Investigation report no. BI-616

| Summary |  |
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| **Licensee** | WIN Television Vic Pty Ltd |
| **Station** | 107 || WINHD || VTV |
| **Type of service** | Commercial Television Broadcasting |
| **Program** | Nine News |
| **Dates of broadcasts** | 1 to 4 July 2021 |
| **Relevant legislation** | *Broadcasting Services Act 1992*(**the BSA**):   * Subsection 130ZR(1) of Part 9D [licensee must provide a captioning service for programs transmitted on main channel between 6am and midnight daily] * Paragraph 7(1)(o) of Schedule 2 [licence condition to comply with Part 9D] |
| **Findings** | * Breach of subsection 130ZR(1) of Part 9D [licensee must provide a captioning service for programs transmitted on main channel between 6am and midnight daily]. * Breach of paragraph 7(1)(o) of Schedule 2 [licence condition to comply with Part 9D]. |
| **Attachments** | **A** – Complaint to the ACMA  **B** – Licensee’s submissions to the ACMA |

Background

The *Nine News* (the **Program**) is broadcast by WIN Television Vic Pty Ltd (the **licensee**). The Australian Communications and Media Authority (the **ACMA**) received a complaint that between 1 and 4 July 2021, episodes of the Program were broadcast without captions on the WIN Network in the Regional Victoria TV1 licence area. A copy of the complaint made to the ACMA is at **Attachment A**.

On 27 August 2021, the ACMA commenced an investigation into the complaint under the *Broadcasting Services Act 1992* (the **BSA**).

The ACMA has investigated the licensee’s compliance with:

* subsection 130ZR(1) of Part 9D of the BSA; and
* paragraph 7(1)(o) of Schedule 2 to the BSA.

The program

The Program comprises several distinct segments, including news, sport and weather. The program, approximately 60 minutes in duration, is broadcast daily from 6.00pm to 7.00pm.

Assessment and submissions

The ACMA has assessed whether the licensee has complied with the requirement to provide a captioning service for the Program broadcast between 1 and 4 July 2021. The outcome of this assessment will determine whether the licensee has breached the licence condition.

This investigation has taken into account the complaint (at **Attachment A**) and submissions from the licensee (at **Attachment B**).

Issue 1: Did the licensee provide a captioning service for the Program broadcast between 1 and 4 July 2021?

Relevant provisions of the BSA

**Subsection 130ZR(1)**

(1)  Each commercial television broadcasting licensee […] must provide a captioning service for:

(a)  television [programs](http://classic.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s130zk.html#program) transmitted during [designated viewing hours](http://classic.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s130zk.html#designated_viewing_hours); and

(b)  television [news or current affairs programs](http://classic.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s130zk.html#news_or_current_affairs_program) transmitted outside [designated viewing](http://classic.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s130zk.html#designated_viewing_hours) [hours](http://classic.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s130zk.html#designated_viewing_hours).

**Section 130ZL - Designated viewing hours**

Programs transmitted on or after 1 July 2014

(2)  For the purposes of the application of this Part to programs transmitted on or after 1 July 2014, designated viewing hours are the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Finding

The licensee failed to provide a captioning service for the Program transmitted during designated viewing from 1 to 4 July 2021, consequently the ACMA’s finding is that the licensee has breached subsection 130ZR(1) of Part 9D of the BSA.

Reasons

Subsection 130ZR(1) at Part 9D of the BSA provides that licensees must provide a captioning service for television news programs transmitted during designated viewing hours. The Program was broadcast between 6pm and 7pm on each night between 1 and 4 July 2021.

In response to the ACMA’s request for an audio-visual copy of the Program, as broadcast with captions, the licensee advised on 26 July 2021 that it was unable to provide copies of the relevant broadcasts as:

*[…] there was no captions available on the SD transmission (CH8) of the Melbourne Channel Nine News in the Gippsland area. Captions were available on the HD version (CH80) of the Channel Nine Melbourne News on those dates, but a recording of the HD service is not available because the HD recording is derived from the HD service as a down conversion to SD where the captions were not present.*

*This was investigated at the time by a local Manager who we asked to confirm what was airing on both CH8 Nine SD and CH80 Nine HD confirming no captions present on 9 SD and captions present on 9 HD.*

As the licensee has indicated in its submission, the Program broadcast between 1 and 4 July 2021 was not captioned.

**Issue 2: Did the licensee comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA?**

Relevant provisions of the BSA

**Schedule 2—Standard conditions**

**Clause 7 Conditions of commercial television broadcasting licences**

1. Each commercial television broadcasting licence is subject to the following conditions:

[…]

(o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision.

Finding

As the licensee failed to comply with subsection 130ZR(1) of Part 9D of the BSA which applied to it, the ACMA’s finding is that the licensee has breached the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

Reasons

By failing to provide a captioning service for the Program broadcast from 1 to 4 July 2021, in compliance with subsection 130ZR(1) of Part 9D of the BSA, the licensee failed to comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

Attachment A

Complaint

**Extract from complaint dated 4 July 2021 to the ACMA**

No captioning on Nine News.  
  
Captioning is available to us on regular programming from Channel Nine, but captioning ceases with the evening news every day. It restarts after the news finishes. The preview to the news even has closed captions.

Attachment B

Licensee’s response and submissions to the ACMA

***Licensee’s response of 26 July 2021 to the ACMA:***

With reference to your email dated Friday 16th of July referring to loss of captions on the Channel 9 News between the 1st and 4th of July 2021.

WIN is aware that we had a loss of captions on the Melbourne Channel 9 news in the Gippsland market which includes Paynesville.

**“Please advise which WIN Network licensee broadcasts Channel Nine evening news in Paynesville.”**

WIN Television Victoria Pty Ltd is the licensee of Regional Victoria TV 1 local market Gippsland.

**“Please provide a copy of the programs as broadcast (including captions).”**

Recording not provided because WIN confirms the viewer’s complaint was correct that there were no captions available on the SD transmission (CH8) of the Melbourne Channel Nine News in the Gippsland area. Captions were available on the HD version (CH80) of the Channel Nine Melbourne News on those dates but a recording of the HD service is not available because the HD recording is derived from the HD service as a down conversion to SD where the captions were not present.

This was investigated at the time by a local Manager who we asked to confirm what was airing on both CH8 Nine SD and CH80 Nine HD confirming no captions present on 9 SD and captions present on 9 HD.

**“Are you aware of any issues that would have affected quality/delivery of the captions for the Program? If so, please provide details.”**

Yes, WIN are aware of an issue that affected the SD broadcast of the Channel 9 News (Melbourne) into the Gippsland local market on those dates. The issue was a faulty captioning inserter at the Affiliate broadcast centre (NPC) which sits between Channel 9 Melbourne studio and WIN Broadcast Centre (MediaHub). The faulty device only affected the down conversion by adding extraneous data in the signal which corrupted the down conversion process, therefore not allowing the pass-through of captions to the SD (CH8) broadcast of the Channel Nine Melbourne News. NPC have now replaced the faulty device which is now allowing captions to be processed to the down converted SD broadcast signal for Channel 9 News Melbourne.

***Licensee’s response of 13 December 2021 to the ACMA:***

With regards to ACMA - BI-616 - Preliminary Findings - Investigation about lack of captions Nine News 1-4 July 2021, […] As NPC have rectified the problem, we do not anticipate that it will be a problem in the future.