



## Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL     )  
  )  
GENERAL ADMINISTRATIVE DIVISION    )     No: 2010/4470

Re: Australian Subscription Television and Radio Association  
Applicant

And: Australian Human Rights Commission  
Respondent

And: Media Access Australia  
Other Party

TRIBUNAL:            Ms G Ettinger, Senior Member

DATE:                 30 April 2012

PLACE:                Sydney

In accordance with section 34D(1) of the *Administrative Appeals Tribunal Act 1975*:

in the course of an alternative dispute resolution process, the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and

the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and

the Tribunal is satisfied that a decision in those terms is within the powers of the Tribunal and is appropriate to make.

Accordingly the Tribunal sets aside the decision of the Respondent and substitutes a decision that reflects the conditions jointly agreed by the parties and annexed to this decision.



.....

○

○

IN THE ADMINISTRATIVE APPEALS TRIBUNAL

File Number 2010/4470

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION  
Applicant

AND

AUSTRALIAN HUMAN RIGHTS COMMISSION  
Respondent

AND

MEDIA ACCESS AUSTRALIA  
Joined Party

BY CONSENT THE TRIBUNAL MAKES THE FOLLOWING ORDERS PURSUANT  
TO SECTION 55 OF THE DISABILITY DISCRIMINATION ACT 1992 (CTH):

1. Exemption

- 1.1 Each of the Entities is exempt from the operation of ss 5, 6, 7, 8, 24, 122 and 123 of the *Disability Discrimination Act 1992 (Cth)* in respect of the provision of Captioning from the date of this Order until 30 June 2015 on the condition that it complies with the conditions outlined below that are applicable to it by reason of its operation as either a Channel Provider or a Platform.

2. Conditions applicable to Channel Providers

- 2.1 Subject to clause 2.3 of these Orders, the following conditions are applicable to Channel Providers:
- (a) each Channel Provider must ensure that minimum captioning is provided in respect of each of its Channels named in the Captioning Table at the level specified for that Channel in the Captioning Table, in each of the Years set out in the Captioning Table during which the Channel is broadcast;
  - (b) if a Channel Provider launches a new Channel during the Exemption Period, the Channel Provider must ensure that minimum captioning is provided in respect of that new Channel at the level specified for a new Channel of that type in Attachment C in respect of each Year during which the Channel is broadcast;

- (c) if a Channel Provider renames a Channel, but the content and operation of the Channel remains materially the same, the captioning levels applicable to the Channel will continue to apply;
- (d) the Channel Provider will report to ASTRA on its compliance with these conditions within 28 days after the end of each relevant Year for each of its Channels;
- (e) minimum captioning levels will be measured in the manner specified in clause 2.2 of these Orders;
- (f) the minimum captioning levels for a time-shift simulcast or HD Simulcast version of a Channel are the same as the minimum captioning levels for that Channel.

2.2 The minimum captioning levels will be:

- (a) calculated on total time during which the Channel is broadcast in the applicable Year less total time during which Excluded Programming is broadcast on the Channel in the applicable Year; and
- (b) measured as at the end of each Year as applicable to that Channel.

2.3 Captioning obligations in respect of live sport

- (a) The minimum captioning levels will apply to each Channel Provider in respect of each of its Channels except that a Channel Provider providing more than one live sport Channel may aggregate its captioning obligations across its live sport Channels and a Platform may also aggregate the captioning obligations in respect of those Channels;
- (b) A 'live sport' channel means a channel that predominantly broadcasts sport by a combination of live and delayed live broadcast content, and repeats of that content, such as FOX Sports 1, FOX Sports 2, FOX Sports 3 and FOX Footy.

3. Conditions applicable to Platforms

3.1 The following conditions are applicable to Platforms:

- (a) each Platform must use its reasonable endeavours to ensure that each Channel broadcast by the Platform pursuant to a license held under the BSA is captioned at the level specified for that Channel in the Captioning Table, in each of the Years set out in the Captioning Table during which the Channel is broadcast;

- (b) if a Platform commences broadcasting a new Channel pursuant to a license held under the BSA during the Exemption Period, the Platform must use its reasonable endeavours to ensure that the new Channel is captioned at the level specified for a new Channel of that type in Attachment C in respect of each Year during which the Channel is broadcast.

#### 4. Definitions

In these Orders:

- (a) **BSA** means the *Broadcasting Services Act 1992 (Cth)*.
- (b) **Captioning** means the text presentation of dialogue and other relevant sounds that appear on screen as part of a television program's content.
- (c) **Captioning Table** means the table set out in Attachment B.
- (d) **Channel** means a channel broadcast by a Platform or a related body corporate pursuant to a subscription television broadcast license under the BSA or, if applicable, which is a licensed subscription narrowcasting service under the BSA.
- (e) **Channel Provider** means an entity named as a 'channel provider' in Attachment A.
- (f) **Entity** means the entities identified in Attachment A and their officers, employees, agents and related bodies corporate and their successors and assigns.
- (g) **Exemption Period** means the period from the date of these Orders until 30 June 2015.
- (h) **Excluded Programming** means:
  - (i) programming with several different language feeds which makes the choice of language for subtitling problematic;
  - (ii) programming that is primarily textual, including channels dedicated to onscreen program schedules or guides, community calendars;
  - (iii) music which is primarily non-vocal in nature, such as a symphony or ballet;
  - (iv) programming that is primarily non-verbal;
  - (v) programming not for general distribution to residential viewers;

- (vi) interstitials, promotional announcements and public service announcements that are 10 minutes or less in duration;
  - (vii) advertising of less than five minutes save for where advertising is provided with closed captioning in the approved format for display on an enabled channel, Platforms will use reasonable endeavours to pass through these captions, subject to technical and capacity constraints if any; and
  - (viii) programming that is broadcast in three-dimensional format.
- (i) **Platform** means an entity named as a 'subscription television platform' in Attachment A, being an entity where it or a related body corporate holds a subscription television broadcast license or licenses under the BSA and, if applicable, broadcasts a licensed subscription narrowcasting service under the BSA.
- (j) **Year** means:
- (i) in the case of an existing Channel, each financial year set out in the Captioning Table; and
  - (ii) in the case of a new Channel, each year of operation of the Channel.

## **5. Reporting**

5.1 Within 42 days of the conclusion of each Year, the Applicant will report to the Respondent on:

- (a) whether each Channel Provider has reported to the Applicant in accordance with Order 2.1(d); and
- (b) if the Channel Provider has reported to the Applicant in accordance with Order 2.1(d), whether that Channel Provider has attained the minimum captioning levels applicable to its Channels as set out in Attachment B, and where applicable Attachment C, of these Orders.

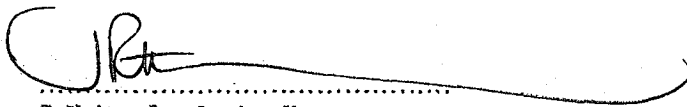
## **6. When exemption does not apply**

6.1 The exemption will not apply to an entity identified in Attachment A or its officers, employees, agents or related bodies corporate if:

- (a) the entity fails to comply with any condition which applies to it; or
- (b) the Applicant fails to comply with Order 5.1.

6.2 The exemption does not apply to any Platform or Channel Provider in respect of any of the dedicated 2012 Olympics Channels to be produced by FOXTEL Management Pty Limited on behalf of the FOXTEL Partnership and FOXTEL Cable and broadcast by one or more of the Platforms.

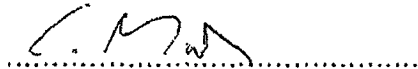
DATED: 17 April 2012



Solicitor for the Applicant  
Minter Ellison



Respondent  
Australian Human Rights Commission



Joined Party  
Media Access Australia

## ATTACHMENT A

### Subscription Television Platforms

1. Austar Entertainment Pty Limited (ACN 068 104 530)
2. FOXTEL Cable Television Pty Ltd (ACN 069 008 797) on behalf of FOXTEL Management Pty Limited (ACN 068 671 938)
3. Telstra Pay TV Pty Limited (ACN 095 931 614)

### Channel Providers

4. Aurora Community Television Limited (ACN 111 452 772)
5. Australian Christian Channel Pty Limited (ACN 083 027 276)
6. Australian News Channel Pty Limited (ACN 068 954 478)
7. BBC World Distribution Limited
8. BBC Worldwide Channels Australasia Pty Ltd (ACN 075 174 257)
9. Continental Century Pay TV Pty Limited (ACN 059 914 840)
10. Discovery Asia, Inc
11. Discovery Networks Asia-Pacific Pte Ltd
12. E! Entertainment Television Inc
13. ESPN Inc.
14. Eurosport Societe Anonyme
15. Expo Network Pty Limited (ACN 111 806 707)
16. FOX International Channels
17. FOXTEL Management Pty Limited on behalf of the FOXTEL Partnership and FOXTEL Cable (ACN 068 671 938)
18. Kids Co Limited
19. Main Event Television Pty Limited (ACN 083 297 634)
20. MTV Networks Australia Pty Limited (ACN 107 601 418)
21. NGC Network (Australia) Pty Limited (ACN 077 753 603)
22. NBCU Global Networks Asia Pte Limited
23. Nickelodeon Australia Management Pty Limited (ACN 071 493 340)
24. Pan TV Ltd (ACN 067 979 391)
25. Premier Media Group Pty Ltd (ACN 065 445 418)
26. SBS Subscription TV Limited (ACN 061 014 480)
27. Setanta Sports Australia (NSW BN98419727)
28. Sky Channel Pty Limited (ACN 009 136 010)
29. Sparrowhawk International Channels Limited
30. The Movie Network Channels Pty Limited (ACN 089 135 740)
31. The Premium Movie Partnership (NSW T0256524)
32. ThoroughVision Pty Ltd (ACN 100 040 033)
33. Turner Broadcasting System Asia Pacific, Inc
34. TVI General Entertainment Partnership



35. TVSN Channel Pty Limited (ACN 111 806 958)
36. The Walt Disney Company (Australia) Pty Ltd (ACN 003 471 029)
37. Universal Networks International (Asia) Pte Ltd
38. XYZnetworks Pty Ltd (ACN 066 812 119)
39. Any other entity which launches a new Channel during the Exemption Period.

**ATTACHMENT B**

**MINIMUM CAPTIONING LEVELS**

<b>Groups and Channels</b>	<b>Year 1 1 July 2011 to 30 June 2012</b>	<b>Year 2 1 July 2012 to 30 June 2013</b>	<b>Year 3 1 July 2013 to 30 June 2014</b>	<b>Year 4 1 July 2014 to 30 June 2015</b>
<b>Group 1</b>				
Disney Channel	55%	60%	70%	75%
FOX8				
Disney Junior				
Showcase				
Showtime Premiere				
Showtime Action				
Showtime Comedy				
Showtime Drama				
TCM				
World Movies				
<b>Group 2</b>				
111 Hits	35%	40%	50%	55%
Arena				
Cartoon Network				
Discovery				
E!				
ESPN				
FOX Classics				
FOX News				
Lifestyle Home				
Movie One				
MTV				
National Geographic Channel				
Nickelodeon				
The LifeStyle Channel				
TVI				
UKTV				
Universal				
<b>Group 3</b>				

Animal Planet	25%	30%	40%	45%
BIO				
Boomerang				
Crime & Investigation				
Discovery Home & Health				
Discovery Science				
Family Movie Channel				
LifeStyle FOOD				
LifeStyle YOU				
Movie Extra				
Movie Greats				
Nick Jr				
Sci Fi				
Starpics				
STVDIO				
The Comedy Channel				
The History Channel				
TLC				
W				
Nat Geo Adventure				
<b>Group 4</b>				
13th Street	10%	15%	20%	25%
A&E				
BBC Knowledge				
Cbeebies				
Discovery Turbo Max				
FX				
Kidsco				
Nat Geo Wild				
The Style Network				
<b>Group 5</b>				
Fox Sports I	5%	10%	12.5%	15%
Fox Sports 2				
Fox Sports 3				
Fox Footy				
FUEL TV				
Sky News				

Sky News Business				
Speed				
<b>Group 6</b>				
Channel [V]	5%	5%	5%	5%
V Hits				
CMC				
MAX				
MTV Classic				
MTV Hits				
<b>Group 7</b>				
3D Channel	0%	0%	0%	0%
Aljazeera				
Antenna				
APAC				
Aurora Community Channel				
Australian Christian Channel				
BBC World News				
Bloomberg				
CCTV News				
CNBC				
CNN				
ESPN2				
Eurosport				
Eurosportsnews				
EXPO Channel				
Fashion TV				
Fox Sports News				
MTV Live				
NITV				
OVATION				
Pay-per-view Adults only				
Pay-per-view Foxtel Box Office and On-Demand				
Pay-per-view Box Office				
Pay-per-view Main Event				
RAI				
Setanta Sports				

Sky Racing				
Sky Racing 2				
Sky Racing World				
The Weather Channel				
TVN				
TVSN				

## ATTACHMENT C

### MINIMUM CAPTIONING LEVELS FOR NEW CHANNELS

	Year 1 of operation of Channel	Year 2 of operation of Channel	Year 3 of operation of Channel
New non-exempt channel (other than sport, news or music)	10%	15%	20%
New Australian sport or news channel	5%	10%	12.5%
New music channel	5%	5%	5%
New exempt channel	0%	0%	0%

In this Attachment:

An 'Australian sport or news channel' means a channel produced in Australia which predominantly broadcasts sport or news, by a combination of live and delayed live broadcast content, and repeats of that content, provided that this does not include any of the dedicated 2012 Olympics Channels to be produced by FOXTEL Management Pty Limited on behalf of the FOXTEL Partnership and FOXTEL Cable.

A 'music channel' means a channel which predominantly broadcasts music.

An 'exempt channel' means a channel which is:

- i. an international sport or news channel;
- ii. a foreign language channel;
- iii. a pay-per-view or on demand channel;
- iv. a niche channel predominantly providing either:
  1. community television;
  2. religious programming;
  3. home shopping or consumer promotions;
  4. racing coverage;
  5. public service programming;
- v. genre-based channels with textual support;
- vi. a channel which would undergo significant hardship and risk becoming unsustainable, or at a minimum, impact programming diversity, if captioning targets were introduced; or
- vii. broadcast in three-dimensional format.