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SENATE

SELECT COMMITTEE ON THE NATIONAL BROADBAND
NETWORK

Reference: Implications of the proposed National Broadband Network

TUESDAY, 7 OCTOBER 2008

SYDNEY

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**SENATE SELECT COMMITTEE ON
THE NATIONAL BROADBAND NETWORK**

Tuesday, 7 October 2008

Members: Senator Fisher (*Chair*), Senator Birmingham (*Deputy Chair*), Senators Lundy, Ian Macdonald, Nash and Sterle

Senators in attendance: Mark Bishop, Birmingham, Fisher, Ludlam, Lundy, Ian Macdonald, Nash, Sterle

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Mark Bishop, Boswell, Boyce, Brandis, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Marshall, Mason, McEwen, McGauran, McLucas, Minchin, Moore, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Stephens, Troeth, Trood, Williams, Wortley and Xenophon

Terms of reference for the inquiry:

1. To inquire into and report on:
 - a. the Government's proposal to partner with the private sector to upgrade parts of the existing network to fibre to provide minimum broadband speeds of 12 megabits per second to 98 per cent of Australians on an open access basis; and
 - b. the implications of the proposed National Broadband Network (NBN) for consumers in terms of:
 - i. service availability, choice and costs,
 - ii. competition in telecommunications and broadband services, and
 - iii. likely consequences for national productivity, investment, economic growth, cost of living and social capital.
2. The committee's investigation should include, but not be limited to:
 - a. the availability, price, level of innovation and service characteristics of broadband products presently available, the extent to which those services are delivered by established and emerging providers, the likely future improvements in broadband services (including the prospects of private investment in fibre, wireless or other access networks) and the need for this government intervention in the market;
 - b. the effects on the availability, price, choice, level of innovation and service characteristics of broadband products if the NBN proceeds;
 - c. the extent of demand for currently available broadband services, what factors influence consumer choice for broadband products and the effect on demand if the Government's fibre-to-the-node (FTTN) proposal proceeds;
 - d. what technical, economic, commercial, regulatory and social barriers may impede the attainment of the Government's stated goal for broadband availability and performance;
 - e. the appropriate public policy goals for communications in Australia and the nature of regulatory settings that are needed, if FTTN or fibre-to-the-premise (FTTP), to continue to develop competitive market conditions, improved services, lower prices and innovation given the likely natural monopoly characteristics and longevity of the proposed network architecture;
 - f. the possible implications for competition, consumer choice, prices, the need for public funding, private investment, national productivity, if the Government does not create appropriate regulatory settings for the NBN;
 - g. the role of government and its relationship with the private sector and existing private investment in the telecommunications sector;
 - h. the effect of the NBN proposal on existing property or contractual rights of competitors, suppliers and other industry participants and the exposure to claims for compensation;
 - i. the effect of the proposed NBN on the delivery of Universal Service Obligations services;
 - j. whether, and if so to what extent, the former Government's OPEL initiative would have assisted making higher speed and more affordable broadband services to areas under-served by the private sector; and
 - k. the cost estimates on which the Government has based its policy settings for a NBN, how those cost estimates were derived, and whether they are robust and comprehensive.
3. In carrying out this inquiry, the committee will:

- a. expressly seek the input of the telecommunications industry, industry analysts, consumer advocates, broadband users and service providers;
- b. request formal submissions that directly respond to the terms of reference from the Australian Competition and Consumer Commission, the Productivity Commission, Infrastructure Australia, the Department of the Treasury, the Department of Finance and Deregulation, and the Department of Infrastructure, Transport, Regional Development and Local Government;
- c. invite contributions from organisations and individuals with expertise in:
 - i. public policy formulation and evaluation,
 - ii. technical considerations including network architecture, interconnection and emerging technology,
 - iii. regulatory framework, open access, competition and pricing practice,
 - iv. private sector telecommunications retail and wholesale business including business case analysis and price and demand sensitivities,
 - v. contemporary broadband investment, law and finance,
 - vi. network operation, technical options and functionality of the 'last mile' link to premises, and
 - vii. relevant and comparative international experiences and insights applicable to the Australian context;
- d. advertise for submissions from members of the public and to the fullest extent possible, conduct hearings and receive evidence in a manner that is open and transparent to the public; and
- e. recognise the Government's NBN proposal represents a significant public sector intervention into an increasingly important area of private sector activity and that the market is seeking openness, certainty and transparency in the public policy deliberations.

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Committee met at 9.06 am

CHAIR (Senator Fisher)—Ladies and gentlemen, I declare open this public hearing of the Senate Select Committee on the National Broadband Network. Today the committee will conduct the first of several hearings scheduled for the coming months. The proceedings are public; however, the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading information to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken. The committee will then determine whether it will insist on an answer having regard to the ground on which the objection is claimed. If the committee determines to insist on an answer, a witness may request that the evidence be given in camera. Such a request may, of course, be made at any other time by a witness.

[9.07 am]

CHAPMAN, Mr Alexander, Executive Officer, Policy and Strategy Coordinator, Australian Federation of Deaf Societies

WALTERS, Ms Sheena, Manager, Interpreting and Advocacy, Deaf Society of New South Wales

CHAIR—I welcome our first witnesses. Thank you for giving up your time to come and talk to us. The committee has received a submission from the Australian Federation of Deaf Societies and numbered it 10. Mr Chapman or Ms Walters, do you wish to make any amendments or alterations to your submission?

Mr Chapman—No, it is pretty straightforward.

Senator LUNDY—Chair, could I interrupt and make a brief statement for the record?

CHAIR—Yes.

Senator LUNDY—Sorry to interrupt. It is important for me to place on the record of this inquiry that my husband, Mr David Forman, works for the Competitive Carriers Coalition. There has been some concern expressed about our relationship in the context of policy matters, and I want everyone to understand that that relationship exists and has for some time and hopefully will for some time to come.

CHAIR—And outlast the duration of this committee!

Senator LUNDY—Indeed. Thank you, Madam Chair.

CHAIR—Thank you, Senator Lundy. Mr Chapman or Ms Walters, do you wish to make an opening statement to the committee?

Mr Chapman—Yes, if that is okay. I will just talk about our organisation—the Australian Federation of Deaf Societies. The organisation was formed in 1996 to represent the deaf service providers in Australia and the needs of the Australian deaf community. Our members are the Deaf Society of New South Wales, the Victorian Deaf Society, the Tasmanian Deaf Society, Deaf Services Queensland, the Royal South Australian Deaf Society and the Western Australian Deaf Society. We cover a large range of Australia and are the major providers of deaf services to the Australian community. Those services involve employment, education, Auslan interpreting and community and family services. So we cater for a large range of services.

With the support of the federal government, through our members we administer the National Relay Service. That is a communication system so deaf people can have over-the-telephone or over-the-internet conversations with hearing people. We also administer the Auslan for Employment program, which allows deaf people to go through training and employment circumstances with the help of interpreters.

The national broadband network provides us a great opportunity to provide what is called video remote interpreting, which will allow people in regional and rural communities to access interpreters who are based in the major cities. At the moment, because there is not good enough infrastructure to support video remote interpreting, we find it hard to provide interpreting services to regional communities. At the state that it is now, we usually have to fly someone out to a remote community to have them interpret, which is a significant cost.

CHAIR—Thank you.

Senator NASH—Can you give us a bit more detail about how video remote interpreting works? Making sure the infrastructure is there to do this through the NBN process seems to be the crux of this submission.

Mr Chapman—I will hand over to Sheena. She is the expert on it.

Ms Walters—It is something that we already provide. As opposed to on-site interpreting where there is a physical interpreter present to interpret between Auslan and English, it is using videoconferencing equipment where there is an interpreter on one end of the line and on the others are the deaf person and the hearing person. The interpreter is based in a central location, usually an office in a city, and it enables greater service provision, because there is a real shortage of sign language interpreters in Australia. It will assist with the demand as well. We have a really high demand for sign language interpreters. This is a worthwhile opportunity.

Senator NASH—How does it physically work? Does it come up on the screen in a room?

Ms Walters—Yes. The interpreter is on one side, facing a screen, and there is a video camera placed on top of the television. That enables the people on the other side to see the interpreter and the interpreter to see what is going on in that other space. There are a range of devices, like D-link equipment or Tandberg and other technology, that can be used to facilitate it. Historically it has been operating with ISDN, but IP is definitely the way forward. For it to work effectively there really needs to be a dedicated line so the video quality is of a high enough standard for the interpreter to see the sign language effectively.

CHAIR—I ask the witnesses to be careful of abbreviations when you are giving evidence. Some of us are more educated and savvy in this area than others, and you have been talking the talk for quite some time. Thank you; continue.

Ms Walters—Sure. IP—internet protocol—is the broadband channel with which VRI can operate, and it really requires a minimum of 512 kilobytes per second upload and download speed for the service to operate effectively. Into the future that will be necessary from the bases where those services are provided, within deaf people's homes and in offices, businesses and government buildings throughout Australia, particularly regionally.

Senator NASH—So the rollout of fast broadband is going to make a huge difference, especially for rural and regional Australia, as you said at the outset? That being the case, have you had any discussions with government about what government's role is, as this rolls out, in making sure that you have access to this type of thing for the VRI?

Mr Chapman—I think, first of all, we would prefer not that it be rolled out but that it be rolled in. That is quite important to us. At the moment the higher broadband speeds are in metropolitan areas. For us that serves no purpose, because the deaf communities that need this most are in rural and regional areas. We would prefer that the broadband be rolled in. We see the government role in this as making sure that, when it does go to tender and the tender process is underway, these requirements are looked at in a community-first nature, that we are not specifying metropolitan areas and slowly working out. We would prefer that it comes in.

Senator NASH—Yes, I absolutely agree with you. Do you think it is being considered seriously as part of the tender process? Until we had your submission it was not something that had really crossed my mind, and it probably should have. But now, having received this submission, it is really important that this is considered in the whole framework. Do you think it is being given serious consideration?

Mr Chapman—I do not really know. That is certainly up to the federal government to comment on. Hopefully, the federal government will realise that this is quite important, especially for the deaf community, who for a long time have gone without these types of services in regional areas. We hope that it will be looked at and that the recommendations in the submission will be considered.

Senator NASH—Absolutely. Is there a significant cost attached to it?

Ms Walters—There are various programs available to fund the interpreting service provision, like the Auslan for Employment program that Alex mentioned earlier. Also, the National Auslan Interpreter Booking and Payment Service covers medical interpreting. That is paid for by the federal government, but employers also pay for the cost of interpreting. The broadband is basically a dedicated connection. At the moment you are looking at \$80-\$120 a month with various service providers. It is important that we try to ensure that that is affordable for the deaf community. As well as there being a fast enough bandwidth, it also needs to be affordable.

Mr Chapman—When looking at the cost for deaf people in regional and rural areas there are actually two issues. Firstly, at the moment the cost is scaled quite highly to rural areas, so they are paying a lot for either a satellite connection or whatnot. On top of that, to access the interpreting service they pay for the broadband connection, the interpreting cost and the STD call as well, so the cost is quite high. The thing that makes up a lot of that cost is the broadband network.

Senator NASH—Do you have cases where people have said, ‘We really would like to access this but we simply can’t afford it’?

Mr Chapman—The Australian Communication Exchange ran video relay interpreting two years ago, I think. That is a slightly different service but on the same sort of level. They found that 40 per cent of the Australian deaf community did not know about the technology, but after they ran the trial with them another 40 per cent said they would definitely use it if it were made available.

Senator NASH—Finally, do you think government should be subsidising it to some degree?

Mr Chapman—Under the Disability Discrimination Act they definitely should be.

Ms Walters—I would like to elaborate a little bit on the video relay service aspect. The Australian deaf community has become a lot more aware of the services that are available in the United States and other countries and feel that we are quite behind in access here. A video relay service is where a deaf person with their television in their own home can dial into a video relay service. On the other end there is an interpreter who makes a phone call for them. Deaf people are able to make calls using their own language, which is recognised by the Australian government. Certainly that has contributed to the increase in the standard of living for deaf people in the United States and other countries where this service is available. I think they are really looking forward to having that type of service enabled in Australia.

Mr Chapman—You mentioned before that you hope that the federal government can subsidise such a program and look at the National Relay Service, which is what Sheena was just talking about. If there were an opportunity for the new national broadband network to support video remote interpreting, rolling in video to the National Relay Service would then provide a fantastic service.

Senator LUNDY—What is the range of bandwidth required for the video relay service that you are describing?

Ms Walters—It needs to be a minimum of 512 kilobits per second.

Senator LUNDY—Is that synchronous or asynchronous—512 both ways?

Mr Chapman—Synchronous both ways.

Senator IAN MACDONALD—Is that kilobits or megabits?

Ms Walters—Kilobits.

Mr Chapman—What is more important is the upload speed, not the download speed. Obviously you need to go two ways with video interpreting.

Senator LUNDY—Where the video relay service is functioning in other countries, does it function more efficiently at a higher bandwidth or is the service generally operating at 512 synchronous?

Ms Walters—I believe it is operating at higher than that in the United States.

Senator LUNDY—Does that mean you can get a better service or is it just something like a better resolution, less latency?

Mr Chapman—Obviously, with interpreting—being able to see Auslan being done over a network—the higher the speed the better. In fact, if the resolution is higher and the speed is quicker, the information is passed faster and the quality is better for both the deaf person and the interpreter.

Senator LUNDY—Can you describe a little more what other hardware would be required at the consumer end to make a video relay service work if universal broadband were available either at that speed or at higher speeds under the national broadband network.

Ms Walters—At the consumer end, the main device that is being used abroad is a D-Link. DVC-1000 is the technology that was first used, and recently in the US they released a second version of that. It is about \$500 to buy that piece of equipment, and then all you are required to do is connect it to a television and a broadband port and you are ready to go.

Senator LUNDY—Are you able to get, for example, internet connection off that same link, albeit not at the same time as using the video relay service? Can that same connection be used for internet connectivity?

Ms Walters—If it is being shared across a network or if the internet is being used at the same time as the D-Link device, obviously the quality will reduce.

Senator LUNDY—I am asking the question in the context of: if people were to use such a service would they also have to subscribe to another service to get their household internet? It sounds like if you get the broadband connection for a video relay service you could also use it for your household internet access and other things.

Ms Walters—Yes.

Senator LUNDY—You mentioned the D-Link. Does it look like a set-top box or that kind of thing?

Ms Walters—It is similar, yes. It is about this big and it goes on top of the television screen. It has a camera which faces you. It is quite a simple device.

Senator IAN MACDONALD—Not that numbers are terribly important, but how many people are we talking about in Australia and in regional areas who would benefit from this service?

Mr Chapman—The problem is that we have not had much research done at the moment. We are currently approaching the federal government to support a research project to see what the signing deaf population is in Australia. The last accurate research that we have into the signing deaf population in Australia is from 1991 and was released in 1992. There were 18,000.

Senator IAN MACDONALD—What are you saying? ‘Signing deaf’?

Mr Chapman—Signing deaf population.

Senator IAN MACDONALD—What does ‘signing’ mean?

Mr Chapman—Using Auslan, Australian Sign Language, as their first language.

Senator IAN MACDONALD—So about 16,000 is your best guess.

Mr Chapman—About 18,000.

Senator IAN MACDONALD—In the last 15 years would you expect that to have increased?

Mr Chapman—Yes, we think it has increased.

Senator IAN MACDONALD—Is that in the whole of Australia?

Mr Chapman—That was in the whole of Australia, yes.

Senator IAN MACDONALD—Do you have any feel for how many of those people would be in rural and regional Australia? As well, do you have any feel for which states they are in or where they are? I accept that you do not have data, but do you have a gut feeling about it?

Mr Chapman—Because we have not provided much VRI interpreting service—we do have programs underway, but it is not a major form of communication and service provision for us at the moment because of the current state of the broadband network—we actually do not have much of an idea of the base population in Australia. But looking on from that survey and the research that was conducted by the Australian Communication Exchange, 40 per cent of that deaf population would use VRI if it were made available.

Ms Walters—I think it is fair to say that it would be reasonably on par with the hearing community.

Senator IAN MACDONALD—Okay. Before, you said that they have to pay the broadband costs and the STD costs. You also said they had to pay the interpreter costs. What is the cost of an interpreter and how do you pay for that? Does your organisation subsidise it?

Mr Chapman—It depends on what types of services we are providing. It depends from state to state. Some states will pay to provide an interpreter for things like funerals and other community events. Sheena will be able to talk further about the costs.

Ms Walters—Sign language interpreting in New South Wales costs about \$95 an hour. There is a minimum of two hours, so anyone using an interpreter on site physically would pay \$190 in business hours. That gives you a rough idea.

Senator IAN MACDONALD—Normally, would the people who use it be paying for it themselves?

Ms Walters—Very rarely, but their employers pay for it and other service providers, like banks, pay for that service. With the Disability Discrimination Act, more and more organisations are paying for interpreters to enable deaf people to access their services or employment. But there are still many for whom those prices are outside what is affordable and they will say it is an unjustifiable hardship for them to pay that cost. In those cases the Deaf Society often funds it from its own reserves or from income from other sources.

Mr Chapman—With regard to that unfunded interpreting, what the state societies pay at the moment amounts to just over \$540,000 per year.

Senator IAN MACDONALD—I do not say this as a matter of fact, but there is a suggestion that only two, three or four per cent of Australia may not be covered by the new broadband proposals. Have you heard that mentioned in the media?

Mr Chapman—Yes. One of the recommendations in our submission is that it reach the proposed 98 per cent of the population.

Senator IAN MACDONALD—You do not know if you have any clients in the two per cent part of Australia?

Mr Chapman—No.

CHAIR—I would like to further explore some of your answers to Senator Macdonald's questions in terms of the basis upon which you are suggesting there is a need. You cannot geographically split up to what extent the people who require the services are regional and to what extent they are city based, yet you are suggesting, if I understand you correctly, that what you want is of utmost need rurally and regionally. Can you expand on that?

Mr Chapman—That is because of the nature of the service itself. It is built for people in regional and rural areas. If a deaf person needs an interpreter in a metropolitan situation we can send the interpreter out quite quickly and they can be at the appointment half an hour later, whereas if we have a meeting out in Griffith that a deaf person needs an interpreter for we are in a situation where we have to send an interpreter out; therefore we have travel costs and time away to look at. Obviously, with video remote interpreting we can have the interpreter in an office or room in Sydney provide the interpreting for that meeting in Griffith. We do not have to send the interpreter out. With the lack of supply of interpreters we have at the moment, it is a big bonus to us because we have them freed up for further situations on the same day or the next day. They are not caught travelling out in the regional and rural communities.

CHAIR—Are you after provision of the service or provision of the service at a cheaper price? I see both themes coming through, but can you perhaps prioritise? Your third recommendation talks about standard price across the board but what if it were, for example, a standard high price?

Mr Chapman—Obviously, we do not know at the moment what the prices would be because we have not seen tender documents et cetera, but I think the most important thing is that the quality of the service is well above 512 kilobits so that we can have a service that is ready to go. The most important thing is that we can provide the service. Beyond that, we can look at the cost. Looking at monopolies et cetera is another issue, but as long as we have the service we can work from there.

CHAIR—You have organisations, if I understand it correctly, who are members of your organisation. On what basis do those member organisations claim membership themselves?

Mr Chapman—Of the Australian Federation of Deaf Societies?

CHAIR—Yes. But also membership of deaf people.

Mr Chapman—The Australian Federation of Deaf Societies is the incorporated association of all the state deaf societies, and they are the major service providers. Therefore, as they are the major service providers there is only a number of very small other ones. Being the major provider of services to the Australian deaf community, we are obviously in a situation where we have to represent their needs.

CHAIR—Do people pay subscriptions to be members of your member organisations?

Mr Chapman—The state societies pay to be members of the Australian Federation of Deaf Societies. We are all not-for-profits, of course, and there is a nominal fee—

CHAIR—For individuals to join?

Mr Chapman—No. There are no individual members of this organisation, just the state societies.

CHAIR—To what extent do you or your member organisations receive assistance from governments in providing your services?

Mr Chapman—Usually it is done through the member organisations, but there are the two programs that we do provide through our member organisations. We are the national body that represents them, and then those services are provided through them. We currently have two programs, the National Relay Service and the Auslan for Employment Program, and they are then administered by the states.

CHAIR—Thank you.

Senator MARK BISHOP—With the improvement in technology, particularly that being sold by Cochlear in the last five to 10 years, I presume there has been a significant reduction in the instance of people complaining of either mild deafness or serious or fundamental deafness. Is that correct? In your submission you said that something in the order of 16,000 people are affected around Australia. Are those numbers coming down at any significant rate?

Mr Chapman—It depends on the level of severity of deafness. At the moment we are obviously seeing a lower proportion of people who were born deaf but a higher proportion of people with acquired hearing loss. That is obviously because of things like the iPod fashion and we are expecting a very high demand in the future from people who have high hearing loss because of worksites, music et cetera. Those statistics that we found in 1991 and 1992 are the only ones you can rely on at the moment.

Senator MARK BISHOP—So for the incidence of deafness you are relying on stats from 1991 and 1992.

Mr Chapman—That is for the signing deaf population.

Senator MARK BISHOP—You are unable to update us on the spread of cochlear and how that has had an effect in terms of people using your services?

Ms Walters—We can certainly say that there has been a much prevalence of cochlear implantation across Australia, but that does not necessarily mean that those people are now hearing. Cochlear implants are not always successful. They are not a cure. Children are still accessing sign language in schools and may rely on it into the future. The Australian signing deaf community, I strongly believe, will continue for many years to come.

Senator MARK BISHOP—I am sure it will, because some people will never be able to afford it or their deafness is so fundamental that technology will not help.

Ms Walters—Or they just do not want it.

Senator MARK BISHOP—For whatever the reason is, yes. So we do not have the current statistics. But in terms of those affected by deafness—and I am talking here about serious or fundamental deafness, not something that might be attended to by technology—do you have figures on the proportion for people who are born with it and those who acquire deafness through misuse of technology or noise in factories or whatever?

Ms Walters—The statistic is that one in five people have a hearing loss, whether that be through age or noise. The majority of people in that one-in-five statistic will be people who have an acquired hearing loss over time. A much smaller proportion will be those who are born deaf or have acquired it early in age and therefore use sign language as their primary means of communication.

Mr Chapman—What is also important is not the level of deafness itself but the fact that the person uses Auslan to communicate. That is why when we are doing this research we are moving beyond the fact that people are either hard of hearing or deaf and looking at who uses Auslan as their main form of communication, because that is where our services are. It might make no difference whatsoever if a person can hear but uses Auslan as their first language or if a person is completely deaf and uses Auslan as their first language and their main form of communication. To us, because we are providing the services, they each count as one person. So it is not particularly for us to say, 'Of that 18,000, 15,000 are profoundly deaf.' We would say, 'Of the 18,000, 18,000 use Auslan.' So that is where our services are provided.

Senator MARK BISHOP—Okay. Thank you.

Senator LUNDY—I note that you include in your submission the reference to the Auslan VRI project. Is the platform that has been created through the state government of Victoria's funding an appropriate platform for a national service?

Mr Chapman—I think so; definitely. Looking at the advantages seen through just providing the service and the amount of demand that has been created for VRI out of both Victoria and New South Wales since they started to providing the services, it would be of huge advantage to the Australian deaf community to have a national service based on VRI.

Senator LUNDY—Can you describe what the process would be to use that work that has occurred and have it spread to or adopted by all parts of Australia?

Mr Chapman—Obviously, the approach would be through the National Broadband Network to get the network to support through 98 per cent of the population the technology aspects of it. From there, we can look at accessing either federal funding or federal grants to set up, all rolling in to the national video relay services as well. That would be a process that we would have to look at.

Senator LUNDY—Such a service would tap into state resources that currently fund the interpreting services.

Mr Chapman—At the moment we do not have any funding for interpreting services, apart from employment, which is federally funded.

Senator LUNDY—I see.

Mr Chapman—Therefore, if it was a national system, we would like at the federal government and not the state governments.

Senator LUNDY—So the Gippsland Auslan interpreting service referenced in the submission is federally funded.

Ms Walters—I am not sure that there is one.

Senator LUNDY—It talks about it being recently set up.

Mr Chapman—That would probably be a private service. That is separate to our state societies.

Senator LUNDY—Okay.

Mr Chapman—They would most probably be self-funded.

Senator LUNDY—So people would pay for that service and presumably it would have a staff of volunteers to manage it.

Mr Chapman—Correct. That tends to be the uniform approach across Australia.

CHAIR—Thank you very much, Mr Chapman and Ms Walters. Thank you for your time.

[9.37 am]

WEIR, Ms Deanne, Group Director, Corporate Development and Legal Affairs, AUSTAR United Communications Ltd

CHAIR—I welcome you, Ms Weir. Thank you for giving us your time today. This is our first day of a series of public hearings into the National Broadband Network. Do you wish to make any variations or amendments to your submission, which is No. 16 in our pack?

Ms Weir—No.

CHAIR—I invite you to make an opening statement to assist the committee before we ask questions of you.

Ms Weir—AUSTAR is a regionally focused pay television provider. We provide services by satellite to about one-third, potentially, of Australian households, with a focus on regional areas. We have been doing that for about 12 years now. We have over 700,000 households, so about two million regional Australians are choosing to watch their television through AUSTAR. Since we began we have been very interested in providing broadband services. In 1999-2000, we purchased a range of spectrum licences. We, through various developments, we now hold spectrum licences in regional areas that tend to mirror the footprint in which we provide our television service. We hold about 100 meg of 2.3 gigahertz licences and about 65 meg of the 3.4 to 3.5 licence range. They are perfect for the WiMAX product. We would love to be able to exploit those to provide broadband services in regional areas. We have had a few goes at doing that. But life is complicated. The most recent announcement that we made, which was in 2005, was that we were going to roll out broadband services into about 25 markets in regional Australia. Not long after we made that announcement, the former government announced the Broadband Connect Infrastructure Program, so it made sense to put those plans on hold to wait and see how the Broadband Connect Infrastructure Program process panned out.

We formed an alliance with SOUL telecommunications and Unwired that we called *AUSalliance* and bid for the Broadband Connect money. Unfortunately, we were not successful in that, but then ultimately we entered into discussions with OPEL and announced in January this year that we were selling our spectrum licences to the OPEL consortium to be used by OPEL to provide the WiMAX element of their offering under OPEL. As part of that we had a very comprehensive wholesale arrangement with Optus, and then would have had one with OPEL where we would have been using our strong retail brand to resell the OPEL and other Optus services into regional Australia. The deal was, of course, contingent upon the OPEL consortium preceding. Unfortunately, when the new government decided not to proceed with OPEL, that deal fell over.

We are still holding those spectrum licences, we are still passionate about wanting to provide broadband services into regional Australia and we would see ourselves being a wholesale customer of the national broadband network, but we do have some concerns about how that would play out. We are concerned about ensuring that there is a very appropriate regulatory regime to surround access to the network. Whilst we were of course disappointed when we did

not win the Broadband Connect funding, the OPEL proposal had a lot of merits to it, including the fact that it was a structurally separated entity, and we think that is quite critical when there is such a large amount of government money going into this project. Really, elements of the national broadband network will almost have bottleneck characteristics for a very long time to come. We think it is quite critical that there be a degree of separation and strong regulation around access to that.

So, whilst we support the government's initiative in doing this, we think it is actually very critical that there be proper regulatory rules. That is one of the things that concerns us about how this is played out—that the regulatory rules have not been set prior to the tenders being called for, because, to put oneself in the position of a tenderer, you are obviously going to want to take the rules as they are today when you are working out the funding and the rules around the tender that you are putting forward. So we think there is a little bit of an issue with that timing. But we believe that the biggest area of need is in regional Australia, and we would hope to see a positive outcome for regional Australians out of this process.

CHAIR—Thank you. Senator Birmingham.

Senator BIRMINGHAM—Ms Weir, thanks for your time today and for the presentation.

Ms Weir—My pleasure.

Senator BIRMINGHAM—Can I start with issues of technology choosing and the picking of winners and so on. Your submission makes it quite clear:

The Government should avoid choosing a technology winner ...

Why do you believe that? What mix of technologies do you think needs to be applied, if, indeed, a mix is the preferable outcome?

Ms Weir—Technology is obviously changing every day. When one looks at fibre today and the capacity of fibre, of course it is easy to say that fibre is the best outcome in terms of providing the broadest range of services and the highest degree of capacity. But there has to be a 'horses for courses' approach. Other technologies, such as wireless, are also capable of providing high-bandwidth services and can be much more economically rolled out. By dictating fibre to 98 per cent of the population—although that is not necessarily technically what the tender talks about, but it is certainly the major public perception—I think that there is a concern that you over-engineer the solution for some geographic areas and you may almost set up a set of rules that work against innovation because other technologies that come along may well be as suitable.

On that point, our parent company, Liberty Global, actually has an investment in a new company that is just starting up internationally called O3b Networks. O3b stands for the 'other three billion', which I think is a fantastic name. They are based on satellite technology with low-orbiting satellites that they propose to launch in 2010 or 2011. The initial focus was to try and provide low-cost satellite broadband access to African countries, but they are now going to roll that out around the world. We have just had some chats with that company, which have been quite fascinating. If what they are talking about can be delivered upon, there is a potential for

them to offer broadband services at as little as five percent of some of the current access prices, which is quite phenomenal. In today's financial market and everything else, whether they will be able to raise all the funds they need to do that is perhaps another question.

O3b is quite a fascinating development that shows that there is constant technical evolution. To be realistic about it, based on the process and the timing of OPEL, it is unlikely the government would be in a position to make a decision on the tenderers until, say, the middle of next year. By the time the contracts are let and the network starts to be built, you are talking 2013 or 2014 before the network under this program is rolled out, while spending up to \$5 billion of government money on doing that and dictating certain technical parameters. Who knows where the market will have gone or where the technology will have gone, even within that five- to 10-year time frame? What looks fantastic in 2015 by 2020 may not be as high bandwidth as what it was. Of course speed is not everything. It is obviously also about quality, throughput, the ability to handle high traffic et cetera, so it is a mix. Frankly, we as a technology company have difficulties making calls and decisions on these things sometimes, so we think it is very difficult for governments to be trying to second-guess technological development.

Senator BIRMINGHAM—Just to be clear, you are not a part of any consortium bidding for the NBN.

Ms Weir—No, we are not.

Senator BIRMINGHAM—So obviously your comments today come, in that sense, from somebody external to that process. Do you believe that the request for proposals has at least got it right in terms of broadening the terms of the technological mix that is possible? Obviously the government's fibre-to-the-node policy announced in the pre-election context sounded very exclusive. You mentioned that the RFP documents are not quite as prescriptive as that. Do you think they are open ended enough, from the assessment that AUSTAR has undertaken?

Ms Weir—They are certainly open ended. There may be a concern that the public impression is being created that it is all about fibre. In the process some people have used that to perhaps denigrate the wireless technology as an option, which is a bit unfortunate because the various wireless technologies are very, very capable of providing equivalent services to what could be provided by some fibre solutions as well. I do not have a concern about the technical terms of the tender. Our concern is more around the public perception and the continual focus on fibre, fibre, fibre.

Senator BIRMINGHAM—Perhaps one of the luckiest things that happened to AUSTAR was not winning the Broadband Connect tender—

Ms Weir—We still spent a lot of money.

Senator BIRMINGHAM—but you still spent a lot of money on the tender and obviously were negatively impacted in the end on the sale of spectrum and so on, too.

Ms Weir—We would hope that whoever ends up being the successful tenderer would also understand that those spectrum licences are in fact a very effective way of providing services into regional areas. We are ready, willing and able. Without going into any matters of

commercial-in-confidence, we are in discussions with various parties about those spectrum licences and remain very willing to agree to those being used, obviously, on appropriate commercial terms.

Senator BIRMINGHAM—Are you confident that WiMAX and wireless technologies still provide the best fit for regional communities under the NBN tender, just as they were proposed as part of the broadband connect tender—

Ms Weir—We certainly are. We think it is a very efficient way of providing services into regional areas and certainly remain hopeful that those will be a part of any ultimate solution.

Senator BIRMINGHAM—How much worse off do you think regional areas are today as a result of the cancellation of the broadband connect tender?

Ms Weir—It is a fact that, if the OPEL service had proceeded, services would start to be provided today into regional areas. But, having said that, even the fear of the OPEL consortium may have sped up the availability of ADSL2 Plus services into some regional areas, so that in itself has probably been a better outcome. But I think it is a shame that it did not proceed because, depending on how the successful tenderer decides to roll out their network, if they start inside out and start in the metropolitan areas and work out into regional areas, it will be some years before regional Australians get the added benefit of this program.

Senator IAN MACDONALD—As the deaf people said: ‘roll in’ rather than ‘roll out.’

Ms Weir—We would agree with that.

Senator LUDLAM—In your opening comments, in reference to the way the network might be regulated, you suggested a degree of separation would be appropriate. What sort of degree?

Ms Weir—Our preferred position is that the entire national broadband network that is being funded with this significant amount of public funding should sit in a separate legal entity. Depending on who builds it and how the rest of it is built, it may be that other elements of existing network should perhaps also be transferred into that separated legal entity. In saying that, when talking about any pre-existing network, we do not in any way shy away from acknowledging that that is a very difficult process. But just because it is difficult does not mean it should not be done. It is difficult for taxpayers, seeing almost \$5 billion of their money going into a partnership with a private enterprise, to consider something like this. I think that that matter should be tackled. It would certainly be our strong preference that anything built with this money should be sitting in a separate company, under separate management, with separate accountability, with contracts back to the company which owns it. We are aware of public statements by the TERRiA consortium as to how they are proposing to do it. That level of structural separation is also what we would prefer.

Senator LUDLAM—So a structural separation rather than a functional separation, as some people have said?

Ms Weir—As we said in our regulatory submission to the department, if we had to fall back then a very strict functional separation is where we would end up, but we would really prefer to see actual structural separation.

Senator NASH—Just following on from that, I guess there is an issue of potential competition in a new environment with the successful NBN tenderer. It came through in a number of submissions that many of the groups and organisations which submitted feel that structural separation should be a requirement. In the event that Telstra were the successful tenderer—and I raise this because a number of submissions have raised it—what is the possibility of having a structural separation with Telstra, given that in the past there was no mood, certainly not from that company, to move towards structural separation?

Ms Weir—I am sure that will not change at all. I think it is technically and legally possible, because obviously there have to be very strict governance procedures around how this money is used. That in itself can help facilitate identifying what is being built. Therefore, those network elements that are being built with this funding can be identified and set apart and can be seen to be owned by the separate entity, with arrangements then put in place between that entity and Telstra proper for having access to that network and for that entity having access back into other network elements owned by Telstra for it to provide the end-to-end services.

Senator NASH—As one possibility, if it were set up as a PPP type model that would then allow the structural separation aspect to take place, wouldn't it? That type of model would allow that to happen?

Ms Weir—Yes.

Senator NASH—Who knows where this will end up, but one thing that has been raised quite a lot is the fact that if the infrastructure itself is owned by the successful tenderer then the competition aspect, if you like, becomes potentially difficult. Just to be blunt, people talk about monopolistic behaviour of the NBN successful bidder in the future in rolling out the network. There are a number of concerns around that. With regard to the regulation that would need to be in place—whoever the successful tenderer is—to ensure that we do not get that monopolistic behaviour, do you think the ACCC has the right tools and resources? Some of the submissions have referred to changing the Trade Practices Act to give it more teeth, if you like, in what it is able to do with regulations. Can you comment on the regulation that will be necessary?

Ms Weir—It is definitely a difficult one, but we would argue that there is clear evidence to date, and Telstra is obviously acting in its shareholders' interests and is obviously pushing the envelope as far as it can on the regulatory regime that exists and that is entirely appropriate. But the outcome that that has led to is a less competitive telecoms regime. That is why we are here today. If we had a more competitive telecoms regime we would not be sitting here arguing that there is a need for a \$5 billion government program. We have some examples of it ourselves. One of the difficulties we have faced in trying to become a player in this area and roll out a WiMAX network into regional markets has been the cost of doing so not because of the wireless infrastructure costs within the market itself but because of the backhaul. It is actually taking the traffic from the network infrastructure that we would build back onto the national networks, giving it back to the cities, out into the ether, the internet et cetera. The cost of that is prohibitive because there is essentially monopolistic pricing on that. We went through that when we were

looking at our own tender for broadband connect and, in fact, it would have cost us more to access Telstra's backhaul network than it would have cost to build a new one ourselves into many of the markets that we were looking at, which seemed illogical.

That raises all sorts of arguments around what cost Telstra is entitled to recover and so on. But where there are not sufficiently strong regulatory rules then incumbents will engage in discriminatory activity and favour themselves, because that is sometimes perceived as logical commercial behaviour, if you have monopoly rents to actually protect. You can see that, in the way in which Telstra actually scaled down its wholesale activities, it figured that that was not a commercial activity for it. We would argue that the ACCC does need more resourcing and we would heavily support that.

In terms of the actual rules, I think we would need to have a look at the existing rules a bit more holistically with the structure that is proposed going forward. If we had a perfect world, you would have done that review and decided on what the rules were first and then let the tender, but that is a timing issue in terms of where we are. We would certainly support there being more resources available for the ACCC.

Senator NASH—My next question is around the issue of backhaul, which seems to be a bit of sleeper and does not get quite as much focus as a lot of others. It has been a difficulty for a number of years. Can you see that problem continuing under the new arrangements? And, while not wanting to single Telstra out, they are the owners of the infrastructure at the moment, so they are getting a lot of focus. Can you see any kind of solution that might change the current environment for backhaul access for carriers under the new arrangement? What should be the criteria around backhaul access, if you like? Should it be specifically quarantined through the ACCC? I suppose what I am getting at is that if this is going to work and the government is going to spend \$5 billion of taxpayers' money on this then I think taxpayers need to be assured that there is going to be a level playing field at the end of it for other carriers to access the infrastructure. Do you have any specific views around backhaul capability and access?

Ms Weir—Certainly. Our argument would be that any network that is built with this funding—so any backhaul network built with this funding—should be a declared service, even under the existing regime. We also argue that there needs to be a relook at whether or not all backhaul in regional areas needs to be subject to a declaration process, because it is simply not working. The problem is that on market by market, SOUL has quite an extensive backhaul network—mostly wireless but with some fibre—but only in particular regional markets. The problem that creates is this sort of exacerbation of the fact that you might find greater access competition into those markets because people can get there with backhaul but then the markets that are sitting there without that competitive backhaul continue to miss out from an access point of view because nobody can serve it. So we think there needs to be a relook at that and, indeed, to suit the needs and requirements of regional markets, a focus on the funding into those areas to actually create competitive backhaul is quite important. This is an interesting area, where something like the O3b networks could become interesting, because part of what they can also potentially provide is competitive backhaul services with satellite. There have always been latency issues with satellite, which is why it has never been as particularly useful as either wireless or fibre based services. One of their arguments is that they can deal with a lot of those latency services. That remains to be seen as a technological development. Until that happens,

you really are reliant on microwave wireless and fibre services. So it is going to continue to be very difficult to get competition in access services until backhaul is dealt with.

Senator NASH—Absolutely. On the rolling in or out of the network—some strongly believe it should be rolled in—given that there is going to \$5 billion of taxpayer’s money—it is not the government’s money; it is taxpayers’ money—going to this, and there does seem to be a fairly clear view coming through from a lot of the submissions that it should be rolled in and it should go to those more underserved areas first—indeed, that is the whole point of it—can you see any justification for the government to decide to roll out from the cities, to allow whoever the successful tenderer is to apply those funds in the metropolitan areas and then roll it out to the bush rather than this roll-in from the underserved rural and regional areas that seem to be the preference coming from the submissions?

Ms Weir—The issue is that the RFP did not dictate one way or the other whether it would be in or out. So somebody is preparing a business case and putting forward a tender on the basis that, to roll their funding through, they want to start generating the revenues and taking those revenues to help fund the push-out. That is a legitimate business argument on which someone would base their tender. The difficulty again becomes the basis on which people have based their tender, and the government will not know about that until those tenders are received.

Senator NASH—Your submission says:

... if Telstra is the winner of the NBN bid, consideration must be given to whether it should continue to own a significant stake in Foxtel.

Can you give us a bit more detail around that comment?

Ms Weir—Certainly. Again, there is a significant amount of taxpayer money going to fund this network, and Telstra very much sees itself as a media company, as we have all read in the newspaper reports, rather than a Telco. That is where their focus is. You can see that in the content services that they are starting to provide, and it is also obvious from the content rights that they are beginning to buy. To extend their reach and power in the whole content services area is quite a significant development within this market, as would them having that amount of funding to strengthen their role in those areas and still owning the cable company. There was a comment from the head of Telstra Wholesale the other day that the reality is there is not the competition in this market between the cable guys and the telco guys that there is in other markets. Well, that is because Telstra owns both of them. Telstra is the telco and Telstra is the cable company, which does not really happen in any other market around the world, and that is one of the logical reasons why you do not have that level of competition. All we are saying is that, if Telstra’s position is strengthened—as being the builder of the NBN would indeed result in—while having control of Foxtel, that would be a very significant development. That really needs to be looked at.

Senator NASH—Good point. Thanks, Ms Weir.

Senator STERLE—I have one very quick question. In the executive summary of your submission you say:

Cost-based pricing is the only mechanism to ensure true retail product and pricing innovation.

Would you like to explain that a bit further to the committee?

Ms Weir—Certainly. There is always the great debate between retail minus pricing and cost based pricing. Our argument is that in order to set a fair starting position for everybody you have to use cost based pricing, so you would have to look at the cost of building these NBN services. Everything talks about having an access regime to allow people to compete with the NBN services. Our argument is that you cannot just look at whatever retail price the provider of the NBN wishes to set and then provide discounts on that. We need to look at the cost of actually building the NBN, and that needs to be the basis on which wholesale services are set. Everybody can then innovate at the level that they wish to, whether it is applications or different ways of delivering the services. Let competition fall there. Again, that is much easier to do if you also have structural separation of the NBN. There is a very clear cost base analysis that you can do on the cost of building the network and the cost of access to any other services that the NBN provider needs to provide that wholesale service. If you do that, everyone will be on the same level playing field.

Senator LUNDY—I want to explore a bit further the rolling-in concept. What specific thoughts or ideas do you have about how to achieve the outcome you are advocating, which is the build occurring in the less profitable areas—the more sparsely populated areas—as opposed to what we all know is the more traditional market behaviour of telcos to build in the profitable areas first and then gradually push out?

Ms Weir—It could be that indeed the government dictates that as part of its actual funding program—that it releases money in tranches to the NBN operator but identifies specific geographic areas that it wants. That might be on a state-by-state basis or even more geographically defined than that, with the next lot of funding not released until the first lot of funding has been used and the network is operational. Indeed, under the OPEL process it was going to be that networks had to be operational and providing wholesale services on that network before the funding could be drawn down. The government itself could impose those rules in the manner in which it rolls it out.

The difficulty is that that may not correlate with how the business plan is developed. To be fair to the tenderers, in today's credit market that may in fact be a really difficult thing to achieve, just being realistic. Because of the cost of raising finance in this market, albeit with the guaranteed backing, as I understand it the cost of this network is going to be significantly more than the \$5 billion that the government is going to put forward. There will have to be a significant amount of debt, and the debt markets may require that there be quite a level of revenue generated to service the debt, which might make going in really difficult. You have to be realistic about today's market, which is perhaps placed slightly differently to the way it was when this program was launched.

Senator LUNDY—One of the terms of reference of this inquiry relates to consideration of the universal service obligation. Do you have a position on a review of the USO and what changes, if any, should occur to make the USO relevant to a high bandwidth national broadband network?

Ms Weir—We have not really turned our minds to that significantly but, again, I think it creates a reality. The universal service obligation was initially envisaged in a time of POTS. It was about ensuring that everyone had access to that landline. The question is—

CHAIR—Sorry, in a time of?

Ms Weir—I beg your pardon, Chair: ‘plain old telephone service’—P-O-T-S.

Senator IAN MACDONALD—Is that a technical term?

Ms Weir—It is a technical telco term from many years ago.

Senator BIRMINGHAM—It is obviously like the GFC.

Ms Weir—The world has changed so much, the question is: what policy decision do we want to make about the basic level of service that people are entitled to? To a certain extent, is the government’s decision that it wants to mandate the minimum bandwidth available to 98 per cent of the population setting a new threshold for what the service is? I guess the difference is: are we talking about specific services or are we talking about bandwidth, which could be used for a whole range of services? Somebody obviously could have a VoIP surface over a 12 meg service very easily, but is VoIP going to be accepted by the public as the same thing as a landline? That is an interesting thing that we looked at ourselves in consumer research: would consumers give up their landlines? There are obviously economic savings if you can offer them a bundle of services—broadband, television and maybe a mobile—and say, ‘This is what you need to spend for those services and you can give up your landline.’ In our initial research about five years ago we actually found that there was significant resistance to that in regional areas—that people had a bit of a psychological connection between the landline and a sense of security. That is changing significantly, but those are the sorts of factors that probably, from a policy level, need to be thought about when dictating what a universal service level would be. It is a bit of a long way of saying ‘I don’t really know’ but I think it is a really important question.

Senator LUNDY—I appreciate your thoughts on it. Thank you.

Senator IAN MACDONALD—We use AUSTAR up where I live in rural North Queensland. I have a couple of quick questions to help me understand a bit better. What would we be getting in North Queensland? Is that wireless? It seems to come through the telephone exchange.

Ms Weir—That is a dial-up service, which is basically us using the SOUL network, in fact. We use services on their network, so it is landline dial-up.

Senator IAN MACDONALD—Where do you use your wireless around Australia?

Ms Weir—We only have two markets, which were our test pre-WiMAX service markets in Tamworth and Wagga. We still have those. We are really not using those spectrum licences other than in the two trial markets.

Senator IAN MACDONALD—So everything else is—

Ms Weir—The AUSTARnet service is just a dial-up service where we are reselling existing telephone lines.

Senator IAN MACDONALD—And under the OPEL arrangement?

Ms Weir—What would have happened under the OPEL arrangement is that we would have sold our spectrum licences to the OPEL consortium and they would have used those spectrum licences in different markets to provide a WiMAX style service. That basically would have built kit onto pre-existing mobile towers or towers on roofs of buildings or whatever. You would initially have had a modem device that you would just go to a store and buy. You connect that to your computer and that would pick up the wireless signal that was being transmitted by the tower.

Senator IAN MACDONALD—Would that have been in most of the red area in your submission?

Ms Weir—Exactly how much network OPEL were going to build with WiMAX was not quite clear. We certainly were going to build 25 markets, and that was initially going to be in Queensland, New South Wales and Victoria. Then we would have looked to expand it beyond that.

Senator IAN MACDONALD—My next question is not quite germane to the inquiry, but you were talking about Foxtel. Can you explain, as an aside, what the connection is between Foxtel and AUSTAR net, because you have all of the same programs, haven't you?

Ms Weir—Certainly it is a long story, but I will give the short version. AUSTAR and Foxtel are completely separate companies, but AUSTAR services regional areas and Foxtel services metropolitan areas. That divide grew up over time based on the different companies that started when pay television started. There were geographic licence areas in the beginning and the companies bought programming licences that fitted those geographic areas. As a result, for about 60 per cent of its programming, AUSTAR has exclusive rights for the geographic areas we service and Foxtel has exclusive rights for the geographic areas it services. Because our markets really do not overlap other than on the Gold Coast, there is a lot of incentive for us to cooperate, so we share the satellite. The signal that you are seeing in Queensland is the same signal. If you are watching Fox Sports in Queensland and someone is watching it on Foxtel in Sydney, you are watching the same delivery—

Senator IAN MACDONALD—I go to the Gold Coast a bit. What am I watching there?

Ms Weir—You are watching the same delivery.

Senator Sterle interjecting—

Ms Weir—You may be an AUSTAR customer or you may be a Foxtel customer. Foxtel services cable.

Senator IAN MACDONALD—If Telstra bought the whole of Foxtel, what would that mean to you?

Ms Weir—That would mean our relationship would be with Telstra rather than Foxtel. Our concern would be from the point of view of content development and continuing competition into those areas. That may not impact on us in our markets, but it is a broader competition point that we are making.

CHAIR—Last question, Senator Macdonald.

Senator IAN MACDONALD—Madam Chair, I have three, but I will ask them very quickly.

CHAIR—Three quick ones—they are all under one heading, I am sure.

Ms Weir—I will try and answer very quickly.

Senator IAN MACDONALD—You made a comment about the \$5 billion only being part of the cost. We have read in the paper that Singapore cost \$13 billion for a tiny little area like that. As the world financial system seems to get more uncertain, if I could put it that way, what is going to be the impact on the service provided by the tenderers? There is only so much money you can outlay to get a return and not go broke yourself. Do you have a feel for what might happen if the \$5 billion becomes an even lesser part of the total cost?

Ms Weir—I think the biggest threshold issue is going to be the ability to actually raise the funds. That is No.1. Then, for the funds that can be raised, it is the cost of those funds.

Senator IAN MACDONALD—Would it follow that financially the winning consortium may not be able to go far beyond the suburbs of Sydney, Melbourne and Brisbane?

Ms Weir—I think the reality will be that the financing costs are going to be significantly higher than somebody might have envisaged 12 months ago, simply because interest rates are higher, there will be tighter controls around the credit and there will be higher, which probably means more strict, covenants around the money that is being raised. As a result, to go to your point, the more money you are spending on financing the less you have got to spend on infrastructure.

Senator IAN MACDONALD—My concern is that if the \$5 billion is nowhere near an adequate enough subsidy to make sure provisions are extended to those of us who do not live in the capital cities, who is going to be the first to suffer? Perhaps it is not a fair question for you.

CHAIR—It is a very good question so you are getting away with it, Senator Macdonald.

Ms Weir—One would trust that the government would contract to avoid that happening and to ensure that there are geographic requirements that certain markets be built. But that is certainly a conundrum that today's credit markets are going to present to an infrastructure project of this size.

Senator IAN MACDONALD—I was very interested in the O3b Networks and your comment that who knows what is going to be out there by 2011 or 2015. Is this O3b proposal relevant particularly to Australia and this tender?

Ms Weir—I think the timing may be a challenge. The CEO of O3b Networks is actually going to be here next week and I am happy to put him in touch with the committee. He has fairly limited time here. He is speaking at a conference and we are trying to arrange some meetings for him. I can direct you to a website and pass that information on, and if there is an opportunity for any committee members to meet with him while he is here you might find that of interest.

CHAIR—Thank you, we would welcome that.

Senator MARK BISHOP—Can I return to the issue raised by a Senator Sterle and this sentence in your submission:

Cost-based pricing is the only mechanism to ensure true retail product and pricing innovation.

What do you mean by cost based pricing? And how do you come to the belief that a provider of infrastructure should somehow or other be regulated or set in the prices that his company chooses to offer to users?

Ms Weir—Basically because this infrastructure provider is getting nearly \$5 billion of taxpayer funds to build their network. That is essentially the rationale. This is not a normal infrastructure project because the government policy is clearly not just about the building of the network per se; it is also talking about open access so that there can be competitive, wholesale supply those services. Our argument is that to ensure competitive supply of those services, access to that network for wholesale purposes needs to be done on cost base. We are talking about competitive retail by the provision of wholesale services.

Senator MARK BISHOP—But even if the government has thrown in the best part of \$5 billion as a kick-start to the building of the infrastructure, how then do users of the infrastructure derive the right to determine the actual price that is going to be charged by the provider, apart from the fact that the taxpayer funded some of the capital cost?

Ms Weir—Because a review of the cost and the cost to the infrastructure provider obviously also includes an element of what is a reasonable return.

Senator MARK BISHOP—No. Why does it have to be a reasonable return? If you have a multibillion dollar company providing massive infrastructure, why should it not be allowed to set its price, the services it offers and the return it gains and use that return for innovation, expansion, development and all the things that are used out of earnings? Why does a user such as your company, or any company, have the right to say, ‘We’re only going to accept cost based pricing’ and, by definition, limit the income and the earning capacity of the provider? I do not follow the logic in the rights.

Senator NASH—It is a Labor monopoly. Sorry, Senator.

Senator MARK BISHOP—I know.

Ms Weir—They will effectively end up with a monopoly and they will be the only company that will be able to provide services on that network. The risk is that they will then price any access competitor out of the market by pricing wholesale access at a rate that would then make it impossible for somebody to use those access services and innovate to provide—

Senator MARK BISHOP—Or others could build their own networks.

Ms Weir—But the reality is that with an infrastructure project of this size with this level of government funding going into it you are effectively going to create a natural monopoly. The consequences that will flow from that will be lack of innovation and lack of competition.

Senator MARK BISHOP—That is the point I am getting to. I do not understand how, when you choose to limit the earnings of the provider, that leads to a conclusion that you are restricting development or innovation.

Ms Weir—The end outcome of that scenario is that the only people who will be able to innovate and provide competitive services is that company. You are talking about a fully integrated monopoly, because no-one else will be able to access those natural monopoly elements. The reason that people have not built competitive networks is that there are great challenges in providing an economic business case to do so. By putting all of this government money into this you are actually assisting in the building of that network.

Senator MARK BISHOP—But in any facility that provides infrastructure—it does not matter whether it is power or water or roads or airport services—cost based pricing always and without exception restricts change, development and innovation because the rate of return is the cost plus whatever the margin is.

Ms Weir—But, Senator, we are only talking about cost based pricing at the basic infrastructure level—

Senator MARK BISHOP—Yes, that is right.

Ms Weir—for wholesale competitors to access. Once that network is built—a fibre-to-the-node network or whatever other elements and technologies there are going to be—that is the basic infrastructure on which all of the other competitive and innovative services will be built—but only if other companies can also have equitable access to that network. If the cost based pricing properly takes account of the cost of building the network, properly takes account of the cost of capital in getting that network up and running and provides an appropriate return within that cost analysis, then we would argue that that is appropriate for an infrastructure project that has such a significant amount of government funding. Our concern is that if it is not priced in that way at the wholesale level then there simply will not be the innovation and competition at the retail level that the government policy, as we understand it, envisages.

Senator MARK BISHOP—Okay. Let's say Telstra have an internal rate of return for capital investment of 18 per cent.

Ms Weir—Wouldn't that be fabulous!

Senator MARK BISHOP—Some companies do sometimes. They get it in some of their projects. Is that what you call an acceptable rate of return on a publicly provided infrastructure?

Ms Weir—No. I think 18 per cent is an awesome rate of return for a government funded project. We do not—

Senator MARK BISHOP—Partially government funded project.

Ms Weir—Yes. We would argue that for \$5 billion of government money that is excessive.

Senator MARK BISHOP—You have not persuaded me.

CHAIR—Senator Bishop, if you have further questions could you place them on notice. Thank you very much, Ms Weir.

Ms Weir—It was a pleasure.

Proceedings suspended from 10.29 am to 10.40 am

BREALEY, Mr Michael, Manager, Public Policy, Vodafone Australia

SCHUBERT, Ms Georgia Kate, General Manager, Public Policy, Vodafone Australia

CHAIR—I welcome Mr Brealey and Ms Schubert from Vodafone Australia. Thank you very much for giving us your time today in what is our first day of a series of public hearings into the national broadband network. The committee proceedings are public but you may request at any stage to have evidence given in camera and the committee will consider that request. Giving evidence to the committee is protected by parliamentary privilege, so it is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and that can be treated by the Senate as contempt. If you object to answering a question, you should state the grounds upon which you so object and the committee will consider that, having regard to the ground on which the objection is claimed. The committee has received your submission and it has been numbered No. 9. Do you wish to make any amendments or alterations to your submission?

Ms Schubert—No.

CHAIR—Would you care to make a brief opening statement prior to us asking you some questions?

Ms Schubert—We will take the committee's time, if that is all right, for about five minutes. We thank the committee for your time today. To very briefly highlight a couple of the elements of our submission, Vodafone believes that the national broadband network issue is actually wider than a fixed issue. We see that there are material implications for all forms of telecommunications and possibly even communications, much more broadly. Therefore, we want to see consideration given to issues beyond the traditional fixed line. In saying that, we see mobiles as effective infrastructure competition, particularly mobile broadband, and service competition to the national broadband network. The two elements that highlights in much broader terms are the importance to both backhaul and spectrum for Vodafone in relation to the continuing and sustainable supply of those services.

Coming back to the national broadband network, we believe that the priority objective for NBN policy primarily is that it must enhance competition, so the regulatory settings must continue to promote competition, encourage investment and innovation and, importantly, provide certainty for both business and consumers. We have heard quite a bit and watched quite a bit, as Vodafone are not a proponent for the tender process, and we have seen quite a lot of discussion in the media et cetera around structural separation and the arguments around overbuild. From all that we see that the NBN will be an effective monopoly and that it will require robust regulatory settings, particularly around access, to ensure that the capability is there for enhanced competition. In saying that, there is an important element that Vodafone has been pursuing for some time, and that is a review of part XIC, which contains the competition provisions, of the Trade Practices Act, which our submission does go into to some extent. That will be really important for the applicability for all services under part XIC.

CHAIR—Thank you. Senator Lundy?

Senator LUNDY—You talked about the national broadband network as being an effective monopoly and needing effective regulation and some changes to parts XIB and XIC. Can you elaborate on that point for the committee?

Ms Schubert—We will actually leave aside part XIB. We do not have any comments on part XIB. But Vodafone has had first-hand experience of part XIC. We provide what is known as the mobile terminating access service, also known as MTAS, and it is a regulated service. The history of part XIC for us is that that service is regulated and the ACCC's role in that is to set a pricing principle which will apply for a period of time. If you disagree with the pricing principle, which is cost based, your first port of call for an 'appeal' is to lodge an undertaking with the commission. That is interesting, because the commission initially sets the price and then it suggests a price that the commission could live with. That is an accept or reject decision that the commission makes and if, of 100 elements that they go to tick the box on, one of those is wrong or different to the other 99, it is an immediate rejection. So you can be almost over the line and not get there.

The process from there is that if the undertaking is rejected, your official appeal mechanism, going to an independent party for the first time, is to the Australian Competition Tribunal. The tribunal stands in the commission's shoes, as it did when it made the original decision on the undertaking, and, once again, either accepts or rejects. Vodafone's experience of the process from the outset, from the very beginning of the pricing principles to lodging an undertaking and to seeing it through to the tribunal is that it is about 2½ years in duration. By the time the tribunal makes a decision there has been a quite substantial amount of business uncertainty in the meantime for what the input price is that you set your business on.

Some of the other issues that come with that are that some of the pricing principles that have been set by the commission have been set into the period in which they will apply, so you have a three or four-month window, or whatever the time frame is, when there is a lot of arbitration going on simultaneously to not knowing what the price will be. That takes up time and resources. It is also very difficult in a business setting. Last week, I had to justify what the current regulatory settings were to a shareholder and was asked when we would know what price would apply from 1 January. We said, 'Probably around December,' and that will be the first time in the last two pricing periods that we will have known the price before. It does become a little difficult. There are a range of mechanisms.

That is the Australian process. We have made some suggestions in our submission about what we think should occur, and they come back to the principle of streamlining and strengthening the process so as to understand what a wholesale price would be. It goes to the very beginning of the framework, saying that the commission needs to be very certain what the purpose of the regulation is. In the issue of mobile termination rates the objective, stated at the very beginning, was to increase competition in a fixed line environment and to decrease the retail cost of fixed to mobile calls, neither of which has occurred. But the regulation has continued for almost five years now. We suggest that very early on in the process you have to be very clear about what the objective of the regulation is under part XIC and then to have sufficient and regular review mechanisms throughout the period for which the regulation will apply to ensure that that is actually being met. If it is not then it may well need an additional intervention or you may need to reverse the original one and put something else in its place. It is not that it does not have to be the case but that they are very certain about it.

It also means that there would need to be some very robust parameters in deciding whether a market should be regulated in the first place, as well as the objectives. Then it goes in a two-step process, rather than having a negotiate-arbitrate model, which is the current premise for the part XIC framework. In effect, that currently does not exist because of all of these pricing principles, late notification and ability to arbitrate. There is no negotiation that goes on and the bar is very low to notify a dispute with the commission under the current framework. So what we are saying is that it should come back to a process which says at the very outset if the commission is very clear that the market needs an intervention and what the objective is, then the commission should be able to set a definitive price. Therefore, the arbitration processes go away—and I think the commission currently may have about 30-odd arbitrations in front of them. We believe that if the commission was able to set a price and had some very robust and rigorous parameters that they had to meet in setting that price, similar to what industry members have to currently do to lodge an undertaking, then that should be the case. From there, the commission sets a price, and that price stands in the marketplace. If you disagree that that is the applicable price for your business then you appeal directly on that pricing principle to the Australian Competition Tribunal. They make a decision and then you get on with business and you live with that.

That is a model to which we are not so much subjected but part of in the UK. We have had a couple of incidents. One was when we disagreed with the commission there, we appealed, we lost and we got on with business. Then the commission set a second price a few years later which we thought was about the right price, so we got on with business then as well. We just believe that is a more effective way of using resources. It actually provides business certainty and therefore provides a greater level of certainty to consumers as well. You can get on with business and provide innovative prices and, from a shareholder perspective, you know what you are investing in and where your investment should go and what it is going to cost you.

Senator LUNDY—What are the implications for mobile termination with respect to a national broadband network?

Ms Schubert—I guess termination itself for mobility will continue as a service and probably continue to be regulated, we would assume. I think the complementary piece that becomes quite interesting in this is that we will continue to offer mobility but we will also need to seek access to the fixed line infrastructure that the national broadband network will provide, particularly to provide high-speed backhaul services as consumers increase their uptake of data intensive services. Getting it back to our network to be able to process will be very important. So, like what will be the price of mobile termination rates, a high priority for Vodafone will be what will be the price of access to the NBN. And, yes, particularly important to us will be the availability of that for backhaul services.

Senator LUNDY—With respect to those kinds of issues, what have you been able to observe in the process so far that they are being addressed or taken into consideration as part of the tender documentation?

Ms Schubert—As we are not a proponent to the tender process, any dialogue for us with the expert panel is out of bounds. We have had other discussions with the department around next generation networks and the broader competition issues for some time, and that continues. We have had a good hearing there. I think the interface for Vodafone with the expert panel is an ongoing question. With regard to recommendations that the panel will be making to the

government around the tender process and the complementary pieces around the regulatory settings, we would like to have some time with the panel to talk about things like the importance of backhaul to mobility because it is not just a fixed line issue. That is where we would like to see some changes to the dialogue. Other than that, we have been able to have conversations around next generation networks and the broader competition issues—but whether or not they are actually being heard by those who are going to be making the recommendations is a question that, for us, probably does need to be answered in the shorter term.

Senator LUNDY—With the emphasis that you have placed on the access regime, the costs of access and dispute resolution relating to access, how does that sit relative to your views of the importance of industry structure and the levers that are potentially available with respect to that?

Ms Schubert—If I talk about industry structure at a very high level, industry should be left to sort out its own structure. The competitive nature of an industry will take precedence and will decide that. When we look at structure in relation to where we see the NBN as a monopoly provider, there will need to be intervention because incentives for a monopoly provider to not look after its own backyard may be much stronger if there are not robust mechanisms in place. In relation to the structural separation question specifically, Michael Brealey can probably add something on that as our expert.

Mr Brealey—It is pretty much stating the obvious, but if you have an NBN owner that is vertically integrated the incentive is there to keep your competitors off your network to free up capacity for your own retail use. On the other hand, if you have an NBN owner that is just about the infrastructure then the incentive is the opposite—they will want to get as many access providers onto that network as possible to take up as much capacity as possible so as to revenue as much revenue as possible. But we make that point in our submission that for us it is about what settings—what levers, as you put it—both regulatory and structurally speaking, will provide the best environment for competition. While we say that a separated network might do that and might seem to provide the best opportunity for promoting competition, we are realists and we understand that it might not necessarily be the easiest option. That is why we go back to our arguments about beefing up the access regime.

Senator LUNDY—Thanks.

Senator IAN MACDONALD—On your comment that NBN will effectively be an monopoly, is that accurate if you are only looking at the network between the eastern capital cities, which is 70 per cent of the traffic?

Ms Schubert—The NBN will effectively be a monopoly because there will be one bunch of money going to what we see as one provider.

Senator IAN MACDONALD—What I am asking is this: could you set up your own network? Vodafone is a big international company. But could you set up your own network without any subsidy between Melbourne, Sydney and Brisbane—and throw in Canberra? Could you do that? That is where most of the traffic is and where most of your users would be. Forget about the rest. Has anyone ever done those sums?

Ms Schubert—We certainly have not. We are not considering doing that. Hypothetically, perhaps. I do not know. We have not looked into it.

Senator IAN MACDONALD—Again this is a hypothetical question, which I should not really be asking you, but if, for example, the effective monopolist did not suit your purposes and you could not get on with them for some reason and the regulatory regime was not regime, would it then be possible for a big company with access to finance to say, ‘Blow them, we’ll do our own thing where most of our revenue is anyhow—between Brisbane, Melbourne, Sydney and Canberra’?

Ms Schubert—I guess if there was a sufficient rate of return on such an investment and there was nothing to stop that, you would have to say that that would be possible.

Senator IAN MACDONALD—What I am trying to get you to agree to, which perhaps I should not be, is that the taxpayer subsidy is really for the non-commercial parts of the National Broadband Network, which one would say would be the more remote areas, where the commercial traffic is not as great and the return on your capital investment would not be as great. Are you able to agree with that?

Ms Schubert—I do not know whether I can agree or disagree with you on that point. I am sorry.

Senator IAN MACDONALD—Okay. Thank you.

Ms Schubert—Sorry.

Senator IAN MACDONALD—No, that is okay. They are perhaps questions for others.

Senator LUDLAM—Somewhere in your submission you noted—and I will just quote it back at you if I may—that should the ‘government not have a high degree of confidence that the best RFP proposal also reflects an optimal net consumer welfare outcome, then it should not pursue *any* proposal ...’ Can you just elaborate on that and on where that would leave us? How high do you consider that that bar should be for the government to just throw it in and say, ‘Lets not bother at all.’

Ms Schubert—I am just going over the question in the back of my head before I answer it. Net consumer welfare would say that consumers must be better off. If it could not be proven that such would be the case then a decision should not be made at all. That could be measured in many ways, but it would be about the supply of a service and the ability of consumers to continue to choose from complimentary or substitute retail products. Perhaps I could illustrate an example and then give you a more optimised example. If you had a NBN provider and through the provision of NBN there was detriment to competition to consumers—so an NBN provider who had detrimentally effected competition—a consumer could only purchase products from that one particular provider or could only purchase products from perhaps more than one provider but only of the same vanilla flavour. Consumer welfare is optimised where you have a range of participants able to access and on sell or to provide complimentary and substitute products across many markets. So I guess that gets to the point of if it would be better to only have a fixed line service available to anyone or would it be optimal for a consumer to be able to

say, 'I would like a Vodafone value cap and I would also like to be able to have fixed line, high-speed broadband in my home.' So it would be that it was not actually detrimental to competition and was able to have many flavours of service out there and for consumers to be able to choose to purchase them and to use them how they see fit. So rather than being dictated to, consumers would continue to have choice around what they do. That is probably the easiest way for me to explain that.

Senator LUDLAM—Presumably none of the tenderers are going to be pitching their proposal to the government in terms of, 'We will provide you with less competition than we have now.' I am just wondering how you think that the government will be able to evaluate those outcomes.

Ms Schubert—I think that comes back to a evaluating some of the issues. The most basic one would probably be price of access—whatever is proposed there. It would be what technology is being deployed and how close is it to the home, and some of the technology aspects would be things like backhaul for mobile broadband as a complimentary or a substitute product and the continuation of infrastructure competition, whether that be through the provision of mobiles plus fixed or any other way that it was actually provided. That is where you come back to the key pillars of our submission, which is looking at backhaul, spectrum availability and continued access.

Senator LUDLAM—I guess to put that in your submission you must think that there is a real risk that we could end up with a situation where we are providing people with less services and more expensive services than we have now as a result of spending nearly \$5 billion worth of taxpayer funds.

Ms Schubert—We think that there is a material risk that the access to that network for mobile only operators like Vodafone may be overlooked in consideration for the tender process. It is very important to put those elements on the table now rather than think about it after decisions have been made.

Senator LUDLAM—Indeed. Google put it rather elegantly. I wonder what you think of this. In their submission they said:

In an optimal regulatory regime, the mandate and incentives of the NBN network operator would directly align with the public interest.

How does that sit with you, in that they have been set up not in terms of pushing their own retail services, obviously, but in direct alignment with the public interest, which they have defined in here? Does that sit well? It is probably a bit unfair to drop that on you out of context.

Ms Schubert—I am trying to think through that and how I would respond. Could you ask the question again?

Senator LUDLAM—The way they have put it is:

In an optimal regulatory regime, the mandate and incentives of the NBN network operator would directly align with the public interest.

Ms Schubert—I think the highlight of that sentence is, ‘an optimal regulatory regime’, so that part of it certainly aligns with what Vodafone is saying, whereas we are saying, ‘You must get that right,’ and therefore the consumer benefit will be delivered. That is my interpretation of that statement.

Senator MARK BISHOP—I would like to return to the second point you made in your summary regarding if there was a monopoly provider of the infrastructure and incentives to maximise access. AUSTAR, quite strongly, in their submission said:

Cost-based pricing is the only mechanism to ensure true retail product and pricing innovation.

Do you agree that when there is a monopoly provision of the infrastructure that the only acceptable way to achieve competition is through cost based pricing?

Mr Brealey—There are a couple of things there I suppose. We are getting down to the arguments that we have seen being made in the press about the type of return that should be recognised from providers.

Senator MARK BISHOP—And other services that might give you a different return as well.

Mr Brealey—I think that it is entirely reasonable for whoever invests a lot of money to build a network, to recognise a reasonable and fair commercial rate of return. It is about whether or not that rate of return effectively limits the ability of competitors to enter the market in terms of service provision. That is something for an expert body to weigh up about where exactly the right price point would be on each particular service, if you consider those services to be bottlenecks or services that need to be declared. Certainly, in terms of innovation, the more service providers that can enter the marketplace the more likely you are to have competition and the more likely you are to have more innovation. It follows that you are going to get more of them being able to enter the marketplace on this particular type of network, where you are looking at monopolistic characteristics, where the entry level price is lower rather than higher. But that is about balancing up, as I said before.

Senator MARK BISHOP—That is essentially an issue of the price point for the user. That is not the issue. The issue is whether the only pricing mechanism that is acceptable to end users—and, by definition, all of their customers—is cost based pricing.

Mr Brealey—Cost based pricing usually takes into account the return element that the provider needs to have in the total cost that they charge to their wholesale customers. I cannot answer the question of whether or not that is the only model that would see innovation. I think it really comes down to what the price is and whether or not it prevents wholesale access to the service for competing providers.

Senator MARK BISHOP—So you neither support nor oppose cost based pricing.

Mr Brealey—No, not on the basis of the model.

Ms Schubert—I guess that part XIC of the Trade Practices Act regime allows for TSLRIC+ cost based pricing and that is applied to all services that are regulated. We would see that the

NBN should be treated in the same way, under that framework, as any other regulated service, which is the cost-plus pricing—so it is the TSLRIC+ pricing model to get to the output of what is the access price. The piece that we would like to see is consistency in application of the regulatory framework across the declared services.

Senator MARK BISHOP—Thank you.

Senator NASH—You mentioned in your submission that the NBN process should be subject to further consultations and submissions from interested and affected parties. Does that mean you are not comfortable with the process as it stands and that there should be more input? What, when and how should that further consultation take place—at what point in this process and for what reason?

Mr Brealey—I think the point we tried to make was that it is difficult to comment on an NBN when you have not seen the final proponents' suggestions. It would be far easier for us to make a more detailed and perhaps even a more valuable contribution at a point when you have a better idea of what the proposal actually looks like in concrete terms. I think we were simply trying to say that another opportunity for everyone to comment on issues that will materially affect our businesses would be of value to us.

Senator NASH—You are in essence saying, once the government has made a decision about the successful tenderer, that should then be held up for consultation. Once the actual tenderer is announced there should then be a period for people to actually submit their view on that. Is that your view?

Mr Brealey—We need to balance up the time it will take to go through all of these things with having an opportunity for other players to be heard. Perhaps the thing that is of most relevance to us is that, if there are changes to the regulatory settings, we then having an opportunity to comment on those specifically.

CHAIR—Does that necessarily mean holding up the process whilst you make those comments or do you see a process that could allow input at the same time?

Mr Brealey—Not necessarily holding up.

Senator NASH—If it were the regulatory environment you were concerned about, I guess the successful tenderer is not as important to you then as being able to have some input to the decisions that are being made about any changes to the regulatory environment. Is that right?

Ms Schubert—It is probably not for us to pick apart the tender or the proposed successful tenderer but to actually ascertain and analyse how that will work in the marketplace, and therefore what are the materiality aspects of the regulatory environment that would need to be considered for the support of an ongoing competitive landscape.

Senator NASH—It is a fair point actually because, if there are going to be regulatory changes, they are going to affect the whole industry not just the successful tenderer. So industry, and those that are going to be affected, should have some kind of ability to be able to comment on those changes before they go through. In one of your other comments in the submission you

talk about the NBN and the promotion of competition and at 4.1(d) you talk about, 'The uncertainty surrounding proponent driven regulatory change.' Can you explain that?

Ms Schubert—This comes back to the process being undertaken with the expert task force at the moment, which is that proponents for the tender have airtime with the expert task force. Those that are not proponents do not actually get that interface. So, if I were being self-serving and standing in front of the expert task force because I was a tenderer, I might be suggesting some regulatory mechanisms, holidays and/or frameworks, which then are not able to be commented upon by the rest of industry because that is, I guess, a closed user dialogue.

Senator NASH—In layman's terms, they get the chance to put their two bob's worth in, but you do not.

Ms Schubert—Perhaps.

Senator NASH—It comes back to what we were saying before. I know you have raised this before and I want to raise it again because I think it could be quite pivotal to where we are going with all of this and that is the issue of backhaul. I asked the previous witness whether they would like to see the regulatory environment or the criteria around backhaul under that new scenario. Do you have a view on this, because it is one of the things that you have mentioned in your submission that is important to you? What would you like to see under this NBN new world, if you like, in the environment surrounding backhaul so that you can continue to provide services in a reasonable manner?

Ms Schubert—I think we eruditely put it on page 17 of our submission.

Mr Brealey—Access to dark fibre is one of the things which is quite important to us.

Senator NASH—Can you just explain dark fibre for the committee?

Mr Brealey—You use the cable for whatever purpose you want to use it for and the owner does not necessarily know exactly what purposes you are putting it to. It is your infrastructure at either end.

Senator NASH—It is paying a toll to use a road basically.

Mr Brealey—Yes.

Senator IAN MACDONALD—That is why it is called 'dark fibre'.

Mr Brealey—Access to the network at that level and the capacity in whatever model is applied to access that can be reviewed when necessary to take into account technological change, competitive change, regulatory change and those kinds of things.

Senator NASH—So you want a framework in place that would allow you to continue to do that under this new framework rather than cutting you out of being able to do that.

Mr Brealey—That is right.

Senator BIRMINGHAM—To pick up on where other senators have been as well, you state in section 1.5 of the submission:

Implicit in this process is the potential interplay between the regulatory environment and investment decisions and a negotiated outcome with financial sponsors of the successful bid.

It is similar to the quote later in your submission that Senator Nash just picked up on. Implicit in that seems to be a concern not just about the early stages of the process at present and the interplay between bidders and the expert panel but also about the concern in the end that you have the scenario where one set of bidders may put a model on the table, another set of bidders puts a totally different model on the table and the expert panel comes up with yet another framework with regulation, and that there needs to be a negotiated outcome of the regulatory framework with the successful bidder, one that allows their model of a bid to fit into some type of regulation. Do you think this is a healthy way to design regulation for a communications network?

Ms Schubert—I think regulatory environments are best made when they are transparent and the processes to devise them are transparent and robust. We are certainly not saying that the process here is not transparent, but the submission specifically looked at the time frames—regulatory submissions were due to the department in June, if I recall—and decisions around that stage were made not knowing when the tender would close. We do now. The decision will be made. There is a long time between drinks, so you make your regulatory submissions. There was no other indicator that there would be an opportunity to officially engage with the expert panel and/or any of the other decision makers in this process. Those parties that were proponents would have ‘face time’ to be able to do that.

We come back to the point that was made earlier. We do see that there could be parallel ways—while not delaying time frames any further—to be able to have these conversations. Potentially there will at the end be give and take about who is successful, on what grounds and how you make that. We trust that there will be some additional points in time when that interaction on regulatory issues can take place, because it is an enormous piece of work that is also being considered in the context of the NBN. We trust that that will occur.

Senator BIRMINGHAM—Has Vodafone approached the government about getting ‘face time’ with the expert panel?

Ms Schubert—We have not, no.

Senator BIRMINGHAM—Has Vodafone requested any other variation to the consultation process that is being applied?

Ms Schubert—We have found other ways to have conversations with many of the government stakeholders about next-generation networks and the competitive landscapes, not specifically in relation to the national broadband network. We believe that the review of part XIC that should take place to streamline and strengthen that framework would apply to more services than merely the NBN. It is a much broader context in which we are having those discussions, and we are quite happy with how those are progressing. We would like to have

some time with the expert task force as we get further into what the landscape may look like. We would like to have an additional conversation on that point.

Senator BIRMINGHAM—I think the quote Senator Macdonald was hoping to extract from you before is probably something close to the statement in 3.7 of your submission:

The Government's investment should be directed solely to the roll out of broadband networks in areas where it would not otherwise be economic to do so ...

With that statement in mind—we have had some discussion with other witnesses this morning about the benefits of rollout versus roll-in—I think it is a phrase that is likely to catch on around this committee, the idea that ideally roll-in would be preferable. Do you think that in the way the NBN has delivered a roll-in approach from those non-economic areas first should be the priority for government funding?

Ms Schubert—Vodafone's principal view on any government funding—and we have raised this with other committees in the past in previous governments—has been that any government funding that is available to deliver social policy needs should meet those social policy needs. If what you are suggesting is that those social policy needs should be defined and therefore limited to a—I forget whether it is rollout or roll-in—

Senator BIRMINGHAM—Roll-in.

Ms Schubert—specific area, then perhaps that should have been stipulated in the terms of reference. We believe there is probably some existing infrastructure already out there that may well deliver the government's 12 megabits per second broadband speeds now. Would any interested proponent for that funding necessarily need to get the funding to build on top of that where those services were already available? That would be a question that the government would need to answer.

Senator BIRMINGHAM—In terms of the type of technology applied to achieving the objectives of the NBN, do you think that specifying either a requirement for, or a preference for, a particular technology, and particularly fibre-to-the-node applications, is appropriate? Or can I take it from your statement that there is probably existing infrastructure or other technologies that could be applied to just as well meet those objectives?

Mr Brealey—It depends what the stated policy objective is in the first place. There are alternative technologies out there that can provide broadband services. They have different capabilities and different characteristics depending on that technology, and once again it depends on what you want to achieve. Our specialisation, of course, is wireless broadband service provision; we are not experts in fixed line service provision. We would argue that, for example, wireless network can provide more than adequate mobile broadband performance for most of the things that consumers would like to use it for. It would be able to perform most of the functions that people would need in their day-to-day lives. But there are other high-end functions that it is probably not in a position to provide at the moment, although that might change further down the track.

So, if the question goes to whether we think there are alternatives out there, then the answer is yes. As to whether it is the right thing to pick a technology, I would just make the broader point that the right thing to do is to decide on a course of action. We think that is the right thing to do in terms of providing the marketplace and Australian consumers in general with some clarity about which way we are going to go in Australia. Having recognised that you probably need to invest to get a network of this type rolled out in other countries, they are probably just going to wait and see how the network develops, wait and see how many networks they have. In Australia, we have decided that if you are going to have one, it is probably going to be a monopoly; let's just get on with it and build it. There are certainly more benefits, broadly speaking, than technology, in terms of having the clarity around which model you are adapting and when you think it is going to be in play.

Senator BIRMINGHAM—You also talk in your submission at 3.3 about the risk of skewing towards fixed line services. If government funding extends beyond investment in those areas where it would not otherwise be economical to do so, does that increase the risk of skewing against wireless or mobile or other such services?

Ms Schubert—I am just rereading 3.3. In the context of the submission, 3.3 draws attention to the point that this is not just a fixed issue and that the successful tenderer will make decisions on where it should spend its money. Potentially it should be a consideration for the government about what existing infrastructure already exists which would meet the objectives of the national broadband network, but the successful tenderer will then choose to meet those objectives. In this instance, the frame-up of the NBN is more around fixed and mobile, so therefore mobility gets, I guess, a lesser weight of attention in this context and consideration. And it does go to the heart of the fact that in the short and medium terms—we are probably talking 10 years—mobile broadband will probably be the only effective infrastructure competitor to a national broadband network in many areas. Whether consumers choose to use that as a complementary service or a substitute service will be up to them. You are sinking money into a fixed infrastructure, but, as the world convergence is finally upon us after all these years, and the infrastructure that mobility relies on is also that which would be provided by a fixed network like the national broadband network, then the two become inextricably linked, and giving a leg-up to one party, potentially, over many other competitors in the marketplace therefore necessitates the questions about how you ensure the ongoing competitive nature of the landscape.

Senator BIRMINGHAM—And that of course brings us back to access arrangements, and I guess your main message to us today is to consider those access arrangements in the broadest possible scope as they apply to mobile technology and elsewhere.

Ms Schubert—That is correct. We absolutely believe that the broadest view should be placed on the regulatory environment for the national broadband network because it does not operate in isolation. More and more services, and the delivery of competitive services and in fact the sustainability of an industry, will rely upon the framework that is put around the NBN.

Senator BIRMINGHAM—If all the boxes are ticked—if structural separation, open access frameworks and all of those reforms are enacted in this process—will that, in your opinion, hasten the development of mobile technologies like 4G and beyond and those types of applications?

Ms Schubert—I think a competitive landscape necessitates ongoing investment in innovation, so will that hasten the LTEs and 4Gs and every other acronym going around? I am not sure, but it will certainly make for a fruitful rollout and economic future for the Australian industry.

CHAIR—As there are no further questions, I thank Ms Schubert and Mr Brealey very much for their time and input.

Ms Schubert—Thank you very much.

[11.28 am]

HICKS, Mr Gregory, Chairman, Adam Internet Pty Ltd

CHAIR—Welcome, Mr Hicks. This is the first day of a series of days of public hearings into the national broadband network. There are provisions for the committee to take evidence in camera if that be appropriate, and we will consider any request to that end. Other than that, the proceedings are public. You are protected by parliamentary privilege in providing evidence to the committee. Do you wish to amend or vary your submission in any respect?

Mr Hicks—No, I am quite comfortable with it as it is, thank you.

CHAIR—I invite you to make an opening statement before we ask you some questions.

Mr Hicks—I would have liked to but I was not aware I could, so I did not put anything together. You will have to forgive me for that.

CHAIR—We are quite happy to hear you speak from the hip, but if you would prefer not to we can go to questions.

Mr Hicks—I can probably speak a little bit from the hip, mainly from experience. I have a small family business that elected back in 2004 to move away from a monopoly wholesaler. One of the reasons we did that was that we were expected to sell below cost to be competitive. Pretty well everyone that was in Adelaide at the time is no longer in business, as far as companies of our size go. We invested a lot of money to secure our future, and that future was our own networks. We fought tooth and nail with Telstra from 2005. We in fact did a lot of our own work and installed the TEBA. We created the wholesale environment within Telstra. Every time we did something like that we effectively had another brick wall put up for us to climb over, and on the way over Telstra would be there with another brick wall or another speed hump.

The thing that concerns me about all of this is that our product is now at the stage that we are no longer in a monopoly environment. We have our own networks in South Australia that currently are providing more than 50 per cent of our customers with speeds greater than what the national broadband network is proposing anyway. So the issue that concerns me more is that we spend this money on a product that creates less of a product for our customers to embrace, as they would be disadvantaged.

As far as we are concerned, I am loathe to be put back into a wholesaler environment that is currently retailing against us. One of the big advantages for growth we have had in the last four years is based on being able to compete in a favourable environment. Our competition nowadays is competing directly with Telstra, Optus and other people who have invested in their own networks. If we continue down the path of Telstra again having a monopoly while having access to all of my customers' information and subsidising their own infrastructure, I do not see a big future for my company, the hundreds of staff that we currently employ or the existing customer base that we currently have, who are getting greater than 12 megs.

CHAIR—Thank you.

Senator MARK BISHOP—You provide your own network and it provides speeds above the level suggested by the government to over 50 per cent of your customers, and presumably you are trying to move to 100 percent of your customers as you expand your network. How would you be disadvantaged, seeing as you retain and own your network, if the NBN came into place?

Mr Hicks—If the NBN comes into place then it is anticipated that we are going to strand those customers back at the exchange. We are physically going to strand all of the exchanges, so all of our equipment will be stranded or isolated. If we have fibre to the node, the copper from the node back to the exchange will be disconnected. I have invested in the vicinity of \$40 million in the last five years.

Senator MARK BISHOP—Putting the fibre to the home?

Mr Hicks—Yes. Currently you have the exchange, and from the exchange the customer is connected via copper. With fibre to the node, the copper will basically be removed from the backhaul side of the exchange, so most of the customers will be within half a kilometre of the nearest node, and then the node will be backhauled via a piece of fibre, effectively stranding all of the infrastructure that we have put in place over the last four years. But Optus, Internode and all of our competitors out there will all be in the same situation. I am quite happy to be in that same situation and operate in a competitive environment because that is good for the environment. But it is very difficult to operate in that environment when our past experience with Telstra, as an example, is that the only competitor they want is themselves.

We have spent three or four years fighting, with the help of the ACCC and different levels of courts, to get anywhere. The current play is that, if we move forward, Telstra will find a loophole somewhere to delay it. This could even go back as far as when we leased our ADSL. If a customer was in a Telstra area and we wanted to put them onto our own networks Telstra would find one way or another not to do that. That could be by saying that there were no ports available. I have had firsthand experience of this. On a number of occasions we have had customers say to us, 'We want to be on your network.' We cannot get them onto it so they go to Telstra and find that Telstra will give them a port immediately, even though we requested that same port.

I went through this myself. I have a place at Hindmarsh Island. This is an example that I have had firsthand. For two years I tried to get broadband off Telstra as a wholesale. In other words, through Adam Internet, I applied to Telstra and I wanted broadband on my own property. My next door neighbour bought his property and within a month he came to me and said, 'I believe you own Adam Internet. Maybe I should have gone broadband with you.' I said, 'You cannot get broadband down here.' His answer was, 'I got it the next day.' I thought that this was not right so I rang Telstra again personally and spoke to one of their reps and they said that there were no ports there. A week later I got my wife to apply in her maiden name and we had broadband within a week. That is a typical example that we go through on a daily basis. We are now suffering exactly the same with ULL services.

Senator IAN MACDONALD—Have you reported that to ACCC?

Mr Hicks—Yes, on a number of occasions. Telstra now have a policy in place that, if the customer has not been able to get broadband through their provider of choice, they have to allow the customer priority. Most of the customers are not aware of this and neither were we. We put in an application as a wholesaler and Telstra said, ‘No port is available.’ Within a few weeks the customer might try Telstra themselves and they get a port. Unless one of us is aware of it, nothing will ever happen.

We have the same issue with ULL services at the moment as an example. It is commonly referred to as a naked DSL so there is no telephone line. We introduced that product last November and currently the hurdles Telstra have now put in place is that the customer has to do without a service for 20 days. That is how long it takes for them to just disconnect the telephone and allow us to supply an ADSL2 service. During that 20 days there is no guarantee that there is even going to be a service on the twentieth day because Telstra gives the customer a service date to deal with the connection and may not even turn up. They will not give 24-hours notice or a day’s notice. They just will not turn up and will say that they were busy. There is no policy in place for Telstra to just get it done. They will go out to a property and say that they knocked on the door and nobody was there even though there might be a note on the door saying, ‘I am in the backyard gardening.’ These are typical examples that we get on a daily basis. We are probably finding around 30 per cent of our current ULL installations are suffering from those types of problems. Telstra has no intention or no policy in place to deal with any form of fast or seamless transfer for those customers because they see it as a threat. They will not offer that service to anyone.

CHAIR—There are a couple of South Australian senators on this committee—myself and Senator Birmingham. I understand that your business supplies largely South Australian based residential and business based customers but other bigger organisations interstate.

Mr Hicks—That is correct, yes.

CHAIR—So do you have a decent handle on particularly the Adelaide market?

Mr Hicks—We would probably be one of the most recognised in Adelaide at the moment. As I said, we would say our main competitor now is Telstra.

CHAIR—To what extent do you think Adelaide customers are missing out on access to fixed-line broadband services? There are some estimates, for example, that some 55,000 Adelaide based homes and businesses do not have access. Do you have any evidentiary basis upon which to assess?

Mr Hicks—I would agree with that. They tend to be in what we call black-spot areas. In fact we have a proposal together at the moment to fill those black spots. Again, they are areas in which Telstra put infrastructure in place a few years ago that is incompatible with ADSL2. Four years ago, nobody realised just how fast ADSL as a product was going to grow. There are tech areas, like Mawson Lakes, which you are probably aware of, and 50 per cent of those areas cannot get any form of broadband, and they were sold as high-tech areas. The reason is that Telstra elected to put in things like pair gain and shared pairs all the way through. For those people who do not understand, that is a product where you can put one piece of copper in to serve many houses, but you cannot run broadband over that infrastructure whatsoever.

CHAIR—Where do you think, in that context, that South Australian or Adelaide based businesses and residential customers fit alongside others nationally, in terms of access?

Mr Hicks—In terms of access, I think it is very strong.

CHAIR—So, despite 55,000 missing out, you think that South Australians have strong access?

Mr Hicks—Correct. I am not talking country—we are lacking quite dramatically there. I think the whole of Australia is in the same situation. As far as the residential areas of Adelaide are concerned, it is very strong. We have our own infrastructure in 34 exchanges around the Adelaide CBD. That covers the majority of the area except for a few of the black spots that we are trying to sort out at the moment.

CHAIR—You mentioned you had proposals to fill some of those black spots. Can you give the committee a bit of an idea about what you are talking about?

Mr Hicks—Most of those proposals are based around wireless type of connection. Short of having a greenfield area, it is very difficult to undo what Telstra has done as far as these single pieces of copper they have got running around are concerned. It would be just as dear to put in fibre to the house as it would be to run copper to it now, so for most of those areas we are looking at backhauling through some form of radio network.

CHAIR—To whom have you put those proposals and what is the status?

Mr Hicks—There is one government submission in at the moment. We have an ongoing process ourselves. We have three wireless networks currently running. We have installed quite a number of kilometres of our own fibre infrastructure as well. But, again, it is backhaul. I heard you talking a little bit about that before. It is extremely expensive for a small company like us to take that on. It is a bit too much for us at this point in time.

CHAIR—Indeed. I have one further question before I swing to others. What about rural and regional South Australia, in terms of access?

Mr Hicks—This is one thing that I mentioned about disadvantage. I find it a little strange that we are looking at disadvantaging quite large segment of South Australia when that money could be used to roll forward, so to speak, from the country back into Adelaide. That may be a five-year or a six-year process. That then puts broadband where it is needed the most, and that is to the people who do not have it.

CHAIR—I note that in your submission you talk about the ‘rollout of the national broadband network’—and you are starting to use those words yourself; others have used ‘roll-in’—‘to those end users most disadvantaged from a lack of competition’.

Mr Hicks—Correct.

CHAIR—Thank you, Mr Hicks.

Senator NASH—Thank you for an excellent submission, Mr Hicks. I want to continue with this issue of the stranded assets because I think this has been a bit of a sleeper issue and has not necessarily been given a lot of consideration. Can you explain, from your perspective, how the change to the new network—to fibre to the node—will work for you? What will you have to do? How will that physically affect you? And what services will you be able to provide to customers?

Mr Hicks—When the fibre to the node comes in the asset will effectively be cut from the customer's premises. Currently we build what is called TEBA. That is a wholesale area of Telstra; in most cases it is a little room that Telstra design purposely so that not a lot of equipment can go in there. You do not get a lot of companies like us being able to go in there and put heaps of equipment in, because they then say that the exchange is full. Effectively, we build the TEBA rooms, we put the power supplies in there, we put our own equipment in and we then apply to Telstra, who disconnects the customer's copper off Telstra's mainframe, or the MDF, and connects it to us and then back to the customer. Effectively, instead of being on the Telstra network first they now come to us. Telstra still puts the dial tone on the network on the way back to the customer.

The issue with the national broadband network is that all of that infrastructure will be cut, stranded and just left. It is now useless, so to speak: it will not work on the new infrastructure, it is not compatible with the equipment out there and neither is the end user's equipment. They will be left stranded as well. They will be expected to buy new modems to be able to pick up this new product as well.

Senator NASH—The point of my question was more about the next step. For you, as the provider, when it gets stranded and disappears, all the investment you have put into that just gets cut. Are you still in a state of flux as to how, potentially, this new network will work in terms of you being able to continue to provide a type of service to the end user?

Mr Hicks—The end user will still get a service similar to what they are currently getting in our case—not in a lot of other cases. The issue I have is that I do not believe we will be able to compete in a fair and equitable market again. We will be creating a monopoly that has got a retail arm, and it is in their best interest, again, to serve their shareholders, profits and that type of thing. We currently live in a very competitive environment, and we can compete in that environment. As I said before, we are a fairly small company in the scheme of things, but we can compete and survive and offer a very competitive product. We have proven that in the past, in Adelaide.

Senator NASH—Really, the point of what I was trying to get to under the potential new environment is about that competitive aspect: unless it is given very careful consideration, it could disappear. It comes back to what we were talking about.

Mr Hicks—It comes back to a monopoly.

Senator NASH—It comes back to a monopoly, and what we were talking about earlier—trying to get a level playing field for fair access for operators exactly like you—which is why I asked the question.

Mr Hicks—I believe there should be a monopoly, and I believe Telstra is the only one that can do it.

Senator NASH—In terms of an infrastructure monopoly?

Mr Hicks—Correct. If we do not allow Telstra to do it, we are going to have them take their bat and ball and redo it themselves anyway. At least if there are billions of dollars of taxpayers' money put into this infrastructure and we can create some form of separation, I can see we will all be in a similar environment—a competitive environment that we can all compete in.

Senator NASH—You mentioned in your submission about compensation for the stranded assets. Do you want to take us through, in your view, what that might be, and how it might end up looking?

Mr Hicks—It depends on how it is done. If somebody just cuts the assets, it could shut us down almost overnight. The return on those assets is something that we have taken over a period of five or six years. Even today, we are still rolling out these assets and spending tens of thousands and hundreds of thousands of dollars, either expanding them or putting in new infrastructure. We are expected to do that as we going through this uncertainty.

Senator NASH—Really, the way it affects you—simplistically, I guess—is not only that you have had to outlay the investment into all of that infrastructure but that you will now be expected to invest in accessing the new network, whoever might run it.

Mr Hicks—Correct, and all of our existing customers as well.

Senator NASH—Who do you think should be responsible for any compensation?

Mr Hicks—That is a difficult one. We are profitable, and the current situation is that, if the rollout were done on such a basis that people could move into it as the technology started coming into the Adelaide environment or any of those bigger city environments, I do not see an issue, because it would be a five-year rollout. I will go back to another example. Telstra themselves have a process in place every time we bring on an exchange so that Telstra can keep those wholesale customers as long as possible. We have to give them 80 days notice. We have now put our own equipment in the Flinders exchange, and there are 7,000 customers in that exchange whom we want to move on to our own networks. Telstra will then say to us, 'Okay, you need to give us 80 days, and then 50 days; that timeline is now fixed and you cannot add any more customers to it,' even though we are still selling the product. Then, when it finally does come to the cut-over time, Telstra will go out to the exchange—we are not allowed to do that ourselves—and spend a week changing those MDF cables from Telstra to us. On average, they strand about 40 to 50 customers. We then have 40 to 50 customers who are extremely irate. They have neither the Telstra network nor ours.

They are the types of concerns that I have. We cannot even do a single exchange correctly, let alone the whole of Australia, so logically that says that it would be a fairly slow and long procedure to have people migrate from their existing infrastructures. People like Internode have over 100,000 customers, we have 70,000 and I think iiNet has somewhere around 500,000, so there are an awful lot of customers who have to have their database physically changed and their

records moved. There is a hard wire. There is human intervention. Every time somebody changes one of those, you end up with the possibility of stranding customers as well. No thought is being given to any of this; it is, 'Let's do a broadband network and switch it on tomorrow.' Once it is on, there needs to be an organised migration path over a four- or five-year period.

Senator NASH—I will take you to your submission, where you have a very interesting phrase: a 'no-disadvantage test'.

Mr Hicks—Yes.

Senator NASH—Do you want to take the committee through what you mean by that and how that would work?

Mr Hicks—For example, how do I explain to a customer who is currently getting 20 megabytes—we have thousands of them at that speed—that they are going to pay an additional \$50 a month for a service that is half the speed? That is the no-disadvantage clause. That customer should be entitled to stay there and give that infrastructure to somebody who can use it, because somebody who does not have the broadband does not have anything to be disadvantaged by.

Senator NASH—True, and that takes me to the next question. You say in your submission that the no-disadvantage test should include a no-change option. How do you do that, though, if we are going to end up with a situation where we have stranded our assets and there is somebody who is quite happy to stay on their DSL and does not want to change at all—which, really, is what you are saying? How can that continue to be provided if that is going to disappear under the new network?

Mr Hicks—There has been a lot of paper and debate backwards and forwards. There is actually no need to strand the assets of existing infrastructure, because fibre to the node is effectively fibre to the node—so it is a new piece of fibre—and then, as they migrate the new customers over, you only need to migrate the ones who want to at the node, so the existing copper stays where it is.

Senator NASH—I am just thinking as I am going here. For that to work, the successful proponent of the new network would have to be agreeable to that remaining in place, wouldn't it?

Mr Hicks—Correct, or there would have to be a migration period, so that we all agree that, whether it is five years or seven years, everyone will be on the new network in, say, seven years time. The option of changing is up to the customer at any time in that seven years.

Senator NASH—That migration period is something very sensible to consider. It would stop current suppliers having that initial cut-off. You were just saying that they could be cut off overnight. There also may well be customers who do not want to change over, and that would at least give a period of time for people to adjust.

Mr Hicks—That is right. It would be a managed migration.

Senator NASH—Do you think that is something that would need government regulation to operate?

Mr Hicks—I am sure it would. This would have to be thought out before the tender was in place and ready to be announced. Nobody knows how it is going to be implemented. My worst thought is that Telstra is going to get out and go, ‘We’re switching over Flinders exchange tomorrow.’ My experience is that it just cannot be done. There is quite a lot of work and time involved in an exchange.

Senator NASH—There is also taking into account what the end customer actually wants out of this.

Mr Hicks—And where does that leave customers who have elected to sign a two-year contract? We are now in a situation where, as an example, we are supplying them a service at \$50 a month and our new wholesale price would be in excess of \$70 a month.

Senator NASH—Thank you. You have raised some very interesting issues for the committee.

Senator LUNDY—I want to go back to a comment you made earlier that a new monopoly would be created. I note in your submission that you go on to say that, because the NBN is potentially a new monopoly, you have some very strong views about industry structure as a condition of that as well. Can you elaborate on your views on industry structure?

Mr Hicks—The industry structure should be a true wholesaler, a monopoly where all they do is wholesale. It gives us security that the existing regime has full access to all of our data, not only customer information like who they are and when they applied for a connection. We have regularly had customers ring us and say they applied for a service with us four months ago and, out of the blue, they get a cold call from Telstra saying, ‘Would you like a broadband service?’

Senator LUNDY—That is very interesting because, of course, they are not supposed to be able to do that, are they?

Mr Hicks—They are not supposed to, but they can. I know the previous incident that I was explaining, when I thought I put broadband on my holiday place at Hindmarsh Island, I had a devil of a time trying to explain to the woman that I wanted Adam, not Telstra.

Senator LUNDY—I got an email from a person in South Australia complaining about pair gain systems. It involved your company. They had applied to you for access and you had advised them that you were unable to provide an ADSL service because of the existence of a pair gain.

Mr Hicks—That is right.

Senator LUNDY—Can you describe that problem with the current network and how it affects your business?

Mr Hicks—Pair gain is an example. Mawson Lakes is a high-tech area. It is green. They do quite a lot of good things, but they put in a pair gain service.

Senator LUNDY—What sort of pair gain?

Mr Hicks—Pair gain in layman's terms is a single pair that gains more pairs. Do you remember 64k ISDN? You have probably heard of that. You get one single piece of copper, and it is capable of being chopped up.

Senator LUNDY—I was trying to find out if you knew what type of pair gain system it was.

Mr Hicks—Pair gain is pair gain. It is just a product that Telstra says. It is not a single piece of copper to the residence. Under normal circumstances every house has a single piece of copper. When you are on a pair gain service there is one piece of copper going down the road, providing telephone services to multiple houses. It was just the same with 64k ISDN: you could put in a single piece of copper and that would give you six, eight, 10 or whatever number telephone lines you wanted on that single piece of copper, but it is unable to carry the ADSL frequencies. That is in a lot of those areas.

Senator LUNDY—Thank you for that. What happens when a customer of yours wants to get internet access or an ADSL service and you find on your application to Telstra that a pair gain is in place? What can you do about it on behalf of your customers?

Mr Hicks—We will go to Telstra and ask them to be put on a standard pair, and in 99.9 per cent of cases they will say, 'Sorry, it's unavailable. We can't give them a pair.' There is a good chance I would recommend to that person to contact Telstra and ask to be transferred, and more than likely they will get a broadband service through Telstra.

Senator LUNDY—Do you have any definitive examples of Telstra offering a transposition if the customer goes with them once they have told you as a company that a service is not available?

Mr Hicks—We can go back to Telstra. As I said, if we were their preferred supplier, Telstra has to then allow us to migrate the customer back to us. But we have to be aware of that situation.

Senator LUNDY—And you are not always made aware of it?

Mr Hicks—Very rarely. In the end, the customer is grateful to get off the pair gain and get ADSL. All they see is that Telstra did it and we could not.

Senator LUNDY—Thank you.

Senator BIRMINGHAM—Thank you very much for taking the time to make your submission. Your evidence thus far today has been very enlightening, and I trust you have gotten over that horrific flight this morning as well. To pick up from where Senator Nash was on the issue of migration over to a new NBN structure, in their submission to us AUSTAR talked about the likelihood or the potential of Telstra rationalising their exchanges under an NBN system. They have suggested, in fact, that the current 1,000-plus exchanges could be rationalised to fewer than 100. In terms of you trying to maintain access on a no disadvantage basis, that would have fairly horrific consequences, I would imagine.

Mr Hicks—Very difficult—that is right. I do not have the answer to that one.

Senator BIRMINGHAM—From your understanding of the network structures and the way they operate, do you think that would be a logical and likely path that Telstra would take?

Mr Hicks—I think it would be in the long run. If I were in that position, there is some very valuable real estate out there, and in the long run it is going to be made redundant. There are no two ways about it with the next generation product that we will all be selling. In fact, I do not class the 12 megs as the next step. We should be looking at fibre to the home, as an example. Most of the world is doing that. We are looking at a stopgap to create a monopoly that strands the competition's assets when, in fact, we should be looking at something like fibre to the home from day one and have a 15-year plan to do that.

Senator BIRMINGHAM—Obviously that is an ambitious plan, but I understand why you would potentially advocate that. Is there a risk, do you think, in the way that the government has gone about this proposal that we are choosing the wrong technologies or picking winners rather than government necessarily allowing the market to sort itself out and taxpayer funding purely being directed to those underserviced and non-economically viable areas?

Mr Hicks—Yes, absolutely. I believe most of the residential area is more than adequately serviced for the performance that we are currently going to offer them in this NBN. You talk to people in these black areas and out in the farming community. You can go as little as eight kilometres out of Adelaide and find that the black areas start. Once you start getting out as far as Mount Barker, which is just at the top of the freeway, the same issue starts raising its head. There is a huge percentage of the population that should be on broadband. Nowadays it has taken over from the local library. The relevance of broadband is huge for the end user. It is like removing their telephone 50 years ago or not giving them a telephone. Everything is resourced on the internet now. Without it you are severely disadvantaging the children out there, the farmers and pretty well anyone in those unlucky black hole areas and pair gain areas or as little as 10 or 12 kilometres out of the city. That is what we should be looking at first.

Senator BIRMINGHAM—I think the new member for Mayo, who is a resident of Mount Barker, has firsthand experience of those challenges.

Mr Hicks—I have a proposal that we are looking at at the moment. We are just putting our infrastructure there as we speak. We have the same issue with backhaul from there as well.

Senator BIRMINGHAM—Senator Ludlam picked up an interesting statement in Vodafone's submission which was that if:

... the Government does not have a high degree of confidence that the best RFP proposal also reflects an optimal net consumer welfare outcome, then it should not pursue *any* proposal at this time.

Would you agree that, in the end, if the government does not put the right regulatory framework in place or if the bidders and—being blunt—if Telstra sticks to its current fairly dogged public mantra of refusing any notion of separation in return for the public funding that is attached to the NBN then we would be better off with the government revisiting the whole scheme, looking at getting the regulatory framework right and pursuing something totally different?

Mr Hicks—I would agree with that, yes. That is a main priority at this time. Without that regulatory framework in place there is a fairly large loose cannonball out there in that they can do what they want.

Senator BIRMINGHAM—Getting the framework right is far more important than the \$4.7 billion.

Mr Hicks—Correct. I think it is. My personal thoughts, as I said before, are that I see this national broadband network as nothing more than a way of recreating the monopoly. We are forcing Telstra to be competitive—there are no two ways about that. Companies like us, Internode, Optus and AAPT have all been forced to put out our own infrastructure within these exchanges. I think they made it quite difficult for us to do it. Even with that constraint we have gone out there and done it. Telstra has now had to be competitive and the customer is benefiting from that. The only way somebody like Telstra can recreate that monopoly is to restrain the assets. To bring out a product like fibre to the node to me is just a stopgap for a few years, recreates a monopoly, gives them a bit more control of the assets and then they will run fibre to the home anyway.

Senator BIRMINGHAM—Looking long-term and, obviously, you have mentioned fibre to the home a couple of times, other witnesses to this inquiry, public commentators and so on have talked about the likely potential in the longer term of wireless solutions and mobile technologies and how they may be applied. Do you simply see them as potential competitors or is there a real risk that in the end we may have other technologies that end up outstripping fibre in many instances?

Mr Hicks—I think all of those products go hand in hand. The issue with Australia is that it is so large. Fibre to the home will work well in the inner suburbs. It has to be a mixture of wireless and mobile phones. A lot of those infrastructures can be used as backhaul to subsidise country. There is one thought that broadband is going to take over. It is not really. It is a product and all products will work hand in hand. I see that eventually the mobile phone market will just be an extension of your home anyway. When you are at home you will be using the fibre; when you are out in a vehicle you will be using mobile. You will probably roam between carriers to get out to the country but it all has to go down that path as an integrated system that will work together.

Senator BIRMINGHAM—You also touched on some of the other regulatory and structural issues in your submission. The one I wanted to close on is around price setting. You have made a pitch for special access undertakings as being the most appropriate formatting in which to have prices set under the NBN. Could you elaborate on why you think that regime is the most effective and appropriate?

Mr Hicks—It is a regime that is accountable. That is probably the best way to look at it. At the moment we have no accountability as far as the wholesale product that we are expected to sell for \$30 or \$40 less than we paid for it. That is how the existing pricing structure works with Telstra. We were offered ADSL2 as I said a month ago with Telstra and our port cost on that is \$52. On that we then have to put backhaul, bandwidth and then sell it at \$49. That is a typical example.

I do not know how they make their figures up. I am not the bean counter in there. Somewhere in there we are subsidising them. So all we are looking for is transparency. That is when you go back to the monopoly side of things. It is all transparent. It is a wholesale monopoly that manages it. If Telstra is that monopoly there will be no problems with access to infrastructure because it is all there in the first place.

Senator BIRMINGHAM—Thanks, Mr Hicks. Those examples demonstrate very clearly why the current regime does not work, let alone under a new one.

Senator LUDLAM—Sorry if this is taking us back a way. I just wanted to check: say we roll this out and we get fibre to the node, even if there is a bit of a period of grace for the new system and there is some overlap but the infrastructure is working concurrently. I get the sense that your business model at the moment is based on piggybacking hardware at exchanges, which are you are able to do. You have been able to force your way in to a limited extent. What does your business model look like, with fibre to the node, where you have a much smaller number of exchanges and a very large number of these cabinets?

Mr Hicks—The business model will not change.

Senator LUDLAM—You are still installing network hardware?

Mr Hicks—We will still have our own infrastructure as far as bandwidth IP traffic; our customer base will still be there and we will retain that customer base as long as we can compete on an equitable playing field. I keep coming back to that same issue. If it is all transparent and we are all able to buy a product that is an accountable product—we know how that pricing is made—it then comes down to us how we run our company: how lean it is, how the infrastructure is put together.

Senator LUDLAM—I guess that is the distinction I am trying to draw. In a fibre-to-the-node network are you reselling bandwidth that you have bought from the network provider?

Mr Hicks—Under the proposal I am presuming we would still be putting our own bandwidth on it. We would be sold the port at a rate and then back-haul it ourselves. There are quite a few different models where we can actually do that. Again, the back-haul model at this point is probably another monopoly, because the fibre from the node to the exchange would obviously have to be Telstra. It creates a second monopoly in there somewhere.

Senator NASH—Mr Hicks, there was one thing I meant to raise before when we were talking about DSLAMs and stranded assets. You say that, in spite of the fact that they are potentially going to become stranded assets, the ACCC is still expecting investment in DSLAMs even though we are going through this process of the NBN?

Mr Hicks—That is right.

Senator NASH—Could you enlighten the committee as to how that is happening? Is there directive from the ACCC or just an understanding or—

Mr Hicks—No, there is no directive, but it is fairly expensive every time we get a TIO complaint. As you have seen, we will get a complaint about products we have no control over—in other words, the pair gain. If our exchanges are capped, so to speak, and we leave the ports full, we will have more TIO complaints than we can jump over. So we have elected to just continue rolling out infrastructure as customers come on board. As far as new customers are concerned, there are basically hundreds a day. Out of those, probably 30 per cent are on incompatible infrastructure or are unable to get services. The products that we service are only in Adelaide as well.

Senator IAN MACDONALD—Mr Hicks, you have given us some examples of how the system is not working at the moment. Obviously there are regulations in place that say that should not happen. Is that correct?

Mr Hicks—Correct.

Senator IAN MACDONALD—What can be done—I see your list of suggestions—to ensure that any regulation surrounding the NBN is actually enforceable, which it does not seem to be now? I suspect it is legally enforceable but not practically.

Mr Hicks—That is right.

Senator IAN MACDONALD—What can the government do to make sure that whatever regulations they make are in fact enforceable?

Mr Hicks—One of the biggest issues I see is that of a retailer having access to our database—all of our customer details, where they are, what they are doing, when they—

Senator IAN MACDONALD—But they must have that for some reason.

Mr Hicks—Because it is Telstra; the unfortunate side of it is they are a retailer as well.

Senator IAN MACDONALD—But could someone with a stroke of a pen, by writing a regulation, say, ‘Telstra shall not have your list’?

Mr Hicks—But as a new monopoly in the broadband infrastructure there is no advantage to utilise it. They will still have the list, but there is no advantage to them because the staff that are involved in the new broadband network will not have a retail arm.

Senator IAN MACDONALD—So this is with structural separation.

Mr Hicks—That is right; if you have structural separation the retail arm will not have access to the wholesale arms.

Senator IAN MACDONALD—Again, that is a regulation. The regulation will say that the retail arm ‘shall not have access’ to the—

Mr Hicks—With separation I would have expected it would be two completely separate companies.

Senator BIRMINGHAM—The problem at present and in an environment without structural separation is that because it is Telstra's infrastructure they in a sense have to know, either by default or by some other means, who is supplying what to whom across their infrastructure network.

Mr Hicks—That is right.

Senator IAN MACDONALD—I am not suggesting for a moment that Telstra would do this, but if they are owned by the same shareholders and one company—we should not malign Telstra—might say to the other, 'We want to get on in the structurally separated network, so you might let drop on the floor of the retail arm over the road just who is actually connected there and we'll cold-call them later.'

Mr Hicks—That is right.

Senator BIRMINGHAM—You're very cynical, Senator Macdonald!

Mr Hicks—The umbilical cord would have to be cut, I would have thought, when you have structural separation. They would not be able to share databases. That still might go on, but in an ideal world you would like to think that it does not. It gives us a bit more accountability, that is all I am saying.

Senator IAN MACDONALD—Okay. With functional separation, could there be regulations in place to make that illegal, and enforceably illegal?

Mr Hicks—You could regulate about many things. As I said, in the ideal world, once they are two separate companies, I think they would be operating independently as well.

Senator IAN MACDONALD—But as a fallback position, if for some reason the government decides not to impose structural separation but requires them to be functionally separate, is there a way it could be regulated?

Mr Hicks—I do not know. I do not have a crystal ball on that. We would end up overregulating again, I think. All I have got is the past history of dealing with Telstra. Every time we have opened a door or climbed a brick wall they have found a way to put up another one. Even when you spend two years fighting them in court there is an appeal straightaway, so then you spend another two years on the appeal.

Senator IAN MACDONALD—We heard this evidence from our briefing notes.

CHAIR—Senator Macdonald's question is not necessarily about more regulation, it is about making what is regulated work on the ground. Whilst you say you are not an expert—

Mr Hicks—It is a huge company.

CHAIR—you do have experience and you can probably forecast the next step. When governments set laws there are rogues in every gallery. You are always trying to outfox them but at the same time achieve an appropriate balance between laws and not laws. Do you have

anything to add, in answer to Senator Macdonald's question, not necessarily about having more regulations or laws but about making those that are there have teeth or have legal fibre?

Mr Hicks—Give the ACCC some teeth, maybe. That is about the only other thing I could think of.

Senator NASH—That is probably an important point. Do you think it is a case of giving the ACCC more teeth so they can operate effectively in terms of prosecuting—and I am using that word loosely—or actually implementing what is expected of them through the regulatory environment?

Mr Hicks—They are sitting there with their hands tied at the moment, so we have that issue of not being sure. How do you expect a company like us to invest in the future when we do not know what the future is that going to be. We do not know the model, we do not know the pricing structure, we do not know whether it is going to happen last July or next September—and during that period we were trying to put together a five-year plan for ourselves.

Senator NASH—It is very difficult.

CHAIR—Senator Ludlam is going to bring this segment to a close with a final question.

Senator LUDLAM—I am not sure whether this is a question or just an observation. Many people, whether it is the ACCC whoever, have raised the fact that there are many subtle ways for even a functionally separated entity to cross-subsidise its wholesale and the retail arms.

Mr Hicks—Correct.

Senator LUDLAM—It is not even a Telstra issue, is it?

Mr Hicks—No.

Senator LUDLAM—It is just corporate behaviour. I do not know if we want to turn that into a question. In your submission you were pretty clear that you are looking for structural separation—two different entities with the incentives not mixed up.

Mr Hicks—That is right. A law could be passed that those two identities cannot have access to each other's databases or computers. That would create the structure and cut the umbilical cord. I do not know how that could be done. It would be very difficult.

Senator LUDLAM—Essentially it would be to prevent ownership of one branch by the other, wouldn't it?

Mr Hicks—That is right. But then you get the issue of migration of staff backwards and forwards. So, yes, it is a hard one.

CHAIR—Thank you very much for your time and expertise.

Mr Hicks—Thanks for your time and I appreciate being heard.

Proceedings suspended from 12.21 pm to 1.33 pm

POOLMAN, Mr Clive, General Manager, Strategy, AAPT

CHAIR—Welcome. Whilst you are making yourself comfortable, I will repeat some of the niceties from this morning. Today is the first day of hopefully a series of days of public hearings into the national broadband network. There are provisions for evidence to be given by witnesses in camera, on a confidential basis, and the committee will consider requests to that end from individual witnesses. People giving evidence to this inquiry enjoy the status of parliamentary privilege, which brings with it certain protections. If you want any more detail as to any of those issues, we are able to provide that. On the basis that you do not, I welcome you. Do you wish to amend or vary your submission in any way?

Mr Poolman—No.

CHAIR—That being the case, would you care to provide the committee with a brief opening statement, after which we will ask questions.

Mr Poolman—Yes, I guess.

CHAIR—You do not have to. I am inviting you, if you so wish, otherwise we can go immediately to questions.

Mr Poolman—I might pre-empt by saying that, whilst I am in the position of GM of Strategy, I have been in the role for two months and was not the author of these documents but accept and agree with everything I have read in the documents in general. However, I have been with AAPT for over 20 years and, in fact, I was amongst the first 30 people to join them in 1990, well before deregulation started in 1997. I have a pretty extensive background, albeit in a different part of the business. Therefore I come from a slightly different perspective, albeit with the same conclusions, in having witnessed through my life there the difficulties in the competitive environment as they work today.

In a nutshell I think that, after Telstra and Optus in terms of profits, there are probably some 700 other small carriers, service providers or ISPs. If you sum the total of the profits from those other 700-odd entities, including us, the sum total of the profits is zero. Telstra and Optus are making 100 per cent or potentially 105 per cent of the total market profits. It has been a tough environment to compete in.

I remember when substantive deregulation started in July 1997 and there were huge, big changes. I remember, effectively overnight, benefits being brought to consumers through a substantial increase in competition at that stage. Probably in 1995-96, just as an example, the cost of telephone calls to the US, UK and New Zealand might have been \$1.50 or \$2 a minute. Within the next six or 12 months, the benefit of competition had brought those costs down to 50c and 40c. I think we started on 1 July 1997 with 40c a minute in comparison to what had been well over \$1 and towards \$2 in a lot of instances. That has come way down since then. However my recollection is that those were the halcyon days of competition. Things have continued to be tough and over the last few years, as I say, the profit pool exists really in two entities.

We submit in this document that, with the advent of a new network to carry the traffic through and around Australia, there is an opportunity now to do things in a different way, particularly from a regulatory perspective, to enhance and facilitate competition in the market. AAPT is a little different for those of you who may or may not know much about us. We are the third largest fixed wire carrier after Telstra and Optus and are worth something like \$1.2 billion of sales revenues, but we have had no profit over the last couple of years.

Whilst we have some 400,000 retail customers that we service directly in a direct billing relationship, we are also, I would guess, the preferred wholesale provider in the market—even including Telstra and Optus. We service some 400 small wholesalers downstream that take elements of our network or total products, resell them, bundle them and then on-sell them to a couple of hundred thousand small consumers down the line. We operate in a fairly broad way both on a retail and wholesale basis and we would like to continue to see that. That ability to service consumers directly and indirectly is something that would be sustained through a new type of framework to suit a whole new generation of technology and equipment.

CHAIR—That is a good overview. Thank you, Mr Poolman. We understand that, whilst you are not the author of the document we have in front of us, the AAPT submission, you bring a wealth of industry expertise. You talk in your submission about the conflict, in your view, that AAPT says Telstra has—balancing interests of shareholders on one hand versus the provision of services on the other hand. You talk about developing appropriate regulation. Can you explain a little more what AAPT sees as appropriate regulation, noting that some might have a view that more regulation is not necessarily appropriate regulation? What is your definition in that context of appropriate regulation?

Mr Poolman—Fairly simply, we have a view that, if a substantive network is owned and held by a vertically integrated monolith with the ability to cross-subsidise between retail and wholesale operations, and with enormous balance sheets and five-billion-dollar annual cash flows, it is very, very difficult for an entity like the ACCC, in terms of resourcing, to regulate and maintain a level playing field in that type of situation. We would like to see that a new network would be separately held by an entity that does not play in the marketplace directly. We believe that, once fairly simple benchmarks are set around that separate entity, it will be easier to regulate and manage without the complications that exist in the current way things work.

CHAIR—So you would effectively sidestep what otherwise might be a desire for more regulation by having the separate entity?

Mr Poolman—Yes.

Senator LUNDY—You said, ‘not playing the marketplace directly’. I presume you mean not playing the retail market; you would want the new network owner not to be a retail player.

Mr Poolman—Yes, I meant not play in the retail marketplace. But you can also have separation between the actual ownership—the equity ownership—and the ability to influence the way the entity works. Pricing and regulation can be set separate from the ownership. But, if there is an ownership of any of the participants in the industry, that ownership needs to be separated from the ability to influence the key components of how that operates from a pricing perspective or from a regulatory perspective.

Senator LUNDY—You are pretty scathing in the submission and in your opening comments about the current regulatory regime or an access regime. You describe in detail the sort of gaming that goes on with the regulation at the moment. Can you give us a bit of an insight into AAPT's experience with the gaming of existing access pricing and the setting?

Mr Poolman—I guess I can take it as read the particular examples in here where the ACCC determines and sets indicative pricing levels for certain elements. It is then necessary to strike a commercial negotiation with the supplier and, as often as not, those commercial negotiations do not result in a satisfactory outcome. They need to go to a legal conclusion, which, of course, suits a big wealthy company with lots of legal resources. Whether that is a strategy or not, I do not know. But it certainly takes a lot more out of smaller organisations to have to continuously contest from a legal perspective commercial terms such as price and non-price just to reach a conclusion. That type of process has been continuing for years. Even in the last month, the ACCC released some changes which are seeking to deregulate Telstra from supplying access to their access infrastructure, and that is also going to result in some legal pursuit because there are those of us who do not believe that the industry is at a point where the monopoly supplier of the copper access network should be let off their leash, because competition is not strong enough to sustain that. So it is about a process of reaching conclusions that do not tie up smaller entities with large amounts of legal time when they can scant afford it, given the relative sizes of the profit pools that I outlined a little earlier.

Senator NASH—You are talking about deregulation of a particular area under consideration at the moment. What exactly are you talking about there?

Mr Poolman—It is the ability for carriers to resell elements of Telstra's network, particularly the line rental and the local calls that you each get on your Telstra telephone bill or your AAPT bills, hopefully, every month for whatever the amount is—say, \$29 a month line rental plus the cost of your 20c local calls. That has been finalised. A very significant part of the revenue lines for many of the smaller carriers is to be able to provide a rebill for those services and also to provide a single bill to customers. The ACCC has continued with that. One of the key planks of deregulation in July 1997 was a process called preselection, which allows you to choose—

Senator Nash interjecting—

Mr Poolman—Am I getting too detailed?

Senator NASH—Sorry.

Senator STERLE—We all know about preselection!

CHAIR—It is a very well intended political pun.

Mr Poolman—Okay. Sorry, I missed that. You have to be in the in-crowd, I guess. With the telecom version of preselection, you can choose your long distance telephone company and those calls get directed over the Telstra network to the long distance company that you have chosen. That was effectively the plank of fixed wire competition, which started in July 1997. Telstra was obliged to provide that to everybody. The ACCC is looking to remove that obligation for some 60 per cent of the metropolitan and 100 per cent of the CBD exchanges within 12

months. Telstra might behave honourably with that and continue the way they are, but the problem is that they have spent millions and millions on getting those regulations overturned, and I presume they intend to do something with that.

Senator NASH—Your submission does not express a lot of confidence in the regulatory system and the ACCC being able to monitor and perform their role under this new NBN and environment. Is some kind of structural separation necessary?

Mr Poolman—Probably. We see that as being one way to ensure a simpler, more equitable system. I do not know whether there is an alternative or better way, but it seems that constantly tweaking with the ACCC process does not constrain somebody with the size and power of Telstra. Judging by the profitability of the industry, competition has not been hugely successful, nor is it hugely sustainable.

Senator NASH—You talk about the ACCC needing more resources. Are you talking about funding, manpower or both? Is there anything other than that? Obviously they need some more resources to perform their duties more effectively.

Mr Poolman—Just those two.

Senator NASH—You also mentioned future network investment, which is something we have not touched on much as a committees so far. If all the funding is going into this new NBN scenario now, what about future network investment? Your submission says:

It is imperative that the NBN regulatory framework encourages future network investment.

Although it is not your submission, could you expand on that for us? Or would you like to take that on notice and come back to us if that is a bit outside your realm at this early point?

Mr Poolman—Let me attempt an answer and come back if I come across anything different. Over last couple of years, probably 10 or 12 entities have invested in equipment called DSLAMs. You install them in telephone exchanges and they have the ability to collect telephone calls and provide broadband services. DSLAMs bypass Telstra, although one has to lease some of the copper network. It is a moderate investment that is required only to collect all traffic from a customer's premises and to deliver it around the world as they need. The proposal for an NBN commonly talks about fibre to the network, which bypasses exchanges and brings the fibre somewhat closer to the customers' homes. That would bypass the equipment that we have installed and invested in the telephone exchanges, so we would lose the ability to provide competing services through investments in infrastructure. That is an issue which somebody will probably get to.

Senator NASH—Yes, we have already been there.

Mr Poolman—Protecting that investment will be a common issue. I am not sure what technology may be there in the future to add to an FTTN type network to build new services, but I would envisage that it would be something with a DSLAM type capability to do different things and bypass various elements of the network.

Senator NASH—So what you are basically saying is that we do not want any kind of framework that is going to constrain that kind of potential competitive development in the future?

Mr Poolman—No, we do not.

Senator NASH—Thanks.

Senator LUDLAM—This might take us back to where you started. Paragraph 60 of your submission, which is part of the conclusion, says:

... by ensuring the alignment of incentives within the appropriate market structure, the appropriate regulatory framework will be achieved.

How would you define ‘alignment of incentives’?

Mr Poolman—I do not know the answer to that question.

Senator LUDLAM—We can come back to that.

CHAIR—Would you like to take that on notice, Mr Poolman?

Mr Poolman—Yes.

Senator LUDLAM—If there were specific things; I suppose it has been a bit of an undercurrent of the day so far. We heard this morning that, depending on how this process goes, we might end up moving to a network which costs customers relatively more than they pay at the moment for slower service and less choice, costing taxpayers nearly \$5 billion. Is there a set of conditions whereby you think it would be better not to proceed at all? In your submission, and from what you have said as well, you have been fairly direct about some of the pitfalls that we could face.

Mr Poolman—Yes.

Senator LUDLAM—One of the earlier submissions suggested that we might be better off not going down this track at all.

Mr Poolman—Our view is that we need to be moving to a digital future—that is necessary. If we are talking about exactly how you do that and the combination of technologies, they can probably be tweaked. We believe that a structurally separated entity, with controls on the rates of return of that entity, and with equivalent access to that entity in wholesale terms to be able to go out and build competing products and services, will result in increased competition benefits to consumers overall. There may be some ups and downs, as there are in a lot of areas, but overall there will be benefits in terms of speed of service, variety of service and price as well.

Senator LUDLAM—This will probably get me laughed out of the room, but I am going to suggest it anyway—would it not be simpler if the network were to be held in public hands rather

than in the hands of a corporation that is trying to achieve commercial objectives that are perhaps sometimes at odds with the public interest?

Mr Poolman—No, I think that is a reasonable position.

Senator LUDLAM—Thank you.

Senator IAN MACDONALD—One person did not laugh at you!

Senator BIRMINGHAM—Can I start with point 42 in your submission? It says:

Consideration also needs to be given as to how to transfer customers to the NBN. AAPT believes this process should be mandatory where consumers are well informed as to the products and services they are able to purchase. However as noted above, consumers should not be disadvantaged and required to purchase product and services they do not desire and do not choose today.

The two statements appear to be contradictory. Could talk me through the logic behind that, particularly in the overarching framework with how you deal with stranded assets and that transition of consumers from current to new frameworks.

Mr Poolman—I think we are talking about a change of underlying technology rather than a change in the services that a consumer buys. If they buy a telephony service—you pick up your telephone from home to make a call—that service will be there the day after. The day before, it ran entirely on a copper network; the day after it runs on a fibre-to-the-node network. We are suggesting that services should be cut over on to the fibre to maximise the use of the new network and improve its viability. That is a commercial issue. But the equivalent products ought to be offered on the new network so that, whilst customers are transitioned across in the dead of night so that they are not inconvenienced, they are getting an equivalent service at an equivalent price—an equivalent or better price so it is transparent to them. They can then choose down the line whether they want to get access to new products and new capabilities that may be offered over that new network.

Senator BIRMINGHAM—Mr Hicks from Adam Internet just before the break put it to us that there may be instances of customers who are connected at present through an exchange and that the connection they could get under the NBN may be a slower connection than they currently have through their direct connection to the exchange. I may not have put that in the most glorious technical language there, but is he right that there may be customers who could be disadvantaged if you made a switchover mandatory? If so, how do you work around that to ensure that people do get the same level of service and product?

Mr Poolman—Theoretically and practically, what he suggests may occur, but I suggest it would be in a minor number of cases. Speed is very much a function of how far away from the exchange you are. If you have an example of somebody who was living next door to a telephone exchange and only had a very short run of copper, they could be getting speeds in excess of 20 megabits today. Regarding the equivalent service on the new network, if it so happened that they were more than 100 metres from the new node as it rolled out—it is possible in that particular example that they could be 1½ kilometres away from a new node—instead of getting 20 megabits they might get 15 megabits. Whether that is going to be visible to the end user is

another matter because, interestingly, the speed you get out of the internet is dependent not just on the size of the pipe that goes from your house into the telephone exchange but also on the size of the computer at the remote end that you are trying to retrieve information from or the thickness of the submarine pipe that goes internationally. It is very hard to determine exactly what is driving the speed of the particular service that you get.

In a minority of cases, yes, it is possible. There would be some cases where you may get a reduction in speed. Whether it is going to be noticeable or not is one issue. There will be a capability of different speeds on the new network anyway, so, in the case where there may be particular customers who have particular instances where they are hurt by that, that could be rectified. Maybe on the night of the transfer, if they knew that they could tell the difference between 20 megabits and 15 megabits per second and that it was going to cause them some damage, that could be rectified shortly afterward.

Senator BIRMINGHAM—You make a pitch in the submission that underserved areas should be targeted first under the NBN. Nearly every witness who has come before us has argued in favour of that rolling in approach rather than the rolling out approach. That is the language that you have used in the submission as well. You argue that not just on a customer service basis but also because it will minimise and defer the stranding of existing assets. Would you talk us through the logic behind that so that it is clear, please?

Mr Poolman—The proposition is that you would start rolling the fibre out in regional areas—for example, Broken Hill, Dubbo and those types of places—because up until now competitive infrastructure has not really been installed in a lot of those places. The majority of the competitive infrastructure from those who have invested in this exchange based DSLAM equipment is mostly in the metropolitan and CBD areas. A lot of this equipment has been installed within the last 12 months, for instance, and its useful life will continue for at least another four years from a financial, if not technical and physical, perspective.

So it just makes sense to avoid compensation or stranding issues associated with that equipment, that those underserved areas be serviced first, that the network be rolled in and that that equipment which has been installed in those exchanges—and it is pretty much universally fairly recent; I doubt that any of it is over five years old in Australia—can live out its natural life through that process without negatively impacting service quality for those people on that infrastructure.

Senator BIRMINGHAM—Thanks, Mr Poolman.

Senator IAN MACDONALD—You indicate that AAPT is part of the TERRiA consortium. Have you been involved in their bid at all?

Mr Poolman—Me personally? Yes.

Senator IAN MACDONALD—I think it is public knowledge that your bid is for a separation of the network. Is that correct? What I am really saying to you is: do not tell me if it is not public knowledge. I am not trying to get any insight into what your bid might be.

Mr Poolman—I believe so.

Senator IAN MACDONALD—Is it public knowledge?

Mr Poolman—Yes and yes.

Senator IAN MACDONALD—I am a bit cautious on how I ask this, but is your company's involvement there to be part of the profit-making venture that would be the network operator if it were successful? Or is it mainly just to ensure that you as an individual company have an equal opportunity of succeeding in an open, competitive market?

Mr Poolman—Potentially both of those, but in addition the ability to try and influence the shape of that bid to try and ensure that we end up with something that is going to facilitate competition in the marketplace.

Senator IAN MACDONALD—So it is really the latter part of my question—you want to make sure that AAPT have as good a right as anyone else to get in there, do them over and make money using an independent network, of which you just happen to be a shareholder?

Mr Poolman—Yes, but also to drive the shape of how that would work. If we are talking about structural separation or about other sorts of things which TERRiA may propose, then we would like to be part of facilitating that.

Senator IAN MACDONALD—I am not sure that you mentioned this at great length in your submission—forgive me if I am wrong—but your company is not big in regional areas. Is that correct?

Mr Poolman—No, I do not know off the top of my head, but we have a pretty significant customer base in regional areas. Say we have in our residential consumer division some 300,000 or 400,000 customers. Once I looked at it—this would be some years ago. If 30 per cent of the population lived in the country areas and 30 per cent of our traffic also came from the country areas, that would be 30 per cent of 350,000—say, 100,000 customers.

Senator IAN MACDONALD—Again this is perhaps not a fair question because it is a little bit hypothetical, but has AAPT ever thought about building its own broadband network just between the major capitals—without subsidy, just doing your own thing?

Mr Poolman—AAPT does have its own fibre, which runs from Perth around up to Brisbane. More recently, a little over 12 months ago, we purchased PowerTel, which also had built a fibre in Melbourne, Sydney and Brisbane, via Canberra, of course. So we have a reasonable amount of land fibre and we also have invested in and built several hundred million dollars worth of submarine fibre over a period of time.

Senator IAN MACDONALD—So is it then true to say that, as far as AAPT's business interests are concerned, you do not really need the national broadband network because the principal part of it is going to places where you already have your own network and it is only the more remote areas that you do not currently have access to or is my understanding of this not correct?

Mr Poolman—I think we are talking about slightly different things. I said that we built a fibre from Perth around to Brisbane. We have two major sites in Sydney, Melbourne, Brisbane, I think Adelaide and Perth to offer a redundant or fallback situation. Our fibre runs from those places and connects them together in a single thread. The NBN then is looking to be the tentacles which run out from those central points in each of those cities. So, yes, we have run some fibre, for instance, around the streets and suburbs of Sydney and Melbourne but it is not extensive by any stretch of the imagination. The NBN proposes to run a whole spider web of fibre out into the suburbs and country towns and get us that much closer to the customer's homes and businesses. So it adds I guess that last bit of connection from where we are centrally located through to the actual business itself.

Senator IAN MACDONALD—I am really trying to draw you into the proposition that the network in the capital cities and the suburbs to which you alluded does not really need taxpayer subsidy. Can I get you to comment on that?

Mr Poolman—For us personally where we have run our own fibre we did it under our own steam and under our own business cases and would not have been expecting anything in return for that.

Senator IAN MACDONALD—But its advantage to you in commercial terms, I suspect from what you say, is in connecting in bulk to the suburbs, is it?

Mr Poolman—It is in connecting in bulk to the suburbs but also broadening our reach. I do not know what percentage of the population we cover today with our infrastructure, but it is not much more than 50 per cent. The proposal for the NBN network would be to get to 98 per cent if not 100 per cent of the population so the reach is more than double.

Senator IAN MACDONALD—Is the profit of being able to double the reach double the profit?

Mr Poolman—Double nothing is nothing, for starters.

Senator IAN MACDONALD—I have read your submission on that.

Mr Poolman—It would be nice to make a profit.

Senator IAN MACDONALD—I am expecting that you are expecting better things ahead whatever happens and it takes a while to get involved. I am struggling with the proposition that any of the subsidy at all should be diverted towards picking up suburban metropolitan areas rather than those parts of Australia which really are not commercial for any carrier to cover—be it Telstra, AAPT or the smallest, whoever that it is.

Mr Poolman—I think the fibre network will run faster so it will improve the quality of service for those people within the metropolitan area. There are, as I understand it, a number of what we call 'holes' in the metropolitan area as well where (a) there is not much competition at all and (b) the quality of the service is fairly poor. So I think overall there is an improvement in terms of moving Australian forward to a digital future for most of metropolitan Australia.

Senator IAN MACDONALD—But it is not an opportunity that would be returned by a commercial investment without a taxpayer subsidy, effectively? Perhaps it is a bit unfair to ask you that.

Mr Poolman—I am not privy to the detailed business modelling around how necessary that is, so I cannot really comment.

Senator IAN MACDONALD—Okay. Thanks anyhow.

CHAIR—That being all in terms of questions, Mr Poolman, thank you very much for attending this hearing today and for the benefit of your experience and expertise.

Mr Poolman—Thank you. It was not at all like the grilling I saw Kerry Packer getting on TV multiple times! Not having attended one of these before, I thought it might be like that.

Senator IAN MACDONALD—We are much more polite than former Senator Bishop.

CHAIR—I was about to say it must be something to do with the chair—

Senator IAN MACDONALD—There is a Senator Bishop here but it is a different one.

CHAIR—but I am glad you led with that, Senator!

Mr Poolman—And I am no Kerry Packer! Thank you.

CHAIR—Thank you, Mr Poolman.

[2.16 pm]

CORBIN, Ms Teresa, Chief Executive Officer, Consumers Telecommunications Network

CHAIR—I welcome our next witness, Ms Corbin, from the Consumers Telecommunications Network. Today is the first of what will be several public hearings into the National Broadband Network. Thank you very much for coming along to talk to us today. Would you care to make a brief opening statement, for the benefit of the committee?

Ms Corbin—Absolutely. Thank you very much for the opportunity to provide some input into this review. CTN put in a submission—a little bit late, unfortunately; we have just put it in. I guess what we want to emphasise with the NBN is that we want to make sure that there is greater availability of broadband services for more Australians, particularly in underserved areas. We also emphasised in our submission the need for pricing and affordability options. We are particularly concerned that the regulatory arrangements should reflect the fact that the NBN will actually be, and broadband already is becoming, an essential service. So we are particularly concerned about the regulatory arrangements that will fit around the rollout of the Broadband Network.

Just to clarify quickly who CTN represent, we represent residential consumers, so we have got a constituency base of about 60 consumer and community organisations from around the whole of Australia. They represent all different kinds of consumer groups, including rural and remote consumers, deaf consumers, people with disabilities, women, consumers in general, Indigenous consumers and low-income consumers. So it is a very diverse group.

We do believe that the fact that there will be a public investment in the National Broadband Network will ensure that there is some control over the future of regulatory developments in the area, which we are particularly concerned about, as I mentioned earlier. We also want to make sure that competition is fully realised. In saying that, we are particularly concerned about the fact that there are a number of consumers that do not have much choice at the moment, so the fact that the network is proposed to be open access is very important to residential consumers.

We would like to highlight that is not just consumers in rural and regional areas that cannot access broadband at the moment; there are a lot of consumers in metropolitan areas as well. Obviously, there have been investigations in the past into metropolitan black spots. We are concerned about specific consumer groups that cannot access broadband services, either because they have a specific need because of a disability or possibly because they are in a low-income bracket. The reality is that there are a lot of people who actually have networks going past their front doors but they cannot access them because they are not necessarily considered attractive consumers. One classic example is that of consumers who live in apartment blocks. Their difficulty in accessing broadband is well known, and their choices, often wireless, are not necessarily as good as the fibre or the network options—the cable options.

Other things that we have commented on in relation to broadband in our submission relate to the fact that we would really like NBN to have universal coverage. We understand that the NBN tenderers will have to provide a solution for the remaining two per cent of the population,

although there is a call for it to be 98 per cent coverage. I guess what we are seeking is an assurance that a two-tiered technological solution will not disadvantage remote consumers. It is particularly challenging at the moment because residential consumers want a lot more information than obviously can be provided because of the process that is underway. We would really like to know what the solution is going to be for that two per cent. Obviously we do not consider ourselves to be technological experts in any way, shape or form; however, we are very concerned about the fact that we know satellite cannot deliver an equivalent broadband service; and obviously we are concerned that towards the future we really need to ensure that we have not only good downstream but also very good upstream speeds, because obviously we are working towards a user-generated content, not just access to services. We also know that satellite does not work very well in particular weather conditions and that it is generally more expensive and has an inferior speed and quality of service. There are a lot of consumers that are very concerned about what technology will be used to provide broadband to that two per cent of consumers in Australia.

Just to comment quickly about wireless technology: we have done a lot of consultation in relation to the regional telecommunications review, and over the years consumers have fed back to us specifics about what does and does not work. I guess one thing that is important to realise is that ABC radio signals are not necessarily received universally in Australia. So we need to be very careful and cognisant of that when we are looking at the technological and technical solutions. We acknowledge that one size may not fit all. But that is not the focus. The focus for us is on the principle of universal availability and equivalent service.

We also think that some sort of price controls need to be implemented, particularly considering that there will be areas that are not considered to be competitive and that competition will not drive prices down in some parts of the market. It may be necessary to have an independent watchdog in relation to price controls, and the ACCC or another independent body may well be able to provide some function in that capacity.

Consumer protection is an area that we are very worried about. At the moment we have a lot of consumer protection in the area of voice networks. We have got a customer service guarantee, network reliability frameworks, priority assistance, a number of low-income measures, emergency-call service access, complaint escalation and resolution requirements and processes for disability and assistive equipment programs. I guess the thing that we are most concerned about is that, whilst we know broadband will not necessarily need exactly the same consumer protections, it will need to refer back to the voice network to ensure that the same principles underpin it, especially considering into the future that broadband will probably become the basis for the voice network, and this is already occurring.

Last but not least is affordability. We think a number of mechanisms need to be looked into as far as ensuring that broadband is affordable for all Australians. We think some kind of communications allowance or rebate to ensure that recipients of government benefits can access broadband will be essential. We think there also needs to be some sort of allowance or rebate for users who require premium type services, such as deaf consumers, who may want to access a video relay service—and I know that you had some evidence this morning from the Australian Federation of Deaf Societies.

We also think that we need to cross over some of the protections that have been implemented in the area of unexpected high bills and ensure that these are relevant to the broadband services. We are already seeing unexpected high bills as a result of broadband service usage. Just last week we assisted a young Australian consumer who had run up a \$50,000 bill using his mobile to access broadband services. Clearly there needs to be more information in that regard, but also there needs to be better implementation of the notification services and credit control limits that have been implemented on a self-regulatory level. They need to be enforced. We are also concerned about the use of terms like 'unlimited' in marketing. When it comes to bundling services, in actual fact you might find that low-income consumers choose services that have a very low download limit and will exceed that fairly quickly. They think that it is a budget mechanism but, as soon as they receive their first bill, they find that they are in trouble.

I want to make a comment about late adopters. We are concerned about the fact that we are already starting to see consumers using broadband by proxy. They need to access a service that is available only on broadband. It might be information on air flights or it could be information on the Centrelink website or something like that. We are seeing grandparents, and even parents, getting their grandchildren or children to access the net for them. They are people who do not have a broadband service at home but who clearly need to have access to a broadband service. We are calling this broadband by proxy. Some work has already been done by the Department of Broadband, Communications and the Digital Economy when it was known as DCITA on late adopters of broadband and on what barriers to entry and access to broadband might exist. Obviously a lot more work needs to be done on those adopters—and I am sure you will hear a bit more from Paul Budde this afternoon about e-health—particularly when we move to using broader applications than we are using at the moment as far as information transfer is concerned, and actual service provision. We need to invest in making sure that those late adopters can get access, not necessarily always in their home but in a publicly accessible place where it does not necessarily have a set time frame and set budget with a limit that is going to finish and with the program ultimately dying because it was not commercially viable. We are really going to have to look into public access and at programs that address the gaps in a bit more detail, because we have not done that very effectively in the past.

Finally, I want to mention that we did a report last year on accessible broadband for all Australians, and I am happy to table that here. That focuses, particularly, on the needs of people with disabilities. Obviously everybody wants broadband, but once you have broadband what do you do to make sure that it is accessible, not just from the perspective of the speeds but also from the perspective of whether you need disability equipment programs specifically targeted towards broadband and whether you need assistance to government and private enterprise to ensure that the content and services they are developing are accessible? Obviously we believe that is the case and we have some principles written down in this document.

CHAIR—Thank you, Ms Corbin. It is very good to hear from someone who is obviously quite passionate about those whose interests you are advocating. I will kick off with a question before I swing to my colleagues. This sector has a lot of jargon which you have adopted with ease, so I want to ask you to clarify something. You talk about the currently untouched two per cent and have expressed a desire that there not be a two-tiered approach to the 98 per cent versus the two per cent. You have also said that maybe one size does not fit all. Those things are potentially at odds unless my question to you is: are you and the industry talking about different

things when you talk about those concepts? Is one the outcome and the other how you get to it, perhaps?

Ms Corbin—Apart from the fact that we are not technology experts, one of the reasons we have not commented on the technology is that obviously there are technologies that have not been invented yet or are not necessarily well known in Australia. We do not want to cut that off as an option.

We do acknowledge that there will be some people who cannot get a cable optic fibre network to their front door. That is acknowledged. However, in providing another solution what we have to make sure of is that we are actually not creating a system whereby you have actually got some consumers that can get significantly less reliable service and obviously the speed as well, but it is not just a focus on the speed, it is also the reliability, especially when you are talking about providing applications like e-health and also access to important services like people who have transferred over to using a data network for their telephone and that some suddenly becomes something you absolutely have to have the same reliability we have got now with our copper network telephone access.

It sounds like I am speaking at odds, but I guess that is why we have come at it from the perspective that ultimately the underlying principle is that we want equitable access and universal access for all Australians and then try not to step too far back from that in actually making sure that you implement a system where people have all got access.

CHAIR—Thank you. Senator Nash.

Senator NASH—Before we start, can I ask about the poor fellow with his \$50,000 bill. Is that progressing favourably?

Ms Corbin—Yes. I have to wonder whether it was more from the help of Channel 7 than from CTN or the TIO, because the TIO did not get that far. Basically the situation was that he had a hiptop mobile phone. I do not know whether you are familiar with them. They have got a slide screen and a semi-keyboard underneath the slide screen and they are very popular with young consumers because of the fact that they are advertised as having unlimited download. If you want to do chatting on the internet on your mobile then that is the phone to go for, or one of the phones before the iPhone came out to go for. What this consumer has done is he has taken the SIMM card out of that hiptop phone and used it with another mobile that could be used as a modem with a computer and he has accessed the internet via that mechanism. But before he did that he actually did the right thing and contacted Telstra and asked them whether the unlimited download applied when he did this. They had actually informed him that, yes, he could do that. So the first thing he knew that in fact he had encountered some difficulty when he got a \$32,000 bill two weeks later, at which point he ceased using the internet and tried contacting Telstra. He had a lot of difficulty with the customer service and getting in touch with them. The follow-up bill was \$50,000, so obviously all the charges had not come through when the bill period had ended.

Senator STERLE—In what period did this young fellow rack up a \$50,000 bill?

Ms Corbin—Two weeks. It is phenomenal. If you read the fine print by clicking several levels down on the website, it does actually say that if you use your SIMM card in another mobile phone this plan does not apply. So Telstra covered themselves in that regard. However, it is once again a problem with the use of the term ‘unlimited’. Unlimited is always limited in some ways. There are always exclusions and it is just a question of where does the asterisk lead to. It is even harder if you are checking on a website what the charges are. To find out I had to go into the FAQs. There was not one document I could go to with it all listed out. So it took some time and a couple of staff members to actually work it out, and we are supposed to understand this stuff.

Senator NASH—You are supposed to know. Can I take you back to the two per cent. You agree completely with the view that it should be universal broadband access. There is an issue with this two per cent. I do not know whether you are in receipt of any information but I have had a very difficult time trying to get information from the minister of geographically where that two per cent is going to be. Are you aware of anything so far that has given any intent of where that two per cent is going to be?

Ms Corbin—No further information at this stage. I guess we are waiting, the same as a lot of people are waiting. I am hoping that some of it will become public once the tenders are actually submitted. However, I understand that that may not be the case and we may have to wait till April, which is very frustrating for a lot of consumers who would like to know that they can actually look forward to better broadband access than they have had to date. We have recently had contact from somebody 10 kilometres out of Coonabarabran who cannot get any broadband. For sure they can get a satellite service, but once again it is the cost and the reliability. So there are a lot of limitations on that.

Senator NASH—Just on cost, you mentioned earlier that broadband access should be affordable. From your network’s point of view, what is affordable for people and how will determine a benchmark for what is and is not affordable?

Ms Corbin—A couple of years ago, I remember saying at a conference that we believe broadband needs to be at a flat rate of \$20 per month before there will be mass uptake. We actually looked around at what would promote mass uptake for dial-up and we found that at \$20 quite a lot of people who had not previously considered it would take it up. Interestingly, there are plans around at \$16.95 in metropolitan areas, but they are very limited in the sense that there is a specific download—usually it is 300 megabytes download per month. It is easy to exceed that, especially once you start taking full advantage of what broadband can really offer. Unless you are just using it for emails and for viewing small things, maybe small videos, you would go over that limit very quickly. I cannot say we have a measure of what is affordable; however, we have noticed from previously looking at the uptake of mobiles and the uptake of dial-up internet—two specific leaps forward as far as our access to communications technology goes. When you got to the \$20 flat-rate plan—and I use the term ‘flat rate’ rather than ‘unlimited’—there was quite a lot of take-up across the board.

As a comparison, another interesting rollout to look at is pay television, which is very expensive. We never did get a mass uptake of pay television. Obviously there are a lot of limitations from a network perspective as well, particularly in metropolitan areas. Even in metropolitan areas where you have both cables running down the street and where you could

have competitively priced options, you do not get a mass uptake. There are obviously a lot of reasons that pay television is expensive in Australia. It is an interesting comparison to make: what price does something have to be before there will be mass take-up? It is perhaps not such a great comparison from the perspective of whether it is an essential service; however, it is very clear from consultation with our members that mobiles and internet connection are now considered essential services.

Senator NASH—Absolutely, as in days gone by when students did not have access to pens and paper.

Ms Corbin—Yes.

Senator NASH—Under ‘competition’, your submission states:

The end-user needs and interests are not necessarily the driving factor in decisions of potential competitors to existing Telstra services in those areas.

What do you mean by that?

Ms Corbin—We think Telstra targets residential areas that will be more lucrative than other areas. We think that there have been restrictions on where competitors necessarily have been able to roll out their services. We think the ISPs cherry pick; that they effectively roll out services obviously where they are going to make more money rather than less. You only saw them go into regional areas with a few more choices when we had HiBIS and a couple of generations before that. They were subsidised services and even then they really only rolled out to regional areas and not much further than that, and they were not necessarily at the same price level as what metropolitan consumers were able to access. We see a lot of choice for consumers in some areas—for example, North Sydney—and particularly metropolitan areas where, generally speaking, consumers have a higher socioeconomic status and where there is some business so there will be quite a lot of network traffic and usage. We do not think there has been enough focus by Telstra and other providers on consumers who cannot pay or want to pay more than \$20 a month.

Senator NASH—Given that competition is delivering in the metropolitan areas but it is not delivering out in the more regional and remote areas where there is market failure, wouldn’t it then be common sense for the government, if it is going to spend taxpayers money up to the tune of \$5 billion, to target that to those underserved areas? I suppose what I am getting at is: shouldn’t we be rolling in rather than rolling out from the cities?

Ms Corbin—Ultimately, from our perspective, that comes back to our point that we want it to be universally available. We want consumers to have access to the same. An interesting point to note is that, in a lot of the information that has come out, some of these services will be available within one month of the tender being announced—which is quite astounding. Obviously, they must be able to provide some of those services now in many metropolitan areas. We want all Australians to be able to access the same wherever they live or work. What we have with universal service obligation is what we want with broadband. It is almost by default that some of those things are going to happen immediately. In some areas, 12 megabits per second is already available. We want the focus to be on the areas that are not being serviced or are being

underserved. That is right at the front of our submission. Obviously, it is not just the two per cent but also people with disabilities that we are concerned about. We also want a real focus on metropolitan black spots and on low-income consumers. As we have not entered into any detailed discussions with the government about the technology and we do not have access to any more information than that, I would not like to comment further. I absolutely agree with the underlying principle.

Senator NASH—You referred to people at the \$20 price point, which is when they simply cannot afford broadband anymore. Given the necessity of broadband, do you think there is a greater role for government to play or perhaps to consider playing in assisting people who simply cannot afford broadband?

Ms Corbin—Absolutely. It is in our submission that there has to be some kind of communications allowance, particularly for people who are recipients of a government benefit and require higher broadband downloads. For instance, if they are a user of any health service—that is going to be huge when it hits—they are going to require some assistance to ensure that they are not running up ridiculous bills, and we end up with a two-tiered health system. We will have to be very cognisant of how, in reality, its affordability plays out on consumers.

Senator BIRMINGHAM—Ms Corbin, thank you for your time today. I have a couple of quick questions. You have made a pitch in your submission that questions whether the Australian Broadband Guarantee is satisfactory at present. In response to Senator Nash, you spoke a little about what you think baseline access rates should be. What do you think would be a reasonable framework for the ABG? If you were to legislate for the Australian Broadband Guarantee, as you recommend elsewhere, or to otherwise institutionalise it in a framework, how would you set the guarantee in years to come?

Ms Corbin—For starters, we think that it needs to be legislated. It needs to be the same as the universal service obligation. Something needs to be written down in stone that says that all Australians have a right to broadband and that it will be guaranteed. At the moment, from what we understand of the Australian Broadband Guarantee, unless the consumer calls on it, it will not be invoked. It is not an automatic thing that will be rolled out past your front door or, if you move into a house, you will automatically be connected to broadband. No. It is something that you have to know about and then say, ‘Right. I’m going invoke my right to the Australian Broadband Guarantee.’ Of course, in some areas that actually means you have to be prepared to pay a bit more. That is what we mean when we say it is limited at present. We think the concept of it is brilliant. When we read the words that are written about it, we totally support what it is trying to achieve. But when it comes to its implementation, we think there are some limitations about the current guarantee.

We also think the Australian Broadband Guarantee needs to be linked with a couple of other things—that is, what we call the Australian voice and text telecommunications guarantee. That is sort of an evolution of the USO, the universal service obligation. It would mean that all consumers, regardless of their location, could also nominate their preferred provider and any-to-any service type for their voice or their voice equivalent if they are a text user such as a deaf or speech impaired consumer. That guarantee needs to be linked with what we call an Australian communications social safety net. That relates to the issue I was discussing earlier about communications allowances. So you would have some real measures in there for affordability

The communications social safety net would also cover things like access to payphones. We get so sick and tired of the fight for pay phones because they are not considered to be important anymore, but they really are for some consumers and they really are for all consumers at particular points in time, such as when your mobile does not work, your battery is out or you are out of a coverage area. Clearly some of them are not very profitable anymore. If we look at the social responsibilities that we need to cover off with our communications services and we put them into a safety net, we could also include things like access for some Indigenous remote communities and put that all together and deal with it as a three-tiered approach to what we consider a new or a reviewed universal service obligation.

Senator BIRMINGHAM—Sticking to the broadband component for a second, what do you think a reasonable broadband guarantee today would be? What research or other work has the network done as to what you would guarantee?

Ms Corbin—That fits nicely with the report that we did last year. We did not settle on a speed. As soon as you settle on a speed you are in trouble because the needs of what consumers are trying to access on the internet are already going to exceed that. As soon as you have published the report it is going to be out of date, so we have not settled on a speed. Our focus in this is more about access to services and applications and establishing what should be some universal rights and some basic principles that have to be addressed. Your broadband guarantee cannot just focus on speed. It has to be principles based and it really has to come back to the same sort of language that we use with the universal service obligation. It is about equivalence of service. It does not matter where you live or work; you should have guaranteed access to a broadband connection.

Senator BIRMINGHAM—That is a nice segue to the holistic debate around the NBN. If you were going to advise the government on how to spend nearly \$5 billion worth of taxpayers' hard earned dollars, would your advice be to build a network or do you think that money could be better directed at targeting services to underserved areas in particular? Could a framework be supported to provide subsidies or support to people who may not otherwise be able to afford access and so on while the communications market is allowed to work out the infrastructure it requires in the profitable areas?

Ms Corbin—Our focus in the submission has been on making sure that all consumers can get services, with a particular focus on underserved areas. I think the solution is going to be a network as well as subsidies and support in different instances. This comes back to the need to have a national vision. We hope that the NBN is going to resolve that. We are concerned about the potential shortfalls. We have not got any expertise in working out exactly how much these things costs. However, we have done a lot of reading, as I am sure you have, about how much this will cost. Some sources tell us that the money is well and truly going to cover it and other sources tell us that it is not going to. So there is real concern out there among residential consumers that that money will fall short. There is also real concern that consumers are going to have to wait five years in some instances. The rollout is expected to be done over a period of five years, so there is a concern about which consumers are going to miss out and have to wait five years.

To answer your question, we do not possess the expertise to fully know whether or not it is going to be a requirement for a network rollout. In some instances it will be because there will

be no network rollout from any competitor. However, we do have the opinion that the underserved areas, as far as both specific consumer groups and geographic location are concerned, have to be targeted with government funding to ensure that they do get the services.

Senator BIRMINGHAM—You mentioned before knowledge of some services that will be available within one month of a tender being let.

Ms Corbin—This is something that I have read.

Senator BIRMINGHAM—Broadly, is it your understanding of the network that the current, five-year process that you just referred to is delaying investment decisions and is also delaying decisions to switch on products or services that may be available?

Ms Corbin—I have no more information than you have as far as that is concerned. It is a concern that this may well be the case. Telstra is on the record as stating that they could provide these services without any taxpayer dollars now. That is a concern. What are they holding out for? Are they holding out for this regulatory holiday? That really does worry us. That regulatory holiday was talked about a lot 12 months ago, and we are very concerned about what that regulatory holiday might actually entail. That comes back to the point that we expect there to be far more debate and consultation about the consumer protection elements to this whole NBN rollout. There has been a call for comment on regulatory aspects, which we have submitted to, but there has been very little debate, discussion or even information forthcoming from the tenderers that we are familiar with, Telstra and TERRiA, about what exactly their requirements may or may not be for their portion of the contribution to the NBN rollout. We reserve a lot of concern about that.

Senator LUDLAM—Regarding the \$4.7 billion that we are bandying about, I think most of us are assuming that that is to be spent on wires, hardware, technology and so on, but from some of what you have said this afternoon I wonder whether you think there is a case for some of that to be spent, given that we are building what is becoming essential services infrastructure, on consumer protection of some sort? I should not even use the word ‘consumer’. What is out there at the moment for people who are intimidated by the array of services out there or who do not know who to go to if they are having some kind of dispute with a provider? I consider myself relatively tech-savvy—or did until fairly recently—and I found it quite intimidating to move from one provider to another.

Ms Corbin—Part of the problem here is that I worry about dipping into the \$4.7 billion and then that being it as far as what we spend on consumer protection. I think that the mechanisms we implement for consumer protection have to be ongoing; they cannot be one-offs.

Senator NASH—Additional funding?

Ms Corbin—It may well be that there is a case for some industry levies. At the moment we have an industry levy for the investment service obligation. Unfortunately, that levy is decreasing over time. We also have licence fees and all sorts of other mechanisms that can be implemented to fund consumer protection. A good example of that is the Low Income Measures Assessment Committee work that Telstra has had to do as part of its licence requirements to

ensure that low-income consumers are covered in a way, shape or form. That includes various discounts and other mechanisms that they implement.

The thing about consumer protection is that there are a number of elements to it. You are talking not just about the reliability of the service—that goes for all consumers—but also about vulnerable consumers who would not otherwise access services. You need to target those in very specific, different ways. Reliability should mean guarantees across all consumers for things like having the same speed of access to emergency services. Those kinds of things are universal.

I guess what I am saying is that I think we need to work out specifically who we need to target and then work out the mechanism how. I believe that industry must play a role in funding these obligations on an ongoing basis because they benefit the most in the long term as far as their company profits et cetera are concerned. So I think there is a role for that to be covered off in that way as well. Having said that, I think it is the government's role to identify what those communications social needs actually are and then work out the mechanism that the Australian public actually feels best should address these.

In answer to your question who can you go to when you are transferring a service and having difficulties, there is a really big problem here and it is going to get worse. I am sorry to say that, but we believe it will get worse because you have got so many people in the service chain now, so many providers. We have already seen this with the mobile premium services. It is a good example of what will happen in the future in relation to broadband services. You have got your telephone carriage service provider, so your mobile provider; then you have got a content provider or an application provider somewhere out there in the ether, possibly even overseas; and in between you have somebody like a content aggregator, somebody who is a middle person who is brokering all those arrangements. If you have a problem, and this is the same with an internet service now, with your internet connection, is it due to your computer at home, the internet service provider or the network provider?

Senator LUDLAM—Or a piece of hardware.

Ms Corbin—Exactly. At the moment the redress and where consumers go to help, sometimes they come to CTN but more often than not they are in trouble already and they go to the Telecommunications Industry Ombudsman. As you would have seen, there is an escalating number of complaints there, mostly in the mobile category at the moment, but I predict that the roll-out of broadband across the board may well increase the number of complaints in that area. That is when you are already in trouble; it is about going to someone before you are in trouble. We have actually made some suggestions in relation to e-security particularly, that you actually do need an independent body. The government in the past provided the Internet Assistance Program, which was very helpful because it was an independent place that consumers could go to when they were having trouble with their connection.

We have approached the Communications Alliance about looking into transferring broadband services and what the problems are for consumers and what difficulties they face. We believe, just from the small bit of research we have done in relation to internet transfers, but most people do not want to change their internet provider, for a number of reasons. One is that they do not want to lose their email address. That is an interesting one because number portability was something we fought really hard for in the mobile space so we could get competition. There is a

big learning curve for consumers to learn how they can keep an email address. There are a number of strategies but a lot of people do not know them. The other thing precluding people from changing providers is whether there is a choice where they live anyway. If they do have the choice, is the piece of equipment they are using, the modem, specific to the provider that they are accessing and were they on a contract? A lot of the contracts out there for broadband go for 24 months, so you are locked in and you are locked in with that piece of equipment once you have finished paying it off anyway. So there are a lot of questions to be asked yet about how easy it is to transfer as a consumer. It is interesting that there has been a lot of focus on mobiles and being able to use your mobile anywhere. There has also been in another space a lot of focus on whether or not you can change your mortgage easily. We do need to think about this, and it comes back to the principle in our submission, which is that open access is very important and access to choices is very important because it does drive the price down.

Senator LUDLAM—What is the internet assistance thing you mentioned before?

Ms Corbin—The Internet Assistance Program.

Senator LUDLAM—You made that sound kind of past tense.

Ms Corbin—Yes. I do not believe it is ongoing. It was run by the Department of Communications, IT and the Arts and I think it was only on dial-up. It was pretty much used by rural and regional consumers. I think metropolitan consumers could have rung it but I do not think they used it as much. It was very much promoted in regional areas.

Senator LUDLAM—Is it likely that the Telecommunications Industry Ombudsman is fulfilling that role these days, or is there a gap?

Ms Corbin—No, because that is an office of last resort and is only when people have already tried to solve their problem with their service provider.

Senator LUDLAM—It just feels like we are missing a big piece of the puzzle, particularly as it becomes more of an essential service.

Ms Corbin—I agree. Absolutely. That is a very good point.

Senator LUDLAM—Not to be too provocative, but I would like to quote your submission back to you. It says:

... if the network actually belonged only to a private entity it is unlikely that the necessary public interest considerations would be fully considered.

Is that an argument for public ownership of the network?

Ms Corbin—It is.

Senator LUDLAM—You should have put that in capital letters and in bold! But, there it is. Do you want to say anything more about that?

Ms Corbin—We actually think the fact that it is going to be in public ownership will ensure that we can set up the regulatory environment in the way it needs to be set up. Having said that, CTN in its early days did not oppose the privatisation of the first tranche of Telstra. For the next tranche, CTN did oppose that from the perspective that a lot of regional consumers were not receiving the services that they had got. In later iterations of our policy discussions, it became clear that a lot of residential consumers and consumer groups believed that we probably should have gone for retaining ownership of the network and having competition in the retail arm of services—so the structural separation debate. Having said that, that was far too late to have that argument really and put that position. It is not too late with broadband to do that the right way.

Senator IAN MACDONALD—I remember the days when the telecom system was controlled by the Postmaster-General's Department, and it was appalling. We do not want to go back to that.

Ms Corbin—There are all sorts of difficulties with monopolies and I think that is another reason why we have to make sure that the regulatory arrangements are correct, particularly if we do end up with only one provider with the NBN.

Senator IAN MACDONALD—Absolutely, and I think that is coming through loud and clear. I do not think you would get a lot of disagreement from anyone about that. I just have one question which is really a bit about remote history. Did your organisation do some work looking into the OPEL arrangement that was going to be wound out by now?

Ms Corbin—Not a lot, but obviously at the time we supported it because we felt that it was yet another tier of possibility for consumers to get access they would not otherwise have got. There were mixed feelings from regional consumers about OPEL. Even though it was a big leap forward, I think some of them felt, 'Okay, it is still not a metropolitan equivalent service.' So that was the basis for the mixed feelings about OPEL. At the same time there were consumers who felt, 'Okay, at least I'm going to have something now.' Ultimately I think a lot of the negative reaction that came from regional consumers was due to the fact that there would still be an emphasis on satellite services and, as you are well aware, the satellite services are not very popular.

Senator IAN MACDONALD—No, that is right; but sometimes a little bit is better than nothing. Some people have said during the course of the day that it may be 2013 before the NBN network is of any use to people in more remote parts of the country. Is that your understanding?

Ms Corbin—I guess the thing is that we have been told it is a five-year rollout. If the five years starts from 2009 then it will actually be 2014.

Senator IAN MACDONALD—It is a matter of simple arithmetic, isn't it?

Ms Corbin—I cannot urge strongly enough that some of those remote and regional areas that are not getting internet at the moment are the ones that should be prioritised. They should not have to wait five years, because they already do not have access. So it is about trying to bring people up as quickly as possible to the level of access that is already available in metropolitan areas.

Senator IAN MACDONALD—Someone has coined a new phrase today—it is new for me anyhow—of ‘roll-in’ rather than rollout for the NBN. Was it your understanding that the OPEL proposal could have been up and running, even with its lesser use, within a relatively short period of time?

Ms Corbin—It was my understanding that some of it was up and running pretty much immediately upon its announcement. Having said that, there were lots of questions asked and opportunities for the contractual information to become public but it was never made public.

Senator IAN MACDONALD—No, that is very true. That was a real problem. Thank you very much for your submission. It has been good talking to you.

CHAIR—Indeed, Ms Corbin, and, as with the Australian Federation of Deaf Societies, I think you have brought to the committee’s attention some issues which might otherwise, regrettably, have been somewhat down the track for us so thank you for bringing them to the forefront of our minds.

Ms Corbin—Thank you. I will pass a copy of *Accessible broadband for all Australians* to the secretariat.

Proceedings suspended from 3.05 pm to 3.20 pm

BUDDE, Mr Paul, Managing Director, Paul Budde Communication Pty Ltd

CHAIR—Welcome to this public hearing of Senate Select Committee on the National Broadband Network. There are some rules of parliamentary privilege which attach to providing evidence to a committee of this nature. We can provide you with further information about that if you so wish. The proceedings themselves are public. There are provisions for evidence to be given in camera on a private basis. If you wish at any stage to make a request of that nature, the committee will consider it according to the circumstances. You have provided us with a brief written submission. Would you like to amend or vary that in any way?

Mr Budde—No.

CHAIR—Would you like to provide the committee with a brief opening statement before we grill you with appropriate questions?

Mr Budde—I am more than happy to do so. Thank you very much for inviting me. It is a pleasure to give evidence and to be involved in the very important debate that is taking place. It has been taking place over the last 10 or 15 years, so it is about time we did something about it. This must be the 10th inquiry that I have spoken at regarding exactly the same issue. Basically, every single time I come back and tell the same story—that it is very, very important for our country to have first-class infrastructure for this generation and following generations, which, as we all know, are and will be very much knowledge driven.

In our economy and our society it is all about knowledge. There really has been quite a remarkable revolution. We had the agricultural revolution all those thousands of years ago, as well as the industrial revolution. We can clearly say that over the last 20 to 30 years we have seen the communications and IT revolution. I see several PCs here around the table that clearly indicate what it is all about. The IT developments in the sixties, seventies and eighties made it possible to start becoming more knowledgeable, although perhaps sharing knowledge is a better expression. Up till that time you had a very small group of people that were in charge. With the internet we all know that everybody now has an opinion and a blog, provides information, knows how to run the country and so on. So the environment really has changed.

The way that people have taken up this technology, on both the IT side and the communications side, is clearly an indication that this is not something that Telstra, Optus or the government thought was a great idea—it is just happening. Seventy to 80 per cent of the population is on the internet, of which half at least are on broadband. Of course there is competition and of course there is advertising, but basically it is about word of mouth. If you are not on the internet and if you do not have broadband, you are seen as not really being part of the society and the economy we are in nowadays. That clearly shows how incredibly important it is not only to have access to information but, far more importantly, to be able to share that information and get input from different directions to participate in lots of discussions.

I am pretty sure that you guys, as well as many others, are involved in discussion groups or blogs, email conversations with colleagues and friends, and what have you. Thinking about five or 10 years ago, it is incredible: how did we do that? In any case, in business it was perhaps just

a fax. I came to Australia in 1983 and I was one of the fantastic letter writers who perhaps two or three times a year got a letter from my mum. But now we have the internet and things like that. Think about little things like that and how important they are.

Increasingly we see that it is not something that is driven by a particular lobby group or a particular sort of interest group. It is absolutely there for the common good. If you take that a little bit further then once you have this sort of infrastructure in place you will start seeing that developments in health care, in education, in energy use and in energy efficiency are going to be critically reliant on communications networks. I am always saying telecommunications is absolutely not the solution to our health problem, our education problem or our energy problem, but I can tell you that without telecommunications there will not be any solutions for any of them. It is critical that we deploy good-quality infrastructure not just for the fun of having the internet but also to deliver the health and education services of the future, as well as something I am very involved in at the moment: smart grids, where you upgrade the electricity network with the communications network and, by simply doing that, you can save 25 per cent of the energy. This is not to talk about how you cannot have distributed energy—user generated energy, as I call it—if you do not have a communications network linked to the electricity network that can clearly handle that sort of traffic from users who generate solar energy, wind energy et cetera and pump that back into the network.

Communications is so critical. Most governments in developed countries around the world have seen the importance of the social and economic elements of telecommunications infrastructure, and they have been very active in starting to create environments where you can have these new developments happening on top of the infrastructure. You see that the governments of Britain, New Zealand, Sweden, Holland, France, Germany, Italy, Singapore, Japan and Korea have all seen how important it is to look at this infrastructure from a national-good perspective. They started to understand that there are two elements to it. On one side there is the infrastructure and on the other side are all the services that you have. It is quite clear, if you think of it from an infrastructure point of view, that roads are infrastructure, but the government is not really involved in the development of the cars that are on the road, designing the colours of the cars, indicating who can operate a car on the road and who can drive a lorry or motorbike or whatever. Of course there are general accessibility rules but, apart from that, that is where the situation is. The government should do exactly the same with telecommunications.

Unfortunately, we are the only country in the world that has this fantastic, enormous bully of an incumbent telecommunications carrier. No other country in the world has this. Every incumbent tries to protect its monopoly; there is no way around it. But we are absolutely the exception to the rule. We have a research company. I have 45 researchers around the world, including 15 senior analysts. We provide presentations around the world on a monthly basis. We had people in Ghana last week. I was in Washington two weeks ago. We do and present research. I can guarantee to you that we are the odd one out in the whole world. I tell people, as I mentioned to people in Washington two weeks ago when I was talking to the Senate inquiry, 'I think we've had 15 inquiries over the last decade.' They said, 'Are you for real?' We are the only country in the developed world where there have been 15 inquiries into this situation. Every other country in the world has already, long before—after, say, two inquiries—come to the conclusion that you have to do something about it and actually started to do something.

The previous government and this government is just going along and doing absolutely nothing, which I think is very, very shameful, particularly in view of the picture I just painted of how important it is our economy and how important it is that our society to do things like that. The government must take a leadership role and set the rules. I am not saying that the government has to say what sort of video quality we should have or what sorts of services we should have—absolutely not. Government should stick to the infrastructure. Governments are there for the infrastructure. Given the size of Australia with only 20 million people, if you ask any economist around the world about this, they would say, ‘If you are considering duplicating networks in this country, you must be totally silly.’ It does not make sense to duplicate networks, to duplicate exactly the same network. I am not saying that you can have a fixed network and a wireless network and a satellite network. These are different networks for different purposes. If you start talking about overbuilding fibre networks—the basic infrastructure sort of situation—that does not make sense. If it does not make sense in America or Europe, why would it make sense in Australia?

For the government to pursue another investigation with this tender process is quite ridiculous. There is no way in the world that there will be competition here. We know the end result. The end result will be that there has to be an open network, that there has to be sharing of the infrastructure, that the service is separate from the infrastructure and that you have open competition on the infrastructure. Talking about a national network—and I do not necessarily talk about Sydney, Brisbane or Melbourne—to a very large extent that is a natural monopoly, if you like it or not. The government will have to act upon that and the government will have to set the rules. You cannot expect Telstra or Optus or anybody else to say, ‘We voluntarily give up the monopoly’ or ‘We don’t want a monopoly.’ Government leadership has been missing all those years and that has actually been the problem. The government should set the rules and not say to the Telstras and the Optuses, ‘You set the rules and then we’ll figure out if it is going to work.’ You have to set the rules upfront and then things will start falling into place.

CHAIR—Thank you, Mr Budde. That might be a convenient place to interrupt. This inquiry is all about helping the government set the right rules and the processes to help it get there. After 15 years experience in the sector, we do not want to leave ourselves with only 15 minutes to question you about that. We will go straight to questions.

Senator LUDLAM—Thanks, that was a very interesting introduction. In the most direct language you can summon, what do you think the government should do? It seems we have two choices on the table at the moment: one is to give the broadband network to the consortium to overbuild and to create duplicate infrastructure; the other is to give it to Telstra but then separate them out—and they have promised the mother of all legal battles, apparently. We seem to be in a bit of a bind. What is your advice?

Mr Budde—It is clear what it is all about. By the way, TERRiA want to overbuild, but at the same time they clearly said, ‘We want a monopoly on the network that we build.’ So it does not really matter. It is not that TERRiA will overbuild and then just sit there and wait for Telstra to knock them down. That is what happened with the cable rollout in the mid-1990s where Optus rolled out a network and then Telstra followed street by street. It is totally ridiculous. Nobody is going to do that. If that is not going to happen, why on earth are you pursuing a tendering process that is asking for that sort of situation? In the end you will come to the conclusion: ‘Both want a monopoly. They will not overbuild, unless they have a monopoly.’ Telstra say they are not

going to do it unless they get a monopoly. Obviously that is where the problem is. The only one who can do something is the government. The government can say, 'We want structural separation, operational separation'—some sort of a separation—'whereby the infrastructure is treated separately from the services.' The infrastructure to a very large extent is a natural monopoly. That is what we have to realise, whether we like it or not. We can dream of all sorts of other things. We can dream of wireless, we can dream of satellite, but it is not equivalent to a fixed network that is needed for the whole country.

So the government will need to structurally separate—in any case operationally separate—Telstra or separate the infrastructure from Telstra and open up the infrastructure so everybody could use it on fixed conditions. It will be a battle in itself to actually sort it out. It takes us well into 2010. Even if the government would take that position, it is going to take until 2010 before anything happens, because of the mother of all battles—legal battles and what have you. There is no other way. You can wait for another inquiry after this one and come to the same conclusion: we have to separate the infrastructure. That is what all the other countries are doing. Are we so different from Britain, New Zealand, Singapore, Hong Kong, Japan, Korea, the Netherlands, Germany, France? How many more countries have to follow this road before we say, 'They might have a good idea'? No, we go for another inquiry.

Senator LUDLAM—Will Telstra not come back to us just with the case that that would represent destruction of shareholder value and that we are pulling their network apart?

Mr Budde—Absolutely. That is the choice the government has to make: are we going to say, 'Telstra, you have to look after your shareholders. You charge \$100 a month, and there you've got a lovely profit. Love you. Go ahead with it,' or are we going to say, 'This is the national interest. We want people to have affordable access to broadband, which is, as we know, around \$30 or \$40 a month.' If you as a government do not provide that sort of a service, you will get an enormous backlash. If you only say, 'We look after the shareholders of Telstra,' if it were as simple as that, then obviously you could say, 'Telstra, you charge \$100—40 per cent of the population can afford that,' and that is it, then we will see that the price will go down from \$100 to \$90 to \$80 over five or 10 years and people will be linked to the network slowly. If that is what we as a clever nation think is a good thing to do, then I think that is the outcome. Or we could put a stake in the ground and say, 'We want a similar network, as good a network, as in other parts of the world. It is important for our economy and our society and therefore we go down that route.' Telstra might not like it—so be it. This is national infrastructure we are talking about. This is what we have built as a country over the last hundred years. Don't we have any say in that? Is it only a matter of how much profit you can make out of the whole thing? I think it is more involved than that.

Senator LUDLAM—But once we privatise—and we have just done that—don't we lose a number of options with regard to what we can and cannot instruct Telstra to do?

Mr Budde—Britain privatised British Telecom in the 1980s; Telecom New Zealand was privatised in the 1980s—and apparently they all find ways to structurally operate and be separate. We have regulators and legislators in this country that should, if that is a problem, go to Britain and New Zealand and find out how they did it over there. I think that is not stopping it. If you have a monopoly, then we have the Trade Practices Act under which you can act and say,

'No, you cannot have a monopoly in this country. It has to be a regulated monopoly,' and the regulations are going to say, 'separation' or whatever.

You see other countries coming to a more amicable solution. The Netherlands is a good example. KPN, incumbent there, was given a choice: structurally separate—a big stick behind them—or sit down with the rest of the industry and work something out. They chose the latter: they sat around a table and worked something out. But Telstra has clearly indicated, year after year after year: over my dead body. Telstra has not been involved in any industry discussion—not one industry discussion—around a table. I have organised many, believe me, and every single time Telstra is not there. They do not want to sit down, they do not want to find a solution with the rest of the industry. If that is the case, then the only thing we have to do is use that stick. The government has a stick—use the stick.

Senator LUDLAM—Thank you very much. Madam Chair, can I just check with you as to whether or not Telstra has agreed to appear or make a submission to the committee? Has anybody asked?

Secretary—So far they have declined to make a submission. However, they have said that they might be willing to appear in Brisbane.

Mr Budde—Fall on your knees and say thank you.

Senator LUDLAM—Indeed.

CHAIR—We can discuss that further out of session if we need to.

Senator IAN MACDONALD—Thank you very much, Mr Budde. That was very interesting. Do I understand that you say that, had the OPEL proposal gone ahead, there would have been two competing networks in Australia, neither of which would have made a profit? Is that the point you were making?

Mr Budde—I think that that would be the case. You would need to look at the country. I am not talking about Sydney itself; I am talking about country networks. In a thinly-populated country like Australia, which has a very dispersed population, it is nearly impossible to build a good-quality network.

You can build a potholed road, of course, but it is more difficult to build a proper road. Even talking about metropolitan networks, if you do not get 40 or 50 per cent uptake in Sydney or Melbourne then the economics are going to fall down. So that shows you, even in a metropolitan area, how difficult it is to have competition, because you need at least 40 or 50 per cent penetration rate on your fibre-to-the-home network in order to make the whole thing work. Imagine if you are outside metropolitan Australia—it will be totally impossible to build it. I am talking about an equivalent network.

Obviously there are possibilities with a wireless network. I see wireless, for example, as a good opportunity—as an interim solution—because if you start building a fibre-to-the-home network or a fibre-to-the-node network then it is going to take years. This is physical work—we are talking about digging ground. That takes time; there is no way around it. Building a wireless

network, as OPEL suggested, I thought would be a good idea because what you then actually do is start generating the business—you start people using it. Okay, it might not be sufficient, but in any case it is sufficient for the next three or four years. So you buy yourself time to actually start building the proper network and you then can actually start transferring people to the fixed network.

Some people will be pretty happy on a wireless network. There are still a million people in Australia for whom the only thing they do is to occasionally check emails. You do not need a fibre-to-the-home network for that. The majority of the people are moving to that new network. So if OPEL had been in competition with Telstra then obviously as soon as OPEL was running out then Telstra would follow the street and overbuild. I think that was one of the reasons why Optus were not all that worried about the fact that the OPEL contract was cancelled. Of course they complained—they have to—but it was not like there was a massive uproar from Optus saying, ‘What on earth are you doing’ et cetera, because they know the reality. It is much better to have sound foundations on which to build this rather than get another disaster as we had with the cable television rollout in the 1990s.

Senator IAN MACDONALD—That has probably answered all of the questions I was going to ask. I am sorry, I am not as familiar with this proposal as perhaps I should be, but was it the intention of the OPEL consortium to—and I come from the country and I am more interested, I might say, in how this whole proposal impacts upon the rest of Australia—go immediately with a wireless network where they did not have an inline network and then over a period of time extend that?

Mr Budde—Yes, that was their proposal. They wanted to roll out technology called WiMAX, which is similar to the mobile technology but dedicated for broadband. They wanted to roll that out quickly, and you could, let us say, in a year or 18 months actually cover most of that rural and regional area with WiMAX. Some people would be on WiMAX forever because it is simply not feasible to actually bring the cable all the way out. I do not mind what technology we use. I am pretty agnostic about it. But we should have an equivalent service. So the service in metropolitan Australia should be equivalent to the service in regional Australia. How do we deliver it? There might be a little bit of an extra subsidy in regional Australia to get an equivalent service—so be it. We do that with roads, hospitals et cetera.

Senator IAN MACDONALD—That is what the \$4.7 billion is all about in my understanding—to bring a bit of equity to Australians wherever they live. Are you also saying that, and this does get hypothetical, had OPEL done the wireless and then later on the fibre-to-whenever service then there would not have been room for two commercial networks in a country as small as Australia?

Mr Budde—If you look at that proposal, being an Australian I would say: ‘Guys, build. I don’t give a damn. Build a network. I get a service. Thank you very much.’

Senator IAN MACDONALD—That is what we happen to say out in the bush.

Mr Budde—Then I have it. If they go broke, it is okay; I have the service. We have learnt that, once infrastructure is in place, somebody else buys it for 10 per cent of the value but it continues in that sort of way. So you could take that sort of stand and say, ‘Let them do it; let

them go broke,' and then somebody else buys it for, say, 10 per cent, and we are all still in business. You could take that attitude. I think that if that happened then something along those lines would happen. It is far cleverer to say, 'All right, with infrastructure there is a monopolistic sort of situation here; there is a market failure, so therefore we should regulate it.' Those who are going to build the national infrastructure get some sort of protection to be honoured, but at the same time they should open up the network so that everybody can compete in it. I have actually organised many industry events myself, and I got a commitment from every single telco in Australia except Telstra that they would support an open network. So, if they are going to build a network in regional Australia, they guarantee that it would be an open network. What would that mean? If Internode, iiNet or—

Senator IAN MACDONALD—I accept that. I do not think you have to argue that. I think that at the end of today we have been told that, and I think we probably all agree, although of course I cannot speak for others. What I am concerned about as a country resident myself is that this might be a great system in 2014 when I get it, whereas I might already have had something that was not the Rolls-Royce but was, at least, not a bad Bentley compared with what I might have now. Remind me: was the OPEL one open access? Could Telstra have come into that if they had wanted to?

Mr Budde—Yes.

Senator IAN MACDONALD—But they had indicated that they were not going to?

Mr Budde—Yes. Going back to your point, I think it is a very good point that you make. I am totally in favour of looking at fibre to the node to approximately 91 to 93 per cent of the population. It is silly to go for 97 per cent. For that last two, three or four per cent, you are spending all your \$4 billion, and it does not make sense. It is not necessary. We can provide a good service to these people with an equivalent service. The government should not fall into the trap of legislating technology. That is not what the government should be involved in. The government should say: 'I want to deliver healthcare services, social services and education services. You guys figure out how you do it, and then you build the network as you can, but I want video quality patient monitoring.' You can specify that and say, 'That's what I want.' Go for the outcomes. That is what a government should do. The government should legislate the outcomes, not the technology you do it with. Leave it to the industry to say, 'We can do it.' If they do not perform, you can punish them or whatever, but that is what you should do. So I hope that the outcome of the tender will be that the minister is sensible and is able to say, 'Okay, I think 92 or 93 per cent is better than 97.' Then you could see exactly what you are talking about. We could rapidly see regional Australia being connected to a proper broadband network, not a 'fraudband' network, and start moving in that direction within 12 to 18 months. The technology is there. We can do it. It is not that it is not there. We can do it, but we need a bit of sense in the outcome of the tendering process in that respect.

Senator IAN MACDONALD—So that still could be an outcome from the tendering.

Mr Budde—It still could be. I am still hopeful. The minister knows about it. Every managed telco has spoken to the minister about it. In the whole industry, there is an agreement that that is a sensible thing to do. The only thing that is holding us back is a promise from the minister to go

for 97 per cent. Everybody else in the industry and in the world is saying that does not make sense. What makes sense is 92 or 93 per cent.

Senator IAN MACDONALD—You are talking about 97 per cent fibre to the node?

Mr Budde—Yes, 97 per cent fibre to the node does not make sense.

Senator IAN MACDONALD—But 100 per cent coverage by some form of internet is possible?

Mr Budde—Absolutely. It is possible. The technology is there; we can do it. It will be wireless, and it can be done quickly.

Senator IAN MACDONALD—Finally, are you saying that you could do the fibre to the node over the next five years but you could have the wireless internet, with the same provider, up within a shorter period of time?

Mr Budde—Yes, and then you could use that \$4.7 billion far more sensibly to do proper things rather than wasting it, to be honest, on a few hundred thousand people who also could have good broadband for a fraction of that price if you develop it in a sensible format. If you give quick access then you can let the market work on the demand basis. ‘Are you going to use lots of videos? Yes, you might be in a for a fibre network.’ ‘Are there plenty of people where you are living? If so, there might be a commercial way to start it there. If there are not plenty and you are one of the few in your area on a wireless network, you still get the capacity because you do not have to share it with many other people in that area.’ Then you get technology and commercial arrangements coming and the government sets the guidelines. In five years time, the government might have other guidelines. But, at the moment, you could say, ‘This level of health care et cetera.’ If you talk about that then you do not tie us into technologies and things like that.

Senator IAN MACDONALD—Thank you.

Senator NASH—I want to take you back to something you mentioned earlier about the roads and the cars, which I think is an extremely good analogy. Should the government own the infrastructure?

Mr Budde—Not necessarily. If you have good regulation around it, that is fine. I have never been opposed to privatisation but privatisation was done, and that is why we are sitting here. If privatisation had been done in a proper way then we would not be having this inquiry at the moment. Privatisation needs to be done in a way that sets up the regulatory system for regional and rural areas to get the sort of infrastructure that is required. You can regulate for it. You do not need to be owner of the network. The British government is not the owner of the network nor is the New Zealand government the owner of the network. You still can legislate and regulate that. It is not strictly necessary. You have to have good regulations and that is what is failing in this country. We have had self-regulation. It painted a story about it when it was invented in 1996. Somebody made a cartoon for me. It had one big elephant and 12 little mice, and it said, ‘You do self-regulation.’ Guess what happened? That is why we are sitting here. The government needs to regulate.

Senator NASH—I could not agree more. We had some witnesses earlier today and a number of submissions talk about structural separation and in their view it is absolutely necessary if we are going to get an open access regime in place. I would see that as an enormous hurdle. Hypothetically, I completely agree. That is exactly what we should be doing, but by no stretch of the imagination is it going to be easy. Even if that was successful, even if it is not, we are still going to need an extremely robust regulatory environment. Given that that does not exist at the moment and there has been debate about the regulatory environment for years now, how can this committee have any certainty that that environment and that framework can be changed to work and deliver the outcomes you are talking about?

Mr Budde—First of all, if I am a monopoly, Telstra, and I am American, I have absolutely no interest in you guys. I travel all the time in America. I am involved with Mr McCain. That is what I am involved in. You have put me in charge in Australia to look after my shareholders, Telstra's customers. That is what has happened. There is absolutely no interest from Telstra to even talk to us, as we know. How can you get them to talk? Use a stick and say, 'Guys, if you are not going to talk we are going to kill you.' That is overkill, but you could say that you will really hurt them. If the shareholders have a choice, at a certain stage they could say, 'They are either to kill us or we sit down with these guys and come up with a solution so only 20 per cent get killed.' In every single country so far, you will see that that has worked. If you do not use the stick, why on earth would Telstra sit around the table? It is only when you use the stick that the alarm bells start ringing. The stick needs to be connected to a time frame. 'In three months time you either come up with a solution or we go to the next level.' That is what happened exactly in New Zealand. You put a time frame in with a good stick and then see what happens. I guarantee it will work.

Senator NASH—What stick is going to be big enough?

Mr Budde—Structural separation.

Senator NASH—Absolutely.

Mr Budde—You can work back. You can say, 'Listen guys, if you sort out something else, we're more than happy to listen to you, but if you don't sort it out then you'll be threatened with structural separation.' You can put that in place and see what happens. The industry can then go back to the minister, the regulator or whoever and say, 'I think we can actually do it in this particular way or in that particular way.' Why do we have a regulator? Why isn't the regulator involved in all of this? The regulator can then say, 'That makes sense. Okay, let's do it in this particular way.'

Senator NASH—Let's just assume that, hypothetically, we have a courageous government that is prepared to go to Telstra and say, 'You are going to structurally separate.' Hypothetically, when Telstra comes back to the government and says, 'No'—probably a little stronger than that—and you are advising the government, what does the government do at that point? What you are saying is absolutely right. What I am trying to get to is that end point at which Telstra says, 'No, we're not going to structurally separate.' We have been through that argument before and they have completely jibbed at the end of the cliff and said, 'No way.' What is going to make them do it?

Mr Budde—Legislation.

Senator NASH—And what would be in that legislation?

Mr Budde—That legislation would say that we in this country want a telecommunications environment whereby the infrastructure can be used for competition and innovation reasons for this particular thing. In that context we put a framework in place that actually indicates what is required of the infrastructure in order to make it happen—so you get access regimes, interconnect regimes and things like that. You need to work that out. Industry is the only one that can work that out. The government cannot work that out. The industry will have to sit down and work that out together. You basically say, ‘Within three months,’ because we have already talked for 15 years. We can then say, ‘This is the framework that we want.’ Once again, 15 countries in the world have done it. Get these frameworks in from those countries, if you are not sure how to do it, and then come up with the legislation. True: there might be court cases and things like that.

Senator NASH—That was my next question: does that lead to the mother of all legal battles?

Mr Budde—Yes. That is what Telstra says. They are not my words; they are their words—the words of Phil Burgess. The other thing that I am thinking about is: if the government shows courage, I would not be surprised if Telstra changes management. The previous management was actually talking about functional separation. Under the previous government that discussion was started. It is not that Telstra is against it; it is the new management that came in in 2005 who actually said: over my dead body. They have done a great job, because for three years they created an enormous profit—one of the highest in the world. Sol can still go back and say, ‘Listen, didn’t I do a good job? I created \$4 billion profit a year—ha, ha, ha.’ But for how much longer do we, the taxpayers, want to pay the \$4 billion profit?

Senator NASH—If it did eventuate that Telstra became the successful bidder, if there is not structural separation, how can you avoid the conflict of interest between delivering what is becoming an essential service when Telstra’s responsibility, and quite rightly, is to their shareholders, without structural separation? Is it right to even require them to not focus on that shareholder responsibility?

Mr Budde—No. If my regulatory environment is such that I can milk the country of \$4 billion profit every year, if that self-regulatory environment allows me to do so, why wouldn’t I do that? If you changed again and said, ‘Sorry, you can’t do that any more. We now have a regulated monopoly and, within the regulated monopoly, these are the rules,’ Telstra can do two things: Telstra can say, ‘I close my shop and I go fishing’—which is highly unlikely, because it is their business to run telecommunications—or they will come up with another business plan, like 15 other countries in the world have done, and say, ‘All right, under these circumstances, this is our new battle plan.’

I am pretty sure Telstra has already made battle plan like that. They are not stupid. So they are sitting there and at least have a battle plan—that is, if this happens, what are they going to do? In between, there will be legal action, but apart from that they will have a business battle plan: how are we going to do that? Telstra is a great company. I have got nothing against Telstra. It is a great company. It is one of the best telcos in the world. They have good engineers and good networks. This company will be there forever. It is just: do we want them to make \$4 billion

profit and charge people \$80 a month for broadband or are we saying, 'Guys, sorry, you have to be happy with \$2 billion profit and we get \$40 per month access for people.' They will have to build the business case around \$40 a month and \$2 billion profit a year rather than \$4 billion profit.

Senator NASH—Finally, if we are going to have a competitive environment, do you see any way of doing that realistically without that structural separation?

Mr Budde—No—there is no way in the world.

CHAIR—Thank you. I acknowledge your very longstanding contribution to this debate.

Mr Budde—Thank you, Fiona.

CHAIR—As there are no other questions, Mr Budde, thank you very much for your passionate, 15-year long habit of exposing the shortcomings in the sector, and may you continue to do so—

Mr Budde—Hopefully, at a certain stage, you know—

CHAIR—for as long as they continue to exist. Thank you very much.

Mr Budde—Thank you.

Committee adjourned at 4.01 pm