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TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE

**Reference: Telecommunications Legislation Amendment (Regular Reviews and
Other Measures) Bill 2005**

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SENATE
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS LEGISLATION COMMITTEE

Monday, 11 April 2005

Members: Senator Eggleston (*Chair*), Senator Lundy (*Deputy Chair*), Senators Bartlett, Conroy, Santoro and Tchen

Substitute members: Senator Cherry for Senator Bartlett

Participating members: Senators Abetz, Allison, Bolkus, Boswell, Brown, George Campbell, Carr, Chapman, Colbeck, Coonan, Crossin, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Heffernan, Hogg, Humphries, Knowles, Lightfoot, Ludwig, Mason, McGauran, McLucaas, Moore, Nettle, O'Brien, Robert Ray, Watson and Wong

Senators in attendance: Senators Cherry, Conroy, Eggleston, Lundy, Santoro and Tchen

Terms of reference for the inquiry:

Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005

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Committee met at 9.04 a.m.

CHAIR—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee in relation to its inquiry into the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005 and welcome everybody here today. The reporting date for this inquiry is 11 May 2005. The committee has received 10 submissions, which have assisted the inquiry significantly. For the benefit of all of our witnesses here today, I point out that the committee prefers all evidence to be given in public but, should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and the committee will consider your request.

[9.05 a.m.]

NEEDHAM, Mr Mark, Policy Manager, Telecommunications, National Farmers Federation

CHAIR—Welcome. Thank you for giving us your time today, Mr Needham; it is much appreciated. The committee has received your submission as submission No. 10. Do you wish to make any alterations or amendments to your submission?

Mr Needham—No, I do not.

CHAIR—You are reminded that the evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Would you like to make an opening statement before we move to questions?

Mr Needham—Yes, thank you. I would like to make some opening comments related to our submission. NFF welcomes this opportunity to provide the committee with input into this important issue. You will note that, along with the comments in our submission, the comments I will make today will be restricted to the provisions that NFF sees as relevant to delivering equitable telecommunications services and outcomes to Australia's farmers. Our current telecommunications policy strongly suggests that service levels and services in rural and regional Australia need to be equivalent to those in urban Australia. We are not considering the issue of the Telstra sale until that is the case. NFF believes that it is the Commonwealth government's responsibility to provide appropriate mechanisms to guarantee ongoing provision of equitable telecommunications services and service quality to all Australians. Thank you.

Senator CONROY—In your submission you argue that the regular reviews should occur at least every three years rather than every five years as set out in the government's bill. The last time the Telstra sale legislation was debated in the parliament the government accepted a recommendation by this committee for three-yearly reviews. What do you think is the practical impact on rural communities of having an extra two years between the reviews?

Mr Needham—It is certainly our perspective that that three-year time frame is an appropriate time frame. It allows sufficient time for a variety of new technologies to be implemented, if they are warranted, and it allows sufficient time for the review committee to find out what the benchmarks are and whether or not changes need to be made. The possible additional two-year time frame, given that the current bill says up to five years, is a problem from the perspective that rural and regional Australia want to get on with business and they do not want to have unnecessary delays in making sure that equitable services are in place.

Senator CONROY—As I mentioned, the government did initially accept the recommendations from this committee for a three-year period. Do you have any idea why the government, after announcing it would accept three years, backtracked on its earlier position and suddenly put up five years?

Mr Needham—No, I do not, other than that, as you will note, the bill that has been put forward is very similar if not the same as the one in the T3 process in 2003. Obviously, NFF's position in 2003 was also the three-year time frame.

Senator CONROY—You do not think they have been listening to Telstra too much?

Mr Needham—No. I do not have any knowledge of why they have put forward exactly the same bill as they did a number of years ago.

Senator CONROY—The government has argued that, while the legislation requires reviews to be held at least every five years, they could be carried out at shorter intervals if the review committee so decides. What is your view on that caveat?

Mr Needham—Again—and I made the comment earlier—it is important that rural and regional Australia understand what the opportunities are in relation to equitable telecommunications services. Not knowing specifically whether there will or will not be a review is disconcerting. It is important that people understand that there is a time frame in place. That time frame, which is nominally three years, gives them a chance to plan and gives them an opportunity to progress their activities as much as they wish.

Senator CONROY—Are you concerned that the government is basically guaranteeing a slow roll-out of telecommunications infrastructure in regional and rural Australia?

Mr Needham—Again, it is important for the business of farmers, the business of rural and regional Australia, that the opportunity be given for equitable services to be delivered in a timely manner. It is important that everyone recognises that that is the case and that things can progress, again in a timely manner. I am repeating myself a number of times.

Senator CONROY—Would the National Farmers Federation support an amendment in the Senate, if it were proposed as an outcome of this committee's hearings, to reduce the period from five to three years?

Mr Needham—Yes. That has been our suggestion since part 10 of the T3 bill came out way back in 2003.

Senator CONROY—In your submission you talked about the importance of competition in ensuring that quality and affordable telecommunications services are delivered in rural communities. This committee has received a number of submissions from other groups suggesting that the review should focus on the state of competition as well as the adequacy of services. Is this something that you would support?

Mr Needham—Yes. NFF is a strong supporter of the competitive process in the telecommunications marketplace. Its key focus is equitable services in rural and regional Australia. It has certainly suggested that it is in the best long-term interests of farmers that a competitive marketplace be maintained and allowed to flourish.

Senator CONROY—You have noted that the bill fails to fully address the Estens recommendations in relation to future-proofing. Can you elaborate on why it falls short.

Mr Needham—We have outlined in our submission that we do not believe that recommendation 9.5 is addressed at all and that there are some shortcomings in relation to recommendations 9.1 and 9.4. Recommendation 9.1 comments that there should be:

... a high degree of certainty that Government funds will be made available to support service improvements ...

I am not sure that is reflected in the bill at all. Recommendation 9.4 also certainly suggests that there needs to be a response from the government and that, in its response, the government should 'justify responses that are not in accord with review recommendations'. Again, that does not seem to be detailed in the bill at present.

Senator CONROY—How would the NFF amend the bill to give effect to the Estens recommendations on funding?

Mr Needham—NFF's concern is that there is an appropriate mechanism in place to ensure that adequate funding is provided. NFF has not been specific as to how that mechanism should be developed, just that there needs to be one that is satisfactory.

Senator CONROY—Has the NFF done any estimates on how much money would be needed to give 'a high degree of certainty' that funds would be available to support improvements identified by the reviews?

Mr Needham—I suppose NFF has interpreted the 'high degree of certainty' as being some specific words in the bill that 'guarantee' that the shortfall identified by the committee is implemented and therefore funded accordingly. You will note that at present the higher bandwidth incentive scheme is a particular process that allows the improved delivery of higher bandwidth to rural and regional Australia. That particular mechanism does seem to be working very well at present. The high degree of certainty is about putting the appropriate words in legislation that guarantee that type of mechanism, or some other form of mechanism, is there and will remain there.

Senator CONROY—How much money? Are there any calculations?

Mr Needham—There is no suggestion from the National Farmers Federation as to how much money. The important issue is the mechanism of the review and that the differences, if any, between urban and rural and regional areas are established and those differences, when identified, are funded accordingly when there is marketplace failure.

Senator CONROY—The government has stated that it intends to impose a licence condition on Telstra requiring it to comply with a local presence plan. This bill allows the minister or the regulator, ACA—soon to become ACMA—to make such plans. What does the NFF want in the local presence plan? From your point of view, what are the essential features?

Mr Needham—Recommendations 8.1 and 8.2 that relate to the local presence arrangement need to be of a nature to guarantee that the primary universal service provider—whichever it may be, presumably Telstra—is there and carrying out the activities that it needs to carry out to ensure that service quality and services are delivered in a more timely manner and to a higher standard than they are at present.

Senator CONROY—In the policy statement that the NFF put out before the last election you called for changes to the customer service guarantee to ensure that the time limits for connecting a service or repairing a fault be the same in rural and regional areas as in urban Australia. Has the NFF estimated the impact of this proposal?

Mr Needham—NFF has certainly been working with providers to attempt to get the same level of service. We have made enormous headway in relation to the installation of new services where previous time frames of six months have been reduced to 20 working days and time frames of 15 days have been reduced to 10 days. So we are attempting to work with providers and the government to ensure that the time frames in relation to installation of new services are as close as possible to those in metropolitan Australia. In relation to faults, we are still continuing to work on that exercise to try and improve the situation with respect to the time frame it takes for services to be repaired in rural and regional Australia.

Senator CONROY—When will you finish that?

Mr Needham—This is a long project from our perspective. It has been going for a number of years. We are certainly working hard to try and achieve that outcome. It will be a big step if we can achieve that. I look forward to something happening in relation to that in the foreseeable future. The challenge is to make sure that there are sufficient resources from the particular provider that repairs services and that their internal systems are of an appropriate nature that maximise the outcome for farmers and for rural and regional people. It is a challenging task.

Senator CONROY—Would it be a year?

Mr Needham—It has been going for some time. I look forward to something happening in a time frame that may be less than that.

Senator CONROY—Hopefully it will be before the privatisation bills go up.

Mr Needham—Certainly from our point of view the focus is on service, service and service. We have been working on this equitable service issue for some time. It would be good to see an outcome soon.

Senator CONROY—To what extent would Telstra's local presence in regional areas need to increase to meet this objective?

Mr Needham—As to whether it increases or whether improved efficiency is the answer to the question, NFF is uncertain at present. It is important that the appropriate resources are directed towards the activities of the primary universal service provider. So, where there are challenges in relation to repair time frames, upgrade, rehabilitation of services, it is important that the necessary resources are applied to those and that there are some guidelines that surround that type of activity and that those guidelines are reported on as part of the local presence plan.

Senator CONROY—But your organisation would be the best placed on the ground, particularly in regional and rural Australia, to be able to make an assessment of where these points of presence are needed. If you guys have not had a chance to think about it or are not in that process of pulling together a points-of-presence plan, no-one else has a chance.

Mr Needham—I am not suggesting that we are not giving thought to the things that could be included in a local presence plan, but we do rely on public information to better determine where there are problems in rural and regional Australia. Obviously our discussions revolve around the mechanisms to make sure that the resources that are necessary to solve those problems are in place and will continue to be in place to deliver the outcome that is necessary.

We utilise public information out of the network reliability framework that assists in identifying exchanges that have problems. Then we try and gauge how quickly those issues are being resolved and obviously make comment that there needs to be greater focus in those particular areas. For example, that could be an issue that could be included in a local presence plan to ensure that outcomes are delivered in an appropriate time frame.

Senator CONROY—I read a while back that the Deputy Prime Minister, John Anderson, talked about standards and Telstra services being ‘soggy’. Are you familiar with what he was referring to there?

Mr Needham—I do not know specifically what he was referring to.

Senator CONROY—It was just a new phrase.

Mr Needham—Yes. It is the prerogative of people to decide on new phrases all the time. But from our point of view it is important that the rules and regulations about equitable services are clear, well defined and hopefully understood by rural and regional Australians—hence our comments in other places in relation to the importance of the regulator having appropriate processes that make sure that rural and regional Australians understand what they are entitled to and whether or not they are getting that entitlement.

Senator CONROY—The government is reportedly negotiating the terms of the local presence plan with Telstra. Has the NFF been consulted in the development of this plan?

Mr Needham—We have not provided any information as yet specifically about the particular items that we would like to see. I would imagine that, as that process is getting under way now, we will attempt to provide our opinion and our comments in relation to that exercise.

Senator CONROY—The minister’s office or the department have not come to yet over this matter?

Mr Needham—They have not specifically asked us for detailed input into that exercise.

Senator CONROY—Have they asked you for any input?

Mr Needham—Certainly in general terms, as we have in our submission, we have suggested broadly that local presence plans need to be robust and the implementation and reporting on the activities need to be done in an appropriate time frame.

Senator CONROY—Do you think the appropriate starting point is a discussion with Telstra in terms of what they think the local presence plan should be? I am sure that they have a lot of information about this but I am just not sure that starting there would be the best thing.

Mr Needham—I am not certain whether the government has started with Telstra, but I would hope—

Senator CONROY—I had hoped that they had started with you; that was all.

Mr Needham—I hope, and I am sure, that they will consult widely in relation to what the local presence plans require and develop something that is appropriate. Certainly, from our point of view, if any issues arise we will be commenting on them.

Senator CONROY—You say you want them to consult widely. I think you said that you rely on information from the public to find out where the problems are.

Mr Needham—Public information being the information published by the regulator and others in relation to service standards in rural and regional Australia. We also consult—

Senator CONROY—With your state bodies.

Mr Needham—Yes, and with our members, of course, to enable them to provide input into what issues they have at any particular time.

Senator CONROY—You look at the published information. Are you also looking around the country and trying to get to the bottom of where the problem areas are and preparing a submission to go to the minister that says, ‘Here are the sorts of areas where we think Telstra have dropped the ball and this is where we want to see some local presence’?

Mr Needham—We certainly have input directly from farmers and from our organisations in relation to challenges that are out there in rural and regional areas around telecom service. That input is certainly part of the process. We then attempt to investigate the details behind the service issues. We have a number of case studies that come through our office which we then progress to the investigation stage to find out the challenges that are there and what the time frame is to get the answer et cetera. It is important from our point of view that, when issues arise, the full background of information on those issues is clarified and that there is an outcome delivered in a meaningful time frame.

Senator CONROY—The bill provides for the minister to approve local presence plans, but the details of the plans are entirely at the minister’s discretion. Do you think there should be a formal consultation process on these plans, as is the case with, say, the plans implementing the USO?

Mr Needham—Again, I think it is important that the government consult appropriately so that the plans are meaningful and detailed and deliver all the necessary outcomes that a primary universal service provider needs to deliver as part of its provision. That should continue to be part of the process as well. Certainly there is a suggestion that they could be reviewed as part of the review committee process. It is something that we are considering.

Senator CONROY—Would the NFF support an amendment to the legislation to require the publication of a draft local presence plan that the public is able to make submissions on?

Mr Needham—The publication of a draft presence plan would attract comments from people in a particular area or from the broader community. I think that opportunity exists.

Senator CONROY—Under this bill, the minister makes an announcement, and that is it.

Mr Needham—Again, I believe that there should be an appropriate level of consultation to ensure that the local presence plan suits the particular region or area that it relates to and that people are aware of the content and are happy with it.

Senator CONROY—Would you favour that being in the form of a public process rather than just the minister having a chat with Telstra?

Mr Needham—Certainly I would prefer that there is some consultation process, that people are aware of it going on and that they have the opportunity to make comment if they wish.

Senator CONROY—In one of your earlier answers you talked about a universal service provider. Presuming that was Telstra, has the NFF examined the issues around operational separation and structural separation? Has your organisation had a chance to look at that?

Mr Needham—We certainly have had some discussions about the need for the primary universal service provider to have sufficient scale and scope to deliver the outcomes that are necessary for rural and regional Australia. It is important that, whatever organisation is there to do that, it has sufficient scale to allow for technologies to be implemented on a national basis and mechanisms to ensure that equitable prices from a marketplace perspective can be delivered as well.

CHAIR—On the question of universal service obligation, one of the issues you have raised is that it is hard to enforce. You might have a requirement for future-proofing or a report which talks about the need to improve technology. But I wonder whether or not the National Farmers Federation has given consideration to including in the universal service obligation a requirement for regular upgrades in the technology of telecommunications in regional Australia.

Mr Needham—NFF focus on service and service outcomes. We do not specifically focus on particular technologies. We are not trying to prescribe that a particular technology should be used in a particular location to deliver a particular type of service. For example, a fibre or copper technology may be appropriate in a particular location, whereas in other areas wireless technology may be appropriate to deliver the same service outcome.

There is certainly a need for the examination of services to be part of the review process. Where there is a problem or where there appears to be an inequitable delivery of services, that will need to be addressed. Again, looking at the series 9 recommendations, they do seem to include that mechanism already. It does not seem to be as detailed in the bill as it could be.

CHAIR—No. Technology relates to service levels. One of your objectives is to have service levels in regional Australia equate to those in metropolitan areas, and that by implication means that there should be comparable technologies. One does not have to use the word ‘technology’, but if the USO included a provision that the providers of the universal service obligation had to provide comparable services, that would perhaps be something which might achieve your objectives, would it not?

Mr Needham—Yes, it would. From our perspective it is about service and services, irrespective of technology. The bill in its current form certainly does talk about equitable services, so it is important that as part of the process we look at the types of services that are on offer and that the marketplace suggests an outcome, and if that is not delivered then government comes to deliver the necessary telecommunications service that is required.

CHAIR—Continuing with the universal service obligation, I do not know whether you have read the Optus submission. They have again mentioned their idea of being excused from paying their contribution to Telstra for the provision of the universal service obligation in return for them increasing their level of service in regional areas, which would achieve the objective of bringing more competition to regional Australia which, by its very nature, might mean that better services were provided. That has been our experience in other areas: where

there is competition and one provider improves a service, the other one also does so just to keep up. Do you have any comment on the concept that Optus have put forward?

Mr Needham—The NFF submission on the universal service obligation and the customer service guarantee review in February 2004 suggested that all providers must contribute to the provision of services, infrastructure and costs relating to the fulfilment of the USO, recognising the benefits, both tangible and intangible, that providers receive from the existence of the USO. So it is NFF's position that all providers contribute to the USO because all providers benefit from the USO.

CHAIR—You do not see any value in varying that in the interests of getting more providers into regional Australia?

Mr Needham—At present the USO relates to the standard telephone service. There are a lot of opportunities and there are other government programs that are providing telecommunications competition in rural and regional Australia for other important services. Earlier I mentioned the higher bandwidth incentive scheme. That scheme is now delivering a competitive supply with eight national providers of satellite services to rural and regional Australia. So there are mechanisms that do allow for the introduction of a form of competition to deliver other types of services in rural and regional Australia. Under the USO, that particular regime which has been established for some time does seem to be delivering that standard telephone service but rural and regional Australians require other than the standard telephone service to get on with their activities.

CHAIR—I agree with that; they do.

Senator TCHEN—It seems to me that one of your main complaints about this bill is the provision for a review within a five-year time frame rather than the definitive three-year time frame for review that is recommended in the Estens report. You said:

The within-five-year timeframe fails to reflect the dynamic nature and telecommunications requirements of farmers and rural communities.

Given that it has a dynamic nature, doesn't a five-year time span offer more time to allow a trend to be identified than would a shorter time span?

Mr Needham—I think there is a need for some certainty in relation to equitable telecommunications services in rural Australia. Having to wonder whether or not you are going to have the services you believe are appropriate to be able to get on with your business activities or the social or economic matters you are involved in is a shortcoming. It is important to know that every three years or up to three years there is a process in place that guarantees that the services you are entitled to are being delivered and are there.

The issue surrounding technology, though, or whether the trend is appropriate, does not recognise that there is a dynamic marketplace out there at present. We are not the only island of telecommunications. Services are delivered around the world with a variety of technologies et cetera. I think that we can learn from how things are being delivered elsewhere as well as utilise our own experience to make sure that if a particular type of service needs to be implemented—and we are talking of minimum service standards here; we are not necessarily talking about the latest and the greatest—it is implemented in an appropriate time frame so that people can get on with the activities that they need to get on with and not be left to

wonder when they are due for a review. That would not ensure the delivery of world's best practice.

Senator TCHEN—You are speaking of a consequence of a market decision. I would suggest that there is a separate dynamic relationship between you, representing the users, and the provider so you can deal with the provider on that basis. Given that the review process is a legislative process which is notoriously inflexible, is it a very good mechanism having a fixed process like this to deal with a dynamic situation?

Mr Needham—I hope that marketplaces have such a nature that if a particular provider sees a business opportunity they will do something about it.

Senator TCHEN—Without waiting for the review?

Mr Needham—Without anything to do with an appropriate review. I am talking about a mechanism that needs to be put in place where the government guarantees minimum service standards now and into the future and where there is no significant difference between the services available in metropolitan areas and rural and regional areas. So it is a check mechanism to ensure that things are happening and things are progressing. The marketplace, I hope, will do what it wants to do in its time frame. When or if the review identifies that there is a gap in service then that is when the government needs to step in to do something about it. For example, the HiBIS scheme at present is delivering that gap service that the marketplace is not offering. Certainly we are not talking about a five-year issue there. You are aware that the HiBIS scheme is under review at present. From my point of view that mid-term review is an excellent process. It is certainly not a five-year one that says, 'Let's see how it is going, look at the equity issues and do things if appropriate.'

Senator TCHEN—That review can be carried out without a legislative framework.

Mr Needham—I think that rural and regional Australia is looking for government guarantees that services will be brought up to the same standard as for metropolitan areas and maintained in the future. NFF's perspective is that that is a government process.

Senator TCHEN—So you are seeking a commitment from the government rather than a commitment from a provider like Telstra?

Mr Needham—Yes. NNF's strong position is that it is the government's responsibility, not that of any particular provider, to ensure that service standards are up to scratch.

Senator TCHEN—Thank you. I notice that in your submission you said:

NFF continues to acknowledge that significant progress is being made ...

Is there any reason for you to think that this will not continue?

Mr Needham—HiBIS is funded to a particular dollar amount. We look forward to the outcomes of the review that is under way at present to see how it is progressing and whether it satisfies a small or large number of rural and regional Australians in relation to the equitable service, and we look forward to that type of arrangement continuing into the future. As mentioned before, that could be a particular mechanism that does guarantee that, if detailed appropriately in legislation, gaps that are identified are funded.

Senator SANTORO—Mr Needham, as an organisation with a strong national perspective and focus, how do you go about gathering in the opinions of your grassroots members, including in particular individual constituent members out there in the bush and rural and regional Australia? What mechanisms do you have? Do you survey? Do you do what politicians on both sides of the political fence do, including, more recently, Minister Coonan, who went out and spoke directly? How do you go about gathering the opinions and information that form the basis of your submissions?

Mr Needham—The NFF is a federation made up of a number of farming organisations around the country. We have a policy council and we have committees under that policy council. Information and perspectives are provided through that process to the policy council. The policy council makes a decision on the particular material in front of it, endorsing it, recommending it, et cetera. That in turn becomes NFF policy.

In relation to source information, if you like, we get information on particular telecommunications issues via our organisations. We get it direct; as I mentioned earlier, we have farmers ring us and letters come in. We turn some of those into case studies so they can be investigated as to their circumstances, and we make judgments from those processes as to what outcomes are desired and whether or not we can achieve those outcomes. You mentioned Senator Coonan's tours around the country. I had the opportunity in a number of cases to accompany the senator. From my point of view, it is important that I talk to the people who come along before the meeting and that I have the opportunity to talk to them during and after the meeting. From our point of view, it is important that we get an understanding, from a national perspective, of issues and of solutions that are possible by a variety of processes.

Senator SANTORO—Does the organisation, including that part of the organisation that is represented by your state constituency affiliates, have the capacity to undertake a quick and efficient survey broadly of your membership?

Mr Needham—From time to time we do engage external organisations to survey farmers in general—rural and regional people—and we have certainly done that in the past on a variety of issues.

Senator SANTORO—Has the response rate been high?

Mr Needham—The response rate does vary. Sometimes we seem to get a quality response but, again, I think it depends on the subject matter as to whether there is great interest in that particular issue at that time.

Senator SANTORO—In relation to Telstra issues, in your experience has there been a very strong level of interest and response to any surveys or any attempts—

Mr Needham—We have not carried out any survey in the immediate past on the Telstra issue. Certainly, though, many of our organisations have carried out a number of surveys on service levels and issues that people have with telecommunications services. Some of our organisations seemed to get a good response; for others it varied.

Senator SANTORO—Two such surveys would be those recently undertaken by Minister Coonan. Would you regard even a committee such as this as valuable in getting direct feedback from those most affected by government policy?

Mr Needham—Yes, certainly.

Senator SANTORO—I would like to ask a follow-up question to some of the questions asked by Senator Conroy on the government's response to representations or requests for meetings. Is the National Farmers Federation happy with the government's willingness to listen to your submissions, to meet and to do things such as tour? This question is not a dorothy dixer—

Senator Conroy interjecting—

Senator SANTORO—This is the first time I have ever exchanged a word with Mr Needham, but I noticed that you were trying to tease out the issue of the effectiveness of government, Senator Conroy.

Mr Needham—Obviously NFF are a lobbying organisation and we attempt to meet and discuss things with a range of people in this place. We have challenges with a variety of people as to the time frame when we can get to meet them and all the rest of it, but in general terms I think NFF's process has been quite reasonable. NFF are not a government funded organisation in any way. All NFF's money comes from the farmer and not from government, so we are not walking around with our hand out. Certainly NFF welcome the ability to be able to travel with the minister—for the minister to pull the crowd, so to speak, and for us to get the benefit by discussion and interaction et cetera. We do have a good relationship with the department of communications and other regulators, as well as with government itself.

Senator SANTORO—Thanks, Mr Needham. I have appreciated your advice.

CHAIR—Mr Needham, we have reached the end of the time allocated to you, so we thank you for appearing today. It has been very useful evidence.

[9.46 a.m.]

FORMAN, Mr David, Executive Director, Competitive Carriers Coalition

CHAIR—Welcome. The committee has received your submission. Do you wish to make any alterations or additions to it?

Mr Forman—No, thanks.

CHAIR—You are reminded that evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I now invite you to make an opening statement.

Senator LUNDY—Before the witness does that, I should declare, as I do at the beginning of each such committee hearing, that Mr Forman is my husband.

CHAIR—That will be duly recorded.

Senator LUNDY—Thank you.

CHAIR—I now invite Mr Forman to make an opening statement.

Mr Forman—I just have a couple of quick remarks. Our submission to this inquiry is a brief and, I think, fairly self-explanatory one. We really raised only a couple of issues in our submission. Firstly, we think that it is now fairly clear that all of the advice that has been received from the likes of the Estens inquiry and, more recently, the Page inquiry is unanimous in expressing the opinion that competition is the primary means of driving better services into regional and rural areas. We simply note that, in the context of this legislation, we think it is crucial that that issue is able to be reviewed. In fact, it explicitly says in the terms of reference of the regular reviews that competition is on the agenda. Secondly, we also note, as I see that others have done, that we think that the five-year time frame is perhaps a bit too long and that four years is probably the maximum time frame between regular reviews in the context of the speed at which competitive signals can be read and technologies moved.

Senator CONROY—Mr Forman, you suggest in your submission that the lack of competition in rural and regional areas is contributing to the poor level of service enjoyed by people in these regions. How does the level of competition in rural and regional Australia compare with that in metropolitan areas?

Mr Forman—I think what is apparent if you look across the geographic spread of Australia is that competition is strongest in those geographic areas where there is the greatest infrastructure competition, and that is predominantly around CBD areas, which is also where there are the bigger customers. The further you move from those dense population areas, from those areas where it has been economically viable for other carriers to roll out infrastructure, the lighter the roll-out by others and the weaker the competition. The more remote the area, the less chance there is of infrastructure competition ever emerging. In most parts of regional Australia, there is no infrastructure competition and, as a direct consequence of that, we would argue, we have issues such as the one we are talking about today and trying to maintain some sort of parity of services and standards.

Senator CONROY—In your view, what is the most significant impediment to achieving effective competition in rural and regional Australia?

Mr Forman—It is the maintenance of Telstra's ability to control bottleneck points of infrastructure.

Senator CONROY—What has been the government's response to these issues to date?

Mr Forman—The government, over a number of years now, has had a lot of different types of programs to attempt to stimulate other investment. It is a recognised issue. There have been the Networking the Nation type programs and, more recently, the HiBIS type programs, so it has been recognised that there is a need to encourage investment at the infrastructure level. We do not think that they have worked. Primarily most of that money has been scooped up by Telstra, and HiBIS is another case in point where you see Telstra again the dominant beneficiary of those funds. Wherever you give a dollar to Telstra, you need to be aware that not only is there an opportunity cost—that dollar going to Telstra as opposed to its competitors—but it also further entrenches Telstra's incumbency in those areas. I do not think that, in the medium term, it is beneficial to competition.

Senator CONROY—Some wit made the joke to me a while back that if you saw a van from a competitor of Telstra west of the Blue Mountains then it would be lost. This suggests that there is no interest in competition from other providers. What is your general response to that, putting aside the obvious kick at Telstra's competitors?

Mr Forman—We tend to get a bit confused about what is the natural state of market organisation, the natural state of business cases, for some of these regional towns. Telstra is an integrated soup to nuts telco. Historically, we have seen Telstra as coming out of the Postmaster General Office and being the vehicle for which telecommunications is provided to everyone. But as new technology has emerged, as you have started to see competition emerge, you see interest in regional towns emerging, in particular in local retail companies, and some of them want to own access infrastructure—that last mile or first mile, as people describe it. To expect other companies to emulate Telstra's business case and go out and be retailers in regional towns is to take a too narrow definition of the way these markets could and should be organised if they were effectively competitive.

A number of the small, regional based companies that have emerged around different parts of the country, for example, have relationships with some of the members of the CCC. You will not necessarily see the brand names of CCC members associated in the billing or in the advertising of those companies, but behind those—providing the wholesale services, providing the access to the systems that you need to run those types of companies—are other telcos. That relationship, though, is dependent upon the retailer, the little guy at the end, being able to survive. That is where you have the point at which Telstra is able to exert its market power and give those guys a difficult time in establishing themselves or remaining in business.

Senator CONROY—Okay. I want to raise one of the issues mentioned in the Page report, which I am sure you are familiar with. The report notes the issue of the price of backhaul services provided by Telstra as an impediment to competition. Do you have a view on that?

Mr Forman—Yes, the backhaul issue has been getting a lot of attention recently from all sorts of directions. It is one of those issues, in my view, that we see erupt in this industry now and again that is symptomatic of a bigger problem. When people talk about backhaul, what they are talking about is a service called transmission, which is actually a declared service on most routes. So we are hearing a lot of people saying things such as: ‘Backhaul is too expensive; it needs to be declared. We need to do something about Telstra’s market power.’ In fact, the service is declared on most routes where there is no competition.

It points to a problem in the way the regulatory regime is organised. A ‘declared’ service means that Telstra is obliged to provide access seekers with that service. It is recognised that it is a monopoly bottleneck, and Telstra has to sell that service to someone on request, but the process is that that access seeker has to go to Telstra to negotiate a price. If the negotiations fail, they can then go to the ACCC for arbitration and, through that arbitration process, the ACCC can then eventually come up with a price. To my knowledge there has not been any arbitration in this country that has ever gone to the point where the ACCC has actually nominated the price at which the service should be provided. I think there will be other witnesses to this inquiry who are much bigger telcos than anyone in the bush today—a regional telco—and who have been involved in some of those processes. It shows how expensive, complicated and time consuming these arbitrations can be. It is unreasonable to expect that the little guys in the bush will be able to avail themselves of these processes. If they go to Telstra, Telstra says, ‘Guys, that’s the price; take it or leave it.’ The regulatory regime should allow for those prices to be examined and worked through and for the ACCC to determine what is reasonable. At the end of the day, though, it just does not happen, because it is too complicated, too expensive and you have a gorilla against a mouse.

Senator SANTORO—You obviously want to see a more competitive environment in the provision of telecommunications services. For the benefit of the committee, and for the public record, in the context of rural and regional Australia, what benefits would flow from increased competition, particularly to smaller providers? That almost sounds like a dorothy dixer but, for the sake of the record, could you outline for the committee the benefits you would see from having some of the smaller players operating more independently within a more competitive and free environment?

Mr Forman—The short answer is that, in our view, it is well established that competition pretty quickly brings about lower prices, newer services and greater innovation. You can see examples of that when comparing Australia with some other countries that have more effective competitive environments and, within Australia, by comparing markets where there is greater competition with those with lesser competition. Traditionally in Australia new services are rolled out first in Melbourne, Sydney and Brisbane—in that corridor, sometimes picking up Canberra. They roll out after some time to Perth and Adelaide and they tend to stop there. In our view, that is because the investment in new infrastructure and marketing and in creating customer relationships is a direct function of the numbers of dollars that are coming from new entrants, and those new entrants are investing in those markets where most of the competitors are.

Senator SANTORO—So there is a focus on that part of the market where the highest return is anticipated?

Mr Forman—It is in markets where there is a view that there is the greatest effective customer access, so the bigger customers are, typically, easier to get at. There is an interesting example of the converts, where some of that breaks down. As you get further out into lower population density areas, it becomes less economically sensible for people to duplicate investment. It might make sense to have two pieces of fibre going into a large office building in the CBD in Sydney, but it probably does not make sense to duplicate investment in a small exchange in a town of 30,000 people. I can give an example of where that might break down. The ACCC is investigating a dispute whereby Telstra has a service that it calls business grade DSL, which is a symmetrical, higher bandwidth broadband service that is available to business customers. Telstra has not made that available at a wholesale level. As a consequence of that, companies that wish to bid for the business of a government or a company that has a number of diverse offices around regional areas find that they are unable to get at the building blocks to deliver the services on the same basis that Telstra can deliver those services. Hence they are unable to compete on price or service quality. So those businesses that have a wide exposure to regional and rural offices encounter the problem that they are unable to get competitive bids for their businesses because competitors are not able to come in on the same infrastructure basis that Telstra is able to build its retail services.

Senator SANTORO—Do you think that increased competition would better equip those small to medium sized businesses in regional areas to put in competitive and, hopefully, successful bids?

Mr Forman—It should. Another example is in the ACCC's price controls final report, where it detailed some of the experiences of price movements within the basket of calls that are regulated. You can see there that the movement in prices at the corporate customer end is either negative or slightly positive at the least contestable end—people's phones to their homes—where, according to those figures, the prices have increased substantially. Telstra acts rationally in response to where its competitive threats are, and that is where it reduces its prices and puts its investment. If you spread the competitive threat across to more customer groups, then you would expect the same experience to occur across all customer groupings.

Senator SANTORO—Would the competitive threat realistically survive under an aggressive countercampaign by Telstra?

Mr Forman—That is where we would argue that you need to have broader reform of the competitive regime to ensure that people are competing on a level playing field and that Telstra is not able to leverage its control over monopoly elements of the infrastructure such that it gains an advantage at the retail level. While ever Telstra is able to leverage its access to the business DSL bottleneck in regional areas, where duplication of the investment is not rational, there will be a hurdle that entrants are not able to overcome.

We have discussed our view of the approach to regional issues in the past, and we think you need to ensure that we get over the hurdles in the right order. The first hurdle is the general competitive framework. Once we get that right we can then identify other hurdles, such as the points at which the quality of the infrastructure in some regional areas needs to be upgraded. We have argued that the USO levy that the members of this group pay should go to some kind of fund that is independently managed and is directly applied to those areas where the infrastructure is in need of upgrade. At the moment our USO levies go straight to Telstra,

and nobody knows what happens to them other than a \$4½ billion profit appearing at the end of the year. Once the framework for competitive entry is right, and the infrastructure for the delivery of competitive services is right, you can start to identify the areas where you may never have a high enough population density to support sustainable competition. You can then have much more targeted programs of public support for those particular consumers, which should be consistent with a good competitive set of outcomes.

Senator SANTORO—I suppose the money that you give to Telstra ends up either as a dividend in the hands of private shareholders or as a more public dividend in the hands of the taxpayer through government. What I am hearing from you this morning—and correct me if I am wrong; I am sympathetic to your argument in relation to competition and I believe in sensible, competitive models—is almost a re-run of the infant industry argument that led to the rise of a tariff structure in the early 20th century. For how long would that protection from overt monopolistic practices be required? At what stage will the smaller players be strong enough to withstand competitive pressure and still be effective players in a competitive environment?

Senator CONROY—Isn't there a monopoly in place?

Senator SANTORO—I appreciate that but that is what we are exploring here—the diluting of a monopoly power.

Senator CONROY—Sorry; I am sure Mr Forman needs no help. I thought I might clarify the question for him.

CHAIR—Let him answer because we are rapidly running out of time.

Mr Forman—I may not have communicated clearly what I was saying. We are not looking for protection; we are looking for competitive access, a level playing field. In our view it is axiomatic that, where you have monopoly power, that monopoly power is regulated and, particularly, that that monopoly power is closely defined around the points from which the monopoly power derives. The problem we have at the moment is that you have points of infrastructure from which monopoly power derive that are then able to be leveraged into potentially competitive markets. So we think you need to more clearly define those points where you are always going to have monopoly power—the same as you do with the gas and electricity industries, for example—and identify those things where you are not going to get overbilled. You regulate those clearly and, once you know that you have a situation where retail or downstream providers are able to access that on an equal basis, then the rules should be, 'Go your hardest, guys,' within consumer protection constraints that would be consistent across all industries. You should let the market drive as hard as it can whilst keeping a close eye on it to make sure that you do not have new forms of leveraging of that monopoly power emerging over time.

Senator SANTORO—That makes sense, Mr Forman. Thank you for your advice.

Senator TCHEN—Mr Forman, I understand your position is that you are looking for fair competition in the marketplace. You said that the CCC's argument is consistent with the view expressed by the ACCC of the existing problem of ineffective and weak competition in the whole of Australia's telecommunications market. My question is not about the competitive side. I think that you have made a submission to an inquiry of a companion committee to this

committee arguing a case for a model for vertical and/or horizontal separation of Telstra. Do you believe that, should Telstra be separated in the manner that you propose, it would make the corporate value of Telstra increase? In other words, do you believe the sum of the parts is greater than the sum of whole?

Mr Forman—I should point out initially that we have made other submissions to another inquiry. We have not presented what we would say is the CCC preferred model. We are still developing that. We have presented a discussion paper that illustrates a number of models.

Senator TCHEN—I am sorry. I have not read anything in detail yet.

Mr Forman—I can only speak in general terms about what the outcomes would be. Perhaps I could talk about structural separation hypothetically by way of a clear example, because that is the thing that has been discussed more generally. We do not know the model of operational separation, so it is hard to speculate, but to talk about the outcome for Telstra shareholders from structural separation we are working very much in the dark. If it is suggested that there are big shareholder benefits from the integration of Telstra as it exists today, that would create warning signals for us. It would suggest that perhaps built into Telstra's share price is a view of the ability of Telstra, as it exists today, to enjoy monopoly rents.

I am also interested to see the market response to suggestions that Sensis be spun off. We have had that floated publicly a couple of times in recent months and both times there was very quick spike in Telstra's share price. That suggests to me that the market thinks that there are at least some parts of Telstra that, if spun off, would increase some of the value. Another interesting example is the BT experience in the UK, where after privatisation the equity markets in fact drove the voluntary separation of the mobiles business from BT to release value. Whether that is really voluntary separation when you are forced to do it by an equity market is an interesting question to discuss.

Senator TCHEN—It is kind of voluntary, if you believe in competition.

Mr Forman—Voluntarily doing what your owners tell you, I think it is called. This is a bit facetious, I guess, but I have been taking bets over the last couple of months from whoever will accept them that, by 2007, the same investment banks that are today suggesting that there would be some terrible, detrimental effect of separating Telstra will be demanding it. They will be demanding it because they will have identified that there are—

Senator CONROY—Synergies.

Mr Forman—There are reverse synergies.

Senator CONROY—Reverse synergies. Whatever the argument is today—the three per cent of the deal.

Mr Forman—They will have identified that the task of managing the beast that is Telstra is too great, that there are pieces of the business that would operate more effectively if spun off and that that would add to the sum of shareholder value.

Senator TCHEN—Perhaps we can discuss that when we have the other inquiry. I am sorry to drop this on you. It is something which has been troubling me for some time, because people do not seem to look at that.

Mr Forman—We think it is a really important question that has not been examined. We are not in a position to examine it, but we think someone should.

Senator TCHEN—Are you suggesting that the maximum period between reviews should be reduced from within five years to four years, keeping in mind that four years is still within five years?

Mr Forman—Yes.

Senator TCHEN—Earlier we heard the National Farmers Federation suggest it should be three years. What is the difference between three years and four years? Why four years and not three years or five?

Mr Forman—We would be happy with three. We suggested four simply because we were aware that the government had moved from three years to five years. We think five is too long. If there is a view that three is too short then we think that the maximum should be four. There was no more science to it than that. If it is anything more than four years you start to get into another situation. Within that period, you can clearly identify flaws that emerge in the effectiveness of the regime. You also have very rapid changes in technology, as you well know, in this industry and in four years a lot can change. Those changes can have implications for competitive outcomes.

Senator TCHEN—But you would not insist on three years?

Mr Forman—No, we think that the maximum should be four years and we also think that, if a maximum term is set, it is very unlikely that reviews would happen within that. People would start to align their thinking towards the maximum.

CHAIR—Thank you very much, Mr Forman, for your evidence this morning.

[10.14 a.m.]

FIELD, Mr David, General Counsel, Regulatory, Corporate Relations and Government Affairs, Telstra

SCALES, Mr Bill, Group Managing Director, Regulatory, Corporate and Human Relations, Telstra

CHAIR—Welcome. We appreciate you being here today. As I am sure you both know, the evidence given 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. Do you wish to amend or alter your submission in any way?

Mr Scales—No, but we do have a short statement to make.

CHAIR—Please proceed.

Mr Scales—Telstra is very pleased to have the opportunity to participate in this inquiry and to comment on the provisions of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005. We would like to take this opportunity to briefly expand on a number of the comments in Telstra's written submission.

Firstly, I think it is very important to reiterate Telstra's commitment to our customers in rural, regional and remote Australia. This commitment has led to the establishment and growth of what is now clearly regarded as the highly successful Telstra Country Wide business model. Telstra is proud of the achievements of Telstra Country Wide today in driving real service improvements for customers in rural, regional and remote areas of Australia. Telstra considers that the Telstra Country Wide model has shown the real benefits that can be delivered for customers through an appropriate blend of local knowledge, empowered local management and access to a national set of resources, experience and expertise. This approach, we argue, has led to tangible improvements for customers in relation to targeted infrastructure investment, access to services and resolution of service concerns.

In relation to the proposed local presence licence condition, it is important to note that the minister already has extensive powers under the Telecommunications Act to impose licence conditions on Telstra. These powers have been used in the past. Accordingly, the objective of the bill in relation to the local presence licence condition seems to us to be intended to clarify and to make completely clear that any licence condition imposed on Telstra to maintain a local presence in regional, rural or remote parts of Australia include an empowerment to delegate administrative decisions to the ACA or its successor. In this context, Telstra would like to emphasise the importance of the proviso in Estens recommendation 8.1 that the local presence requirement imposed on Telstra should not be 'unduly prescriptive or burdensome, and should be broadly compatible with Telstra's commercial interests'—and we go into that in some detail in our submission.

In Telstra's view, the manner in which the local presence obligation is implemented must allow Telstra the necessary commercial flexibility to respond to customers' needs and focus on customer outcomes. Much of the impetus behind the drive of the local presence obligation related to the benefits of having local managers empowered to make decisions informed by

local customer conditions. We understand, completely agree and recognise that this is consistent with the rationale for the creation of the current conditions and operations of Telstra Country Wide. It would seem to us that it would be completely inconsistent with the objectives of both the provisions of this bill and the establishment of Telstra Country Wide to have artificial and onerous constraints placed on the way that the benefits of local presence are delivered.

In addition, the explanatory memorandum to the bill describes one of the objectives of the local presence plan as being to promote decentralised management. Telstra agrees that there are distinct benefits from some degree of decentralisation of management and supports significant use of decentralisation, as seen in the management and structure of Telstra Country Wide. However, Telstra cautions against enshrining decentralisation of management as a goal in itself without any qualification. Telstra considers that the best service outcomes for customers in rural, regional and remote Australia should be driven by an appropriate blend of giving customers access to Telstra's national experience, systems and economy of scale while ensuring that decisions are adequately informed by local circumstances on the ground through empowered local managers.

Telstra remains committed to a model of appropriate decisions being made by empowered local managers who understand the customer and service circumstances on the ground. In relation to the local presence obligation as it is currently likely to be implemented, Telstra also considers that it is essential that the implementation avoids unnecessary bureaucracy and minimises the extent to which resources are diverted into bureaucratic processes and away from meeting customers' real needs.

Finally, in relation to the local presence obligation, Telstra notes that the statement in the explanatory memorandum to the bill says that it seeks to promote representation for regional and rural interests in Telstra's executive management structure. Provided this statement is intended to refer to the requirement for the service and market needs of rural and regional customers to be represented within the thinking and actions of Telstra's senior management, Telstra is very supportive. If it goes far beyond that, then Telstra has some concerns, which are in our submission. Thank you.

Senator CONROY—On average, how long does it take Telstra to commercialise a product improvement?

Mr Scales—That varies.

Senator CONROY—Speaking generally, how long would it take to start selling improvements on an existing product from the time that an engineer pitches the improvement to a commercial team? Would it be five years, 10 years?

Mr Scales—While I accept that you do not want us to generalise, in fact we cannot generalise. There are some services—for example, around the use of mobile phones—that might take less than three months. There might be other services where very sophisticated IT systems need to be put in place. If you take, for example, 3G and the application of 3G, sometimes it is in the area of years. It really does depend on the service to which one is referring.

Senator CONROY—What about something like ADSL to ADSL2?

Mr Scales—That is a fairly extensive set of issues. It requires sometimes an upgrading of large parts of the system. Senator Lundy would be quite aware of the issues associated with moving from one form of technology to the next. Often what happens in those circumstances is that you almost have to go back and look at each part of the network to ensure that the network itself is able to take—using the example that you used—the extensive increase in speeds and download limits. That can vary if one is talking about rural, regional or remote areas as distinct from some parts of urban Australia. Even there, I do not think it is possible for us to generalise necessarily.

Senator CONROY—I have noted the deployment of ADSL2. Where are we at in the deployment stage?

Mr Scales—It is very early. In many ways, that form of technology is probably almost in the experimental stage of implementation. As you would have read in the press, there are a number of other suppliers who are also interested in that technology. In many ways, the competitive environment is driving us all to consider that because that is where the demands of customers are. We are in the fairly early stages of implementation.

Senator CONROY—Is there a time frame to try and get, say, 50 per cent of customers—business or retail—connected?

Mr Scales—ADSL2 will be not dissimilar to ADSL in that it will be driven mostly by demand. When one is talking about broadband in general—again, let us try and define that: we are talking about high-speed internet—even within high-speed internet there are still a large number of customers who are quite comfortable just having dial-up and the speeds that that implies. There are others who are very comfortable and are still learning to use ADSL in its current form.

Senator CONROY—That is me.

Mr Scales—There are others—other businesses and private users—who are wanting large downloads and are moving to ADSL2, or what is now being described as ADSL2. But it is still at a very early stage and, for Telstra and most internet service providers, that will depend very much on demand.

Senator CONROY—Is it still too early to ask how soon it will be before I can get ADSL2 connected or have my ADSL service upgraded?

Mr Scales—Yes, it is too early for us to be able to give you an answer to that, partly because one has to look at provisioning exchanges. As I said, we are at the relatively early stage of experimentation with regard to that. We do not have plans for a broad-ranging roll-out of that right across the country as yet. I do not have any doubt that, in due course, that will become the issue, but it is not the case just yet.

Senator CONROY—In Telstra's submission to this inquiry it suggests that an appropriate time frame for the technology service reviews provided for by this bill would be at least every five years. That was partially why I was asking those sorts of questions. Is that consistent with the pace that Telstra is able to introduce new products into the market? I appreciate your previous answer.

Mr Scales—No, I do not think our reason revolves around that. Our reason revolves more around the processes that might be involved with regard to inquiries themselves. For example, if you had any particular inquiry and recommendations were made as a result of that inquiry, even the implementation of those recommendations might take a year or two. If the recommendations for that inquiry required broad-ranging reconsideration of policy, it could even take longer. At that first stage of that there would be the consideration of what might come out of it, there might be some policy implications and then there would be the implementation of those policies. On top of that, of course, one then has to consider what time it might take to see the effects of any policy implementation. Sometimes that can take a considerable amount of time.

Even if one takes the issues around HiBIS, while we think HiBIS has been a very successful scheme, it is still at a very early stage and we are yet to see the full effect of that. I think the government itself is beginning to understand the power of that particular scheme. We heard Mr Forman talk earlier about the way in which from his perspective there needs to be a greater possibility of competition in terms of the way those funds are allocated. Again you see the development of a particular policy which will need to see its way through before one can see whether even a policy like that is fully successful. So that is what is behind our five years. If one tries to do it any earlier than that, I think most students of public policy would argue that you are beginning to get a bit short. You may come to the wrong conclusions that might emerge as a result of the implementation of that policy if you take anything shorter than that. I would not suggest that it is not an arguable proposition; it is, and people can come from different views, but that is why we came to that view.

Senator CONROY—Telstra makes a number of comments in its submission relating to its concerns about the potential contents of the local presence plan. I think you made some references to it in your opening statement. Did you want to add to what you have already said?

Mr Scales—Maybe I will just give a bit of colour and light to that. Hopefully what people have understood in what we have said here is that we are not in any way against the local presence plan—quite the reverse. We see a local presence plan as something that Telstra would want to do anyway. It is an important part of the way Telstra operates now and the way Telstra will continue to operate in the future. It has proved successful for us and we want that to continue. But what we are concerned about it is, if a local presence plan becomes so prescriptive, we will not be able to make the appropriate adjustments as rural, regional and remote Australia adjust.

I can give you almost an extreme example of this. Think about the towns which used to surround Broken Hill at the beginning of the 20th century. You would have found towns much larger than Broken Hill. As the ore body changed, so did the geography of Broken Hill, and so did the demography of Broken Hill, quite appropriately. What we are most concerned about is getting locked into a local presence plan which means we have to go through very laborious bureaucratic processes to even change where an individual might be located. That will not be in the best interest of our customers nor the best interest of rural, regional or remote Australia. That is what is behind our commentary here. We are agreeing that a local presence plan is

sensible. What we are saying is, 'Give us some flexibility to meet our customers' needs and we will work diligently and appropriately within that framework.'

Senator CONROY—How does Telstra currently go about determining whether to have a local presence in an area?

Mr Scales—A lot of this was established when Country Wide was first established, but it is changing. It is based around a number of criteria. Without being completely exclusive to what they might be, there were clearly issues of demand. I do not mean that in terms of the volume of demand; it is the nature of demand. So that would be one important element. Secondly, clearly we understand that we have licence obligations to meet the needs of rural, regional and remote Australia. That is another set of issues. So we need to try and make sure that with regard to our licence conditions that is particularly important. There are a series of criteria.

From our perspective, we have become aware that sometimes certain sources of labour are particularly important to us, and we are trying to find them and lock into them. Sometimes we find them in some parts of Australia and not in others. In that regard, there is an ongoing debate around how we can best attract staff from Indigenous communities to work for Telstra and how best to appropriately incorporate them into Telstra. Again, the best way to do that is by maybe locating some of our operations in areas where the labour market for those things might be more robust and mature. So there are a number of criteria.

Senator CONROY—Telstra indicates in its submission that local presence plans 'should be broadly compatible with Telstra's commercial interests' and that the local presence plan should only address circumstances of 'demonstrated market failure'.

Mr Scales—Yes.

Senator CONROY—Isn't the entire rationale of the need for local presence plans based on the fact that it is not in Telstra's pure commercial interest to have such a regional presence? This goes to the nub of trying to get to where you should be.

Mr Scales—Yes, it does. The first thing is that there are a number of qualifications in that statement, and we talk about it generally. The reason we say that is that it seems almost incontrovertible that, if you can get a coincidence between what is expected by policymakers and what is required by commercial organisations, you will get the best result. It is implicit, in agreeing that the competition gives good outcomes, that that is the case. That is the first point that we are making. We are not arguing, however, that that is the only criterion. We are talking about it in general, and that is why we have very specifically used the words we have in those particular phrases.

In addition to what we are saying there, we are also arguing that again in the long run for policymakers and commercial entities, whether it is Telstra or any other commercial entity, where market failure is not present, often the most efficient way to address market failure is through the normal approaches which we use in public policy—that is, direct intervention by government, maybe even direct subsidies by government, with a direct understanding of what it is that we are trying to cure for. Once one moves away from that important principle, the whole question of the appropriate level of transparency, our understanding of what the problem actually is, becomes much more muted. That is what is behind the comments which we have made here today.

Senator CONROY—The minister has indicated in the past that the local presence plan will be something that will be subject to negotiation with Telstra. So you guys are going to get a chance to have a chat. Do you think that it should be broader than that, that more than just Telstra should be involved in discussions about the local presence plan? Should there be a draft local presence plan—I think you were in the room when I discussed this with the previous witness—

Mr Scales—Yes.

Senator CONROY—that the community can have some say in? Or do you think that a chat with you guys is enough?

Mr Scales—No, I think that is a matter for government. What we were trying to point out is that, given the ubiquitous nature of Telstra and the licence conditions that are imposed on Telstra, it would seem appropriate that the government be required to speak to us about what would make both commercial and, from their perspective, policy sense. The question about how far the government want to consult is really a matter for them.

Senator CONROY—Telstra's submission to this inquiry proposes:

... new section 66 should specifically provide that any requirement imposed by a subsidiary instrument under the licence condition should also be a disallowable instrument.

By this, does Telstra mean that it would like to see a local presence plan approved by the minister or the ACA treated as a disallowable instrument?

Mr Scales—I might ask Mr Field to answer that, but I will give a generality on that point. What we were trying to get at there was that it seems to us, again from a sound public policy perspective, that all of these instruments should be transparent, that people should know what is in an instrument and that any minister or government official should be subject to what they are requiring an instrumentality to do. It was in that broad context that we were making those comments.

Senator CONROY—That is probably enough, unless Mr Field wants to anything. I think that covers the issue.

Mr Field—I have nothing to add.

Senator CONROY—That is all I have, thank you.

Senator SANTORO—It has been suggested that Telstra is making much of Telstra Country Wide. My question is very simple: how is Telstra Country Wide different organisationally from what existed before? Are people being a bit uncharitable with their suggestion that it is all about branding and marketing?

Mr Scales—We have made a lot of Telstra Country Wide because we think it has been very successful in achieving the objectives which we set for it. I think it is true that when we first established Telstra Country Wide we were not really sure what to expect. But we knew—this is clear, and I think we have been on the record saying it—that we were not meeting the needs of rural, regional and remote Australia. There was significant criticism of us, and I think that criticism was well founded. We had to respond to that. We also had to respond to it because some of our competitors, if I can use a colloquialism, were eating our lunch. They were beginning to eat into a lot of our market and we did not like it, so we had to do something

about it. Our establishment of Telstra Country Wide was to address a very clear and correct perception that we were ignoring some parts of rural and regional Australia, and the commercial imperatives were driving us to do that.

Subsequently we have been learning from that experience, making adjustments to the structure of Telstra Country Wide and making sure that we give more authority to individuals to be able to meet the needs of particular areas, including increasing budget opportunities to our area general managers and so on. I could go on and on, and I am sure you do not want me to. The general point I am making is that this is a bit of a learning process for us as well. The more we learn about the power of that local presence, the more we learn about how valuable it is to us from a commercial perspective and the more that people in rural, regional and remote Australia seem to value what we are doing.

Senator SANTORO—You obviously see devolution of power and responsibility to your local regionally based managers as being a pretty important component.

Mr Scales—It is critical. The way it plays itself out inside the company is that those area and regional general managers become the advocates for what is going on in each of those areas. They also bring, and this will not be immediately obvious, a very subtle understanding of what is going on on the ground. It changes the way business is developing. It even changes the way in which some businesses are declining and so on over time. From that perspective, they are an important part of it.

I did not answer one other element of your question, and that was about whether this is just marketing. There is an element of marketing about what we are doing—unashamedly so. Through our sales and marketing teams we are trying to go out to those regions and say to people, ‘We are here, we want to be here, we value you as customers and we want to support you.’ There is an element of marketing in it—we would not deny that.

Senator SANTORO—I tried to draw out before, and I appreciated, advice from the National Farmers Federation representatives as to how they go about consulting their constituency. What instructions or leeway do your regional managers have to go out there and to consult, survey and bring in opinion? What are the relationships between, say, Telstra and an organisation such as the NFF?

Mr Scales—It is almost unlimited. In many ways, that is one of the reasons why we have people located in those 37 or 38 regional areas. We have found that they are part of the local school community. They are able to debate, discuss and negotiate with the head of the local shire. They are able to go into the local shire offices and talk about what the needs are right on the ground where the people are. In fact, we would be most disappointed if those regional or area managers were not doing exactly as you have described. That is the sort of local presence which we want them to have. That is why they are there—it is almost the *raison d’être* for them being there.

Senator SANTORO—So there is a strong recommendation or suggestion from Telstra headquarters that consultation, particularly with representative organisations such as the NFF, is there?

Senator CONROY—You will have to come up with questions better than that, Santo!

Mr Scales—It is absolutely imperative, Senator Santoro. As I said, we would be most concerned about that. If you want an example of our doing more than just talking the talk, you should look at a lot of the ads that are going on for Telstra in those regions. You will see the local or regional area manager being the focus of those. That is deliberate. We want to put that person's face up. It is not some actor acting out what is going on in that area; it is that person. We want that person to be there so that they can be contacted.

Senator SANTORO—Thank you, Mr Scales. I was just trying to elicit, despite some cynical view to the contrary, just how authoritative your feedback and your base level of knowledge is, which is the reason why I took that same line of questioning with the NFF. If there is a different point of view, Senator Conroy, I am sure that the NFF and others who do not feel quite as strongly about the consultations will let us know, which will be an important part of this inquiry.

Senator CONROY—We will call the New South Wales NFF.

CHAIR—Mr Scales, I would like to ask you a question that is raised in one of the other submissions: that Telstra itself should respond to recommendations of the committee of review. Do you have any comment to make as to Telstra, rather than just the minister, responding to any recommendations that might be made?

Mr Scales—Presumably, Telstra would be responding.

CHAIR—But publicly?

Mr Scales—If the Estens review is any example of that, we have responded publicly. It is very difficult to talk theoretically in these sorts of circumstances. I need to probably get a bit more of an understanding of what was behind the commentary that had been made.

CHAIR—It would be to respond in public to the recommendations made by the review board.

Mr Scales—So are they suggesting that in a public inquiry context we would respond? Is that what they are suggesting?

CHAIR—No. One of the submissions suggests that not only the government—through the minister—but also Telstra should respond to any recommendations made by this review board.

Mr Scales—I do not think we would see an objection to that. In the end, depending on whether Telstra is a completely private company or still a company in government hands, I think either way Telstra would want to respond to any recommendation. It would happen either directly to the public or through responding to a government requirement; one way or the other we would respond publicly.

Senator LUNDY—I wish to go back to the issue of Telstra's structure of managing Telstra Country Wide and allowing the area manager to take the upfront running on a given issue. To what degree is that manager empowered to make decisions relating to technological upgrades such as transpositions in their area?

Mr Scales—The extent of power that is available varies. It is like with any organisation: you have certain delegations. In many cases an organisation like Telstra is no different from the public sector in general or any private sector organisation: you have to decide what power

you will delegate to individuals. But I think it is fair to say that those area general managers have quite a large amount of power. They have it both directly and indirectly. They have it directly in that they are able to influence what goes on in their own region. They have it indirectly because they have, as I was suggesting to Senator Santoro, the ability to act as advocates for what needs to be done for their own area.

Senator LUNDY—On that basis I have used the local region as an example. We have heard a lot publicly from the area manager. There has been a lot of promotion, but the feedback, both from some examples on local radio and from what I get directly from constituents, is that, for all that promotion, the delivery on the ground is pretty weak. The feedback across various committees is that people usually have a soft spot for their Country Wide manager but that rarely seems to be accompanied by any sense of their ability to deliver where it matters, which is solving very specific problems relating to network technology or indeed resources—for example, the funding necessary to make the upgrades. I am not talking about HiBIS necessarily, because a lot of this happens in areas where they are not eligible for HiBIS. That inability to access resources really makes a bit of a farce of the whole situation. How do you handle that from a management perspective, given that you are creating a rod for your own back?

Mr Scales—You will not be surprised but I do have to disagree with some of the comments that you are making. If you take Gungahlin as an example, the local area managers were very influential in ensuring the upgrades at Gungahlin. There is no doubt about that.

Senator LUNDY—The upgrades have not solved the problem, Mr Scales.

Mr Scales—Let me answer that part of the question and then I will go back to what I was going to say. We have never tried to suggest that in the blink of an eye all issues in any region will be resolved. Many of these issues will be resolved over time, and we accept that. I do not think that, in any of the discussions that we have had in this forum or in any other, we have ever said that we are perfect, because we are not. We are continually trying to address the sorts of questions that you and others put to us. I think it is fair to say that credit should be given to those people who are appropriately arguing for the upgrade of the exchange as a precondition for ensuring that a whole lot of things flow from that. That is really my point. The area general manager was right in the centre of that—and I do not have to go into all of the details—and had the CEO come out on a regular basis to see the effects of not having that exchange upgraded in Gungahlin. You know that that area general manager fronted a number of very heated exchanges in local meetings. They were front and centre, so I think it is true.

Let me give you another minor example, and I will not go into the particular area. Even when it goes to the micro of deciding where mobile towers might be placed or shifted to or whether to have additional mobile towers, those area managers have an involvement, and they do involve themselves. I say this to you in all honesty: are they able to move all of the budgets of Telstra to make sure that they are biased in favour of their line? No, they are not. Are they an important voice of reason to make sure that there is an appropriate allocation of resources to that area? Yes, they are. Like all large organisations, there are processes for deciding how money is allocated, but they are really important in that regard.

Senator LUNDY—To what degree is the management of Telstra influenced by an area manager's priorities if a competitor enters their area?

Mr Scales—That would be one of many issues. Our area general managers are required not only to meet the normal obligations under our licence conditions but also to fight the competition. That is what competition is about.

Senator LUNDY—Given Telstra's relatively late setting up of a Telstra Country Wide office in Canberra, is it fair to say that TransACT as an ongoing competitor influenced the decision to establish a Country Wide office in Canberra?

Mr Scales—No, far from it. TransACT is a strong competitor and we give it great credit for that. Yes, we can see TransACT taking our customers from us. Do we require the local area manager to address that? Yes, of course; that is what competition is about. But was it the driving force for establishing Telstra Country Wide office here? No. Again, addressing Senator Santoro's question from before, one of the things we have learned very clearly about the Telstra Country Wide model is that it might actually have application in areas that might not necessarily be called rural and regional.

Senator LUNDY—For what purpose though?

Mr Scales—Because it is a business model in which we can get much closer to the customer. It has not happened only with Canberra. If you look at what is happening in Frankston, Victoria, and if you look at what is happening on the outskirts of New South Wales, you will see exactly the same thing. You might make exactly the same criticism of us and say: 'Did you go to Penrith because of the competition?' Yes. But what we saw in the Telstra Country Wide model is an ability to get much closer to our customers. We make no apology for that. That is competition.

Senator LUNDY—To what degree are the area managers charged with reporting back to Telstra management on the performance of competition?

Mr Scales—It will be one of the important issues they are required to report back on. There is no question about that. We are in a highly competitive market. We are up against some very formidable competitors and we do expect them to report back on that.

Senator LUNDY—Going back to questions relating to HiBIS in that regard, to what degree are Country Wide area managers responsible for pursuing a HiBIS application because of increased competition in their area?

Mr Scales—I think it is a bit more complicated than that.

Senator LUNDY—Tell me how complicated it is.

Mr Scales—You have to understand that our general managers are very canny at looking for every opportunity they can to meet the needs of the people in their areas. If they believe they can make a case that says, 'Why don't you, Telstra, talk to the government about whether this might fit under a HiBIS scheme?' that is what they will do. They would unashamedly do that. I am trying to get a sense of the direction of your question. Are you trying to suggest that somehow we are trying to manipulate the HiBIS system—is that what you are driving it?

Senator LUNDY—The question that has been raised with me from very small community based competitors providing a service is that, up until the point where they had not entered the market, there was no application by Telstra to secure HiBIS funding for an upgrade of the local exchange. It is only with the entry of one of those small competitors, perhaps providing

a wireless solution, that Telstra ramp up their interest and effectively put a great deal of strain on those emerging very small businesses. This certainly happened in this region. It has happened to varying degrees with and without HiBIS that Telstra only responds with some investment in the local exchange following some competitive presence. You might say that that is just competition in action. I know that was former Minister Alston's view. He seemed to have no problem with public policy being used in that way. But you can imagine the frustration of customers out there who make an investment in supporting a new emerging local business only to see them cut asunder when it suits Telstra.

Mr Scales—But they would say that, wouldn't they?

Senator LUNDY—Of course they would, but it does not change the fact that the timing of Telstra's choice of either using HiBIS or making a commercial investment has a huge impact on the viability of small players.

Mr Scales—I suppose I was making the point that nobody comes to this with a lack of self-interest. You would expect that people would do exactly as they have suggested to you. Let me try to answer the question most directly: that is not our motivation. The second point that I would make, which to some extent addresses the question that Senator Santoro asked of Mr Forman earlier, is: to what extent should any one particular mechanism try to address what might be a market failure? If what you are suggesting here is that some of these competitors are too small to be able to compete with Telstra in that area, the question then becomes for policymakers: what is the best way to address what might be in your perception that market failure? Currently we have a whole range of regulatory opportunities to address those. If, as I was hearing a little earlier, it is something to do with fighting legal cases, then maybe there should be an extension of legal aid to businesses. You might want to recommend that. It is a question of what the nature of the market failure is and then finding a direct means by which you address that market failure rather than diminishing competition. Let us understand what diminishing competition actually means. It means taking away benefits to customers. That is what that means. If at the same time we want to give benefits to customers while addressing market failure, stopping Telstra competing is not the way to do it.

Senator LUNDY—I put it to you that, in the absence of that competition, Telstra withheld services deliberately and specifically because you did not see a commercial opportunity unless confronted with a situation where you may lose market share. What is your response to the fact that Telstra have, clearly, with the amount of investment that is now occurring, withheld broadband services from rural and regional areas up to a point at which your market share is threatened?

Mr Scales—I think it is implicit in that that there is only one driver as to why Telstra makes decisions, and there are many drivers. If I go back to one of the questions asked of me earlier, Telstra is very concerned about its reputation in the bush. Even in many of those cases where there are not competitors there and if our service is declining, we are concerned about that. We know that it affects our reputation. We know that it affects whether customers turn away from us to a whole range of other potential operators. We know that, and we respond to that as well as to whether there are competitors or not. Again, we unashamedly say that when competitors come into an area, yes, we will compete. We unashamedly will compete, but I do not see that there is anything necessarily wrong with that.

Senator LUNDY—Can you tell the committee why Telstra made a decision to cease investing in the installation of ADSL equipment in exchanges a couple of years ago? It is prior to HiBIS; it is prior to all of that. Telstra made a commercial decision not to proceed with a standard roll-out and devised, from memory of evidence provided, very amorphous commercial criteria for that investment. Why was the policy changed at that point?

Mr Scales—I cannot remember us making that decision in the way in which you have described it.

Senator LUNDY—It is in the transcript of evidence for the ATN inquiry that we heard in Melbourne.

Mr Scales—From Telstra?

Senator LUNDY—Yes. The cessation of that investment on the previous terms was discussed. I think you were aiming for some thousand exchanges out of the 5½ thousand to be upgraded, at which point that investment stopped and any subsequent investment was on commercial terms, which were described originally as 40 users wanting broadband and was then changed to 80. It was linked in with the broadband register et cetera. But clearly the rules were changed in any way Telstra liked, which is probably a reasonable thing from Telstra's point of view. Could you take that on notice and maybe review the *Hansard* and come back to the committee with an answer?

Mr Scales—Yes, I will review that because I need to see that in the context. Certainly, from our perspective, there is no doubt that what we have tried to do is through both public policy means—that is, HiBIS—and also—

Senator LUNDY—Subsidy.

Mr Scales—Sure. It is well understood that that is a subsidy available to other providers as well as Telstra. We have also tried to do this through looking at our own technology to see if we could lower the scope by which we can have an even lower number of users at any exchange. But let me go back and look at that.

Senator LUNDY—Okay. I will probably take the opportunity to put a few questions on notice through either this or the second inquiry. Thank you.

CHAIR—Thank you, Mr Scales and Mr Field, for appearing before the committee today.

[10.58 p.m.]

HAVYATT, Mr David Stephen, Head of Regulatory Affairs, AAPT Ltd

CHAIR—Welcome, and thank you for being here today, Mr Havyatt. We appreciate your presence. The committee has received your submission as submission No. 5. Do you wish to make any amendments, addition or alterations to it?

Mr Havyatt—No.

CHAIR—You are reminded that the evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate, so bear that in mind. Do you wish to make an opening statement?

Mr Havyatt—Yes, please.

CHAIR—Please proceed.

Mr Havyatt—AAPT really wishes only to address one of the two pieces of this inquiry. We do not intend to address the regional presence piece, though I do find it a separately interesting exercise. The only comment I would make is that, in the context of a policy of operational separation which the minister seems to be promoting, I am just not quite sure which half is meant to be having a regional presence. But maybe that is something that can be addressed somewhere else in the proceedings.

In the matter of the reviews of the adequacy of telecommunications, that has been part of the debate for some time. In 1998 I actually attended a Senate committee representing a different telco, and I responded to a question from Senator Allison on this very subject. At that stage, the senator's questions related to whether the inquiry then envisaged should be a public and independent inquiry. I am not sure whether in the scheme of things that wound up being Besley or Estens—I think it might have been Besley. In my response, I emphasised the need for future reviews to look at wider issues than just the adequacy of services, including how well the competitive regime was working. In our submission to the committee we have included a bit of the history of the unfolding policy on telecommunications in this country. Whilst Telstra in a submission to the ATN inquiry claimed that the avowed policy of universal service was something that was incorporated in the community telephone plan of 1960, that is actually not correct. The first time you will ever find a statement that remotely approaches a statement of universal service is the duties that were given to Telecom Australia under the Telecommunications Act 1975, which read:

The Commission shall perform its functions in such a manner as will best meet the social, industrial and commercial needs of the Australian people for telecommunications services and shall, so far as it is, in its opinion, reasonably practicable to do so, make its telecommunications services available throughout Australia for all people who reasonably require those services.

It appears to AAPT that in a different guise that is still the avowed expressed policy that we all subscribe to—that telecommunications is about social and economic purposes and there is a desire and goal that they generally be available to all Australians as efficiently as possible.

That raises our concern that the current proposal for regular reviews is in fact limited in its scope to one specific area—that is, the adequacy of services in what has now become regional, rural and remote Australia. It is to be benchmarked against some concept of services in urban areas. Our concern is that this would imply that only customers in those geographic areas are likely to experience problems or that the only problem with achieving the objectives of the regime in the future is likely to be in relation to regional services. We know that today it is not only regional, rural and remote areas that have problems accessing some modern telecommunications services. We know from other inquiries that the Senate has undertaken that there have been problems in the outer suburban areas of our large cities. You will find that many of your colleagues in the House of Representatives continue to raise questions about the adequacy of services in those outer metropolitan areas. Similarly, we even find problems in the new areas of cities undergoing urban renewal, where you wind up with a large number of residential dwellings on what used to be industrial estates. So the adequacy of services needs to be considered in a wider area. I should point out that none of these customers in the urban areas would benefit from the affinity discount plan that the National Farmers Federation apparently has in place with Telstra, whereby NFF members receive a six per cent discount on their phone bills.

At the same time, we are also aware of failings in the competition regime. For example, last week the Victorian government announced Telstra and Optus as winners of the second tranche of their TPAMS tender. This win by the Optel duopoly highlights serious flaws in the competition regime. Telstra won the data component of this tender and the previous tender by quoting network elements that competitors were unable to access for their bids. This is in part the business grade DSL services that David Forman referred to. Similarly, Optus, in winning the fixed voice component, is reported to have offered fixed and mobile calls at 14c per minute in their tender offer whereas in the undertaking they have made before the ACCC the price for the mobile terminating access service component of that is offered at 19.25c per minute. So only part of the service that you would need to acquire is offered at a higher price. There continue, therefore, to be significant structural weaknesses in the operation of the competitive regime. I am not sure that a settlement on an Optel duopoly is exactly the outcome that all policymakers have in mind.

AAPT has submitted that the regular reviews need to be broadened in scope to address the adequacy of telecommunications services in Australia and the extent to which those services meet the social, industrial and commercial needs of the Australian people for telecommunications services. They should then have specific regard to the quality of services in regional, rural and remote Australia and to the ongoing achievement of the policy objective of the long-term interest of end users. Secondly, we have turned to the question of frequency. We note that many submitters, and in fact the committee when it considered the 2003 bill, recommended three years as the time between reviews. Our concern is that it is very hard to know how long the reviews themselves take, so three years between completion dates seems to be a little bit problematic. Our version suggests three years between the completion of one and the commencement of another, which we think tidies up the question of frequency.

We have made some other general comments about the question of independence. We recognise the theory of an independent review being that it is therefore removed from political

interference but we are slightly concerned that the concept of independence can mean that you wind up with somebody who is not sufficiently familiar with the regulatory regime or the telecommunications services to provide good advice. We have two specific considerations. We do not understand why the regional telecommunications commissioner could not be an associate member of the ACMA, and we repeat a suggestion that we will also repeat this afternoon: that the ACCC should have a full-time telecommunications commissioner who would therefore guarantee there were sufficient resources in the ACCC to address their ordinary tasks and to assist the inquiry. Thank you.

Senator CONROY—Thank you very much for that. That was a very comprehensive summary that probably knocked out quite a few of my questions! I do, however, want to draw you out on a couple of points you have made reference to. Can you outline for us some practical examples of the difficulties AAPT has in competing in rural and regional Australia as well as in other areas, such as the suburbs you were making reference to before.

Mr Havyatt—There are a number of aspects to that. Let us talk about the regional and remote Australia part first. Earlier you repeated to a witness the Ziggy Switkowski line that if you find a competitor's truck in regional Australia, it is probably lost. That is incorrect because AAPT does not run trucks. We have \$1.3 billion to \$1.4 billion in revenue but we do not run a fleet of installation trucks because we subcontract that work to a large number of people. In metropolitan areas where we have built our own infrastructure, we still subcontract that work—sometimes to a company called NBC, which is a Telstra subsidiary, but not always. Certainly in regional and rural Australia, the people who provide the access infrastructure for our customers is a company called Telstra. So if you see that Telstra truck out there, there is no guarantee that it is servicing a Telstra customer; it could well be servicing an AAPT customer and being paid very well by AAPT for providing that service.

Where it becomes difficult and problematic is that there is no real equivalence between the treatment we get and that which Telstra gets. One of the most demonstrable examples of that is what occurs when a residential customer in regional Australia is complaining about the quality of the infrastructure supporting their service. Telstra Country Wide will fall all over that customer if they are a Telstra retail customer and will happily respond to questions a local member might want to raise about the quality of telecommunications services. But if it is a Telstra wholesale customer service by AAPT, there is an immediate assumption that AAPT has to answer that question even though it is about infrastructure operated by Telstra. That is symptomatic of the number of times that a competitor utilising the Telstra infrastructure faces these marginal additional impediments to dealing with quality of service issues. They are probably more frequent in regional Australia because I think you find a degree of variability in regional services that we do not find in metropolitan areas and also because the nature of telecommunications infrastructure means that there are scale efficiencies.

Therefore it is less likely to have effective viable competition in a regional and remote area at the infrastructure layer than it is in a metropolitan area, so there is less threat to Telstra with our ability to take our business elsewhere. Having said that, the service you provide to a customer is not all about the tail infrastructure. It is about a whole lot of things on top of that, including what you do in your core network and what you do in terms of billing and charging arrangements. So there is a lot of competition that occurs but not at that infrastructure layer.

Senator CONROY—Could you expand on your reference to affinity programs? I am still relatively new to the portfolio. I had not heard of those programs before.

Mr Havyatt—Affinity programs are marketing programs that people sometimes enter into that say: ‘Because we want to use you as a channel to market, we will give a discount to members of your association. So, if you sign up, you then promote to your association the idea that you can get service from us.’ It is my understanding that there is such a program that exists between the NFF and Telstra for members of the National Farmers Federation.

Senator CONROY—I think we will have the NFF before us again this afternoon. We might ask them about it. I am sure they will welcome the inquiry. Do you think five-year reviews will reflect the pace of change in the industry.

Mr Havyatt—We only have to look at the number of reviews we have been able to squeeze in in the last five years. Someone joked the other day that there is a review every six months.

Senator CONROY—We have a new one today.

Mr Havyatt—We have three concurrently. We have this, we have this afternoon’s review and the minister’s more formal process.

Senator CONROY—We consider ourselves very formal!

Mr Havyatt—Fair enough. The nature of the industry is that, whilst some things seem to be very fast, some things also seem to be very slow. We all talk about ADSL now as if it were the latest and greatest wonderful new technology, but in 1994, when I used to work for the organisation called Telstra, I was taking customers on visits to TRL to show them the wonders of ADSL. So sometimes what we think is a fast-moving industry is also somewhat slow. Getting the balance right is therefore difficult.

I think that five years is an incredibly long time given that we have historically reviewed things in around three-year time scales. The Productivity Commission review of the original act was to occur three years after the act was passed. That proved to be a very appropriate time for that review. I would argue that it is an appropriate time for a thorough review right now. We have had reviews happen out of synch as well, so the USO-CSG review happened on its own. That has implications for the rest of the regime. Five years is stretching it too far. I think leaving it to the exigency that says, ‘We could do it faster,’ is just unrealistic. Three years between completion of a review and starting again is a more appropriate process.

Senator CONROY—Someone suggested the review committee will have a number of Telstra employees on it. Would that give you great confidence that it would be boiling along?

Mr Havyatt—The legislation has a proposal that says they could be Telstra employees but they would not be able to constitute a monopoly.

Senator CONROY—That is a small concession so that they would not be in charge of reviewing themselves.

Mr Havyatt—Yes. It is an equally interesting point in that I am not quite sure why a Telstra employee would be able to be on the review, as is envisaged in this process, but competitors would not.

Senator CONROY—I was going to ask: if Telstra gets someone on the review, I presume AAPT or—

Mr Havyatt—There is nothing in the structure that guarantees it. I would suggest that there should be a process that says that carriers should be treated equally in this regard and either all excluded or all included. My gut feeling says they should all be excluded from the process of the review. I do not think people employed in the industry are potentially good people to review themselves.

Senator CONROY—It would probably fail most people's definition of governance nowadays.

Mr Havyatt—I think it would.

CHAIR—Senator Cherry, do you have any questions?

Senator CHERRY—I did have one, but Senator Conroy just asked it, so I will pass to Senator Tchen.

Senator TCHEN—Mr Havyatt, you quoted a general example of where competition between Telstra and other carriers is not equal. You said that if a retail customer of Telstra Country Wide has a problem it will pull out all stops to help but that if an AAPT customer has a problem Telstra would require AAPT to raise the issue first. Is that your complaint?

Mr Havyatt—My complaint was more specifically the circumstance where an issue is raised with a local member about the quality of infrastructure in the area and Telstra will not respond to the question because the person who raised the question is an AAPT retail customer. I do not have a problem with the idea that the customer has to report an ordinary fault to AAPT, but the idea that Telstra Country Wide denies ownership of its network when people wish to ask questions about the quality of the network I find extraordinary.

Senator TCHEN—How would a layman know whether the problem is a network problem or a service problem?

Mr Havyatt—The example I can think of is very clearly where the constituent has asked the member and the member has asked Telstra Country Wide about when a specific exchange will be undergoing an upgrade. Because this constituent was an AAPT retail customer, Telstra Country Wide chose not to answer.

Senator TCHEN—I guess that is human nature.

Mr Havyatt—It is, but it goes back to my question earlier about the community presence: which is the part of Telstra that people think is meant to be represented by Telstra Country Wide? Is it meant to be the Telstra that is operating that essential network infrastructure in regional Australia, which we all recognise as essential for those communities and unlikely to be profitable to duplicate, or is it the Telstra that represents the interests of its retail business? I think it is a very important set of questions that I do not think Telstra has got a convincing answer for.

CHAIR—I want to ask you about your comment that the Productivity Commission should be available to help the board. Do you want to enlarge upon that?

Mr Havyatt—It was only in the sense that if the legislation is going to start cataloguing the government agencies that should be available—I do not think it necessarily excludes anybody—one of the core bodies that has expertise in the analysis of the underlying economic issues is the Productivity Commission. It has a degree of expertise already that it developed through its review in 2000-01 of telecommunications and it continues to have an active interest in competition policy. If you were looking for a group of economists who could give you good independent advice you would find it in the Productivity Commission whereas sometimes the regulatory agencies who are involved in the process get defensive, if you like, of their own outcomes. It is very easy as a regulator to start defending what you have done rather than to get back to bare bones. So to make sure there is a good quality pool of advice the Productivity Commission should be available.

CHAIR—This issue of the composition of the board is the most important theme in your submission. Would you prefer not to have Commonwealth or Telstra people there but to have totally independent individuals who simply have experience of regional Australia, shall we say? Would you think that to be a more effective composition of the board?

Mr Havyatt—No. My sense would be that it should be an independent chair and that an independent chair supported by Commonwealth officials would be more than adequate. I am yet to be convinced that Commonwealth officials are not independent if they are involved in an independent inquiry. They are not independent if they are involved in an inquiry which has private reports to ministers. So I am not actually too concerned about anything other than the role of the chair. And I would be more than happy even for the chair, whilst they are appointed, to be an associate member of the ACA. That would enable them to have a closer association. I am also a bit confused in the legislation exactly what the staffing of the regular reviews is meant to be. There is a role for a chair that can be appointed for five years, but there does not seem to be any clarity about whether there is meant to be a chair at all times or only one appointed when it is deemed to be time to do another inquiry.

CHAIR—And whether will there be an ongoing secretariat, perhaps, as well.

Mr Havyatt—Yes, and that is a little bit uncertain at this stage.

CHAIR—Yes, it is, I agree.

Mr Havyatt—That is why I thought that the idea of the chair being an associate member of the ACA would be a good, convenient way of having a continuity in that position.

CHAIR—That is an issue perhaps that should be clarified in the legislation, you would say?

Mr Havyatt—Certainly.

CHAIR—The other issue you raised concerned the representation of the carrier Telstra. Senator Conroy suggested the issue of other carriers being there has been raised. But not all carriers are represented in providing services in regional Australia. Is there a case for not having a carrier there?

Mr Havyatt—I think there is a case to have no carriers involved—nobody who has got a carrier licence or is currently providing service. We should be clear and make it not only carriers but people who are currently involved in providing service. You have got two distinct

concepts in the legislation: carriers that own infrastructure and service providers that provide service. Neither a carrier nor service provider under the Telecommunications Act should be allowed to be a member of the inquiry.

CHAIR—Thank you very much for your evidence. It has been very useful.

[11.21 a.m.]

GREEN, Dr Walter Battman, Director, Communications Experts Group Pty Ltd

Evidence was taken via teleconference—

CHAIR—Welcome. We thank you for giving us in time today and we appreciate the effort you have made for this committee. The committee has received your submission, No. 9. Do you wish to make any amendments or alterations to your submission?

Dr Green—No, the submission as it stands is fine, thank you.

CHAIR—You are reminded that the evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Would you like to make an opening statement?

Dr Green—Yes. In summary, the changes in technology and the introduction of new service features is such that the five-year time frame is excessively long. Secondly, I have got concerns on the membership of the RTIRC. In particular, I would like to see service providers being excluded and there should be a majority of people with a knowledge or experience of rural and remote issues.

I have one other point that I would like to bring to the attention of the committee. In Western Australia, if you look at the survey that was conducted in 1997 on the telecommunication needs of rural and remote parts of WA and then you look at a similar survey conducted in 2003—that is a six-year gap—there was a completely different focus as to what the community needed in terms of the way it conducted its business and used telecommunications. I think that that is a very useful indicator of the fact that five years is far too long and that three years would have been a more appropriate period in order to hasten the introduction of newer technology. I believe there is a real situation that the five-year period will inhibit the introduction of technologies and services rather than promote them.

CHAIR—Thank you. We will ask the secretary to get copies of those two reports for the interest of members of the committee. Have you copies that you would like to table?

Dr Green—Both are available on the WA government's Department of Industry and Resources web site. I can give you the address and you can get them.

Senator CONROY—I am not sure whether you were able to tune in to our previous witnesses—sometimes our proceedings are web cast—but we had Telstra before us recently arguing strongly that five years was necessary, given the time frame of the processes involved, the decisions and the implementation of the decisions. Do you have any sympathy for their view?

Dr Green—No—I am strongly against it and would quote one fact in support of my position: if you look at the way the telecommunications industry developed, you will see two situations. In one situation a type of service developed—in other words, voice versus broadband—but within each service there is a need to improve the features and so forth. It is game-playing by the carriers that can delay the introduction of services to the rural areas. I have seen this in a couple of places where I have been providing advice to people. The carriers come back and say, 'Oh, we cannot do that; it is too expensive and we need all these

changes.' We need something that raises the barrier at a shorter interval rather than a longer interval. I believe that the five years will actually be inhibiting—it is too late. An example is that in 1997 broadband—or even the internet—was not even raised as an issue, yet in 2003 there were areas of 80 to 90 per cent demand for the internet.

Senator CONROY—How important is that access to broadband services for rural and regional Australians, particularly from your experiences in WA?

Dr Green—Anecdotal evidence and surveys clearly show that the further a person is away from Perth the greater the need for internet access. In particular, there are federal and state governments that are cutting back on expenditure and expecting rural and remote communities to use the internet to access services. Governments, both federal and state, are expecting people to have access to the internet, so they should be doing more to ensure that they get that access. The dial-up access that is available today is clearly unsuitable.

Senator CONROY—Telstra argued before us earlier today that their responses are usually a function of demand. It was not the only factor, but they respond to demand. In your view, is the level of demand for broadband internet services still unmet?

Dr Green—It is still unmet. The pattern I observe is that if a competitor tries to set up a broadband service—usually via wireless—then the next thing the community knows is that there is a strong sell by Telstra. The fact that anecdotal evidence says that Telstra does not have the 60 or 90 people that they require on the list is purely irrelevant. It is the fact that there is a competitor there that is driving them, not the numbers of applicants.

Senator CONROY—In your opinion, how long has this demand for broadband services been obvious?

Dr Green—I have done a number of surveys for telecentres throughout Australia, and one of the drivers of the demand for telecentres was to get access to decent internet service. This goes back to 2000—a period of four years. You can see that as the community gets educated the demand for access to and use of the internet increases. I have seen a number of programs that have successfully introduced the new technology to the rural community, and that has driven the demand even more, particularly in WA with its successful telecentre network.

Senator CONROY—You also made some comments in your submission and earlier about the composition of the RTIRC. Do you consider that prohibiting the committee from being composed of a majority of Telstra and government employees is sufficient to ensure the independence of the committee?

Dr Green—No, I do not, because it is still possible to get people with what I call carrier or service interests—that is, the supply side—being in the majority. My experience in talking to and dealing with people in rural and remote communities is that they are well able to voice their needs and, particularly, the types of services that they want. They can do that effectively. A carrier's representative, and I am now including all carriers, should be excluded—not just Telstra's.

Senator CONROY—So you are in favour of having no employees from any carrier?

Dr Green—Yes, that is correct.

Senator CONROY—Would you agree that the appropriate role for Telstra in these regional reviews would be in assisting the committee and providing it with evidence, as opposed to actually being involved in the decision-making process on the committee?

Dr Green—I would say that all carriers need to be involved in the provision of information support. But you are quite right: the decision making should be done by the people who need the services.

Senator CHERRY—Dr Green, I know you have appeared before several committees and talked about these sorts of issues. I want to ask a question about the Estens report. The government now says that it has fully implemented 21 of the 39 recommendations of the Estens report. Do you feel there are recommendations there which are yet to come through that are important, or do you think the government needs to go much further than the recommendations of the Estens report?

Dr Green—My opinion at the moment is that they need to go further than the Estens report. There are a number of issues and things that are happening now where, typically, the universal service obligation is actually inhibiting investment in telecommunications services in the rural areas of WA. So, yes, the Estens report was heading in the right direction, but I do not think it went anywhere near far enough to deal with the issue.

Senator CHERRY—Following on from that issue, there has been a general issue about investment infrastructure in regional areas and questions have been raised by some people about regulatory holidays, or at least competition holidays, or prevention of duplication of infrastructure. Do you have any views on the necessity for those sorts of measures to protect or promote investment in regional areas?

Dr Green—Yes. If a carrier moves into an area, there should be some protection to stop Telstra using its muscle and might to put them out of business, because those are the people who develop the market and the need. But my real concern is that the universal service obligation is supposed to help or promote investments in the rural area, and carriers have to pay that USO to Telstra in addition to the very large backhaul prices. There should be some change to the USO so that, if they are investing in the rural area, they should be given a credit.

Senator TCHEN—I put a question to an earlier witness who also proposes that the review period should be three years rather than five years. I said that, given that the telecommunications area has very rapid technological changes, a three-year review might well lock the providers into a particular technology that would rapidly get out of date. From the point of view of the marketing mechanism, it would be in the interests of operators to make changes anyway, but we are talking about regulatory review and regulatory control, so that tends to lock people into a particular outcome. Earlier in your evidence, you said that in WA there were two inquiries six years apart, and they came up with a totally different focus. Doesn't that actually reinforce the view that there should be a longer period of review rather than a shorter period?

Dr Green—If it had been done properly it would have been halfway through the issues of internet access and the need for changes in the access regime, so internet service in rural areas would have been captured more quickly and there would have been a greater focus. What I am trying to indicate is that in a six-year gap the needs of the community change so much that

you are missing the important things; it is actually too late. In fact, any review that comes in three years time will be looking at a whole new set of problems. With the six-year or the five-year timing, it will be more or less snapshots of what is going on rather than setting the tone of what should be happening in the future.

Senator TCHEN—I understand that. What I am getting at is that I assume action was not taken following the first review. Is that true?

Dr Green—There was very little or no action taken. In fact, the 1997 one focused on broadcast and television whereas, in 2003, the internet was the major focus. In fact, there is a strong case to be argued now that the type of broadband that will be introduced over the next couple of years is actually going to be insufficient for the rural community's needs.

Senator TCHEN—That is my point exactly. If it is a case of responding to the market, I suspect that operators will be very quick to respond to the customers' requirements, in a perfect world. But if we are talking about a regulatory review where the government sets the condition of what should be provided, and the operators only have to meet that condition because everyone else has to meet it, there is no competitive element. Wouldn't we run the risk of being locked into a technology or a particular service which, in a few years time, will be out of date? That is assuming that, in the Commonwealth review, we have a very quick response.

Dr Green—Let us look at the USO. At the moment the definition of that is still an ordinary telephone call, which is woefully inadequate for the rural community. In that respect, the regulatory area has not changed fast enough. But I am still saying that there were improvements that should have and could have been made in 2000 and 2001 if there had been an appropriate review to set the appropriate standard in place for future developments in rural areas. Because that review was not there, things had to develop at a much slower pace and the rural community is being held back.

Senator LUNDY—I want to go to the issue of the nature of services in demand. At the moment, public policy through HiBIS and so forth is very much focused on providing an ADSL service. What sort of bandwidth do you think will be required in three years time? Were public policy to accurately reflect the needs of rural and regional customers, and if the broadband products are available in three years time, what sort of bandwidth should they be set at?

Dr Green—It is difficult to answer that straight off. My analysis and the work I am doing consulting at the moment are indicating that the demand from the public in the next five years is for 54 megabits, which will consist of a mix of videoconferencing and TV services as well as today's broadband networks. My guess is that in three years time a figure of two megabits is what should be needed. But another misconception in the industry, and it is a pretty broad misconception, is that more bandwidth will solve today's problems. That, in fact, is not true. What is more important is being able to prioritise and say that the video and telephone call packets need to go first and that email and web packets need to go second. That is a critical factor. If we are actually going to get the benefits of the internet, we need that ability to prioritise the traffic as well as the additional bandwidth. It is not just bandwidth; it is the extra feature that is important.

Senator LUNDY—What are your reflections on the value of HiBIS as a subsidy for the installation of ADSL connections in rural and regional Australia?

Dr Green—Based on the one HiBIS project that I am currently working on, the HiBIS fund is ideal but there are too many blockages in getting access to suitable properties and access to existing Telstra sites. There is an entire gap in the regulatory regime on third party access to telecom infrastructure.

Senator LUNDY—What is the nature of the blockages that you have experienced with the project you are involved in?

Dr Green—They simply cannot get access to the mast and to the building. There is an additional complication in that the land is owned by a third party. Not only do you have to get through Telstra but you also have to get through the third party. In fact, it looks like they have got the money and they have got the application but, because they cannot put the infrastructure in place, the funding and the whole project is going to fall over, and that is purely because of access to one site.

Senator LUNDY—You have not been able to find a complaint or problem resolution mechanism to ensure that that does not happen?

Dr Green—As I say, where the landowner is a third party, that is the game that is being played. You have to get through the landowner before you can get through to Telstra. It is very much the case that state governments need to look at how they manage access to telecom infrastructure. That extends not only to wireless but also to fibre.

CHAIR—Dr Green, thank you very much for appearing before the committee today.

[11.42 a.m.]

BROWN, Mr Ewan Dallas, Executive Director, Small Enterprise Telecommunications Centre Ltd

CHAIR—Welcome. The committee has received your submission. Do you wish to make any amendments or alterations to it?

Mr Brown—No, I do not.

CHAIR—You are reminded that evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I now invite you to make an opening statement.

Mr Brown—We feel that the current measures being put in place are creating patchwork remedies to the current situation. We would like to see some positive vision on telecommunications policy and, thus, telecommunications infrastructure throughout the nation. We would like to see speeded up a process that would generate high-level services for all users in Australia—not only people in regional, rural and remote areas—and address not only the Telstra-centric issues that are being covered by the current bill.

Senator CHERRY—Thank you for that brief introduction. I have had a quick look at your submission, but could you give us a summary of what amendments you would write if you were to plug the biggest holes in the regulatory regime.

Mr Brown—I think there are two aspects to it. One is the bill as it currently stands and what to do about any modifications to it. We would like to see more regular review processes. Constituents and small businesses around the country, particularly in regional areas, are still mightily concerned about the low level of broadband, or data-speed service, in the country. So we think waiting five years before you have a review of the process is far too long. I would prefer to see a review process within two years—and ideally within two years of the outcomes from the Estens report—to give a firm view on how much development has taken place since the Estens recommendations were made. I would then like to see the next review within a three-year period and then maybe, if things are okay, a move to a five-year time frame.

The other concern is that if we maintain a Telstra-centric approach there are fears that with a fully privatised, large semimonopolistic operator—and particularly in regional areas it is almost a monopolist operator—we would see a process whereby it would be virtually the power of the government against commercial viability or commercial decision making in a large corporate entity which would have a greater responsibility to its shareholders, one of which would no longer be the government, so we see some major concerns there. Under the current regime—particularly from the point of view of small, micro and home based businesses—it is competition that has not worked as well as we would have hoped after seven or eight years down the track. We see it affecting mainly big business. I suppose that we are concerned that there are too many carriers in the marketplace for a market the size of Australia's, particularly given the market in rural and regional areas. Most of the competition is occurring in CBD areas, yet we have a massive amount of infrastructure that is virtually being laid to waste at the moment without providing the right sorts of services and technologies for people in rural communities.

Senator CHERRY—Thank you very much for that, Mr Brown.

Senator TCHEN—I do not have any questions, Chair. Mr Brown, I was very interested in your suggestion about a review process that is more flexible and more focused. You suggest that after the initial demonstration a review process that would work in five-year spans would be acceptable. Thank you, as that is a very good recommendation. I should say it is an interesting recommendation. I do not have any other comments. Thank you for your submission.

Mr Brown—Could I add some of the reasons for that. We think that the Telstra Country Wide initiative has been quite useful, and if we can embody some of the other developments in competition we might find that a five-year process down the track is sufficient. But what we are really seeking is an upgrade of the standard telephone service benchmark to prevail to provide a reasonable level of digital non-dial-up services in all areas of Australia and to let the marketplace then build on better services after that.

Senator LUNDY—What is SETEL's view on the current level of service in rural and regional Australia?

Mr Brown—In a snapshot: not good. As I said earlier, a lot of my constituents are complaining that they cannot get access to reasonable data services at reasonable prices. We have uncovered a range of issues that are particularly important. The first is access. The next is awareness or understanding. The third is application. The fourth is competition. If you read about what is happening in telecommunications or communications in general, you see people are getting faster and better data services. We are seeing more and more applications supposedly being made available to businesses to create efficiencies, yet there is a high degree of frustration in a lot of areas because the services either are not being made available or are not being made available in a format that the user can understand. We see a situation whereby government bureaucrats in particular are requiring more and more contact by electronic means—for example, the business entry point database has something like 27,000 business regulations on line and there is a key requirement for businesses to utilise electronic services to access that information. We do not think the efficiencies are there because a dial-up download to one of those services leads to intense frustrations or otherwise you have to access at times when there are not peak loads, and that is just not viable for many businesses.

Senator LUNDY—Further on that point, you said in your submission:

Commercial activities to date have seen too many new service offerings limited to metropolitan areas.

You have just reiterated that point. Can you identify specifically the sorts of services that have been introduced in metropolitan areas that are not getting out to rural and regional areas, or that have not been offered to rural and regional areas?

Mr Brown—If you accept the concept that the last mile problem is a major bottleneck in allowing any competition to develop in a marketplace, we had hoped that there would be a far more solid take-up of satellite and wireless based services as a means of getting around the fixed line copper pair provision to the home or to the business environment. We really have not seen any major competition developing in the cable area either.

Senator LUNDY—It is the opposite, in fact; there is some consolidation.

Mr Brown—We have seen too many businesses that have sought to overcome that dominance of the last mile connection, or the second last mile connection, develop new technologies and yet there is a tendency—and it is only natural—for a commercial entity to seek the critical mass of users before it can roll out its services. The real concern is that a lot of these new technologies are based in areas where there is a fairly heavy population or the likelihood of getting some commercial viability. That was partly behind some of our concerns that there are too many providers in the marketplace and it is just spreading the available consumer or user base too thinly and, thus, none of them seem to be able to get a critical mass of users to be able to challenge either from infrastructure development or from pricing, apart from resale, in this current environment.

Senator LUNDY—Given that your constituents are small business or home-based business users, do their complaints about the lack of broadband, quality of services et cetera differ from the more general complaint of residential users? Are there any examples that you can highlight, or is it the same sort of complaint?

Mr Brown—It is generally the same sort, except that we see that residential users have probably a far greater number of applications available—particularly in terms of entertainment and information. The critical factor for the business environment is that it is being seen as more essential to them to obtain faster data speeds rather than purely the decision within the home environment to obtain those for entertainment or information.

Senator LUNDY—So it is now a business necessity.

Mr Brown—Yes.

Senator LUNDY—I suppose some would argue that it is a home necessity too. I know I certainly would. Is it possible to conduct business in rural and regional Australia without an always-on broadband connection in 2005?

Mr Brown—It is being done at the moment but it is intensely frustrating and the variety of services and applications that are available is severely minimised.

Senator LUNDY—So it would inhibit that business's prospects at least?

Mr Brown—Given the current pressures on rural businesses, yes. They are always way behind the eight ball in terms of competition against other businesses in areas that do have access to the faster speeds. The government information dissemination side is that more and more reliance is being placed, both by big business and government, on electronic services for access.

Senator LUNDY—So there is a lot of push happening?

Mr Brown—There is a lot of push, but not enough support in the provision.

CHAIR—One of the issues you raised, which has been raised by a few other witnesses, is the membership of the RTI RSC. You say it should be completely independent and exclude Telstra employees. Do you want to broaden that a little bit and tell us how you think the RTI RSC board should be composed and who would you ideally like to see on it?

Mr Brown—I do not have any specific names—

CHAIR—No, not as individuals; just what kind of organisations you are talking about.

Mr Brown—One of the frustrations we are facing at the moment is the intense power than an organisation like Telstra can exert in the Australian scene. We would prefer to see complete independence in this review process, with input from Telstra rather than having a Telstra or Telstra-supporting member within the committee process. We think this would enhance the viability of this review committee, help transparency and probably give a far more independent view on how to move forward, without having to consider the pressure that Telstra may be able to apply to that body. From our perspective, it is a very effective lobbyist and we can see the sort of impact that it is having on the regulatory system in Australia.

CHAIR—Would you, for example, like to see representatives of various kinds of interests and businesses in rural Australia—like pastoralists and graziers; chambers of commerce representing small business, which is perhaps your group; local government associations and so on?

Mr Brown—We would certainly like to see probably all of those people involved. They have a major role in stimulating demand in non-metropolitan Australia. I would like to see them more heavily involved in the whole telecommunications policy debate so that we have far better outcomes. At the moment there seems to be a relatively small pool of people appointed to these particular groups. We would certainly like to see business, particularly small and micro business, heavily represented. That could equally be done through the chambers of commerce. We would also like to see the involvement of local government, because one measure for improving the whole telecommunications access regime in Australia is to have the three tiers of government involved in providing at least a high-level benchmark universal service as a major philosophical goal of governments in the country. If there is any killer application, it may well be the provision of government information and government services, which can remove some of the digital divide that exists between city and country counterparts.

CHAIR—Thank you very much.

Senator CONROY—The committee has been discussing the issue of five years, four years or three years as the review period. In your submission you suggest that an appropriate time frame for the service level reviews provided for in this bill be an initial review of two years, a subsequent review within three years and reviews after that every five years if service levels are found to be sufficient. Given a comment, which you may have seen in the press, by the Deputy Prime Minister, Mr Anderson, about service levels being ‘soggy’—it was not a phrase I was familiar with a while back—and that the Deputy Prime Minister has identified what I could describe as backsliding on existing service provision, do you think that moving to a five-year phase, even when you have reached a certain point, will actually guarantee that ongoing service levels are provided after that?

Mr Brown—I had a rider to that five-year suggestion. It was if the services had been found to be adequate after two shorter review periods. So it was subject to a high level of agreement and awareness within those areas that there was substantial movement.

Senator CONROY—Two years is a short period. Why do you think an initial review is needed within two years?

Mr Brown—It is an ambit claim to start off with it. Mainly because we thought five years was far too long. We also thought that the Estens report recommendations had been provided to government. Under the current bill we are looking at the first term probably starting once the legislation is enacted. Bringing it forward to two years after the release of the Estens report more or less means you have got to start that process now. There are high degrees of frustration in rural and regional areas that services are not up to scratch and if we are having a new mechanism we want a transparent, independent mechanism that looks at the current situation and moves it forward. We have been waiting 10 years to get some progress and it is coming too slowly.

Senator CONROY—If this committee came up with a recommendation which it has previously made and which has previously been accepted by the government—for an amendment that said it should be reviewed every three years—your organisation could support that, even though it is not quite the structure you have suggested?

Mr Brown—Yes, we would look at it favourably.

Senator CONROY—In your submission you make a number of comments about the composition of the RTIRC. Why are you concerned about Telstra being permitted to have members on the committee?

Mr Brown—I addressed that a little bit earlier. I am really concerned about the level of lobbying pressure and influence that a Telstra member can exert on that particular committee. We feel as though there is substantial influence—

Senator CONROY—You do not think a poacher turned gamekeeper would work in this situation?

Mr Brown—It is hardly likely.

Senator CONROY—The poacher does normally promise to give up the previous poaching behaviour when they become gamekeeper—usually.

Mr Brown—I suppose we are looking at a different scenario. If there is further progress on the sale of the remainder of Telstra, the fears are that we would have a fully privatised, commercial environment—

Senator CONROY—It would be worse.

Mr Brown—where, in a sense, any direction is reliant on the existing regulatory framework. I do not think they have shown that degree of largess to date to be able to do the right thing, as we term it.

CHAIR—That concludes the questions, Mr Brown, and in fact we have run out of time. I thank you for your appearance today.

[12.01 p.m.]

CARUSO, Ms Linda, Manager, Industry Analysis Team, Telecommunications Analysis Group, Australian Communications Authority

HORSLEY, Mr Allan, Acting Deputy Chair, Australian Communications Authority

CHAIR—Welcome. Thank you both for being here today. It is very much appreciated. The committee has received your submission and listed it as submission No. 2. Do you wish to make any amendments or alterations to your submission?

Mr Horsley—No.

CHAIR—You are reminded that the evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Do you wish to make an opening statement?

Mr Horsley—I would just confirm the contents of our submission and highlight that it is well within the ACA's capability and competence to undertake the monitoring tasks that are proposed in the bill. Equally, given its experience, the ACA—and I might say ACMA, which it will be then—would be in a position to provide support to the committee.

CHAIR—Thank you.

Senator CONROY—Has the government discussed the operation of this bill with you?

Mr Horsley—No, not in detail.

Senator CONROY—Not at this stage.

Mr Horsley—But I think we understand what would be expected of us and are comfortable.

Senator CONROY—Has the government indicated whether the authority would have to approve local presence plans or whether that may be delegated to you to look after?

Mr Horsley—They have not given us that indication, but if they did we would be in a position to do it because it is not inconsistent with what we have done for other activities.

Senator CONROY—In your submission you note that the bill envisages some new roles for you, and obviously you are going to be part of ACMA after 1 July. Have you had any discussions with the government along the lines of, 'If you are giving us all these new responsibilities then we are going to need some more funding'?

Mr Horsley—We have not done that detailed work, no.

Senator CONROY—We are in the middle of the budget round. You are probably even a bit too late now.

Mr Horsley—We accepted that the coming together of the ACA and the ABA would be covered by the current budget provisions. That is, we would proceed forward with the ACA and ABA budgets and we are comfortable that that would allow us to do what was generally expected of us.

Senator CONROY—Even though, with this bill, they have given you a whole heap of new roles?

Mr Horsley—The detail of the roles is not yet clear. If the ACA had to provide a secretariat for the committee, which it could do, that would be outside our budget provision. But, in the normal work the ACA does other than that, we think we can accommodate the work that we imagine is coming.

Senator CONROY—But at this stage you have not really had any in-depth discussions with the government about your role?

Mr Horsley—No, not yet.

Senator CONROY—That makes it hard to ask you any other questions.

CHAIR—Senator Tchen, do you have any questions?

Senator TCHEN—No, not really. I am happy with the way the government is managing.

Senator CONROY—Senator Tchen is happy with the way the government is managing it!

Senator TCHEN—I am happy with the way the ACA is managing it.

Senator LUNDY—I would like to go to the issue of service standards within the context of regulation. A number of the Estens recommendations related to the remediation of pair-gain devices in the network. From the various inquiries and estimates hearings, my understanding is that there is no obligation on Telstra to actively remove broadband-inhibiting pair-gain technologies from the network. So I would like to hear the ACA's perspective on what powers it has to order the removal of pair-gain technologies with the aim of increasing broadband access for customers who may or may not be subject to a HiBIS subsidy.

Mr Horsley—I think the role of the ACA is to monitor the performance of voice services—and we do that. If pair-gain systems are providing inadequate voice services—that is, voice services that do not comply with the applicable code—we can seek the compliance of the provider, Telstra, with the network performance code. We have no power to require the removal of pair-gain systems to enable broadband services.

Senator LUNDY—Referring back to the particular recommendation, which the government accepted and which Telstra says it accepted, in Telstra's interpretation it does not place any requirement on them to remove those pair-gain systems. Are you telling me there is nothing this government is prepared to do about that, including empowering the ACA to force a change?

Mr Horsley—I think that is a question for the government.

Senator LUNDY—That power has not been vested in you?

Mr Horsley—We have not been given the power to do that.

Senator LUNDY—How does being charged with responsibility for voice services relate to the new licence requirement for achieving 19.2 kilobits per second on dial-up connections?

Mr Horsley—I used the term 'voice', but if a service is capable of providing good quality voice then it will provide the 19.2 kilobits.

Senator LUNDY—But the voice standard is only 2.4 kilobits per second.

Mr Horsley—Yes. But the point I was trying to make is that if a service is providing a good quality appropriate bandwidth voice—that is, a voice service which is consistent with the network performance code—we would expect it to carry 19.2 kilobits of conventional data.

Senator LUNDY—So your power to enforce the 19.2 kilobits per second data speed relates to your management of the licence conditions for carriers?

Mr Horsley—As I understand it.

Ms Caruso—That is correct. Our role relates to the monitoring and enforcement of that licensing condition on Telstra.

Senator LUNDY—How does the ACA deal with complaints it receives about pair-gain systems or the inability to get ADSL in either a HiBIS eligible area or a non HiBIS eligible area? What is the process?

Mr Horsley—When we get complaints which suggest that a voice service is not up to scratch, in normal circumstances that complaint would obviously have been made to the TIO first. We would inevitably get a brief from the TIO saying, ‘There is a perceived and mounting problem,’ and then we would conduct an investigation. If that problem was found we would initially request that Telstra solve the problem. If that did not occur then we could direct Telstra to solve the problem. But beyond the voice services we have no influence over recording complaints that broadband services are not available because of DSL. It is not a task we have.

Senator LUNDY—So whose task is it?

Mr Horsley—I imagine that that would be information that was recorded by the TIO and appear as part of the TIO’s quarterly or annual report.

Senator LUNDY—I guess this comes down to being a policy issue about convergence and the discussions and the evidence that was collected through this committee’s discussion of the ACMA bills. But is it an area of complaint and monitoring that the ACA gets strong feedback on?

Mr Horsley—We are aware of concerns as we listen to a range of people. If the ACA were required to undertake some processes in relation to monitoring of broadband service delivery then it would be a task that we could well do because it is the work that we do.

Senator LUNDY—This is not a hypothetical, more a question of the structure and process of this bill: would it be possible that an amendment could be prepared as part of these bills to give the ACA the appropriate powers to deal with monitoring service standards with respect to broadband?

Mr Horsley—If that were in the bill and went through the parliament then obviously the ACA would respond.

Senator LUNDY—Thank you.

CHAIR—That has probably concluded the questions we have for you, because your role in relation to this is a little bit undefined.

Mr Horsley—Certainly.

CHAIR—So it makes it difficult to dig deeply into what you may be doing. Thank you very much for appearing this morning.

Mr Horsley—Thank you.

Ms Caruso—Thank you.

[12.13 p.m.]

CHEAH, Mr Chris, Chief General Manager, Telecommunications Division, Department of Communications, Information Technology and the Arts

McNALLY, Ms Carolyn, General Manager, Regional Communications Policy, Telecommunications Division, Department of Communications, Information Technology and the Arts

CHAIR—We welcome the representatives of DCITA. Thank you for being here today; it is very much appreciated. You are reminded that evidence given 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. Your usual procedure is just to take questions, but do you wish to make a statement?

Mr Cheah—No, we are happy to take questions.

Senator CONROY—How does this bill differ from the measures that were included in the Telstra (Transition to Full Private Ownership) Bill 2003?

Ms McNally—They do not differ; they are the same sort of—

Senator CONROY—It is a cut and paste?

Ms McNally—That is right. We actually sought to delink what was in that bill from that bill and then bring that into line with what was required in terms of the inquiry.

Senator CONROY—Which inquiry?

Ms McNally—RTI?

Senator CONROY—Is that the Estens inquiry?

Ms McNally—That is right.

Senator CONROY—So there are changes to bring it into line with that?

Ms McNally—Particularly around the local presence licence condition.

Senator CONROY—So you would argue that this package does constitute a comprehensive response to series 8 and 9 recommendations of the Estens inquiry?

Ms McNally—Yes.

Senator CONROY—The National Farmers Federation suggests that it does not. Recommendation 9.1 of the Estens report, on the regular reviews, stated:

The review process should be linked to a strategic plan for regional telecommunications, and underpinned by ongoing arrangements that provide a high degree of certainty that Government funds will be made available to support service improvements ...

Is there any reference in this bill to a high degree of certainty about available government funds in the future?

Ms McNally—I think the concept of having regular reviews is about looking at what funding would be required.

Senator CONROY—So will there be any further legislation responding to series 8 and 9 Estens recommendations or are they covered off?

Ms McNally—They are covered off. The series 8 recommendations will also cover the issue of a licence condition to be imposed upon Telstra.

Senator CONROY—What progress has the department made in developing the strategic plan mentioned in the recommendation I referred to earlier?

Ms McNally—The department has been focused on implementing the RTI recommendations. Those recommendations—as you know, there were 39 of them—provided a large number of things that needed to be undertaken. We have progressed significantly in that regard. In terms of a strategic plan, more recently we had some discussions with our state government counterparts who raised the issue with us. They have sought to provide ideas and information about what could be included in a strategic plan. At this stage we have been looking at what would be the basis of a strategic plan, what would be acceptable to the states in the first instance and what would be the role of such a plan in the context of already having a national broadband strategy and a number of other strategies. So, really, at this stage we are looking at things from a preliminary type level.

Senator CONROY—But there is nothing in this bill that requires the government to respond with financial backing to recommendations made by the RTIRC? That is right, isn't it?

Ms McNally—The bill requires the government to actually table a response to the recommendations relating to funding. There would need to be some sort of response, which I guess the government of the day would make a decision about.

Senator CONROY—Do you think that represents 'a high degree of certainty' of available government funds?

Ms McNally—I think it provides transparency and a framework so that the government of the day can find out what regular reviews have to say.

Senator CONROY—They can transparently say that no funds are available, though.

Mr Cheah—That is correct, but I suppose the bill is proceeding on the assumption that it would be very difficult to have an independent review committee binding a future government to actually spend money in that way. Probably the most appropriate way forward is to have the independent review committee making transparent recommendations, as Ms McNally was saying, and then the minister has to formally respond to those.

Senator CONROY—Why do you think the National Farmers Federation state in their submission to us, which I am sure you have had a chance to look at, that the government has made slow progress and has lacked focus in implementing the Estens report recommendations? I remember some comments late last year from Mr Estens himself, when he said that the government has not actually done it.

Ms McNally—I think a lot has been done. Funding has been made available to a number of the program based regulations. We have now implemented 27 of the 39 recommendations; of those, some are outstanding. In relation to Indigenous telecommunications, we have made significant headway in working with Telstra and the ACA on how to address the complex

issues for Indigenous people around demand and supply. We have made some progress there. There is a recommendation relating to online access centres. We have been working with the state government through fairly intense consultation and we are expecting that the group working on that will make a report in the middle of the year to the Online Council.

Regarding the two recommendations around the local presence plan, we have been looking at what would be the basis of a local presence plan and the basis of a condition. Also, we have a group relating to the regular reviews. The last two that are outstanding relate to network extension and trenching and a review of the NRF. On the network extension and trenching, we have been looking at what are the best options for how those costs can be recovered. We have been consulting with industry and a range of others about what are the best options. We hope to have some views soon. The ACA has completed its review of the NRF and it is just finalising its final advice on that matter, so we hope to have that sorted out this month.

Senator CONROY—You would be familiar with the report of late last year from Mr Estens where he said he did not think the government had met all his recommendations?

Ms McNally—The government has not completed all the recommendations as yet, but it is well on the way.

Senator LUNDY—The minister has previously provided evidence to estimates committees saying the government felt they had satisfied and responded to all of the recommendations and had concluded their program as far as responding to those recommendations was concerned. What has changed since that evidence was given?

Ms McNally—I could not comment on that evidence.

Senator LUNDY—I am just trying to find the *Hansard* reference now because clearly the story has changed.

Ms McNally—I am not aware of that at all.

Senator CONROY—I am perplexed that you said earlier that this was the final response to the bill, that this was it, that this covered off on Estens. Yet you are now also suggesting—

Ms McNally—No, the bill relates to the future-proofing component. I think the earlier comment was related to future-proofing.

Senator CONROY—So you are saying the whole Estens report is not addressed by this, just those particular sections?

Ms McNally—That is right.

Senator LUNDY—The minister at the time made it very clear—I cannot remember which minister it was—that the future-proofing components of the Estens review were not part of what the government considered a formal response to the Estens report, that future-proofing issues were indeed separate, and that allowed them to claim that they had responded to the Estens report and had concluded that program. So can you tell us whether or not future-proofing is now determined to be part of a response to the Estens report?

Ms McNally—Some of the recommendations relate to future-proofing, and those recommendations are being worked on towards implementation. Then there are a number of other recommendations.

Senator LUNDY—So can you confirm that the minister is now describing the future-proofing recommendations as part of the Estens report response?

Ms McNally—If you are asking me whether that is all the government is looking at doing in terms of future-proofing, I cannot comment.

Senator LUNDY—No, that is not the question. The question is: is the minister describing recommendations relating to future-proofing as part of the formal response to the Estens review now?

Mr Cheah—It might be helpful if we get some clarification of what we think the recommendations relating to future-proofing are and what the minister's claims were. I suppose I would feel a little bit reluctant to speak on behalf of the minister in this way. Could you point out to me what you regard the future-proofing recommendations as being, and then we can give you a factual response as to where those are at and how they are currently being handled. That is probably the best way of proceeding.

Senator LUNDY—I will see what I can do. It may be that only the minister can solve this mystery for us.

Mr Cheah—Indeed.

Senator CONROY—Can the minister currently impose a licence condition on Telstra under the Telecommunications Act?

Mr Cheah—Yes, the minister can. In fact, that is how part of the bill process would work.

Senator CONROY—If the minister was inclined, the minister could impose a licence condition on Telstra to maintain a local presence tomorrow. We do not need this bill or anything to do with this bill.

Mr Cheah—That is correct. What the bill does in relation to the local presence plan is make it clear that the minister can also involve the ACA in that process. That was a little bit less clear. What the bill does is clarify the legal ambiguity in that area.

Senator CONROY—A licence condition under the Telecommunications Act would be a disallowable instrument, wouldn't it?

Mr Cheah—I do not think a licence condition is, no.

Ms McNally—A regulation.

Senator CONROY—It would have to be tabled in both houses of parliament and gazetted, I thought.

Ms McNally—A licence condition? No.

Mr Cheah—I will clarify that for you.

Senator CONROY—As far as you are aware, under this bill is the minister or the ACA required to consult with anyone when they make their decision to approve Telstra's local presence plan?

Mr Cheah—The minister is required, before imposing a licence condition on Telstra, to consult for 30 days. There is a 30-day consultation requirement.

Senator CONROY—I was talking about approving Telstra's local presence plans.

Mr Cheah—That would depend on what the terms of the licence conditions include.

Senator CONROY—Is this condition going to be available shortly?

Mr Cheah—You would have to ask the minister that question.

Senator CONROY—Recommendation 4.1 of the Estens report also recommended that the government impose a licence condition on Telstra requiring it to provide a minimum dial-up internet speed of 19.2 kilobits per second for all Australians. Was the inclusion of provisions allowing for the imposition of such a condition considered in the process of creating this bill?

Mr Cheah—I think the minister has already imposed that condition on Telstra. It is already an existing licence condition on Telstra, and that was made in the middle of last year, on 7 July.

Senator LUNDY—We heard from the ACA that they do not have any powers to monitor or to enforce data standards, broadband service standards or anything of that nature, partly because they aren't any. What opportunities are there, from the department's point of view, to provide stronger support for customers who have complaints with the state of their broadband services or lack thereof? What are the regulatory opportunities?

Mr Cheah—To start with, the ACA does actually do some monitoring of data services as part of its new monitoring and reporting framework, which is now available on its web site. It is going to be starting to progressively monitor how those services are being provided.

Senator LUNDY—Which services specifically?

Mr Cheah—You would need to check with the ACA directly on that. Do you have any more information on that, Carolyn?

Ms McNally—Basically, looking at information around internet service providers.

Senator LUNDY—Through internet service providers?

Ms McNally—Yes.

Senator LUNDY—What about the provision of broadband and the issue of remediation of pair gains?

Mr Cheah—Generally in relation to remediation of pair gains, in relation to the narrowband services I think Mr Horsley already answered some of that question. The actual recommendation in the RTI was:

Telstra should be required to demonstrate that it has an effective strategy to address any dial-up data speed issues arising from poorly performing pair gain systems. Telstra should provide a formal undertaking to the Government in relation to any actions necessary to implement such a strategy.

That was recommendation 4.2. That recommendation has in fact been implemented. Telstra has described its strategy to the government and there is a formal agreement between the government and Telstra about how that is going to work. That is available on the DCITA web site.

Senator LUNDY—That formal agreement?

Mr Cheah—Yes. It describes what Telstra's strategy is. As you are aware—and it was described in the RTI report—they are responsible for supporting the phone services of 1.3

million customers throughout Australia. Most of the pair gain systems do not seem to be causing any kind of barrier, at least to narrowband performance.

Senator LUNDY—We know that. The issue is primarily about broadband.

Mr Cheah—Yes. The government's strategy in relation to broadband, as you are aware, is basically via the HiBIS program, which enables broadband to be provided on a basis equivalent to that of metro throughout Australia. We have got 19 registered HiBIS providers. Several of those already provide an offering on a national basis to whoever wishes to sign up with the relevant providers, and that includes Telstra. That is provided by a range of technologies, including ADSL in some cases and satellite—

Senator LUNDY—Yes, I understand all of that.

Mr Cheah—and sometimes a combination of ISDN and satellite.

Senator LUNDY—I did not ask for a description of HiBIS. Can you tell me, given the recommendation that you just read out, whether that recommendation and the subsequent agreement between Telstra and the government require the removal of broadband-inhibiting pair gain systems?

Ms McNally—No.

Mr Cheah—No, it does not.

Senator LUNDY—The other question I have relates to voice services. Some of the pair gain systems prevent all customers on a particular pair gain from accessing dial tone at any one point in time. Does the agreement between the government and Telstra require the removal of dial tone inhibiting pair gain systems?

Mr Cheah—If there is a poorly performing pair gain system, the agreement says how that will be fixed, yes.

Senator LUNDY—Does the agreement require the removal of dial tone inhibiting pair gain systems in Telstra's network or not?

Mr Cheah—It depends on what you mean by 'dial tone inhibiting'.

Senator LUNDY—Six by 16, six by 15 style pair gains which provide six dial tones to 16 customers and only six people can be using those facilities at any one point in time.

Mr Cheah—If there is a problem, the answer is that they will—

Senator LUNDY—No, if there is not a problem. If those systems are working as they are designed, which is to provide six dial tones to 16 customers, and those six dial tones have to be shared, is there a requirement on Telstra to remove those pair gain systems?

Mr Cheah—Certainly there is to upgrade them, and those are some of the older ones. I am pretty sure the agreement covers that, but we can provide you with further details on that.

Senator LUNDY—I am very interested in the specific response to that, because currently those systems are not being required to be removed.

Senator CONROY—I want to go back to the issue we were discussing before. I have a copy of the bill and the EM attached to it. Page 4 of the explanatory memorandum, which deals with schedule 1, states:

Under section 63 of the Telecommunications Act, the Minister for Communications, Information Technology and the Arts may, by written instrument, declare that Telstra's carrier licence is subject to such conditions as are specified in the instrument. A copy of any such instrument must be published in the Commonwealth of Australia Gazette ...

Mr Cheah—It is a disallowable instrument.

Senator CONROY—It is a disallowable instrument. The reason I was asking that question was to try to set out what happens now. Under the bill, a local presence plan can be promulgated without it being a disallowable instrument. In fact, a number of witnesses appearing before us today, including Telstra, have argued that they believe, for transparency purposes, that even the local presence plan should be mandated to be in that form—I mean, the minister could put it in this form, but she is no longer required to do so under this bill. Even Telstra have put forward an argument that it should be a disallowable instrument. That was what I was trying to get an understanding of before. I probably explained it very badly.

Mr Cheah—No, Senator. The bill does not really change the current legal situation at all in the sense that the minister can make a licensed condition now to require Telstra to have a local presence plan. That is the current intention. It is the licence condition which is a disallowable instrument. The bill does not change that in any way, shape or form.

Senator CONROY—My interpretation is that that is not quite right. It is a fine point but it is an important point in that the minister can now just issue these local presence plans but not in the form of a disallowable instrument, following on from this bill.

Ms McNally—Basically, you can require a local presence plan through a licence condition?

Senator CONROY—She can do that now—

Ms McNally—That is right.

Senator CONROY—but this bill gives her a slightly different set of powers. That is my interpretation on the reading of it, and that is what I am trying to clarify with you.

Ms McNally—It is not my understanding that it gives her a different set of powers.

Mr Cheah—The only provision that relates to a local presence is in part 1 on page 3 of the bill. It says:

1 After section 65

Insert:

66 Condition requiring Telstra to maintain a local presence in regional, rural and remote parts of Australia.

It then goes on to describe the main operative provision and it states:

- (2) The condition may make provision for, or in relation to, a matter by empowering the minister or the ACA to make decisions of an administrative character.

That is the main operative provision.

Senator CONROY—But 'administrative character' is different from a disallowable instrument.

Ms McNally—That is right.

Senator CONROY—So, in other words, this bill gives the minister the power to do what she can do currently but only in the form of a disallowable instrument, but it actually gives her the administrative power to issue a local presence plan, which by definition is not a disallowable instrument.

Mr Cheah—The minister would not be issuing a local presence plan as such.

Senator CONROY—But she can delegate the power for a local presence plan to be done by the ACA, or ACMA as it will be, which, again, is not a disallowable instrument.

Ms McNally—That is right.

Senator CONROY—That is what I am trying to get to. This bill actually opens up—

Mr Cheah—It clarifies it.

Senator CONROY—It is pretty clear that, if she wants to do it at the moment, it has to be through a disallowable instrument.

Ms McNally—No. If she wants to do it at the moment she can still impose a licence condition.

Senator CONROY—Which is a disallowable instrument, as you would agree.

Mr Cheah—She could impose a licence condition on Telstra right now and say, ‘Telstra, you must produce a local presence plan.’ The licence condition would be disallowable, but the plan would not necessarily be. As the act currently stands she could do that. What this clarifies is that she can impose the condition on Telstra and then underneath that have a set of administrative decisions being taken. That is the way it works.

Senator CONROY—If the minister wanted to try to structure it in that way she could. I guess she could move down that path now. As you say, this actually clarifies that she can now put in place local presence plans that are not subject to any parliamentary scrutiny. It is clarifying that she can do this.

Mr Cheah—It simply clarifies an existing power, yes.

Senator CONROY—It is just that, for instance, Barnaby Joyce and other senators might want to have a say about what these local presence plans should be. That is what I am trying to get to the bottom of. I think we have established your definition of legal clarification and my understanding of the bill.

CHAIR—As that appears to be the end of questions, we thank you for appearing this morning. That concludes today’s proceedings. I thank all witnesses for their informative presentations, and I thank Hansard and the committee secretariat.

Committee adjourned at 12.37 p.m.