



**Australian
Broadcasting
Authority**

Investigation Report No 1482

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| File No. | 2004/2298 |
| Licensee | General Television Corporation Pty Ltd |
| Station | GTV 9 |
| Type of Service | Commercial Television |
| Name of Program | <i>The Today Show</i> |
| Date of Broadcast | 28 July 2004 |
| Relevant Legislation/Code | Clause 4.3.1 of the Commercial Television Industry Code of Practice 2004 |

Investigation conclusion

Breach of clause 4.3.1 of the Commercial Television Industry Code of Practice 2004, by failing to present factual material accurately.

The complaint

On 3 December 2004 the Australian Broadcasting Authority (the ABA) received a complaint from Telstra Corporation Limited (the complainant) regarding a segment on *The Today Show* broadcast by General Television Corporation Ltd (the licensee) on 28 July 2004, in which the host, Steve Liebmann, interviewed the then Federal Opposition spokesman, Lindsay Tanner.

The complainant alleged that the licensee breached clause 4.3.1 of the Commercial Television Industry Code of Practice 2004 (the code) in that it failed to present factual material accurately by using an irrelevant internal Telstra report to show an increase in mobile call drop-out rates.

Matters not considered by the ABA

The complainant submitted that the licensee failed to provide it with an opportunity to participate in the segment and that it unreasonably insisted that it was only willing to interview Telstra's newly appointed Chairman the day after the broadcast.¹ The ABA has not investigated these aspects of the complaint as there is no requirement under the code that current affairs programs² must be neutral on every issue or give equal time to both sides of an argument. Such programs are entitled to take a stance and present a particular point of view.

The complainant also claimed that the licensee had breached clause 4.3.11 of the code by insisting that it would only accept the Telstra Chairman as a spokesman, thus effectively depriving the complainant of an opportunity to correct a significant error of fact at the earliest opportunity. Clause 4.3.11 provides:

4.3 In broadcasting news and current affairs programs, licensees:

4.3.11 must make reasonable efforts to correct significant errors of fact at the earliest opportunity.

The ABA has not investigated this complaint as the obligation to correct errors of fact in the broadcast is clearly on the licensee rather than on the persons to whom the segment is directed.

The program

The Today Show is a current affairs program broadcast between 7.00 am and 9.00 am on weekdays. The segment in question commenced as follows:

PRESENTER: Dropouts, one of the most frustrating problems for mobile phone users. You're on a call, you suddenly lose reception, or you're stuck in a

¹ The licensee submits that it offered an interview to the Telstra Media Relations Manager or the Chairman in an even more prominent position in the program than was given to Mr Tanner.

² It is accepted by both the complainant and the licensee that *The Today Show* falls under clause 4.3.1 of the code relating to news and current affairs.

zone where you can't even get a signal, we've all experienced it. Here's a look at an experiment we had [the reporter] do for us last year.

The reporter then discussed how he lost phone reception on the F3 freeway, 30 kilometres outside of Sydney, concluding:

REPORTER: Telstra call these technological challenges, which they are addressing. I call it frustrating.

PRESENTER: Well, it seems that things haven't got much better since then, and now a leaked report by Telstra shows a number of widespread problems, including an increase in dropouts. We're going to have more on that in just a moment.

The reporter interviewed people on the street about their experiences with mobile call dropouts. Following these interviews, the presenter interviewed Mr Tanner about the report, stating:

PRESENTER: Now your advantage is you've read the full document. What does it reveal?

Mr Tanner expressed his view that the report shows that Telstra has been neglecting its mobile network. He commented that the amount of time that cells on mobile towers were out of action was well above Telstra's targets. Throughout the interview, captions were broadcast at the base of the screen, including, 'Report shows increase in mobile drop-outs' on five occasions.

Assessment

The ABA sought and received a tape of the relevant segment from the licensee and comments in regard to the program's compliance with the relevant clause of the code.

Issue 1: Whether the licensee presented factual material accurately

The relevant provision of the code is clause 4.3.1:

4.3 In broadcasting news and current affairs programs, licensees:

4.3.1 must present factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program.

Complainant's submission

The complainant submitted that:

- in the course of the interview, the presenter made statements purporting to summarise the effect of the internal report, including statements that the report showed an increase in Telstra's mobile call dropout rates. Not only was his description of the report materially incorrect, the presenter appeared to have made

these statements despite other on air comments from him indicating he had not read the report in full and perhaps not at all

- the report related to internal network performance measures that had no direct bearing on call dropouts impacting on customers.

Licensee's submission

The licensee submitted that:

- the reporter indicated the nature of certain information contained in the report, including an increase in dropouts. His comments did not purport to cover all of the information contained in the report or describe the report. Further, the presenter made it clear that he had not read the report in full
- the purpose of the report was, 'to identify Code Division Multiple Access (CDMA) and GSM Base Station supportability issues which may have a direct bearing on Base Station availability affecting GSM/CDMA products'. CDMA and GSM provide customer mobile access
- while the focus of the report may have related to network performance measures, it contains information relating to cell availability which directly affects call dropouts on customers. Cell availability is clearly a performance indicator which gauges how successful a network is working
- the report also refers to another set of reports on the performance indicators for the Base Station Transceiver Subsystem (BTS) which clearly impact on mobile phone reception availability. BTS is defined in the Telstra report as:

the last item of hardware before entering customer terminal equipment ... BTS location, accessibility, capacity and design issues are important when trying to meet customer mobile (GSM & CDMA) access availability demands ...

- those reports reveal that the cell outage time has been steadily increasing over time. Increased cell outage means that these cells cannot be used for transmitting mobile phone messages and calls.

Finding

The ABA is of the view that the licensee did not present factual material accurately in *The Today Show* broadcast on 28 July 2004. Accordingly, the licensee breached clause 4.3.1 of the code.

Reasons

The requirement to present factual material accurately means that every reasonable effort must be made to ensure that factual content is presented truthfully and is free from error or defect. This does not mean that all factual material must be presented, but rather that what is presented is in itself accurate and not misleading.

The ABA has considered the factual accuracy of the following statement made by the presenter:

... and now a leaked report by Telstra shows a number of widespread problems, including an increase in dropouts ...

and the caption used in the broadcast: 'Report shows increase in mobile drop-outs'.

Background

For the purposes of this investigation, the ABA has taken into account the following definitions of the technical terms used in the Telstra report:

- the BTS³ is the actual transmitter and receiver of radio signals for mobile phones
- a cell is the geographical area of radio coverage provided in a given location and
- availability of a cell refers to the ability of the BTS cell to facilitate reception and transmission of mobile phone calls.

Focus of report

The Telstra report detailed the results of a survey conducted of relevant Telstra staff pertaining to supportability⁴ issues of BTS infrastructure such as incident control, coverage delivery, product service management and customer operations. The purpose of the report was to identify issues relating to BTS maintenance and supportability, not performance-related issues, as evidenced by the Scope Section of the report:

This survey applies to BTS and considers processes, systems, training, environment, security, software, change management and organisational structures which may impact customer services. The focus of this survey will be on *supportability* issues only. It will not attempt to capture performance issues, of a technical nature, as currently addressed by the BTS Outages task force.

The executive summary of the report also indicates that:

BTS location, accessibility, capacity and design issues are important when trying to meet customer mobile (GSM & CDMA) access availability demands, however this review deals exclusively with *supportability* matters which increase 'up time' (availability management) and reduce 'down-time' (recovery processes).

The report includes BTS reports, sourced from Telstra's intranet, which refer to the availability of BTS cells and the cause and duration of BTS outages. The document concluded that the BTS has a 72 per cent confidence rating. It also set out a number of specific findings and recommendations which relate to such issues as training, documentation, support structure, performance and fault analysis, alarms and site maintenance, all of which relate to the supportability of BTS infrastructure.

³ The Telstra report indicates that there are hundreds of BTSs throughout Australia.

⁴ *The Macquarie Dictionary* (third edition) defines supportability as: [the ability to] support; endure; maintain.

Issue of accuracy

It is clear that the Telstra report does not purport to measure the technical performance of the BTS, that is, how well the BTS hardware performs in order to transmit radio signals to mobile phones. Rather, the purpose of the report was to identify issues relating to the ability of support staff to maintain BTS infrastructure and to suggest solutions in areas where there were problems meeting acceptable standards.

The licensee contended that the report indicated that the unavailability of BTS cells directly affects mobile call dropout rates. The report includes graphs indicating BTS cell availability ranging from 99.7 per cent to slightly below 100 per cent, averaging approximately 99.9 per cent. It is noted that the graphs and the quantum do not indicate either a serious problem or a decline in cell availability. Thus, the ABA does not accept the licensee's interpretation of the Telstra report in this regard.

Even if a BTS cell were unavailable, the ABA finds that any implied relationship between BTS cell availability and call drop-outs is tenuous on the basis that:

- the BTS will typically have several different transceivers which allow it to serve several different cells and
- should a BTS fail, every cell served by that BTS will also cease to function, however, the reverse is not true. If one cell served by a particular BTS stops working, calls destined for the unavailable BTS cell would be handled by overlapping or adjacent BTS cells.

Therefore, a vehicle moving out of the range of one cell comes within the range of a number of cells in the vicinity, not all of which would be congested.

The licensee also submitted that the report reveals that the cell outage time has been steadily increasing over time, which in turn, affects mobile phone messages and calls. The report includes various graphs indicating the cumulative duration of BTS outages. It is noted that the graphs refer to statistical distributions of outage times as opposed to indicating decreasing performance of the BTS. On this basis, the ABA does not accept the licensee's argument that increased cell outage time increases mobile dropouts.

In conclusion, the ABA is satisfied that the licensee has not presented factual material accurately by indicating that the Telstra report shows an increase in mobile call dropout rates.

Action taken by the licensee

The ABA notes that in relation to the breach finding, the licensee has taken the following steps:

- it would discuss the final report with the relevant producers of *The Today Show* and
- the final report would be used as an example in ongoing training in relation to the application of the code of practice.

The ABA considers these actions will address the compliance issue raised by the investigation and will continue to monitor the licensee's performance in this regard.

Decision

I, Andree Wright, Director, Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Broadcasting Authority, determine for the above reasons that in a segment broadcast on *The Today Show* program on 28 July 2004, the licensee of GTV 9, General Television Corporation Pty Ltd, breached clause 4.3.1 of the code by not presenting factual material accurately.

Signed:

Andree Wright

Dated this day of May 2005