

Submission

10 June 2024

Diversity, Localism and Accessibility Section
Australian Communications and Media Authority
By Email: captioning@acma.gov.au

Re: Draft target reduction orders for comment: Telstra Pay Tv Pty Ltd and Foxtel Cable Television Pty Ltd

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Communications and Media Authority (**ACMA**) for the opportunity to comment on the draft target reduction orders for comment (**the draft orders**).

In 2023, ACCAN provided a submission to the ACMA that noted a requirement to consistently enforce year-on-year improvements in captions availability in line with legislation. ACCAN recommended denying both requests made at the time by Telstra Pay TV Pty Ltd and Foxtel Cable Television Pty Ltd (**the licensees**) for captions target reduction orders.¹

Both licensees broadcast the Aurora Channel (**the channel**), a not-for-profit channel that screens locally produced community television programs.² This is the second year in a row that requests for reductions in captions targets have been made by both licensees for the channel. More broadly, the channel's low captioning rate has been a known issue to licensees since at least 2019.³

This year, the licensees have requested a reduction in captioning targets for the channel from 70% to 45%.⁴ ACCAN acknowledges that this is an improvement on the 2023 request for a reduction from 65% to 25%,⁵ and a significant improvement on the request for a reduction to 5% in 2019. ACCAN also recognises that the licensees have continued to raise the issue of the contractual obligation for the channel to provide captions, however the licensees also indicate that the channel is not in a financial position to comply with this requirement. This has been included as a component of the licensee's unjustifiable hardship claim.

ACCAN does not consider that the *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012* was passed with the intent of constraining smaller channel providers who provide

¹ ACCAN, 2023. Captioning Target Reduction Order June 2023. Available at: <https://accan.org.au/accans-work/submissions/2145-captioning-target-reduction-order-june-2023>

² Subscription Media Australia, 2024. Aurora Community Channel. Available at: <https://www.astra.org.au/about/members/meet-our-members/aurora-community-channel>

³ ACMA, 2019. Decision to make a target reduction order (STV-TRO-0071) for Foxtel Cable Television Pty Limited in respect of the subscription television service aurora community channel for the 2018-2019 financial year. Available at: <https://www.acma.gov.au/sites/default/files/2019-11/TRO71-SoR.docx>

⁴ ACMA, 2024. Statement of reasons #148. Available at: https://www.acma.gov.au/sites/default/files/2024-05/stv-tro-00148_telstra_preliminary_sor_publication.docx

⁵ ACMA, 2023. Statement of reasons #143. Available at: https://www.acma.gov.au/sites/default/files/2024-05/stv-tro-00148_telstra_preliminary_sor_publication.docx

locally significant or independent content. If the channel does not have the financial capacity to provide captions, then it is incumbent upon the licensees to remedy the captions or support the channel to do so. We regard it as a worrying development that instead of allocating resources to resolve the matter, licensees have suggested cancelling the channel's broadcasts.

This has been a consistent proposal by the licensees, with ACCAN noting the following:

In 2019:

The Applicant has submitted, and the ACMA accepts that, if the Target Reduction Order is not granted, the Service will be removed from the Foxtel platform.⁶

In 2023:

The Applicant has also submitted that, if the ACMA does not make the Target Reduction Order, there is a possibility that the Applicant may cease to provide the Service to minimise any ongoing non-compliance. The ACMA notes the Applicant's view, but does not consider that this is likely, because ceasing the Service would not undo any breach that may have already occurred in the 2022-2023 financial year.⁷

In 2024, as the breach was not applied for 2022-2023, the licensees have continued to indicate the potential cancellation of the channel:

...if the Applicant ceased to provide [The Channel], it would reduce the availability of diverse and innovative Australian-made community content, including regional and community news, from the Applicant's 'Foxtel Plus Bundle' which would be a detriment to the Applicant and its subscribers.⁸

ACCAN encourages the ACMA to work with the broadcaster to seek a resolution that ensures the assertions of cancellation are not realised, but that accessible content is provided. This is now critical, with the 2024 statements of reasons indicating the channel has reached a crisis point in their capacity to deliver on future captions targets, whereby:

The Channel Provider has received a quote of \$8,000 per month (\$96,000 per annum) for the new playout facility; however, the provider of the facility requires

⁶ ACMA, 2019, p.6. Decision to make a target reduction order (STV-TRO-0071) for Foxtel Cable Television Pty Limited in respect of the subscription television service aurora community channel for the 2018-2019 financial year. Available at: <https://www.acma.gov.au/sites/default/files/2019-11/TRO71-SoR.docx>

⁷ ACMA, 2023, p.5. Draft statement of reasons for the preliminary decision to make a target reduction order (STV-TRO-00143) for Telstra Pay Tv Pty Ltd (ACN 095 931 614) In respect of the subscription television service Aurora Channel for the 2022-2023 Financial year. Available at: https://www.acma.gov.au/sites/default/files/2023-05/STV-TRO-00143_Telstra%20Pay%20TV%20Pty%20Ltd_Preliminary%20SOR_Publication.pdf

⁸ ACMA, 2024, p.5. Draft Statement of Reasons for the preliminary decision to make a target reduction order (STV-TRO-00148) for Telstra Pay Tv Pty Ltd (ACN 095 931 614) in respect of the subscription television service Aurora Channel for the 2023-2024 financial year. Available at: https://www.acma.gov.au/sites/default/files/2024-05/stv-tro-00148_telstra_preliminary_sor_publication.docx

a minimum three-year term. The Channel Provider is unable to provide such a contractual guarantee, given the size and nature of the organisation.⁹

ACCAN recommends that the ACMA does not grant target reduction orders for the two licensee applicants and pursues a consultative process with the licensees that aims to support the channel's capacity to deliver on captions requirements.

ACCAN appreciates the opportunity to provide comment on the draft orders. Should you wish to discuss any of the items raised in this submission, please do not hesitate to contact me at david.swayn@accan.org.au.

Yours Sincerely,

David Swayn
Disability Policy Officer

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)

⁹ ACMA, 2024. Draft Statement of Reasons for the preliminary decision to make a target reduction order (STV-TRO-00151) For Foxtel Cable Television Pty Ltd (ACN 069 008 797) in respect of the subscription television service Aurora Channel for the 2023-2024 financial year. Available at: <https://www.acma.gov.au/publications/2024-05/report/151-foxtel-cable-television-pty-limited>