence holders are through either a section 64 or a section 65 declaration. Licence declarations must be tabled for consideration by Parliament, and are disallowable instruments.

Clause 64 and clause 65 declarations

The Minister may make a declaration in writing under section 64 specifying conditions which apply to:

- (a) all licences; or
- (b) all general telecommunications licences; or
- (c) all public mobile licences.

Section 64 therefore provides the means by which the Minister may declare "blanket" or "core" conditions which apply to all licences of a particular type, or all licences in general. The Minister may, by writing, vary or revoke a declaration made under section 64.

A declaration made under section 65 is more specific in its coverage than one made under section 64, in that conditions specified in a section 65 declaration apply only to a particular licence.

A section 65 declaration may be included in the licence, or may be made while the licence is in force. The Minister may, by writing, vary or revoke a declaration made under section 65.

However, section 68 requires that the Minister consult with carriers before changing licence conditions.

Prescribed Carrier Obligations (Section 71)

Section 71 provides that a licence may declare that a specific condition of the licence is a prescribed carrier obligation (PCO) of the carrier which holds that licence.

There are two main points to be noted regarding PCOs:

- . A PCO confers rights upon third parties other than the carriers and the Government (ie. community members or

specified organisations). In the past, the term Community Service Obligations ("CSOs") has been used to describe carrier obligations to the public, but CSOs were not closely defined and are not synonymous with PCOs.

The remedies (and defence) for breach of a PCO differ from those for other licence conditions. The carrier has a defence of "unreasonableness" if an action is brought against that carrier for breach of a PCO. This defence does not apply to other licence conditions. However, aggrieved parties can seek damages for non-compliance with a PCO. This remedy does not apply for non-PCO licence conditions.

A section 71 declaration may be included in the licence when it is granted. Alternatively, the Minister may by writing vary a licence by inserting, varying or omitting a section 71 declaration, in accordance with the consultation requirements of section 68.

Relationship to Section 70 Agreement

Section 70 of the Act provides that the Minister, acting on the Commonwealth's behalf, may make a written agreement with a carrier about the exercise of:

- . the power to grant a licence under section 57;
- . the power to make an instrument under section 64; or
- . the power to make an instrument under section 65 relating to a licence held by a carrier.

A section 70 agreement may prevent or restrict the exercise of a power by providing, for example, that the power may only be exercised in a particular way or in particular circumstances, or that a particular licence condition is not to be varied.

The party which has been selected by the Government to purchase AUSSAT Pty Ltd, has negotiated a section 70 agreement with the Government. Part of this agreement relates to exercise of particular licence conditions made under section 64 of the Act, and these conditions comprise Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991 and Telecommunications (Public Mobile Licences) Declaration (No. 2) of 1991.

Explanatory statements relating to provisions of MOBILCOM (Australia) licence

The licence provides details of the eligible corporation holding the licence. Details include company name, company

address, Australian Company number and the type of licence granted under section 57 of the Act (that is, general telecommunications or public mobile licences). The licence allows MOBILCOM (Australia) to do all or any of the acts permitted under the Telecommunications Act 1991.

Attached to the licence document is the Schedule which contains section 65 licence conditions.

Section 64 declarations, which also apply to this and all other general telecommunications licences, are not included in each separate licence. These declarations comprise Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991 and Telecommunications (Public Mobile Licences) Declaration (No. 2) of 1991.

Notes on Clauses

These declarations made under section 65 of the Act are more specific in coverage than those made under section 64, as the conditions apply only to MOBILCOM (Australia).

Commencement (Clause 1)

Subclause 1.1 specifies the day upon which the licence takes effect. This is also the day upon which section 7 of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991 lapses. Section 7 allows carriers to continue their current operations until licences are granted.

It is envisaged that this licence will be transferred to the party acquiring AUSSAT on the day upon which the ownership of AUSSAT Pty Ltd is transferred from the Commonwealth to that party.

MOBILCOM (Australia) is subject to the conditions specified in the licence from the date specified in subclause 1.1.

Term of licence (Clause 2)

Subclause 2.1 provides that, if not sooner revoked under section 58 of the Act, the licence ceases to have effect on 31 December 2016.

In the event that the licence is not sooner revoked, the licence ceases to have effect on 31 December 2016. The licence therefore has an initial maximum term of approximately 25 years from the time of issue.

Limitation on scope of licence (Clause 3)

Decision 67 of the Statement accepted AUSTEL's recommendations on digital competition prima facie, but also gave AUSTEL the opportunity to reconsider its recommendation on the implications for analogue network competition. AUSTEL had recommended that operators other than Telecom be precluded from implementing analogue networks. AUSTEL did not subsequently alter this recommendation.

The only analogue mobile network in Australia is Telecom's MobileNet, which operates according to the AMPS standard. "AMPS" is defined in clause 2 of the Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991.

Subsection 63(3) of the Act states that a condition of a licence held by a carrier may abrogate or restrict the right or privilege that the carrier would otherwise have under a provision of the Act or the regulations.

Clause 3 states that the licensee must not install or operate an AMPS network. This restates the Government's decision to accept AUSTEL's recommendation.

Network rollout
(Clause 4)

This clause reflects that timeframe which the licensee has negotiated with the Government relating to provision of services by means of digital facilities. "Digital facilities" are defined in clause 2 of the Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991.

Clause 4 specifies that by 31 December 1991, the licensee must be in a position to supply services by means of digital facilities to not less than 80% of the population of Australia.