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SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE

Reference: Competition in broadband services

THURSDAY, 5 FEBRUARY 2004

BALLARAT

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SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY

AND THE ARTS REFERENCES COMMITTEE

Thursday, 5 February 2004

Members: Senator Cherry *(Chair)*, Senator Tierney *(Deputy Chair)*, Senators Lundy, Mackay, Tchen and Wong

Participating members: Senators Abetz, Allison, Bolkus, Boswell, Brown, Buckland, George Campbell, Carr, Chapman, Conroy, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Greig, Harradine, Harris, Humphries, Knowles, Lees, Mason, McGauran, Moore, Murphy, Nettle, Payne and Watson

Senators in attendance: Senators Cherry, Lundy and Tchen

Terms of reference for the inquiry:

To inquire into and report on:

(a) the current and prospective levels of competition in broadband services, including interconnection and pricing in both the wholesale and retail markets;

(b) any impediments to competition and to the uptake of broadband technology;

(c) the implications of communications technology convergence on competition in broadband and other emerging markets;

(d) the impact and relationship between ownership of content and distribution of content on competition; and

(e) any opportunities to maximise the capacity and use of existing broadband infrastructure.

WITNESSES

Committee met at 11.01 a.m.

ANGELONI, Ms Maria, Executive Officer, cBallarat

KEENAN, Mr David, Executive Director Economic Development, City of Ballarat

VENDY, Mayor David, Mayor, City of Ballarat

CHAIR—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts References Committee and welcome people here today to this absolutely beautiful hotel. The committee has received over 40 submissions to its inquiry into competition in broadband services. We have already had four days of hearings, in Canberra, Sydney and the Gold Coast. I would like to welcome our witnesses today to hear what is happening with the broadband industry here in Ballarat. Particularly, I would like to welcome Mayor David Vendy. We are honoured by your presence today. Thank you for turning on the sunshine. The Gold Coast failed to turn on the sunshine during the week. He is also joined by Mr David Keenan and Ms Maria Angeloni. I invite you make an opening statement before we move to questions.

Mayor Vendy—Thank you. I will be very broad. I think David will go on from what I broadly go through. Welcome to Ballarat. You certainly are in a beautiful hotel. They are spending $5 million on upgrading this hotel to a five-star, so they will expect all you people to stop here next time you are here. We welcome you to Ballarat.

Here are a few broad things that most of you would know about Ballarat. Ballarat has a population of around 86,000. Our population is increasing by about 1.6 per cent, which ensures we are moving along in line with our economic development plans. We have a catchment in the broader area—if you look 30 or 40 kilometres around us—of 180,000 people. We have an unemployment figure of about 6.4 per cent, which is probably average around Australia. But we do have an unemployment problem in the 15- to 19-year-olds which is probably a lot higher than that. That is not great for Ballarat. We certainly have skills shortages in Ballarat in a number of areas, and connecting unemployed students with jobs that are out there has become a bit of a passion of mine because we do appear to have a whole range of jobs out there and a whole range of students unemployed. In terms of trying to connect the two, we are getting there but we have had a lot of discussion on how that could be done.

Ballarat’s strengths are in art and culture, and tourism is very big. Manufacturing employs about 20 to 25 per cent of our work force. There are great health facilities and education facilities. Of course, heritage is very important in Ballarat. We are a member of the League of Historical Cities. We have their world conference here in 2006, which will be huge for Ballarat, if not Australia. So things are going extremely well in Ballarat. We were named recently in the *Age* as the premier provincial area for the whole of Australia—we are No. 1 in Australia. It was pretty big to be named like that. So, me being a marketer, I was keen to grab hold of that statement and tell everybody.

As I said, we have an unemployment problem in that 15- to 19-year-old area. That is one issue. One of the other issues that I will throw in for the senators—and, as you came up the road today, you might have got caught in the traffic—is that we are lobbying for Deer Park bypass.

We need that funded by the federal government. That is very important. With that, you probably would have been here 20 minutes earlier.

But in relation to our future, you probably know—and I know Senator Lundy does—about Ballarat and the great university we have and what we are doing with information technology in Ballarat. We believe that is where we have a niche in the market, and that is where we are doing extremely well. Of course, with that comes the fact that we have to lead the way. We have IBM up here out at Technology Park and, as I said, we have great educational facilities with the university in Ballarat. So on the surface you would say, 'Well, we're going extremely well.' But we have a number of concerns. We have a number of concerns with the ad hoc arrangement of broadband and where it is coming from, where it is going to and whether it is controlled by state or federal authorities. We do not really know what the future is or who is bringing it all together. We do want to make sure that broadband in Ballarat is affordable. In Ballarat we seem to have an excess capacity of broadband across the board. Would that be right?

Mr Keenan—We have broadband coming in from a number of different avenues. That would probably be the best way to put it.

Mayor Vendy—Yes. But we are not sure who is controlling where it is coming from. All these people are putting it up and saying, 'We're going to give you broadband,' but nobody seems to be coordinating it overall. So we are pretty keen on ensuring that someone controls that. We want broadband to be affordable and, of course, we have an economic development strategy in place. I know you have copies of that. That will expand where broadband and IT fit within our economic development strategy.

But, as I said, we are concerned about the direction of regulation. We have been heavily involved in the development and nurturing of information technology, and we need a more competitive environment. We believe that Telstra has a bit of a disproportionate share of market, but at the same time we would point out that both the standard and the quality of service delivered by Telstra have improved in recent years, perhaps as a result of competition. Clearly, in Ballarat we have a great relationship with Telstra and all the other providers that are here. I think that one of the reasons for that is that we have a board called cBallarat, which is 'connect Ballarat'. It is run by the community, and the mayor is on that, and David and his people. IT projects, broadband and all those things filter through that, so whatever happens in Ballarat happens in a structured manner.

So we believe we are ahead of the rest. The City of Ballarat would welcome a strategic role out of additional broadband infrastructure, rather than having it delivered on an as needs basis. I think that is what we are really asking for in Ballarat. So we believe that further education and training is required to support the maximum use of broadband in provincial areas. It is interesting that even in Ballarat there can be pockets where service is not provided. I have just shifted into a new area in Ballarat and I have not got the service provided in my area. So there are pockets where the service is not provided, rather than it being provided to the total community. That is about all I have to say. David is going to add to that. Are you right there, David?

Mr Keenan—Yes. Do you need to disappear?

Mayor Vendy—Yes, I will disappear in a minute.

Mr Keenan—Thank you for the opportunity.

CHAIR—Just before you do that, we have received a submission from the City of Ballarat. Is it the committee's will that it be published?

Senator LUNDY—I move that it be published.

CHAIR—It is so ordered.

Mr Keenan—Just speaking to the submission put forward by the City of Ballarat, we do want to make it quite apparent that we do not believe that there is anything to be gained by criticising Telstra or the activities of Telstra at all. Ballarat probably has a broader object, and the broader objective is to try to cluster as many ITC businesses in Ballarat as possible and to make sure that what we are looking at is the development of future employment options in Ballarat. One of the issues we have had, building on what the mayor has said, is that we have had different groups tell us that broadband infrastructure is coming from a whole lot of different areas. Whether it be microwave, up the railway lines, up the highway, it comes through a whole lot of different areas at the moment. To a large degree that creates a great deal of confusion in the marketplace. We would look for someone in federal or state government to do a lot more regulation in this area. We would also submit that business is not dealing as best it could at the moment with the implications of broadband. It is unaware of what some of the opportunities are. A recent example of that would be that the City of Ballarat, through the state government, ran a series of e-commerce workshops. Those were specifically aimed at the retail sector and the small to medium business sector. It is difficult to attract people to these workshops, to get them to comprehend how they can use some of the broadband activities and how broadband can bring benefits that can go through to help their business.

The City of Ballarat is very lucky. We have a number of providers of a very high quality here in Ballarat, including Telstra and Neighborhood Cable. We have some very good ISP operators here in the form of Chariot netconnect et cetera. We are also especially lucky to have the University of Ballarat here, which the city has a number of partnerships with and which works proactively in trying to attract new businesses here. As part of that, what is needed is a reliable source of broadband infrastructure. We are finding that it needs to be dedicated and identified by businesses as being integral.

You need to keep in mind too that a number of call centres are currently operating here. I think they would employ in the vicinity of 700 to 800 people. We are actively trying to attract additional call centres here, even though a few seem to be disappearing offshore at the moment. I would turn around and say that, on average, we have expressions of interest from new call centres probably about two to three times per month. That would indicate to you obviously that broadband infrastructure is going to be very important to the long-term development of Ballarat.

The last point I will make from the City of Ballarat's point of view is that I do not believe that you can underestimate the need for education in the broadband area. During the Networking the Nation funding arrangements, a great amount of education was given out through the telecommunity centres that were established and through a lot of the infrastructure that was put out at that time. The telecommunity centres are at some point going to run out of funding. They are also going to run out of relevant infrastructure that can be utilised there. Some of the telecommunity centres in Ballarat have been the most successful. Wendouree West and Ballarat East, off the top of my head, are two of the most successful telecentres that I have ever seen. What is integral, if broadband education is going to occur in the future, is the need for additional funding for education of both the community and businesses, and these telecentres are probably the best way of doing it. We would welcome additional funding in that area. I think last time it was as a result of the part sale of Telstra. I am not sure where the money for the telecentres in the future will come from, but they are sitting there as a piece of infrastructure that could be utilised in the future.

I will leave copies here of some propaganda material that is produced in conjunction with cBallarat, the City of Ballarat and the University of Ballarat that is used to attract businesses here. It outlines a number of the businesses that are already here and, obviously, dependent on quality infrastructure coming through in the broadband sector. We also acknowledge, and this is probably not addressed enough in our submission, that there is a need for local government to start working closer with developers to ensure that the 'third conduit' goes into houses and new residential developments. I think probably a big education process needs to go on with developers at that time as well. I think I will leave my comments at that. Before introducing Maria, I think it is important to understand that Maria is part of cBallarat, which is part of the City of Ballarat and is not part of the City of Ballarat. cBallarat is an independent organisation and a separate company to the City of Ballarat. I just want to make that clear; hence the reason why there are two separate submissions.

Ms Angeloni—I have the cBallarat submission here to present. I will cover some of the highlights from this submission. Ironically, last Friday cBallarat sponsored a forum called 'From silos to synergies', and that brought forth different representatives from different levels of communities around the area to talk about their IT issues. Broadband access was probably the largest topic talked about that day, and it was an all-day forum. A lot of the examples that are presented here have actually come from that forum, from real people talking about some real issues that they deal with on a daily basis.

In response to your terms of reference, one of the three key areas in broadband would certainly be that the appropriate infrastructure needs to be put in place. You cannot even attract the proper service providers if the infrastructure is not there. Some of the initial investment costs have to be brought down, which would enable more service providers to tap into that infrastructure as well. In relation to free market competition, as more service providers are put in place, a lot of the costs that consumers are paying for now will come down and hopefully be less complicated.

A lot of the impediments to competition and uptake were discussed last Friday. One of them is the general knowledge base. I agree with David that there needs to be an increased knowledge base at the ground level as well, and not just for individuals but also for business—just general business knowledge. In most small to medium enterprises broadband access can increase current business processes, whether it is accessing vendors, suppliers or sales channels. Most people I have talked to feel that they need broadband access but they are not sure exactly how to get it. When they do get it, it is just too complicated.

That leads me to my next point: the service confusion and complexity. A lot of people do not understand what broadband means. They are bombarded with a lot of different technologies. When they get their service they are underutilised—there may not be enough broadband—or they are given too much. That is certainly an issue with a lot of consumers.

Service access is an important issue. Somebody raised the example of a dairy somewhere in Victoria who cannot even get proper power access. You get a real sense of pessimism from the average potential consumer: ‘If I cannot get proper power, I am not even going to expect proper broadband.’ There is a lot of pessimism out there among potential consumers. Right now the most offered service is ADSL but that is certainly limited in a three-kilometre radius. Even in a town like Ballarat, like Mayor Vendy said, you could be out of the range of a certain exchange and not have broadband access. What really needs to be looked at is broad access for everybody.

I now refer to infrastructure access. Because the infrastructure is inconsistent from town to town and from town to rural areas it is bottlenecking even the services that need to be provided. One idea came out of the forum: if a manufacturing facility, let us say, in rural Australia has broadband access, how come that broadband access is not being spread out in the immediate community? There is an idea to try to encourage piggybacking of services so that they bleed out to a larger area whereby a major facility like a university, hospital or manufacturing plant can help the larger community gain access as well as far as infrastructure is concerned.

Let me deal with some of the implications for competition. Certainly what will improve competition is going to lower the service cost to the individual consumer. That is one of the key areas that need to be looked at. As more e-services are available, more consumers are going to demand that they get their broadband access. It is ironic: if you live in a small town and your local bank has closed, what do you do? You have to go online to do your banking and your bill paying. It is the same for businesses as well. As local storefront facilities are closing down, they have an even larger need. I argue that rural Victoria has a greater need for broadband access than towns like Ballarat. cBallarat is interested not just in Ballarat; the businesses and people who live in the surrounding areas have an impact. It cannot be stated enough that for any local company to compete in the 21st century they need broadband access to sell their product globally as well. Whether they are a sheep farmer or a granary, they need that access to get stock prices or whatever other information they need.

I will move to some opportunities. Out of our forum there were certainly a lot of opportunities that came about, including the obstacles that I mentioned. I agree with David that some sort of national marketing campaign or education forum needs to be put in place to educate individuals in the services that are available to them and to educate SMEs in how broadband access can better enable them to communicate with their vendors, suppliers and customers.

I would suggest that the government also encourage the service providers to simplify consumers’ perception, and definition, of broadband. I think some of the responsibility lies with service providers to make it less complicated, to make their fee structures less complicated and to open the channels for broadband access. I think towns and communities need to be encouraged to invest in their own infrastructure and then to actively pursue the service providers to come and provide services to their areas. Local councils too must be encouraged to incorporate broadband access into their town planning and town expansion—it is not just for existing businesses but for potential businesses to locate in their specific areas.

It was suggested to me today—and I thought of the wind map that is now available for Victoria—that a map of current access and services be provided to all interested parties to give a comprehensive view of Australia's state of connectivity. I think that would be very important and would show the world how progressive Australia is and can be in the future. In the end, I believe that broadband needs to be deemed to be as important as road infrastructure: you do not not build a road to a small town. There are lots of excuses such as: 'That town is a point on a map. Why do we want to build fibre optics there?' But every town—every business and every individual—has something to contribute to the economy, and if the infrastructure for broadband is deemed as important as roads, all of Australia will benefit.

CHAIR—I have a couple of quick questions. We are a bit limited for time this morning, so unfortunately we will not have a lot of questions for you. I am interested in the role of local government in planning and development. We took a bit of evidence on this earlier in the week from the Gold Coast City Council. What do you think councils need to do better—for example, in terms of letting potential carriers know when conduits might become available or could be put down, or whatever, and in planning for new developments in particular?

Mr Keenan—I have a feeling that there are some people from Neighborhood Cable behind me at the moment. What a surprise! One of the things that council is trying to do—and this is something the committee may well want to take up—is that, under the Local Government Act, there are certain referral authorities we can refer subdivisions to. The only one in the telecommunications and IT area at the moment, realistically, is Telstra; we are not under an obligation to refer them to anyone else at this point. Keep in mind that any company or individual can come down at any time and look at our subdivision book, which is located in the customer service area at the council, as it is in most councils, to see what subdivisions are going ahead. Obviously what local government needs to do is to try and incorporate. This also opens up an issue: if you suddenly end up with 15 different carriers, that is a lot of notifications and those people also have 28 days in which to either object or suggest that they may be coming in.

One issue is that we would like to see as much additional fibre as possible going in with common trenching and, where possible, with conduits. Harking back to our submission, that also requires an education process for developers. Developers are now beginning to understand—and the COLT project here in Ballarat, with the University of Ballarat and CEOS, is an example of this—that there is value adding through supplying broader-band infrastructure in new residential developments. It is a bit like selling an environmentally friendly house: if they can value add to it and they see that they are going to get extra money or greater sales potential from it, the developers will do it.

I will throw that back to the committee: is it the role of local government to educate those developers, or is it the role of government to almost enforce that from a higher level and say to developers, 'This is the benefit you will get from additional infrastructure in your facility'? Keep in mind that developers may come back and say: 'Why do I need infrastructure in the ground? Why don't I do a wireless solution?' This is where some of the regulation needs to come in at some point. We never want to end up with a scenario where we have four or five wireless solutions sitting next to each other that are all causing issues with each other. At the moment, that could happen quite easily; there are no regulations to stop that, as I understand it. I hope that answers your question.

CHAIR—Yes, that is very helpful. Are the referral powers in Victoria essentially that you simply advise Telstra that a new subdivision is being planned?

Mr Keenan—You advise Telstra, the water authority, the energy authority and the Department of Sustainability and Environment so that, if there are any issues, they have a 28-day referral period. If they have a major problem with it—for example, if Telstra or a water authority turned around and said, ‘You’re doing an inappropriate subdivision in the middle of nowhere and to service that is going to add on an extra $500,000’—they might turn around and say, ‘It’s not worth our while doing it.’

CHAIR—What role do you see for higher levels of government in planning of infrastructure roll-out?

Mr Keenan—With respect to Maria’s point about having a map of infrastructure, there was the old Telstra map that used to show the old backbones coming out of the exchanges. I think the state government infrastructure planning review looked at that as one of the issues that came through in that review. They were one of the people lucky enough to get a copy of that map—it is a difficult map to get, at times. There is a role there for education in turning around and saying, ‘What is available? What is a preferred method of infrastructure? How can that infrastructure be facilitated?’ I am aware that the committee went to the Gold Coast. If I am not mistaken, they laid a huge amount of fibre down the highway from Brisbane to the Gold Coast, expecting a huge take-up from business, and, if I remember correctly, it may not have experienced such a huge pick-up in the first few years.

CHAIR—It is the last mile stuff they are still struggling with, yes.

Mr Keenan—That is right. So, we would look for direction in the form of education. We would look for direction in the form, maybe, of incentives for new organisations to put this infrastructure in. That comes back a bit to what Maria was saying: how do people get into the markets? I include Telstra in that at the same time. We are dealing with all these markets. In the end, all we want is better access for everyone.

Senator LUNDY—Just to follow on the issue of local government and their role, my understanding is that Victoria is the only state in Australia that requires a referral to Telstra. Are you able to clarify for me whether that is a non-exclusive arrangement and whether it is within the power of local governments to provide that referral to someone else or whether it has to be to Telstra?

Mr Keenan—I am under the impression at this point that it has to be to Telstra. The gentleman from Neighborhood Cable or Chris might correct me, but I am under the impression that it is to Telstra at this point because Telstra are the majority infrastructure owner. In other municipalities I am quite sure that it is Telstra. Where you do not have a Neighborhood Cable, there would be no-one else to refer to, for example.

Senator LUNDY—With respect to what that referral then enables, you mentioned a 28-day period in which any of the notified utilities could object. Is it a theoretical scenario that Telstra could decide not to install infrastructure in a new subdivision?

Mr Keenan—In theory that is so. I am unsure what the obligations are under the universal service obligation in that regard.

Senator LUNDY—I think it is an interesting crossover of regulation.

Mr Keenan—It is. It almost makes the referral redundant in some ways, because one expects that to be coming out from Telstra. I do not have the answer to that one, Kate.

Senator LUNDY—It is a matter of great interest, as the chair said to the committee, so we are being as thorough as we can in exploring it with witnesses. It raises another issue, which either of you may comment on. Telstra have now said that, once they reach about 1,000 exchanges being ADSL enabled, they will only consider further provisioning of exchanges if a commercial case can be established. One, are you aware of this? Two, what are the implications for a place like Ballarat, where you still have some exchanges that are not ADSL enabled? Are they on Telstra’s list or will a commercial case have to somehow be established for Telstra to upgrade those exchanges?

Mr Keenan—I am unaware of the case in Ballarat with the exchanges that will be upgraded. I will say that I cannot see how this is going to be entirely different from what occurs with the natural gas industry, for example, in Victoria at the moment. That is simply done on a commercial basis. That is why we have areas that are not serviced at present. I cannot see how that is going to be any different for Telstra, and it is probably being financially prudent to go down that path, as well. One of the issues we have in provincial Victoria is identifying where there is enough critical mass and where there is enough use.

Senator LUNDY—It comes back to the map point?

Mr Keenan—It comes back to the map, and it comes back to people deciding the value of infrastructure in the IT and the communications area. If we are going to decide that it is as important as a road, it is something that you are going to have to act on. If it is not as important as a road and it is something that people are going to simply become selective about, maybe they have to think about the conditions they will be moving to at the time. There are other pieces of infrastructure out there that may service people: in remote areas in Victoria, people often use solar electricity systems rather than connect to the grid because that is prohibitive. These are some of the other options that have to be looked at.

Senator LUNDY—From the city of Ballarat’s point of view and from cBallarat’s perspective, how do you rate affordable broadband connectivity for both residents and commercial businesses on a scale of your capacity to grow your economy?

Ms Angeloni—I would say that, compared to North America, it is probably medium to, maybe, not so good. It is not at the level of competitiveness in a global economy. I think it is good for regional Australia, certainly, and maybe it is not quite at the level of Melbourne or Sydney. It is progressing, which is good, but it may not be progressing as fast as some people would like or in the areas that some people would like.

Senator LUNDY—What are the implications for that average performance relative to North America?

Ms Angeloni—I think there are a lot of personal computers out there getting dinged up—I think there are a lot of people throttling their computers. My own experience with friends and colleagues is that, on a very individual and personal basis, the dial-up access is just not adequate compared to the services that are available to them. They are being bombarded with all this amazing access that they can get through their bank and through whatever sort of entertainment or business processes that are available to them, and they just cannot get to the level that they would like. So it is like having all these wonderful things available to you, but you have this glass wall and you cannot get through it. I think it is very frustrating for most people.

Mr Keenan—Can I follow up a little on that?

Senator LUNDY—Yes, please.

Mr Keenan—You asked about the affordability. I think it is very hard to define what the affordability is because no-one knows what the actual price is. You are asking about the affordability of broadband. When you talk to the University of Ballarat, who are speaking later, they will know what they pay for access to their broadband services, which will be different from what the individual pays and different from what GRAHNet are involved in in the hospital services, due to all the different brokerage arrangements that are being made at the moment. So a pint of milk may cost a dollar or it may cost $20; it depends where you are buying it from and how much milk you are going to be drinking. This is the essence of your inquiry.

Senator LUNDY—That sounds like an argument for far greater transparency of at least the types of services available and the ability of consumers to compare them.

Mr Keenan—We go back to the education point of view: why are universities and hospitals achieving great rates with the management of broadband and their services out of there? They have learnt the lessons of call data aggregation, how to bundle it and put it out in the market. We see a similar thing has been attempted by individuals in the power industry, and we have seen a few of them try and do it in the gas industry as well. This is group buying; this is call aggregation. There is still funding coming from the federal government through NOIE to look at some of these potential brokerages that come through, but it is not heavily promoted. Again, you are asking about affordability: which one?

Ms Angeloni—I think there is a certain amount of resentment among people in country areas where they have to pay higher rates than, say, somebody in a metropolitan area. That argument goes for petrol or anything else, but I think in general you get a bit of frustration with that, and the complexity of the services adds to the affordability issue. Nobody is really sure exactly how much they are getting for how much money, and when they exceed that amount for that data access they are charged even more. I think that adds to the frustration: exactly how much can I afford as a business or as an individual?

Mr Keenan—And please keep in mind that we are just over an hour from Melbourne; we are not three or four hours away.

Senator LUNDY—Ballarat has always presented a unique environment as far as broadband goes because you do have competing infrastructure, but this issue of the complexity and difficulty that consumers have in comparing apples with apples in what is on offer in that market is a very interesting point.

Ms Angeloni—I think a key term that finally turned around the IT industry several years ago was ‘plug and play’. That was used quite a lot and I think that could be brought forward again in this instance because I think people just want to be able to plug in, get on the Internet and have as few as possible of the hassles, fee structures, equipment and everything else that go with it. They just want to make it as easy and painless as possible.

Senator LUNDY—You mentioned infrastructure access in your presentation. I interpreted that as the sorts of retail services that could be provided over the existing infrastructure. Can you extrapolate on what some of those barriers to competition are?

Ms Angeloni—From my experience and from what people have told me, there are not a lot of services provided—in the first place because there are prohibitive costs to even accessing the core infrastructure as far as putting in any sorts of additional boxes outside of exchanges and that kind of thing. Australia is sort of in a unique situation, whereas in America, say, the infrastructure was already there so all the services were basically laid on top of cable television. Here in Australia we have had a bottleneck. The infrastructure and the services are all trying to be worked out at the same time, so it makes it twice as difficult to get the services out to the consumers. My understanding is that in Canada the government had a little bit of foresight and just went ahead and did the infrastructure investment as a government. They laid it all out and now all the services are right on top of that. I think in South Korea they are doing an infrastructure layout as well. I do not know if the Australian government would ever consider that kind of global roll-out, but certainly if they are looking at how other countries combine the infrastructure with the retail markets, and those interconnectivities, those countries might well be looked at.

Mr Keenan—Keep in mind also that we currently have infrastructure either coming in or going out to Ballarat that is underutilised and under capacity at this point.

Senator LUNDY—Yes, I was just going to ask a follow-up question to Ms Angeloni, because there is some dark fibre there on the interexchange network. But our bottleneck is very much in this local loop. Given the insights that you have into what is happening in Canada, for example, would the comparable type of investment here be that roll-out at the local loop level and the upgrading of that infrastructure? Do you see what I mean?

Ms Angeloni—Yes. I certainly would think there is a delicate balance trying to decide which—

Senator LUNDY—I think that is where it goes.

Mr Keenan—It is the roll-out at the local level, but I am going to hark back and say it is education again. If there is capacity, hypothetically that capacity should be—

Senator LUNDY—But that is just creating the demand.

Mr Keenan—That is right—so it is making people aware of that capacity and utilising it.

Senator LUNDY—It is that ‘chicken or egg?’ of supply and demand.

Ms Angeloni—Yes. Somebody has to get it started.

Senator LUNDY—That is really interesting. Are either of you in a position to provide the committee with a little more detail about the current status of the COLT project—how it is developing, take-up rates et cetera?

Mr Keenan—The City of Ballarat, cBallarat and the University of Ballarat are all involved in the COLT project through the STI funding through the state government.

Senator LUNDY—The University of Ballarat are coming to the table shortly, so we will be able to pursue that then. Thank you.

Senator TCHEN—Mr Keenan, you responded to the chair’s question about what local government and other spheres of government can do. I want to put the question slightly differently: from your perspective, keeping in mind that Victoria has more uniform local government structure than other states, what do you think that local government should do in providing for broadband here?

Mr Keenan—The Shire of Whittlesea is probably the best example at this point. They have incorporated the third conduit into all their new developments going through. Local government probably needs to do this on a uniform basis. You will usually find that a developer operating in Whittlesea is also operating in Melton and Brimbank. There is a need to send out a uniform message in this regard. Another good example of that would be the separate planning permits that were issued for Neighborhood Cable. They now have planning permits in Geelong, Mildura, Ballarat and Warrnambool—I do not think I have missed any—but each of those has been a separate planning permit. There should be a uniform way of dealing with those. The other way that local government has to be involved is in education. We currently support the telecentres through the work of cBallarat as well. There are not many other local government authorities that do that. From a planning point of view there probably needs to be further education in the planning sector, full stop, but also in the building sector where the value adding can occur. If that means it has to come through local government, that is probably the most appropriate way to do it.

Senator TCHEN—Most of that, including what the City of Whittlesea has done—and it is a city now, isn’t it? —

Mr Keenan—I cannot remember if it is a shire or a city.

Senator TCHEN—is done under the existing power, under the planning act.

Mr Keenan—It is.

Senator TCHEN—So basically, as you said, it comes down to education: getting the developer to accept it and also getting council to accept their role. Regarding this particular referral power to Telstra—my knowledge of the Victorian planning act stopped in 1998, so there may have been changes since then—my understanding is that the neighbouring requirements do not require council to refer matters to any particular authority or agency. I think the actual word used is ‘utility’—there is a reference to utility authorities.

Mr Keenan—It is a utility or a referral authority. For example, the Department of Sustainability and Environment is one of the referral authorities, and that is not really a utility.

Senator TCHEN—So the referral to Telstra is actually a choice of the council, within their planning scheme, isn’t it?

Mr Keenan—I am under the impression that the utilities are part of the referral process—the energy authority, the gas authority and the water authority must go through to Telstra. That is certainly the impression I am under, but I am happy to follow that up.

Senator TCHEN—Is your director of planning here?

Mr Keenan—Yes, in Ballarat.

Senator TCHEN—That is what I meant; not at this inquiry.

Mr Keenan—I am happy to follow that up with a note and go from there.

Senator TCHEN—Thank you. If that were the case then it is not only the local council that should be doing things about broadband, but also the state government needs to come in and enable the local council to do that. I have one question for Ms Angeloni. Thank you for your written submission, which is a very concise and clear response to the terms of reference. In 1)b)ii) you refer to the investment costs, saying:

Because Telstra has a corner on the market in both the wholesale and retail arenas, Telstra can establish such high buy-in costs which keeps many potential competitors at bay

Do you know whether Telstra has done that?

Ms Angeloni—My impression is that there was an additional cost and that it had been contested in court. I do not know where that stands at the moment. I have been told by various sources that it is a moving target: there is no actual cost but barriers tend to be put up for potential providers. I do not have any specific examples, but that seems to be the case.

Senator TCHEN—I think a lot of people concur with your assessment that it can establish it. Throughout this and other inquiries dealing with Telstra, quite often there seems to be a readiness for people to say ‘it can do it’ or ‘it has done it’.

Ms Angeloni—As I said, I got a lot of these examples from the forum last Friday. I wanted to give a real groundswell impression—not just the official council impression but what people out there are seeing in the obstacles that they are coming up against. I was trying to get that as unfiltered as possible so you understand the perceptions that people out there have. Sometimes people have the perception that Telstra have the R&D, the retail and the wholesale, so basically they can make the rules. That is the impression that a lot of people have.

Senator TCHEN—I see. It looks like Telstra will have to engage in education as well.

CHAIR—Thank you very much for that. It was a very interesting and concise presentation and there were a lot of very good ideas. Thank you for coming in, and good luck with all those exceptionally good projects. We will publish the submission from cBallarat. It is so ordered.

[11.46 a.m.]

DOWSLEY, Mr Jeffrey, Manager, Information and Communications Technology Strategy and Planning, University of Ballarat

HOOK, Mr Robert Malcolm, Pro-Vice-Chancellor, Finance and Development, University of Ballarat

CHAIR—Welcome. The committee has received your submission. Are there any changes you wish to make to the written submission at this stage?

Mr Hook—No.

CHAIR—I invite you make an opening statement.

Mr Hook—The University of Ballarat is a multisector university with TAFE and higher education divisions. We have three campuses in Ballarat and campuses in Ararat, Stawell and Horsham, so when we talk about our area we talk about more than Ballarat. We talk about a broader base than the city, whose representatives have just been here. The mission of the University of Ballarat is to use education, training, research and consultancies to promote the growth and wellbeing of the communities in our part of Australia. Our Vice-Chancellor, Kerry Cox, who apologises for not being here—he had another appointment in Melbourne today—charges us to mobilise the head power in our region and to bring the world of learning to our primary catchment area. A key requirement for any university in order to meet its mission in this knowledge based area is digital communication. A robust, affordable broadband connection for the university is critical to its success, as ICT is now a component part of most of the university's activities.

The university, with the support of the City of Ballarat and state and federal governments, has established a critical mass of ICT activity at its Ballarat Technology Park. We did set ourselves a target to get 1,000 employees at the technology park. I think we will hit 750 employees by the end of this month, and we have in plan projects which, when those projects are fully expanded, will bring the number to 1,000. So without winning anything extra now, we virtually have the 1,000 employees secured, which in our opinion is fairly important to this region and leads the regional areas in ICT development. Ballarat is gaining a reputation for low-cost delivery of ICT services. They are much cheaper to deliver here in Ballarat than in the metropolitan areas.

Regarding the university, the School of Information Technology and Mathematical Sciences has significantly increased its capacity to match with the park. Its staff has been doubled over the past two years, and its budget for 2004 shows that over 60 per cent of its earnings will come from entrepreneurial activity rather than the day-to-day educating of students. So it is quite a different school with a lot of activity going on. In particular, there is an international standard research centre in informatics and applied optimisation there which is causing a lot of interest right across Australia and the world.

Our TAFE division is desperate to improve its digital communication to the campuses in Ararat, Stawell and Horsham, particularly for online teaching. All this activity needs to be supported by affordable broadband, in particular to enable voice and video as well as data to be communicated. Jeff Dowsley is the technical expert putting a lot of technical solutions together at the university, and he will now specifically address some issues from our submission.

Mr Dowsley—I suppose you can accuse people in universities of being up in their ivory tower, but we think it is just a lofty viewpoint that we have taken to try and see further out into the future. One of the issues I have is the definition of broadband, for a start. I think that broadband was defined in the briefing notes as 64 kilobits upstream and 128 kilobits downstream. My definition of broadband would be around 256 kilobits upstream as a minimum and half a meg downstream. I think that a lot of the applications that we are seeing out there right now in the community, such as Internet banking, require far more bandwidth than the standard that has been set within the inquiry. If you have ever tried to do Internet banking through a dial-up line, it is not a nice experience, with time-outs and failure. With the minimum ADSL type services it is usable, but I would not like to be a business trying to use it.

One of the issues that the inquiry faces is that we are coming from a very low base. To look at it from that low base and aim for just above that base is not going to do Australia any good service in the long term. We really need to come up with what is a reasonable level to put in now for future growth. The applications that the university wishes to run for its teaching programs include things like access grids. The bandwidths that we are talking about there are in excess of megabits. In fact we will get up to 20 to 100 megabits a second for our internal teaching programs. The university, because of its nature and the cost of telecommunications within the regional areas, has built its own private microwave radio network and has spent several million dollars on building a 34-megabit radio link from Melbourne right out to Horsham, linking all our campuses. The university can do that, but businesses cannot afford to do that, especially small regional businesses that are struggling to survive in an environment where, with reducing services, there is a natural decline in population in regional small towns. A lot of that is due to the fact that services are not there.

Because the university covers this whole region out to the South Australian border and north and northwest up to Mildura—this is our catchment area for students—we are very interested in the services that are available for the communities in the region. The university has been involved in and has sponsored and supported a number of programs, such as the regional connectivity programs and state government e-commerce programs, that have led to the establishment of over 30 incubator sites, and these we have linked back, originally via Telstra ISDN. Lately we have been moving more to satellite services to try and reduce the cost so that these small centres can remain viable and continue on once the seed funding has stopped, because it is the communication cost that kills these things.

Our problem here in Australia is that these costs, relative to North America, for example, are very high. Compare the basic broadband cost with America, where even back in 1998 a 128-kilobit ISDN service was priced at $15 a month in the Bay Area of San Francisco. The cost of ADSL broadband here is much higher than that, and I believe for any business to seriously use these services it requires symmetric broadband services.

I have been unable to find the pricing of these on the Telstra web site up until the start of this week; I understand they are planning on rolling these services out, but we still do not know the costing. It would probably not be unreasonable to assume that they are going to be similar to the broadband services offered to businesses in the capital cities—such as those Optus run—and they range between $600 and $1,000 per month, depending on the service levels. I believe that as Internet applications change, as there is a trend away from simple Web browsing to more and more Internet applications, such as entertainment, education and business applications, we are going to require a symmetric service for users. To simply roll out an ADSL service is not adequate and will not do much to support business communities in small regional centres.

You have our submission in front of you and that covers a number of points. However, it contains one error. At the time of writing I was unaware that one recent housing development in Ballarat is going to have conduit and fibre to the homes as part of the housing development. I keep reminding people to whom I talk that in the unit that I occupy in the nursing home and the retirement village—as I am approaching the age of retirement—I want a gigabit connection. I am very worried that the services—

CHAIR—For the operations, if nothing else.

Mr Dowsley—Indeed. In the applications we see over the horizon, I am worried that the infrastructure being planned at the moment and that is being deployed, in terms of ADSL, is woefully inadequate. I just have a comment on one of the issues raised with the shire. When you consider that the cost of building a road is in the order of $1½ million per kilometre, let alone a multilane highway, the cost of dropping a conduit down along that roadway during the construction phase would only be in the order of $1,000 per kilometre. In the total scheme of things, when roads are being built or when subdivisions are being planned involving road making, to mandate that a conduit system be put in place that could be used for the distribution of fibre later on would be a very smart move, because it is the hole in the ground that costs the money, not the fibre—that is only $4 or $5 a metre. Another issue involves the Telstra ducts that are in the ground. Unfortunately, the rental cost to use a Telstra duct is so high that it makes the business unviable. Telstra would like to reserve those ducts for its own use, to make sure it has expansion, and that is a reasonable thing. But I think that for a housing division it would not add significantly to the cost to mandate those types of facilities.

Mention was made before of wireless systems. Wireless systems are great; the problem is there are technical limits in terms of the service that you can deliver over the wireless. There are also encryption and security issues, which mean that the cost of the head end and tail end are fairly high as well. Fibre is a lovely medium in that, to date, we are looking at a 30-year lifetime for the hardware, which means that even if there is a reasonable cost to put it in the ground in the first place, when you amortise it over a 30-year period it is not expensive at all. With the technologies we have and are developing these days, the bandwidths that you can put the fibre down are truly amazing. Technically, we now have far more bandwidth than we can ever use in the laboratories, but I am sure that we will use them, as applications change and as society changes in the way it uses these features.

That last issue is a very difficult one for the regional areas—we know that. In most of the towns out in the regions, once you get beyond the town limits you are lucky if you can sustain 2,400 baud in a lot of instances. You heard Maria Angeloni refer to the power problems in the western districts where there is a bit of dairy farming. The dairy farmers have to coordinate when they do their milking, because there is not enough power coming down the line.

Cross-talk in the Telstra CAN network once you get outside the towns is a big issue. It disappears if you go to the high bandwidth. But we should point out that—from our statistics collection at the university—some 65 per cent of our students come from backgrounds that would be classed as being under some financial difficulty. They are coming from lower socioeconomic areas. At present pricing levels, to expect that people in rural areas can afford to pay to obtain always on, better quality, higher speed services is not on. I suggest that the cost of Telstra's fibre network—and I believe that most if not all of their exchanges are now upgraded to digital exchanges and they are all linked by fibre—has been a sunk cost. Telstra's system of charging based on distance metrics should be abolished. Charging should be based simply on a service metric, and rural people should be given equity with city people when it comes to services. CANARIE in Canada is an interesting network. I am not sure of your knowledge of that.

CHAIR—What is CANARIE?

Mr Dowsley—The Canadian network is called CANARIE—the Canadian research, industry and education network. I can give you some Canadian figures from several years ago. They estimated in about 2000 that they had spent $250 million of government money on establishing the trans-Canada optical network and gigapops in each of the provincial centres. They estimated in 2000, about three years after its establishment, that it brought back $600 million of benefit to Canada. They were then rolling out CANARIE mark III or IV. I think they are onto CANARIE IV at the moment. That has been done on the basis of defining a second class of users, made up of non-competitive users of the telecommunications infrastructure, so that schools, local government and such are able to connect into the CANARIE gigapops with a $20,000 connection fee, which gives them an 'all you can eat' service, depending on what hardware they can put in to meet their needs. That was on the basis that they set up that definition of a non-dominant carrier. They allowed users to become carriers but not to go out and compete in the commercial market, which would be the province of the normal telcos delivering managed services and providing some guarantee of service. The universities, as you may be aware, are fairly carefully defined—

CHAIR—You are quoting a few figures. Do you have any references on CANARIE I, II, III and IV and that sort of stuff that you could provide to the committee?

Mr Dowsley—I can find that information on CANARIE web sites.

CHAIR—That would be appreciated.

Mr Dowsley—The universities are proscribed within the Telecommunications Act 1997. We had built a network spanning Australia that became AARNet. We in fact sold AARNet Mark I to Telstra, and that became Telstra BigPond. It was the basis of Telstra building up its Internet services here in Australia. There are reasons why the universities did this. We have gone on to build bigger and more powerful networks that probably rival some of the commercial networks within Australia. You would be aware of the funding that Minister Nelson has provided for the development of AREN—the Australian Research and Education Network—and the work that is going on there. But the Telecommunications Act makes it difficult for the universities to extend some of those benefits out to regional areas. It can do so for education, for itself, for its own staff and students and for the work that it does, but it is very difficult for us to, for example, help neighbourhood houses, community groups and non-profit organisations to have low-cost, high-speed access.

CHAIR—Why is that? How does the act do that?

Mr Dowsley—We were so tightly tied down that we had to gain a ministerial exemption to actually allow our own students access to the AARNet network in the first place.

Senator TCHEN—Which minister was that from?

Mr Dowsley—That was back in the days of Minister Alston.

Senator TCHEN—The communications minister, yes.

Mr Dowsley—Yes. That was an interesting period. DCITA had to gain some understanding of the nature of universities: we do have visiting academics from other universities who, although they may not be paid by our university—they are paid by their home university, and we do the same for our staff going overseas as visiting academics—come and visit and work with us, and yet under the act those visiting academics could not, for example, actually use our networks in any way, so we had to gain ministerial exemptions to allow those people on. So the activities of universities were being very carefully tied down so that we were not competition for commercial providers. There is good reason for that, in that universities will often accept a best effort network. Because we want to get bandwidth, we accept a certain down time, whereas Telstra and other carriers are providing managed services with 99.999 per cent availability. So, whilst we need higher bandwidth, to get it we are prepared to accept service levels that may not be appropriate for a business for whom that might be a mission critical issue.

We mentioned access grids. We have a minor problem, in that I think some $60,000 a year of university staff time is spent sitting in cars going up and down the Western Highway between Ballarat and Horsham. We have been using videoconferencing technology, which has limitations. We have moved to video over IP over our private microwave networks, which is an improvement, but we are now moving to access grid technology. We have obtained a CDP funded project of a bit over half a million dollars to put in access grid centres at each of our laboratories. This is videoconferencing on steroids—as the technicians describe it—where, instead of using normal television display type equipment, we are using computers to do the reception and LCD projectors to project up a whole wall. If this august committee were doing its interviews remotely—if you were stationed in Canberra and set up a videoconference to us—instead of a fuzzy picture and instead of just seeing a television talking heads type of thing, we would actually see you bigger than life-size on the wall. That has a tremendous impact on the participants in these conferences, in that they really do lose the feeling that this is a remote conference. It has greater immediacy and a more intimate feel to it.

CHAIR—How does the cost of that compare with video over IP, for example?

Mr Dowsley—The costs of the equipment are lower, in that we are using basically PCs with LCD projectors. The LCD projectors and PCs are actually cheaper than putting up plasma screens and the video over IP equipment, which is fairly expensive stuff. We know: we have spent literally hundreds of thousands of dollars on videoconferencing, both in the early days on the ISDN based equipment and now on video over IP, where we have spent in the order of $100,000 or $175,000 in the last few years. Now we are moving into the access grid technology. That is fine where we have high-speed links, and the university is attempting to gain access to fibre, because our usage, we believe, is going to exceed gigabits per second out to these campuses in the very near future. It is not the sort of stuff that is around and available for small business, let alone for retail customers. Yet one of our issues is: if we try and deliver teaching to remote users, the bandwidth that ADSL will provide to them—if it is available in their area—is inadequate. If you try and do remote teaching to people, as I said, outside the town limits, you drop down very rapidly to non-ADSL services. You can get ISDN, but it is very expensive and the ISDN rates are too low anyhow for the work we want to do. So I can only reiterate that, from the university's perspective, we would argue that the standard for broadband is too limiting and that it should be raised if at all possible.

CHAIR—I have two more questions that have come out of that, and then I might ask a couple of questions about the COLT program, as discussed earlier. My first two questions are in relation to the issue that you were just talking about, which is universities being able to open up their networks to other nonprofit organisations. The whole area of demand aggregation is one that we have talked about a lot in government circles and in our hearings. What mystifies me is that big users effectively are not available for community level aggregation, because universities have their own network, the state government has its own network, the federal government has its own network and a lot of the big corporations develop their own networks. So aggregation at a community level is often not available. Firstly, are there options for universities to become part of community aggregation or to provide community access type opportunities? Secondly, can you think of any mechanisms that might encourage aggregation type activities?

Mr Dowsley—In the US, for example, there are quite a few instances where carriers will provide free access to either a fibre or at least some bandwidth for research, education and community use. That would be very desirable here in Australia, if it could be done. If the carriers could be persuaded to provide some bandwidth, we would see that as a good step in the right direction. For example, on the Southern Cross Cable Network, AARNet on behalf of the universities—given that AARNet is a creature of the universities—has negotiated a commodity Internet arrangement where we have undertaken to purchase a certain quantity of commodity Internet from the US, and in return for that we have managed to negotiate two wavelengths for research and education use. The sting there was that we had to buy the commodity Internet at a fixed price over a fixed period of time.

The university itself would be more than prepared to assist. As I mentioned before, our area of catchment goes right out to the South Australian border, up north and south from this corridor. We are very concerned about the decline of towns and population in the region and would like to help provide access to services which would slow down that decline and allow businesses to continue to operate. We know of instances where businesses have shut down branch offices in smaller regional towns simply because they could not access the applications that their head office and main regional offices required them to use, because the bandwidth available to them was not adequate or was just too expensive for the office to support.

CHAIR—My next question—and you have touched on this, as did Mr Hook in his presentation—is in relation to the affordability of broadband for students. I am fascinated—and I should declare that my partner is a student, and it is amazing how you cannot even enrol now without going online—by the extent to which, particularly in non term time, students are able to access universities in an affordable way. So my question is twofold: firstly, what are the demands that students are now looking for in broadband needs and, secondly, what initiatives are universities looking at to try to improve the affordability of that?

Mr Dowsley—As I said, unless we take out a carrier licence in our own right, universities are not able to on-sell to the public or any other organisation. That is the issue that we are faced with. Whilst we have AARNet, which has a nominated carrier licence, it is run effectively as a not-for-profit organisation for the universities. Whilst we buy our bandwidth at a very low cost and share it out to the universities, we do so by charging universities at a higher rate to cover the development costs of AARNet and the equipment that we use for doing that. Because of the act, we are constrained, in that we cannot provide it outside our university community, even though we would like to help nonprofit groups and other organisations.

CHAIR—You haven’t looked at joint ventures with other carriers? When we were on the Gold Coast, there was talk of a wireless venture.

Mr Dowsley—It is funny you should mention this. We actually have an expression of interest into the NOIE CCIF program. Part of that is to exploit a possible pair of fibres that may be available between Sunshine in Melbourne and the South Australian border. That would be initially developed to provide for education and government department uses and uses by the health sector and hospitals here in Victoria, but it would also free up a wavelength for use by commercial interests, and that would be provided to carriers who require bandwidths, such as Powercor or Neighborhood Cable, to handle the backhaul.

One of the issues they run into is that, whilst Neighborhood Cable, for example, has a hybrid fibre network here in Ballarat city itself, where there are power poles and there is one other new housing development maybe, if you are in a later housing division that does not have power poles and has underground development, they cannot get to it. Secondly, they cannot get to anywhere outside these towns, because of the backhaul costs. So, unless there are affordable backhaul costs, we do not see that there is any reasonable return on investment for the smaller telcos to get in. Telstra has its network in place, which is a sunk cost. The price, actually, of putting in a DSLAM in a point and setting up an ADSL service is quite reasonable. The university is aware that it could, if it could afford to put a DSLAM in Telstra’s exchanges, run ADSL services in its own right. However, there is that minor cost of obtaining access into Telstra services, because you need access to Telstra’s copper, and that is a $300,000 threshold.

We do have an issue with the copper itself, and I do not know how we deal with this Australia wide. An original decision made almost a century ago by the postmaster general’s office to run on twisted pair that had six twists to the foot instead of the worldwide standard of 15 twists to the foot means that the noise and cross-talk on the copper network makes it very difficult to use with high-speed communications. In a region like Ballarat, where we have a fairly waterlogged network as well, it is not good. We are stuck with this 3.8-kilometre radius from the exchanges and fairly limited bandwidth from there. When you attempt to drive it to the XDSL services, I am sure that Telstra will say that you have to be even closer to the exchange.

CHAIR—We are getting very much up to time so I will hand over to Senator Lundy.

Mr Dowsley—Sorry, I will just give you a quick answer on COLT. The university is deploying COLT in its student residences. COLT has a limit of about 100 megabits per second on its deployment at the moment. We regard that as reasonable for student residences, so our students will be able to take advantage of that in their rooms in our residences at the start of this semester, hopefully. We are not deploying around the laboratories of the university, because we are already deploying gigabit per second services there. So, whilst that would appear to be a good improvement for small businesses and home residences, it is already superseded by the university's internal requirements. But it does look like a good way of providing additional services and data services, if you can get over the carrier issues of last mile connection.

Senator LUNDY—Thank you, Chair. Just going back to the issue of backhaul costs, in your view is it a combination of Telstra's position in the market and a lack of availability of information about the true costs of carriage for backhaul that allows them to choose and set an arbitrary price? Are you able to nominate any specific—perhaps competition related or access regime related—policies that could mitigate that particular bottleneck and pricing barrier for competitors?

Mr Dowsley—Part of that is due to the fact that we pay America but America does not pay us. So there is a cost imposed on us simply to gain access to the commodity traffic in the US, and they do not contribute. They are reluctantly agreeing that maybe their position gives them an advantage and maybe they should do something about it, but they are being very slow, strangely enough, to alter that.

Senator LUNDY—I think they negotiated a better deal in about February last year.

Mr Dowsley—Yes, they did.

Senator LUNDY—I do not think they have passed it on to their customers yet.

Mr Dowsley—That is a problem. The cost of wholesale commodity Internet is not too bad when you are looking at less than 2c a megabyte for some of this stuff. But the customer who exceeds his $10 a month dial-up plan is paying at the rate of 17c or 22c.

Senator LUNDY—Twenty-something cents.

Mr Dowsley—There is a very big mark-up, so to speak, in the cost. Whether the carriers can justify that on the basis of the arrangements between them, and also the cost of the equipment that they need to have in place to deploy it, I do not know. As I said, the universities developed the Internet here in Australia first. We decided that Telstra's upgrades that we proposed would not do, so we sold them AARNet mark 1 and put in the next generation of network, AARNet 2, because it was several orders of magnitude more powerful than what Telstra were prepared to offer to us for them at the same money.

In Australia the universities collectively had the bargaining power to do that. I do not see that small businesses and even regional areas have the money to do those things. To put in fibre, as you are aware, it is somewhere between $35,000 and $50,000 per kilometre. Just to get from here to Horsham is $10 million or so—let alone the cost of the electronics that we need to put in place and the cost of the tails that you need to put in place. So this is big money. It is okay if you amortise it over 30 years, as I said before, but it is big money and it is beyond most small regions. It is certainly beyond the ability of any enterprise within the region to look at it. The university has on its campus, for example, IBM, as a tenant and developer of various activities on campus. However, IBM, because of the security and knowledge protection that it employs, will not share its fibre with anyone; nor will it put its communications on anyone else's data links.

CHAIR—Sounds like a great partner!

Mr Dowsley—So there are issues. When you deal with companies that maybe are big enough to do things in their own right, what I am suggesting to you is that they possibly will not be prepared to enter into brokerage arrangements anyhow. Yes, it would be great to get some network brokering going, but on what infrastructure are we going to put it? That is the big question. Out here in the region there is very little infrastructure. There are some fibre loops that have been run around. SPI PowerNet and Powercor have fibre going from Melbourne, Geelong, Ballarat, Bendigo and slightly beyond there. The big inter-capital city loops are very difficult to break into.

Senator LUNDY—Thank you for that. Finally, you mentioned ADSL services and the asynchronous nature of those services—that is, you can download a lot more than you can upload. Can you make some observations for the committee about the problems or challenges that that feature of ADSL introduces, particularly for small business, residential use and home based business use? Could you also comment on what you see as the sort of broadband that we should be aiming for in public policy terms? We have spent a lot of time moving around the country, talking about ADSL and its limitations, but I have not heard anyone talking about 100 megabits per second. Ten megabits has been described as being where public policy should be aiming for. Two megabits has been argued as the minimum broadband definition that we as a committee should contemplate. What is your view on what realistically we should pitch for as the sort of broadband we need to take Australian towns through the 21st century?

Mr Dowsley—Two megabits a second symmetric services would probably be a good base to start from. The asymmetric nature of the services at the moment is predicated on someone not being able to type very fast, where you do not need much upstream and the user is going to be deluged with information coming downstream. For a lot of the applications that we see that involve video especially, that is no longer true. It is a two-way street thing. That is for the user class. For any enterprise that wishes to have a presence out there it needs to be two-way. People need to be able to get into that business and get information back as well. The upstream side for small to medium enterprises needs to be as high as it can be. To aim for a symmetric service is the ideal. Two megabits a second would be good for most businesses and would meet their needs for probably the next five years.

The sorts of services that the university wants to play with are a little bit more extreme, I suppose. I note that last week I saturated our link back to Melbourne at 12 megabits a second, which is still at cost. You can see the cash registers spinning when I do things like that, and I am just a single user. We have 2,500 devices on our network and we are finetuning this technology to try and be a bit more economic. That is why we are playing with it and that is why we are a university. The current bare minimum ADSL service is really not much more than what you could do with a modem, in my view.

Senator LUNDY—Just a little bit faster.

Mr Dowsley—To change something and to do Internet banking on a 56 kilobit modem, as I said before, that would have pages timing out and being retransmitted down. It would take 30 seconds or a minute to download a meg or so of Java code from the bank before it could be executed. If you double or quadruple your ADSL connection, you are still halving 30 seconds down to 15 or eight seconds, but that is still too slow. I would suggest that we need to get that time response down to two seconds or less. We used to have the old character mode terminal standard before the Internet was invented, where you hit the enter key on a keyboard and you wanted something to come back on your screen within two seconds, otherwise the user’s attention span was being lost and the productivity losses were starting to snowball in terms of the use of the device. So I would suggest that you want two-second or sub two-second responses. That has some implications for the whole Internet and the backbone distribution around Australia as well. I would see two megabits a second as being the ideal to aim for now for businesses.

Senator LUNDY—Thank you very much.

Senator TCHEN—Mr Dowlsey, how do you spell ‘CANARIE’?

Mr Dowsley—C-A-N-A-R-I-E—Canadian Network for the Advancement of Research, Industry and Education.

Senator TCHEN—I did not think it was going to finish with a Y. I wanted to make sure so that I can find it when I get on the Internet. I hope I will get a short answer to this question: can you put a figure on what the University of Ballarat has spent on the broadband capable network?

Mr Dowsley—About $6 million in the last five years.

Senator TCHEN—That is to connect with your Horsham network?

Mr Dowsley—We have spent over $2 million on the microwave radio links. We have replaced one of our microwave links between our Lydiard Street campus and our Mount Helen campus with fibre, which is being lit up as we speak. The cost of the communications equipment that is then attached to the network to enable us take advantage of things like voiceover IP is included in the $6 million that we spent on infrastructure.

Senator TCHEN—Thank you.

Mr Hook—And you wonder why I have grey hair! I will say one quick thing on the COLT project. COLT has partnered with Hitachi; I do not know whether you are aware of that. Two weeks ago, we had at the university in our residences a crew from Japan who shot the project as it is at the moment. They were taking that back to go to tens of millions around the world, as they are promoting this product for wider distribution throughout the world.

CHAIR—We would have liked to talk about that a lot more, but we have unfortunately run out of time. Thank you very much for coming in this morning. Your evidence is much appreciated.

[12.30 p.m.]

BAIRD, Mrs Sari Nella, Company Secretary, Legal Counsel, Neighborbood Cable Ltd

FELDMAN, Mr Jeffrey Neil, Commercial Manager, Neighborhood Cable Ltd

GROSSMAN, Mr Fred Aron, Chief Executive Officer, Neighborhood Cable Ltd

CHAIR—Welcome. Thank you for your time today; it is much appreciated. I know you launched your Chatphone in Geelong yesterday and in Ballarat in December. I am sure we will hear about that.

Mr Grossman—And we will launch it in Mildura in March.

CHAIR—Excellent. We heard a lot about Neighborhood Cable when we visited Mildura and Ballarat with our other inquiry, so thank you for your time today. We have just received your submission. Is it the wish of the committee that it be published? There being no objection, it is so ordered. I invite you to make an opening statement before we move to questions.

Mr Grossman—I would like to thank the committee for the opportunity to present our paper today. We are more than pleased to have it published. I will highlight a couple of points in that paper and then we are more than happy to field questions and go into a discussion. Neighborhood Cable speaks, we believe, as a lone individual on a hilltop. Basically we are doing everything I have heard this morning and at many other inquiries—we are actually building that local loop. I could be wrong but I do not think there is another company in this country at the moment other than Telstra—and we can debate that afterwards—that is building broadband local loop in regional Australia for the masses at this point in time. As you stated, we have three networks that we have built at the moment, in Mildura, Ballarat and Geelong, that have access to approximately a quarter of a million regional Victorians.

There has been a lot of discussion this morning about defining broadband. I must admit I think that is a key function. There are a lot of statements in the marketplace at the moment and there is a lot of need for education. I believe that education falls upon Telstra. With its marketing dollars, the way it advertises and the way it spends, it should not dumb down the market. At the moment, Telstra is using broadband at the lower end of the DSL scale and claiming that broadband is anywhere from 144 megabits per second. In the most recent Telstra Country Wide release there is talk about fast Internet being from 144 megabits per second—‘Isn’t that wonderful? We have fast Internet in regional Australia.’ That type of dumbing down of broadband is not doing anybody any real benefit.

Australia is a long way behind most developed countries. I think that is a fact that I do not need to talk about. One of the reasons for that is the lack of infrastructure based competition. One of the reasons the US has done well is the infrastructure based competition between telecommunications and cable TV networks. One of the earlier speakers this morning spoke about the difference in the US, where the broadband networks are coming on the back of the cable TV networks. That is a very similar type of model to the one Neighborhood Cable has followed.

There has also been discussion—and our paper covers this in quite some detail—about the backhaul. I stated that Neighborhood Cable builds local loop. We have chosen at this point in time not to build the backhaul. The last speaker, Jeff Dowsley, spoke about his belief of the costs. Access to backhaul, which is something that is in the Telstra domain at this point, is crucial. We can build the local loops but to get carriage from, say, Mildura back to Melbourne, is very expensive. So we can be throttled, even though we are investing as entrepreneurs. It is like going back to the road builders and the railway builders of last century. A private company, Neighborhood Cable, is investing in infrastructure without any government assistance, yet a 51 per cent government owned carrier can throttle that initiative by not allowing it to connect at reasonable rates back to the rest of the network.

Senator LUNDY—Mr Grossman, I am sorry to interrupt your presentation. Does Telstra’s backhaul cost effectively determine your price points in your regional markets?

Mr Grossman—It is a factor. The availability of backhaul and the cost of that backhaul affects where we choose to roll out our local networks. We are in discussion with many areas and we look at who has the effective backhaul infrastructure and what we might pay for that.

Senator LUNDY—So in some areas you can access competition for backhaul but in some areas you cannot.

Mr Grossman—Correct. There is some competition, for instance, from Geelong to Melbourne. There is obviously a lot of competition up and down the east coast. Mildura to Melbourne there is a lot less competition.

Senator LUNDY—Please continue.

Mr Grossman—You actually made one of my points there. Then we move on to have a look at the pay TV industry and the fact that we have got Foxtel and Telstra inextricably linked together there. I made the statement that one of the things that brought broadband competition worldwide was the distinction between telecommunications infrastructure and pay TV infrastructure so the two could basically compete in the broadband environment. We now have Foxtel, with the Optus deal that was done a year ago, managing all the content. We have Foxtel managing that content out and we have Telstra involved in there as an owner as well. So you have now got what I think is a very unhealthy play possibly limiting competition in that area. Something that came to my attention this morning which is really very interesting is that I think we are all at the moment hyped by Foxtel’s current digital revolution and they are bringing mega bandwidth to the home and you can have hundreds of channels. Allow me to quote from the Foxtel digital brochure which came to my attention today which blew me away in terms of this being the future. That is a question on the back under ‘If you need to know more’:

Q. Will I require different equipment to receive FOXTEL Digital?

A. Yes. To receive FOXTEL Digital you will need a Digital Set-Top Unit and a return path installed, both will be supplied by FOXTEL. The return path runs from the back of your Digital Set-Top Unit into your standard phone line and allows you to utilise FOXTEL Digital features like FOXTEL Box Office.

May I suggest that is one-way broadband, not two?

Senator LUNDY—That is very interesting. Was that the arrangement with the previous Foxtel service or was the back channel through the cable?

Mr Grossman—I could not tell you.

Mr Feldman—Perhaps we can clarify that. In the previous Foxtel service there was no back channel; there was no interactive digital. It was only one-way.

Mr Grossman—I do not know what Foxtel is doing. All I can see from that is that—if I had Foxtel—to go back from my Foxtel connection I am not using their HFC cable for the backhaul; I am using a standard phone line. I make an assumption that it might take a phone call. Who pays for that phone call? Is the consumer aware that he is making a phone call every time he wishes to send information back?

Senator LUNDY—And if a consumer does not have the Telstra service, does that preclude them from that service from the Foxtel digital?

Mr Grossman—If my teenage daughter is on the phone chatting, do they get an engaged signal and I do not get my backhaul service? I bring that example of education of the market about what is going on. I made the comment that Foxtel's great revolution is coming. We all sat there and said, 'Wonderful. I have now got a large pipe backwards and forwards to my home.'

Moving on, I think it is public knowledge that we at Neighborhood Cable opposed an issue that we thought was third-line forcing where Telstra applied to the ACCC to allow itself to bundle the Austar pay TV product and rebrand. We claimed in that submission, a public submission of which we bring highlights in this submission, that that was doing absolutely nothing for competition, in fact stifling competition. The ACCC in its wisdom saw fit to allow Telstra to bundle. We believe that adds absolutely no value. It is the same product to the same customers, just a little bit branded build, stifling our competition.

Why does that bother us? It bothers us—going back to the opening statement—because we have invested $60 million of private funds to build a true broadband network for 250,000 local loop customers. We need to make a commercial payback on that, as did railways and anybody else who did it a century ago. If we can be slowed down in that effort then we obviously cannot continue to broadband the market. With $60 million we broadbanded 250,000 people. Do some numbers. Is it that hard to provide true broadband to all of Victoria—or all of Australia, for that matter?

I will talk about another stifling factor that can stop companies such as us: the recent launch of Telstra's unlimited broadband product. Is it truly unlimited? No. Your speed is cut back to something that is nothing like broadband speed when you get to your 10 gigabyte package limit. Because of Telstra's position in the marketplace and its peering arrangements it does not have the same backhaul costings or data costings that we do. Therefore, how does a competitor compete with an unlimited product when it is not able to purchase something that is unlimited?

Moving on in time, we discussed broadband. What is true broadband? We do not believe it is 144 kilobits per second. There is confusion in the market. Education has been mentioned a lot today. The confusion is compounded by national campaigns. Ned Kelly riding a whale out of the water does not do much to tell people what broadband is. But that is where the dollars are going into the marketplace; that is what people see. There has been a lot of discussion this morning that I have heard while I have been here about consumers not knowing what broadband is and what they can do with it. 'How fast is really fast? Where should I go?' If you are going to have the lion's share of the market I think there is a duty for you to educate people about what true broadband is and, as I said before, to not dumb it down.

What about the future? Government needs to support private companies such as us. We have not received one cent of government funding for rolling out public infrastructure. As governments change they create new programs. Rolling out infrastructure does not change every three or four years. While you are looking at one type of funding, the government changes or a policy changes or a minister changes and it changes. You cannot keep rewriting your business plan and your business case to keep moving along with the next subsidy. At the moment, the flavour of the month is the HiBIS scheme, which is about funding broadband CPE in the home. That is wonderful where there is no local loop. If DSL is the broadband connectivity then who are we actually funding? We are funding the major carrier to get more connectivity for what is currently called broadband.

Other issues, as I mentioned earlier, are the council issue and the legislative framework. We are not immediately included. We do not know what is going on everywhere. To build public infrastructure, we need to apply to council, we need to apply to power companies, we need to apply to all authorities, we need to apply to landowners.

The ultimate point I would like to make today, before I quickly go into a summary, is that Neighborhood Cable as a publicly listed private company has invested private funds to build something for the community for the long term. Yesterday we launched a network in Geelong. There is $17 million in Geelong. What was the last investment in Geelong of $17 million? What was the last investment in Ballarat of $15 million or $16 million to put in infrastructure for the community? People can say—and I will take an example—that any large corporation that builds its warehouse or factory in Ballarat has been very good for Ballarat. But that is not infrastructure. That is to run their business. We have built infrastructure. We are trying to make a profit on it; I make no bones about that.

In summary, I have about six points. What is the definition of broadband? Let us not dumb it down. In regional Australia, if you are going to do the local loop as we have and be entrepreneurial and have that spirit then something has to be done about backhaul availability. We have to be careful about this unlimited idea, because very few people can buy something that is unlimited. Telstra, Foxtel and Austar: that is an interesting arrangement. I discussed the third line forcing with the ACCC and ultimately government support for these private infrastructure rules. We have been told time and time again by the government, 'We don't support a commercial enterprise.' If government does not, it will not get infrastructure built unless they are going to build it themselves.

CHAIR—Thank you. I have one quick question, which goes to the third line forcing dispute between Austar and Telstra: have Austar offered similar terms to Neighborhood Cable?

Mr Grossman—I do not know what terms they are giving Telstra; it is obviously commercial-in-confidence. As for any discussions we have had with either Foxtel or Austar to resell—for want of a better word—their product, from our point of view it has never commercially viable.

CHAIR—Thank you.

Senator LUNDY—That is a good segue into my question. I was going to ask you the outcomes, if any, of your negotiations, particularly in the context of the approval of the bundling arrangements, and whether, when that was approved by the ACCC, that created any movement in Foxtel or indeed Telstra's attitude towards your ability to effectively resell Foxtel across your services.

Mr Grossman—One of the key platforms of that agreement—I am not sure it was a platform; but underpinning it—was that Foxtel or Austar would never unbundle their product. If you wished to purchase their channels you would buy them in the same bundling formats that they sell them so there would be absolutely no product differentiation in the marketplace. And then it gets down to commercial terms; can I buy it at price and then add on my costs and make a profitable margin? The facts speak for themselves: I do not resell the Foxtel packages or the Austar packages.

Senator LUNDY—Okay. I guess I am asking for your subjective view of that whole negotiation process, but there was a significant expectation at the time that arrangement was announced that Foxtel were likely to be able to resolve some of those problems—and I know they were having discussions with TransACT at the time as well. Do you think that they did not move enough—in their commercial negotiations, obviously? Does that surprise you in the context of the bundling decision?

Mr Grossman—I do not think I have anything more to add.

Senator LUNDY—No, I know. The next issue is the one of peering, backhaul and the associated costs that you have with Telstra. What are the characteristics of the current peering arrangements that Neighborhood Cable sees as either anticompetitive or stifling of competition?

Mr Grossman—Again, I will make it very simple: we need to connect our networks back to the Internet world and, in most cases, to use the backhaul capacity and the peering. To remain competitive you have to look at what pricing is out in the marketplace and how you price into that, and you have to be able to buy for less than you need to sell for. We find that difficult in certain circumstances.

Senator LUNDY—How have Neighborhood Cable fared in their negotiations with Telstra about peering arrangements, and what sorts of terms and conditions do you have with Telstra on peering, relative to other peering partners of Telstra? If you want to get back to me, that is okay, but I am trying to get a feel for how a company like Neighborhood Cable is faring with some of these big issues, and for your capacity to negotiate with Telstra.

Mr Grossman—There is not a large capacity to negotiate.

Senator LUNDY—So you have got to take what they give you or you do not take it?

Mr Grossman—Like in most buyer-seller relationships, you state what you wish to buy, you are given a price and you try to get a better price—but we do not have a lot of leverage.

Senator LUNDY—Okay. You mentioned HiBIS, the Higher Bandwidth Incentive Scheme. What scope do Neighborhood Cable believe they have to secure funding under that scheme?

Mr Grossman—We have applied—we have registered our interest. That is where it is at at the moment. And we think it will benefit us; there is no doubt about that. Will it assist us to build more local loop infrastructure, will it assist us to have more community networks that can offer products like Chatphone—untimed calls—to people who have been waiting for them? Not really, because it is the wrong end of the funding. I build the network, I do the marketing, I get a customer and I might get some dollars for helping to connect that customer. That is a deep-pocket philosophy.

Senator LUNDY—That is really what I was going to try to get to: whether the HiBIS funding would help you build, for example, the infrastructure in a town that does not currently have Neighborhood Cable or whether it would just help subsidise user access to your network.

Mr Grossman—It will help subsidise user access to our networks. It is very much needed.

Senator LUNDY—Yes, I have heard your arguments for that previously; we do not need to go through that again today. But I do want to recall the evidence you gave: that it really is about increasing the affordability for customers to subscribe who are already potentially serviced by your infrastructure.

Mr Grossman—Neighborhood Cable, in products like Chatphone and in its pricing, continue to subsidise heavily because ultimately we have built networks. We now need to populate those networks with customers, so we continue to dig into our pockets to get customers onto the network. I think that is all in the community good, at the end of the day.

Senator LUNDY—Given the uniqueness, as you say, of Neighborhood Cable's model, the last time Neighborhood Cable appeared before a committee we had a discussion about some of the greater challenges that Neighborhood Cable were facing in accessing capital to build more networks in new centres around Australia. Are those issues still the same? If not, what has changed?

Mr Grossman—The issues are a little bit different. They are issues of timing and proving a business model. I am thrilled to say that, and it is public knowledge, Neighborhood Cable has just completed another round of capital raising and its shareholders have invested more funding. Our shareholders are supporting us. Our business model continues to develop. Two years ago the business model was, one could say, 10 per cent evolved and was therefore a greater risk. Today it might be 80 per cent evolved and of a lesser risk. As time goes on, that risk becomes less. But certainly, finding capital to build new networks is very difficult at this point in time. There is not a lot of appetite out there for infrastructure build, and the government can support that. If the government were to go dollar for dollar, it is very simple: it is not a lot of money. You can build a city like a Bendigo or a Warrnambool for $15 million and give it a sustainable broadband network. There is more money spent on Ned Kelly and whales.

Senator LUNDY—In terms of that business case to build new networks, can you identify any specific conduct by Telstra, as the dominant carrier in regional areas, or indeed regulation that presents an additional impediment to your company making those investments? You have mentioned backhaulers governing some of the pricing.

Mr Grossman—It is the market we need to operate in. We operate as a small fish. We have the backhaul issues, we have the council issues, we have the funding issues. It is the complete business model. It is quite a simple model, actually, but it just takes time and it needs a window of at least five to seven years—and there are very few investments nowadays in infrastructure in Australia that are prepared to look at that. And it absolutely needs the government and the 51 per cent government owned carrier to assist that to happen rather than to stop that happening.

Mr Feldman—If I could speak to the committee on the regulatory issues—

Senator LUNDY—Thank you.

Mr Feldman—Planning is a major hurdle for a company like Neighborhood Cable in building new networks in new cities. We face numerous issues when it comes to planning, the least of which is heritage listed areas. If broadband is considered—as so many people have said this morning and previously—as the information highway and is analogous to building road infrastructure, surely we see a need for businesses to have access. In Ballarat, for example, the bulk of the business community is located in a heritage listed area and does not have access to our cable infrastructure and cannot get access to our broadband product. If broadband is the information highway that everyone thinks it is, surely it is as important as having a road in front of a building so that businesses will have access to information and be allowed to compete.

So that is one of the planning issues we face. Other planning issues relate to new developments having all their infrastructure placed underground. David Keenan did mention this morning that we are able to go and look at the planning register and obtain information from it, but I think it comes down to an issue raised earlier, which is that of referral authorities. We have looked at this in the past and have sought to have our planning permits at Mildura, Ballarat and Geelong amended so that we are deemed a quasi-referral authority. The only way that Neighborhood Cable could be officially notified of any new subdivisions is to be declared a referral authority throughout the state of Victoria. That would mean Neighborhood Cable would be notified of every new subdivision planned or proposed in the state of Victoria. There is no scope in the planning legislation for that to happen at a local level.

Senator LUNDY—Do you think that would assist you?

Mr Feldman—It is certainly an impediment to us. Other than going down and inspecting the register, which is sometimes helpful and sometimes not helpful, we have no knowledge of where new developments are planned or proposed or of how to get in touch with the developers.

Senator LUNDY—If that problem were fixed, and regions could somehow tailor their notifications to, say, the carriers competing in their regional market, what would that allow you to do? What sorts of initiatives could Neighborhood Cable take at the stage of notification of, say, a new residential development?

Mr Feldman—It gives us the ability to contact developers at a very early stage in their development, to get our infrastructure into their development and to enable them to work out the value of what that infrastructure delivers to purchasers of the individual lots of land. We have a proposal that we are taking to developers at present and we are finding it fairly successful. Developers are starting to understand that there is value in having broadband infrastructure.

Senator LUNDY—We have heard evidence in Queensland of an infrastructure provider company joining with the developer in funding the infrastructure roll-out in a particular estate. Is that the sort of thing you are thinking of?

Mrs Baird—This is the program Jeff is talking about. We are presently trying to interest Ballarat developers in that initiative, but it is offered very successfully in Mildura. It was an initiative of our branch manager, who was seeking to ensure that all new developments in Mildura would have access, because those new developments tend to have underground infrastructure. Getting that third conduit in the ground, with our cable in it, was very positive for us. I will elaborate on Jeff’s point about being required to go and inspect the register. We have been fortunate in having a positive relationship with the utility whose infrastructure we share, Powercor. They refer these programs and developments to us from time to time where it requires the changing over of assets—moving off poles and onto the ground. You asked what it would mean for us if we had forward notice through a referral scheme. What it means is this: business is about planning and certainty and the allocation and timing of resources, and when notification is dependent on ad hoc good relationships with your power utility or with the city council it prevents us from doing that in the most cost-effective way.

Senator LUNDY—Thank you. That is really interesting. Mr Feldman, are there any other points you want to make?

Mr Feldman—Yes. In terms of access to land and to the infrastructure on which we build our networks, we are reliant on the utility companies whose poles and other infrastructure we attach our assets to, but the legislative regime in place does not permit them to give us access to the land that those poles sit on.

Senator LUNDY—That is a separate process?

Mr Feldman—It is a completely separate process. Yes, we can attach our asset to the pole—

Senator LUNDY—But you have to fly in!

Mr Feldman—but we cannot necessarily get access to the land to get to the pole.

CHAIR—You could employ some possums!

Mr Feldman—There is no consistent approach throughout the regulatory environment, particularly in telecommunications, that gives telecommunications companies any certainty of tenure or of access to infrastructure. From our perspective, that is a severe impediment.

Mrs Baird—Perhaps I could elaborate on that point and link it back to what Jeff was talking about regarding heritage. We are sympathetic; we want development to be in keeping with the communities we build in that have a strong history, like Ballarat. The issue of access to private premises is very important to us where we are trying to erect infrastructure over buildings with the cooperation of landowners whose tenants will be the ones to benefit from it and may be the ones demanding it; but that is dependent on the building owner also coming to the party. The situation could arise where there are 11 buildings in one street with the owners of the buildings at either end not being persuaded of the benefit of that infrastructure, thereby shutting out access for all those in between—and we do not have legislative authority to enter the land without access. As is normal in business, we do try to negotiate commercial terms, but it is sometimes frustrating and time consuming for our potential customers; in terms of competition, that is an impediment, because speedy access to the Internet is what they want.

I would like to make one last comment, which I think we made in our submission, on the legislative framework: it is ad hoc. We do need to negotiate with a utility owner for facilities' access, and so we have one level of commercial negotiation at that point. We negotiate separately with individual councils in each of the markets we are in. Then we have ad hoc negotiations with other people who may have claims over our presence in the market—for example, road authorities, private land owners et cetera. This means it is very difficult to plan with certainty the costs and terms of the infrastructure construction. You can often find yourself over a barrel in the negotiations, which is not a desirable commercial position to be in. Particularly with utilities, there is generally one that has the monopoly position.

Mr Grossman—I would just make a closing statement. You can see that we are all very passionate about what we do. I think the best corollary is that of the railway entrepreneurs and the building entrepreneurs of a century ago. Yes, we are a commercial company, but we are passionate about what we do. We do want to broadband Australia and, more specifically, to broadband regional Australia. We believe that together with government—whether through funding or legislative assistance—and a government-owned authority, as it still is at the moment, it can be done. But it has to be done as a partnership. It can be done as a win-win between the three parties. As a partnership—whether it is Telstra at 51 per cent ownership, the government and Neighborhood Cable—it is not that hard to truly broadband regional Australia.

I think people are trying to make it a lot harder than it actually is. Neighborhood Cable, with its long-term view and initiatives such as its Chatphone and very affordable broadband pricing, can do it. It frustrates us—it must frustrate you as well—that we meet with you year on year and discuss the same issues. The only good point is that our business plan has gone from 10 per cent to 80 per cent, so we are proving it as we move along.

CHAIR—Thank you very much.

Proceedings suspended from 1.03 p.m. to 1.36 p.m.

PINNOCK, Mr John Edward, Telecommunications Industry Ombudsman

CHAIR—I welcome our next witness, Mr John Pinnock, the Telecommunications Industry Ombudsman. Thanks for again giving us your time—though on a slightly different topic today. As always, it is much appreciated. Before moving to discussions, I have a few procedural comments to make. As you would be aware, we prefer that all evidence be given in public but, if you want your evidence to be in taken in private, the committee will consider that request. All evidence provided to the committee is protected by parliamentary privilege and the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. We have received your submission, which we have already published. Do you need to make any changes to it at this stage?

Mr Pinnock—No, there are no changes.

CHAIR—I now invite you to make an opening statement before we move to questions.

Mr Pinnock—The only other matters I will be putting to the committee are by way of an update to my earlier letter, which I think was written some time in October. Firstly, I mentioned in the letter that the current process in relation to ADSL transfers is not entirely seamless. But we have noted—at least in terms of the feedback we get from consumers—an improvement in the timing of the process, which can run from 15 minutes to four hours. We would think a four-hour downtime a little extreme, but there are always going to be issues in relation to authentication in this situation. Any consumer, particularly where it is a manual process, has to expect some delay in relation to authentication. The information we recently received from Telstra about the detail of its procedures shows it to be, in our view, fundamentally a good process. But there is the problem that it is, for the most part, a largely manual type of process. One wonders how much growth can be sustained or can continue to be sustained when so much of the sector tends to rely on these manual process.

There are other issues relating to transfers. On the basis of some complaints we have been getting, we think there is some risk of what I might describe as rogue players in the ISP industry using this procedure to obviate the churning of customers to them but essentially holding on to the customer by various means and not letting them churn away. It is difficult to know how often this might be happening. We are investigating a particular case at the moment where there is some evidence of it. That is an issue that I think we would want to look at very, very closely in the future.

The customer transfer process is meant to be a process that is followed by players in the industry no matter what type of carriage service is being offered to customers. So, whether it is a fixed line or, as in this instance, the transfer of a broadband service, the ACIF customer transfer code applies to the situation. Our observation is that the vast majority of ISPs simply know nothing about ACIF codes in general, or this code in particular.

One of the problems ACIF has had, I think, is coopting, as it were, the ISPs into its processes. Many ISPs see ACIF as a body which has very little to do with their concerns. It is interesting about complaint numbers at the moment—they are static and so there has not been an improvement. But we think the rate is declining simply because if complaint numbers are static and broadband connections are going up then some improvement is taking place. We still think that this area of ADSL transfers will be a fruitful area of complaint and work for the TIO. We think there is a lot of work to be done amongst the ISP community so that they can better inform themselves about their obligations under the code in particular.

I mentioned applications for ADSL services in my letter. We seem to be finding fewer complaints about those issues that I have set out in my letter. It is worth noting that, anecdotally, it would seem that not all providers have the same level of information available to them—that is particularly the case where there are multiple providers involved in a supply chain, which is a feature of the Internet area. We know pretty well the sort of information that Telstra offers to its wholesale customers when it is suppling services, but whether they then in effect use that information as a source to better inform their own end-user customers is very difficult to say.

I know that pair gains and RIMS et cetera are an area close to Senator Lundy's heart, and there is a variation on this problem which has bedevilled some consumers. We have been receiving complaints from consumers who have chosen to have an ISDN service installed thinking that they really have no option and when ADSL becomes available in their area they are being told that they cannot migrate from ISDN to an ADSL service. We are looking at those complaints because we do not see that that is reasonable. At the very least, if an offer of an ISDN service is made to a consumer in those circumstances, they ought to be put on notice that it might affect their right to gain access to ADSL in the future. Of course there are price and quality differences between the two products, and I think consumers should be in a position to be able to make an informed choice.

The codes that are attached to a consumer's line have been a perennial problem because, if the codes are effectively left in place and the customer attempts to churn to a new provider, essentially it is like an electronic stop: you just cannot churn the customer. Telstra has advised us there has been a substantial clean-up of one of its databases, and it believes that when customers churn away those codes will now be virtually automatically removed. There is a working group established by ACIF to deal with an issue called 'connect outstanding', which largely involves fixed line telephony where a customer wishes to move from one provider to another and cannot get the service in their name. There is in fact a group that is looking at this issue, and we suggested that the question of these ADSL codes being an impediment to churning should be taken up by that working group, but we do not believe that that is going to happen.

The last matter I raised in my letter was the question of the TIO not being certain as to whom complaints are to be taken up against because one is not quite sure whether it is an ISP issue, where the customer wishes to go ISP X, or whether it is an upstream provider issue, such as Telstra. We raised this matter with our council, and the council was frankly undecided because it was in no better position than us, I guess, to make a decision. So we are maintaining what we call—it is a bit of a misnomer—the biller policy. That is to say: the entity or provider which has or wishes to have the relationship with the customer will be expected to deal with the customer's complaints. So, if there is an issue as to whether ADSL can be provided by a particular ISP, and a customer wishes to deal with that ISP, we will expect the ISP to deal with that matter rather than raise a case against the upstream provider, which is almost always Telstra. That completes the additional remarks I want to make.

CHAIR—On that last point, I find the difficulty is when these things are dated, but your letter was dated 1 October. Have you finalised your position with Telstra vis-a-vis your approach to intra-industry matters?

Mr Pinnock—Yes. As I say, that is it. If we think it is a Telstra issue insofar as the customer is dealing with Telstra, then Telstra will be expected to resolve it. But, if it is a matter involving another ISP, where the customer is essentially wanting to churn to that ISP as the gaining provider, or wanting to obtain a service from that provider, then it is a matter for that provider to deal with that potential customer. There are always arguments about whether that is fair. The problem with making an exception to that sort of policy is that, because of the interconnectedness of the telecommunications industry—not just in broadband but also in fixed-line telephony where there are resellers, and mobile telephony where there are resellers—if you let the provider who is at the end of the supply chain always blame an upstream provider, then they are going to slide out of their responsibilities to their customers. So it is very rare for us to make an exception to that policy.

CHAIR—Does that cover the issue of availability of ADSL service as well?

Mr Pinnock—Yes and no. If, for instance, a provider does not or is not able to provide any type of carriage service—for instance, at a particular geographic site—then strictly speaking it is outside my office's jurisdiction. There is a provision in our constitution that says we can take up any complaint relating to the provision or supply or failure to supply or provide a carriage service, other than complaints which involve a policy or commercial decision of the provider. So, if, for instance, Telstra says this particular exchange is not due to be actioned for ADSL provision until, say, 2005 and therefore no-one off that exchange will get ADSL, that is outside our jurisdiction. What we are trying to resolve, though, are these arguments where it is suggested that, when the customer talks to the local ISP, and the local ISP or that customer talks to Telstra, and Telstra says, 'No, we can't give you ADSL on a wholesale basis so you can resell it,' then the customer independently goes to Telstra and says, 'Can I get ADSL?' and Telstra says, 'Yes, as our customer.' On the face of it, that is an anticompetitive issue if it happens, but it is not our job to resolve that issue. Our job is to try and figure out who it is the customer wishes to deal with and then force them to try and deal with it. Then if the ISP says, 'We are facing anticompetitive conduct,' there is only one place to take that, and that is to the commission.

Senator LUNDY—That is probably a good place for my questions to start. There have been a couple of examples of that scenario—where customers have applied for ADSL with a carrier service provider and have been told no, and then have been able to apply with Telstra. Telstra have claimed that that has been an anomalous situation and that it is not their way of doing business, because indeed it would constitute anticompetitive behaviour. Can you give the committee an idea of how many times that scenario is presenting itself before your office, even though you are not able to act on it? Have you been able to keep any records of that circumstance occurring?

Mr Pinnock—No. Although we were looking at keeping records in the December quarter, we actually stopped doing it in the current quarter simply because the complaints tend to be falling away quite rapidly. We do not quite know why that is. Perhaps Telstra is addressing the issue; perhaps the exchange of information between Telstra and the ISPs has improved—certainly Telstra asserts that. Beyond the fact that the complaint numbers have gone down, we just do not know. You would appreciate also that, whilst the committee is inquiring into broadband competition issues, the TIO very rarely talks about competition issues. It is not our area, so I can only offer information or evidence which might tangentially assist the committee. On this one it seems to be improving.

Senator LUNDY—On that basis, do you have any records, perhaps for the December quarter, that could be provided to the committee?

Mr Pinnock—I do not have them with me but I can certainly provide them. I will take that on notice, if I may.

Senator LUNDY—Thank you. That would be helpful. Of course, we acknowledge the role that you play. On the issue of RIMS and the continuing use of pair gains on the network, what is your understanding of the commitments given by Telstra to remove certain types of pair gains, particularly the six by 16 and the six by 15?

Mr Pinnock—Certainly we have had evidence of individual cases where ANT1 technology and pair gains have been removed to enable customers to access ADSL, for instance, but I am not certain whether that is an undertaking for it to occur in every single instance. We understand that RIM technology has been used in a number of instances, obviously to provide services as quickly as possible—but in my view in an inefficient way—for instance, to new subdivisions. It is not apparent to me how Telstra might in those circumstances, as opposed to one-off cases, turn around and now give everyone in that subdivision potential access to ADSL. I would have thought it would require a considerable change in infrastructure. So I have heard about it on a number of occasions—funny enough, particularly in regional areas of Victoria—but I do not know how far Telstra's undertaking goes. On individual cases involving pair gains that have been brought to our office, I would say there has been a fair breakthrough. It now seems that Telstra, in just about every one of those cases, is acting to ensure that the customer gets access to ADSL.

Senator LUNDY—Transposition is an issue that Telstra puts forward now as a way of getting around a pair gain, as opposed to a pair gain system, where they can provide copper within a network for a specific customer—

Mr Pinnock—Sorry, Senator, I have not heard that term before.

Senator LUNDY—My understanding is that if someone is on a network that is not necessarily inhibited by a medium or large pair gain—that is, by a small pair gain—Telstra will undertake transposition, which is an installation of new copper to bypass that inhibiting feature of the technology.

Mr Pinnock—I had not heard that term, but, yes, essentially that is my understanding of what they are doing. I assume that would usually be easier to do in the individual case. It is much more difficult to do where there are multiple users in that situation, because obviously the amount of infrastructure you have to put in is greater.

Senator LUNDY—Again this goes to the issue of competition, so tell me if you cannot help me. On the issue of requests for ADSL being made of carriers other than Telstra, are you aware of any frustrations relating to a potential transposition in the same way as a general ADSL connection?

Mr Pinnock—We have had some instances, which is why, for instance, in relation to the ADSL codes type of situation, we have suggested that it be brought under the aegis of the ACIF working group. Whereas we have had that issue of codes between providers, we have not had other carriers coming to us and saying, 'The problem is with Telstra's ANT1, pair gain or RIM technology.' That is not to say it is not happening, but it does not tend to come to us. I suspect that, if it is there, they somehow work that issue out between themselves.

Senator LUNDY—We have discussed ADSL faults and outages across the table on a number of occasions, but are you perhaps able to provide some records to the committee and give us a synopsis today of the trends in ADSL faults and outages?

Mr Pinnock—I can undertake to provide statistics. This is a perennial issues and it is one of the most vexed that the TIO has. In every second case at the very least it is almost impossible to be certain where the fault outage lies and therefore who is responsible for it—whether it is customer premises equipment, which not the responsibility of anyone other than the customer, unless it is an ADSL modem which is rented as part of the process, or whether it is the immediate provider or an upstream provider. And, of course, if it is the modem, how do you diagnose that in the first place, as opposed to it being a line fault? There are diagnostic tools to which Telstra has access to look at issues of—

Senator LUNDY—This is the DSLAM reset?

Mr Pinnock—Yes. But it is still a vexed issue for us. It is also an issue in terms of how much information is available not merely to the customers but to the smaller ISPs. We are no further advanced in terms of being able to deal with individual complaints than we have been historically. It is simply a long, drawn-out process to try and figure out where the fault is and therefore who is responsible. Even then, you are never absolutely certain.

Senator LUNDY—Do you think that, with the growing propensity for other carriage service providers to resell ADSL as well as install their own DSLAMs, this problem will simply get worse?

Mr Pinnock—Yes. I think there is the potential for it. Whether it will or not, we do not know.

Senator LUNDY—Can you point to any policy or regulatory mechanism that could assist you in delivering an outcome for consumers or indeed assist another body or authority to try and smooth the path for complaint resolution in this area?

Mr Pinnock—I cannot. I would have made the suggestion if I could. One could pass a service provider rule that says, 'You've got to do X,' but the same issue arises: how do you enforce it? You can only enforce it if you can see where the problem lies in the first instance.

Senator LUNDY—So maybe the answer goes back to the diagnostic tools built into the network, with more transparency there.

Mr Pinnock—It may be that you can improve diagnostic tools. Some advances have been made there. I do not know whether it is so much an advance in technology or the fact that Telstra, for instance, is more ready to use that sort of tool. I would say it is one of the most difficult issues for consumers and for my investigators to pin down.

Senator LUNDY—Thank you.

CHAIR—Senator Tchen, do you have any questions?

Senator TCHEN—No. I have no questions.

Senator LUNDY—Well, I have more, as usual, if no-one else is going to take the time.

CHAIR—We have a bit of time.

Senator TCHEN—It is not because I cannot think of anything. It is just that I thought Mr Pinnock was doing such a good job.

Senator LUNDY—Very good. I was being a responsible committee member.

Mr Pinnock—Am I being let off easily today?

CHAIR—I thought it was all covered myself.

Senator LUNDY—I wanted to go into the ACIF code issue, because that is something that has not been raised before the inquiry in any depth. That has prompted me to think that as a committee we might even be able to look at having ACIF appear. Obviously, in the sorts of challenges you are facing, the ACIF codes do determine at least the behaviour of the various players in the market and how they respond to the sorts of complaints that you have to deal with. What sort of relationship do you have or does your charter allow with ACIF?

Mr Pinnock—We have an extremely close relationship with ACIF. As you know, part 6 of the act says that, so far as industry codes are concerned, the ACA cannot register them unless it is of the opinion or is satisfied that the TIO has been consulted in their development. In practice, what that has meant is a considerable level of involvement of the TIO on a day-to-day basis in the actual development of the codes. So either I or one of my senior staff will commonly participate in working committees which draft the codes. That has certainly been the case in relation to virtually all of the consumer codes that have been developed. I am an ex-officio member of the Consumer Codes Reference Panel, which basically has the charter under the ACIF procedures of handling all of that. We rarely sit on any of what might be called the ‘industry codes’, the ‘network codes’ and those sorts of things, although we have agreed to deal with complaints involving a number of those.

It has always been our view that, in relation to a significant number of codes—of which the customer transfer one is perhaps pertinent here—the level of knowledge and involvement of ISPs generally in the whole ACIF process is problematic. That is not a criticism of ACIF. It has gone out of its way, in my view, to try to involve the ISP community. In my view, the ISP industry is an industry only in an economic sense. There are all sorts of groups, factions and views within the ISPs, ranging from those which regard any sort of industry association as some sort of regulatory anathema, even if it has the most light-handed, self-regulatory touch of all, down to the view that the ACA and perhaps the TIO are the devil incarnate. At the other end of the spectrum, you have the very large ISPs like BigPond, OzEmail and those which see ACIF as a normal part of the industry regulatory regime. So a very large number of ISPs just have no time for ACIF. They do not understand ACIF and, despite ACIF's best endeavours, it has not been able to bring them into the fold. So we have all these codes that are being developed, which on the face of them are enforceable against ISPs because they are registered, and the ISPs are commonly breaching them.

We are much closer to the ISPs than ACIF is because they are members of our scheme. We have the same difficulty. There is a gap when it comes to any code that has to deal with, in this instance, broadband type issues, of which customer transfer would be the most obvious. I do not know how you get that message across to the smaller ones. It may be that, in the course of time, this aggregation of customers where ISPs are being bought up will solve the problem. The most diligent, if you like, or entrepreneurial in that area at the moment appears to be iiNet, which is busily acquiring other providers and, interestingly, moving all of its customers straight on to broadband, as opposed to dial-up. From our perspective, we get very few complaints against iiNet because it knows how to go about things and it knows the ACIF codes. Amongst those second-tier ISPs, it is very much the exception rather than the rule.

Senator LUNDY—It is interesting you say that because I know iiNet was involved in some of the more formal complaints about the ADSL transfer.

Mr Pinnock—Yes, it was.

Senator LUNDY—That tells me that there could be some correlation; how to make a complaint about that is specifically important.

Mr Pinnock—iiNet itself had some problems with acquisitions in terms of customers and the way that worked, but that was a teething issue. It also obviously had problems with upstream provision. I suspect that it has probably worked its way through that, in terms of the complaint numbers that are coming through to us any way.

Senator LUNDY—That is very interesting. You raised in your submission—I am just trying to find the reference to it; I read it earlier and am trying to find it again—that the codes in the ADSL are attached to the lines.

Mr Pinnock—Yes.

Senator LUNDY—Is that potentially a barrier to effective competition in ADSL?

Mr Pinnock—It is, but to what degree it is hard to say.

Senator LUNDY—What are your observations about the trends surrounding that particular problem, given that it relates to how the ISPs managed these complaints and issues?

Mr Pinnock—We still think it is a useful thing to be looked at by the ACIF working group, which is looking at the connect outstanding issue, which admittedly is a matter relating to fixed line telephony. But it is conceptually the same sort of problem. It means that, for some reason or other, there is a bar to a transfer of a service. It does not really matter whether the bar was put there intentionally or it exists because systems do not work or a transfer process has not been well designed. The fact that it exists is a bar to easily transferring a service and, hence, competition. It is difficult to say how important it is. I am not suggesting it is a fundamental problem. I think the real issues about competition in ADSL in Australia are largely related to price as opposed to the sorts of matters I have been referring to. I would hazard a guess that the problems the TIO are having to address—and I am not suggesting that they are not important to consumers—are not, in the scheme of things, central to the competition issues. If you said, ‘What is the one issue?’ the answer would be ‘price’.

Senator LUNDY—Let us go to that.

Mr Pinnock—That is only an observation. I should add to that a large qualification that I am not an expert on that and it is not the TIO’s area. That is why I very rarely talk about competition issues. It is the commission’s bailiwick, and I know the commission is due to give evidence.

Senator LUNDY—Bear with me. We have discussed the problems encountered by consumers who had unexpectedly incurred great expense as a result of breaching download caps. There have been some changes with respect to download caps and their management—that is, a slowing of the speed rather than a massive increase in the cost.

Mr Pinnock—Yes—the throttling.

Senator LUNDY—Can you provide the committee with some observations about the impact of download caps and the range of products that are now—

Mr Pinnock—I can make some observations, but it is hard to back them up with detailed statistics. We have been looking at the whole issue of access to what we would call unlimited credit and overcommitment. That started off in 190 premium rate services as an Internet dumping thing. The more we thought about it, the more we thought, ‘What about excess usage charges?’ We were getting complaints about that issue. They were not voluminous, but they were significant because the amounts involved tend to be quite high. Just as we began looking at what we might do in terms of adopting some formal position statement in relation to it, lo and behold, Telstra turned around—because it was largely a Telstra issue—and started throttling. As far as I am aware, we have not had any complaints, or we have had very few complaints, about excess usage charges.

Senator LUNDY—That is because people cannot exceed their usage.

Mr Pinnock—That is right. On the other hand, we do not seem to be getting complaints about throttling itself. Maybe it is simply that people realise that they have got to their limit, so they sit back and wait, as opposed to the fact that, when they were able to exceed their limit and it had a financial implication for them, that was a big deal.

Senator LUNDY—It makes sense that you would not receive complaints when people have reached their limit and get throttled, but I suspect there still is—and I certainly have observed—a general complaint about the nature of the download limits on those products as a general principle. But that is not the sort of complaint that I expect you would hear about.

Mr Pinnock—They are not coming through us. You might say that if you wanted to be able to market a very robust service to residential consumers or anyone else that the service ought to be such that there is no need for excess usage charges or throttling. But, given the speed at which data can be downloaded and the demands of some consumers, that may also be an unrealistic expectation. It may be impossible to accommodate everyone and what they might want to download. To be fair to the industry, it finds itself in a rather difficult position here. It may be that it has to rebalance its costs and pricing structures, but I still think it is going to be faced with this sort of issue.

Senator LUNDY—Can you explain for me—and this will be my last question—what the Internet dumping issue is? I understand it is about dial-up calls getting cut off.

Mr Pinnock—There are two versions of it. It only happens with dial-up customers. So far as we are aware, it is not able to occur if you are an ADSL, broadband or always-on customer—

Senator LUNDY—What about with ISDN?

Mr Pinnock—although human imagination and ingenuity never cease to amaze me. I am sure there is a technological way to actually make this happen even in that circumstance. Essentially what happens is this: you are surfing the Net, you have a dial-up connection through your ISP, you have your PC screen in front of you and you are at a site. Nine times out of 10 that will be an adult site. Whether there is or is not a warning on the site, by hitting an icon on the site you do the following. You download a piece of software which achieves sequentially three things. Firstly, it mutes your modem. Secondly, it instructs the modem to disconnect itself from your ISP connection. Thirdly, it instructs the modem to dial a new number. Hence the muting; you do not hear it redialling. That number may be a 190 premium rate service in Australia or it may be an IDD service through a 0011 connection.

What happens in many instances is that either there is no warning or the warning is not properly displayed. From the point of view of you as a consumer, visually it is seamless. You see the screen and the screen does not appear to change. You might move down to the next page, as it were, on that screen. But suddenly what you are now having is a data connection through your phone line which is charged either at a 190 rate or an international rate. You surf this site sometimes unaware that you are being charged at all. More commonly, even if you are aware that you are being charged, the charges escalate enormously.

Why is this different from the old premium rate telephony services? Part 9A of the act deals with them; they are called telephone sex services. To call a spade a bloody shovel, we are visual beings. People are much more likely to spend a lot of time on an adult site which is visual than aural. It is as simple as that. These charges have gone through the roof. Two of the major companies involved in this, who are called Internet diallers, are publicly listed companies. In February last year, because of the odium that this was attracting to it and the damage to its corporate image, Telstra gave those companies six months notice of its decision to end their contracts. They were no longer able to supply those sorts of services through Telstra. By the way, the charges for these fall on your Telstra bill, it being the carrier that supplies the service nominally at least, or charges for it.

Earlier, the minister had directed the ACA to develop a determination which would introduce service provider rules covering two things: firstly, price caps for 190 services; and, secondly, obligations on carriers to give detailed information to consumers about the 0011 type situation—that being beyond the regulatory control of the ACA or probably any other regulator in Australia. These sites are commonly in countries that have what are called high terminator charges. The reason for that originally was that it was an encouragement through the International Telecommunications Union for those countries to invest in telecommunications infrastructure for themselves. So they were able to charge high charges for calls to them and get some benefit from them. The site operators go along to these countries and, quite commonly, they go to a small telco there—or it might even be an international telco—and say, ‘We can quadruple the calls to you and we’ll take half of the profit.’ So the telco is already ahead by double anyway, and they say yes.

Faced with the prospect of this price cap, the industry has started to move offshore, so 190 providers in Australia are now going into the international route, which is what we predicted. Yet, funnily enough, there seems to have been a decision made—by whom I am not quite sure—that the price cap regime will not be introduced. That is it in a nutshell. So people will end up with bills of hundreds or even thousands of dollars in circumstances where there is an argument that they have not properly put on notice as to their liability or potential liability.

Senator LUNDY—Thank you very much for that background; it is a very interesting issue.

CHAIR—Fascinating, although completely off our terms of reference.

Mr Pinnock—I was not going to say it, Mr Chair.

Senator LUNDY—You have explained a lot to me. Thank you very much.

CHAIR—Thank you very much.

[2.16 p.m.]

NICOLL, Mr Roger John Raymond, General Manager, Planning and Interconnect, Primus Telecommunications Pty Ltd

SLATTERY, Mr Ian Thomas, General Manager, Regulatory, Primus Telecommunications Pty Ltd

CHAIR—Welcome. I know you have travelled from Melbourne, so I thank you for fitting in with our program today. We have received your submission, which we have already published. Are there any alterations you need to make to the written submission at this stage?

Mr Slattery—There are no alterations, Chairman.

CHAIR—That is excellent. I now invite you to make an opening statement before we move to questions.

Mr Slattery—Firstly we would like to thank the committee for the invitation to give evidence and present today to the inquiry. I hope the submission that we put in last year is fairly self-explanatory. However, I will just take a couple of minutes to summarise Primus's overall position. Clearly, as many others would agree, we contend that broadband is a key driver in delivering innovative information and telecommunication services to Australians. Therefore, of course, effective and fair competition in this market is essential to enable this.

Broadband and Internet related services are a key business line for Primus. I think it is probably clear to anybody that this is a major business line for all carriers. That is simply indicative, particularly with the recent aggressive retail offerings we are seeing in the market. In summary, Primus's contention is that competition is far from effective in this area. That is largely due to Telstra's control over the network which all competing carriers require access to in order to supply broadband based services and drive the take-up and penetration of broadband services in this country. In addition to Telstra's control over the access network, we believe that its very high levels of vertical and horizontal integration—horizontal integration being a relatively recent development in terms of its inextricable links with cable services and related content through Foxtel—are also a major structural impediment to broadband competition.

Our view is that, until major structural issues are addressed, full and effective competition will continue to be limited in this market. I think it was the gentleman from Neighborhood Cable who made the point that we are in a rather unusual situation in Australia where the dominant telecommunications carrier is also arguably one of the dominant cable companies, including in relation to its control over content. It is probably unmatched anywhere else in the world.

In summary, we see this inquiry as a significant opportunity for government to implement necessary remedies. We believe that our view is supported by the independent umpire, the ACCC, which is responsible for regulating competition in this market. It obviously considers that the regulatory regime has failed and that markets are not yet competitively effective. I do not want to repeat the points that we made in our submission, but one only has to look at the

ACCC's competitive safeguards report, its telecommunications market indicator report and the emerging markets report to see that, quite clearly, the ACCC believes the current regulatory regime is ineffective. Its view is that the recent accounting separation legislation and the current access arrangements are unlikely to improve that. It also is of the view that, as opposed to what was intended in the 1997 Trade Practices Act amendments—when telecommunications was opened up to full competition—we now have more regulation and increased costs on the industry instead of less. The ACCC essentially summarises that this all points to Telstra's control over essential facilities and its high levels of integration.

Primus has outlined in its submission some of the areas where it is impacted by what it sees as the failure of the regulatory regime. That includes issues such as competitor access to Telstra's information systems for service provision and ordering. Primus believes that Telstra's wholesale customers are not receiving equitable access to Telstra's own retail operation into those wholesale backend systems. We also believe that Telstra's wholesale pricing practices for wholesale broadband services which it offers to its competitors are resulting in a price squeeze at the retail end of the market. The last point, which I do not think we included in the submission, is that we believe that DSL providers, such as Primus, are limited in their ability to offer entertainment services because of restricted access to content. That is essentially arising from last year's decision—or perhaps it was the year before—on the Foxtel/Telstra/Optus pay television and content transaction. I will leave it there and take some questions.

CHAIR—I have two very quick questions. One is about the nature of your broadband offerings. Your submission says that you are in the process of installing your own DSLAMs in Telstra exchanges. At the moment, are your broadband offerings primarily ADSL, or do you have offerings above that as well?

Mr Slattery—It is ADSL. I will ask Roger to speak to that in a little more detail.

Mr Nicoll—We are also providing SHDSL, which is a symmetric service for businesses.

CHAIR—What sort of capacity is in that? What sorts of upstream or downstream are in that?

Mr Nicoll—The standard allowance—and that is what we provide for—which is 2.3 meg symmetric. I should point out that there is an upgrade coming to ADSL called ADSL2+, which will be available around the middle of this year. That doubles the ADSL speed, but only within around 3½ kilometres, up to 24 megabits per second. I would imagine that that will become available across all platforms of all vendors in around the same time frame.

CHAIR—Did you say up to 23 megabits per second?

Mr Nicoll—24.

CHAIR—We have had so much argument as to whether ADSL is in fact broadband. That is why I thought I would raise the question about what we are actually talking about in terms of your offerings.

Mr Nicoll—It is actually flexible. There is an upstream option to double the return bandwidth at the sacrifice of some of the payload. So you can extend what is currently a one meg download limit to up to two meg in the return direction as a vendor option.

CHAIR—So you are not essentially reselling Telstra ADSL products; you are actually providing your own DSL products?

Mr Nicoll—We do both because there are 2,500 exchange serving areas in Australia, which is a very large number of network nodes to need one provider to deploy. Even Optus at this stage has deployed only 104 of those nodes, against Telstra, which has now, I understand, up to well over 1,200. As a ratio, Telstra is the only network by 90 per cent of coverage areas that exists. If we want to be a provider to the mass market, we have no option but to purchase Telstra services. However, we are deploying our own network within our high penetration areas, which are the top 39 DSLAM areas based on our customer base. That is currently focused on the business market.

Mr Slattery—I think it would be fair to say that Primus is a major wholesale customer of Telstra, with respect to wholesale broadband services.

Mr Nicoll—We currently have over 17,000 wholesale Telstra lines.

CHAIR—Would that be the majority of your business, or do you think your own network would be the majority of your business at the moment?

Mr Nicoll—No, it is definitely the Telstra proportion, which is in the area of 90 per cent.

CHAIR—I have another question, which I ask just for colour. Is Primus Australia a wholly owned subsidiary of Primus Telecommunications?

Mr Nicoll—Yes. It is listed on the NASDAQ.

CHAIR—That is what I thought.

Senator LUNDY—I would just like to go through the other DSL products that you have talked about. Is SHDSL, the synchronous 2.3-meg symmetrical service, able to be provided over the standard DSLAM, or can you provide that particular service over Telstra's DSLAMs in their exchanges?

Mr Nicoll—Telstra's DSLAM is SHDSL capable but, so far, they have chosen only to equip it with ADSL cards.

Senator LUNDY—That is my next question. Are we working in an environment where Telstra have technology that could provide, for example, synchronous services or a variety of services but are choosing not to and only to provide 256, 512, one or two meg?

Mr Nicoll—There are two issues. Firstly, they are not providing SHDSL. Secondly, they are not providing ADSL at its full speed capability, which is six megabits per second out to 3½ kilometres, which I understand would serve 80 per cent of subscribers at that sort of speed.

Currently the maximum speed is only 1.5. So why they are not doing that is clearly a market strategy decision. My personal opinion is that, probably on both counts, it is because the higher speed services would be suitable for larger business customers and maybe they are trying to avoid losing what are higher revenue services from a historical offering of leased line type products.

Senator LUNDY—The fixed line products. I am sure that we have heard evidence earlier about the potential of DSL technology and the way Telstra are managing the products around it, but can you clarify this for me: when you resell an ADSL service and, if you like, lease that port from Telstra, can you put your own card in it, or are you bound to what Telstra have provisioned that port to be?

Mr Nicoll—We do not have the right to do anything with Telstra's network, so we buy the product they offer, which is ADSL.

Senator LUNDY—So, because Telstra choose to provide that retail product in the market, if you want to resell ADSL you really have to limit yourself to 256, 512 and 1.5?

Mr Nicoll—That is correct. It is interesting that Telstra BigPond could offer unique speeds but, so far, the wholesale and retail markets have been aligned, and I am not sure whether there is any actual requirement for that to be the case.

Senator LUNDY—Can you explain what you mean?

Mr Nicoll—The three speed offerings that they have made available for retail they have also made available for wholesale.

Senator LUNDY—So how do you provide the 2.3 meg symmetrical service with your own DSLAMs if you have to—

Mr Nicoll—That is our own infrastructure at play.

Senator LUNDY—So you cannot use Telstra's interexchange network to provide that service?

Mr Nicoll—Telstra do not offer SHDSL on their DSLAMs, but where we have gone and purchased our own and installed them, which is in the 39 largest business exchanges, we are offering SHDSL.

Mr Slattery—What we are saying is that there is no SHDSL wholesale offering.

Mr Nicoll—No.

Senator LUNDY—So, if you want to offer SHDSL, you have to have your own wholesale bandwidth?

Mr Nicoll—We have to own our own access equipment and link it all back together to make a network.

Senator LUNDY—So you have to own the network or manage your own network separately from Telstra to provide that service?

Mr Nicoll—Yes. We have fibre to 32 of those sites to connect them, and the rest we are leasing the bandwidth—or the backhaul, as it was called earlier—to.

Senator LUNDY—You made some observations about the motivation of Telstra to align their wholesale offering with their retail offering. How does that present a competitive barrier to you, if it does?

Mr Nicoll—I do not think it is a competitive barrier while we get to match them speed for speed. So there is no issue currently.

Senator LUNDY—You also mentioned how you resell Telstra ADSL services. We have heard a lot of evidence about the ability of people to access information about Telstra's network, I presume both for prospective service offerings and to make assessments about ability to deliver services in certain areas. Can you tell the committee a little more about your experiences and difficulties in trying to get access to that basic information you need to provide and market the ADSL reselling service?

Mr Slattery—We are fairly limited, or restricted, in what we can discuss in that regard because of confidentiality agreements we have with Telstra. Really, the only way I could answer the question in general terms is that, from experience, we do not believe Primus is a wholesale customer. We obviously need to access Telstra's systems to be able to provision and connect end users to the network, because we rely on Telstra's access network to interconnect with our own. Given the fact that Telstra really is still controlling what we consider to be pretty much a monopoly network—that is, the customer access network—then Primus, as with all competitors, need access through Telstra's back-end information systems to initiate service ordering and service provisioning. From our experience, we do not believe we are receiving that access on terms and conditions that are equitable with Telstra's own retail operation.

Senator LUNDY—You make it clear in your submission that you think Telstra retail receives preferential terms for system access from Telstra Wholesale over what Primus receives as a competing retailer. I am really interested in the interface between you and Telstra as a wholesale provider, and I am also particularly interested in your reference to a price squeeze at that point. If you can elaborate, that would be useful. I note your comments about a confidentiality clause, but I think it is open to the committee to suggest to you that we go in camera to hear that evidence. Can you answer as far as you can? I put to you that it is important to the committee.

Mr Slattery—I am reluctant to answer any further in a public forum.

Senator LUNDY—Then I suggest we go in camera, because I think this is important information for the inquiry.

Senator TCHEN—I have no objection.

Evidence was then taken in camera but later resumed in public—

CHAIR—Can you comment on the new and improved pricing arrangements from your point of view?

Mr Slattery—Let me answer that this way. My clear understanding of the recent legislative amendments, which include such things as a requirement on the ACCC to issue indicative pricing, is that a clear objective behind them was to promote commercial negotiations between the players. That is not what we are seeing now. Take Telstra’s recent undertakings, which are quite public. It is also public that they have submitted two sets of undertakings; they withdrew one set and replaced them with revised undertakings. Line those up against the ACCC’s indicative pricing and compare how they fit in with the arbitration process. We believe that, when you stack the three things up together, we are not seeing outcomes consistent with what the policy objective was—to further commercial negotiations. What essentially has happened now is that Telstra’s undertakings identically match the pricing set down in the ACCC’s indicative pricing. The ACCC is in a position now where it is assessing Telstra’s undertakings. If it accepts Telstra’s undertakings—and you would have to ask how it could not, given that the pricing in the undertakings matches exactly what the ACCC believes is the case for where it will go on the undertakings—and if an access seeker is then in a situation where commercial negotiations have failed on price, and I am just talking about price for the moment, and they seek for the ACCC to arbitrate on the dispute, the ACCC cannot determine a dispute that is inconsistent with any undertaking that is in place. To summarise all of that, we think that the new legislation is tending to result in outcomes which, essentially, are setting rack rates in the industry, and I am not confident that it has achieved the objective of players sitting down and commercially negotiating.

Senator LUNDY—In that scenario, there is no way that the price would go below that determined by the ACCC. Is that a fair observation?

Mr Slattery—I think that is a fair observation.

Mr Nicoll—Earlier in the ACCC’s deliberations they set ranges on each of the services, so they were aware of what the lower bounds would be, based on volume I would imagine. What we are seeing is the possibility that the lower part of that range may now not be supported in the way that the regime is implemented.

CHAIR—I will raise this with Commissioner Willett later, but I would have thought that, if an undertaking is setting a bottom line below which the ACCC is not able to determine or arbitrate, an undertaking would be accepted if it were exceptionally good, as opposed to the bare minimum of commercial.

Mr Slattery—Correct; that would be our view.

CHAIR—Have industry or you put in significant objections to the proposed determination?

Mr Slattery—We are in the process of raising this concern with the ACCC, and we are also intending to raise it with the department and the minister.

CHAIR—Do you think those determinations should cover broadband products as well?

Mr Slattery—Currently the regime talks about core services. Core services are essentially defined as unconditioned local loop, the local call service and PSTN interconnect. Our view is that this whole concept of core services ought to be based around what are monopoly or bottleneck based services. They should not just be defined as specific services. We are really talking here about Primus and other access seekers needing to access services or needing to obtain wholesale services which are based on monopoly or bottleneck based facilities. Quite conceivably, you could include ADSL or broadband wholesale products in that basket.

CHAIR—Thank you very much for your evidence and your submission. As Senator Lundy pointed out, it is a very robust submission and one which certainly grabbed our attention.

Mr Slattery—Thank you for your time.

[3.01 p.m.]

GRIBBLE, Mrs Gillian, Senior Industry and Policy Adviser, Australian Industry Group

WICKENTON, Mr Dean Paul, Economist, Australian Industry Group

CHAIR—Welcome. Thank you for coming today. I believe you have come all the way from Sydney.

Mrs Gribble—I have actually come from Newcastle.

CHAIR—Even better. We have your submission before us. Are there any changes you need to make to the written submission at this stage?

Mrs Gribble—We would say only that we would like to add an appendix to it, which is the survey form that we sent out to form part of our research. We thought that might assist the committee a little further. We would prefer, however, not to have that in the public domain if possible.

CHAIR—Do you want it to be accepted as a confidential submission?

Mrs Gribble—Yes; only the appendix.

CHAIR—Are you happy to move that, Senator Tchen?

Senator TCHEN—Yes.

CHAIR—That is acceptable to the committee.

Mrs Gribble—Thank you.

CHAIR—I now invite you to make an opening statement before we move to questions.

Mrs Gribble—Thank you very much for having us along today. We believe that broadband is a very important issue for our members. On behalf of Ai Group, I would like to thank you for this opportunity and for receiving our submission. As you know, I am a senior industry and policy adviser with the Australian Industry Group, and Dean is our national economist. He works on a lot of our economic survey data as well. We are a national organisation, as you are probably aware. We have about 10,000 members. About a quarter of those members nationally are based in regional locations; hence, we think that broadband is a very important issue. We provide a representation and advocacy role across a number of areas, including workplace relations and industry development. An important part of what we do is our policy and communications work, where we are monitoring industry performance and also undertaking research in the areas that we believe will assist our members to improve that performance.

In accordance with that, in the first half of 2003 we did a study unpacking the productivity performance of the Australian economy in the 1990s. We found, as a lot of other research has, that a key element was the growth in efficiency effects of a surge in the use of information technology by our business sectors. We wanted to look a little further into that issue. We also found that, according to some of the research that we had done, there had been some stagnation in the uptake of ICT. We felt that that was an important competitiveness issue for our industry going forward. So we undertook to do some more research in the area of information technology. Our means for doing that was through our regular surveys that we do in manufacturing. Around 870 companies regularly respond, which represents approximately 25 per cent of total Australian manufacturing. So I guess we had a captive audience. We received 807 responses to our particular special issue question in relation to the broadband survey.

We think it can provide assistance to the committee and to the inquiry in terms of providing a broader view on industry uptake of broadband and on the issues that may be impacting on that uptake of broadband as well. We do not pretend to be experts on broadband technology or the market. I guess the evidence that we give today will not be expert evidence, but wherever we can assist the committee and the inquiry we will endeavour to do so. We will take your questions.

CHAIR—Thank you. We heard a lot of evidence from witnesses earlier in the day about the need for education of consumers—and carriers, for that matter—about broadband offerings because of the immense confusion about what is offered, what can be offered, pricing arrangements and so forth. From reading through your survey, it seems to imply that that need is quite clear in the SME section as well. Do you have any thoughts about where we might proceed from here on that?

Mrs Gribble—That, I believe, was a key finding from our study: awareness of retail providers. Although companies nominated in excess of 80 providers providing businesses with connections, about half of them said there were only one or two providers in their area. We believe that is an awareness issue. We believe that there is a big role for a joint initiative, I guess, between industry and organisations like us and government in terms of raising the level of awareness about what is on offer in different areas—in particular, for small business and in regional locations as well.

CHAIR—Is it primarily an issue of access, or an issue of cost, in terms of non take-up of broadband at this stage?

Mrs Gribble—The actual primary issue that comes out of our research is in fact a perception by business that there is not a need for broadband. Around half of the responses to the survey from those who were not connected said that. But the evidence the survey gave us was that those who were connected—particularly small business as well—were receiving significant benefits from being connected to broadband. We think that is probably another awareness issue. We need to raise awareness within the business community of the benefits of broadband.

CHAIR—In the manufacturing sector do you have any examples or any insights for the committee on smart use of broadband and what that means in terms of potential economic opportunities for your members?

Mrs Gribble—I guess we have anecdotal evidence, rather than evidence that we have received as part of this survey.

CHAIR—Even that would be helpful.

Mrs Gribble—I should clarify that: Dean has actually done quite a bit of work in the information and communications technology area through our regional studies and things like that. He is probably best placed to answer that.

Mr Wickenton—There is some evidence, particularly in design industries, that the ability to send large files of complex designs has become an increasingly important prerequisite, particularly for companies supplying to the auto industry. For example, being able to deal with large firms in terms of supplying complex designs by ICT and also in terms of having an always-on connection for supply chain management and so forth is quite important.

CHAIR—Have you had any cases reported to your organisation of companies in that area who have not been able to get access to broadband?

Mrs Gribble—I am not aware of any.

Mr Wickenton—No.

CHAIR—So access, to your knowledge, is not actually an impediment to growth for your firms at this stage?

Mrs Gribble—Having said that we are not aware of specific cases, there are obviously the results that have come out of the survey, in which around 12 per cent of companies said that the reason they were not connected to broadband was that they did not have a provider in their area. Again, that could be a perception issue rather than the reality. So, for 12 per cent of those firms not connected, not having access was an issue.

CHAIR—The policy issues you identified in your report I felt were quite interesting. What would be the key things which come out of those four or five dot points there, from the point of view of this inquiry? What would be your recommendations to us of the key things we could be doing or recommending to push this issue along a bit?

Mrs Gribble—As I said before, I believe that there is a strong case for some joint initiatives—for example, between us and community groups within regions and government—to spread around the good news about the benefits of broadband and to identify the number of providers and availability of retail provision within those various areas as well. The exact form that that may take is something that we should discuss a little further, but we believe that a joint initiative is probably the best way to do that. We have already started by disseminating the results of our research through the various methods we have to do that, but we think that there is a case for putting together some joint initiatives on it.

In terms of a broader focus by industry on the use of broadband to supply chain management, we believe that is part of our job, which we have already started doing. One of the outcomes of the survey was that it seems to be those consumer based sectors of manufacturing are using broadband more because they can use it to improve their supply chain management processes. We believe that is something that we can do. Greater competition through availability and industry awareness is something we have talked about in relation to getting our members aware of what exactly is out there and available for them to use. Dean, do you have something to add to that?

Mr Wickenton—I think the key point is that there are some 200 retail providers but only 80 were identified in the study, and most only knew one or two. Whose job that is is, as Gillian said, probably a joint effort, but I guess there is also some onus on the industry itself.

CHAIR—The other thing I found quite interesting, which jumped out of your survey at me, was that you found: 'A pre-existing relationship is nominated by more than half of connected firms as the reason for their provider choice.' Then you go on to say that competition would be a good thing in the industry. I have often suspected that, whether it be banks, telecommunications companies or whatever, we Australians are pretty lazy in terms of changing relationships. Do you think that is almost anticompetitive? 'Anticompetitive' is probably too strong, but is it something that is making it more difficult in terms of getting competition going in the industry?

Mrs Gribble—It may well be, but I do know that a big focus for our members is on making sure that they have a supplier for whatever it is that they do. A pre-existing relationship is obviously going to have an influence; however, competitiveness in the market is such that obtaining the best supplier—someone who will give you the best service and the lowest cost—is clearly going to be something about which our members, who are in a profit-squeezing situation already, can choose. I think it probably is a factor, but it is like in any market when it opens up: competition should correct that situation.

CHAIR—That preference your members are talking about is interesting. We had that evidence from a lot of the smaller boutique telcos, who might specialise in one aspect of the market. They have said that they are coming up against that concept, whether it be a big public sector government department or the private sector, where there is that reluctance to let off part of their business to a specialty person even though, overall, they could probably get a better result. Do you think that is part of an education program? Do you think we need to look at those sorts of issues? Or should we just leave them to it, and telecommunications is not that important to your members?

Mrs Gribble—I think telecommunications is very important to our members. I think it is something that we should possibly explore further as an organisation and possibly come up with some best practice models in terms of achieving better outcomes in those areas, which our companies can look at. It is quite possibly something that we should look at a little further as an organisation in terms of assisting our members to reduce their costs in that area or to achieve the best outcome in terms of their performance as well.

Senator TCHEN—Most of my questions relate to your survey and findings, because I want to make sure I understand it properly. Out of curiosity, what do you call 'first generation broadband'?

Mrs Gribble—I said first and second generation.

Senator TCHEN—So you actually do not have first generation; you go straight from ISDN.

Mrs Gribble—As I said, we are not experts in broadband technology, but we mulled over the definition of broadband. It seems to be clear, even in evidence before this inquiry, that there is no one definition of broadband.

CHAIR—There is actually a lot of argument about it.

Mrs Gribble—What we did—and you will see this when you look at our survey questions—is we initially asked companies whether they had a broadband connection and then we broke that down into the various types of broadband connections. We actually came up with errors. People ticked the yes box and then they also ticked the ISDN connection box, but most people now do not call that broadband because the speed is not fast enough. We thought it was an important outcome of the study that we could separate those two things. Basically, we call the second generation 'something faster than the ISDN connection'.

Senator TCHEN—In your survey did you allow people multiple choices?

Mrs Gribble—Yes, it was a multiple choice survey response.

Senator TCHEN—So people were asked to tick not just one box but any number of boxes, as applicable, where there was a choice?

Mr Wickenton—No, we asked them to circle one.

Senator TCHEN—Later, in the outcome, you look at the reason for not connecting to broadband. I assume that refers to charts 15 and 16.

Mrs Gribble—Yes, that is right.

Senator TCHEN—You say that 29 per cent said that ongoing costs were too high and start-up costs were too high.

Mrs Gribble—That is right.

Senator TCHEN—This is nitpicking, but in the middle of page 5 you say that 57 per cent of firms are not using advanced telecommunications. I think the word 'are' should come out.

Mrs Gribble—Okay.

Senator TCHEN—I found your comments particularly interesting where you say that Telstra is the dominant player. It is obviously the major player, but I would not say that 52 per cent would be dominant. Do you have a chart showing what the other connections are?

Mrs Gribble—We found that the next closest to it was about 3½ per cent of the market in terms of broadband connection.

Senator TCHEN—Compared with 52 per cent for Telstra?

Mrs Gribble—Yes. The next greatest proportion of the market was about 3½ per cent.

Mr Wickenton—There were a couple at about 3½ per cent, and the rest were spread across the other providers.

Senator TCHEN—Can you supply us with that particular chart as well?

Mr Wickenton—Yes.

Mrs Gribble—I think the only reason we did not make a chart was that the spread was so even across the other providers.

Senator TCHEN—To me that seems to raise another possibility. We kept being told that the broadband market is not competitive because it is dominated by Telstra. If the market is so spread out, that would create the other possibility that it is not competitive because it is inefficient, because there are so many players and they sort of cut each other’s throats.

Mr Wickenton—I have just one clarification to make. In the report we tried to suggest that Telstra has a lead role in the market.

Senator TCHEN—Yes, I understand that, but I thought that information would be interesting as well. If you could let us have that information, I would be interested.

Mrs Gribble—Yes, we can provide that information.

Senator TCHEN—Thank you very much. I would like you to talk about the five points in your major findings. Perhaps you could amplify each of them so I can see what you actually mean by them.

Mrs Gribble—Are those the policy considerations?

Senator TCHEN—Yes, that is right.

Mrs Gribble—We probably covered a few of those earlier in terms of the acceleration and the take-up amongst small business.

Senator TCHEN—What sort of action do you envisage could be taken?

Mrs Gribble—As I said before, we will be looking at some sort of joint initiative. We have started doing things ourselves in terms of trying to promote, to small business and to regional firms, the benefits of connection to broadband on the basis of the results that we received from the survey. I think there probably is an opportunity for us to work together with the government and with other community organisations to try to accelerate the take-up of broadband amongst small business and regional firms. We have not determined at this stage the exact form that will take; we would have to negotiate with the other groups.

As I said, in terms of the broader focus by industry on the use of broadband, we have done a little bit more work on supply chain management, and we may well implement some programs out of that in relation to the benefits that broadband may have for our members in that area. I think that there has already been some progress on greater competition through greater availability since our submission in relation to the roll out of the different technologies to businesses. So there is some progress in that area anyway. I think that there is still room to do some more work on industry awareness. We are trying to do that anyway, but I think that there is room to do more work. Again it is a question of the marketplace marketing their product in different areas as well.

There is only so much an industry organisation can do to influence community take-up, but we are a part of the community and we see a role for ourselves in that bigger project. In terms of encouraging the international studies, we found that there was not a lot of information available on business take-up of broadband and that definitions vary, so comparing apples with apples is a difficult thing to do. We believe that there is a case to put forward that we are able to look at business take-up in an international comparison, because as far as a lot of our members are concerned we are competing in a global market and we need to make those benchmark comparisons. So we would be strongly advocating to the government trying to establish those sorts of relationships—for example, with the OECD.

Senator TCHEN—Thank you; and thank you for undertaking this survey. It is very useful for us because in this type of area we have a lot of opinions but very few facts. I do not have any more questions.

CHAIR—That being the case, we thank you for your evidence today and thank you for the survey.

Proceedings suspended from 3.23 p.m. to 3.47 p.m.

COSGRAVE, Mr Michael Duane, General Manager Telecommunications, Australian Competition and Consumer Commission

WILLETT, Mr Ed, Commissioner, Australian Competition and Consumer Commission

CHAIR—I welcome and thank the commission's representatives for appearing today as they appear at the committee's direct request. As you have both appeared before the committee before, you know the drill. I invite you to make an opening statement before we move to questions.

Mr Willett—Thank you, Chair. It is a pleasure to appear today. As we have explained previously, we have not provided a written submission to this inquiry because we think the issues are adequately covered by the emerging market structures report, which is publicly available—and no doubt it is available to you.

The Australian Competition and Consumer Commission is responsible for competition in, access to and regulation of telecommunication services; that is no surprise to you, I am sure. The commission's primary objective in relation to telecommunication services is the promotion of the long-term interests of end users, having regard to efficient investment in and use of telecommunications and communications infrastructure and competition within the sector.

The commission has undertaken a number of initiatives to promote broadband competition and take-up in Australia including, firstly, requiring unbundling of the local loop in 1999 and declaring the line sharing service in October 2002. These actions have enabled access seekers to supply competing DSL services on Telstra's network. The commission notes that the take-up of these services has been relatively low to date, but it is important to recognise the role these declarations also have in encouraging the supply of wholesale DSL services. The commission's recent work on pricing should also increase the potential for the efficient take-up of the unbundled local loop service—and we can discuss that further through questions.

Secondly, in 2001 the commission issued a competition notice to Telstra regarding its conduct in the provision of wholesale broadband ADSL services to its competitors. This resulted in price reductions of up to 25 per cent in Telstra's wholesale price and changes to the architecture of the wholesale service which allowed the wholesale customers to compete against Telstra in retailing ADSL services.

Thirdly, the commission has played a leading role in industry discussions to resolve the so-called next generation network issues. This includes discussion of commercial, technical and regulatory issues. Further, the commission has worked to implement measures to ensure non-discriminatory treatment by Telstra between its retail arm and access seekers. Also, the commission is monitoring advertising and contractual terms and conditions in particular to ensure customers are protected when consuming broadband services. This includes monitoring advertising, which properly reflects any limitations on so-called unlimited broadband Internet packages. There is some activity on that issue at the moment.

We would like to now make some brief comments and then take some of them up further during questioning. When we think about competition in telecommunications and communications services it is important to distinguish between competition at the retail level and competition at the network or wholesale level. That is a critically important distinction that we will expand upon later. Network competition is important because competition is over supply of all elements of the price service package. That is, when effective network competition is present, network providers are under a competitive discipline when deciding how and when they develop new services and invest in their networks. By contrast, access regulation can only go so far to provide the impetus and only so far in introducing retail competition, since competitors still rely, at least in part, on incumbent services and facilities in order to compete with that incumbent.

Both levels are relatively concentrated but retail competition is greater, in part due to access regulation. Due to significant scale economies and high sunk costs there is less network competition, with Telstra owning the most ubiquitous local access networks outside the CBDs of major cities and with Optus having a more limited HFC based network. There are therefore limits to network competition and particular attention is required to impediments to efficient infrastructure entry. The commission has addressed this issue in detail in the emerging market structures report. The commission therefore carefully analyses conduct which may potentially act as an impediment to such entry, such as bundled telecommunications services. The commission also seeks to ensure that its access regulation is appropriately targeted and, apart from competitive aims, the promotion of efficient telecommunications investment is one of the matters it must consider when regulating telecommunications services.

Further, the commission believes that caution is required in not applying some arbitrary cut-off for defining what does or does not constitute broadband services. There are some interesting definitional issues we can get into here, particularly in terms of the NECG work. It can be expected that customers will seek high-capacity broadband links as applications develop. It would be unwise to predict just what people's needs are going to be in the future in terms of applications and data transfer. It follows that international comparisons need to consider the differences in data transfer speeds between countries. Expressed differently, comparisons need to consider not just the penetration levels but the speed of broadband services supplied to consumers. This is an area where Australia does not compare favourably with other OECD countries.

As the committee is aware, the commission has made recommendations in its emerging market structures report to the minister on possible measures to increase efficient infrastructure competition, which would have particular significance for broadband services. The commission remains of the view that further analysis is required of the impacts of Telstra's joint ownership of HFC and copper networks and its part ownership of Foxtel. However, in the absence of such action it would not necessarily be expected that new entry will significantly reduce Telstra's market power arising over its control of the two most significant telecommunications fixed line networks in the foreseeable future.

Finally, the commission has been following the inquiry proceedings with interest and has concerns about some of the arguments put forth to the committee by interested parties—in particular, Telstra's assertions regarding the commission's alleged role in delaying the roll-out of ADSL in the Australian market and the contentions contained in the supporting NECG submission. Further, the commission has concerns about Optus's criticisms of the commission's implementation of its local call service pricing principles and its contention that the legislated interim price of 10c per call should be introduced. In the commission's view, this argument for the government mandating what is seemingly an arbitrary access price amounts to a request on Optus's behalf for subsidised resale competition. That concludes my opening comments.

CHAIR—Thank you. In your statement you briefly mentioned the issue of bundling. This morning Neighborhood Cable gave evidence which was very critical of the ACCC's decision to allow bundling of Austar's products with Telstra, arguing that there was no competitive benefit to bundling products at that level. We asked whether they had been offered bundling by Austar on similar terms and they said they had not been able to reach a commercial agreement with Austar on bundling. What commercial benefits are there with bundling products like that where obviously it will make it so much more difficult for a competitor like Neighborhood Cable to compete?

Mr Willett—I am glad to see that we are starting with an easy question. Bundling is extremely difficult. There is no doubt that bundling can provide consumer benefits because there can be economies in the supply of a bundle of services compared to the individual supply of services, and consumers might value the bundle more than they would the individual package of services. Those benefits are there, and I think they are there in terms of the pay TV services that you refer to. The difficulty is that we recognise bundling can be used to lever market power when one of the components of the bundle is the subject of incumbent market power.

What we have done in that matter and in the Foxtel matter is to recognise the potential benefits of those bundles of services, recognising the extent to which it importantly has underwritten the roll-out of infrastructure; but we have also introduced some measures to try to ensure that any anticompetitive impacts of bundling are not realised. Those measures particularly focus on access to content requirements and infrastructure requirements. We may not have gone as far as we would have liked to, and that has been referred to in the emerging structures report. We did not have the opportunity to revisit some issues that we think needed to be revisited, simply because we had to deal with the application that was in front us. But that is why we have written the emerging structures report and addressed those issues in the broad.

CHAIR—Do those arguments also run for the Austar application, which is the one I was referring to—not the Foxtel one?

Mr Cosgrave—They do in a couple of ways. Firstly, it is important to recognise the context of that particular decision. People talk in terms of bundling in very general terms. But in that instance there was a specific proposal in relation to a specific package of services proposed to be offered by Telstra and Austar—a so-called rewards package—and we made clear that our decision was in relation to that package. That is an important rider for a start. It may well be that we have different concerns in relation to another type of bundle involving different discounts and different services. It came up in the context of so-called third-line forcing. The process there is that fundamentally that conduct is notified to the commission and the commission is in a position where it has to assess the public benefits and the possible detriments of the action.

In terms of the public benefits, it was the commission's view that the proposed bundling would enhance competition by providing consumers with an alternative supplier of pay TV services and have the prospect of facilitating price competition. We made it clear in that decision that we thought there was a public benefit, although we were not convinced it was a large one. We were very conscious of Neighborhood Cable's opposition to the proposal. We undertook quite a deal of analysis to determine the exact extent to which we thought investment in new networks might be directly harmed, but we did not think sufficient empirical evidence was available to us to indicate a significant public detriment. On that basis, we felt that the notification had to stand.

CHAIR—My next question relates to the ACCC's proposals to reduce the regulation of transmission capacity services. Throughout this inquiry we have received quite a bit of evidence about concerns regarding the high costs of backhaul with broadband across Australia. The decision to remove from regulation quite a number of routes strikes me as cutting across what people say is actually happening out in the marketplace. What basis is the ACCC putting up for reducing the regulation of those transmission lines at this stage?

Mr Cosgrave—Again it is important to understand the nature of the regulation, what regulation has been removed and, indeed, what regulation remains. Transmission has been regulated since the commencement of this regime in 1997. Obviously since 1997 a variety of infrastructure has been built, including networks like IP1 and NextGen, covering principally intercapital routes. Regulation has been progressively removed firstly from the Melbourne-Sydney route and over a period of time from a number of other intercapital routes. But the concerns being raised with you, as I understand it, are principally in relation to non-intercapital routes, and regulation remains in relation to those routes. So, in theory, it is open to any service provider who is seeking to negotiate a rate for backhaul to come to us and seek to have that arbitrated. To date we have not had any arbitration in relation to that service.

CHAIR—As I have to leave for a few minutes, I will hand over to Senator Lundy to ask questions at this stage.

Senator LUNDY—Just going back to bundling, when approval was given for the Foxtel arrangements to proceed, it was largely on the expectation—and I think I can say it was a general expectation—that that would facilitate alternative infrastructure providers, like TransACT and Neighborhood Cable, being able to carry Foxtel content. Obviously we are not privy to the commercial arrangements entered into, but this morning Neighborhood Cable said very succinctly that they had not entered into an arrangement because it was not commercially viable. What is the ACCC's view of that? Was that an outcome that you anticipated would follow that bundling agreement?

Mr Willett—It was certainly a risk that we anticipated, but the work we did was designed to try and alleviate that risk. We would be concerned if there were remaining impediments to other infrastructure service providers being able to bundle, for example, Foxtel content with the provision of their services. But, on the basis of the information that you have just provided, it is difficult to form a judgment because we do not know what the drivers of the lack of viability are. It may be that there is simply not the customer base to support that service.

Senator LUNDY—Is the ACCC able to be proactive in investigating with these companies why there was that outcome and what the companies' assessments were for the purposes of determining that there was still a problem? Do you have the resources, the will and the capability to do that?

Mr Willett—We have the resources and the will. What we can do is determined by the roles that were given in terms of the act and the requirements that we have agreed in terms of the undertaking that has been submitted on the pay TV arrangements. So it is a matter of relying on those.

Senator LUNDY—Are you saying that you need to respond to a complaint, or can you be a bit more proactive about investigating an outcome that all the parties are saying was the commercial outcome? They are not prepared to disclose the details of their negotiations publicly or anywhere else.

Mr Cosgrave—I must say they are not saying it to us. It is always an issue if people are not approaching us on their commercial negotiations. We do have broad powers, particularly with declared services, in relation to facilitating those negotiations.

Senator LUNDY—I do not necessarily know whether they have a complaint to bring to you. But from a public policy perspective it concerns me.

Mr Willett—We would certainly be interested in hearing from them, but we would need more detail. We can protect commercial confidential information, so we would be happy to take that further.

Senator LUNDY—The ongoing ramifications of the *Emerging market structures in the communications industry* report are that it contributed to an ongoing public debate. Since the publication of that report, have you seen any evidence of a change of behaviour in the market? Has it started to respond to some of the problems that you have identified? What action have you, the ACCC, been able to take, within your powers, to start militating against some of the blockages you identified in that report?

Mr Willett—'Not much' would be the short answer. There are two aspects of the work in that report that are relevant to this inquiry. First is the importance of competitive infrastructure in the long term to ensure effective competition in the provision of these sorts of services. We are a bit pessimistic about that prospect in the medium term. It is very hard to speak about the long term, but it seems to us there is a lot of focus at the moment—and you have probably heard some of it—on effective regulation for the purposes of reselling services, rather than on people spending money on infrastructure.

Mr Cosgrave—Or, indeed, on access based services.

Mr Willett—Indeed. The second key overall problem we identified in the emerging structures report was that effective access regulation is much more difficult, if not impossible, with the sort of market structure that we have in communications in Australia at the moment and the ubiquity of Telstra across so many services. As an incumbent, it is more ubiquitous than any equivalent in any other developed country. Without substantial policy change in relation to Telstra, it is difficult for that problem to be resolved in the short term.

Senator LUNDY—There is a fundamental problem. You expressed pessimism about the prospects of having competitive infrastructure. I am presuming that led to a very strident recommendation about divestiture of the HFC network as one way to perhaps short cut some competitive tension in that broadband infrastructure.

Mr Willett—That is right. It is not all doom and gloom; I would not want to give that impression. Michael has just spoken about how in transmission services competitive infrastructure has developed, such that regulation is no longer required. We have seen in Leighton’s acquisition of NextGen potential for exciting developments in making best use of that infrastructure. So there are some positive signs there. But, in terms of broadband services across the board and the sorts of infrastructure that are needed to provide a complete network, we think it is going to take a long time on current policy settings before competitive infrastructure is in prospect.

Senator LUNDY—We have heard a lot about backhaul and the cost of the bandwidth necessary to make a local loop infrastructure investment stack up for many businesses. Again, Neighborhood Cable is a good example. What policy mechanisms do you believe could be available to remove what looks like a pretty significant bottleneck in the affordability of that backhaul bandwidth for potential infrastructure competitors?

Mr Cosgrave—That is difficult because I do not think anyone is really talking about building transmission capability in regional Australia. Clearly the NextGen network has some capability there.

Senator LUNDY—But it really goes to a pricing issue of what Telstra are charging on those networks, so doesn’t that point to some regulatory treatment of access to those networks?

Mr Cosgrave—Yes, but, as you know, the regulatory regime we have in place provides for declaration of the service, which we have done in relation to that service. It provides possibly for an access provider, and it is solely at their discretion to put forward an access undertaking. That has not been done. Really our only other role is if somebody brings us a matter for arbitration, so to that extent it is a reactive role. We are not a price setter in that sense, and that has to be emphasised: we do not have price-setting powers in those markets. Again, we recommend prices in relation to some services. In fact, we did that even before government gave us that role in relation to basic interconnection and the unconditioned local loop. That could be something that the ACCC could look at—what it thinks might be efficient prices for backhaul services.

Senator LUNDY—We heard from an earlier witness about some of the processes that have occurred around the recent model terms that have resulted in Telstra lodging an undertaking and that have led to a scenario, effectively, of a price that Telstra are not prepared to negotiate below. Could you step the committee through what has happened with that process, knowing that it is under the most recent round of legislative amendments?

Mr Willett—We are not necessarily privy to those commercial negotiations, as you would appreciate, but I can certainly take you through the legislative regime and what we have done to date in relation to that regime.

Senator LUNDY—We are not privy to any commercial information either.

Mr Willett—No, I understand that.

Senator LUNDY—But what I understand about the process is that it has not led to the outcomes that would have been anticipated with the new regulation.

Mr Cosgrave—The legislation enacted at the end of 2002 required us to put in place indicative prices for each of the PSTN interconnection, the unconditioned local loop and the local call service within six months. It actually took a little longer, but the commission last year did come out with some indicative prices for each of those services. I think the second reading speech and the EM made it clear that the purposes of those provisions were to facilitate commercial negotiations, and clearly in the commission's final indicative prices we reflected that and said we would anticipate that commercial negotiations would continue to take place. The commission has since received an access undertaking from Telstra that mirrors the indicative prices that the commission set down. The commission has to assess that undertaking—I must say, in relation to fairly similar criteria that it has considered in setting the indicative prices. That is what we are in the process of doing now. It is really then a question as to whether the commission will accept or reject the undertaking, as it has been with a number of other undertakings.

Senator LUNDY—What happens next? What is the scenario if you do accept it, and what is the scenario if you do not accept it?

Mr Cosgrave—If the commission accepts an undertaking, we are precluded from making an arbitral determination that is inconsistent with the acceptance of that undertaking.

Senator LUNDY—With the implications being?

Mr Cosgrave—The implications would be that that would be the price.

Senator LUNDY—So no-one could complain about it or bring a complaint to you?

Mr Cosgrave—We could not make an arbitral determination. I presume some people would say that you could still negotiate something that is inconsistent with those undertakings. You could speculate about what people's incentives are to do that, but the clear legal effect of us accepting an undertaking is that we are not in a position to make an arbitral determination that is inconsistent.

CHAIR—Would that make you extremely reluctant to accept an undertaking as an organisation?

Mr Cosgrave—There are in both the legislation and the supporting material clear indications of some of the beneficial effects of an undertaking in terms of bringing certainty across the industry. There is certainly stuff in the EM about that.

Senator LUNDY—So everyone knows what the price will be?

Mr Cosgrave—If an access undertaking is accepted, yes. Again, commercial negotiation is not precluded, but you do not have as a factor in commercial negotiation the residual spectre of an arbitral determination by a regulator.

Senator LUNDY—I will come back to that. What happens if you reject the undertaking?

Mr Cosgrave—If it is rejected, then it is pretty much as is. We have a set of indicative prices out there. People will continue to be able to negotiate and bring arbitrations to us if they consider they want to do that. It will pretty much be status quo—where we are at at the moment.

Senator LUNDY—You are assessing at the moment whether to accept the undertaking. Is that correct?

Mr Cosgrave—Yes.

Senator LUNDY—In having put forward your model terms and conditions, are you in a position to tell me whether Telstra's justification for their undertaking matches your justification for setting your model terms and conditions? Are you as one in reaching your outcomes?

Mr Cosgrave—Do they accept that our indicative prices are the right prices?

Senator LUNDY—Yes. Are you working on the same logic in your conclusions?

Mr Cosgrave—No. Telstra would say that their modelling means that access prices should be significantly north of the indicative prices that we have set.

Senator LUNDY—The prices should be higher?

Mr Cosgrave—That they should be significantly higher in some cases.

Senator LUNDY—What are the ramifications of your accepting their undertaking, given that it is their logic that underpins it and they are effectively presenting to you what you say is some sort of concession?

Mr Cosgrave—I do not think their logic underpins their undertakings. I think they have simply put forward a set of figures that say, 'This is what you have said are indicative prices, and we are prepared to put that in.'

Senator LUNDY—So the commission does not automatically coopt their logic by accepting the undertakings?

Mr Cosgrave—You can come to a result by many different ways.

Mr Willett—I think we are careful to explain quite fully our reasons for accepting or rejecting an undertaking. That provides our rationale.

Senator LUNDY—If these undertakings are accepted, how likely is it that anyone negotiating with Telstra will be able to negotiate a price less than the one you have accepted?

Mr Cosgrave—We have said a number of times in the past that we had some issues with the negotiate-arbitrate model in telecommunications where there was an incumbent with significant market power. Those sort of comments would be apposite to the current question.

Mr Willett—It is difficult for us to form a view on that. You can observe, looking at infrastructure services across the board, instances where a reference price is set but for some reason the parties are able to agree on a different price. That happens, and it may happen here, but you can see some pretty strong pressures that would tend to suggest that most prices are going to be pretty close to the mark that is reflected in the undertaking, if it is accepted.

Senator LUNDY—I think that we are working in hypotheticals now, but are you aware of any prices negotiated in the market that are below the model price that you originally set?

Mr Cosgrave—I think the answer to that is no.

Mr Willett—We hear a lot of suggestions but we do not know anything.

Senator LUNDY—Are you able to find out, and is it incumbent upon you to find out?

Mr Cosgrave—We have from time to time sought details of interconnection agreements using our information-gathering powers, so it is open to us to do that. Obviously, it is not necessarily entirely consistent with a legislative regime that says, 'You facilitate commercial negotiations in your role as an arbiter in the event that they fail,' but we have sought them in the past and it is always possible that we might do so in the future.

Senator LUNDY—Logic would dictate, in my mind, that you would at least find out what was happening in the market before you determined your model terms and conditions anyway.

Mr Cosgrave—I would agree with that.

Senator LUNDY—Was that done?

Mr Cosgrave—We were aware, in general terms, of the prices of those services in the marketplace.

Senator LUNDY—But you are not able to tell the committee whether or not you have investigated any changes since then, or any downward movements?

Mr Cosgrave—Since the handing down of the model terms and conditions?

Senator LUNDY—Yes.

Mr Cosgrave—We have not investigated any change since that time.

Senator LUNDY—But that is open to you?

Mr Cosgrave—It is possible.

Senator LUNDY—Are you planning to do it?

Mr Cosgrave—I would simply say it is possible in the context of the current undertaking.

Senator LUNDY—So you are considering it?

Mr Cosgrave—Yes.

Senator LUNDY—I am conscious of time, but I want to go back to the access regime issue and this whole thing about resellers. We heard quite a bit of evidence from an earlier witness about some of the challenges they face in dealing with Telstra Wholesale and retail and some strong statements were made. I am sure you have seen them in the Primus submission to the committee. In relation to the five major points they make in their submission, what power does the ACCC have to perhaps monitor or intervene or respond to concerns or complaints? There are a number of crossover areas, where I have written directly to the ACCC as well, particularly on the issue of ADSL, of customers requesting a service from, say, an ISP and the ISP making the inquiry and saying that ADSL is not available but then going through Telstra retail, BigPond or whoever, and getting a positive answer. We heard evidence today that Primus is of the view that it has a different interface for competitors than it has for Telstra retail. Primus understands that Telstra Wholesale does not impose the same system interface requirements under its retail business as it does upon Primus. For example, Primus—on page 4 of its submission—believes that Telstra retail uses different system interfaces which give it a more direct and hence preferential access to wholesale. What do you know about that and what monitoring role do you have in making sure that there is equity in Telstra Wholesale's treatment of Telstra retail and whichever carriage service providers are reselling ADSL services?

Mr Cosgrave—As you say, this issue has quite a deal of history. We have been quite active since 2002 in working with Telstra—including examining their systems—to ensure as far as possible the sorts of service qualification issues that are a constant source of complaint are eliminated. I would be the first to say that that still has not occurred. We have written as recently as this week to Telstra with a number of individual complaints and seeking from them further assurances in relation to the sort of action they might take in the event that they do get customers who fall into one of those two circumstances that you mentioned. What you do not want is what I have seen on at least one occasion, which is a customer who does not service qualify for a competitor to Telstra qualifying for Telstra and, when that is disclosed, suddenly finding that they should not have been qualified for Telstra and they are without an ADSL service altogether. So we have written seeking further assurances that in the event that occurs the customer will be allowed to churn to the competing ISP without any penalty to them.

In a more systematic way, we have been proactive with working through their systems to ensure, again as far as we can, that there is the minimum of human discretion in there and that systems are fully automated. It seemed to us upon examination that it was where the human element came into it that these sorts of issues were arising. I must say there is nothing from the work we have done—and we have done considerable work—that would support the sort of suggestion that is in the fourth of Primus's dot points. I would welcome Primus, who I know are here today, to if they have further evidence in relation to that to both discuss it with us and bring it further to our attention.

Senator LUNDY—So that is potentially a complaint you could act upon?

Mr Cosgrave—Yes, it is potentially an area we could examine. There is, in relation to services that are declared—and that is not all services; it is not wholesale ADSL, for instance—a requirement that there be reasonable equivalence of fault handling and provisioning. I am paraphrasing the legislation, which is always dangerous.

Senator LUNDY—Just for the sake of the *Hansard*, the fourth dot point in the Primus submission relates to Primus's belief that their customer data is being accessed and used by Telstra retail.

Mr Cosgrave—I am sorry: I did mean to refer to the fifth one, which is about the issue you raised around system interfaces being consistent between wholesale and retail.

Senator LUNDY—So that was the point you were referring to?

Mr Cosgrave—Indeed.

Senator LUNDY—On the previous point—the fourth point; the one about Telstra using Primus customer data—is that a complaint you could act upon? I am not aware if that has been brought before you.

Mr Cosgrave—The answer is yes, we could act upon it, again in the sense that there may be—and I would not guarantee that there were—issues around access obligations to declared services. But the difficulty often with allegations of that nature is that they are made in very general terms and the rebuttals come in very general terms and it is difficult to come to any clear view in relation to their validity or otherwise. But, yes, they could certainly be raised with us.

Senator LUNDY—Okay. I think it would be useful for the committee if you could give us an idea whether or not these problems raised by Primus are within the ACCC's mandate to deal with, or at least respond to, so we can get an idea—

Mr Cosgrave—If you would like us to do that in a more systematic way, we would be happy to put something in writing to you.

Senator LUNDY—If you do not mind. If you could take that on notice, that would be helpful for time today. I have a couple of specific questions. First of all, there is a lot of discussion at the moment about the ADSL provisioning of exchanges by Telstra up to a certain point, including a program of installing DSLAMS and miniMUX or CMUX units into RIM cabinets. Many of those are structured around a pilot project. I would like you tell the committee whether or not the same access provisions and fair prioritising of customers to the limited number of ports in those exchanges has the same open, competitive environment as it is supposed to have in exchanges or whether, if a miniMUX is put in a RIM, then Telstra know when they are doing that, they know the customers who want it, and they can make those connections.

Mr Cosgrave—To the extent again that it deals with services that are regulated—and I would put the caveat that obviously not all services are regulated—the same access obligations apply in relation to each regulated service.

Senator LUNDY—In the case of this program of rolling out the miniMUXs into RIMs, we have had consistent evidence that the lack of information access by other people to Telstra’s program for doing that really governs their ability to market in those areas or even to market quite so selectively to be able to support customers who might be able to access one of the minimal number of ports under miniMUX inside a RIM.

CHAIR—And if they do start marketing that area then the miniMUX arrives not long after.

Senator LUNDY—Yes. That is a really good point. And if a competitor is promoting, say, a wireless service in that area, in lob Telstra with their miniMUX and CMUX units to create an alternative—which is great for competition but it really comes down to information and the way that information really governs business decisions.

Mr Willett—So you are suggesting that roll-out is being done in a predatory way against other technologies?

Senator LUNDY—Yes, that is the general allegation, but it has not been expressed in those terms by witnesses. They just want equal access to that programming information by Telstra so that they have an equal and fair opportunity to make decisions governed by that.

Mr Willett—So they are using their greater access to information about customers to tailor installations.

Senator LUNDY—About customers but also about their program for rolling out their technology. Can you do anything about that? That is my question. How do you make it fairer?

Mr Willett—We might take that on notice as well.

Senator LUNDY—It is difficult, I think, because of the imperfect nature of most of that information anyway. But it comes back down to those information systems and how Telstra program it and how they make that available to the market.

CHAIR—We really have to move on.

Senator LUNDY—Yes. I had one other question. The Ergas report raised a number of issues that really challenge the ACCC’s credibility, in many respects, for some of the conclusions and data that you have used in the emerging markets report. We have touched on this previously, but what is the ACCC’s view of that Ergas report in the context of its being effectively put up as a response to the emerging markets report?

Mr Willett—There is a fair bit of manipulation of data that I think is inappropriate, a fair few assumptions that are questionable, and, I think, a bit of self-serving rewriting of history. Let me firstly take up the first issue, because I think that is the one that particularly irks us. We understand that Telstra was working on ADSL from the early- to mid-nineties. From our perception, the big driver in getting ADSL roll out by Telstra was the 1999 declaration of the line service. That meant there was the potential, at least, for other people to come in and install that sort of infrastructure. So Telstra started work on it to protect its position. The suggestion that we asked or insisted that Telstra did not roll out ADSL until other things had happened, including the provision of a wholesale ADSL service, has in our view some wrong timings; our understanding is that that discussion occurred in early 2000 and the wholesale and retail roll out of ADSL happened about six months later. So, at worst, there was a six-month delay. We think it was important to ensure that Telstra did not have an advantage through being able to roll out a retail service when no-one else could.

Mr Cosgrave—I might just interrupt the commissioner and say that we have raised that with Telstra. Commissioner Willett is not aware of this, but I understand that the committee has had some communication from Telstra in the last 24 hours.

CHAIR—Have you seen the communication?

Mr Cosgrave—Yes, I have.

CHAIR—And that is a more accurate interpretation?

Mr Cosgrave—It is more accurate to the extent that there is a clear insinuation in both Telstra's submission and some of the evidence that has been given to you that the commission ordered Telstra not to roll out a wholesale ADSL products at the time the commission commenced its unconditional local loop investigation. We certainly did not do that. What we did do was write to Telstra on 29 February 2000 saying there are industry processes going on that mean, in our view, Telstra should not roll out a retail product until such time as those deliberations are available and other people can use the ULL declaration. But, as Commissioner Willett says, that is a matter of five to six months as opposed to the suggestion of 29 months that is in the submission. I think they might suggest that it was 12 months; we say it was five to six months.

Mr Willett—I think it is fair to say that it is pretty well known that when Telstra rolled out the ADSL service in late 2000 there were some problems associated with it. Given that experience, it is a bit hard to believe they were ready to roll it out some three years earlier. I can say some more about some of the other shortcomings that we believe are present in the NECG work, because I think it is quite important. We think there are some specification problems in the way they have identified and compared broadband services. There are no price or service quality parameters taken into account. The fact that broadband services in Australia are relatively low quality in terms of slow data speeds, and relatively high cost in terms of prices, is not taken into account. We think there are further specification problems in terms of the way they use, as an indicator of roll out, the roll out of pay-TV services rather than other technologies such as the ownership of computers in households. Pay-TV roll out in Australia was relatively late, by world standards, yet we also know that Australian households probably lead the world in terms of the uptake of new technologies, including the roll out of PCs and the take-up of DVDs; any sort of new technology is rapidly taken up by Australian households. So relying on those sorts of indicators might be a bit more revealing in terms of what you would expect to see in Australia in terms of broadband take-up.

The starting point for the roll out of digital services and broadband being taken by NECG to be the later of the date of ADSL and cable does not make any sense to us. Cable was rolled out some three years earlier. There were broadband services made available to Telstra some three years earlier. Why wouldn't you use that as the starting point rather than the year 2000? If you use that as the starting point then Australia's performance looks a lot less positive than NECG have indicated. We also have concerns about the regression analysis. We have tried to replicate that and have identified some problems.

CHAIR—Have you done a paper or a short note on that?

Mr Willett—We might actually provide that in writing to you because the regression analysis problems are just too technical for me to go through right now.

CHAIR—We have limited time and I have a few questions. My next question—and it was partly touched on by the material from Senator Lundy and if you have done it while I was out of the room then just refer me to your earlier answer—is a question about the number of complaints we continue to get from ADSL retailers competing with Telstra. They ring on behalf of their customers and are told they cannot get ADSL.

Mr Cosgrave—We did that one when you were out of the room.

CHAIR—Thank you. I thought you would have. My next one was partly related to the questions Senator Lundy was asking. It is on the whole issue of DSL based infrastructure competition and actually putting DSL stuff into exchanges and so forth and the fact that there are so few exchanges, particularly in regional areas, that have had DSL based infrastructure put into them. I am wondering what that lack of competition in terms of DSL based infrastructure says to you in terms of other costs associated with trying to make DSL pay for competitors, particularly in regional areas?

Mr Willett—I think that is symptomatic of a broader issue that we raised earlier about the disappointing extent of roll-out of competitive assets in terms of infrastructure and the relatively slow take-up of ULL—unconditional local loop services. That problem should be addressed at least in part by a move to lower ULL pricing in metropolitan areas, which should be an outcome of the current consideration of the undertaking whether we accept it or not. The work we have done suggests that ULL pricing in the past has been too high in at least the metropolitan areas outside the CBD. There is a further difficulty there in that because the ULL take-up has been relatively low the ULL specific costs are spread over a small base. That tends to increase the per unit cost. That is a spiralling problem.

CHAIR—It is a chicken and egg argument, too, isn't it?

Mr Willett—That is right. We have attempted to address that by smearing those costs on the basis of some aspirational assumptions about ULL take-up rather than relying on existing take-up. It is indicative of a lack of a push towards more infrastructure based competition and a continuing reliance at the moment on resale of services.

CHAIR—In terms of just taking broadband competition further, there are a whole range of other log jams in terms of competition; for example: access to the Telstra conduits, the pricing for access to the Telstra conduits, the pricing for access to the exchanges and the pricing of access to buildings. All of these have been reported to us this week and all of these are impediments to competitors getting into the field. Does that suggest that you will need to take your regulatory process further beyond just ULL to look at some of the other parts of the field if we are going to get a competitive market in broadband?

Mr Willett—It is possible. But in response to those specific complaints it is noteworthy that there has been a lot of roll-out of competitive infrastructure in CBDs, where you would expect to see those sorts of problems that you just mentioned most prominent.

CHAIR—The highest value added customers are in those markets, too.

Mr Willett—That is right, but if there are big problems in terms of lack of access to trenches or conduits or buildings, you would think that would impact most on CBDs—but that is where you have most of the roll-out. There is a question mark about that, but if it were raised with us it would certainly be something we would want to hear about and take into account in terms of the regulatory process.

CHAIR—I have no more questions for the moment. Senator Tchen?

Senator TCHEN—This is about the fourth or fifth telecommunications inquiry I have been on since I joined this committee three years ago. In just about every one of them I get the impression the inquiry is a matter of Telstra versus the rest of the world. Given that Telstra is the dominant player in the Australian telecommunications market it is probably not surprising that it should be the dominant feature in any inquiry like this. I am just wondering whether this type of attitude or approach might influence even impartial participants like the commission. I suppose the assumption has always been that the elephant is the largest animal on the savanna and he also has the largest tusks and therefore must be the most dangerous predator around. The reason I say that is that the commission is concerned with consumer benefits and competition—the two are linked.

Being much longer in the tooth than either Senator Cherry or Senator Lundy, I can remember the time when Australian telecommunications was not only dominated by Telecom; it was Telecom. I enjoyed the consumer benefit under Telecom. Competition obviously has benefited Australian consumers in terms of telecommunications products. However, as pointed out in your emerging market structures report, Telstra is one of the most integrated providers in the world. In your comments on the costs of divestiture you acknowledge the production efficiencies arising from the existing level of integration between the entities. In other words, we can assume that you mean integration would actually produce consumer benefits as well.

Mr Willett—Should I address that now or wait for your other question?

Senator TCHEN—If you answer it now and I find my assumption is wrong, my next question will be different.

Mr Willett—I think it is probably going a bit too far. We recognise that there can be costs of separation and that integration can involve some technical efficiencies, but we also think it is important to recognise the allocative and dynamic efficiencies that might be available through separation. Those considerations differ whether you are talking about horizontal separation, like divestiture of the HFC cable, or vertical separation out of the copper network. There are some very difficult issues to address there and some very difficult analysis to be done. We have not reached any conclusions on that other than the conclusion that the net benefits of horizontal separation are more likely than net benefits associated with vertical separation, simply because we think the costs of the vertical separation are likely to be higher. That does not say that both of them might not be good things to do, and our emerging structures report suggests that the work be done.

Senator TCHEN—I appreciate that point but it seems to me that the commission has made an assumption that separation is desirable on the grounds that, potentially, there is an ability for Telstra to unfairly dominate the market or veto supply to competitors and so on. But there is a difference between potentially being able to behave in an anticompetitive way and actually behaving in an anticompetitive way. As I said, it is like the elephant’s tusks.

Mr Willett—That is true. I have to say there have been a lot of positives, in terms of emerging competition in telecommunications services, since deregulation and, indeed, in terms of cultural change within Telstra. That is quite apparent. I am relatively new to this in the ACCC, but we have very good relations with Telstra and they are very engaging on the issues that we raise with them; we do not regard them as the enemy. It is noteworthy that, I think, there have been as many concerns expressed by competitors of Telstra—in particular, Optus—about our regulatory role as there have been from Telstra itself. I do not think we are inappropriately in a combative relationship with Telstra. We recognise that we have a job to do, in terms of regulating access and the competitive environment in telecommunications, and that involves regulating the market power of Telstra. But it does not involve providing preference or favours to Telstra’s competitors. That is an important line to tread and an important distinction to draw, and we are very careful to draw it.

Senator TCHEN—In no way am I suggesting that the commission is biased for or against Telstra or any other players. The reason I raise this is that the committee heard earlier from the Australian Industry Group, which has conducted a survey of its members—there were 807 respondents—and found that about 52 per cent of the respondents that have broadband connections are Telstra customers. On the face of it, Telstra is the dominant player. However, with this 52 per cent, it depends on what the proportion of other players was. I put that question to them and they said that the next largest player has 3½ per cent and the rest is spread around. It occurred to me that, in a competitive situation like this, having a range of very small competitors does not provide for a very healthy competitive market.

Mr Willett—Yes, I agree with that.

Senator TCHEN—So, in fact, it is better to have two or three nearly matched competitors, rather than a situation like this.

Mr Willett—I am not sure that I would go that far.

Senator TCHEN—Or the four pillars! So I was wondering whether this antipathy—if I may use that word again—towards Telstra is because the competitive market is skewed at the moment. It is not so much that Telstra’s behaviour is necessarily anticompetitive or potentially anticompetitive but that the market is imbalanced.

Mr Willett—Yes, I think there is a lot in that. There are a lot of dimensions to the point you make, which we could discuss for some time. I think there is some truth in that. I do not know how much you want me to say about that. I think that goes to the heart of some of the points we made in the emerging market structures report. There are some entrenched problems here that are going to mean we are not going to have effective competition in some of these services for some time to come.

Senator TCHEN—It seems to me that in your emerging market structures report you make some fairly firm recommendations on particular actions. I was wondering whether those actions can perhaps be in a more contemplative mode than a decisive mode.

Mr Willett—Some of it was contemplative and some of it was suggesting that more work could be done in this area. But a strong theme throughout it was that the current structure was not conducive to effective competition in a number of important communications services, and I think we would stick by that conclusion.

Senator TCHEN—Thank you.

CHAIR—We will now have to conclude today's proceedings. We could go on for a bit longer but there is a plane to Canberra that people have to catch. I thank all our witnesses today for their informative and challenging presentations. There being no objection, the committee accepts the additional correspondence from Telstra as a supplementary submission.

Committee adjourned at 4.56 p.m.