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From: 47F
Sent: Tuesday, 27 October 2020 5:48 PM
To: DLO
Subject: FW: Letter from Foxtel to the Minister for Communications, Cyber Safety and the Arts [SEC=UNCLASSIFIED]
Attachments: 27 October letter to Minister Paul Fletcher.pdf

Priority corro for the Minister's pack and for minrep please.

Thanks

47F
[REDACTED]

47F [REDACTED]

Office of the Hon Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts

Commonwealth Parliamentary Offices | 1 Bligh Street | Sydney NSW 2000
Suite MG.48 | Parliament House | Canberra ACT 2600

I would like to acknowledge the traditional custodians of this land on which we meet, work and live. I recognise and respect their continuing connection to the land, waters and communities. I pay my respect to Elders past and present and to all Aboriginal and Torres Strait Islanders.

UNCLASSIFIED

From: Patrick Delany (SYD)
Sent: Tuesday, 27 October 2020 5:06 PM
To: 47F [REDACTED]
Cc: Lynette Ireland (SYD)
Subject: Letter from Foxtel to the Minister for Communications, Cyber Safety and the Arts

Dear Minister,

Attached is a letter for your attention regarding the review of the subscription television captioning obligations in the *Broadcasting Services Act 1992*.

Yours sincerely,
Patrick

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27 October 2020

The Hon. Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

By email: **47F** communications.gov.au

Dear Minister,

Review of the subscription television captioning obligations in the *Broadcasting Services Act 1992*

I am writing to express Foxtel's views in relation to the closed captioning regime that applies to subscription television (STV) licensees under the *Broadcasting Services Act 1992 (BSA)* and to propose some key reforms to ensure the long term sustainability of the STV industry.

Foxtel is seeking four key changes to the current captioning rules to ease the captioning requirements on the STV industry, without compromising access to its services. Those changes are:

1. **a genre cap freeze** at the FY21 captioning levels;
2. **an audience share exemption** to apply where annual viewership of a channel is at or below 0.15%;
3. **refinements to the "unjustifiable hardship" captioning exemption and target reduction order (TRO) application process** so that applications are assessed on the financial circumstances of the channel provider rather than the STV licensee; and
4. **an exemption for racing services** where live racing and replays of live racing represent at least 70% of the channel's content.

Background of the existing captioning reform proposals

The STV captioning obligations are not competitively neutral and are very onerous and complex.

In an effort to simplify the regime, as part of a statutory review of the STV captioning regime in 2016, Foxtel consulted with the key regulatory bodies and stakeholders to propose some significant captioning reforms. These discussions in 2016, have formed the basis for the draft of the *Broadcasting Services Amendment (Captioning) Bill 2020 (the Bill)* that has recently been reinitiated by the Department of Communications and is in the process of being finalised for consultation with you and the public.

However, as a result of the recent disruptions to the STV industry (e.g. the entry of a number of global streaming giants) and the increasingly challenging economic conditions which have been exacerbated by COVID-19, the captioning reform proposals that were discussed with the Department in 2016 are now out of date and will be ineffective in easing the operational and financial requirements on the industry.

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For example, in an effort to simplify the regime, we understand that the Bill proposes to collapse the movies and general entertainment categories under one captioning quota that will still increase year on year. This change will require a significant initial increase of captioning across a number of channels on the Foxtel platform and will ultimately see the Foxtel platform as a whole captioning at 100% across all services sooner than under the existing regime.

The 2016 captioning reform proposals were primarily focused on reducing the complexity of the regime and easing the administrative burden on STV licensees. However, in view of the increasingly difficult industry conditions, we believe our reform proposals set out above represent a much more reasonable approach.

Current regulation of the STV industry versus its competitors

Foxtel is supportive of statutory captioning obligations and appreciates the benefits media captioning services bring to the deaf and hearing-impaired community in Australia. This is illustrated by the FY19 captioning results where subscription television services provided approximately 2.2 million hours of captioned programs; with about 67.3% of subscription television services (335 out of 498) exceeding their annual captioning targets.

However, the STV industry is by far the most heavily regulated platform when it comes to captioning.

Free-to-air (FTA) channels have capped 75% quotas on their main channels only and unlike STV services, there is no regulatory pathway to increase these channels to 100% over 24 hours. For instance, as compared to STV's FY19 captioning results above, FTA broadcasters provided approximately 0.65 million hours of captioned programs on their primary services only between the hours of 6am and midnight in FY19.

In addition, despite often having larger audience numbers than a number of the STV services, FTA multi-channels have no statutory captioning quotas and are only obliged to caption repeat programs that have been broadcast previously captioned on the main FTA channel. For example, in FY19 Foxtel's Arena channel had an average audience of 8,700 and a captioning target of 75%, increasing 5% yearly. During the same period, a comparable FTA multi-channel (Nine Go) had an average audience of 50,700 but a 0% captioning target with no pathway to increase.

There is no sound policy justification for the significant inequity in the application of captioning obligations to STV channels and FTA channels.

Furthermore, global streaming services such as Netflix and Amazon, who compete directly with STV providers for subscribers and content, have no statutory obligations to caption content in Australia.

Foxtel's 2020 captioning reform proposals

By 2022, all channels on the Foxtel platform will be required to caption, subject to any individual "unjustifiable hardship" exemptions.

The captioning quotas on STV channels are currently increasing yearly by 5% until each channel reaches 100%. The requirement to caption at 100% causes regulatory compliance issues for licensees when minor breaches are caused by human or technical/engineering errors that are outside the control of the licensee. For example, four of Foxtel's movies channels, that were required to caption at 100% for FY20, fell short of meeting the required target by between 0.01-0.06% due to a combination of technical and human scheduling errors.

In addition, the exponential cost impacts on STV channels in reaching 100% captioning targets needs to be considered in the current context, given the significant financial pressures the industry is currently facing.

Accordingly, one of Foxtel's key captioning reform proposals is to cap the captioning quotas across all channels at the FY21 levels (except for the movies channels currently captioning at 100% which we propose should be capped at 98%). This will ease the growing financial and operational burden on STV providers by removing the yearly increase.

The audience share exemption is modelled on the UK legislation (adjusted to Australian population levels) and ensures that captioning obligations are targeted to the channels with a reasonable level of viewers.

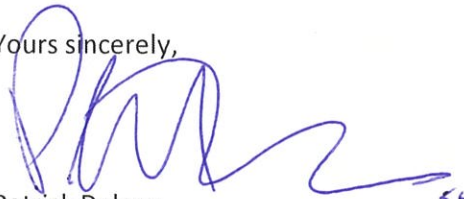
The proposed refinements to the "unjustifiable hardship" captioning exemption and TRO application process, so that applications are assessed on the financial circumstances of the channel provider rather than the STV licensee, more appropriately reflects the way business is conducted. Foxtel has applied for 6 captioning exemptions in the past and has been unsuccessful with all 6 applications. Consideration of Foxtel's top line revenue is not a meaningful reflection of an individual channel's ability to caption.

Finally, the racing channel exemption, which was proposed in 2016 and currently forms part of the Bill, recognises that captioning on racing channels will not dramatically enhance the viewing experience of the audience. These channels are highly text based with the displayed text largely reflecting the audio commentary before, during and after a race.

Conclusion

Foxtel's four key captioning reform proposals set out above are necessary to ease the growing financial and operational requirements imposed on the STV industry, without compromising access to its services. I look forward to hearing from you.

Yours sincerely,



Patrick Delany
Chief Executive Officer
Foxtel Group