EXPLANATORY STATEMENT

Section 26 – Legislative Instruments Act 2003
VARIATION TO LICENCE AREA PLAN FOR LITHGOW RADIO – NO. 1 OF 2008 MADE UNDER THE BROADCASTING SERVICES ACT 1992

In accordance with the Australian Communications and Media Authority Act 2005, from 1 July 2005 the Australian Communications and Media Authority (ACMA) exercises powers and functions under the Broadcasting Services Act 1992 (BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On XX April 2008, ACMA made a variation to the Licence Area Plan (LAP) for Lithgow Radio. The variation was made under section 26(2) of the BSA and is referred to in this explanatory statement as “the instrument”.

The licence area plan and variations
ACMA prepares LAPs under section 26(1) of the BSA. LAPs determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands.

ACMA may, by legislative instrument, vary licence area plans under section 26(2) of the BSA.

The ABA made the LAP for Lithgow Radio on 14 May 1997, and varied it on 16 December 1999. The LAP for Lithgow Radio, as varied, is referred to in this explanatory statement as “the instrument”.

Intended impact and effect
In relation to broadcasting services, the instrument varies the operating conditions for national and commercial radio services in Lithgow by:

- making spectrum available and specifying additional technical specifications for national radio broadcasting services to serve the general area of Lithgow;
- changing the technical specifications of the commercial radio broadcasting services for the Lithgow RA1 licence area (which is determined under the licence area plan); and
- determining that the licence area of the commercial radio broadcasting service with the service licence number (SL) 10279, broadcasting as 2ICE, will be the Lithgow RA1 licence area.

The intended impact and effect of these variations is to:

- facilitate the provision of additional national radio broadcasting services to the Lithgow area;
- facilitate provision of commercial radio broadcasting services to the area of Katoomba within the Lithgow RA1 licence area by providing more appropriate technical specifications for those services; and
- authorise the broadcast of those commercial services to the same area.

The instrument also makes variations of a minor and administrative nature to:

- vary the definition of the licence areas so that they are described against terms used by the Australia Bureau of Statistics in the 2001 Census and are consistent
with the most recent determination of populations of licence areas made under section 30 of the BSA;

- delete references to technical specifications that are no longer used;
- correct previous drafting errors; and
- delete information, included for reference only, that does not form part of the licence area plan and which may create confusion.

ACMA intends for these variations to clarify the rights and responsibilities of commercial and community radio broadcasting licensees in the Lithgow area. ACMA does not intend the variation to alter those rights and obligations.

**Regulatory impact statement exemption**

ACMA’s SES contact officer for the Government’s regulation impact analysis arrangements is of the view that the instrument has no or low regulatory impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS reference number is 044.

**Consultation and Submissions**

**National services**

In 2004, the Government advised ACMA of its intention to make ABC services available to areas around Australia with populations of 10,000 and above, subject to spectrum availability. ACMA conducted engineering assessments to identify any spectrum availability, including availability of spectrum in the Lithgow area.

**Commercial services**

Between 2004 and 2007, the ABA and, subsequently, ACMA received unsolicited requests from the licensee of the commercial radio broadcasting services 2LT and 2ICE for amendments to the technical specifications for their respective services.

**Public consultation**

Before making a decision to vary the licence area plan, ACMA undertook the following consultation:

On 9 January 2008, ACMA published the following papers on its website:

- a draft variation to the licence area plan; and
- an explanatory paper about the changes proposed in the draft variation, inviting public comment by 15 February 2008.

On 16 and 17 January 2008, ACMA placed an advertisement in the “Blue Mountains Gazette” and “Lithgow Mercury” newspapers outlining the effect of the draft variation on the licence area plan providing details on how to obtain copies of the draft variation, how to access it on ACMA’s website and inviting public comment.

On 15 January 2008, ACMA wrote to licensees providing radio broadcasting services to the Lithgow licence area to advise them of the release of the draft variation and related explanatory papers, and to invite their comments.
At this time, ACMA also wrote to industry bodies and other interested agencies or organisations, including the Community Broadcasting Association of Australia, Commercial Radio Australia Ltd, FREE TV Australia, Broadcast Australia and Air Services Australia, to advise them of the release of the draft variation and explanatory papers and to invite their comments.

ACMA received seven submissions on the draft proposal and explanatory paper.

**Description of the provisions of the instrument**

Clause (1)(a) of the instrument varies the text of the determination in the licence area plan to number each of the paragraphs in the determination consecutively as clauses.

Clause (1)(b) of the instrument varies the text in clause (2) of the determination in the licence area plan so that it refers to the additional national broadcasting services to be available and so that it refers to the relevant technical specifications detailed in Attachments 1.2 – 1.13.

Clause (1)(c) of the instrument varies the text of the determination in the licence area plan to insert a new clause that will ensure that references are included to schedules or attachments that have been amended from time to time by ACMA.

Clause (2)(a), (b) and (c) of the instrument deletes all text appearing immediately under the heading “SCHEDULES” (including the heading itself). The paragraphs contained information, included for reference, that does not form part of the licence area plan and which may be confusing.

Clause (3) of the instrument varies the schedules to the licence area plan. This schedules sets out details of the national and commercial radio broadcasting services that are to be available on particular frequencies in the Lithgow licence area. In particular, the schedules provide the technical specification numbers for the transmitters to be used by the services and specify the attachments which contain the technical specification for each of those transmitters.

Clause 3(a) of the instrument omits Schedule One of the licence area plan and substitutes Schedule One of the instrument. Schedule One provides details of the services to be available in the Lithgow RA1 licence area. The substituted Schedule One includes information about additional national services and the commercial radio broadcasting service previously available in the Lithgow RA3 area and provides for it to be available in the Lithgow RA1 licence area.

Clause 3(b) of the instrument omits Schedule Three of the licence area plan, removing the previously defined Lithgow RA3 area.

Clause (4)(a) and (h) of the instrument omits Attachment 1.1 and 2.1 of the licence area plan and substitutes Attachment 1.1 and 2.1 of this instrument.

The substituted Attachments 1.1 and 2.1 contain definitions of the Lithgow RA1 licence area and the Lithgow RA2 licence area in terms used by the Australian Bureau of Statistics in the 2001 census.

Clause (4)(b), (c) of the instrument updates Attachment 1.2 and 1.3 respectively in the licence area plan to correct previous drafting errors resulting from the December 1999 variation.
Clause (4)(e) of the instrument inserts Attachments 1.3, 1.9, 1.10, 1.11 and 1.13 of the instruments.

The inserted Attachment 1.3 contains new technical specifications for the commercial radio service available in the Lithgow RA1 licence area to facilitate its transmission to the Katoomba area on an FM frequency.

The inserted Attachments 1.9, 1.10 and 1.11 contain technical specifications for new national radio services for the Lithgow area.

The inserted Attachment 1.13 contains new technical specifications for the commercial radio service previously available in the Lithgow RA3 licence area to facilitate transmission of the service to the Lithgow RA1 licence area.

Clause (4)(f) omits Attachments 3.1, 3.2 and 3.4 from the instrument. These attachments contained the definition of the Lithgow RA3 licence area and technical specifications for a commercial radio broadcasting service for that area. That service will now be provided to the Lithgow RA1 licence area.

Clause (4)(g) of the instrument replaces the heading “Attachment 3.3” from Attachment 3.3 with the heading “Attachment 1.12”. The attachment contains technical specifications for the commercial radio broadcasting service previously available in the Lithgow RA3 licence area. These specifications will now be used by the service to provide as service to the Lithgow RA1 licence area and are to be inserted after Attachment 1.11 with other attachments relevant to that licence area.