

21 February 2024

The Foxtel Group's supplementary submission to the Environment and Communications Legislation Committee on the Broadcasting Services (Minimum Prominence Requirements) Regulations 2024.

The Foxtel Group welcomes the opportunity to make a supplementary submission to the Environment and Communications Legislation Committee on the *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* (the "**Regulations**").

1. Introduction

- 1.1 The Foxtel Group is one of Australia's most progressive and dynamic media companies reaching more than 4.4 million Australian homes overall via our different services¹. Our services include:
- i. a premium subscription television broadcast service which has approximately 1.3 million subscribers and which is available over satellite and internet, via our proprietary set top boxes ("**STB**") known as the iQ;
 - ii. the subscription streaming services Kayo Sports (1.2 million subscribers), Binge (1.5 million subscribers), Flash and Foxtel Now; and
 - iii. the Hubbl puck and television which will be released/launched in Australia in early 2024.

2. Executive summary

- 2.1 The Government's policy objective of the prominence framework is to ensure that *"local TV services, which broadcast the Australian content, sports, news and emergency broadcasting Australians rely on, are easy to find on connected TV platforms"*²... *"without imposing unreasonable or unintended burdens on the manufacturers of regulated television devices"*.³
- 2.2 The Foxtel Group submits that the Regulations need to strike the appropriate balance of ensuring access to free-to-air ("**FTA**")⁴ services (linear and BVOD) but broad enough to ensure that the framework is the minimum required to achieve this policy objective, with minimum cost and impact on industry.
- 2.3 The Foxtel Group has a long history of supporting access to FTA services through our STBs, first through the retransmission of linear FTA services and most recently via access to both linear FTA and BVOD services on our IP connected STBs. Without any regulatory mandate to do so, the Foxtel Group has:
- i. provided the primary linear FTA services electronic program guide ("**EPG**") prominence on Foxtel's STBs for many years;
 - ii. supported easy access to the FTA BVOD services (via our IP connected STBs); and

¹ Foxtel Group Fiscal 2024 Second Quarter Earnings, <https://foxtelgroup.com.au/newsroom/foxtel-group-fiscal-2024-second-quarter-earnings#>.

² Labor Party Media Release (7 May 2022), "Labor will support local TV & free sport in the streaming age" <https://anthonyvalbanese.com.au/media-centre/labor-will-support-local-tv-free-sport-in-the-streaming-age>

³ Second Reading, *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023*.

⁴ Including both the national broadcasters and commercial television broadcasting licensees, together "FTA".

- iii. integrated linear FTA content and FTA BVOD content into our search and recommendation engine feature (via our IP connected STBs).
- 2.4 Acknowledging that device manufactures provide **access** to FTA services in different ways, the Foxtel Group submits that the current drafting of the Regulations is too onerous in terms of its prescribed requirements in relation to the logical channel numbering (“**LCN**”) of the linear FTA services and the program information to be displayed on the EPG.
- 2.5 In order to give device manufacturers more flexibility to comply, the Regulations should be amended so that:
- i. there is no requirement for linear FTA services to be identified and accessible on the device and in the EPG using the LCN set by Free TV Australia only; and
 - ii. there is no requirement to display both a brief description **and** a detailed description of a linear FTA television program in the EPG.
- 2.6 The suggested changes above will make the minimum prominence regulations more attainable for industry. They will ensure that the regulatory response meets the Government’s policy objective of ensuring that Australian audiences can easily find and access the FTA services on regulated devices, while also minimising the cost and impact on industry and consumers by ensuring compliance obligations are flexible and will not inhibit UI or EPG innovation.
- 3. The requirement that the linear FTA services must be identified and accessible on the device and in the EPG using the service’s LCN (s 7(2)(b) and s 7(3)(c) of the Regulations)**
- 3.1 The Foxtel Group makes the linear FTA services available on its devices via a logical numbering system; with each broadcaster’s LCN being agreed with the broadcaster.
- 3.2 The channel numbering applied to the primary linear FTA channels on Foxtel’s Hubbl connected TV sees them appear on the first screen, occupying 5 of the first 10 positions, which ensures these channels are prominent and easily located.
- 3.3 Any requirement to make the linear FTA services identifiable and accessible on the device using the Free TV Australia prescribed LCN order will require significant rearrangement of the EPG on Foxtel’s Hubbl connected TV. This will require a substantial solution design change in both the Foxtel and Comcast headends and a design change to the UI, followed by a software update to be delivered over the air to the device.
- 3.4 The Hubbl connected TV is a globally syndicated product used by multiple different providers e.g. Sky UK. The backend is managed through Sky and Comcast. Accordingly, the Foxtel Group has no control over the lead times for required design or software updates; these are managed direct via the platform provider.
- 3.5 In addition, the Foxtel Group utilises a single head-end system to control the channel numbers across all of its devices. Accordingly, any requirement to make a change to the logical numbering system we have already developed in agreement with the FTAs on the Foxtel Hubbl connected TV, would impact a number of Foxtel’s unregulated, and largely unsupported, legacy devices.

- 3.6 With technological advancements such as remote control unit (“RCU”) voice commands that make accessibility to FTA channels easier and faster, there is no policy justification for requiring device manufacturers such as the Foxtel Group to overturn their existing EPG logic, that is developed for the best customer experience, simply to identify linear FTA services in the Free TV Australia prescribed LCN order.
- 3.7 As such, the Regulations need to recognise that devices that provide appropriate **access** to linear FTA services will satisfy the Government’s policy intention without the need to present them in the Free TV Australia prescribed LCN order.
- 3.8 Accordingly, the Foxtel Group proposes that section 7(2)(b) of the Regulations be deleted and section 7(3)(c) of the Regulations be amended to read *“each of those services must be identified in the guide using the service’s logical channel number or the logical channel number set by the manufacturer.”*
- 4. The requirement that both a brief and detailed description of a linear FTA program be displayed in the guide (s 7(3)(e) and s 7(4)(c)-(d) of the Regulations)**
- 4.1 As noted above, the Foxtel Group devices that are proposed to be regulated under the prominence regime are obtained “off the shelf” from an external vendor. For various technical and visual reasons, the UI is designed to depict a brief description of any program (not just FTA programs); not a brief description **and** a detailed description of a program as required under sections 7(3)(e) and 7(4)(c)-(d) of the Regulations in respect of linear FTA programs.
- 4.2 Any requirement in the Regulations to display both a brief and detailed description of a linear FTA program in the EPG would require a substantial solution design change in both the Foxtel and Comcast headends and a design change to the UI, followed by a software update to be delivered over the air to the device. As noted above, the Foxtel Group has no control over the lead times for required design or software updates; these are managed direct via the platform provider.
- 4.3 In addition, the Foxtel Group sources its EPG information from its vendor Gracenote/Neilsen, who is the global provider of linear schedules for most television operators. Depending on the program, our vendor may not have access to both a brief and detailed description of a linear FTA program.
- 4.4 The Foxtel Group submits that the benefit derived from providing multiple descriptions of a single linear FTA program on a device will not outweigh the costs that device manufacturers will incur to accommodate this obligation.
- 4.5 Accordingly, the Foxtel Group proposes the following drafting for section 7(4)(c)-(d) of the regulations:
- “(c) a brief description of the television program; or*
- (d) a detailed description of the television program.”*