



6 March 2024

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

**Communications Legislation Amendment
(Prominence and Anti-Siphoning) Bill 2023 (the Bill) and draft Regulations (the Regulations).**

This submission responds to the matters raised at the public hearings on 23 February 2024.

We understand from comments at the hearing by ACMA and Department representatives there seem to be some fundamental misunderstandings and assumptions about how community television broadcasting services operate, which may have led to the unequal treatment of community television Broadcast Video on Demand (BVOD) services in the Bill.

As proposed in our 25 January 2024 submission and 18 February 2024 supplementary submission, this can easily be rectified by the amendment of subsection 130ZZ(b) of the Bill to include community television BVOD alongside other broadcasters' BVOD as a *regulated television service* under the Bill.

Our proposed amendment is a new subparagraph (b)(v): "a community television broadcasting service provided by a community television broadcasting licensee" (the "proposed amendment").

Response to issues raised at Public Hearing

1. Issue raised:

In response to a question by the Chair, the ACMA and the Department sought to explain the different treatment of community television broadcasting. They began by referring to the "anomaly" and "quirk of licensing arrangement" for Channel 44 in Adelaide which makes it a narrowcasting rather than broadcasting service. (See pages 76 and 77 of the Hansard proof transcript sent on 28 February 2024)

Our response: It is correct that a longstanding historical licensing quirk means that Channel 44 holds a narrowcasting rather than broadcasting licence, despite it being a long term and much-loved community station for Adelaide audiences, a market where there are few other local media services.

We have not argued that narrowcasting services should be included in the Bill. We are arguing that the lists of regulated television services under section 130ZZJ of the Bill should be consistent – those included in subsection 130ZZJ(a) should have their BVOD services listed in subsection 130ZZJ(b). At present, community television BVOD services are not listed in the latter.

In relation to the regulatory anomaly around the allocation of a narrowcast rather than broadcast licence to Channel 44, this is a matter we hope to rectify with the regulator. Were this to occur, Channel 44 would be included in the list in subsection 130ZZJ(a). However, we believe this regulatory matter is not relevant to the matters before the Committee or to our central contention that community broadcast television BVOD should be a *regulated television service*.

2. Issue raised:

Following the above statements, the ACMA then sought to explain why the community television BVOD app was not included along with other regulated BVOD services. The following extract is from p77 of the Hansard proof:

Ms Press: On the BVOD side of things, the Community Plus app features content from both the narrowcaster and the community television broadcaster.

Ms Chapman: So it's actually a joint venture between them.

Ms Press: It's a joint venture. If Channel 31 had its own BVOD app then one would assume it would follow through. But then there's obviously a different nature to the BVOD offering that community gives, so it's not expressed in the Bill – as I understand it.

Chair: Right, is that something you're going to need to unpack a little bit?

Mr Penprase: It would be in the hands of the Minister to consider any determination or instrument in relation to community television services. But these differences were recognised, noted, in the EM, so the government is certainly conscious of that. I suppose it's a quirk of licensing arrangement that's a reality...

Our response:

As noted in our earlier submissions, the fact that CTV+ is a joint venture between Channel 31 and Channel 44 and that some content is shared is not relevant to the policy underlying the Bill:

- The BVOD apps of the other regulated broadcasters may also include joint ventures and content from joint venture partners. There is nothing in the Bill proscribing who their partners are (or that they need to be broadcasters) or their BVOD content. Community TV should not be treated differently.
- Channel 31 provides CTV+ as a BVOD service for Channel 31 viewers, including a stream of its live terrestrial service. If section 130ZZJ(b) is amended to include community television broadcasters, then the proposed minimum requirements in the regulations would require manufacturers to make Channel 31's BVOD service available to Channel 31's viewers. This would simply make it equivalent to other broadcasters, and it would not in any way be giving prominence protections to a narrowcasting service (which is outside the objects of the Bill).
- If, as suggested in the statement above by Ms Press, the source of content is the reason why community television BVOD has been excluded from section 130ZZJ(b):
 - **90% of the content on the CTV+ app is also broadcast on Channel 31.** CTV+ ensures that Channel 31 viewers without access to an antenna or who have missed their favourite broadcast will not miss out on their favourite shows, which is the very purpose of the Bill.
 - **Around 4 out of 5 viewers on CTV+ are watching live television.** The reasons for this have been well canvassed in the Explanatory Memorandum, submissions and public hearings, including declining access to antennas that receive terrestrial television. Channel 31 viewer habits mirror a trend across Australian TV. We refer to several comments in the public hearing including:

"Back to free-to-air TV, it's 55 per cent of all viewing. Two hours and 18 minutes per day per household is the average total free-to-air viewing, to give you an idea of the size. Of that, 70 per cent is currently live." *Mr Lorson, Fetch TV, page 39 Hansard proof transcript*

"...in the BVOD space it is the live streaming of our broadcast channels that is driving the majority of the viewing and the fastest growing category. It literally is the exact channel that you see that is being broadcast via the antenna, and hence that's expected to continue in terms of growth and proportion of viewing." *Mr Sneesby, Stan response to a question from Senator Pocock expressing concern about a BVOD "just showing overseas content," p18 Hansard proof transcript.*
 - **BVOD services provided by other regulated broadcasters also contain content from partners,** so it is not clear as to why this would be a reason to treat community television differently.
 - **Channel 31's CTV+ on-demand content is 100% Australian,** precisely the content the legislation is seeking to protect so Australian audiences can readily access it. This significantly exceeds the Australian content of broadcasters whose BVOD are protected under subsection 130ZZJ(b):

"A couple of years ago..we did an audit of the commercial BVODs...We found that they do have...less local content in their programming than the networks' free-to-air linear channels. It's a bit hard to do an apples-to-apples comparison...but nevertheless between a fifth and a third of the content that the commercial BVODs offer is Australian content". *Dr Scarlatta, RMIT, page 54.*

The reasons for protecting all Australian free-to-air television services are well understood and validated and we strongly support the Bill, other than the exclusion of community broadcasting BVOD.

The only justifications we can find for the different treatment of community broadcasting are at page 18 of the Explanatory Memorandum and in the above statements at the Public Hearings (Hansard proof pages 76 and 77). As outlined above and in our other submissions, we do not believe these are valid reasons nor are they consistent with the treatment of other broadcasters in the Bill.

The exclusion of community broadcasting BVOD undermines the very purpose of the Bill – to ensure TV audiences can continue to easily access their valuable and beloved services. This is particularly concerning in the case of community television which supports underrepresented and otherwise underserved Australian audiences, many from vulnerable and marginalised communities. They should not be at risk of missing out on the BVOD services of the very television designed to serve them.

We reiterate the more detailed points made in our earlier submissions and at the public hearings, including policy, practical and financial concerns about the uncertainty created by needing to rely on Ministerial Directions to obtain prominence protection for community television broadcast BVOD. These affect not only our sector but also manufacturers, who may needlessly be required to invest in updates if there are changes to Ministerial directions, which would also be significant wasted investments.

We are happy to provide further information to the Committee on the costs incurred building CTV+ and the substantial investment commitment this year and in future to make it compatible with manufacturer requirements for TV devices, much of which is funded through Federal Government competitive funding grants.

The comments made in the public hearings have only further confirmed that there is no clear policy reason to treat Channel 31 and any future licensed community broadcaster differently by making the protection of community television BVOD subject to a Ministerial Direction.

The amendment we are seeking is modest but has an enormous impact for the audiences of community television broadcasting and for the sustainability of the sector. It also offers the considerable benefit of providing manufacturers with greater certainty and cost efficiencies achieved by defining included BVOD services in legislation from the outset.

We request that the Committee gives these matters consideration and that it recommends the proposed amendment be made to section 130ZZJ(b) to include community television broadcasting.

Sincerely,

Jon Bisset
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CBAA

Shane Dunlop
President, ACTA