Proposal for variation to Licence Area Plan—Bathurst radio

Submission by Midwest Radio Network Pty Ltd – 8 June 2018

Executive Summary

Midwest Radio Network Pty Ltd (Midwest) welcomes the opportunity to comment on the ACMA’s proposal to vary the Bathurst RA1 Licence Area Plan as part of the AM-FM conversion of regional solus markets as set out in the “Proposal for variation to Licence Area Plan – Bathurst radio” Consultation Paper released in May 2018 (Consultation Paper).

The ACMA’s proposal in respect of the Bathurst RA1 Licence Area Plan (LAP) will have wide ranging consequences for Midwest and the Lithgow RA1 market. Given the proximity between the Bathurst RA1 and Lithgow RA1 markets and the historical issues associated with the way power level specifications have been set for the section 39 licence in the Lithgow RA1 area, it is imperative that the ACMA considers the AM-FM conversion (including to power specifications applicable to the new 2BS FM service) and any redetermination of the Bathurst RA1 LAP in the context of the broader effects those matters will have on the Lithgow RA1 market.

In considering the AM-FM conversion in the Bathurst RA1 radio area, the ACMA should:

- address the issue of overspill predicted from the new 2BS FM service into the Lithgow RA1 area, particularly if that overspill is not a by-product of power level specifications that are required to adequately serve the original audience of the 2BS AM service in the Bathurst RA1 radio area; and

- if the ACMA is unable to address the overspill predicted to arise from the AM-FM conversion in Bathurst, address the broader disparity in power level specifications applicable to the section 39 licence in Lithgow compared to other section 39 licence in the Central NSW region to remove the competitive disadvantage and equity related issues which will follow from the ACMA’s AM-FM proposal.

1. Excessive overspill

In the Consultation Paper, the ACMA proposes that:

1. the current 2BS AM service in the Bathurst RA1 radio area will be converted to an FM Station utilising the 95.1 MHz frequency; and

2. the new 2BS FM service will have power specifications of 0°T to 70°T – 10kW, 70°T to 165°T – 5kW, and 160°T to 360°T - 10kW.

While Midwest does not necessarily object to the ACMA’s proposal, that support is conditional on the ACMA addressing the significant and excessive overspill which the ACMA has predicted to arise as a direct result of the proposal.
The ACMA recognises in its Consultation Paper that the proposed new 2BS FM service will generate a significant increase \(^1\) in overspill into the Lithgow RA1 compared to the currently operating omnidirectional 2BS AM transmission and FM infills. The ACMA has predicted an overspill of 9,200 people into the Lithgow RA1 area, \(^2\) compared to the current AM overspill into that area of 200 people (i.e. a 46X increase). This overspill will add to the significant overspill into the Lithgow RA1 from the current section 39 2BXS FM service of 11,200 people, as the ACMA has informed Midwest recently. \(^3\) This is a significantly higher level of overspill compared to the predicted overspill from the current section 39 licence in Lithgow and a converted AM service from the Lithgow RA1 area into the Bathurst RA1 area, which has been estimated to be 1,700 people on the basis of the current 1kW power level towards Bathurst. \(^4\)

Despite identifying the significant overspill in its Consultation Paper, the ACMA has failed to provide sufficient justification for that overspill predicted. The ACMA has recently indicated to Midwest that it is prepared to lift the 1kW power level specification applicable to the section 39 licence and a converted AM service in Lithgow from 1kW to 2.5kW. In a letter dated 8 May 2018, the ACMA informed Midwest that despite the overspill predicted from the new Bathurst 2BS FM service and the current section 39 licence in Bathurst, there is likely to be comparable levels of overspill from the current section 39 licence in Lithgow and a converted AM service from the Lithgow RA1 area into the Bathurst RA1 area based on a power level specification of 2.5kW of 8,100 people. Midwest does not consider these overspill values to be comparable.

As part of the ACMA approach to AM-FM conversion, the ACMA has proceeded with solus markets as it considers that issues of competition and equity within radio markets are unlikely to arise. However, given the excessive overspill predicted by the ACMA, Midwest considers that the ACMA’s proposal raises issues of competition and equity between radio areas.

The fact that overspill from Bathurst into other radio areas far exceeds the same overspill from other radio areas into Bathurst is inequitable and does not further a regulatory environment that will facilitate the development of the broadcasting industry in Australia in accordance with the objects of the *Broadcasting Services Act 1992* (BSA), creating an imbalanced playing field between broadcasters in different markets. It creates a broadcasting industry in which one radio licensee is permitted to overreach its radio area in a manner more aggressively than other licensees and generate additional revenue while placing other broadcasters (including Midwest) at a significant competitive disadvantage.

Midwest understands that overspill can be a by-product of power level specifications required for a licensee to adequately serve its own radio area.

The ACMA should consider:

- setting power level specifications in a way that represents the most proportionate outcome between minimising excessive overspill and ensuring power level

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\(^2\) An increase in overspill of 5,000 people into Lithgow and 4,200 people into overlapping licence areas between Lithgow and Katoomba, and based on the concept of overspill of the provision of a field strength higher than a rural stereo grade service is expected to be provided.

\(^3\) Letter from the ACMA to Midwest Radio Network Pty Ltd, dated 8 May 2018.

\(^4\) Letter from the ACMA to Midwest Radio Network Pty Ltd, dated 8 May 2018.
specifications ensure adequate service of the Bathurst area. This can be done by the ACMA in accordance with section 23 of the BSA, which permits the ACMA to have regard to such other matters as it considers relevant; 5 and

- other technical solutions to the excessive overspill, including setting a lower power level specification to reduce excessive overspill or requiring the use of a unidirectional antenna to minimise the extent of the overspill towards the Lithgow RA1 area.

However, if the overspill cannot be reasonably managed (e.g. using unidirectional antennas in the current case) and such power level specifications are required to ensure the new 2BS FM service is able to adequately serve the Bathurst area, then the ACMA needs to have regard to the broader implications of that decision on other radio areas, such as Lithgow, and take steps to address any imbalance that arises from that overspill in its conversion decision for the Lithgow RA1 radio area.

2. Power level specifications applicable in Lithgow

If the ACMA does not address the significant and excessive overspill into the Lithgow RA1 that will result from its proposal for the Bathurst AM-FM conversion and the power level specifications proposed, or it is not possible for the ACMA to reduce the power level specifications of the Bathurst 2BS FM service without breaching the ACMA’s principles in relation to AM-FM conversion and ensure adequate coverage to the existing 2BS AM audiences, 6 then the ACMA must address the broader issue of power levels applicable to the section 39 FM licence in the Lithgow RA1 which contributes to the disparity in overspill.

The power level specifications currently applicable to the section 39 licence in the Lithgow RA1, which the ACMA proposes to use as a starting point for the AM-FM conversion, effectively grandfathers and then builds upon an original determination by the Australian Broadcasting Authority (ABA) in 1997 in which power level specifications applicable to that service towards Bathurst were set at 1kW (1997 Decision).

While the ABA initially consulted on several section 39 licences in the Central NSW region in 1996 (including Bathurst and Lithgow) together with proposed power level specifications of 10kW omnidirectional, 7 Lithgow was subsequently removed from the general determination of LAPs and was determined separately in 1997.

The ABA’s decision to reduce the power level specifications applicable to the Lithgow section 39 licence towards Bathurst was asserted as in response to a change in transmitter site from Mount Walker to Mount Lambie and noted by the ABA to be to prevent excessive signal strengths into communities outside the Lithgow licence area. However, in the circumstances, that decision was arbitrary and inconsistent with the broader approach being taken by the ABA in relation to other section 39 licences. Subsequent decisions and

5 As the AM-FM conversion will involve a redetermination of the relevant LAP pursuant to section 26(2) of the Broadcasting Services Act 1992, the ACMA is required to have regard to the planning principles set out in section 23 of that Act.

6 That is, the principle that FM conversion should not result in any significant coverage differences for radio listeners within the affected licence areas.

7 Excluding the Orange licence area, which had power level specifications set at 5kW omnidirectional.
proposals from the ACMA in relation to power level specifications applicable to the section 39 licence in Lithgow reflect further inadequacies. In particular:

1. The Lithgow power level specifications were reduced from the proposed 10kW omnidirectional in the 1997 Decision to prevent excessive signal strength outside of Lithgow. However, based on the current Bathurst power levels, the Bathurst section 39 licensee is causing overspill into Lithgow of 11,200 people.\(^8\) This is compared to current levels of overspill of 1,700 overspill into Bathurst by the section 39 Lithgow licensee utilising currently applicable power levels of 1kW towards Bathurst. The ABA’s decision therefore involved a significant differential treatment between section 39 licensees.

That differential treatment is evident as the Bathurst section 39 licensee’s transmitter is located closer to the Lithgow area than the Lithgow section 39 licensee’s transmitter is located to Bathurst but has received more favourable treatment in relation to overspill.

2. The ‘restriction’ on the Lithgow section 39 licence’s power levels have gradually eased, starting in 1999 because of the change in frequency for the section 39 FM licence from 95.3MHz to 107.9MHz. Further to this, and as noted above, the ACMA has recently indicated it is prepared to lift the 1kW power level specification applicable to the section 39 licence in Lithgow from 1kW to 2.5kW. Therefore, while the power levels for the section 39 licence in Lithgow have the potential to be improved, the improvements do not fully make up for the lowering of the power level specifications that previously occurred.

The application of the ACMA’s principles for the AM-FM conversion places Lithgow at a significant competitive disadvantage as between radio areas, due to arbitrary and inconsistent approaches taken by the ABA historically in relation to power level specifications, and now proposed by the ACMA, in relation to power level specifications in Lithgow.

While the ACMA does not plan to achieve reciprocity in overspill, a failure by the ACMA to consider or have regard to the disparity in overspill predicted in relation to the AM-FM conversion of Bathurst and Lithgow AM services effectively results in the AM-FM conversion repeating the same mistakes that were previously made in relation to the power specifications for the Lithgow RA1, which were not set in a principled, consistent or non-discriminatory manner.

When re-determining a LAP, the ACMA must have regard to the objects of the BSA and all relevant considerations. It is unclear to Midwest how proceeding with the AM-FM conversion in the manner proposed by the ACMA will facilitate the objects of the BSA, when that conversion effectively seeks to maintain the status quo established from a historical decision that was highly flawed and caused competitive disadvantages for Lithgow.

The grandfathering of the 1997 decision has had a significant adverse commercial impact on Lithgow. If the ACMA does not address the issues raised in this paper now in the context of the AM-FM conversion, there is the potential for the inadequacies in the 1997 decision to become even more debilitating for Lithgow. Beyond the AM-FM conversion, the effects

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\(^8\) Letter from the ACMA to Midwest Radio Network Pty Ltd, dated 8 May 2018.
of any continued grandfathering of the 1997 decision will extend to future developments applicable to Lithgow, including any future rollout of DAB+ in the Lithgow RA1 area. On this basis, if the ACMA cannot address the significant overspill into Lithgow predicted from the new 2BS FM service, it should address the disparity in overspill between Lithgow and Bathurst by giving broader consideration to power level specifications applicable to the section 39 licence in Lithgow in the context of historical issues, including by reviewing the applicable power specifications of that section 39 licence which the AM-FM conversion will be guided by and where possible, establishing power level specifications that are above the proposed 2.5 kW proposal and closer to the originally proposed level of 10kW omnidirectional to achieve a greater degree of equality in overspill.

The time is right for the ACMA to substantively address the concerns raised in this submission. The viability of the Lithgow market depends on it.