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**STATEMENT OF REASONS FOR DECISION TO MAKE AN EXEMPTION ORDER (STV/EO-389) FOR FETCHTV PTY LTD IN RESPECT OF THE SUBSCRIPTION TELEVISION SERVICE CGTN FOR THE FINANCIAL YEARS 2020 to 2025**

1. DECISION
   1. On 15 June 2021, for the reasons set out below, the Australian Communications and Media Authority (**the ACMA**) decided to make an exemption order (**the Order**) for FetchTV Pty Ltd (ACN 130 669 500) (**the Applicant**) in respect of the subscription television service, CGTN (**the Service**), for the specified eligible period of 1 July 2020 to 30 June 2025 (**the Specified Eligible Period**).
   2. The Order has been published on the ACMA’s website in accordance with subsection 130ZY(10) of the *Broadcasting Services Act 1992* (**the BSA**).
2. LEGISLATION

**Annual captioning targets**

* 1. Subsection 130ZV(1) of the BSA requires a subscription television licensee, such as the Applicant, to meet annual captioning targets for its subscription television services for each financial year commencing from 1 July 2012. An annual captioning target for a financial year is a percentage of the total number of hours of programs transmitted on the subscription television service during the financial year. The annual captioning target for a financial year is dependent on the category of subscription television service provided by a licensee.
  2. There are nine categories of subscription television services: movie service (divided into three sub-categories – Movies A, B and C); general entertainment service (divided into three sub-categories – General Entertainment A, B and C); news service; sports service; and music service).

**Application for an exemption order**

* 1. Paragraph 130ZY(1)(a) of the BSA provides that a subscription television licensee may apply to the ACMA for:

an order that exempts from subsection 130ZV(1), a specified subscription television service provided by the licensee in a specified eligible period (an **exemption order**).

* 1. An exemption order, if granted, would exempt the service from the captioning target for each financial year in the specified eligible period of the exemption order.
  2. Subsection 130ZY(4) of the BSA provides that the ACMA must not make the exemption order unless the ACMA is satisfied that a refusal to do so would impose an unjustifiable hardship on the applicant.
  3. In determining whether a failure to make the exemption order would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the matters specified in subsection 130ZY(5) of the BSA (these are addressed individually below).
  4. Subsection 130ZY(3) of the BSA provides that, if an application under subsection (1) has been made for an exemption order, the ACMA must, after considering the application, either (by writing) make the order, or refuse to make the order.
  5. Subsection 130ZY(6) of the BSA provides that, before making an exemption order under subsection 130ZY(3) of the BSA, the ACMA must:

1. within 50 days after receiving the application for an exemption order, publish on the ACMA’s website a notice:
2. setting out the draft exemption order; and
3. inviting persons to make submissions to the ACMA about the draft exemption order within 30 days after the notice is published; and
4. consider any submissions received within the 30-day period mentioned in subparagraph 130ZY(6)(a)(ii) of the BSA.
   1. Section 204 of the BSA provides that an application may be made to the Administrative Appeals Tribunal (AAT) for a review of a decision to make an exemption order under subsection 130ZY(3) of the BSA, by a person whose interests are affected by the decision.
   2. Section 205 of the BSA provides that, if the ACMA makes a decision that is reviewable under section 204 of the BSA, the ACMA is to include in the document by which the decision is notified:
5. a statement setting out the reasons for the decision, and
6. a statement to the effect that an application may be made to the AAT for a review of the decision.
7. LEGISLATIVE OBJECTIVES
   1. The purpose of captioning target requirements is to facilitate improved access to free-to-air and subscription television by Australia’s deaf and hearing-impaired community, by requiring broadcasters to caption speech and other sounds during television broadcasts.
   2. The Second Reading Speech for the 2012 Amendment Bill[[1]](#footnote-2) noted that a gradual, incremental increase in captioning targets is intended to assist Australia’s broadcasters to adjust to the increasing costs associated with the changes. The cost of providing captioning services on subscription television is a business expense which must be borne by licensees, except where, on application under section 130ZY of the BSA, a licensee is able to satisfy the ACMA that compliance with the captioning obligations would impose an unjustifiable hardship on the licensee.
   3. Paragraph 63 of the Explanatory Memorandum to the 2012 Amendment Bill states:

The priority for government is for television services to be broadcast, and where possible for those services to be broadcast with captions. It is not the intention of the government that services not be shown because captioning obligations result in unjustified hardship on broadcasters.

1. APPLICATION
   1. On 16 March 2021, the Applicant applied for an exemption order under paragraph 130ZY(1)(a) of the BSA in relation to the Service for the Specified Eligible Period.
   2. The Service’s genre falls within the captioning category of a ‘subscription television news service’, which would normally attract an annual captioning target of 45% for the financial year commencing 1 July 2020.

**The Applicant**

* 1. The Applicant is a subscription television licensee. The Applicant is an indirect wholly owned subsidiary of Media Innovations Holdings Pty Ltd.
  2. The Applicant does not, itself, provide captioning on any of its services and does not have the infrastructure to do so. The Applicant does not have the scale of captioned services to nominate any of its subscription television news services to be exempt from the annual captioning target for 2020-21 under section 130ZX of the BSA.
  3. The Applicant provides a low cost, but full service, pay TV offering which can be ‘bundled’ and distributed by its internet service provider (**ISP**) partners. The low-cost model means the Applicant’s content must largely be available at a low price point. All services are ‘pass-through’ because the Applicant has no ability to compile services itself or carry out post or pre-production by the addition of captions on content.[[2]](#footnote-3)
  4. The Applicant submits that, to the extent that it can do so, it seeks to provide popular content that may not be offered by its competitors and that, within its cost parameters, it looks for niche content.

**The Service**

* 1. The Service is a 24 hour live global news services with a special focus on China. The Service is provided by China International Communications Co Ltd (**the Channel Provider**).
  2. The Service is available as part of the linear channels packages provided by the Applicant. The packages are:
* The Fetch Entertainment Package – a legacy package
* The Fetch Ultimate Package
* The Fetch Knowledge package.
  1. The Service has not previously been broadcast with captions on the Applicant’s platform. The Applicant has been granted captioning exemption orders for the Service for each financial year since 1 July 2013.
  2. This is the Applicant’s fifth application for an exemption order for the Service. The last exemption order (STV-EO-00368), covering the period 1 July 2018 to 30 June 2020, was made by the ACMA on 26 June 2019.

1. EVIDENCE AND REASONS FOR DECISION
   1. As noted above, the ACMA must not make an exemption order unless it is satisfied that a refusal to make that order would impose an unjustifiable hardship on the Applicant. In determining whether a failure to make an exemption order would impose an unjustifiable hardship, the ACMA must have regard to each of the matters specified in subsection 130ZY(5) of the BSA, assessing their relative weight and significance.
   2. The term ‘unjustifiable hardship’ is not defined in the BSA and is to be given its ordinary and natural meaning as appropriate to the legislative context. The ACMA considers that the BSA requires it to assess the weight and significance of any hardships to the Applicant made out in the material before the ACMA, and to assess whether or not the imposition of those hardships on the Applicant is unjustifiable, having regard to the criteria specified in subsection 130ZY(5) of the BSA and the purpose and objects of the relevant statutory provisions.
   3. In reaching a decision to make the Order, the ACMA has considered
   * written representations and supporting evidence submitted by the Applicant, which also includes information provided by the Channel Provider, in support of the application
   * the submissions received by the ACMA during the consultation period for the draft order.
   1. This information is considered below by reference to each of the criteria specified in subsection 130ZY(5) of the BSA.

*Nature of the detriment likely to be suffered by the Applicant (paragraph 130ZY(5)(a) of the BSA)*

* 1. The Applicant submitted that if the ACMA does not make an exemption order with respect to the Service, it will be required to cease to provide the Service or to operate in breach of its subscription television broadcasting licence conditions. This is because:
* the Channel Provider does not currently provide the Service with captioning because the Service is not required to be captioned in the jurisdiction where it is produced (i.e. China) or in any other jurisdiction in which it is distributed
* the Channel Provider would not caption the Service for the Applicant because of the relatively small number of subscribers to the Service, when weighed against the very substantial cost of captioning.
  1. The Applicant submitted that it would suffer the following detriment from the removal of the Service:
* as the Service is a well-known and respected news source, particularly for Australian residents from a Chinese background, and adds to the breadth of news coverage provided by the Applicant, its removal would reduce the variety and breadth of the Applicant’s content and diminish the value and appeal of the Applicant as a service provider, making the Applicant’s offering less attractive to ISPs and subscribers
* ISP customers can terminate their agreements with ISPs for the provision of the Applicant’s packages if there are ‘material’ changes to the content line-up. Removal of a service increases the likelihood of customers being entitled to cancel their agreement with the ISP, which would be detrimental to both the Applicant and the ISP.
  1. The Applicant advises that licence arrangements with the Channel Provider allows for termination of the agreement to provide the Service if no exemption is granted.
  2. The Applicant advises that it is not in a position to incur the costs involved in the provision of live captioning for the Service and provided a quote from a third-party captioning provider for the cost to caption the Service (see paragraph 5.28, below).
  3. The ACMA considers that detriment would be suffered by the Applicant as a result of a failure to make the Order, because the Channel Provider does not caption the Service and cessation of the Service because of its lack of captions would diminish the value and appeal of the Applicant’s service offerings. The alternative of the Applicant paying for live captioning of the Service is not commercially viable due to the high cost, relative to the Applicant’s financial position, of live captioning a live news service meaning that cessation of the Service is probable if an exemption order is not made.

*Impact of making the exemption order on deaf or hearing-impaired viewers, or potential viewers, of the Service (paragraph 130ZY(5)(b) of the BSA)*

* 1. The Applicant submitted that the impact of making the exemption order on deaf and hearing-impaired viewers, or potential viewers, of the Service, would be limited as the Service has a small audience and that audience has viewed the Service without captions since 2013.
  2. The Applicant provided subscription figures, as at February 2021, on a confidential basis, that indicated the number of subscribers who can access the Service, and the percentage of those subscribers who have watched the Service.[[3]](#footnote-4)
  3. The ACMA accepts that a small percentage of subscribers have watched the service and that a very low number of viewers of the Service are likely to require captioned content on any given day.
  4. However, the ACMA also notes that, although the total numbers may be low, hearing-impaired viewers may make up a reasonable proportion of total viewers. The ACMA considers that making the exemption order would have an adverse impact on deaf and hearing-impaired viewers, and potential viewers. In forming this view, the ACMA notes that around 1 in 6 Australians are affected by total or partial hearing loss. [[[4]](#footnote-5)] [[[5]](#footnote-6)] [[[6]](#footnote-7)].
  5. The Applicant has cited viewer feedback which it claims indicates that the captioning of movie services is valued more highly by deaf and hearing-impaired viewers than captioning on other services, including the Service.
  6. In the longer term, the Applicant submitted that, because the failure to make an exemption order would cause the Applicant to remove the Service from its platform, this had the potential effect of decreasing the Applicant’s revenue and jeopardising the Applicant’s overall viability. This would disadvantage deaf and hearing-impaired viewers by limiting the likelihood that funds would be available to commence captioning of other services in the future.
  7. The Applicant also submitted that the effect of a refusal to grant this Application, and other applications for exemption orders submitted by the Applicant, would likely be to cumulatively reduce the commercial viability of the Applicant’s operations and endanger its business. This might lead to an outcome whereby deaf and hearing-impaired viewers, or potential viewers, of the Service (along with other viewers) lose access to the Applicant’s platform entirely, including to the Applicant’s most popular services, which are captioned.
  8. Based on the information provided in the Applicant’s submission, the ACMA considers that it is probable that the Applicant will cease to provide the Service if an exemption order is not granted.

*Number of people who subscribe to the Service (paragraph 130ZY(5)(c) of the BSA)*

* 1. The Applicant provided the following information about subscriber numbers, as at February 2021, to the ACMA on a confidential basis:
* the total number of subscribers to the Applicant’s platform
* the total number of subscribers with access to a content package that includes the Service (and therefore who can access the Service)
* the percentage (relative to total subscribers of the Applicant’s platform) of subscribers who viewed the Service
* the percentage of subscribers (relative to total subscribers accessing linear channel content) who viewed the Service through linear channel access.
  1. Having regard to the figures supplied by the Applicant in confidence, the ACMA accepts that the number of subscribers who have accessed the Service as at February 2021, was relatively low.

*Financial circumstances of the Applicant (paragraph 130ZY(5)(d) of the BSA)*

* 1. The Applicant submitted that its business plan is to provide a low-cost but full-service subscription TV offering, and accordingly the content must be largely available to the Applicant at a low price point, and cover a diverse range of services.
  2. The Applicant submitted that it is not commercially feasible for a company of the Applicant’s size and financial position to incur the extremely high costs involved in the provision of live captioning for the Service. As the Service is an international pass-through service, without any of its content captioned by the Channel Provider, live captioning is the only means of captioning available to the Applicant.
  3. The Applicant provided details of its financial circumstances on a confidential basis. These included consolidated financial statements for its corporate group for the financial year ended 30 June 2020.
  4. Based on the information provided, the ACMA accepts that it is not commercially viable for the Applicant to incur the costs of captioning the Service to the prescribed 45% target in 2020-2021, independently of the Channel Provider, and that not making the exemption order would impose an unjustifiable financial hardship on the Applicant.
  5. The ACMA is also of the view, based on the information in the Application, that unless the circumstances of the Applicant change significantly over the remainder of the Specified Eligible Period, it will not be commercially feasible for the Applicant to incur the costs of captioning the Service to the prescribed targets as they increase (by 5% each financial year) up until 30 June 2025.
  6. The ACMA considers, based on confidential information provided by the Applicant including information about its forward business planning, that not making the exemption order for the entire Specified Eligible Period is likely to involve unjustifiable financial hardship for the Applicant.

*Expenditure that would be required to caption the Service if the exemption order was not made (paragraph 130ZY(5)(e) of the BSA)*

* 1. As noted above, the Applicant submits that the captioning expenditure is unaffordable for small providers such as the Applicant, for a single service.
  2. The Applicant noted that, if it was required to caption the Service to the annual captioning target, it would be required to live caption it, as it is a pass-through service. The Applicant has no ability to compile the Service or carry out post or pre-production by the addition of pre-prepared captions on the content.
  3. The Applicant provided a third-party quote of the costs to provide 45% captioning for the Service to meet the annual captioning target in 2020-2021, amounting to $1,222,200, with a recurring cost of $1,117,200 for future years. The costs comprise the following:
* $1,058,200 to live caption the Service to the captioning target in each year
* $105,000 non-recurring costs of setting up the captioning infrastructure for the first year, and
* $59,000 recurring annual infrastructure costs after the first year.
  1. The ACMA presumes that the live captioning component of these costs would increase in future years in accordance with the 5% annual increase to the captioning targets for subscription television news services.
  2. The Applicant has submitted that complying with the captioning obligations for the Specified Eligible Period by way of providing live captioning on the Service is not financially viable, given its financial circumstances.

*Extent to which captioning services for television programs are provided by the Applicant (paragraph 130ZY(5)(f) of the BSA)*

* 1. In its annual compliance report for 2019-2020, provided in accordance with subsection 130ZZC(5) of the BSA, the Applicant indicated that captioning was provided on 44 of its 64 subscription television services in the period from 1 July 2019 to 30 June 2020.[[7]](#footnote-8) All the captioning was provided by third-party channel providers of those services. Two services met, but did not exceed, their targets. In 38 cases the Applicant reported that it exceeded the annual captioning targets. The Applicant has reported that 4 services provided captioning but did not meet the required captioning target.
  2. Of the remaining 20 services that were not captioned in 2019-2020, 19 were exempt from captioning targets (of these 19, 15 had exemption orders in force, one was a ‘new’ service and 3 were exempt under subscription television category exemption rules).[[8]](#footnote-9) The remaining service did not meet its captioning target.
  3. Eleven services provided by the Applicant in 2019‑2020, including the Service, were subscription television news services. Of these, 8 were exempted from the captioning targets under exemption orders.

*Likely impact of a failure to make the exemption order on the quantity and quality of television programs transmitted on subscription television services provided by the Applicant (paragraph 130ZY(5)(g) of the BSA)*

* 1. The Applicant submitted that, if the ACMA does not make an exemption order, the Applicant would need to remove the Service from its platform.
  2. Based on the information provided in the Application, the ACMA considers that this would probably occur.
  3. The ACMA considers that cessation of the Service would reduce the quantity of subscription television news programs offered on the Applicant’s platform and may impact the viability of the platform as a whole, as the loss of services would tend to make the platform less attractive to subscribers, compared to competing platforms.
  4. This would potentially constrain the Applicant’s future capacity to transmit television programs on the platform.

*Whether the Applicant has applied, or has proposed to apply, for exemption orders or target reduction orders in relation to any other subscription television services provided by the Applicant (paragraph 130ZY(5)(h) of the BSA)*

* 1. The Applicant has made applications for 12 exemption orders and 4 target reduction orders for periods of 1, 2, 3 or 5 years commencing from 1 July 2020.

*Other matters as the ACMA considers relevant (paragraph 130ZY(5)(i) of the BSA)*

* 1. There are no other matters the ACMA considers relevant in respect of this application.

1. **RESPONSE TO SUBMISSIONS RECEIVED** 
   1. The ACMA received submissions in response to the draft exemption order published on 4 May 2021 from the Centre for Inclusive Design (CFID) on 1 June 2021 and from the Australian Communications Consumer Action Network (ACCAN) on 3 June 2021.

**CFID submission**

* 1. CFID’s submission included the following:

In the Explanatory Memorandum accompanying the legislation to amend the *Broadcasting Services Act*, the intent of the Parliament is made clear in regards to the purposes of the amendments. Paragraph 93 states quite clearly: ‘The over-arching policy is for a subscription television licensee to meet annual captioning targets, that will increase in time, in respect of particular categories of subscription television services that are required to be captioned. Incremental improvements in the accessibility of television services are consistent with the objectives of the DDA [*Disability Discrimination Act 1992*].’

In simple terms, the purpose of the amendment is to improve access to television, not provide a simple administrative process by which licensees seek to avoid their captioning obligations. In light of this we regard the granting of an exemption as an exceptional circumstance that is provided as a last resort and for a minimum timeframe. In granting an exemption we believe that a full and public process outlining clear reasons for the temporary exemption should be provided so that both the public and Parliament are satisfied that it is truly exceptional circumstances.

* 1. Noting that the ACMA granted preliminary exemption orders to 12 services provided by the Applicant ‘for six financial years, from 1 July 2020 to 30 June 2025’, CFID also submitted that:

Fetch TV, which began in 2010, has no captioning infrastructure, although it passes through pre-existing captions on some channels. There is no indication that Fetch TV intends to put any captioning infrastructure in place in the future.

The applications give estimates of setting up captioning infrastructure, and annual costs for captioning […] The ACMA has accepted that the introduction of captioning would constitute ‘unjustifiable hardship’ for Fetch TV. However, the ACMA has not stated how it defines this, so there is no indication of how profitable Fetch TV would need to become before it is required to deliver captioning.

* 1. CFID also referred to approaches to granting exemptions that are undertaken in other jurisdictions, such as the UK and USA as alternative processes that the ACMA could follow.

**ACMA response**

* 1. The ACMA acknowledges that, as set out in the paragraph from the Explanatory Memorandum to the 2012 Amendment Bill cited in the CFID submission, the general policy for the introduction of the captioning requirements for subscription television licensees in Division 3 of Part 9D of the BSA is for a subscription television licensee to meet annual captioning targets that increase incrementally each financial year.
  2. However, the ACMA also notes that this general policy is intended to be subject to exemptions from the obligation to caption at the prescribed level in certain circumstances. The ACMA has referred to paragraph 63 of the Explanatory Memorandum (at paragraph 3.3 above) and further notes paragraph 95 of the Explanatory Memorandum, which states:

It is intended that all subscription television services would be captioned to the required level, as set out in the relevant annual captioning target, unless the service is exempt in accordance with proposed section 130ZX or 130ZY.

* 1. The ACMA acknowledges that the Specified Eligible Period in the Order is from 1 July 2020 to 30 June 2025 (while noting that this is a period of 5 consecutive financial years, not 6, as claimed in the CFID submission).
  2. In paragraph 5.2 above, the ACMA has explained its approach to applying the term ‘unjustifiable hardship’, and the balance of these reasons for decision explain why the ACMA is satisfied, having regard to the matters specified in subsection 130ZY(5) of the BSA, that a refusal to make the Order for the Specified Eligible Period would impose an unjustifiable hardship on the Applicant.
  3. The ACMA notes references in the CFID submission to the approaches to captioning regulation taken by regulators in the UK and the USA, but considers them irrelevant since the ACMA must apply the law as enacted by the Australian Parliament.

**ACCAN submission**

* 1. ACCAN’s submission included the following:

ACCAN’s long held concern that Australian consumers who rely on closed captions struggle to have the same functional access to television services as other Australians has not changed since we last submitted to the ACMA’s draft exemption and target reduction orders. […]

[C]losed caption requirements have been part of the Australian subscription television market legislative framework since 2012. Under the previous model, in which the Australian Human Rights Commission presided over the exemption process, subscription services needed to provide tangible evidence that they were working towards meeting their legislative obligations; legislation designed to ameliorate disability discrimination. ACCAN urges the ACMA to apply this principle to the current exemption process. ACCAN is concerned that there has been no commitment from the applicants to investigate opportunities to meet their legislative obligation, nor any stipulation from the ACMA that the applicants take any pro-active measures to address their legislative obligation into the future.

[…]

In the interest of providing equitable access for all Australians to our changing media environment, ACCAN strongly recommends that the ACMA deny [the Application]. This recommendation is based on the lack of evidence that the applicants are taking bona fide steps to meet their captioning obligations beyond the exemption period.

* 1. ACCAN’s submission also stated:

[I]t is ACCAN’s position that [the Application] for a five-year exemption is particularly unacceptable. There have been no captions for [the Service] on the Applicant’s platform as they have been granted captioning exemption orders since 2013. Given [the] previous exemptions and the extended period of time covered by [the Application], ACCAN believes it is inappropriate for the Applicant to be granted [the exemption]. Additionally, the period of time covered by this application is excessive given the Government’s *Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021*, which proposes amendments to the *Broadcasting Services Act 1992* and would provide subscription television captioning rules to be made by legislative instrument.

**ACMA response**

* 1. The ACMA acknowledges that a lack of captioning on the Service adversely impacts the viewing experience of the deaf and hearing-impaired audience and, accordingly, that making the Order will have some detrimental effect for viewers, or potential viewers, of the Service who are deaf or hearing impaired.
  2. The ACMA also acknowledges that:
* in granting the Order the ACMA is exempting the Service from captioning for a 5-year Specified Eligible Period (ending on 30 June 2025), and
* the Applicant has not provided captioning for the Service since 2013.
  1. In deciding to make the Order, the ACMA was satisfied that a refusal to make the Order would impose an unjustifiable hardship on the Applicant, and, based on the information provided by the Applicant, including confidential financial and subscriber information, that the unjustifiable hardship would continue for the duration of the Specified Eligible Period.
  2. In the ACMA’s view, the Applicant’s record of not captioning the Service in previous years was because in those years it was not financially viable for the Applicant to do so. On the previous occasions when the ACMA granted an exemption order for the Service, the ACMA was satisfied that a refusal to make the exemption order would have imposed an unjustifiable hardship on the Applicant.
  3. The ACMA notes that the provisions under which the Applicant applied for, and the ACMA has made, the Order will be repealed if Parliament enacts the *Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021* and a commencement day for Schedule 2 to that Bill is fixed by Proclamation. However, the ACMA is required to consider the application submitted by the Applicant in accordance with the provisions of section 130ZY of the BSA as currently in force.

1. **CONCLUSION**
   1. In summary, the ACMA has decided that a refusal to make the Order would impose an unjustifiable hardship on the Applicant because:

* as a pass-through provider of the Service, it is not possible for the Applicant to contract with the Channel Provider to provide pre-prepared captioning for the Service, because the Channel Provider does not offer this option and has advised it is not likely that this will change during the Specified Eligible Period
* having regard to the financial information provided by the Applicant (including revenue from subscribers) and the quoted costs of providing live captioning, it is not commercially viable for the Applicant to provide live captioning for the Service as the cost would be prohibitive relative to the revenue generated for the Applicant by the Service, and it is not likely that it would become commercially viable for the Applicant to provide live captioning within the Specified Eligible Period
* if the ACMA were not to make an exemption order, the Applicant would be unable to meet the prescribed captioning target for the Service, making it probable that the Applicant would cease to provide the Service to avoid being in breach of the BSA, which would have consequential detriment for the appeal of its service offerings, and the operations of its business.

1. APPEAL RIGHTS
   1. Under section 204 of the BSA, a person whose interests are affected by the decision to make an exemption order may apply to the AAT for a review of the ACMA’s decision. The AAT can, among other things, confirm or vary the ACMA’s decision, or set aside the ACMA’s decision and replace it with its own decision.
   2. Section 29 of the *Administrative Appeals Tribunal Act 1975* states that an application to the AAT for a review of a decision shall be in writing and must contain a statement of the reasons for the application, identifying the respects in which the applicant believes that the decision is not the correct or preferable decision. The AAT has a form which can be used for this purpose. The application must be made within 28 days of the date that the notice of the ACMA’s decision is received. The application fee of $952 must accompany an application for review by the AAT. An application may be made to the AAT for a reduction of the application fee, and the application form for this can be obtained from the AAT.
   3. Further information about making an application for review is available on the AAT website at www.aat.gov.au or by telephone on 1800 228 333. The postal address for the AAT is GPO Box 9955 in each capital city.

1. *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012* – Second Reading Speech before the House of Representatives on 30 May 2012, available at <https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/4a17e30d-c43b-48b9-83ed-4280fc00314c/0029/hansard_frag.pdf;fileType=application%2Fpdf>. [↑](#footnote-ref-2)
2. A pass-through service is one obtained under a licensing agreement from the Channel Provider. [↑](#footnote-ref-3)
3. The figures indicate the number of subscribers who have accessed the Service at least 4 times in a month for more than 3 minutes. [↑](#footnote-ref-4)
4. 2012 Year Book Australia, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Health%20status~229> [↑](#footnote-ref-5)
5. Access Economics: Listen Hear! The economic impact and cost of hearing loss in Australia, February 2006 located at <http://apo.org.au/node/2755> [↑](#footnote-ref-6)
6. Roadmap for Hearing Health, Department of Health, February 2019 located at

   <https://www1.health.gov.au/internet/main/publishing.nsf/content/CDFD1B86FA5F437CCA2583B7000465DB/$File/Roadmap%20for%20Hearing%20Health.pdf> [↑](#footnote-ref-7)
7. Cartoon Network, Boomerang and CNN ceased being included in the Applicant’s linear channels packages on 24 April 2021. [↑](#footnote-ref-8)
8. Under section 130ZX of the BSA, where a subscription television licensee meets its captioning targets for a specified minimum number of services in a specific category of service (i.e. movie, general entertainment, news, sports or music) in a financial year, the licensee may nominate other services in that category in excess of the minimum number that are then exempt from the annual captioning target for that category in that year. [↑](#footnote-ref-9)