

20 April 2012

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

By email: ec.sen@aph.gov.au

Re: Inquiry into the Broadcasting Services Amendment (Anti-siphoning) Bill 2012

On behalf of FOX SPORTS, FOXTEL and the Australian Subscription Television and Radio Association (ASTRA), I thank the Senate Environment and Communications Legislation Committee for the opportunity to give evidence in relation to the Broadcasting Services Amendment (Anti-siphoning) Bill 2012 (the Bill), and for the opportunity to review the transcript of the hearings for the Inquiry into the Bill.

Below, ASTRA supplies further information or clarification on particular issues raised during the STV sector's appearance before the Committee. We also provide supplementary submissions from FOXTEL and FOX SPORTS on issues raised in the course of the Inquiry:

- FOXTEL (at Attachment A) outlines remaining drafting concerns;
- FOX SPORTS (at Attachment B) addresses the issues raised by Free TV in its submission in regard to the acquisition of highlights rights to listed events by free-to-air broadcasters and imposing limits on program suppliers of subscription television broadcast licensees.

Questions on notice

ASTRA notes four requests for further information raised during the appearance of the STV sector at the hearings:

1. *Senator McKenzie asked how many people outside capital cities have subscribed to STV (page 28).*

In total there are 770,865 STV subscribers outside the capital cities, including 582,688 AUSTAR and 188,177 FOXTEL subscribers.

ASTRA also notes that STV subscriber households nationally represent 34% of the Australian population, based on total subscriber numbers.

2. *Senator Bilyk requested a breakdown of the listed events historically not shown live or at all by free-to-air broadcasters (page 28).*

Independently audited ASTRA monitoring of FTA coverage of anti-siphoning events from 2000 to 2005 showed that only 13% of those events on the anti-siphoning list were shown live and only 23% were shown at all.¹ We refer the Committee to page 9 of the ASTRA submission to the Government's Review of Sport on Television (attached to this

¹ A finding of independent monitoring conducted by Ernst & Young for ASTRA. See ASTRA media release "New Research Exposes Chronic Failure of Sports 'Anti-siphoning' Regulation" 13 July 2006 (attached).

letter at Attachment C), which provides further information. Appendix B of that submission details numerous examples from the period 2006-2009 of anti-siphoning events that were either not shown live or not shown at all.

ASTRA also notes that the ACMA monitoring of FTA coverage of listed events during the period 2006-08 did demonstrate that a significant number of events on the anti-siphoning were not shown live (particularly NRL and AFL matches).² More recently:

- the Nine Network has chosen not to broadcast live the Rugby League Test Match on Friday 20 April 2012 between Australia and New Zealand on either its primary channel or its two multichannels (GO! And GEM), instead providing a delayed telecast on its primary channel³;
- In October 2010, the Seven Network delayed its telecast of the Bathurst 1000 touring car race to enable the insertion of additional commercials⁴;
- In April 2011, the Nine Network delayed coverage of a number of matches in the Cricket World Cup including the final which is a Tier A event under the revised scheme⁵.
- In 2011, the Nine Network delayed coverage of the State of Origin in Western Australia⁶.
- Until the 2012 AFL season, the Seven Network routinely delayed its coverage of Friday night AFL matches and the Nine Network delayed its coverage of Friday night NRL matches until midnight in Victoria;
- In January 2011, the Seven Network delayed coverage of a number of matches including the match between Australia's Alicia Molik and Nadia Petrova after the match had already been completed. The Australian Open men's final was also shown 2 hours on delay in Western Australia yet this match is considered to be a Tier A event under the revised scheme⁷.

The anti-siphoning regime grants FTA broadcasters the privilege, and commercial benefit, of having first access to acquire the broadcast rights of major sporting events, which is intended to give effect to the public policy objective of enabling television coverage of those events to be freely available to the public. The evidence over an extended period demonstrates the need for coverage obligations on FTA broadcasters to ensure they broadcast, to the greatest extent possible, live and in-full, the events to which they have acquired exclusive rights. As noted in our answer to Question 4 below, previous ASTRA consumer research, as well as public reaction to recent FTA

² For example, during the 2007 AFL season, only 50 of the 167 matches broadcast on FTA television were broadcast live to more than 50% of the Australian population. See ACMA, *Anti-Siphoning Monitoring Investigation, Annual Report for 2006-07 to the Minister for Broadband, Communications and the Digital Economy*, February 2008, p.17 (http://www.acma.gov.au/webwr/_assets/main/lib101062/2006_07_annual_anti-siphoning_report.pdf)

³ While broadcasting the event on Nine's multi-channels is currently prohibited under the *Broadcasting Services Act 1992*, the free-to-air networks have made a number of recent requests to the Minister to remove certain events from the anti-siphoning list so that such events can be premiered on a multi-channel. Since November 2010, the Minister has de-listed over 700 individual events on this basis. We understand that the Nine Network has made a similar de-listing request to the Minister on this particular occasion to allow it show the test match on delay on GEM in Perth. However in all other states it has taken the decision not to show it live on either GO! or GEM and instead has scheduled 2 repeats of *Friends* on GEM and the 2005 produced film titled *The Adventures of Sharkboy and Lavagirl* followed by the 1997 produced film titled *Flubber* on GO!

⁴ <http://www.dailytelegraph.com.au/news/channel-seven-broadcasts-finish-of-bathurst-1000-30-minutes-after-race-actually-ended/story-e6freuy9-1225936875295>

⁵ <http://www.tvtonight.com.au/2011/03/icc-cricket-world-cup-update.html>;

<http://www.tvtonight.com.au/2011/04/icc-world-cup-cricket-final.html>

⁶ <http://www.perthnow.com.au/sport/othersports/live-state-of-origin-for-usa-but-perth-missed-out/story-fn4pw13c-1226063386848>

⁷ <http://www.throng.com.au/2011/01/the-australian-open-should-be-live-to-all-markets/>

programming decisions, demonstrate a strong public desire for major sporting events to be broadcast live.⁸

3. Senator Fisher asks if there are any other examples of events not on the anti-siphoning list that have nevertheless been broadcast on FTA television (page 29).

As noted during the hearings, previously Olympic Games and Commonwealth Games were broadcast on FTA television while not on the anti-siphoning list, as are the ANZ Netball Championships when Ten successfully bid for the rights in 2009. Other current examples include:

- MOTO GP – only the Australian race is listed and the other races were removed from the list in 2004. Ten was able to acquire the exclusive broadcast rights to all races including qualifying even though only the Australian event is listed.
- Formula One – only the Australian race is listed and the other races were removed from the list in 2004. Ten was able to acquire the exclusive broadcast rights to all races including qualifying even though only the Australian event is listed.
- National Basketball League – the playoffs were listed but were removed from the list in 2004. In 2010, Ten was able to acquire exclusive broadcast rights even though none of the events are listed. On 18 April 2012 the NBL announced a new broadcast deal with Network Ten.
- Tour de France – SBS owns the exclusive live broadcast rights. This event has never been on the list.
- Tennis – Brisbane and Sydney international tournaments held pre-Australian Open – each match of each tournament was previously listed, but then removed in full from the list in 2004. Seven owns the exclusive broadcast rights.
- Football – SBS has non-exclusive rights to the UEFA Champions League. No events in the Champions League are listed.
- Major League Baseball – Ten has non-exclusive broadcast rights. No MLB events are listed.

4. Senator Cameron requested the methodology and copies of the outcomes of consumer research conducted by ASTRA in 2009 into community attitudes to sport on television (page 30).

Key results

The research revealed the following key results:

- 57% of Australians indicated they were sports fans but only 21% of Australians indicated that they were 'keen' sports fans;
- almost twice as many people believe there is too much sport on FTA television than believe there is too little;
- 69% of people who are not sports fans believe there is too much sport on FTA television;
- 49% of all women believe there is too much sport on FTA television;
- 47% of all 18-24 year olds believe there is too much sport on FTA television;
- most football code matches, all major golf tournaments and the French Open tennis have low national significance in Australia;

⁸ <http://www.dailytelegraph.com.au/sport/nrl/channel-9-has-refused-to-show-either-the-anzac-test-or-the-city-country-games-live-to-air/story-e6frexnr-1226332102550>; "Ten causes outrage with F1 move" *The Australian*, 19 April 2012 (<http://www.theaustralian.com.au/media/ten-causes-outrage-with-f1-move/story-e6fre996-1226332816613>).

- keen sports fans are especially eager to see more live sport on TV; and
- all sports fans are annoyed that more events are not screened live.

Methodology

Research conducted by Auspoll for ASTRA included a mix of focus groups and an online survey.

The focus groups were held in Sydney, Melbourne and the Gold Coast during the week of May 25, 2009. The online quantitative survey was conducted between June 26-30, 2009 with a total sample of 1500 Australian residents, weighted to be representative of the national population by age, gender and residential location.

The total sample of 1500 provides an error margin of +/- 2.5% at a 95% confidence level. This means that for a result of 50%, we can be 95% confident that the actual result would be between 47.5% and 52.5%.

We refer the Committee to ASTRA's submission to the 2009 Review of Sport on Television (attached) for further detail.

Please contact myself or Simon Curtis, Policy and Regulatory Affairs Manager, on (02) 9776 2684, if you have any queries regarding the above.

Yours sincerely



Petra Buchanan
CEO