

## Investigation report no. BI-615

Summary	
<b>Licensee</b>	Mildura Digital Television Pty Ltd
<b>Station</b>	1150827    NINE    MDV
<b>Type of service</b>	Commercial Television Broadcasting
<b>Name of program</b>	<i>Judge Judy (21 July 2021 – 3:08pm)</i>
<b>Date of broadcast</b>	21 July 2021
<b>Relevant Legislation/Standard</b>	<ul style="list-style-type: none"> <li>&gt; <i>Broadcasting Services Act 1992 (the <b>BSA</b>):</i> <ul style="list-style-type: none"> <li>• Paragraph 130ZR(1)(a) of Part 9D [licensee must provide a captioning service for programs transmitted on main channel between 6 am and midnight daily].</li> <li>• Subsection 130ZZA(4) [compliance with captioning standard by a commercial broadcaster].</li> <li>• Paragraph 7(1)(o) of Schedule 2 [licence condition to comply with Part 9D].</li> </ul> </li> <li>&gt; <i>Broadcasting Services (Television Captioning) Standard 2013 (the <b>Standard</b>)</i></li> </ul>
<b>Findings</b>	<p>No breach of paragraph 130ZR(1)(a) of the BSA [licensee must provide a captioning service for programs transmitted on main channel between 6 am and midnight daily].</p> <p>No breach of subsection 130ZZA(4) of the BSA [commercial television licensee to comply with the Standard].</p> <p>No breach of paragraph 7(1)(o) of Schedule 2 to the BSA [licence condition requiring commercial television broadcasting licensee to comply with applicable provisions in Part 9D of the BSA].</p>
<b>Attachments</b>	<p>A – Complaint to the ACMA</p> <p>B – Relevant provisions of the Standard</p> <p>C – Licensee’s submissions to the ACMA</p>

## Background

The Australian Communications and Media Authority (the ACMA) received a complaint that the episode of *Judge Judy* broadcast by Mildura Digital Television Pty Ltd (the **Licensee**) on 21 July 2021 (the **Program**) was not accompanied by a captioning service. A copy of the complaint to the ACMA is at **Attachment A**.

On 1 September 2021, the ACMA commenced an investigation into the complaint under the BSA.

The ACMA has investigated the licensee's compliance with:

- > paragraph 130ZR(1)(a) of the BSA
- > subsection 130ZZA(4) of the BSA
- > paragraph 7(1)(o) of Schedule 2 to the BSA.

## The Program

*Judge Judy* is an American arbitration-based reality court show presided over by former Manhattan Family Court Judge Judith Sheindlin.

## Legislative framework

Paragraph 130ZR(1)(a) of the BSA imposes an obligation on licensees to provide a captioning service for programs transmitted on a main channel during 'designated viewing hours' defined under subsection 130ZL(2) as being between 6 am and midnight daily.

Subsection 130ZZA(4) of the BSA imposes an obligation on licensees to comply with the *Broadcasting Services (Television Captioning) Standard 2013* (the Standard) determined by the ACMA under subsection 130ZZA(1) of the BSA.

The Standard establishes minimum requirements relating to the quality of captioning services on television<sup>1</sup>. Specifically, the Standard requires captions to be readable,<sup>2</sup> accurate<sup>3</sup> and comprehensible,<sup>4</sup> so that they are meaningful to viewers who are deaf or hearing-impaired.<sup>5</sup>

A 'captioning service' is defined in section 4 of the Standard as 'a service in which captions are provided for programs, that enable the viewer to follow the speakers, dialogue, action, sound effects and music of a program'.

'Captions' are defined in section 4 of the Standard as 'the visual translation of the soundtrack of a program in English, in word form'.

Section 6 of the Standard sets out factors that must be considered when determining the quality of a captioning service. It stipulates that the quality of a captioning service for a program must be considered in the context of the program as a whole.<sup>6</sup> When determining the quality of a captioning service for a program, the cumulative effect of the readability, accuracy and comprehensibility of the captions must be considered.<sup>7</sup>

Relevant provisions of the Standard are provided at **Attachment B**.

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<sup>1</sup> Section 5 of the Standard.

<sup>2</sup> Paragraph 7(a) of the Standard.

<sup>3</sup> Paragraph 8(a) of the Standard.

<sup>4</sup> Paragraph 9(a) of the Standard.

<sup>5</sup> see section 3 .

<sup>6</sup> Paragraph 6(a) of the Standard.

<sup>7</sup> Paragraph 6(c) of the Standard.

## Assessment of the Program

The ACMA assessed a copy of the broadcast provided by the Licensee. The ACMA has also taken into account the Licensee's submissions (at **Attachment C**).

### Issue 1: Did the Licensee comply with paragraph 130ZR(1)(a) of the BSA?

#### Relevant provisions of the BSA

##### 130ZR—Captioning obligations

*Basic rule*

- (1) Each commercial television broadcasting licensee [...] must provide a captioning service for:
  - (a) television programs transmitted during designated viewing hours; [...]

##### 130ZL— Designated viewing hours

[...]

- (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

A captioning service was provided for the Program broadcast on 21 July 2021 and, accordingly, the Licensee did not breach paragraph 130ZR(1)(a) of the BSA.

## Reasons

The Licensee advised that some viewers might not have been able to access the captioning service for the Program broadcast during July 2021. The Licensee indicated that this was due to a technical issue - the captioning service was available and could be accessed if it was selected using the manual "TXT 801" process on the television remote instead of the short-cut "SUBT" function. The Licensee also advised that this issue was resolved on 29 July 2021, after it was drawn to the Licensee's attention.

The ACMA accepts that some viewers might not have been able to access the captioning service through their preferred method on the television remote. Nevertheless, the ACMA considers that a captioning service was capable of being accessed on-screen using commonly available television reception equipment, albeit via the manual "TXT 801" rather than the short-cut "SUBT" function. The ACMA therefore finds that the Licensee did provide a captioning service for the Program broadcast on 21 July 2021.

## Issue 2: Did the Licensee comply with subsection 130ZZA(4) of the BSA?

### Relevant provisions of the BSA

#### 130ZZA—Captioning standards

- (1) The ACMA may, by legislative instrument, determine standards that relate to:
  - (a) the quality of captioning services provided by commercial television broadcasting licensees for television programs

[...]

- (4) A commercial television broadcasting licensee must comply with a standard determined under subsection (1).

### Finding

The captioning service provided for the Program broadcast on 21 July 2021 met the requirements relating to quality imposed by the Standard and, accordingly, the Licensee did not breach subsection 130ZZA(4) of the BSA.

### Reasons

The ACMA's assessment of the Program broadcast on 21 July 2021 indicated that the captioning service was readable, accurate and comprehensible as required under sections 7, 8 and 9, and was therefore meaningful to deaf and hearing-impaired viewers, fulfilling the stated objective in section 3 of the Standard.

## Issue 3: Did the Licensee comply with 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 complied with paragraph 130ZR(1)(a) and subsection 130ZZA(4) of the BSA, the Licensee did not breach paragraph 7(1)(o) of Schedule 2 to the BSA.

### Reasons

By providing a captioning service that met the quality requirements imposed by the Standard for the Program broadcast on 21 July 2021, the Licensee complied with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

## Complaint

### 1. Extract from complaint dated 13 July 2021 to the ACMA

[....]

The problem is channel 10, I think.

Win used to beam 10 until 1.7.21, then it switched to beaming 9 instead...actually again as it did it for many years until it switched to 10 for a few years.

While Win was beaming 10 cations were not a problem. They work fine on 9 also 80 up here.

But since the switch on 1.7.21 there has been no captions on 10/50 as it is in our area. Some of the NCIS on 10Bold is captioned.

[....]

### 2. Extract from complaint dated 19 July 2021 in response to the ACMA's request for additional information in relation to the complaint

[....]

As I have previously stated

EVERY PROGRAM ON CHANNEL 10. FROM 6.00am to 4.30am.

[....]

### 3. Extract from complaint dated 21 July 2021 in response to the ACMA's request for additional information in relation to the complaint

[....]

My current attempt.

Judge Judy 3.08pm Wednesday 21st July 2021.

[....]

## Relevant provisions of the *Broadcasting Services (Television Captioning) Standard 2013*

### 4 Definitions

In this Standard:

Terms that are defined in the *Broadcasting Services Act 1992* have the same meaning as in that Act, unless the contrary intention appears.

[...]

**captioning obligations** means the legislative obligations under Part 9D of the Act that require:

- (a) commercial television broadcasting licensees and national broadcasters to provide a captioning service for programs transmitted under subsection 130ZR(1) of the Act;

[...]

### 5 Quality of captioning services

Broadcasters and narrowcasters must, when providing a captioning service in accordance with their captioning obligations, comply with the requirements relating to quality in this Standard.

[...]

### 6 Determining the quality of captioning services

- (a) Subject to paragraph (b), when determining the quality of a captioning service for a program, the captioning service must be considered in the context of the program as a whole.
- (b) When determining the quality of a captioning service for a program that is a distinct program segment within a television program, the captioning service must be considered in the context of that distinct program segment on its own.
- (c) When determining the quality of a captioning service, the cumulative effect of the following factors must be considered:
  - (i) the readability of the captions;
  - (ii) the accuracy of the captions; and
  - (iii) the comprehensibility of the captions.

[...]

### 7 Readability of captions

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are readable.
- (b) When determining whether captions are readable, the following factors

must be considered in the context of the program as a whole:

- (i) whether colour and font are used in the captions in a way that makes them legible;
- (ii) whether the caption lines end at natural linguistic breaks and reflect the natural flow and punctuation of a sentence, so each caption forms an understandable segment;
- (iii) whether standard punctuation of printed English has been used in the captions to convey the way speech is delivered;
- (iv) whether the captions are positioned so as to avoid obscuring other on- screen text, any part of a speaker's face including the mouth and any other important visuals where possible; and
- (v) whether the captions are no more than three lines in length.

## **8 Accuracy of captions**

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that accurately recreate the soundtrack of a program.
- (b) When determining whether captions accurately recreate the soundtrack of a program, the following factors must be considered in the context of the program as a whole:
  - (i) whether spoken content has been captioned;
  - (ii) whether the captions of spoken content are verbatim;
  - (iii) where it is not possible for the captions of spoken content to be verbatim, whether the captions reflect the actual meaning of the spoken content;
  - (iv) where the intended target audience of a program is children and the captions are not verbatim, whether the captions reflect the actual meaning of the spoken content;
  - (v) whether the manner and tone of voice of speakers has been conveyed, where practical and material; and
  - (vi) whether sound effects and/or music, material to understanding the program and not observable from the visual action, have been accurately described.

## **9 Comprehensibility of captions**

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are comprehensible.
- (b) When determining whether captions are comprehensible, the following factors must be considered in the context of the program as a whole:
  - (i) whether the captions clearly identify and distinguish individual speakers, including off-screen and off-camera voices;

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- (ii) whether the captions are displayed for a sufficient length of time to allow the viewer to simultaneously read them and follow the action of the program;
- (iii) the extent to which the appearance of the caption coincides with the onset of speech of the corresponding speaker, sound effect or music;
- (iv) the extent to which the disappearance of the caption coincides with the end of the speech of the corresponding speaker, sound effect or music;
- (v) whether the words used in the captions have been spelt correctly;
- (vi) where a word is not spelt correctly, whether the spelling provided nevertheless conveys the meaning of the actual word;
- (vii) whether explanatory captions are provided for long speechless pauses in the program;
- (viii) the extent to which a caption over-runs a shot or scene change; and
- (ix) the extent to which the appearance or disappearance of the caption, as the case may be, coincides with the relevant shot or scene change.



## Licensee's submissions to the ACMA

Extracts from WIN's response on 6 August 2021 to the ACMA's email on 23 July 2021 (ACMA questions in Bold)

- 1. Please advise which WIN Network licensee broadcasts Channel Ten programming in Mildura, Victoria.**

Channel Ten Licence Pre 1st July (Judge Judy) was WIN Television Mildura Pty, Ltd (10088)

Channel Ten Post 1st July Mildura Digital Television Pty Ltd (1150827)

- 2. Are you aware of any issues that would have affected the delivery of the captioning service for the Program? If so, please provide details.**

WIN is not aware of any reason why captions would have not been available on Judge Judy on the 21st April 2021.

- 3. Are you aware of any issues that would have affected the delivery of the captioning service for other programs broadcast on Channel Ten in Mildura since 1 July 2021.**

1st of July 2021 was the date that Affiliations changed and the transmission was reconfigured to swap services between WIN Television and Mildura Digital Television licences.

I asked our engineers to investigate this complaint and I can confirm that there have been captions on channel Ten programs Since 1st of July, this can be confirmed with the program compliance recordings. On a deeper investigation it appears that in the configuration of the transmission a check box that allows the "Subtitles" short cut on remote controls to find Line 801 was not activated.

As a consequence those who activated caption via the manual process "TXT 801" on their remote would have activated the captions but those who used the shortcut function "SUBT" may not have activated the captions.

This has now been rectified so that those who use the SUBT or similarly titled shortcut (dependant on brands) is now working.

Extracts from WIN's response on 12 August 2021 to the ACMA's email on 6 August 2021 (ACMA questions in Bold)

- Was the non-activation of the check box that allows the "Subtitles" short cut on remote controls to find Line 801 a process error on WIN's behalf or a viewer error.**

Yes it was a error in WINs process.

- **The date on which the issue was rectified.**

The issue was rectified on Thursday 29th July 2021.

- **Whether this issue affected all programs broadcast on Channel Ten in the Mildura region between 1 July 2021 and when the issue was rectified.**

Yes it did affect all Channel Ten programs in Mildura between 1st of July and 29th July where the viewer accessed captions via the SUBT on their remote. They could only access the captions if they had the ability to manually type in 801 through the TXT /MX function. I note that some modern remotes do not have the manual TXT function.