

**MINISTRY OF ECONOMIC
DEVELOPMENT**

RADIO FREQUENCY AUCTION

No. 3

AUCTION CATALOGUE

as amended on 22 December 2000

10 July 2000

MINISTRY OF ECONOMIC DEVELOPMENT

RADIO FREQUENCY AUCTION NUMBER 3

CALL FOR BIDS

On behalf of the Secretary of Commerce and with his authority, I give notice of intention to conduct an auction commencing at **9:00am, 10 July 2000** in accordance with the "Terms And Conditions" to this notice for:

- i Management rights to be transferred under section 42 of the Radiocommunications Act 1989 in lots as specified in the Schedules to this notice;
- ii Licences to be created pursuant to section 48 of the Radiocommunications Act 1989 in lots as specified in the Schedules to this notice.

The rights to be sold by auction are subject to the provisions of the Radiocommunications Act 1989, together with the Radiocommunications (Fees) Regulations 1993 and the Radiocommunications (Forms) Regulations 1990. Prospective bidders should familiarise themselves thoroughly with the Radiocommunications Act.

The Government is putting aside one 15 MHz block of the 3G Band for acquisition by a pan-Maori trust which is being established. This block (1965-1980 MHz and its Natural Pair 2155-2170 MHz) is not being included in the auction, although it is still within the definitions of the "3G Band" and "3G Natural Pair Band" under the Terms and Conditions. The Spectrum Cap applies to the whole of the 3G Band and the 3G Natural Pair Band. The beneficial interests of Maori in the pan-Maori trust will not of themselves create an association between the Trust and any bidder in the auction.

Bidders in the auction are reminded that the Government has established a Ministerial Inquiry into Telecommunications. That inquiry is scheduled to report to the Government at the end of September this year.

The inquiry is charged with making recommendations for any amendments to the policy and regulatory framework in order to achieve the Government's objective for telecommunications, if the current regulatory regime does not achieve that objective.

It is possible that the Government will make changes to the policy and regulatory framework following consideration of the inquiry's recommendations. Bidders are particularly advised to note that the inquiry is giving consideration to the following issues:

- whether mandatory roaming on compatible cellular networks or mandatory airtime resale should be considered as a means of reducing barriers to entry, and if so what terms and conditions would be appropriate;
- spectrum allocation policy, including use-it-or-lose-it provisions;
- whether mandatory co-location would be desirable for the building and upgrading of network facilities, and how this would best be achieved.

The Ministry wishes to advise interested parties that it has commenced a process to identify by the end of the year whether or not remaining GSM-A spectrum is suitable for auction.

Dated at WELLINGTON this 2nd day of June 2000.

Ralph Jaeger
Acting Manager
Radio Spectrum Management Group
Ministry of Economic Development

CONTENTS

- | | | |
|---|---|---|
| A | <u>Terms and Conditions</u> | Terms and Conditions. |
| 1 | <u>First Schedule</u> | <p>A management right lot over the range 1710.000 MHz to 1715.000 MHz and 2 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 2 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 2 | <u>Second Schedule</u> | <p>A management right lot over the range 1715.000 MHz to 1725.000 MHz and 54 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 35 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 3 | <u>Third Schedule</u> | <p>A management right lot over the range 1725.000 MHz to 1735.000 MHz and 72 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 41 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 4 | <u>Fourth Schedule</u> | <p>A management right lot over the range 1735.000 MHz to 1745.000 MHz and 98 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 57 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 5 | <u>Fifth Schedule</u> | <p>A management right lot over the range 1745.000 MHz to 1755.000 MHz and 38 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 20 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 6 | <u>Sixth Schedule</u> | <p>A management right lot over the range 1755.000 MHz to 1760.000 MHz and 87 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 48 licences not for auction. The licences will be created before the management right is transferred.</p> |
| 7 | <u>Seventh Schedule</u> | <p>A management right lot over the range 1760.000 MHz to 1765.000 MHz and 8 licence lots with their frequencies within the same range.</p> <p>Also within this range and listed in this Schedule are 4 licences not for auction. The licences will be created before the management right is transferred.</p> |

- 8 [Eighth Schedule](#) A management right lot over the range 1765.000 MHz to 1775.000 MHz and 63 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 36 licences not for auction. The licences will be created before the management right is transferred.
- 9 [Ninth Schedule](#) A management right lot over the range 1775.000 MHz to 1785.000 MHz and 53 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 35 licences not for auction. The licences will be created before the management right is transferred.
- 10 [Tenth Schedule](#) A management right lot over the range 1785.000 MHz to 1805.000 MHz and 35 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 20 licences not for auction. The licences will be created before the management right is transferred.
- 11 [Eleventh Schedule](#) A management right lot over the range 1805.000 MHz to 1810.000 MHz.
There are no licence lots for auction in this schedule.
- 12 [Twelfth Schedule](#) A management right lot over the range 1810.000 MHz to 1820.000 MHz and 71 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 44 licences not for auction. The licences will be created before the management right is transferred.
- 13 [Thirteenth Schedule](#) A management right lot over the range 1820.000 MHz to 1830.000 MHz and 103 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 64 licences not for auction. The licences will be created before the management right is transferred.
- 14 [Fourteenth Schedule](#) A management right lot over the range 1830.000 MHz to 1840.000 MHz and 82 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 42 licences not for auction. The licences will be created before the management right is transferred.
- 15 [Fifteenth Schedule](#) A management right lot over the range 1840.000 MHz to 1850.000 MHz and 93 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 51 licences not for auction. The licences will be created before the management right is transferred.

- 16 [Sixteenth Schedule](#) A management right lot over the range 1850.000 MHz to 1855.000 MHz and 2 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule is 1 licence not for auction. The licences will be created before the management right is transferred.
- 17 [Seventeenth Schedule](#) A management right lot over the range 1855.000 MHz to 1860.000 MHz and 22 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 13 licences not for auction. The licences will be created before the management right is transferred.
- 18 [Eighteenth Schedule](#) A management right lot over the range 1860.000 MHz to 1870.000 MHz and 48 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 27 licences not for auction. The licences will be created before the management right is transferred.
- 19 [Nineteenth Schedule](#) A management right lot over the range 1870.000 MHz to 1880.000 MHz and 56 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 36 licences not for auction. The licences will be created before the management right is transferred.
- 20 [Twentieth Schedule](#) A management right lot over the range 1920.000 MHz to 1930.000 MHz.
Also within this range and listed in this Schedule are 41 licences not for auction. The licences will be created before the management right is transferred.
- 21 [Twenty-first Schedule](#) A management right lot over the range 1930.000 MHz to 1935.000 MHz.

There are no licence lots for auction in this schedule.
- 22 [Twenty-second Schedule](#) A management right lot over the range 1935.000 MHz to 1940.000 MHz.
Also within this range and listed in this Schedule are 14 licences not for auction. The licences will be created before the management right is transferred.
- 23 [Twenty-third Schedule](#) A management right lot over the range 1940.000 MHz to 1950.000 MHz.

There are no licence lots for auction in this schedule.
- 24 [Twenty-fourth Schedule](#) A management right lot over the range 1950.000 MHz to 1960.000 MHz.
Also within this range and listed in this Schedule are 17 licences not for auction. The licences will be created before the management right is transferred.

- 25 [Twenty-fifth Schedule](#) A management right lot over the range 1960.000 MHz to 1965.000 MHz.
There are no licence lots for auction in this schedule.
- 26 [Twenty-sixth Schedule](#) A management right over the range 1965.000 MHz to 1980.000 MHz.
Also within this range and listed in this Schedule are 27 licences not for auction. The licences will be created before the management right is transferred. This management right is to be created but is not for sale in this auction.
- 27 [Twenty-seventh Schedule](#) A management right lot over the range 2010.000 MHz to 2015.000 MHz.
There are no licence lots for auction in this schedule.
- 28 [Twenty-eighth Schedule](#) A management right lot over the range 2015.000 MHz to 2020.000 MHz.
Also within this range and listed in this Schedule are 32 licences not for auction. The licences will be created before the management right is transferred.
- 29 [Twenty-ninth Schedule](#) A management right lot over the range 2020.000 MHz to 2025.000 MHz.
Also within this range and listed in this Schedule are 14 licences not for auction. The licences will be created before the management right is transferred.
- 30 [Thirtieth Schedule](#) A management right lot over the range 2025.000 MHz to 2053.000 MHz and 2 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 39 licences not for auction. The licences will be created before the management right is transferred.
- 31 [Thirty-first Schedule](#) A management right lot over the range 2053.000 MHz to 2082.000 MHz and 2 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 30 licences not for auction. The licences will be created before the management right is transferred.
- 32 [Thirty-second Schedule](#) A management right lot over the range 2082.000 MHz to 2110.000 MHz.
Also within this range and listed in this Schedule are 42 licences not for auction. The licences will be created before the management right is transferred.
- 33 [Thirty-third Schedule](#) A management right lot over the range 2110.000 MHz to 2120.000 MHz.
There are no licence lots for auction in this schedule.
- 34 [Thirty-fourth Schedule](#) A management right lot over the range 2120.000 MHz to 2125.000 MHz.
Also within this range and listed in this Schedule are 12 licences not for auction. The licences will be created before the management right is transferred.
- 35 [Thirty-fifth Schedule](#) A management right lot over the range 2125.000 MHz to 2130.000 MHz.
There are no licence lots for auction in this schedule.

- 36 [Thirty-sixth Schedule](#) A management right lot over the range 2130.000 MHz to 2140.000 MHz.
Also within this range and listed in this Schedule are 13 licences not for auction. The licences will be created before the management right is transferred.
- 37 [Thirty-seventh Schedule](#) A management right lot over the range 2140.000 MHz to 2150.000 MHz.
Also within this range and listed in this Schedule are 12 licences not for auction. The licences will be created before the management right is transferred.
- 38 [Thirty-eighth Schedule](#) A management right lot over the range 2150.000 MHz to 2155.000 MHz.
There are no licence lots for auction in this schedule.
- 39 [Thirty-ninth Schedule](#) A management right over the range 2155.000 MHz to 2170.000 MHz.
Also within this range and listed in this Schedule are 34 licences not for auction. The licences will be created before the management right is transferred. This management right is to be created but is not for sale in this auction.
- 40 [Fortieth Schedule](#) A management right lot over the range 2200.000 MHz to 2208.000 MHz.
Also within this range and listed in this Schedule are 38 licences not for auction. The licences will be created before the management right is transferred.
- 41 [Forty-first Schedule](#) A management right lot over the range 2208.000 MHz to 2236.500 MHz.
Also within this range and listed in this Schedule are 24 licences not for auction. The licences will be created before the management right is transferred.
- 42 [Forty-second Schedule](#) A management right lot over the range 2236.500 MHz to 2265.500 MHz.
Also within this range and listed in this Schedule are 31 licences not for auction. The licences will be created before the management right is transferred.
- 43 [Forty-third Schedule](#) A management right lot over the range 2265.500 MHz to 2300.000 MHz and 4 licence lots with their frequencies within the same range.
Also within this range and listed in this Schedule are 42 licences not for auction. The licences will be created before the management right is transferred.

CALL FOR BIDS FOR FREQUENCIES

TERMS AND CONDITIONS

- 1 The terms and conditions applicable to this auction are as follows:

AMENDMENTS TO THIS CALL FOR BIDS

- 2 This call, including these terms and conditions, may be amended or revoked by the Secretary in whole or in part, and at any time before the conclusion of the auction, by notice in the *New Zealand Gazette* or by notice in writing to registered bidders.

DEFINITIONS

- 3 In these terms and conditions, the following terms have the following meanings:

“Act” The Radiocommunications Act 1989, as amended from time to time;

“Agreement” Includes an agreement, arrangement or understanding whether:

- (a) formal or informal or partly formal and partly informal; or
- (b) written or oral or partly written and partly oral; or
- (c) having legal or equitable force or not, and whether or not based on legal or equitable rights;

“Associate” Means:

- (a) For a body corporate:
 - (i) a director of the body corporate; or
 - (ii) a related company of the body corporate; or
 - (iii) a director of a related company of the body corporate; or
 - (iv) a partner of the body corporate in terms of the Partnership Act 1908

- in a partnership that relates to or includes as part of its business the holding of radio frequency spectrum or the provision of mobile telecommunications services; or
- (v) any person (including bodies corporate and individuals) who, in making a decision or exercising a power materially affecting a business that relates to or includes as part of its business the holding of radio frequency spectrum or the provision of mobile telecommunications services, is accustomed, or under an obligation, or proposes, or is likely, to act in accordance with the directions, instructions or wishes of the body corporate; or
 - (vi) an individual who controls directly or indirectly (whether solely or jointly or in concert with any other person) at least 20% of the voting power or holds at least 20% of the issued shares in the body corporate; or
 - (vii) a trust in terms of the Trustee Act 1956 that relates to or includes as part of its business the holding of radio frequency spectrum or the provision of mobile telecommunications services and in respect of which the body corporate or a director or employee or Associate of the body corporate is a trustee; or
 - (viii) a nominee of the body corporate; or
 - (ix) an Associate of any person (including bodies corporate and individuals) that is an Associate of the body corporate; and

(b) For an individual:

- (i) the individual's spouse; or
- (ii) another person who, although not legally married to the individual, lives with the individual on a

- genuine domestic basis as the spouse of the person; or
- (iii) a partner of the individual in terms of the Partnership Act 1908 in a partnership that relates to or includes as part of its business the holding of radio frequency spectrum or the provision of mobile telecommunications services; or
 - (iv) any person (including bodies corporate and individuals) who, in making a decision or exercising a power materially affecting a business that relates to or includes as part of its business the holding of radio frequency spectrum or the provision of mobile telecommunications services, is accustomed, or under an obligation, or proposes, or is likely, to act in accordance with the directions, instructions or wishes of the individual;
 - (v) a body corporate in which the individual directly or indirectly (whether solely or jointly or in concert with any other person) controls at least 20% of the voting power or holds at least 20% of the issued shares; or
 - (vi) a body corporate of which the individual is a director; or
 - (vii) a body corporate that is related to a body corporate of which the individual is a director; or
 - (viii) a nominee of the individual; or
 - (ix) an Associate of any person (including bodies corporate and individuals) that is an Associate of the individual; and
- (c) For any person (including bodies corporate and individuals) – any other person (except the Secretary) who has an agreement with that first person that:
- (i) relates directly or indirectly to the bidding strategy to be adopted by either or both parties in the

- auction, in relation to the 3G Band, the 3G Natural Pair Band or the TDD Band; or
- (ii) entitles one of the parties to the agreement to a Controlling Interest, or the right to obtain a Controlling Interest, in radio frequency spectrum within the 3G Band, the 3G Natural Pair Band or the TDD Band in respect of which the other party is or will be (subject to these terms and conditions) a manager or rightholder under the Act; or
 - (iii) provides directly or indirectly for the acquisition of a spectrum licence within the 3G Band, the 3G Natural Pair Band or the TDD Band;

Provided that (despite anything else in this definition) no direct or indirect association will arise from any two companies that:

- (i) are the holding companies of separate registered bidders;
- (ii) have not more than one common non-executive director;
- (iii) are not otherwise Associates; and
- (iv) are not registered as bidders in the Auction.

“Associate Group”

A bidder for management rights under these terms and conditions, and any Associate of such a bidder that is also a bidder for management rights under these terms and conditions. (For the avoidance of doubt, a bidder for management rights under these terms and conditions which has no Associate that is also a bidder is an **“Associate Group”** under these terms and conditions);

“Auction Information Page”

The internet site at the following address:
<http://auction.med.govt.nz>

“Auction Message System”

The electronic exchange of messages between bidders and the Auction Manager by the Internet Auction Site;

“Auction Manager”	The employee of the Ministry designated as the auction manager from time to time and whose address is: Auction 3 Manager Radio Spectrum Management Group Ministry of Economic Development PO Box 2847 33 Bowen Street WELLINGTON
“Clause”	A clause of these terms and conditions;
“Controlling Interest”	In relation to any radio frequency spectrum, means an interest which results in the direct or indirect control of that radio frequency spectrum, but does not include the non-exclusive right for any person to use any radio frequency spectrum on arms length commercial terms, where that frequency is controlled directly or indirectly by another person, unless there is evidence that a non-exclusive right to use spectrum is being used for the purpose of exercising control of that spectrum;
“Internet Auction Site”	The internet site as given in the Registered Bidders’ Pack;
“Management Rights Deed”	The deed to be entered into between the Secretary and each successful bidder for management rights for part of the 3G Band, the 3G Natural Pair Band or the TDD Band in the form required by the Secretary to ensure the Spectrum Cap continues to apply to the successful bidder and to any party to which the successful bidder transfers or assigns the management rights or in whose favour any registered interest or Controlling Interest in the management rights is created;
“Ministry”	The Ministry of Economic Development and any other department given responsibility for the auction from time to time;
“Natural Pairs”	The natural pairs in the 3G Band and the 3G Natural Pair Band are as follows:

3G Band	3G Natural Pair Band
1920-1930 MHz	2110-2120 MHz
1930-1935 MHz	2120-2125 MHz
1935-1940 MHz	2125-2130 MHz
1940-1950 MHz	2130-2140 MHz
1950-1960 MHz	2140-2150 MHz
1960-1965 MHz	2150-2155 MHz
1965-1980 MHz	2155-2170 MHz

- “Part I”** All the lots in the auction that are management rights;
- “Part II”** All the lots in the auction that are licences;
- “Part”** Either Part I or Part II, as the context requires;
- “Provisionally successful bidder”** The bidder which has the highest valid bid for any lot after one round in which no new bids are received and no bids are withdrawn in relation to Part I or Part II;
- “Registered Bidders’ Pack”** The information provided by the Auction Manager to bidders on registration under clause 10;
- “Related company”** A company is related to another company if—
- (a) The other company is its holding company or subsidiary; or
 - (b) At least 20% of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) At least 20% of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other

- (whether directly or indirectly, but other than in a fiduciary capacity); or
- (d) The businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
- (e) There is another company to which both companies are related;

“Round”	A period of time during which the Auction Manager has signified that bids may be submitted;
“Secretary”	The Chief Executive of the Ministry of Economic Development;
“Spectrum Cap”	Not more than: <ul style="list-style-type: none"> (a) 15 MHz in the 3G Band; and/or (b) 15 MHz in the 3G Natural Pair Band; and/or (c) 5 MHz in the TDD Band;
“Successful bidder”	A provisionally successful bidder that has – <ul style="list-style-type: none"> (a) met the conditions in clauses 6 or 7; (b) fulfilled the requirements in clause 48; and (c) met the conditions in clause 49;
“3G Band”	The band within the radio spectrum frequency range 1920–1980 MHz;
“3G Natural Pair Band”	The band within the radio spectrum frequency range 2110 – 2170 MHz;
“TDD Band”	The band within the radio spectrum frequency range 2010 – 2025 MHz;
“Technical difficulties”	Difficulties relating to the operation of any hardware or software associated with the computer system or internet browser belonging to or operated by any bidder, the Ministry, any contractor to the Ministry

involved in running the auction; and includes any interruption in the operation of the internet as a medium of communication affecting the auction;

“Working day”

Between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a public holiday within the meaning of section 7A(2) of the Holidays Act 1981.

LEGAL REQUIREMENTS

- 4 These terms and conditions, and any management rights or licences acquired under these terms and conditions, are subject to all legal requirements that apply to the acquisition and holding of management rights or licences created under the Act, including any requirements that may be added in the future as a consequence of the recommendations of the Government’s current Telecommunications Inquiry or otherwise.

APPLICATION OF COMMERCE ACT 1986

- 5 Section 138 of the Act provides for the application of the business acquisition provisions of the Commerce Act 1986 to the acquisition of management rights or licences under the Act.
- 6 The contract created between the Secretary and each provisionally successful bidder upon the completion of Part I or Part II of the auction (refer clause 45) is subject to the condition that none of its provisions relating to the acquisition of the relevant management rights or licences will come into force unless-
- (a) The proposed acquisition has been given a clearance, or an authorisation has been granted, in accordance with Part V of the Commerce Act 1986; or
 - (b) The bidder provides sufficient evidence, within 10 working days of the completion of the auction, to the Secretary to satisfy the Secretary that the proposed acquisition will not breach section 47 of the Commerce Act 1986. The Secretary will take into account compliance with the Spectrum Cap by any provisionally successful bidder for the 3G Band, 3G Natural Pair Band or the TDD Band in satisfying himself whether or not a proposed acquisition by that provisionally successful bidder will not breach section 47 of the Commerce Act 1986.
- 7 Where the Secretary is not satisfied under clause 6(b) that a proposed acquisition will not breach section 47 of the Commerce Act 1986, the provisionally successful bidder must, within 15 working days of notification from the Secretary of that decision, apply for a clearance or

authorisation from the Commerce Commission and give the Secretary notice that a clearance or authorisation has been sought. If an application for a clearance or authorisation is declined, or the bidder fails to give the Secretary notice that he or she has applied for a clearance or authorisation from the Commerce Commission, the Secretary may dispose of the lot as the Secretary sees fit. This may include re-auctioning the lot concerned, or offering it to the next highest bidder in accordance with clause 58.

WHO MAY BID

- 8 Individuals or organisations may only bid if they:
- (a) are registered as bidders in accordance with clauses 9 and 10;
 - (b) have disclosed the information required to be disclosed to the Auction Manager under clauses 12 and 13; and
 - (c) have not been disqualified from bidding under clause 30A.

REGISTRATION AS A BIDDER

- 9 Individuals or organisations wishing to register as a bidder in this auction must complete form RFA1, which may be downloaded from the following internet site <http://auction.med.govt.nz> or obtained in hard copy from the Auction Manager.
- 10 To ensure registration before the auction commences, form RFA1, together with the deposit required by clause 19 and a RWT exemption certificate (refer to clause 24), must be received by the Auction Manager no later than 4:00pm on 29 June 2000. The Auction Manager will accept registrations after this date but gives no guarantee that such registration will be completed by any particular date. The Auction Manager will advise applicants of their registration, and will also issue a Registered Bidders Pack, including a registered bidder's number, passwords, bidder's manual and other documentation required for participation in this auction. The bidder's registration number and passwords will be used to authenticate bids made in this auction. It is the responsibility of each registered bidder to maintain the confidentiality of their bidder's passwords and the address of the Internet Auction Site.
- 11 The Auction Manager will publish the names and registration numbers of all registered bidders and (if they are not a public listed company) the identities of their principals or ultimate beneficial owners on the Auction Information Page no later than 4.00pm on 30 June 2000.
- 12 The registered bidders shall notify the Auction Manager before 4.00pm on 7 July 2000 whether or not they are Associates of any other of the registered bidders whose names have been published on the Auction Information Page. If registered bidders are Associates, when they provide their notification to the Auction Manager under this clause, they must provide the Auction Manager with:

- (a) the identities of the registered bidders that are their Associates;
- (b) details of how any associations arise; and
- (c) (if they are not a public listed company) the identity of their principals or ultimate beneficial owners.

13 Any bidder that applies for registration after 4.00pm on 30 June 2000 is required to notify the Auction Manager at the time it applies for registration whether it is an Associate of any registered bidder. If it is an Associate of any registered bidder, when it provides its notification to the Auction Manager under this clause, it must provide the Auction Manager with:

- (a) the identities of any registered bidders that are its Associates;
- (b) details of how any associations arise; and
- (c) (if it is not a public listed company) the identity of its principals or ultimate beneficial owners.

The Auction Manager will publish the name, registration number, disclosed associations and the identity of any disclosed principals or ultimate beneficial owners of any such registered bidder on the Auction Information Page as soon as reasonably practicable.

14 The Auction Manager will publish on the Auction Information Page before the commencement of the auction the composition of any Associate Groups and the identities of any disclosed principals or ultimate beneficial owners as advised to the Auction Manager. Bidders have an obligation to advise the Auction Manager of any changes in the composition of their Associate Groups from time to time. The Auction Manager will publish updates on the Auction Information Page if the Auction Manager becomes aware that the composition of any Associate Group changes or that any new Associate Group has been formed from time to time during the course of the auction.

15 If a registered bidder provides information to the Auction Manager relating to whether or not any registered bidders are Associates of the registered bidder that is or becomes false or misleading, then (without limitation to any other legal rights and remedies available to the Crown):

- (a) the Auction Manager may refuse to accept any further bid from the Associate Group of the registered bidder; and
- (b) the misrepresentation will entitle the Crown to cancel any contract with the registered bidder arising at the conclusion of the Auction.

15A No new bidder is eligible for registration under these rules after 21 December 2000.

CREDIT LIMIT

- 16 Bidders must advise the maximum amount, in whole New Zealand dollars, they are prepared to pay for any combination of lots that they may be provisionally successful for in this auction. This amount will be declared the bidder's credit limit, and no bid that would cause this limit to be exceeded will be accepted. Each bidder must provide a deposit in accordance with clause 19 to validate the credit limit.
- 17 At any time during the auction, bidders may increase their credit limits by providing the Auction Manager with a further deposit, equal to 25% of the desired increase in their credit limit. However, the Auction Manager gives no guarantee that such an increase can be put in place before the auction is completed. Bidders should therefore endeavour to ensure that their original credit limit is adequate.
- 18 The Auction Manager will keep the credit limit of each bidder confidential at all times.

DEPOSITS

- 19 A deposit equal to 25% of the value of the credit limit is required to validate each bidder's credit limit and any increase to the credit limit. This deposit, in whole New Zealand dollars, is to be made in the form of either a currently dated "Bank Cheque"¹ or a "Banker's Certificate of Undertaking"² ("Banker's Certificate") provided by a bank registered in New Zealand, and must accompany each request for registration. No request for registration will be accepted unless such a deposit is provided. Deposits received in the form of a Bank Cheque will be banked in a trust account by the Ministry.
- 20 Deposits received by way of Bank Cheque paid by provisionally successful bidders will be held in the trust account until the bidder has made payment in settlement in accordance with clause 56. Upon payment in settlement in accordance with clause 56 the deposit will be transferred to the Crown's own bank account. Any interest earned on the deposit will be paid to the bidder.
- 21 Deposits received in the form of a Banker's Certificate paid by provisionally successful bidders will be held secure until the bidder has made payment in settlement in accordance with clause 56. Upon payment in settlement, the Banker's Certificate will be returned to the bidder, together with a letter of release to the bank.

¹ A Bank Cheque is a cheque raised on the bank's own trading account by the bank. Personal or company cheques are not acceptable for deposits.

² A Banker's Certificate of Undertaking is an absolute guarantee given by the issuing bank to make payment up to the face value of the certificate on demand by the Ministry without further reference to the bidder.

- 21A Where one Part of the auction is completed before the other Part, an amount of the deposit equal to 25% of the provisionally successful bids for the first Part that is completed will be held secure until the bidder has made payment in settlement of that Part in accordance with clause 56. The balance of the deposit will continue to be available for determining the credit limit of the provisionally successful bidder for the continuing Part of the auction.
- 22 Deposits paid by unsuccessful bidders in the form of:
- (a) A Bank Cheque will be repaid to unsuccessful bidders together with any interest received on the deposit after the names of provisionally successful bidders have been published; or
 - (b) A Banker's Certificate will be returned to unsuccessful bidders, together with a letter of release to the bank, after the names of provisionally successful bidders have been published.
- 23 Deposits paid by Bank Cheque will accrue interest while held in trust accounts. Interest that is payable to unsuccessful bidders will be paid at the time that their deposits are repaid. The Secretary makes no representations as to the rate at which interest will accrue. Deposits paid by way of Banker's Certificate will not earn interest.
- 24 In respect of deposits paid by Bank Cheque, the Ministry's bank will automatically deduct resident withholding tax ("RWT") after calculating interest payable. Therefore a RWT exemption certificate must be supplied at the time of registration so that the bank can be advised at the time of deposit if the bidder is to be exempt from this tax. Otherwise, responsibility for arranging a refund of RWT will rest with the bidder.

BIDDING RULES

- 25 The auction will consist of a number of successive rounds which will continue until both Parts of the auction are concluded in accordance with clause 45. Bidders may lodge bids in any round with the Secretary at the Internet Auction Site in accordance with the instructions in the Registered Bidders' Pack.
- 26 Bidding rounds will be held initially in accordance with the time schedule provided in the Registered Bidders' Pack, and later in accordance with the time schedule published by the Auction Manager on the Auction Message System or on the Auction Information Page. The Auction Manager may vary the duration of bidding rounds and the time interval between rounds.
- 27 The following revealed reserve prices will apply in the auction:

- (a) For all management rights in respect of radio frequency spectrum bands of 10 MHz in the 3G Band and the 3G Natural Pair Band, the revealed reserve price will be \$3,333,333 (excluding GST);
- (b) For all management rights in respect of radio frequency spectrum bands of 5 MHz in the 3G Band, 3G Natural Pair Band and the TDD Band, the revealed reserve price will be \$1,666,667 (excluding GST);
- (c) All other management rights will have a revealed reserve price of \$10,000 (excluding GST); and
- (d) All licences will have a revealed reserve price of \$500 (excluding GST).

The Auction Manager will set an initial minimum bid amount for each lot before the auction commences. A bid that is less than the initial minimum bid amount will not be accepted as a valid bid. The Auction Manager may reduce the initial minimum bid amount at any time.

- 28 After the results of each round of bidding are determined in accordance with clause 38, the Auction Manager will advise all registered bidders, by means of the Internet Auction Site, of the results for each lot. These results may also be published on the Auction Information Page.
- 29 At any stage of the auction, the Auction Manager may require the bids for any lot to be greater by a specific minimum increase than the results for that lot in the previous round. The size of the required minimum increase is at the discretion of the Auction Manager. Notification of any required minimum increase will be given to registered bidders by the Auction Message System or on the Auction Information Page by the Auction Manager specifying the required minimum bid for a round before the commencement of the round. A bid that is less than the required minimum bid will not be accepted as a valid bid.
- 30 A bidder may withdraw a bid at the Internet Auction Site, in accordance with the instructions in the Registered Bidders' Pack, in any round prior to the conclusion of the auction. Any bid withdrawal will be processed at the end of the round in which that withdrawal was lodged. The bid withdrawal will be confirmed by the bidder receiving a message "Your bid has been withdrawn".
- 30A Any bidder that exercises the right under clause 30 to withdraw one or more bids for lots in Part I in five (5) or more rounds from 8 January 2001 will be automatically disqualified from lodging any further bids in both Parts of the auction. Any further bids lodged by a disqualified bidder will be void, irrespective of any automatic acceptance of such bids by the auction system. All valid bids made by a bidder before it is

disqualified under this clause will remain valid unless they are withdrawn by the bidder.

- 31 The Secretary or the Auction Manager may refuse to accept any bid.

VALID BIDS

- 32 For a bid to be valid (and without limiting the possibility that a valid bid may be void under clause 30A or refused by the Secretary or the Auction Manager under clause 31, or that a valid bid may be deemed to be withdrawn under clause 50) it must be:

- (a) Made in accordance with clause 25; and
- (b) Received by the Auction Manager while a round is continuing, which will be confirmed by the bidder receiving a message "Your bid was received" on the bidder's screen for the Internet Auction Site; and
- (c) At or above the minimum bid specified in accordance with clauses 27 or 29 or, where no minimum bid has been specified, higher than the results for that lot advised in accordance with clause 28; and
- (d) An amount that, when added to the other valid bids made by that bidder in that round, and to any bids made by that bidder in previous rounds which remain the highest bids made on the lot to which they relate, does not take the bidder beyond his or her credit limit (determined in accordance with clauses 16 and 17); and
- (e) Made in whole New Zealand dollars (exclusive of GST).

- 33 Any bid made by or on behalf of an employee of the Ministry will be invalid unless the prior written consent of the Secretary is obtained to that employee participating in the auction. If the Secretary has consented to an employee participating in the auction this will be advertised on the Internet Auction Site before the commencement of the auction.

THIRD GENERATION MOBILE SERVICES SPECTRUM

- 34 No Associate Group and any other of their Associates may purchase at the auction, or otherwise acquire from the Crown, management rights in respect of radio frequency spectrum in any of the 3G Band, the 3G Natural Pair Band and the TDD Band if such purchase or other acquisition would cause them to exceed the limits contained in the Spectrum Cap.

- 35 Any Associate Group that purchases more than one management right within the 3G Band or the 3G Natural Pair Band must purchase management rights in respect of adjacent frequencies.
- 36 Any Associate Group that purchases management rights in relation to the 3G Band and the 3G Natural Pair Band must purchase management rights for frequencies that are Natural Pairs.
- 37 The Auction Manager and the Secretary have no obligation to notify any member of an Associate Group on the close of any round that it or its Associate Group is:
- (a) Exceeding any limit in the Spectrum Cap;
 - (b) The highest value bidder or equal highest value bidder for management rights within the 3G Band or the 3G Natural Pair Band that are not in respect of adjacent frequencies; or
 - (c) The highest value bidder or equal highest value bidder for management rights within the 3G Band and the 3G Natural Pair Band that are not in respect of Natural Pairs.

RESULTS

- 38 The results for each round will be determined as follows:
- (a) Except where the highest valid bid for a lot in a round has been withdrawn, the results will show details of the dollar value of the highest valid bid or equal highest valid bids received for each lot and the registration number of the highest bidder or bidders, as the case may be.
 - (b) Where the single highest valid bid or equal highest valid bid for a lot in a round has been withdrawn, the results for the round for that lot will show the next highest valid bid or equal highest valid bids, or the equal highest valid bid to the withdrawn bid, as the case may be, and the registration number of the highest bidder or bidders. If there are no other valid bids in the round for that lot the results for the round will show the word “withdrawn” instead of the bidder registration number and the greater amount of either:
 - (i) The dollar value of the previous highest valid bid from a previous round for that lot, in which case, unless a valid bid is received in the subsequent rounds, the results for the subsequent rounds will be determined in accordance with sub-clause 38(c); or
 - (ii) The revealed reserve price for that lot, in which case, unless a valid bid is received in subsequent rounds, the results for the subsequent rounds will show the revealed reserve price.

- (c) Where the results of a round are determined in accordance with clause 38(b)(i), unless a valid bid is received in the subsequent rounds, the results of the subsequent rounds will be determined as follows:
- (i) For the next round after the round in which the bid was withdrawn, the results will show the word “withdrawn” instead of the bidder registration number and the greater amount of either:
 - (A) The dollar value of the second highest valid bid from a previous round; or
 - (B) Where there is no second highest valid bid from a previous round, the revealed reserve price for that lot, in which case, unless a valid bid is received in subsequent rounds, the results for the subsequent rounds will continue to show the revealed reserve price.
 - (ii) Where the results of the next round show the dollar value of the second highest valid bid from a previous round, the results for the subsequent rounds after that next round, unless a valid bid is received in those rounds, will show the word “withdrawn” instead of the bidder registration number and:
 - (A) For the next three rounds, the second highest valid bid reduced by a percentage amount determined by the Auction Manager;
 - (B) For each subsequent round after the next three rounds, the revealed reserve price for that lot.

TECHNICAL DIFFICULTIES

- 39 If any registered bidder is prevented from placing a bid in any round by technical difficulties, the registered bidder must advise the Auction Manager by facsimile, telephone or the Auction Message System that he or she is unable to place a bid.
- 40 Where the Auction Manager is advised, as a result of notice given under clause 39 or otherwise, that technical difficulties are preventing any bidder or bidders from placing bids the Auction Manager may temporarily halt the auction, as advised at the Auction Information Page or the Internet Auction Site, to allow the technical difficulty to be corrected.

- 41 Where technical difficulties have prevented any bidder or bidders from placing bids, the Secretary may decide not to conclude the auction so as to allow the bidder or bidders to place a bid, notwithstanding that one or more rounds may have occurred in which no bids were received for any lots and the auction would otherwise be concluded.

WITHDRAWAL

- 42 All or any of the management rights or licences auctioned under these terms and conditions may be withdrawn from sale at the discretion of the Secretary at any time prior to the conclusion of the relevant Part of the auction, notwithstanding that valid bids may have been lodged in excess of the revealed reserve prices of any of the lots and the results of one or more rounds may have been determined.
- 43 If the Secretary exercises his discretion to withdraw all or any of the management rights or licences from sale, the Auction Manager will announce that decision by the Auction Message System and on the Auction Information Page.
- 44 Any bidders for management rights or licences that are withdrawn from sale may call for all or part of their deposits to be returned by the Ministry on the same basis as if they were unsuccessful bidders, and no bidder or potential bidder will have any claim against the Secretary or the Ministry for any expenses or other compensation as a direct or indirect consequence of such withdrawal.

CONCLUSION OF THE AUCTION

- 45 Part I and Part II of the auction will conclude separately upon the completion of one round, regardless of whether or not the results for any lot in those rounds is determined in accordance with clause 38(c), in which:
- (a) No new valid bids are received for any or all of the lots in the concluding Part; and
 - (b) No bids are either withdrawn in the concluding Part, or deemed to be withdrawn in relation to Part I in accordance with clause 50.
- 46 [Deleted]
- 47 In the event of any result showing two or more provisionally successful bidders for the same lot, the actual provisionally successful bidder will be determined by the Auction Manager as the first in time to have lodged the valid bid as recorded by the auction system history log.
- 48 Immediately following a round in which no new valid bids are received for any or all of the lots and no bids are withdrawn in Part I, the Auction Manager shall advise the provisionally successful bidders for the

management rights in the 3G Band, 3G Natural Pair Band and TDD Band of the names of all the provisionally successful bidders in the 3G Band, 3G Natural Pair Band and TDD Band. Those bidders must each, within 3 Working Days from the date of receipt of such advice from the Auction Manager, deliver to the Auction Manager a statutory declaration either:

- (a) Confirming that the bidder is not an Associate of any other provisionally successful bidders for lots within the 3G Band, 3G Natural Pair Band and TDD Band; or
 - (b) Identifying any provisionally successful bidders for lots within the 3G Band, 3G Natural Pair Band and TDD Band that are Associates of that bidder.
- 49 The auction will only be concluded in relation to Part I if there is one round in which no new valid bids are received for any or all of the lots in that Part, and no bids are withdrawn or deemed to be withdrawn in accordance with clause 50, and the provisionally successful bidders for the management rights for the radio spectrum frequencies in the 3G Band, 3G Natural Pair Band and TDD Band, and their Associate Groups, are:
- (a) complying with the limits in the Spectrum Cap;
 - (b) provisionally successful bidders for management rights in respect of radio spectrum frequencies in the 3G Band and 3G Natural Pair Band that are adjacent (if they are provisionally successful bidders for more than one management right in respect of either or both Bands); and
 - (c) provisionally successful bidders for management rights in respect of radio spectrum frequencies in the 3G Natural Pair Band that are the Natural Pairs of the management rights in the 3G Band for which their Associate Group are provisionally successful bidders.
- 50 If any provisionally successful bidder fails to provide a statutory declaration under clause 48, or to meet the conditions in clause 49, then the bids of that provisionally successful bidder and its Associate Group in the last round for the lots in the 3G Band, 3G Natural Pair Band and TDD Band will be deemed to be withdrawn and the auction will recommence with a new round for bids on all lots in Part I.
- 51 When the Auction Manager is satisfied that there has been one clear round in Part I or Part II, and that (in relation to Part I only) the requirements of clause 48 and the conditions in clause 49 have been met:

- (a) The Auction Manager will announce by the Auction Message System and on the Auction Information Page that the relevant Part of the auction is concluded; and
 - (b) A contractual obligation will exist between the Secretary and each provisionally successful bidder for the sale and purchase of the lot or lots that each provisionally successful bidder has purchased in that Part of the auction, subject to the conditions in clauses 6 and 7.
- 52 If a statutory declaration provided by a provisionally successful bidder under clause 48 is false or misleading, then (without limitation to any other legal rights and remedies available to the Crown):
- (a) The Auction Manager may refuse to accept any further bid from the Associate Group of the provisionally successful bidder; and
 - (b) The misrepresentation will entitle the Crown to cancel any contract with that provisionally successful bidder arising at the conclusion of the auction.
- 53 The Auction Manager will advise all bidders by the Auction Message System of when the provisional results will be published on the Auction Information Page. The Auction Manager will also advise bidders by letter of their provisional success or otherwise, as appropriate.

SETTLEMENT

- 54 For successful bidders, the amount required in settlement in respect of each lot is:
- (a) In the case of bidders who have paid their deposit by way of Bank Cheque, the amount bid for the lot plus goods and services tax (GST), less the deposit paid by the bidder.
 - (b) In the case of bidders who have paid their deposit by way of Banker's Certificate, the amount bid for the lot plus goods and services tax (GST).
- 55 Each successful bidder will be invoiced for the amount payable in settlement as soon as possible after the conditions in clauses 6 or 7 have been complied with.
- 56 Full payment in settlement is due within 15 (fifteen) working days of the invoice date. Payment must be made in New Zealand dollars. Cheques are to be made payable to the Ministry of Economic Development and must be sent to the following address:

Manager - Finance
Radio Spectrum Management Group

Ministry of Economic Development
P.O. Box 2847
33 Bowen Street
Wellington

- 57 Each provisionally successful bidder in the 3G Band, the 3G Natural Pair Band and the TDD Band, and such members of its Associate Group as the successful bidder may nominate (if any) will be required to enter into a Management Rights Deed with the Secretary on or before the date on which payment of the purchase price is due as a further condition of settlement.
- 58 If a successful bidder fails to pay the sum owing under clause 56, or a successful bidder fails to enter into a Management Rights Deed in terms of clause 57, the Secretary may, if he or she wishes, re-allocate the lot as he or she sees fit, which may include re-auctioning the lot concerned, or offering the lot to the next highest bidder. Neither a successful bidder that defaults on its settlement obligations, nor any other member of its Associate Group, will be eligible to participate in any such re-allocation process. Any successful bidder that defaults on its settlement obligations will be liable for any losses, costs or expenses suffered or incurred by the Crown as a result of any such re-allocation. If a lot is re-allocated in accordance with this clause then, subject to clauses 34 to 36, the person to whom the lot is re-allocated will be treated as the provisionally successful bidder or successful bidder for the purposes of clauses 45 to 59 (inclusive).
- 59 Where a successful bidder fails to pay the sum owing under clause 56, liquidated damages will be payable in respect of each lot for which payment is not received as follows:
- (a) A sum of money equal to the difference between the amount bid for the lot and the amount eventually paid for that lot, if that amount is lower than the value of the successful bid; and
 - (b) A sum of money equal to the administrative expenses incurred by the Secretary in seeking payment from the bidder.

If the lot is subsequently sold for more than the amounts referred to in this clause, no damages will be payable.

SUITABILITY FOR PURPOSE

- 60 It is the responsibility of bidders to ensure that any lots for which they are bidding are suitable for their purpose. No representations in this respect are made by the Secretary or the Auction Manager. It is also the responsibility of bidders to ensure that any information read or extracted from any CD ROM version of the Auction 3 Catalogue correctly reflects the information as supplied in the Auction 3 Catalogue published on the Auction Information Page.

GOODS AND SERVICES TAX ("GST")

- 61 The Department of Inland Revenue has advised the Ministry that GST is payable in respect of successful bids. For the purposes of determining the results of this auction, all bids will be considered to exclude GST. GST will be recovered from successful bidders at the time that they are invoiced for payments in settlement. GST will be additional to the amount otherwise payable by the successful bidder.

REGISTRATION OF MANAGEMENT RIGHTS AND LICENCES

- 62 The Ministry will undertake to arrange any necessary registration or transfers of management rights and licences with the Registrar of Radio Frequencies on behalf of successful bidders. Bidders will be invoiced separately for the registration fees incurred.

COMMENCEMENT DATE FOR LICENCES

- 63 The commencement date on all licences will be determined by the commencement date of the appropriate management rights to which the licences relate.

UPLIFTING OF MANAGEMENT RIGHTS

- 64 Subject to compliance with all conditions precedent, under these terms and conditions the management rights will be transferred to the successful bidder within 30 (thirty) working days of the invoice date, provided the Secretary has received payment in settlement for each lot in accordance with clause 56.

UPLIFTING OF LICENCES

- 65 Subject to compliance with all conditions precedent under these terms and conditions, registered licences will be available to the successful bidder within 30 (thirty) working days of the invoice date, provided the Secretary has received payment in settlement for each lot in accordance with clause 56.

ANNOUNCEMENT OF FINAL RESULTS

- 66 Final results will be published by the Secretary in the *New Zealand Gazette* when all management rights and licences have been uplifted in accordance with clauses 64 and 65.

PUBLICATION OF INFORMATION OF GENERAL INTEREST ON THE INTERNET

- 67 The results for each round and other information of general interest related to this auction will be published in the Auction Information Page.