

PIB 28
September 1999

Radio Spectrum Management

RADIO SPECTRUM AUCTIONS

GENERAL INFORMATION

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Introduction

This document is intended as an addition to the publication “Radio Spectrum Tenders - General Information” ([PIB 19](#)), which was produced in April 1994. Since that time, the Ministry of Commerce has moved away from traditional tenders for the allocation of radio spectrum, in favour of an auction format. The new format is considered to provide a more efficient, transparent and equitable method of allocating commercially valuable radio spectrum.

This document is effectively a revision of PIB 19, as it replaces outdated sections with new material relating to the current auction process, while leaving the remaining parts largely unchanged. It is intended to give an overview of the auction process, and answer the questions which are most frequently asked about this method of competitive allocation. This document does not replace PIB 19, as the Ministry retains the option to use tender methods again in the future, where appropriate.

Radio Spectrum Management
Ministry of Commerce
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1. Background

Prior to 1987, radio spectrum management in New Zealand was comparable with most other countries. A state-owned monopoly provided general telecommunications services and state-owned broadcasting services were dominant. Private broadcasting was controlled by a tribunal system.

Since 1987, as part of the overall process for economic reform in New Zealand, barriers to entry into telecommunications and broadcasting markets have been removed. There are no restrictions on the activities of operators, the number of entrants into the markets, or special licensing requirements (other than a radio licence, where appropriate). There are no barriers to foreign ownership, operation or investment.

Competition within the industry is not controlled by industry specific regulations but relies on general competition law (the Commerce Act 1986) which is enforced by the Commerce Commission.

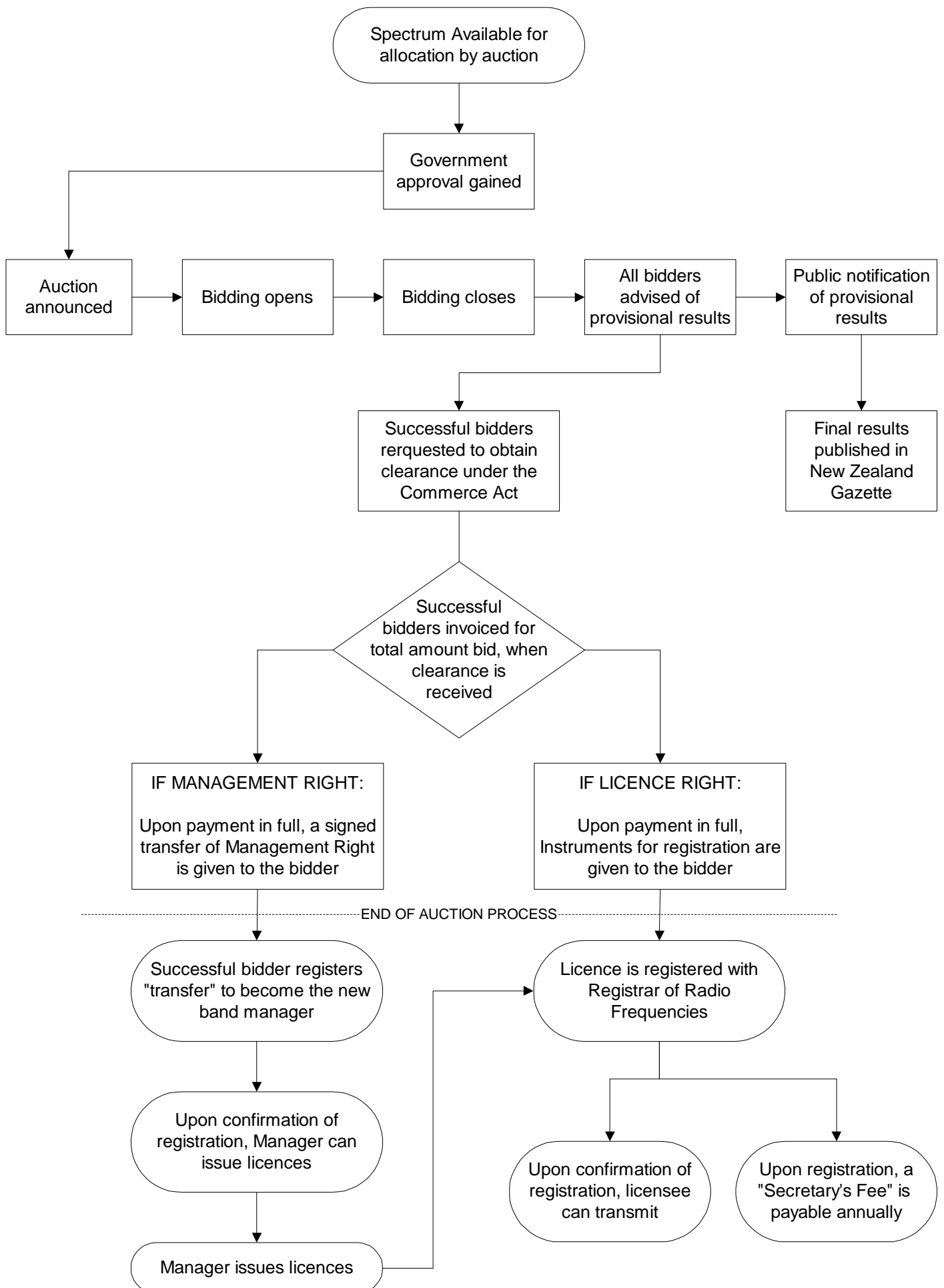
The Radiocommunications Act 1989 established a new market - oriented system for allocating spectrum, based on tradable property rights which are valid for up to 20 years. There are two types of property rights; management rights and spectrum licences. These are covered in greater detail in sections 3 and 4 of this document.

These property rights are registered and transferred on a similar basis to that of land ownership, and in the same way as property, may be freely traded.

Radio spectrum management rights can only be created by the Crown. These, or spectrum licences created pursuant to such rights, are usually brought into commercial circulation by the Crown ; most allocations of radio spectrum in the past have been by public tender, but since mid-1995 an auction format has been preferred.

2. The Auction Process

Auctioning is the mechanism currently used by the Crown for allocating management rights, and most licences granted under them, as a manager. To assist general understanding of the full process followed in conducting radio spectrum auctions, the following flow chart outlines the main stages of any given auction.



3. Management Rights

The Radiocommunications Act 1989 established two forms of tradable property rights which may be granted for periods of up to 20 years.

The Secretary of Commerce establishes a tradable right for a range of frequencies in the radio spectrum by creating a "management right." This right legally defines the technical parameters necessary for registration with the Registrar of Radio Frequencies. The documents drawn up to record the technical and legal details of the new property right so that it may be registered, are known as "Instruments of Registration."

Essentially a management right gives the owner - generally known as the Band Manager - the right to issue "spectrum licences" for frequencies in the radio spectrum that is the subject of the management right. No radio transmission can legally be made in any radio spectrum subject to a management right until a licence has been issued by the manager (i.e. the owner of the relevant management right), and registered with the Registrar of Radio Frequencies. This includes any "incumbent licence" holder whose right is recorded at the same time as the relevant management right (see page 7).

Management rights are normally created for a period of 20 years, and on expiry automatically revert to the Crown. There is no right of renewal.

NOTE: This description of a management right is only intended as an overview. Persons interested in bidding for management rights should familiarise themselves with the Radiocommunications Act 1989 and/or seek legal advice before making any bids.

4. Licences

Under the Radiocommunications Act 1989, a person must hold a "licence" that is registered with the Registrar of Radio Frequencies, before any radio transmission can legally be made. A "licence" is in many ways similar to the traditional "apparatus licence"; it gives the right to transmit on a given frequency using a defined output power, it gives the modulation to be used, the occupied bandwidth, and other technical parameters. It may also record any conditions of use. However, to distinguish licences issued under the spectrum rights regime from apparatus licences issued under the parallel administrative licensing system, the former are generally known as "spectrum licences."

Spectrum licences can only be issued by a management right holder. To register a new licence, the "Instruments of Registration" provided by the management right holder to the licensee to enable the new licence to be registered, must be accompanied by certificates (two different types of certificate are required) issued by a radio engineer who is approved under the Radiocommunications Act 1989. One certificate must certify that no interference will be caused to radio communications for which licences have already been registered with the Registrar of Radio Frequencies and that no interference will be caused to radionavigation services or any service essential for the protection of life and property (Section 25(2) Radiocommunications Act 1989). The second certificate must certify that the unwanted emission limits are in accordance with the requirements of Section 53 of the Radiocommunications Act 1989.

Incumbent licence rights are licences granted at the time a management right is first created by the Secretary of Commerce to holders of "apparatus licences" who meet the criteria for such a grant under the Radiocommunications Act 1989. Such licenses have equal "first in time" status under the Act.

Generally, any spectrum licence may be traded or mortgaged in a normal commercial manner without further reference to the Band Manager, but any such transaction must be registered with the Registrar of Radio Frequencies. Spectrum licences may be granted for a period of up to 20 years, or such lesser time as agreed between the management right holder and the licensee, but in no case can they be for a period that exceeds the expiry date of the management right under which they are issued.

NOTE: This description of a licence is only intended as an overview. Persons interested in bidding for licences should familiarise themselves with the Radiocommunications Act 1989 and/or seek legal advice before making any bids.

5. Expressions of Interest

Where the Crown is the Band Manager (i.e. holds the management rights to a particular band of spectrum), and to provide feedback on the current requirements of the marketplace, an invitation for "expressions of interest" may be made, usually through publishing the invitation in the New Zealand Gazette. Public notification is also provided by a combination of other means, such as placing advertisements in the main newspapers, posting a notice on the Ministry's Internet Web page, and a press release issued through the office of the Minister of Communications. Individuals and organisations who are likely or known to have an interest in using the radio spectrum under consideration are notified directly - in most cases either because they have asked to be placed on the Ministry's mailing list for the next auction, or through their involvement in the previous auction.

When an application for a new broadcasting licence is received and a frequency can be made available, a temporary licence can be issued, on the understanding that it will in due course be offered at the next auction, and that no pre-emptive or incumbent rights will attach to the temporary licence. Such applications are also considered to be an expression of interest.

Formal expressions of interest require the following information to be provided :

- i. Name of person or organisation.
- ii. Postal address.
- iii. Business telephone contact number.
- iv. Contact person for technical matters.
- v. General description of the type of service to be provided.
- vi. Geographical extent of coverage/s desired.
- vii. Transmitter site names (if known).
- viii. Preferred form of spectrum allocation: i.e.
 - "licence", or
 - "management right".

In reaching a decision on what can and will be offered for auction, expressions of interest play an important role. However, for various reasons it is not always possible to satisfy all requirements.

6. The Auction Catalogue

When the Ministry is ready to hold a radio spectrum auction, the event will be publicly announced in the same way as for a call for expressions of interest (see previous page). All individuals and organisations who may be interested in actively participating in the auction are able to view the "Auction Catalogue" in electronic form at the [Ministry's Internet Web page](#). Hard copies of the catalogue can also be made available on request.

The Auction Catalogue is the equivalent of the "Call Document" for tenders; it contains the authority under which the auction is being held, the conditions of sale, and the technical description of the lots being offered.

The Auction Catalogue contains a number of schedules. The First Schedule contains the statement of authority and also the conditions of sale, including the rules and operating procedures for the auction, while the remaining schedules provide the individual lot references and detailed technical descriptions of the lots being offered.

The Auction Catalogue is the sole formal representation made by the Ministry of Commerce, and prospective participants in the auction are recommended to obtain their own legal advice in relation to the provisions of the catalogue.

7. Pre-emptive Rights

A "pre-emptive right" is the right to win a lot by matching the highest bid for a nominated lot in a radio spectrum tender.

Pre-emptive rights used to occur when, at the request of a "right holder" a licence already held by that right holder was cancelled to permit the creation of a new licence. Typically this was to permit an increase in power or a change of transmitter location.

In such cases, if the Ministry of Commerce agreed that it was technically possible to make the proposed changes, and if the commercial value of the re-engineered licence exceeded predefined limits, the licence had to be retendered. This was facilitated by a contractual agreement between the Ministry as the "manager" and the licensee as "right holder." As part of this agreement a "pre-emptive right" was sometimes given to the right holder who requested or agreed to the change, in recognition of the fact that the new market value of the licence could not accurately be determined until it was once again offered to the market.

Due to the nature of auction bidding, all participants can see the value being placed by the market on a particular frequency at any given time, and this effectively gives all bidders a pre-emptive right. For this reason, it is not considered necessary or

appropriate to formally grant pre-emptive rights to any participant in a radio spectrum auction.

8. Announcement of Results

In multiple round auctions, interim results are notified to all bidders at the end of each round. The results notice sent out to bidders after the end of the final round of the auction shows the highest bids received for each lot on offer, and these are provisionally declared to be the winning bids for those lots. Confirmation of these provisional results, as they relate to individual bidders, is sent by postal mail to each registered bidder as soon as possible after the close of the auction. These letters state to each bidder whether they have provisionally won one or more lots at the auction, and if so, the lot(s) for which they have made the highest bid.

The provisional results are also posted on the Ministry's Internet Web page, and they may additionally be notified in the next available issue of the [New Zealand Gazette](#), and/or through a Ministerial press release.

Final results will be notified to all registered bidders, and published in the New Zealand Gazette, when all outstanding clearances, payments, and any legal or other issues have been finalised.

9. Gaining Commerce Act Clearance

As indicated above, the winning bidders will receive a letter formally notifying the Ministry's provisional acceptance of their successful bid(s). This letter will also contain instructions concerning any clearance which may be required under the Commerce Act 1986. In this regard, successful bidders are required - usually within a period of 20 working days from the date of the letter - either to obtain clearance from the [Commerce Commission](#), or to advise the Ministry that they do not believe such clearance to be necessary. If they are in any doubt, successful bidders should seek legal advice as to the requirements of the Commerce Act with respect to their individual circumstances.

Successful bidders should note that it is in their own interest to follow this clearance procedure as soon as possible, as it is a prerequisite to further processing of the lots they have provisionally won.

10. Final Payments

When the Ministry receives advice from successful bidders that they have gained any necessary clearance under the Commerce Act, or that such clearance is not considered necessary, those bidders are invoiced for the total amount of their successful bids, plus GST. These payments must be made in full to the Ministry within 10 working days from the date of invoice.

11. Issuing of Instruments for Registration

When payment in full has been received by the Ministry of Commerce

- a) For licences:- **Instruments of Registration** will be sent to the bidder for all lots won.
- b) For Management Rights:- **Notices of Transfer** will be given to the successful bidder.

In both cases, these documents must be registered with the Registrar of Radio Frequencies within 20 working days of their date of issue by the Ministry.

N.B. This process may be disrupted if legal action challenging aspects of an auction is commenced by any party.

12. Approved Radio Engineer under the Radiocommunications Act 1989

Under the Radiocommunications Act 1989, an "Approved Radio Engineer" is a person who has been formally recognised by the Ministry of Commerce as being suitably qualified by both training and experience to issue certificates. Two different certificates are required. The first of these certifies that no interference will be caused to radiocommunications for which licences have already been registered with the Registrar of Radio Frequencies, and that no interference will be caused to radio navigation services or any service essential for the protection of life and property (Section 25(2) Radiocommunications Act 1989). The second certificate certifies that the unwanted emission limits are in accordance with the requirements of Section 53 of the Radiocommunications Act 1989.

Such certificates must accompany all Instruments of Registration sent to the Registrar of Radio Frequencies for registration.

Note: No frequency can be used until registered with the Registrar of Radio Frequencies. It is the responsibility of successful bidders to register the Instruments of Registration sent to them within 20 working days of their date of issue by the Ministry. **Instruments of Registration are not a licence to transmit until registered.**

13. Registration of Radio Frequencies

All licences must be entered onto the "Register of Radio Frequencies" before they are valid. The Register of Radio Frequencies is a public register similar in principle to the Land Register. It provides for the clear definition of registered licences, a database of information suitable for planning spectrum purposes, a legal basis for resolution of interference problems and other issues, as well as a safe and efficient mechanism for trading of licences and management rights. Substantial penalties apply to the offence of transmitting without a licence. Licence holders must not make any transmission until after they have received **written confirmation** from the Registrar of Radio Frequencies that the licence has been registered.

To register a licence, the Registrar of Radio Frequencies must receive:-

- Two originals of the licence (i.e. the Instruments of Registration) ; and
- Two engineering certificates (one original of each) ; and
- The registration fee (\$36.00 GST inclusive, for a licence with one frequency).

Licences should be presented by hand in the Registrar's office. The Registrar will accept instruments by mail, but any defects with the documents or fees will result in delays before the licence is registered.

The Registrar's address is: [The Registrar of Radio Frequencies](#)
Level 7
33 Bowen Street.
PO Box 690
Wellington.

Telephone (04) 472 0030; Facsimile (04) 499 0797.

The Registrar of Radio Frequencies is an independent office within the Ministry of Commerce. **It is not part of any other organisation**, either inside or outside of the Ministry. For this reason care should be taken when giving or writing delivery instructions, when arranging the delivery of Instruments and fees.

14. The Annual Fee

There is an annual fee payable to the Secretary of Commerce on all registered licences.

The fee payable for the registered licence for each frequency is set out in the Radiocommunications (Fees) Regulations.

Currently there are five classes of service:

- MF - AM Sound broadcasting
- VHF - FM Sound broadcasting
- UHF Television Broadcasting
- VHF Television Broadcasting
- Other Services.

There are different fees for each class of service, and within each class the fee varies according to the maximum transmission power (E.I.R.P.) permitted by a given licence.