Commonwealth of Australia

Telecommunications Act 1991

Licence to operate as a public mobile carrier

I, ROBERT LINDSÄY COLLINS, Minister of State for Transport and Communications:

(a) under section 57A of the Telecommunications Act 1991, grant Arena GSM Pty Limited of Suite 1, 4th Floor, 424 St Kilda Road, Melbourne in the State of Victoria (Australian Company Number 056 161 043) a public mobile licence to do all or any of the acts that the holder of a public mobile licence is permitted to do under that Act; and

(b) under section 65 of that Act, declare that the licence is subject to the conditions specified in the Schedule.

SCHEDULE

Commencement
1.1 This licence comes into force on 31 December 1992.

Term of licence
2.1 If not sooner revoked, this licence ceases to have effect on 31 December 2017.

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

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

Limitations on scope of licence
3.1 The licensee must not install or operate an AMPS network.

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

3.2 Under this licence, the licensee must not supply services as a carrier before 30 June 1993.

3.3 Without limiting the generality of subclause 3.2, the licensee must not enter into a contract or other arrangement, under which the licensee is entitled to benefits before 30 June 1993, for:

(a) AMPS bulk volume discounts; or

(b) the purchase of bulk AMPS air-time;

referred to in subclause 13.1 of the Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991 as in force from time to time.
3.4 In spite of subclauses 3.2 and 3.3, the licensee may:
   (a) acquire, before 30 June 1993, bulk volume AMPS air-time if:
       (i) the air-time is not acquired at a discount of more than 5%; and
       (ii) the air-time is not acquired for a period exceeding 12 months; and
   (b) resell that air-time.

Majority Australian ownership

4.1 On and after 1 July 2003, foreign persons within the meaning of section 5 of the
   Foreign Acquisitions and Takeovers Act 1975 must not hold 50% or more of the total issued
   shares of the licensee.

4.2 The licensee must enter into (on a commercial-in-confidence basis) an
   agreement in writing with the Commonwealth for achieving the requirements of subclause
   4.1.

Network rollout

5.1 No later than 31 December 1996, the licensee must have offered, and be in a
   position to supply, services by means of digital facilities to areas in Australia in which not
   less than 80% of the population of Australia reside.

5.2 The licensee must enter into (on a commercial-in-confidence basis) an
   agreement in writing with the Commonwealth for achieving the requirements of subclause
   5.1.


Minister of State for Transport and Communications
EXPLANATORY STATEMENT

PUBLIC MOBILE LICENCE GRANTED TO ARENA GSM PTY LIMITED

TELECOMMUNICATIONS ACT 1991

Issued by the Authority of the Minister for Transport and Communications

Part 5 of the Telecommunications Act 1991 ("the Act") enables the Minister for Transport and Communications to grant licences and to declare licence conditions.

Receipt of a public mobile licence confers upon an eligible corporation the rights and obligations of a public mobile carrier provided for under the Act. The licence and its conditions also stipulate the Government's expectations regarding rights and privileges which carriers will extend to each other, to consumers, and to other parties.

Conditions to which the licence is subject

Under Section 62 of the Act the licence holder must comply with the Act and regulations made under it, directions and orders made by AUSTEL under the Act, and conditions provided for in other specified instruments made under the Act.

Under section 64, the Minister may make a declaration in writing specifying conditions which apply to all licences, all general telecommunications licences, or all public mobile licences. Section 64 therefore enables the Minister to 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.

Section 64 declarations, which apply to this and all other public mobile licences, are not included in each individual licence. Rather, they are separate documents. Three declarations have been made: Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1991, Telecommunications (Public Mobile Licences) Declaration (No. 2) of 1991 and Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1992.

A declaration made under section 65 is more specific in its coverage than one made under section 64, in that the conditions 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.

Section 68 requires that the Minister consult with carriers before changing licence conditions.

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 his licensing powers. Arena GSM has negotiated a section 70 agreement with the Government.
The Public Mobile Licence of Arena GSM Pty Limited

The licence document consists of two parts: the licence and a schedule.

The licence specifies that Arena GSM is the eligible corporation holding the licence. Details include Arena GSM's company address, Australian Company Number and the type of licence granted under section 57A of the Act (that is, a public mobile licence). The licence allows the company, Arena GSM, to do all or any of the acts that a public mobile licensee is permitted to do under the Telecommunications Act 1991. The licence specifies that the licensee is subject to the section 65 conditions in the licence schedule.

The Schedule

The conditions in the Schedule are declared under s.65 of the Act.

Commencement (Clause 1)

Clause 1.1 specifies that the licence comes into force on 31 December 1992.

Term of licence (Clause 2)

Clause 2.1 provides that, if not sooner revoked under section 58 of the Act, the licence ceases to have effect on 31 December 2017. The licence therefore has an initial term of 25 years.

Limitations on scope of licence (Clause 3)

Clause 3.1 states that the licensee must not install or operate an AMPS network. ("AMPS" is defined in clause 2 of the Telecommunications (Public Mobile Licences) Declaration (No.1) of 1991). This condition gives effect to the Government's decision that competition in public mobile telecommunications services should be based on digital facilities. The only AMPS network in Australia is that operated by AOTC and which is scheduled for closure by 1 January 2000. Under its licence AOTC is required to supply AMPS airtime to other mobile licensees.

Clause 3.2 provides that the licensee must not commence services as a carrier before 30 June 1993. This condition is required by clause 2.3 of the Section 70 Agreement (Public Mobile Licence) between Optus and the Commonwealth. While this condition prevents Arena GSM from supplying services as a carrier before the specified date, it does not prevent it from otherwise benefiting from its status as a public mobile carrier or from reselling mobile services acquired, at a non-preferential rate, from another carrier.
Further to clause 3.2, clause 3.3 provides that the licensee must not acquire AMPS airtime on a preferential basis (as provided for in clause 13.1 of the Telecommunications (Public Mobile Licences) Declaration (No.1) of 1991) and resell such airtime before 30 June 1993. This condition recognises that the supply of such airtime is a right only available to a carrier entitled to supply services. As noted in relation to clause 3.2, the third mobile carrier will not have this right before 30 June 1993.

Clause 3.4 provides that nothing in 3.2 and 3.3 prevents the licensee supplying before 30 June 1993 AMPS services based on AMPS airtime not acquired on a preferential basis.

**Majority Australian Ownership** (Clause 4)

Clause 4.1 provides that on and after 1 July 2003 foreign persons must not hold 50% or more of the total issued shares of Arena GSM. This gives effect to the Government's decision that the third mobile licence should be majority Australian owned after 10 years. "Foreign person" has the meaning given to it in s.5 of the Foreign Acquisitions and Takeovers Act 1975.

Clause 4.2 provides that Arena GSM must enter into an agreement (on a commercial-in-confidence basis) with the Commonwealth for achieving majority Australian ownership. The agreement is to be on a commercial-in-confidence basis because the licensee's commercial interests could be affected if its plans for achieving majority Australian ownership became publicly known.

**Network Rollout** (Clause 5)

Clause 5.1 provides that no later than 31 December 1996, the licensee must have offered, and be in a position to supply, mobile services by means of digital facilities to areas in Australia in which not less than 80% of the population of Australia reside.

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

Clause 5.2 provides that Arena GSM must enter into an agreement (on a commercial-in-confidence basis) with the Commonwealth for achieving its network roll-out obligation. The agreement is to be on a commercial-in-confidence basis because the licensee's commercial interests could be affected if its network roll-out plans became known to its competitors.