



14 June 2019

Order Applications
Diversity Localism and Accessibility Section
ACMA
PO Box Q500
QVB NSW 1230

Via email: captioning@acma.gov.au

ACCAN thanks the Australian Communications and Media Authority (ACMA) for the opportunity to comment on the caption exemption draft orders for Fetch TV Pty Ltd, listed in appendix 1.

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 orders. Deaf and hearing impaired Australians continue to be excluded from full access to any television service in Australia, despite this issue of inequality being debated in our public policy discussions for decades. In 2012 the Australian Parliament passed legislation mandating greater captioning of subscription television with an expectation that subscription television services would meet increasing annual caption targets.¹

Australian subscription television market predictions forecast increased take up of services with significant revenue growth over the next 5 years.² Australians with disability need to be able to benefit and enjoy these new services in the same ways as their families, friends and colleagues.

Closed caption requirements have been part of the Australian subscription television market legislative framework since 2012.³ 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 applicant to investigate opportunities to meet its legislative obligation, noting that these channels have all been granted exemptions

¹ The Broadcasting Services Amendment (Improved Access to Television Services) Act 2012
<http://www.comlaw.gov.au/Details/C2012A00083>

² See IBIS World's Pay Television market research report 2014
<http://www.ibisworld.com.au/industry/default.aspx?indid=1817>

³ <http://www.acma.gov.au/Citizen/TV-Radio/Television/Captioning/captioning-1>

previously with no stipulation from the ACMA that the applicant take any measures to address its legislative obligation.

ACCAN also questions the evidence used to evaluate the ACMA's granting of these exemptions under paragraph 130ZY(1)(a) of the BSA where the ACMA has made a preliminary determination to grant the exemption, based on the applicants claim that meeting its legislative obligations would cause financial unjustifiable hardship. Without full transparency of the applicant's revenues we are unable to make an informed evaluation. However, in reviewing the financial information that has been provided ACCAN questions some of the assertions made by the applicant. For example, in each of the applicants channel exemption applications (16), the applicant has indicated that there is a one-off cost of \$120,000 set-up. This cost would surely be amortised across all channels; a per-channel cost of approx. \$7500. ACCAN reiterates our recommendation that the adoption of an exemption process based on setting a revenue percentage benchmark, similar to that used in the UK, should be evaluated by all Australian access service stakeholders; industry, service providers, consumers, regulator and government.⁴

It is also of interest to ACCAN that the applicant asserts that its business model is based on providing an 'an extremely low cost but full service subscription TV offering'. Surely, a full service offering by definition means that all viewers can enjoy and benefit from the service – without providing access services for consumers with disability this is not a full service offering. Furthermore, the statement that the applicant has made asserting that if they had a larger subscriber base they may be incentivised to provide captions clearly articulates that the applicant does not understand the social or legal value of their legislative obligation to provide a functionally equivalent service for consumers with disability.

In the interest of providing access for all Australians to our changing media environment, ACCAN strongly recommends that the ACMA deny exemptions, especially in view of the lack of evidence that Fetch TV is taking bona fide steps to implement closed captions beyond the exemption period. ACCAN asserts it is unacceptable that after decades of advocacy and lobbying for increased access to both publicly funded and subscription broadcast television services, Australians who rely on captions continue to find themselves excluded from equitable access to subscription television services.

International best-practice mandates the provision of captions irrespective of the broadcast platform. Section 203 of the U.S. *Twenty-First Century Communications and Video Accessibility Act* requires all devices that can receive or play back video programming to be capable of displaying and passing through closed captioned content.⁵ In addition, the Federal Communications Commission has created an Accessibility Clearinghouse listing mobile devices with closed caption capability.⁶

⁴ see <http://accan.org.au/our-work/submissions/1152->

⁵ see <http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0>

⁶ See FCC Accessibility Clearing House <http://ach.fcc.gov/products-and-services/mobile-devices/region-na/all-manufacturer/all-blind-features/all-cognitive-features/all-hearing-features/all-mobility-features/all-physical-features/page-1-of-3/show-100/>

In conclusion, the technology exists to provide captioned video programming, legislation is in place to promote greater access to video programming and no transparent evidential claim of 'unjustifiable hardship' or exceptional circumstances have been provided in the exemption draft order. For these reasons ACCAN recommends that the ACMA deny the exemption applications.

Sincerely,

Wayne Hawkins
Director of Inclusion
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Appendix 1

Application #	Applicant	Years applied for	Channel	Notice / Draft Order / Statement of reasons	Submission due date*
STV/EO-367	FetchTV Pty Ltd	2	Bloomberg	Notice Draft order Statement of reasons	19 June 2019
STV/EO-368	FetchTV Pty Ltd	2	CGTN News	Notice Draft order Statement of reasons	19 June 2019
STV/EO-369	FetchTV Pty Ltd	2	Channel News Asia	Notice Draft order Statement of reasons	19 June 2019
STV/EO-370	FetchTV Pty Ltd	2	Euronews	Notice Draft order Statement of reasons	19 June 2019
STV/EO-371	FetchTV Pty Ltd	2	France 24	Notice Draft order Statement of reasons	19 June 2019
STV/EO-372	FetchTV Pty Ltd	2	NDTV News 24	Notice Draft order Statement of reasons	19 June 2019
STV/EO-373	FetchTV Pty Ltd	1	Australian Christian Channel	Notice Draft order Statement of reasons	19 June 2019
STV/EO-374	FetchTV Pty Ltd	1	BBC World News	Notice Draft order Statement of reasons	19 June 2019

Application #	Applicant	Years applied for	Channel	Notice / Draft Order / Statement of reasons	Submission due date*
STV/EO-376	FetchTV Pty Ltd	2	Fashion TV	Notice Draft order Statement of reasons	19 June 2019
STV/EO-377	FetchTV Pty Ltd	2	HGTV	Notice Draft order Statement of reasons	19 June 2019
STV/EO-378	FetchTV Pty Ltd	2	Food Network	Notice Draft order Statement of reasons	19 June 2019
STV/EO-379	FetchTV Pty Ltd	2	Travel Channel	Notice Draft order Statement of reasons	19 June 2019
STV/EO-380	FetchTV Pty Ltd	2	Horse and Country TV	Notice Draft order Statement of reasons	19 June 2019
STV/EO-381	FetchTV Pty Ltd	1	ZooMoo	Notice Draft order Statement of reasons	19 June 2019
STV/EO-382	FetchTV Pty Ltd	2	Baby TV	Notice Draft order Statement of reasons	19 June 2019
TV/EO-383	FetchTV Pty Ltd	2	Al Jazeera	Notice Draft order Statement of reasons	19 June 2019