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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

**PROF R. SNAPE, Presiding Commissioner
MR S. SIMSON, Assistant Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 26 MAY 1999, AT 9.01 AM

Continued from 25/5/99

PROF SNAPE: Welcome to this the third day of the hearings in Sydney and I shan't go through the full spiel that I had on the first day, simply to say that the terms of reference for the inquiry are available on the table near the door, as is the issues paper, if anyone hasn't seen it; to remind people that the proceedings are transcribed, a transcription service here, and the transcripts will normally be available about three days after the hearings and they go onto our Web site, as well as being available in hard copy. At the end of today's proceedings, I will ask whether there is anyone present who would like to make an oral presentation and I do that at the end of each day's proceedings. So with that introduction, I'd now like to turn to Publishing and Broadcasting Ltd, who are first off the rank this morning and to welcome them.

We have three representatives. I'd ask each of you to identify yourselves separately, please, for the transcription service, and then whoever is going to start off to speak to the submission. You are Mr Falloon, I think.

MR FALLOON: Nick Falloon, chief executive of PBL.

MR McLACHLAN: James McLachlan, CEO, PBL Enterprises.

MS MARQUARD: Jane Marquard, manager policy development, Publishing and Broadcasting Ltd.

PROF SNAPE: Thank you, very much.

MR FALLOON: I'll open with a few comments, if I may. We thank you for the opportunity to appear here today and to talk to you about the future of broadcasting in this country. This inquiry comes at a fascinating time. Broadcasters are preparing for the transition to digital television, the most exciting change for viewers since colour television and which brings with it a number of consumer benefits - cinema-quality pictures, CD sound, less interference, spectrum efficiency and flexibility of use. Alongside this development is a fireworks of other new media making their presence felt. All this has major significance for consumers who can choose from a proliferation of media sources, some free and some subscription based. We are here today to say that the media law should enable Australian media companies like PBL to be dynamic and responsive to the needs and the interests of Australian consumers.

With this in mind, we have a few key messages, which are detailed in our submission and some in the fax submission, but which we can summarise today as follows. Australia has the best free-to-air broadcasting system in the world, with three commercial and two public broadcasters providing national coverage to over 18 million Australians. Most Australians want to ensure that they continue to have an excellent free television service. "Excellence" means high-quality expensive programming, a comprehensive range of programming catering to a wide range of interests and local Australian culture. It also means sport, free television access, for which most Australians is guaranteed by the anti-siphoning rules. The provision to consumers of this kind of quality service, in the context of the challenging landscape

in which we now exist and the new digital costs, is critically dependent on no additional free-to-air broadcasters fragmenting the revenue base available for broadcasters.

That means no new television services and no new broadcasters calling themselves "datacasters". The value of a quality free service has had bipartisan political and community support since television began. Free-to-air television has a special role in people's lives and requires special legislation. The digital television conversion scheme is a sensible mechanism for ensuring that there is a smooth transition to digital television without causing disadvantages for viewers. The short-term loan of spectrum to free-to-air broadcasters, paid for by licence fees, will allow broadcasters to simulcast digital TV, including high definition television and attractive accessories like enhanced programming, while giving viewers time to acquire the sets needed for digital reception.

While these aspects of the broadcasting law are working well, rules which provide artificial restrictions on ownership and control of media create inefficiencies and are anti-competitive without any public benefit. It is undeniable that there is now an incredibly diverse media landscape in Australia, with a multitude of viewpoints and ideas. Common ownership will have no negative impact on this whatsoever. Instead, freedom from these shackles will encourage Australian media companies to expand and diversify and compete, both locally and overseas, with all the community benefits that brings. With that, I'll finish and say we'll happily take questions on the matter.

PROF SNAPE: Good, thanks very much, Mr Falloon. I have one problem which has been passing through my mind a little bit during the week and I've asked it a couple of times, so I'll ask it of you also. In your case of PBL, the licences that you have in the Nine Network are valued in your balance sheet at - I think about 1.3 billion is the latest figure I have, \$1.31 billion, and that valuation is there with all the requirements that you convert to digital, all the law that's surrounding it, and taking account of all the restraints which are upon you - the content rules, the constraints on cross-media ownership, etcetera, and all those other constraints - together with the advantages which you've been given - as you would put it, as a quid pro quo - of guaranteed no new entrants until 2007, the requirement that you continue, the disadvantage that you continue to work in analogue as well as digital until then, what you call a "super tax" on your revenue.

All those things which are put in place, after all of those and in the presence of all of those, you value your licences yourself at \$1.31 billion, and yet you say that a new entrant would ruin the whole landscape. Now, I would have thought that it would ruin - essentially, there would be a race to the bottom in terms of quality amongst the commercial broadcasters, free-to-air broadcasters. I would have thought that it might lower this value that you place upon the licences in your balance sheet, but I can't see that it would necessarily have all these other disastrous effects upon the quality of television.

I'd have thought that your own valuation of the value of the licences shows that

there's a lot of cream in there which could be creamed off by competition before it necessarily had any effect upon the quality of the television or anything else which was, if you like, of economic or social significance; that the one thing it would be likely to hit is the value of your licences on your balance sheet. Now, can you explain why I've got it wrong?

MR FALLOON: Certainly. I think there's no doubt that a new entrant would impair the value of those licences, and you're correct in what you report from our balance sheet in terms of what we do value our licences at, and that's an ongoing valuation process that each company has to make as to what it sees the value of those licences. I just come back and say we've had 40 years of television in this country where, through the policies that we've had in developing free-to-air broadcasting, we have developed a system in this country which provides for the viewers - and I think successive governments have supported this policy all the way through - we think the best system anywhere in the world, and that is in a context where we are a small country of 18 million people.

It's a system with five free-to-air services, not just three, so in terms of looking at the value of the licences, it was only a decade ago that all three commercial television licences were, in one form or another, facing financial ruin. If you look out to the sorts of services and the landscape that we as free-to-air broadcasters find ourselves in at the moment, we are saying that we want to maintain that system for the Australian consumers that's been built up over 40 years, but not only maintain it, take it forward and bring in the new high-quality system, to set the broadcasting system up that we've built up in this country for the next 30 to 50 years with the rate in which change is coming. In doing that, yes, that brings with it significant costs for us to meet the challenges of that.

On top of that, we're just coming, for the first time, into competition in the free-to-air television market, significant competition, from both pay television and from the Internet and on-line services market, both of which are challenging the sole source of revenue that free-to-air television or commercial free-to-air television broadcasters rely upon. The impact of pay television, which everyone knows has been a mess into this country over the last few years - pay television is now starting to make its mark and starting to fragment the audiences that commercial television gets, and we don't know the answer to the question of what's going to happen in the next five to seven years in terms of free-to-air broadcasting. That's a question that will be answered by time. On top of that, all the new media services of on-line is coming into that landscape as well.

So what we're sitting here saying is that we are proud of the system that has been developed over the last 40 years. We want to take it forward and enhance it. I will just finish on one point: there is this misnomer that we've been gifted spectrum in what we're doing. We do have all these high definition requirements on us over the next decade, and over the past 40 years the need to develop local content and all the rest of it, and we have paid. To give you an example, the free television commercial broadcasters pay licence fees each year approaching \$200 million to the government,

which is a licence fee or a super tax.

That is more than any other country around the world. So this misnomer that it's free and we're getting something for free is just, in our minds, completely wrong. And we've been paying this licence fee right through the process. So we see the industry at the moment with lots of challenges in front of it, but we are firmly committed and excited about developing high definition television for Australian viewers out over the next decade.

PROF SNAPE: Yes, I understand what you are saying there, and your position. But I come back to the fundamental position that, taking account of all the uncertainties that you just described - the new developments that are in front of us, the new competition that's with you through pay television and other forms - taking account of all of those things and taking account of the nine per cent of revenue licence fee which you're paying to the government, taking account of the restrictions on entry, when you take account of the whole thing and add it all up - all the constraints, all the advantages, the constraints that you have to do - the net effect of all of that is that with all of those things you've still got a value at the end of the day which you value yourself with those licences at \$1.3 billion. And that tells me, that suggests - and tell me if I've got it wrong - that really the exclusion of competition combined, when you take it into account, with all those other things that you are required to do as well, of content, etcetera, the net effect of all of that is valued by you at \$1.31 billion.

MR FALLOON: That is an asset value based on the system that we face and, as I say, gets reviewed annually by our board of directors. We have a landscape in front of us where we have - if there was a fourth television broadcast in this country we believe that value would be not just impaired but severely challenged. Overlaying on top of that we are just feeling for the first time the competition of new players both in pay television and in the Internet services.

On the other side of the coin we are going into a commitment for the next decade to significantly spend not just resources and capital to upgrade to high definition television; we are committing huge internal resources to change the way we produce and do programs to enable our television system to move into the next millennium and be at the forefront of technology and not be undermined on the way through. So as to what that value of that licence will be really depends on that framework.

PROF SNAPE: Are you suggesting that next time the board reviews it they are likely to substantially reduce the value of the licence because of the uncertainties ahead of you?

MR FALLOON: I'm not suggesting that at all. I'm suggesting that the board will need, as it always does, to take into account the framework and the environment in which it's operating in arriving at its views.

MR SIMSON: Mr Falloon, wouldn't the impact of a fourth licence very much depend on the market positioning that new entrant took? Channel 10, Network Ten we heard yesterday and have been reading about is segmenting itself or taking a particular position in the marketplace. Pay channels by definition obviously take a specific position. I mean, if you could put yourself in the position of a starter, and you're the CEO of a new starter coming with a fourth free-to-air, you'd be pretty careful, wouldn't you, about the way you'd actually position your new station? I mean, would you come in with programming that would take head-on the Nines and the Sevens or the others? Wouldn't you try to be a little more clever about that in terms of building the market rather than really dividing an existing market that's currently divided by three or whatever your market share is and then dividing it by four?

MR FALLOON: When you say "building the market", my understanding if you introduced a fourth television market - I don't believe the market is going to build. If we look back at aggregation when it's come or when a third licence has been introduced in the past into a two-market situation, there's been very little if any growth in the advertising pie, the advertising pie for free television people going forward. I think what you're saying is, "That's all right, because the person that's going to come in with that fourth licence is going to be a sane operator." Just have a look at what's happened in terms of the introduction of pay TV services in the last three to four years in this country to get some idea of insanity which in our mind - certainly in my mind - has cost the Australian economy a significant amount of money in the double cable build and the huge losses that have been sustained by the players that came into that market.

So I don't think that we can sit back and rely on the sanity of a new operator coming into the market at all, and that is why the current government - and it had bipartisan support - I think looked at the framework and said, "In going into the next eight years, in developing this new technology, we need to have certainty about what's happening."

MR SIMSON: I'm just wondering whether you might be selling yourselves a bit short in terms of your ability to be able to position yourself and compete with a new aspirant who doesn't have all your experience and all your assets and capabilities.

MR FALLOON: I don't think we are selling ourselves short. We think it would be a devastating impact, and when we look at the whole environment that is there - people have to keep coming back and remembering we are 18 million people - with what has developed over 40 years in our view, and I think supported by a lot of other people who travel to this country, a very, if not the best broadcasting system in the world, and we're proud of that fact; and there's not too many other countries, even much larger countries than ourselves, that have more than five free-to-air services.

PROF SNAPE: You know, the argument sounds a little bit familiar. I'm not quite sure if you remember the 1960s. The argument sounds very familiar - - -

MR FALLOON: Very vaguely.

PROF SNAPE: - - - to the argument put forward by the motor vehicle industry in the 1960s, who said, "We have got a number of models that are particularly suitable for the Australian market. They're much better than any other. We succeed in doing that in a very limited market" - at that time much less than 18 million. "There are economies of scales. We need to restrict the competition. We can only do what we're doing so well for the country by having restriction on competition and keeping competitors out and that there shouldn't be any more new manufacturers coming in to split what would be a stagnant market, a market which would just be carved up." There were content rules that you had for particular models, and content rules for different particular models, very similar to what is going on in this industry and we hear, "We just cannot afford to continue our current standards and our profitability and serve the Australian market as well as we have unless the competition is kept out." It just sounds so much to me like a repeat of the motor vehicle industry arguments from the 1960s.

MR FALLOON: I have a little difficulty arguing with you about the 1960s as I was rather young in those days.

PROF SNAPE: Younger than me, yes.

MR FALLOON: A little young to recall these sorts of arguments. But just off the top of my head, the motor industry in my mind doesn't have the interests of the Australian viewers in terms of developing content, developing all those things.

PROF SNAPE: They argued all that, if I may say. They were in fact developing Australian content for the motor vehicles, and it was exactly the same; they were in fact saying how much they were developing the manufacturing industries which are supplying them with content. It was exactly the same argument.

MR FALLOON: I'm not quite sure I understand how you can say that it is the same argument but - - -

PROF SNAPE: So is this not just an industry protection argument?

MR FALLOON: It is not just an industry protection argument. The industry is facing in a variety of forms competition from pay television coming in which will fragment its audience going forward.

PROF SNAPE: And there were motorbikes coming in as well, yes.

MS MARQUARD: Perhaps, professor, I think our argument here is very much that broadcasting has some special objectives which do differentiate it from other industries, and those objectives are to do with the fact that broadcasting has a special importance in people's lives, which is different to driving a motor vehicle or the features on the motor vehicle, and those are things such as being able to listen to

Australian programs and having quality programs and having a range of programs. It's because of those special objectives that these arguments are being put, and not simply because we're saying it will make it easier for incumbent licensees.

PROF SNAPE: With respect, the same arguments were put in the 1960s, about the pride that one got from driving a Holden rather than something from some other country, the pride that we got from having our own motor vehicle industry, the links that went back into how central that industry was for the whole manufacturing sector - you can go on and on with parallels - and it was of special significance because it was such a key industry in the whole industrial structure and so on.

MR SIMSON: Mr Falloon, Mr Leckie made a couple of points when he appeared with FACTS earlier this week. He made the point that from a competitive perspective for the advertising dollar the benefit that mainstream media has over other new media in terms of being able to reach mainstream audiences, chunks of audience - we were having this discussion in the context of the prospective impact on free-to-air's bottom lines of a growth in pay television, household penetration and reach. In other words - and we've heard this from industry visits we've had with advertising agencies - at the end of the day, even if the pay television industry gets to, say, a 35 per cent penetration in four or five years' time that in the view of your clients and the people you work with and in the thrust of Mr Leckie's point this week, you'll still have a good business because of the nature of the way you reach people.

Second, as you say in your submission, many of these new services offer benefits to those who have access to them, but many Australians cannot afford new media. So that while this new media is coming in - there are a couple of points that are made in your submission and by Mr Leckie and others - and perhaps if we just put to one side the new media and we look at the impact of a new entrant - may not make it so devastating as perhaps you're suggesting; in other words, that your competitive position, notwithstanding there's a lot of activity around out there, it would appear from what we've heard is still going to be relatively strong on a four to five-year time-frame.

MR FALLOON: First of all in supporting what Mr Leckie put to you, we certainly think one of free-to-air's advantages is that it is mass reached vis-a-vis the pay TV on an advertising point of view. However, you go back and look at the growth - and it's a question that we ask ourselves every day as to what that impact is going to be over the next four to five years and I don't think anyone has the absolute answer to that. If you look back at the United States and look where viewership for the network broadcasters has gone in the last decade - I'm not sure of the numbers off the top of my head - their audience reach has dropped from the 90 per cent type area down to the low 50s. I think that's about right. So if that transpires here over the next five years, what impact that will have on advertising revenue, our sole source of revenue, I'm not sure.

We do have, and we do believe, that we have that advantage to help counterbalance that in going forth, but I don't know where that will end up. Certainly

that is one of the many challenges that we face with the advent of that competition into the marketplace in the last couple of years. It's really only starting to develop now because of the way in which pay TV was developed over the last two to three years. So that will be a dynamic that we have to face.

MR SIMSON: Of course you're hedging your bets somewhat because you're also an investor in Foxtel, a shareholder in Foxtel, with 25 per cent and, if I could just flesh out my line of thinking, you also have I think an option to purchase in Fox Sports and you also have an equity in Sky News, the channel, so that in the pay television area specifically you're covering your flanks in a balance sheet sense, aren't you, because if things move a little bit more aggressively in the pay TV area in terms of reach and advertising share, you've got that? If they don't, you've still got your free-to-air. It's not as if you're just playing in the one television segment.

MR FALLOON: I think that's correct but, please, don't confuse the argument. Our investment in pay TV is a separate investment decision saying we think that may be a good business, and it is a separate business in a sense from free TV in that it is mainly subscription driven, as we've just talked about, although it is having an impact in terms of advertising and fragmentation of the free TV audience. But it is a completely separate investment decision from PBL from the arguments that we're putting forward on a free TV basis.

MR SIMSON: I understand what you've just said to me but I'm just making the point that you're investing in the new medium that you say is going to be potentially quite competitive with you. You've made the point of how much - people aren't too sure of at the moment. You're an investor in that and on the other hand you're saying, "But we can't take another free-to-air in this other medium that we're also an investor in." So I'm trying to reconcile that - - -

MR FALLOON: Let me help. The two are two separate investment decisions and we are saying in the free-to-air area, because of the special purpose and the special place free television has in the Australian environment, that it needs, with the changes that are in front of it and the decision to go in and be at the forefront of new high definition television - which we think is absolutely the right way for the country to go in terms of doing that - that brings with it significant costs and imposts to the industry and, during that period, we say there needs to be certainty to be able to maintain the integrity of the system that's been built up over 40 years.

Yes, there will be, and I'm quite certain that both sides of government have taken into account the fact that there will be a vast number of Australian consumers that cannot afford pay TV and that the integrity and the quality of the free TV system that has been built up over 40 years needs to be maintained. It also needs to meet the challenges of new technology, and the system that has been put in place is one that takes it there over the next decade. So the two are completely separate decisions and I don't think our arguments are confused at all on that point.

MR SIMSON: No, but existing policy, or the policy is for no new free-to-air

entrant, at least prior to 2007. That's not to say that there will be one or there won't be one.

MR FALLOON: I agree.

MR SIMSON: But there's not a decision till then. Do you believe that your shareholders and the people who advise your shareholders have factored in at all the possibility into your share value, that from 2007 there could - underline "could" - be a new entrant?

MR FALLOON: I'm not sure whether they have factored that in or not. We would argue, as we argue now, that there shouldn't be, and the arguments that will take place in 2007 as to whether there should be or not will be made with the benefit of the hindsight of the next seven years; what does happen in the landscape with the introduction of the new system and what impact it does have on the industry as a whole.

PROF SNAPE: Could I ask another question that goes into the future a little bit. There are many services, I think, that you are foreshadowing or thinking about to be going alongside the current free-to-air that you would want to be doing in the future when you're able to and you're not able to multichannel for a number of years, for example, but I'm sure you would like to at some stage.

Would bringing forward the day at which you could stop analog broadcasting in tandem with the digital broadcasting, which at the moment you're required to do until 2008, as I understand - and we've heard a number of views saying that not too many people will have changed by then and maybe it will be pushed forward further than that because there are a lot of people in the community who wouldn't have the facility to receive the digital signals and so the risk is that it will be pushed forward, much further forward, and all the analog spectrum tied up to continue broadcasting analog - if the transition day in which you could in fact stop analog broadcasting could be brought forward closer to now, shortened, and then you could presumably be able to multichannel and do all the other things and there would be spectrum which you would no longer be tying up on analog and you could be using some of that perhaps along with other people and so to complete the transition phase much earlier, would you see that as favourable to you or unfavourable?

MR FALLOON: I think it depends on whether the majority of Australians have had the opportunity to take up the new technology and we have been successful in delivering high definition television, which will set up the broadcasting system, or the free-to-air broadcasting system, for the next 30 to 50 years.

PROF SNAPE: If you could just assume that the former is satisfied, that somehow in fact people are able to receive through set-top boxes being given out free, as mentioned yesterday as a possibility or some other way of a set-top box which would convert the digital signal into analog so that everyone with an analog set could in fact receive a high definition digital signal, albeit receiving it only in the quality that we're

currently getting it on an analog set - so let's assume that problem has been satisfied, that in fact we are able all to receive the digital signal on the analog set and that, by either commercially or non-commercially, everyone has been able to get a chip or a box that enables that to be done, so we've removed that constraint.

MR FALLOON: I'm now somewhat confused. We're now giving away set-top boxes that will enable high definition television or won't - is that - - -

PROF SNAPE: The signal - the receiving of the signal on the analog set.

MR FALLOON: In high definition.

PROF SNAPE: No, not necessarily.

MR SIMSON: They're two separate issues.

PROF SNAPE: So that the people who have currently got analog sets and are receiving an analog signal are no worse off because they can continue to receive a signal in that quality, even though it was transmitted in high definition or in digital.

MR FALLOON: I think the problem I have with this hypothetically - the fact that they're no worse off - means that the system of broadcasting is not taking the next step, in our view, forward to enable it to be at the forefront of technology and the opportunities it will open up for it past 2008.

PROF SNAPE: No, I'm not ruling that out. I'm saying that no-one is worse off. Everyone would have the options you're talking about, but the problem that many people have foreshadowed that will occur in 2008 is there's a whole lot of people out there who have still got analog sets and have not converted. So, for very good reasons, a decision would be made to continue broadcasting in analog to service all the people who hadn't made the conversion to digital. So I'm saying let us suppose that problem is overcome because there are chips made available or a very standard set-top box is made available - however it is made available - so all those people who would otherwise be acting as a blockage to the stopping of analog transmissions are able now to receive that digital transmission in analog form on their set. You know, it is being transformed so they are no worse off.

That hasn't meant that other people aren't purchasing superior boxes and doing all the things that you would like to do. I am saying suppose we have solved that problem of the people who have not converted and suppose that we are able to do that much earlier than 2008?

MR McLACHLAN: Haven't you solved it in a way which has those consumers who are, through the process you are talking about, continuing to receive analog signals, will continue to receive analog signals forever, or on a long-term forward basis?

PROF SNAPE: They have the option.

MR SIMSON: They have the option of upgrading, f going out and spending what is at the moment thousands of dollars, and presumably the price will come down on a high definition television receiver, but initially they can enjoy the benefits of datacasting and other related services. But the point that Prof Snape is coming at here is that it removes a blockage of having to preserve simultaneously analog and digital spectrum during that conversion period.

We've had a lot of evidence this week from people that suggests that the actual take-up of high definition television receivers is actually going to be quite slow because of the price point. Notwithstanding that, there would be benefit to the consumer of being able to receive some of the other services, such as datacasting services, on their existing television set with the set-top box that may have been given away free, whether it's been given away free or not, because there are two bunches of benefits at least that you get from this, as I understand it. One, as you've explained, Mr Falloon, is superior viewing on a high definition TV but you don't need that to get a bunch of other benefits.

The original question of Prof Snape's was, from your perspective and from a corporate perspective, how much value are you placing on datacasting, for example, and some of these - and down the track multichannelling - as part of the benefits of this conversion process? Because if, as was suggested yesterday, the entire Australian population, every Australian household could get a chip or a set-top box that would enable them to continue using their existing receiver for an analog receiver, there would be business benefits that you could exploit on datacasting, multichannelling, from day 1.

MR FALLOON: We are not looking to exploit those benefits. We are looking to develop and enhance the excellent broadcasting service that was developed to date, and to take that forward into the next leap, being the next 30 to 50 years, and we think it's absolutely essential that we as a country do that and be at the forefront of technology, not get sidetracked down a substandard set-top box or a substandard process on the way, because at the end of the day we'll end up coming up with a hotchpotch of a system which will not be able to take advantage of those new technologies down the track.

The government bipartisan support has looked at this and said, "We need to make sure that we're at the cutting edge of technology." What we're talking about here is having a fragmented version on the way through which will (a) undermine the current system and (b) leave our whole broadcasting system in a mess to go forward into the next 30 to 50 years, in our view.

MR SIMSON: Fair enough, but you're basically saying that unless people want to purchase a high-definition TV, which at the moment is thousands of dollars, those people should not be able to receive a standard of set-top box - sorry, people who do not wish to purchase a high definition television at this point, should not be able to

take advantage of these other services that can be available from the digital spectrum.

MS MARQUARD: Perhaps if I can just answer that. That's not exactly correct. The set-top boxes which we were hoping will be the set-top boxes that will be primarily available in Australia will be ones which allow a high definition display, but also downwards, inter-operable, in that they will allow all the other services to be made available to consumers.

MR SIMSON: Perhaps there's no disagreement between us. The only point we were making was that that set top-box, or what may end up as a chip or a set-top box, could be given away free, could be made available en masse, earlier rather than later, that would free spectrum.

MR FALLOON: I think it's essential that we just make the clarification, that that set-top box we believe needs to be capable of handling high definition not - I mean, as I've read in the newspapers in the last day - a set-top box that is unable to go to that next level. Otherwise we end up with a system that does not free up and enable us to take advantage of all those opportunities at the end of this process, and the time-frame that has been set in place has been set in place to enable the earlier doctors that want to pay the price which is reasonably expensive at the outset. We have followed pretty much the US system of doing this, intentionally on the basis that we believe, as with most other technologies, that price point will reduce drastically based on that scale argument by the fact that we will have similar and common technology to what will be developed in the US. So that is part of that whole process.

PROF SNAPE: So you're speaking about a set-top box. You're not speaking about people having a choice of what set-top boxes they get. If I buy a CD I can buy a very simple one or I can buy a very complicated one. I have that choice. That choice isn't put upon me by the sellers of the CDs and say you must have the most sophisticated set-top CD box to in fact give you all the facilities that we want to give you. I have the choice. Are you saying that you want to insist on the most sophisticated box or a very sophisticated box rather than allowing people to have a choice of whether they have a very basic box or a very complicated box?

MS MARQUARD: I don't think we're insisting on that at all. The set-top box manufacturers will be putting on the market what they think is appropriate for the Australian market, but this debate has come about because of the Standards Australia process for setting a standard for digital television. What we are really concerned about ensuring is that the bipartisan commitment to high definition is reflected in any standards that are set for digital television, and we're not through that process in any way, shape or form, trying to push out any possibilities of datacasting services. But obviously our primary concern is for free services which are available to everybody as opposed to datacasting services which will most certainly be primarily subscription based and ensuring that the people who do buy sets are able to get high definition television and that their sets are not going to go to black when high definition is transmitted.

So that's really the primary concern here. The simulcast period I think is a period which was set to sort of approximate the normal replacement times for analog sets so that consumers would not be disadvantaged in the process. They would, when they went out to buy a new set, be able to purchase a set which would last them for decades as opposed to having to buy an inferior set earlier on, only to discover that they're not able to get the full set of features.

MR SIMSON: Can I just clarify one technical point? You mentioned a set going to black when a high definition television signal is transmitted. In the set-top box from digital to analog, I have a set-top box that takes me from digital to analog, but I don't have a high definition television. Does my set go to black? Does my signal, my screen go to black simply because I don't have a high definition television? I thought that so long as I had even the most basic set-top box that converted from digital to analog that I could continue on my analog receiver, I could continue to receive a digital signal. It may not be as fancy or as good looking as if I had an HD TV.

MR FALLOON: While in simulcast, I think the answer is, what you're saying, that once the broadcast is at the end of the period, are broadcasting fully on HDTV, I think the less version set-top boxes may well not be able to receive high definition television.

PROF SNAPE: OzEmail yesterday said that the additional chip that would in fact be required to receive high definition as well as standard definition digital would in fact be very cheap, and so the adjustment, we're still talking about a pretty basic box that in fact wouldn't go black with the extra chip in to ensure that when the high definition was transmitted.

MR FALLOON: We're not sure, and again I'm reading the papers that the set-top boxes that they talked about are actually available, but that's something our technical people - and this is something that Standards Australia and the technical people are looking at but that's certainly not our belief.

PROF SNAPE: It might be an idea to have a look at the transcript as well as what was in the papers because even though there was excellent reporting, the transcript was much fuller.

MR SIMSON: But, Mr Falloon, notwithstanding what was said in the transcript yesterday, we would appreciate clarification on that point, if you're able to provide that to us, the discussion we've just had, please.

MR FALLOON: Sure.

PROF SNAPE: As Mr Simson said earlier, I think what we're trying to do in this exploration of questions is in fact to see if all the advantages that you've been talking about can in fact feasibly be brought forward in time, not to close out options, but in fact to see whether all the advantages which you've been describing and others have told us about may be able to come in closer to 2001 rather than 2007 or 8, or more

likely because of - while the period of 2007 or 8 may have been set with a view of the normal changeover of television sets or the average, we know that it can be very sure that there will be segments of the community, and particularly the old, and particularly the lower socio-economic part of the community who will not have changed by that time, and who will still have analog sets and very rightly any government will be concerned about them losing their free-to-air television at that time if analog stops, and more than likely the simultaneous transmission period would be extended further into the future, meaning that all that spectrum which is being absorbed by the continual broadcasting in analog will still be not available for all the other exciting purposes that you've been describing.

MR FALLOON: If I heard what you relayed was said to you earlier, if at the end of that period - and we certainly believe that the high definition set-top box in pricing will over the simulcast period come down substantially in price, and that's certainly all the evidence that we have, and that's certainly the belief from the states - if that is correct that a very cheap chip could be added to a box at the end of that period to enable people still with analog - and I'm not sure this is the case - but if what you're putting to me is that at that time it would be very cheap to put a chip into that box to enable that purpose, then it would solve that problem at that time as well.

PROF SNAPE: My fundamental question at the beginning was, if that could be done in 2001 or 2003 for everyone at that time so that the analog spectrum could then be made available, would you support that?

MR FALLOON: No.

PROF SNAPE: Why not?

MR FALLOON: We believe to go through the process of taking the system that we have, the excellent system that we have at the moment, and to put it at the forefront of technology, and the system that is in place at the moment, it is envisaged that the spectrum will be given back at the end of 2008, I think the right date is. We believe that the Australian television system should move to the cutting edge of technology and have that available, and if we don't do that, we are selling ourselves short for the next 30 to 50 years, and we think that is essential to be able to take advantage of all the new technologies that are coming down the pipe, and to end up with a half-baked system on the way through will be the equivalent of throwing out the excellent system that we've managed to build in this country for consumers over the last 40 years.

MR SIMSON: Mr Falloon, I think we agreed earlier that it's only half-baked if the tech solution is half-baked. If the set-top box or chip can be available earlier, that will facilitate both - upgrade or even perhaps include HDTV when people at some stage want to buy a receiver, then it's not half-baked, is it?

MR FALLOON: But half-baked in both senses of the word "technology" as well as the excellence of quality of service and quality of programming that are delivered. As professor mentioned, a number of the consumers in the marketplace a la with pay

television which is coming into the market, won't be able to afford to buy that, and a number of them won't be able to afford to buy data services and the other services that are on offer. What we are saying is we have an excellent free-to-air broadcasting service that provides five channels to all one hundred per cent of Australians. Through this transition and through the need to change, both from a technology point of view and from a quality of product and cultural and all the other aspects that we've put in our submission, it is essential that we don't end up with a half-baked system where our free-to-air service that goes out to a hundred per cent of the viewers becomes substandard and not at the forefront through that process. So you need to consider all the dynamics of what's going on there in looking at that.

MR SIMSON: But how would that occur? Why would the service that's going out to your consumers become substandard?

MR McLACHLAN: On your hypothetical, as I understand it, the sort of chip you're talking about means that the HDTV signal which is being sent out can be converted into an inferior signal for these viewers so that these people are sort of condemned for life to continue to receive the sort of analog received signal.

MR SIMSON: No, no.

MR McLACHLAN: You're talking about taking HDTV signal and converting it to an analog reception.

PROF SNAPE: The fundamental problem of government policy in general, as we know very well from some debates that have been going on in the senate in the last few days is to in fact introduce a change without disadvantaging anyone. So that a change can be introduced so that some people are at least better off and other people are not worse off, particularly when it's a low socioeconomic group that is not worse off, and that's what all the debate has been about the GST. What we're saying here is we're trying to introduce something, to propose something that would in fact make no-one worse off. They would be able to continue to receive on their analog set the digital transmission, so they are no worse off than they are before.

MR SIMSON: But they're not getting the full - - -

PROF SNAPE: But other people, those who wish to in fact purchase these sets or more sophisticated boxes to get all the other advantages, are able to do. So some people, and perhaps a great number of people, are better off and no-one is worse off, and that seems what governments are always trying to do with their policy. We are trying to in fact explore this avenue and to say that, "Oh, well, they're not as well off as they could have been if they were compelled to get a better set," - and of course if they choose not to then they are worse off because you've had to compel them to do so - that's not an argument.

MR SIMSON: But the benefit is a free spectrum earlier than may have otherwise been the case.

MR McLACHLAN: On your hypothesis; not to the benefit of those people that you're talking about because they're not people who can afford to buy that broader array of new services.

PROF SNAPE: We are giving them the chip free. They are no worse off because they get the chip free.

MR McLACHLAN: They get the chip but not the service. They've got to pay for the service.

MR SIMSON: If they want to.

PROF SNAPE: But they are no worse off.

MR SIMSON: They may not want to.

PROF SNAPE: I'm sorry, we're not getting anywhere on that argument obviously so let's move to another topic.

MS MARQUARD: Professor, can I just say one more thing on that. I think the expectation is that worldwide there will be a move to digital and so that eventually analog equipment will dry out, and it's within that context that Australia looked at moving to digital and that free-to-air broadcasters thought, "We're going to have to spend this money on converting to digital." So within that framework the government looked at what is the best way of ensuring that this worldwide move to digital, which is obviously going to affect Australia because we get most of our equipment from elsewhere - what is the best way of achieving this without disadvantaging consumers - and I think it was seen that if we were going to allow all Australians to have the full benefit of services, including high definition, that you would need a fairly substantial simulcast period, one which incidentally I think is fairly similar to the time that was allowed for the transition from black and white to colour. You would need that period so as to explain to viewers and show viewers all the different bouquet of features which digital offered - you know, that it wasn't going to be, even if the set-top boxes were cheap and I think it's questionable whether there would be a set-top box that would be given away that would have the high definition features on it. But even if there were it's still a matter of making sure that this transition to digital occurs fully within the country in a way which benefits all the consumers.

PROF SNAPE: I think we're all rather glad that that same philosophy didn't apply to the introduction of the Internet. I wonder then if we could move to some other areas. I gather from your submission that you would be quite happy or not unhappy, or quite relaxed about Murdoch having Channel 7?

MR FALLOON: I don't know how to answer that question, in the sense that I don't see how that's relevant. What Mr Murdoch does is his business. I mean we've put forward what our beliefs are in our submission, in terms of the changes to the

cross-media and foreign rules. I don't want to speak as to what Mr Murdoch may or may not do.

PROF SNAPE: But what you proposed would in fact enable Channel 7 to be taken over?

MR FALLOON: Or Channel 9.

PROF SNAPE: Or Channel 9, yes.

MR SIMSON: Mr Falloon, on page 27 of your submission - and I would just like to read this, if you don't mind:

PBL is prepared to compete with foreign companies within the changing Australian media sector but it does not believe that it can do so on a genuinely competitive basis unless the cross-media rules are repealed and PBL is enabled to grow its capital base.

And you've got tables which show the relative capital base of yourselves, the big telcos and other competitors you're facing increasingly in your marketplaces. I mean that's a categorical statement. It does not believe, so it does not believe that it can. You are categorically saying that unless the cross-media rules are changed you are not going to be able to compete with foreign companies in the Australian media sector.

MR FALLOON: Yes, I think that's right. I mean I think if you looked just in the newspapers every day about what's happening in the American market, for example - I mean the biggest companies in the last month, in terms of media companies, the argument is are they a telecommunication company or are they a computer company? I mean that change is happening around us as we speak. I know we're talked about as a big company within the confines of Australia, but we do believe we need scale to be able to grow and pursue these opportunities, absolutely.

MR SIMSON: So taking Fairfax is actually then core to your strategy, isn't it?

MR FALLOON: No, it's not core to our strategy. Having the freedom and the flexibility to make commercial decisions at the appropriate time is core to our strategy. I mean a lot gets talked about. PBL sold its interest in Fairfax some time back. If the cross-media rules were changed, would it look at it? Possibly. It's not core to the strategy at all.

MR SIMSON: Hang on, I don't quite understand this because - - -

MR FALLOON: Scale is core to the strategy.

MR SIMSON: How do you get scale if you don't take Fairfax? I mean News Ltd is not going to sell you their business?

MR FALLOON: Do you know that? I don't think we can sit here and play individual - what Channel 7 could do or what Fairfax could do. I mean what we're saying is fundamentally we believe that with the changes that are going on around us that the freedom to get scale is essential. That's what we're saying.

MR SIMSON: I'm just raising the question as to how you get to scale without taking Fairfax, in the context of your statement there about cross-media? I mean I'm only raising it in the context of your own words about cross-media.

MR McLACHLAN: I think the issue is to not be restricted in the way that we can get scale. Whether at the right time as a matter of commercial decision it's to buy Fairfax or part of Fairfax or News Ltd's newspapers, or some of those newspapers or to establish our own newspapers, I mean we should as a matter of regulation be permitted to make the appropriate commercial decision not subject to artificial constraints.

MR FALLOON: There are sizeable parts of Australia's areas where there is only one major newspaper currently operating in Brisbane and in Adelaide, and in the West. So I mean just to narrow everything down, as is done in the newspapers most days to Fairfax and to Seven, is not what we're saying in a sense. We're saying, "Yes, because of the changes that are around us we need the freedom and the flexibility to get scale to go forward." That's what we're saying.

MR SIMSON: So some of these markets, such as Brisbane and Perth and Adelaide, which previously have had two newspapers and one of those has closed, it's always the possibility to look at actually opening up another newspaper?

MR FALLOON: Whether it would be PBL or whether it would be Channel 7 or Channel 10 or someone else. I mean I don't want to individualise what we're saying. I mean we're not simply saying it's to do with Fairfax or Channel 7 or anything else.

MR SIMSON: Could I turn to a point which you make in your submission relating to - just excuse me a second - actually I'm now up to speed, I apologise - page 8 of your submission, which is under the heading of Influence. You say the arguments about influence are largely irrelevant. This is in the context of media diversity:

There is an abundance of media. both entertainment and information, available and it portrays and reflects different viewpoints and ideas both within each medium and across the media sectors.

Could you just expand on the point that you're making that arguments about influence are largely irrelevant, because the Broadcasting Services Act actually places a lot of importance on influence, in that it says in the first point under 4/1:

The parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence the different types of broadcasting services are able to exert in shaping

community views in Australia.

You made the point earlier today that - in the context of the discussion about mainstream media - you would certainly see television, and you also said newspapers, as remaining important media mediums. Could you just expand a little bit on that sentence about arguments about influence being largely irrelevant, please?

MR McLACHLAN: I think the point we were trying to draw out was precisely the one you take us to in terms of the objectives of the act. The objectives of the act are used, if you like, as the foundation for saying there should be different rules as to ownership and control applied to different mediums, so different rules as to ownership and control apply to pay television, for example, as apply to free television, and we don't think that's justifiable. It's a bit of a bootstrap argument. We will put that objective in there because that then justifies having a different rule. We don't think there is a proper justification for different rules. We think that there is a broad array of services available and the degree of influence of any one particular service is impossible to measure. Different media products cater to their audiences in different ways. Newspapers provide a greater depth of analysis and a different style, a more opinionated editorialised style than, say, a commercial television news service.

MR SIMSON: I don't disagree with that, although you did make the point in your submission, and on one or two occasions today, that a lot of the population who can't afford to pay for that new media is still going to be relying on traditional media forms, that is television and radio and newspapers, for their media, so diversity is theoretically correct but at this stage the media consumption is different amongst groups and, as we know, the new media group is still in the minority.

MR McLACHLAN: Yes, but I think the point we make about diversity is that there is diversity even within media products themselves - you know, within one newspaper there's a range of views and opinions expressed; there's a depth of stories that's reached in a newspaper that's perhaps not reached in commercial television or commercial radio. Commercial radio provides a sort of a depth of opportunity for viewer input that television doesn't.

MR SIMSON: I appreciate that. Of course in your case you are a business that owns a whole subset of other businesses, or you have a whole range of other businesses. We discussed some of them - pay TV - today. You're in telephony, One Tel. You're into Hoyts.

MR FALLOON: PBL is not actually in Hoyts but obviously CPH is in it.

MR SIMSON: Okay, CPH is in Hoyts. In other words you have a diverse - if I could use that term - range of business interests and I would be interested in your view as to whether you see this as presenting a problem in a change in the cross-media rules, whereby if you either started or bought, or whatever, a bunch of newspapers how you see the issue of influence impacting on the journalists and the editors who then have to write about this growing array of business interests. I mean

barely a day goes by where there are not at least a couple of stories on the business pages at least of our newspapers that don't relate - or in fact do relate to PBL/CPH interests. I'm not disagreeing at all with your earlier point but you are in a particularly interesting situation with regards to influence because of the nature of the range of interests, the range of business interests, that you have. I'd be interested in your comment on that.

MR FALLOON: James can come in. But take Hoyts, in terms of how Hoyts company goes to influence views. I watched the 7.30 Report last night to see that we've got greater influence because we've got 25 per cent of Foxtel. We don't have management control of Foxtel and I suspect never will have management control of Foxtel. We have a financial investment in pay TV as a business which is another form of media. The Foxtel business is managed by News Ltd, that is a fact of life, so how that influence gets overlaid on the narrow view that people take of us - we have diverse views within the Nine Network of what gets put to air, as there are on newspapers as before. So I think we are confusing financial investments in things with the marrying together of influence.

MR SIMSON: I understand where you're coming from in the case of investments where you do not have control, but even then there is the trail of those businesses and the reportage and editorialising and commentary on those businesses on a day-to-day basis.

MR FALLOON: By?

MR SIMSON: By newspapers. The issue that I'm trying to explore with you is that, quite apart from the diversity of media, which is a point Mr McLachlan made, is in what way you can provide - "guarantees" is probably the wrong word, but you can provide some assurance to the community that in the context of influence, if there were to be a change in the cross-media ownership rules and you were to take control of Fairfax or start up new papers or take control of News Ltd, that there would not be influence on the people who write and report and edit your business affairs generally in those papers. I mean, the word "influence" is important here and it's quite a separate issue. I don't think I am confusing things; it's quite a separate issue to the point that Mr McLachlan was making.

MR McLACHLAN: At the end of the day, using Nine Network as an example of clearly a business that is both owned and controlled by PBL, there isn't some PBL corporate editorial policy that our journalists and producers are forced to toe the line on, which I think is the proposition you're exploring by your question. Programs reach their audiences in different ways. A Current Affair is a very different style of program with a different audience to, say, the Sunday program. 60 Minutes is a different style of program with a different audience to A Current Affair, but those programs in themselves are all about succeeding in finding and reaching their audience and maximising their audience and, to do that, they need to attract the most talented journalists and producers available and, to do that, there has to be an integrity and credibility about the program.

Nine Network, I think, is Australia's most successful television network in terms of the depth and range of its news and current affairs programming. It has been able to achieve that because of the reputation of the network and of the programs that the network broadcasts, and it has that reputation because of the integrity of those programs. Nine Network reports on the business affairs of CPH and the business affairs of PBL, just as the Fairfax press reports on the travails of, say, Conrad Black when he was in ownership and control of the Fairfax newspapers, and that will continue to happen because they're about reaching their audience.

MR FALLOON: We don't believe that the ownership question goes to diversity of views; that's the point we're putting.

PROF SNAPE: There has been a view, I think, put by a number of journalists who have been working in the industry - and let us take financial journalists as an example - that if the rules were relaxed in the way that you're recommending and if, as seems likely, the relationship with Fairfax got closer than it is at the moment, then financial journalists would basically have two employers in the country. Is that correct? They would have only two opportunities; that basically a financial journalist would be able to work for Murdoch papers or for Packer papers. Would that be correct? That has been put to us and put publicly; that that would be very restricted choice and they would have to be very careful what they wrote.

MR FALLOON: And they now work for Fairfax or Murdoch? I'm not quite sure what the distinction here is.

PROF SNAPE: I think there are also some magazines around.

MR FALLOON: Okay, there are some magazines around.

PROF SNAPE: So there are potentially three employers at the moment.

MR FALLOON: Right. This is a view that is often put forward by the journalists - mainly from Fairfax - but all I can say is we've been in the business in television, as James has said, we've been successful in news and current affairs. The reason I believe we're successful is because of the integrity and the success of all our journalists, be it financial and whatever, and we don't think that will change, so that's all I can say on the subject.

MR SIMSON: I appreciate that. Just hypothetically, from our perspective, though, you're seeking a change in the cross-media ownership rules. You are a significant player in television and magazines and have these other new media investments, and you are asking us to take at face value assurances with regard to influence in the context of the examples, in the discussion we were having a couple of minutes ago, in terms of the way - to cut to the chase, that PBL would take a completely hands-off approach to editorial and reporting processes and related matters in the context of all these businesses that you own. I'm not disagreeing with what you're saying. I'm just

suggesting to you that perhaps given your particular circumstance and what you're seeking and given the importance that the act and our terms of reference places on influence and diversity-related issues, that there may be some more that you could provide in terms of this particular issue.

MR FALLOON: I think what we're saying to you is, let's look at the track record that we have had in television and why we've been successful, and that we don't believe that ownership will - and we do believe that newspapers are different from television and radio is different and the new media services will be different, going forward, and there will be a diverse view being put, no matter whether the ownership is owned by one, two, five or 10 players in the different media products, and there are diverse views and there are, increasingly, more avenues for those diverse views coming down the track.

MR SIMSON: You don't think because of your particular situation, where you have this large number of other businesses - some in the media, some not in the media - that are quite central to the business fabric of this country, that there are other ways in which you could provide assurance in terms of checks and balances - in your particular case in a situation where the cross-media rules were relaxed - and I'm not thinking of what would and will ordinarily occur from an ACCC perspective in terms of advertising and market, commercial, power. I'm not talking about that.

MR FALLOON: I don't believe it's necessary and, as I'll just repeat, some of the other businesses you talk about that get rolled into the degree of influence - a financial investment by us in pay TV does not give us any influence in that area from an influencing of views at all. We don't have any managerial control of that investment yet. I read every day how that's a widening of the net from an influence point of view.

MR SIMSON: No, but you'd have a situation where, if you either bought News Ltd or started some papers or bought Fairfax, that they would presumably be writing about the Nine Network, so there are some that you have - as you quite correctly point out - minimalistic control and a degree of passivity, but there are others where you have obviously an intense control and an intense business interest.

MR FALLOON: And we've had for 40-something years control of the most successful television network in this country, where we have prided ourselves on putting out - and I believe I talk for our journalists - a diverse range of views, with high integrity, for that whole period of that time, so a combination of those two things is what I'm saying.

MR SIMSON: Okay.

PROF SNAPE: I think in the scenarios which you are envisaging or which could come with the recommendations, what would be very important in terms of the government's stated objectives in the terms of reference and the legislation - which is what we have to work from, of course - is a very high degree of competition between the big media players, what would become the very big media players, which in the

current arrangements would look to be between the Packer empire, or PBL and its associated companies, and Murdoch, and that's not to say of course, in what you envisage, that wouldn't change in the future, particularly with the relaxation of the foreign investment rules which would perhaps enable players from abroad to come in, etcetera.

MR FALLOON: Could I just re-emphasise a point here, which I think gets missed a lot by our press. If we have a look at the changing world around us at the moment, the companies that are going to be the competitors to Packer and Murdoch, in this country and in other countries, are going to be in the future - it's as night follows day - the computer companies, the telecommunication companies. I mean, Telstra has 40 per cent of Foxtel, it's a local company, regardless of foreign rules. Yes, if the foreign rules come, there are massive companies with major scale that will be major competitors in all forms of media. The convergence of technologies that we're all talking about in terms of high definition boxes and all the rest, there will be multiple players within the media space.

There won't, in my view, in 10 years' time be this narrow Packer-Murdoch argument. There will be significant other competitors in the media, because the media is changing. The biggest media players in the United States now, because of acquisitions that have taken place in recent days or recent weeks, are the telecommunication companies and the computer companies. They are all converging into this space, and to just think back and say we don't - I mean, anyone who travels to this country and looks at the various forms of our media in the last few years and says that it's not competitive, I don't think they've really been watching what's gone on. We believe we've got, in television and in other forms of the media, an extremely competitive media landscape, which is only going to increase in terms of its level of competition with these new players coming into it. So it's in that context we put our submission.

PROF SNAPE: In that case, I'll change my question and ask you to react to something which was reported in the Australian Financial Review about a year ago, and I apologise for using that as the source, but I haven't been able to get hold of the book in the short time that I had to which it refers, and you probably know what I'm going to say.

MR FALLOON: I don't.

PROF SNAPE: That was a report, and I shall read it:

It could be 10 to 20 years before the Internet adds sufficient diversity to the media to allow the current cross-media laws to be abandoned, according to Mr Daniel Petre. Mr Petre said that despite the arguments put forward by the government -

and this is still the journalist speaking, and quoting him -

News Ltd and PBL that the Internet would add to diversity, it's existence should not -

then it's quotes -

"signal the end of cross-media regulation for the existing television and print media. This would be disastrous, while the on-line world will increasingly attract providers and consumers of information. Some years will elapse before this new media form has the level of critical mass enjoyed by today's newspapers and television industry. In the meantime" -

and there's something omitted there, I'm not sure what it was:

"In the meantime, we should continue to prevent any greater concentration of media ownership than we already have." Mr Petre's remarks were made in this book *The Clever Country: Australia's Digital Future*. Mr Petre stressed that his remarks should not be taken as a comment on the existing debate about ownership of Fairfax but rather statements of principle."

Add that extra bit in there. I wonder if you could react.

MR FALLOON: You would need to talk to Mr Petre on his views, and whether those views are still his views, I'm not sure. I haven't discussed them with him in recent times, but I disagree with that view.

PROF SNAPE: Thank you.

MR SIMSON: Mr Falloon, may I turn to the issue of foreign ownership and control where on page 24 of your submission you say:

The justification of foreign ownership limitations based on levels of influence, as was intended to be the measuring stick, has become meaningless.

But then you say that unless the cross-media rules are repealed this meaningless foreign ownership limitation should also not be repealed. Could you explain that, because it seems to me that either something is meaningless or it's not meaningless?

MR McLACHLAN: I think what we're saying is that they should both be repealed, and that's really our primary point - is that they should both be repealed. We support the principle of Australian ownership of media assets, but that principle hasn't been implemented and hasn't been effectively applied across any of the sectors, including, as illustrated by Ten Network, in relation to commercial television.

MR SIMSON: But the repeal of the foreign ownership rule would potentially bring in a diversity of owners. It would potentially bring in more players, would it not?

MR McLACHLAN: Yes, it would.

MR SIMSON: And that would be a good thing?

MR McLACHLAN: In a context where companies like PBL were committed to build scale to compete against those new entrants, yes. That's an environment we're advocating.

MR SIMSON: But why wouldn't it be good for the country for it to happen anyway?

MR McLACHLAN: It's good for the country for companies like PBL to be able to grow in scale to compete against those foreign participants, like the telecom companies who are becoming media companies, like the computer companies who are becoming media companies. So we say it's good for the country for both the foreign and cross-media laws to be repealed.

MR SIMSON: And not one without the other?

MR McLACHLAN: It would be an uneven landscape. It would be a landscape which said that those huge telecom guys can come in and do as they wish, but companies like PBL are impaired in the way that they can go about building their businesses. That doesn't make any sense.

PROF SNAPE: Would you see in a sequencing of a relaxation of the foreign investment rules before the cross-media rules that the Australian public may feel more assured that there would be competition and diversity, because it would enable the possibility of players from abroad to be taking positions in order to be able to compete more equally on the Australian landscape?

MR McLACHLAN: I don't think the players from abroad, some of which have market capitalisations well in excess of \$US100 billion, need any step-up start or advantage over Australian owned businesses.

MR FALLOON: There are already, in our view - Channel 10 is owned by a foreigner right now. That's why we say the rules are meaningless; they have been meaningless. We think it would absolutely be a ridiculous situation if the foreign rules were relaxed while cross-media rules stayed in place. The size of these companies that are coming into our marketplace, commercially they will be able to make their decisions, and there are a vast array of media companies that they could build a base from in this converging world and are starting to try and do so now.

PROF SNAPE: Do you find any parallel in the banking area? I mean, people may, because in the banking area there were lots and lots of very huge foreign banks which could come in and yet they have not really succeeded. They haven't taken off. So being huge abroad does not necessarily mean that you would be able to position yourself well in the Australian market.

MR FALLOON: Look, not necessarily so, but I think it's likely to be so.

PROF SNAPE: I wonder if I could go back to a line that I had just a moment ago, which I diverted from with a quote from the Fin Review, and talk about the competition. In a number of areas you've gone in jointly - you're in fact taking interests in the same companies as has Murdoch. Sorry, not going in jointly, it was each taking positions. At least in one occasion, at One Tel, I think it was, those positions were taken on the same day. I think in Foxtel it was not simultaneous. You have options on Fox Sport. I think in Sky News it was going in at the same time, was it not? Going in at the same time leads people, perhaps wrongly, to have suspicions that there may not be as much active competition between the groups, but there may in fact be some degree of collusion between them rather than vigorous competition, particularly, as I say, when these things happen simultaneously.

MR FALLOON: Let me try and deal with that. If anyone who has lived through the last three to five years in Australia doesn't believe there's been competition between the two groups, I'm not sure what more examples there could be of how competitive the landscape is. We will, as organisations, commercially cooperate in some businesses where we think we can make money and we will compete vigorously in others. That's always been the case, and the most graphic examples of that have been in the last three to five years.

To say that we went into investments in pay television at the same time I think is sort of rewriting a part of history that certainly doesn't sit with my memory. We, PBL, have been active in trying to secure a position in pay TV for three or four years and we have been on a number of fronts at open war - I think is probably a better way of describing it - with News Ltd through various periods of that time, and we, for commercial reasons, with the way in which the pay TV business has rationalised, have ended up with an investment in pay television which happens to be in the same vehicle as News Ltd. But to say that we went into it at the same time I think is a stretch.

Going back to the earlier parts of that, and as a result of that whole framework, we do have an option to buy 50 per cent of Fox Sport, that's true. It came out of that same process. Earlier in the development of pay television we, with BSKYB, which is a company in which News Ltd has, I think, 40 per cent interest, together with Channel 7, formed a joint company to create an Australian news service for pay television; that was at the outset. So in the middle of the differences of views and the battle that was going on in pay television we could see a reason, a commercial reason, to make that transaction.

One Tel is a financial business not in the media as such but in the mobile phone business, and generally in the telecommunications business, and yes, in that instance we collectively - we at the same time decided that we would invest in that company and try to grow that company. Again, in that company, One Tel, we have the potential, if we exercise a number of options over the next couple of years, to go up to 19.1 per cent of that business - that is, PBL - as does, I think, News. Separately CPH has a further interest in One Tel, but PBL and News did decide to invest, looked

at the business opportunity of One Tel, and decided to invest at the same time.

But going forward, I think it's pretty clear to say that I can envisage areas where we will cooperate for commercial reasons in some areas but compete in many others, and I think that's been the case for as long as I can remember.

PROF SNAPE: I suppose that degree of cooperation has caused some concern in some areas - - -

MR FALLOON: I'm not sure why.

PROF SNAPE: - - - when vigorous competition between the two may be what is necessary to ensure the diversity, etcetera.

MR FALLOON: In pay television - going forward, forget the history - we are an investor in a business that Telstra is also an investor in, that News manages. In the sense of One Tel, I don't quite understand where the concerns are from the diversity and what have you. It's in a telecommunication business for which it's a tiny business compared to the big players in that business, and we each have less than a 20 per cent stake in that business to try and grow it. We did go into that investment at the same time. As I understand it, we have different views on the future of television in this country, going forward, and I imagine we'll be fierce competitors in that area into the future.

PROF SNAPE: I wonder if I could just refer you to something which is right at the back in an appendix, and it's in III - - -

MR SIMSON: Third-last page.

PROF SNAPE: Yes, third-last page of the whole submission, and it's a table that's there. It's the footnote to the table:

Under the exclusive agreements, the pay television operators pay mainly global content providers for programs using a mix of licence fees per subscriber.

What are the exclusive agreements?

MR McLACHLAN: Each of the pay television operators, Optus Vision and Foxtel, have arrangements with a number of Hollywood studios for supply of movie channels, so that Foxtel has an exclusive arrangement with studios including Paramount and Fox and Sony; Optus Vision has exclusive arrangements with studios including Warner Brothers, Disney and MGM.

PROF SNAPE: So you've got them and the others haven't.

MR McLACHLAN: Yes.

PROF SNAPE: That's the exclusion, yes.

MR McLACHLAN: Yes.

MR FALLOON: There's various forms of product within pay TV that are non-exclusive and there are some that are exclusive, and that's an example of it. There are probably other examples as well.

PROF SNAPE: Going to siphoning, anti-siphoning, just for a moment, do you wish the current anti-siphoning rules to continue?

MR FALLOON: Yes.

PROF SNAPE: Yes. How would you react to a system that in fact did without a list but simply had that both pay TV and free-to-air television would get non-exclusive rights? So therefore it would be that pay TV could in fact not prevent pay television from showing any event, because there would be non-exclusive rights, and similarly pay - I've got it the wrong way round - free-to-air television would not be able to exclude pay TV because they would be non-exclusive rights.

MR FALLOON: Quite frankly, I think the concept is a nonsense in the sense that you have two - on the face of it - similar businesses in the sense that they both come down the TV screen - or come through the TV screen. I mean, the free-to-air television system is based 100 per cent on obtaining advertising revenue and eyeballs per every five minutes to retrace and maintain its viability, whereas the pay television model while having advertising revenue, for sure, is mainly funded out of subscription television - once pay television reaches a certain critical mass, it will - so to say that the same program is being shown on the same TV screen at the same time just doesn't seem to us to make sense and, commercially, from a free television broadcaster's point of view, will probably not be able to afford to do so and, looking at the flip side of the coin, which is the current siphoning rules and how they're operating - and I know, with the pay TV hat on, that the pay TV operators did not like the siphoning rules when they first came in but, if you look at what is happening in pay television at the moment, the free-to-air broadcasters and the pay TV operators are co-existing where there is piles of sport being shown on pay television and the traditional sports that were shown previous to the introduction of pay television are still being supplied to the whole of the country on a free television basis, so we think the rules - the classic example at the moment being the World Cup of cricket, where the two are co-existing and the system is working perfectly, and we don't see a reason to change that.

MR McLACHLAN: The ability for free television to write ad revenue against the telecast of an event depends on having exclusive access to that event. If a viewer can watch an event on free television with ads every so often or watch it on pay television on an ad-free basis, for viewers that have that choice most of them will watch it on an ad-free basis and that undermines the viability of the telecast by the free-to-air operator, who can't afford therefore to telecast the event and will end up not telecasting the event, so the proposition would see a massive migration of the telecast

of sports events off free television to pay television to the detriment of viewers who only have access to free television.

PROF SNAPE: I think the argument for the government is that the government has, or parliament has, for the anti-siphoning rules is to ensure that these events are available on free television. I mean, it is not, with respect, to prop up the revenues of the free television stations. It was to ensure that they could be shown on that. I am talking about non-exclusive rights and both free and pay would be buying them, offering it, knowing that the other could have it; therefore the supplier of those rights - that is, the owner of the sporting event who is supplying it to you - would know the market and would know that it would be non-exclusive rights but, in fact, it could be shown on both; the two potential bidders and they have potentially - potentially - not in all cases realised, of course, but potentially two sources of revenue. The price, presumably - the asking price - to each would be adjusted accordingly, knowing that they were non-exclusive rights. I mean, they want them more shown in Australia than not shown in Australia - their choice as a seller of world cricket or what have you is not a continuum, if you like. It's no revenue or revenue.

MR FALLOON: So I sit with a pay TV hat on and say, "I'll double the price I offer you for the rights, if you make them exclusive to me"?

PROF SNAPE: No. You don't have that option. It is non-exclusive for both. This is the condition - to legislate a condition - that it must be non-exclusive, and so having exclusive is not an option.

MR FALLOON: But in a practical sense it is exclusive because free television won't buy non-exclusive rights because free television won't be able to afford to telecast the event on a non-exclusive basis.

PROF SNAPE: I was just suggesting that the price you pay for it will be significantly lower when they're on a non-exclusive basis and so, while I take your point that you may not get as much revenue because people have an option of watching it on the other thing, my point is that the cost of the event would also be substantially less because it would be on a non-exclusive basis to both.

MR FALLOON: The cost may well end up being less but the advertising and the sponsorship would be significantly less to a point where, over time, very little, in my view, sport will end up being shown on free-to-air television.

PROF SNAPE: That's not the case of what has happened in the States, is it? It has grown in fact on free-to-air television when in fact both are able to show it and sports showing on free-to-air television has grown on free-to-air - - -

MR FALLOON: Very little - - -

PROF SNAPE: - - - as well as on pay.

MR FALLOON: - - - sporting programs on American television happen where both are showing them at the same time. Most of what happens in the US market in sport is exactly the model that is developing here with the advent of the siphoning rules where the two work in conjunction and the free-to-air broadcasters show what they can - the free-to-air broadcasters are in a position where they will show sport if it attracts enough eyeballs to compete with whether they show a movie or a drama because it is a purely advertising-based model. If it doesn't they don't show it full stop, and the two are working in concert. From our point of view, from a consumer point of view, from the way it is working, we just don't understand why there is a need to change this process.

MR McLACHLAN: I don't know of any examples in the United States where there is parallel coverage of sport. I mean, there may be some but I expect it is on a very minor basis, if there are any. The proposition that you are testing, Prof Snape, is one which is strongly advocated by pay television interests and it is advocated by them precisely for the reason that they know the result of the proposition would be a migration of sport away from free television to pay television.

PROF SNAPE: I wasn't consciously - I have seen that it is in your submission, but I wasn't drawing it from there.

MR McLACHLAN: No, no, no, but there has been a long debate down this track and that is the case.

PROF SNAPE: Okay. It has been a long session and thank you very much for your patience and also for your very helpful submission and, if you have further thoughts that you would like to straighten us out on some of our thinking, etcetera, then we would welcome supplementary submissions that, in retrospect, you think that we're even wronger in what we suggested than you told us at the time, and we look forward to that. We will now have a break.

PROF SNAPE: We have with us Mr Stewart Fist, who has given us two submissions, which are numbers 18 and 85.

MR FIST: My name is Stewart Fist. I'm an independent writer and journalist, mainly on technologies. I write a column for the Australian and for a number of other magazines. I have been involved in film and television for many years, including a period of four years as head of what was called "the Open Program" of the Australian Film and Television School. I am sorry, what aspects would you like me to address?

PROF SNAPE: Perhaps if you could just highlight what you think are the key messages in the submissions for us.

MR FIST: I think the key messages are that this industry runs on a whole series of very popular myths and these myths have been perpetuated for at least 40 years to my knowledge: myths like the shortage of spectrum, which has been very widely pushed for many, many years - a bit less recently but, a couple of years ago, it was still a current myth that it was not possible to have any more television stations in Sydney and the major capitals because of the lack of spectrum.

There have also been myths that things like MDS, the microwave distribution system, was not suitable for television - we saw one minister in the Labor government make this statement very openly. There were myths about digital television: Optus in fact in a submission to the 1992 senate inquiry maintained that digital television could be up and running by mid-1993. I was on an expert panel assisting the inquiry at the time and that was supported by the vast majority of the panel, who were all lobbying for industry, so these sorts of myths about technological change and technological influences are very current in this business and always have been. There has been a very strong mystification of the whole business.

MR SIMSON: On the shortage of spectrum are you therefore saying that it really doesn't matter that the analog spectrum is tied up by simulcasting high definition and analog transmission until 2007?

MR FIST: If they are willing to release the other spectrum. In the transit period between analog and digital obviously you are going to need to tie up two channels for every one. Now, those channels can be made available in this - you know, they were suddenly discovered about a year ago; they hadn't existed before - it wasn't possible before that - but these extra channels were suddenly discovered. There are other channels there that could be suddenly discovered, too, if we wanted to use shadow infill technologies to release the five or six actually that's available at Kings Cross and at North Head in Sydney, so there are plenty of channels there available if we wanted to extend the number of players in this market. I don't pretend that that is the only consideration. You have got a major problem with programming which we're going to certainly have in the future with multiple channels down the digital multiplexes.

MR SIMSON: Just on the fill in: I think it is a very interesting point you make about basic cable as a potential solution to the fill-in; that then, I take it, frees spectrum for other purposes.

MR FIST: Sure.

MR SIMSON: Could you just talk to your point about the provision of a basic cable service as opposed to, as you call it, the premium cable service that has so far been advanced?

MR FIST: You see, no-one in the argument in Australia has ever made these obvious distinctions, and they are made everywhere else in the world. In America, if you buy a basic cable service, they come along; they connect you up and you take all of the free-to-air channels - what's called "a must-carry rule" - the cable operator must carry the local channels and then the cable operator will operate his own channels, usually with local advertising and things like that, so these are unscrambled, if you like, basic channels that anyone gets just for the cost of connection.

As soon as you do that, as soon as you have those very simple rules, then you get the very high numbers of cable connections that they get in the USA. On top of that, the cable channel operator will franchise various premium channels, which is where the original scrambling came in because the only way they had to control premium channels was to put a set-top box in each home to descramble their signal, and since there was multiple channels they would sell on a subscription basis. So you would have to, in effect, rent the set-top box and in renting that you would get four or maybe six premium channels of home box office movies - that sort of thing.

MR SIMSON: How much spectrum would a basic cable service free up, because it would solve the problems of - - -

MR FIST: Just in analog?

MR SIMSON: Yes. It would solve the infill problem.

MR FIST: Just in analog it would take Sydney from having five channels to three times six - 18. So we could probably jump immediately to 16. It's not clear whether all of those 16 would be clean, just on their own at the fringes.

MR SIMSON: Is this just through using this service in the infill areas? Is that what you're talking about?

MR FIST: Yes. Just simply by making the channels available, yes.

PROF SNAPE: It's getting rid of the transponders. Is that right?

MR FIST: Yes.

PROF SNAPE: Yes.

MR FIST: Yes. I mean, at the present moment each of the transponders is occupying a channel which could be available for primary transmission.

MR SIMSON: And you make the point on the following page that set-top boxes are not needed for the basic cable service.

MR FIST: Set-top boxes are not needed in the sense of descrambling boxes. They have what's often called a basic cable box depending on - you see, sometimes they use more spectrum than the television tuner will normally handle. So there are some sorts of basic cable boxes.

MR SIMSON: Could I also take you to a point here, your concern about the way programming has been bundled.

MR FIST: Yes.

MR SIMSON: Are you coming at this from a perspective of consumer choice: the consumer just wants a channel; they therefore shouldn't have to pay for, you know, whatever - 15 or 30 or whatever it is?

MR FIST: Sure. The technology has existed in set-top boxes for close on a decade now that you have one standard set-top box in each home and people can opt into various channels just by slotting in a smart card. There's also built into these boxes the ability to take pay-per-view; in other words, just pay for one hour of programming. These are built into all modern set-top boxes. In those circumstances what has to happen is the ability of the home owner to just pay for what he wants. At the present moment it's not in the interests of any of the broadcasters to do this because they want to sell block subscriptions, not pay-per-view, and fundamentally when you look at the problems of regulating this industry, it's because of that subscription problem.

This is what divides the pay-per-view regulations from the free-to air regulations. Otherwise, if we move to a situation where it was all pay-per-view, if people wanted it - they could subscribe if they wanted it, too, but if that was an ability that people had, to take things off air - either with advertising or pay a very small fee without, as you were talking about before with the siphoning - then suddenly the problems of regulating all these things separately disappear and the whole market can be opened up, because a single player can start to compete with these massive giants who at the present moment run six major Hollywood movie channels or something of this kind.

MR SIMSON: But they're having to pay for this cable they've laid down everybody's street.

MR FIST: That's because we have this stupid conduit plus content combination in Australia. Around the world the telephone company has been designated a common carrier and not permitted to engage in content provision. In Australia we allowed it.

That was the big stupidity of the Labour government in allowing the PMT consortium. If Telstra had been kept right out of this and kept as a conduit provider, then none of this problem would have arisen.

PROF SNAPE: And that would have been economically feasible, do you think, within Australia for that system to occur? I can imagine that the companies would argue that this bundling was necessary for it to be financially viable.

MR FIST: It's not necessary anywhere else in the world. In Australia we ended up with two cables, each servicing a very small number of homes in a row; whereas in the USA you have one cable which services virtually every home with a basic cable connection. The funding comes from that \$5 a month basic cable connection, not from the premium bundled scrambled services.

MR SIMSON: And, as you pointed out a second ago, the content providers compete for the hearts and minds of the viewers?

MR FIST: Then the content providers compete, sure.

MR SIMSON: Yes.

MR FIST: How can a single channel content provider compete with a Foxtel which has the cable and the content locked up in subscription - - -

MR SIMSON: You've got to get on to the Foxtel or the Optus or the Austar programming guide.

MR FIST: So you have to buy yourself in to your competitor. This is the problem. You cannot have true competition while the competitors are dependent on the massive Foxtel people to deliver the service, obviously.

MR SIMSON: It's a bit after the horse has bolted now, though, isn't it?

MR FIST: No, because there are very simple ways of breaking it. It can be broken under antitrust regulations. Subscription service is a third-line forcing operation. It's a very marginal thing in terms of antitrust anyway.

MR SIMSON: And I assume that you'd include into that discussion bundling telephony as well.

MR FIST: Telephony is a bit of a different problem there, because the channels are being made available down at the bottom end of the spectrum. You could argue that one any way.

MR SIMSON: No, what I mean is, in terms of the marketing of the bundle, you're getting access to Pay TV programming content, and in the case of Optus for example you're also getting access to telephony.

MR FIST: Supposedly. I'm yet to be convinced that it's a viable telephone operation across cable, but yes; in principle.

PROF SNAPE: You, at the end of your section 4.4- it's the paragraph which in fact, as you noted in conversation before, I have used earlier in the hearings here - where you say that:

Few knowledgeable people in the business really believe that the stupid high definition idea will be implemented anyway. Most people I know are reasonably confident that not long before or after launch date commonsense will prevail and either this government will be forced to dump the restriction or an alternate government will.

Would you like to amplify?

MR FIST: My original training is as an eye specialist many many years ago, and when high definition first came along I did some very simple calculations to see how big a TV set would need to be in a living room to get the benefits out of 1000 lines of scan. The answer is that it would need to be about a metre high in screen height, and since it's about a two to one ratio it would be about two metres wide, and in a cathode ray tube you're talking about something that's the size of a double-door fridge put on its side. Not too many living rooms are going to carry that sort of a unit.

The fact is that in the conditions we have in most Australian homes the current size of TV sets in terms of vertical height and the 625-line scan is more than adequate when you get picture quality. People are not seeing the present quality from the back of a room; only those at the front of the room with perfect eyesight are seeing it. So going to a higher definition than this is just a waste of time and effort. It eats up bandwidth because it occupies one full multiplex - in other words, one full seven-megahertz channel - to get a high definition signal. And when I've talked to people around the industry I have never yet come across anyone that I use as regular correspondents for technical information who doesn't believe that this was a deliberate ploy to limit the number of channels that were available at the time of the introduction of digital.

MR SIMSON: Yes. I suppose also, to support your point, if you're already hooked up to cable or satellite in many cases your reception is superior again.

MR FIST: Yes, if you wanted it. The real point is that there is no - - -

MR SIMSON: So what I'm getting at is, there's almost a million Australians now who are getting cable or satellite - - -

MR FIST: Sure.

MR SIMSON: - - - are pay television, and your free-to-air reception - certainly in

our household - is superior, tapping into the free-to-air over the cable, to what it was when we were using an antenna on the roof.

MR FIST: Yes.

MR SIMSON: Yes.

MR FIST: The whole point is that there is no real reason for high definition as a television medium - and I make a distinction between home cinema and television. Television is a casual medium; it's watched by the whole family at various distances in a lighted room and while they're eating their dinner. Home cinema is a separate room where you have a big projection system, surround sound, and you watch it in the dark. That is a high definition application. Television is not a high definition application.

MR SIMSON: Were you here for the previous discussion?

MR FIST: I heard a little bit of it.

MR SIMSON: There was quite a discussion about this issue as to speed of take-up and what's the real advantage of digital. Is it through facilitating, at least in the initial years, access to being able to use a high definition television, or is it something that in the initial years perhaps some of the bigger advantages are being able to free spectrum and also perhaps provide other services, such as datacasting and so on?

MR FIST: Yes. There are a lot of advantages to digital television, including high definition home cinema, which is a new service and will be quite a good pay TV service in the long run. It's not television, though; that's my point. Television is something quite different. Digital in terms of television has the effect of freeing up a hell of a lot of spectrum and it's not necessarily going to be even of a higher quality than the present television. This constant myth that digital standard definition television is a higher quality than analog is not really true. It is higher in some ways and not in others.

MR SIMSON: If you've got a big TV set.

MR FIST: No, because it also has a whole lot of artefacts which have never been resolved. They might be eventually. But you get some weird and wonderful effects out of digital television when it goes wrong.

PROF SNAPE: And is it likely to go wrong?

MR FIST: It's not so much it goes wrong, but if you get a scene, for instance a panning along a whole lot of faces at a stadium, the MP compression system uses what's called motion compensation to try and judge where the movement has taken place, and it can go haywire because all of the faces look roughly the same, and so you get funny sort of weird motion effects that make people sit back. When you learn to look for artefacts in television you see as many artefacts in digital television as you

do in analog.

PROF SNAPE: But when you learn to look for them, are they things that are going to bother the ordinary viewer?

MR FIST: People are remarkably unbothered by bad quality television. We look at nightly news which is about equivalent to the old super-8 film of the 1960s and no-one seems to notice it much. I sit in a room with my family and I sit there tearing my hair out because there's bad effects going on and they don't see it. So yes, it's very variable, which is another reason why high definition television isn't really of much significance.

MR SIMSON: Could I turn to 5.4 of submission number 85, and in any event it's to do with the Internet, when you say:

In terms of diversity of information and opinion it -

that is, the Internet -

serves mainly to extend the ability of a very few information-oriented people, probably no more than 5 per cent of the population, to reach out to alternate sources.

You say:

The Internet could eventually concentrate even related commercial businesses even more firmly into fewer hands.

That figure seems a bit low.

MR FIST: No, not if you want the Internet. We're talking about the Internet at the present moment; the people who are putting information into the Internet is a very small percentage of people.

MR SIMSON: People putting information in, not users?

MR FIST: Yes. Isn't that how I read it?

MR SIMSON: I'm sorry. Maybe I misunderstood it. Are you talking about this in the perspective of - - -

MR FIST: Yes, it's a bit ambiguous there. But what we're talking about, among information as against entertainment users of the Internet, it would still be a very low percentage of receivers as well. Very few people go on the Internet to actively look for hard, useful information to do with politics or technology or business. The vast majority of the Internet activity is equivalent to a cocktail party.

MR SIMSON: Yes, I saw that reference. Some cocktail party, hey?

PROF SNAPE: Including shopping?

MR FIST: Yes, there are certain developments in shopping. I use shopping for books, for instance, with amazon. I find that a very useful tool.

PROF SNAPE: But one could expect that to be growing pretty rapidly, couldn't one?

MR FIST: I think you'll expect e-commerce to grow in areas where people can make up their minds beforehand what they want and then shop around for the lowest price. Books are a classic example, because you know exactly what you want to look for.

PROF SNAPE: Books, records, travel.

MR FIST: Travel is another one I use. Cars, possibly, because I would shop around and have a look and see what sort of car I wanted and then go on-line. Classified ads, of course, are going to be a goldmine, whoever locks that up, and that will be locked up pretty well by someone eventually and that will probably be in Australia - in Sydney it will be the Sydney Morning Herald, I would imagine, because they can lever off their present organisation. So yes, there are certain things where shopping on the Internet will become important, but it's hyped out of all proportion all the same.

MR SIMSON: I was also interested in your scepticism of datacasting, where you make the point that already over the Internet you can receive video, stream video, and certainly, of course, audio as well, and I take it what you're saying there is that for someone with even a half-decent modem on their PC at the moment, I suppose the question you're asking is what's going to be the difference? What are the datacasters going to be able to offer that you can't get over your computer at the moment?

MR FIST: The whole of this world operates on a sort of hype and a mystification, right. The whole promotion of the Internet at the moment rests on no firm foundations whatsoever, including PE ratios when you look at the share prices. I mean, they're ridiculous. The idea that's being promoted here in datacasting is that the world out there is all desperately waiting for hard information to arrive in the form of weather charts and stock market quotes. Now, this is not true. How many people open up the newspaper and go straight to the share market quotes to see what their prices are for the day? I would guess it's in the region of 5 per cent. It's not 95 per cent, as this is being projected. Datacasting has been tried before in the form of teletext and we had it for quite a long while, and for a while in Europe, particularly in the UK, every TV set being sold had teletext attached to it.

It was just not used. So the reason why datacasting is being promoted as a myth at the present moment is because in the USA they've started digital television.

It's been an abject failure so far and so they are promoting it as a datacasting medium, because no-one can disprove the value. That's how I read it, anyway.

PROF SNAPE: So I guess that what you're saying is really amplifying what you've got on the prediction mythologies on 2.0 of your second submission or, as popular belief, if it's possible for them to merge, then they will merge, perhaps 20 years hence, you're saying, but not for a very long time.

MR FIST: That's it. They always tell you that these technologies are going to revolutionise the world the day after tomorrow, and very rarely do they.

PROF SNAPE: I guess the Internet has, hasn't it?

MR FIST: No.

PROF SNAPE: In part. E-mail has, surely?

MR FIST: It probably has to you people, but you see, I was number 002 on the e-mail system produced by OTC back in - I don't know, the late 1980s. I've been using e-mail for all of those years. It is not a revolution to me and it wasn't to all of the scientific community. What was revolutionary was that this thing was locked up between universities because of the high cost of linking into the Internet for many many years and then suddenly got released into the world, so it was like a dam breaking. That's what made it appear revolutionary. It wasn't revolutionary to most of us.

PROF SNAPE: Still, you said it's 1989, I think, so even from that date, it's only 10 years.

MR FIST: Well, yes. 10 years is a long time in technology.

PROF SNAPE: Considering how long we've had the postal system and the telephone system as the basic forms of communication, I think indeed the extent to which it has - I would regard 10 years of the extent of e-mail as absolutely revolutionary, and the things that we are doing in just this hearing. All the submissions are on the Web as soon as they come in, etcetera, which is a surprise to some people.

MR FIST: Yes. I'm not downplaying the importance of these things. I use them more than most people do. They've allowed me to work from home. I have not had a printer attached to my PC for nearly a year, because it burnt out and I found no need to print it out. I've got a fax machine that sits there just taking Spam - rubbish coming in from PR agencies all the time - and I'm thinking of ripping that out, because I no longer have a use for it. My whole work is over the Internet these days.

MR SIMSON: Could I just turn to the issue of local content - and this is in submission 18. It must be in item 3.8, where you say:

However, it is clear that with a multiplicity of channels and a conservative government -

whatever that means -

eventually Australian content regulations could disappear entirely.

Could you just explain to me the forces that you're looking at there that would - - -

MR FIST: As soon as you introduce - I ran the Australian Film Industry Action Committee in the Whitlam years, when the third commercial channel came along and we were very much afraid, the film production industry at that time, that the introduction of a third channel would destroy what was then a very early development in making Australian content. We'd got Channel 9 and Channel 7 to finally accept the idea that people would watch Australian Homicides and those sorts of series and we were just starting to build an industry and suddenly it looked as if they were going to lose their profitability for a while, and their ability to influence governments in terms of Australian content was even stronger than it is now. So one of my worries with all of this is that I can see a number of niche market channels opening up.

I'm not sure how much effect they will have on the profitability of the main companies and the whole profitability of the Australian production industry. Although a lot of this stuff is now being sold overseas, it still rests on a domestic base. It has to have a guaranteed recovery of a certain percentage before people will take the risk in film production, so I think that's a serious consideration.

PROF SNAPE: Do you see a parallel between the time that you were just speaking about, when Channel 10 was introduced and the great fear was around there that that third channel would decimate the Australian production industry, and what is put around now as a fear of a fourth channel?

MR FIST: To a degree. I think it would have destroyed the Australian film production industry except, at about the same time, we went into a fairly good boom period. If we'd gone into a depression period, I think the two existing commercial channels would have gone along very quickly to the government, and won their point, that they couldn't afford Australian content. At that stage, we were paying a lot less for Hollywood films and Hollywood sitcoms than we do today, even in a constant dollar sense, and Australian production costs were quite considerably higher, so it really was a serious economic problem, and I could see the same thing happening here. Not so much with a fourth channel; I think they could probably handle a fourth channel, because they've shifted away from serious Australian production into things like home videos, these sort of light-weight programs that really don't cost anything much to make. You can't really compare the 1970s with today terribly well.

PROF SNAPE: Is there too much spectrum being tied up for defence purposes?

MR FIST: I never managed to get an accurate figure of how much it is, but one of the spectrum regulators in Canberra told me that roughly a third of Australian spectrum was tied up in defence, and he included aerial navigation in that. I've got some charts which show where the navigation stuff is and where the defence might lie, but they don't spell it out for you - "These are the channels we're using." However, if you sit down with a scanner - anyone can go down to Dick Smiths and buy a scanner and sit down and start to let it search the dial. You'd be lucky to find a couple of per cent of the radio spectrum actively in use at any one time.

Digital standards, digital technologies, allow you to utilise unused channels because they can dynamically allocate spectrum, so all of this unused space suddenly becomes available when you start to use digital technologies anyway. They're called "active systems". You don't need to be allocated a set channel in order to talk to your taxi or your driver. You're allocated over a range and they can jump around and use whatever is available.

PROF SNAPE: But that's for short-distance stuff, is it?

MR FIST: Yes. Well, that's where a lot of the spectrum is tied up in Sydney, for instance. A lot of the more valuable spectrum is in the VHF, UHF area, where you get a reasonable distance at a reasonable cost. It's quite instructive actually, just to sit down with a short-wave receiver or a scanner and just run across those channels at any time and see how much is actively in use. You'll find it's fractions of a per cent in most cases, outside the broadcast bands. The other thing on spectrum is you've got to realise whenever you move up a band, as we've just done - we've now moved in the super high frequency band - every band you step up gives you nine times the spectrum that you had before, the total spectrum you had before. Each band actually has 10 times the information capacity of the band below it.

This is another thing that we've just moved into, the super high frequency, and we're now actually starting to move into the one above that, the EHF band. They're just talking about auctioning the 40-gigahertz range, which is one up there. We're starting to get short of range, that's the problem with this very high stuff.

PROF SNAPE: You've given us a lot to contemplate and to think about and, as you say, the myths are challenging to us and we'll have to think much more about it. Thank you very much, Mr Fist.

MR FIST: Thank you.

MR SIMSON: Very useful, thank you.

PROF SNAPE: Very helpful, thank you. We'll now be moving to the Australian Association of Independent Regional Radio Broadcasters.

PROF SNAPE: Thank you. We have with us two representatives of the Australian Association of Independent Regional Radio Broadcasters, and we would ask you, if you would, to identify yourselves individually and the positions that you're occupying for the benefit of the transcription service.

MR CAMPLIN: Ron Camplin. I am a commercial radio broadcaster and I have been for the past 51 years, and I'm also the president of the Independent Regional Broadcasters Association.

MR FOSTER: My name is Desmond Foster. I'm director of that association. I have worked in the commercial radio industry for about 45, 50 years as a general manager of a city station and for some 20 years I was chief executive of the Federation of Australian Radio Broadcasters. For the last 10 years I've been consulting to people in the industry.

PROF SNAPE: Mr Foster, are you going to speak to the submission?

MR FOSTER: Yes, but I'll be very brief, thank you, chairman. Just by way of keeping the record straight, I should say that our membership has gone up slightly since we made our submission. We now represent 75 stations, and I can tender a replacement appendix, if you like, just to keep the record straight. The remaining regional stations in Australia by and large I think are owned by about three different entities. So we represent a substantial proportion. We've got about 15 entities representing 75 stations. In essence what we are saying to the inquiry is that regional Australia is a different case from metropolitan Australia, that the prescriptions for state capitals and large metropolitan areas are not necessarily the right prescriptions for regional markets.

For that reason we oppose the relaxation of cross-media restrictions in country areas. We don't take a view about the metropolitan areas, but we say regardless, we oppose them in regional areas. We say in our submission that the real value of regional commercial radio is its contribution to localism and to community. We make the point that that contribution is very much dependent on the viability of the stations, and in our submission we're also concerned about another issue which is what we see as a serious failing in the act to deal with broadcasters who operate as commercial broadcasters without a licence.

PROF SNAPE: Good. Thank you very much for that and for your submission. I wonder if you'd like to just amplify a bit more on the section 39 licences which you're referring to in 238 which, as I read the act, are additional commercial radio licences in single markets. Would you like to speak to that?

MR CAMPLIN: I was very active as a member of the FARB directorate in obtaining the S39 licences for regional stations. 50 of those licences were issued to small regional markets in solus areas. My own operation is situated in Bathurst, and we were one of the first S39 stations to go to air on 2 December 1997. The S39

licence is - most of them are in FM. I think all of them may be in FM. They have provided a diversification of services in those markets, but have allowed small market operators to sustain their viability in those markets by not having additional competition in small markets.

As you are probably aware, the additional competition model was tried in small markets but failed, and the labour government then allowed the legislation of S39 to proceed. There are some 50-odd licences that have now gone to air in those small markets. There is, however, one point I'd like to make here. In those small markets I have a service area of about 41,000 people. The major city of Bathurst has about 30,000 people. The advertising revenue in those markets is finite. Simply by putting in another service doesn't mean that there will be increased revenue obtained from that market. There has been no additional revenue obtained from those markets as a result of increasing the number of broadcasting stations.

PROF SNAPE: So that's increased it from one to two. Is that correct - commercial ones?

MR CAMPLIN: That's commercial licences, but in the licence area of my station, for instance, there are 15 separate broadcasting services. There are four ABC. There are two commercial. There are two community; one high-power narrowcast and six low-power narrowcast all servicing that very small market. It means if you were to divide the 41,000 people in that market you would have something like 2780 people per service. It's very competitive.

PROF SNAPE: I guess the features of the narrowcast should be that they're not just dividing up the total thing but they're targeting a special - - -

MR CAMPLIN: A specific market.

PROF SNAPE: - - - segment of it or a particular time of day, etcetera.

MR CAMPLIN: That's right. I might add though that one of the narrowcasters that is licensed in our market has 10,000 watts, is on FM and is primarily a relay of a Sydney radio station.

MR SIMSON: Just out of interest, what does that narrowcast station - - -

MR CAMPLIN: Mostly it's sport and racing but it also takes a lot of news services and other general progress.

MR SIMSON: That's allowed, is it?

PROF SNAPE: Is that the racing radio station?

MR CAMPLIN: That's the racing radio station.

PROF SNAPE: So it's not just doing racing then?

MR CAMPLIN: Not when I've listened.

PROF SNAPE: That as a network seems to have been - the picture that we had from them, it was a very successful networking - - -

MR CAMPLIN: Absolutely. I think on their behalf they would regard it as being highly successful.

PROF SNAPE: Yes, but for a very limited audience, but I might say this is the first suggestion that we've heard that that particular service is attacking a wider audience than just the racing community.

MR CAMPLIN: That would be my view.

MR SIMSON: With 15 in your particular market, and we've had submissions from a range of commercial operators, community operators, and narrowcast operators, it's going to be a delicate balancing act, isn't it, into the future for the ABA to keep everybody happy, if I could put it that way?

MR CAMPLIN: I do believe that there are enormous opportunities to keep everybody happy with digital.

MR SIMSON: Do you want to talk to that?

MR CAMPLIN: Firstly, what we require or desire with digital is legislation for us to be able to move into digital. I'm also a member of the FARB board, and we have a submission into the planning authorities that commercial operators should be able to participate in digital. That's a separate submission from this. We are quite prepared to participate in digital, but most of us, and we're all very small business in regional areas, especially the stand-alone operators like mine, believe that we've spent a considerable amount of capital in establishing the S39s. It will take some years to recoup that capital. While we are prepared to participate and want to participate in digital, we believe that the metropolitan markets should be planned first.

MR SIMSON: Specifically, what would you do on the advent of digital or with the advent of digital?

MR CAMPLIN: There will be no audience to commence with because they will need to buy new digital receivers. What we will do to commence with is simply to simulcast our programs. Once there is a market there, then we can diversify our programs.

MR SIMSON: Also, as you've said, the ABA hasn't regulated or ruled on this.

MR CAMPLIN: There's no legislation.

MR SIMSON: There's no legislation. So how much or how little - same sort of issues, presumably, that have arisen in the context of television and also arrive in the case of the city-based stations will come to the fore?

MR CAMPLIN: What we are requesting at this stage is an amount of 256 kilobits per service, at this stage. That will allow us to be flexible enough to decide how we use that in the future.

MR FOSTER: I think the significant thing about digital radio is that for the first time radio services will be not merely sound but will be accompanied by a visual component, and that really does change the nature of the medium very substantially.

MR SIMSON: And enhances the value of the licences that you have potentially.

MR FOSTER: When you've got an audience that is, yes.

MR CAMPLIN: Yes. It will probably be 10 or 15 years - - -

MR SIMSON: But I'm talking about the people you represent.

MR CAMPLIN: 10 or 15 years hence.

MR FOSTER: Yes.

MR SIMSON: Just out of interest, Australian Association of Independent Regional Radio Broadcasters as to - - -

MR FOSTER: The members of this association are specifically excluded from holding newspaper interests or controlling newspapers in the terms of the act, and television. In other words, they are independent of television and newspapers.

MR SIMSON: And the rationale for that?

MR FOSTER: It's to some extent bound up in the cross-media issue.

MR SIMSON: So it's driven from the legislation to an extent.

MR FOSTER: Partly, yes, but also from a recognition that the interests of those other media are sometimes counter to those of our members.

PROF SNAPE: But your members may in fact be and do operate several stations in some cases.

MR FOSTER: They may own several stations, yes.

PROF SNAPE: The points that you make in 222 and 223 which are on page 5 of our copies, where you're referring to the value of localism, and I think you're speaking about how localism is desirable but also I think you are saying that localism is a help. People get revenue from being local. If the local butcher doesn't want to advertise on a national service. But then you say intervention may be necessary, and I would have thought that if localism was very highly desired then it would engender its own revenue, and therefore government intervention would not be necessary to in fact preserve that localism.

MR FOSTER: No. What we're really saying is that there is another model besides the existing one, and that is a service which networks throughout all of these country areas from a central point driven perhaps, driven almost certainly, by the desire to gain national advertising in those markets. What we're saying is there's a scenario there where pursuing a particular target audience for the national revenue may in fact set aside the needs of localism. You can run country stations with very many fewer people than most of our members do if you're prepared to put them on a network and just let them be slave relays of some central service. So we're saying that it's that model which we feel is hostile to localism.

PROF SNAPE: Yes, I see that. Yesterday we had Prime Television in who were talking about, to some extent, their using the model that you were just describing, but they were also saying how they maintained localism as well by having local news services in Tamworth and Bathurst, I think, and Mildura - not yet Mildura but in Newcastle and so on, and so they are working a combination of a network service plus localism.

MR FOSTER: Yes.

PROF SNAPE: They were arguing that that enables them to keep a local presence which is valued and of course would be tapping into local advertising as well. Isn't that a model which would be attractive to you and it would be possibly even easier to do in radio because the overheads aren't as great and you might be able to get even more localism in than they do?

MR CAMPLIN: There's a lot more to localism than just inserting an ad for the local butcher. In my market where we live and I employ my people we are involved in local organisations. For instance, in my market I'm president of Legacy, I'm chairman of the university's foundation, I'm an honorary Rotarian, I'm patron of several organisations. I'm there on the ground. I employ people locally who live in that marketplace. If there is a bushfire, we cover it; if there is a local flood, we cover it; if somebody's house burns down, we run an appeal to cover that. There is far more than just slotting in an ad from a network program.

The thing that concerns me is that with the additional competition that we've had - when I first bought my radio station back in 1969 there was the local ABC and there was me, and we had a little bit of competition from the radio station in the next

town this way and the radio station in the next town that way. Today we've had any amount of additional services in those markets. The net effect on my employment in that market has been of half my staff in that time. I do not want to halve my staff again. I have seen the operation or the kind of operation that you're talking about of slotting ads in in the United States. They call them "mom and pop" operations. I do not believe they service their markets the way we are able to service our markets today.

PROF SNAPE: I wasn't thinking of just the ad or two. I was thinking of news services; I was thinking of programming which was directed to the local community combined with network services which were not area-specific.

MR CAMPLIN: I believe regional radio is able to handle localism better than any other medium and I say that because regional radio is so small within its own service area. I agree with what Prime Television say and do. They have a very good local news service but Prime Television have one salesperson who lives in Bathurst. They have a news service that is produced in Orange, a very good news service that takes news. I have 15 people who live in Bathurst. I did have 30. I don't want to have six. That makes it far more difficult for me to conduct the kind of operation that I believe is important.

PROF SNAPE: Is the localism being supplied by the community radios?

MR CAMPLIN: Would you like to answer that?

MR FOSTER: I think the short answer from our viewpoint is no. Certainly what they're doing is local but the very nature of these stations is not to satisfy the mainstream community but to satisfy particular interests. We do deal with this in our submission.

PROF SNAPE: That's the special interest frieze which you also did, wasn't it?

MR FOSTER: Yes. I mean community is a very recent term. They're originally described as public broadcasting stations, which is also ambiguous I think, and those stations in those days were in fact being licensed for special purposes; education, classical music and things of that kind. We don't mean to denigrate community broadcasting but I think you have to put it in perspective. If they really were providing a strong localism content then they would have very many more listeners.

Could I just finish the other point that Prof Snape raised about the activities of Prime. I think we could give full marks to Prime for what they're doing but what we're saying is that it's really a cultural thing. Prime don't have to do that and nor do many of the radio stations have to do what they're doing. What they're saying is that when the commercial pressures can get to a point where you have no option or your desire for profit may get to the point where you elect not to provide those services.

MR SIMSON: Yes, in fact Prime made the point that would be possible in terms of

restructuring their operation, but they also made the point that they believed over time that would erode the value of their licence because it would leave open room for others to come in and provide that local content, so it might be a short to medium term way to pump up the PNL but not a long term one.

MR FOSTER: Yes.

MR SIMSON: May I just come to another issue on page 8, which is the cross-media ownership one?

MR FOSTER: Yes.

MR SIMSON: The first question is in a situation where, as you put hypothetically here there was one radio station and one newspaper, and let's say the cross-media ownership rules were changed or done away with, wouldn't that be picked up by the ACCC? It would depend on how they defined the markets, how narrowly.

MR FOSTER: Definition of the market.

MR SIMSON: But I understand your concern, and there are some very interesting points here and I'm just raising it as a question as to whether you've given consideration as to whether you would be protected anyway by how you read the ACCC looking at the trade practice legislation?

MR FOSTER: We certainly don't put ourselves forward as experts in that area but one thing that does concern us is that if the ACCC has made a pronouncement about competition in regional markets and has gone on record as saying that radio doesn't have any competitors, we disagree with that viewpoint to begin with, but, secondly, the question of whether ACCC would see that situation as being unacceptable is really a matter for it to determine in the circumstances. What we're looking for is certainty. We would rather not see it get into that area at all. We would like to see it enshrined in the act and not be an issue for the ACCC to address.

MR SIMSON: What if you had a situation where there was not just one newspaper or one radio station but arguably, just as a hypothetical question, for example, at least a couple of commercial operators and a local newspaper. Would you be concerned about a relaxation there?

MR CAMPLIN: I don't quite understand that.

MR SIMSON: Well, that potentially one newspaper could become aligned in an ownership sense with one radio station and there's still another active commercial radio competitor in the marketplace.

MR CAMPLIN: That would be very difficult for the stand-alone radio station.

MR SIMSON: Let's talk about that. At an operational level what are the benefits

that - what's your local newspaper in Bathurst?

MR CAMPLIN: It's owned by Rural Press. They own most of the rural newspapers in New South Wales.

MR SIMSON: If you and they were in bed together how would the business be run differently, editorially and commercially?

MR CAMPLIN: If I owned both?

MR SIMSON: Yes.

MR CAMPLIN: If I owned both I would certainly have a joint rate card with my local advertisers and I would certainly discount the radio station or the newspaper. I would make it very cheap to buy and I would make it very difficult for my competitor but I can't see me owning the newspapers.

PROF SNAPE: The news service?

MR CAMPLIN: News service would probably be directly from the newspaper - well, it would be. It would be from the newspaper.

MR SIMSON: So you would catch their content and just read it to air?

MR CAMPLIN: Absolutely.

PROF SNAPE: Would that provide a better newspaper?

MR CAMPLIN: That's what happened before.

PROF SNAPE: Because you would be pooling resources would that provide a better news service?

MR CAMPLIN: It would be certainly a more economical news service. They would certainly have plenty of journalists to provide it, and I suppose in some directions it would provide a better news service. In other areas certainly not because you would be getting the one view in that marketplace.

PROF SNAPE: Have you thought of contracting with the local paper to be doing in fact a joint news service?

MR CAMPLIN: That has happened and does happen. If they have any stories in their newspapers that we want to use we will take it and develop it.

PROF SNAPE: But that's on an ad hoc basis.

MR CAMPLIN: Yes.

PROF SNAPE: It's not employing common staff or just one servicing the other?

MR CAMPLIN: No. There is some common staffing, I believe, between some radio stations and Prime Television. I think Prime does provide radio news services to several radio stations. They don't provide it to my radio station.

MR SIMSON: To what extent are people such as yourself in competition for advertising dollars from the aggregated TV groups such as Prime, because I've known an example in Victoria where through aggregation the rate card has actually become very, very cheap - the TV stations rate card - almost as cheap as a classified ad. A short ad on the TV is almost as cheap as a classified ad in, let's say, the Warrnambool Standard, for example.

MR CAMPLIN: I'm pleased you asked that question because that's one of the problems that we have. In 1990 television was aggregated in our marketplace. From that moment our revenues dropped substantially. Prior to that you had one television station in the marketplace with approximately nine minutes an hour of advertising. Most of that advertising was national advertising and they were \$500 to \$1000 an ad, whereas we in the radio are about \$30 an ad. We were the cheap medium; we were the local medium. Come aggregation the three television networks then not only relayed programs from their city stations but they relayed the windows that held the advertising. I haven't got any accurate figures but I don't think it takes much to work out that in fact that means there are about 3000 new ads available to be sold every day in that marketplace, and they have to be sold because those windows have got to be filled. What happened then of course is that in my - - -

PROF SNAPE: Sorry, 3000 per day?

MR CAMPLIN: Per day. You would need to check my figures.

MR SIMSON: But you went from one operator to three?

MR CAMPLIN: It went from one operator to three and it went from nine minutes an hour to 13 minutes an hour of 15-second ads. If you would like to add that up I think you're getting to - 24 hours a day - an enormous number of ads. I worked it out at several thousand.

MR FOSTER: It's very substantial.

MR CAMPLIN: It's very substantial.

PROF SNAPE: There's not too many at 3 o'clock in the morning I suppose.

MR CAMPLIN: But you turn the television on at 3 o'clock in the morning and they're still rolling out ads.

MR FOSTER: And some of the ones I saw are in effect classified ads on the television, basically.

MR CAMPLIN: Yes. Let me say as a result of that there was an enormous amount, a great inventory to be sold. What happens in the marketplace then is that for \$500 you can buy 50 ads on television. I can't compete with those rates. I don't have that inventory available to my radio station. So what happened immediately television became very much a local advertising medium and an enormous competitor of ours. The effect of that is that my revenue in 1999 is 25 per cent less than it was in 1989.

MR SIMSON: In today's dollars?

MR CAMPLIN: No, in dollars. We write less revenue today than we did 10 years ago.

MR SIMSON: That has been most insightful.

PROF SNAPE: Yes, thank you very much. I think that's my questions.

MR CAMPLIN: Thank you.

PROF SNAPE: Thank you very much for coming along and for your submission which has been very helpful, and we are now going to have Heart N Soul Productions which I think amongst other things are 2ME, if I've got it right.

PROF SNAPE: We welcome Heart N Soul Productions and we have Mr Mehri. Would you please identify yourself for the transcription service?

MR MEHRI: My name is Sid Mehri. I'm a director of 2ME Radio, which is owned by Heart N Soul Productions. 2ME Radio is a broadcaster which broadcasts in Arabic-English. It's a bilingual station, broadcasts and targets to the Arabic people of this state and Melbourne. It broadcasts into Sydney and networks into Melbourne; soon it will be networking into Adelaide, and our plan is to network around the entire country.

PROF SNAPE: Thank you. If you'd like to speak to your submission, and your worry is, I think, that you might drop off the dial, in shorthand.

MR MEHRI: Yes. I'll just go through the letter that I've written out.

PROF SNAPE: Perhaps if you just indicate the highlights rather than to read it all, thank you.

MR MEHRI: Okay. In the addendum that we've given to the commission you'll see that the ordinary radio, the average radio that most consumers have, on the AM band will go up to about - some of them go to 1700 kilohertz, some of them go to about 1650 kilohertz, and so on. 1638, which is the frequency we broadcast on, is available to probably 95 per cent of the people who have analog radio. Our major concern is that we've worked very hard over the last four years trying to get our target market together and we've got a good listening and loyal audience. We think that there is a very very strong chance that when digital radio comes in the commercial broadcasters who are in-band, which is controlled by the Australian Broadcasting Authority, may be only allowed to migrate to the digital band, and we may be left off the whole thing. Now, ultimately if we're talking about an area of competition, it will obviously impact on competition because we'll be just left behind. Radio manufacturers won't be making AM radios any more and we'll slowly be not there.

I'd like to point out too that in recent statistics, the Commonwealth census, in 1996 over 51 per cent of the population of Australia is of non-English language descent, and these services, using these apparatus licences, are available on the normal radios; theoretically off band, of course, but they all target the same people.

PROF SNAPE: What is the problem of getting a frequency in the transitional - or at least in the new system, for getting a licence? Would you not be covered by one of the licence categories that are in the act under the ABA? Presumably you'd be eligible to apply for a narrowcasting licence.

MR MEHRI: Professor, part of the problem here is that the ABA doesn't control our service.

PROF SNAPE: Yes, I understand that you're off the area of the band currently

controlled by the ABA, but presumably what you would like is with the new system to in fact get into that area which is controlled by the ABA, because, as you say, no longer will where you are at the moment be feasible.

MR MEHRI: Yes.

PROF SNAPE: And so you want to get allocation within the area which is to be controlled by the ABA and which will become available on the new generation sets. What is the problem with you doing that? You've just been forgotten about. Is that the problem?

MR MEHRI: We think there's a very real chance that there will be a lot of pressure from the commercial broadcasters - and let's face reality, they are a very powerful group and there will be a lot of pressure in time to allow the commercial operators only to go into the digital band.

PROF SNAPE: There are also narrowcasters and there's community radio, which presumably provision would be made for, since provision is made for them in the current arrangements. Why is it that you're fearful that you wouldn't be able to get an allocation as a community radio or as a narrowcaster?

MR MEHRI: I think we're fearful because we are on a less influential part of the band. It's very difficult for me to explain. We are not in-band and so therefore it seems as though it's too simple to be able to say, "Okay, if you're not in-band, then you won't be seen."

MR SIMSON: Have you had any indications from the ABA or anyone that they won't listen to you; that they might do what you're concerned about?

MR MEHRI: No, we haven't had any indications at this point, but we know that the ABA have got nothing to do theoretically with that part of the band. It's all the ACA. We've spoken to the ACA about it, and it's too early days, it appears, for that sort of decision-making and direction. But the Australian Broadcasting Authority really can control our format under the legislation but they can't control the migration of - - -

PROF SNAPE: Okay, I see that. Now, the list of narrowcasting stations that you have at the back of your submission, which is a very long list, most of those are in fact within band, are they?

MR MEHRI: Yes, professor, these are the ones that are on air at the moment.

PROF SNAPE: Yes.

MR MEHRI: There's probably a total of about 300 frequencies that have been issued in the last four or five years by the Australian Communications Authority when that band was extended, and a lot of them are not occupied at the moment or are being developed and will go to air, but these are currently on air.

PROF SNAPE: These are not all out of band, are they?

MR MEHRI: Yes, they are all out of band.

PROF SNAPE: These are all - - -

MR MEHRI: Sorry, the 87.6 FM one-watt licences, they're in the actual broadcast band, but the 1620 AM and the 38s and the 65s and the 1693s and all of those are out of band.

PROF SNAPE: So the point that you're making is really not just about 2ME, but it's about a number of the stations which - - -

MR MEHRI: The entire band.

PROF SNAPE: - - - are in this list, which are outside - - -

MR MEHRI: Yes.

MR SIMSON: Not just your own stations.

MR MEHRI: No, not just ours. There's a total of about 300 stations which are - I should give you the list of the entire frequencies issued by the Australian Communications Authority. Some of them will go to air within the next 12 months, but it's around about 300 frequencies that will be affected.

PROF SNAPE: From the communications authority.

MR MEHRI: Yes.

PROF SNAPE: That would be a helpful addition to your submission. I think it's a very interesting point that you've got there. Even though there are 300 of you involved, it is a very different position from the one we've had from others.

MR MEHRI: It is.

PROF SNAPE: I can see there's a genuine concern there and thank you very much for putting it to us.

MR MEHRI: With the recent census showing that over 51 per cent of the population is of non-English descent, these 300 frequencies more than likely target all those people, so there will be an impact on the marketplace if we're left out.

MR SIMSON: If you're dropped off.

PROF SNAPE: That's very helpful, and we have been conscious that perhaps we haven't been hearing as much from the ethnic community as we would have liked. This is in fact something which is confined to them in a sense, communities of course, and as you've drawn the attention, it's a very large part of the community and thank you very much for that.

MR SIMSON: Thank you for it and thanks very much for drawing it to our attention.

PROF SNAPE: We'll now adjourn for lunch and we then are scheduled to resume at 1.45, when we will be having SBS - I think that's correct - followed by the Presbyterian Women's Association in New South Wales, and then the Australian Subscription TV and Radio Association. We'll adjourn until quarter to 2, thank you.

(Luncheon adjournment)

PROF SNAPE: Thank you very much. We will resume the hearings and welcome SBS Corporation here. We have three representatives and we would be grateful if you could each separately identify yourselves and your positions for the transcription service. The microphones in front of you are simply for the transcription service; they are not amplification and sometimes people have to speak up a little bit to get to the back there. If that is a problem there are a couple of microphones which are for amplification on the desk there. Thank you.

MR CAVANAGH: I'm Peter Cavanagh and I'm the head of television.

MS SHARP: I'm Chris Sharp and I'm policy manager at SBS.

MR LUU: I'm Quang Luu, head of SBS radio.

PROF SNAPE: Thank you very much and thank you very much for your submission. Who would like to speak to it?

MS SHARP: In actual fact we had thought that we would make no additional comments to the submission but we would just take any questions that you care to raise with us.

PROF SNAPE: Okay, thank you. On page 3 you say:

SBS looks forward to the opportunities available with digital multichannelling to provide more programming which fits with SBS's charter obligation to provide multilingual and multicultural broadcast services.

I wonder if you might like to elaborate what you have got in mind there?

MS SHARP: The first thing to point out is, I suppose, that in radio we have particular problems in broadcasting 68 languages over a fairly limited spectrum and that radio multichannelling would offer us obvious advantages in being able to expand our services. In television - probably Peter can expand in a moment - we're very aware of keeping our costs low but, at the same time, once again the demands of our charter mean that we have a very eclectic schedule; for instance, our World Watch services which we currently offer for five or six hours a day in about 18 languages. There is quite a lot of community demand for an extension of those services; those are services that are brought in by satellite. Peter, would you like to expand on that?

MR CAVANAGH: Yes. We currently have what we call our World Watch schedule, which I suppose is loosely divided into two categories: one would be daily news services for the major language groups within Australia, and the other currently weekly summary services for some of the smaller communities. We have a very long list of communities in Australia who would like to be added to the World Watch schedule and currently our schedule restrictions wouldn't allow for any further expansion. Perhaps we have got room for one or two if we reshuffle the schedule at

this stage, but if we were to have access to additional capacity through multichannelling we would certainly be looking to expand the range of the services we provide, probably with additional services for the major language groups which are currently once a day and often at some fairly unsociable hours, and expanding the range of communities who would have daily and weekly services.

MS SHARP: I might add, commissioner, that we are also under some community pressure in terms of coverage of Australian multicultural events because SBS is a national signal; the same television signal goes out across all areas of Australia. It is not really appropriate for us at the moment to devote a lot of time to events or areas of interest that are quite local, that might only appeal to one area of the country and not to the entire country. We see multichannelling as offering a very good opportunity for us to expand the sorts of programming that's limited at the moment to one half-hour a week, which is called Tutti, which really provides a service to ethnic multicultural communities across Australia to tell them what's going on in their particular areas of cultural interest.

MR LUU: May I also add that from a radio perspective we are now broadcasting through an integrated five-signal network - two in Sydney, two in Melbourne, and with one in capital cities outside Sydney and Melbourne.

PROF SNAPE: It's a little hard to hear in that part of the room.

MR LUU: I repeat, that I would like to add a radio perspective to the issue: currently SBS radio is broadcasting in 68 languages through a five integrated signal network. We have two frequencies in Sydney and two in Melbourne but only one in capital cities outside Sydney and Melbourne, and we don't have anything at all in regional Australia and there are, of course, people living in isolated areas who would need access to SBS radio at any stage - we're not able to do it - so if and when digital radio broadcasting - - -

MS SHARP: It doesn't seem to be amplifying.

PROF SNAPE: Don't repeat - just keep going.

MR LUU: There are people in isolated areas in rural Australia and in regional Australia who certainly would very much like to have access to SBS radio but they cannot because we don't have the facilities, both transmitters and frequencies, to broadcast to them, and we are now currently bringing our outside broadcasting unit to southern New South Wales, and the response from the people in that area is very obvious - that they are in need of SBS radio programs. What we would hope is that if and when digital broadcasting in radio is in place, then SBS radio is also in a position to broadcast on a multichannelling mode, so that we can enhance our air time capacity to satisfy the needs of our listeners and members of the Australian community around Australia.

MR SIMSON: When would you anticipate, Mr Cavanagh, beginning to

multichannel on television?

MR CAVANAGH: Unfortunately, that's not really in our hands. We're in the hands of the government in terms of its multichannelling review to determine whether the public broadcasters would have access to that. The current timetable - - -

MS SHARP: 1 January 2001. Everything depends on how the legislation is decided at the end of this year, but I suspect we would try to begin multichannelling as soon as possible after digital broadcasting commenced.

MR SIMSON: And what preparation are you making for that in an operational sense?

MS SHARP: At the moment we're gearing up in terms of basic equipment replacement in terms of our studio and our production facilities at SBS Artarmon. We are also planning for a major upgrade for radio to coincide with our move into Federation Square in Melbourne next year, but perhaps you could talk also, Quang, about our digital requirements - digital upgrade - in radio.

MR LUU: In radio for the time being we are using what I can describe as very obsolete technical facilities, so we certainly would take the opportunity to move SBS radio in Melbourne to Federation Square to upgrade our facilities, and one of the features that we would like to do is to build an audio-video digital studio to combine the two media into one means of broadcasting, and that is going to happen but not immediately. We're going to do it in a year or so because the time to move to Federation Square in Melbourne is in 2001.

MR CAVANAGH: Just getting back to the preparations that are under way in terms of television multichannelling, what we're doing at the moment is carrying out an investigation into the range and type of news and current affairs services from overseas sources that would be available to us within that time-frame. Currently we access a range of our services via satellite, and there are a number of satellites that provide coverage within our region that we can draw those services from. We're carrying out a review to see what other services would be available from the same satellites and talking to a range of overseas broadcasters to see what their own future transmission planning involves in terms of the types of services that we would expect to become available to us in the next couple of years.

MR SIMSON: And the issue of the access of your viewers, your customers, to the multichannelling, they will require some form of set-top box. Clearly if you are off the blocks in 2001 with programming, you're going to want that to be seen by people. What discussions, if any, or what is happening in terms of perhaps fast-tracking that from your perspective with your particular constituency?

PROF SNAPE: So it can be received, an analog receiver - - -

MR SIMSON: So the people don't have to have a high definition television to

receive.

MS SHARP: Our planning and communications engineer is very much an integral part of the planning that has been done by both the ABA and the ACA in terms of achieving agreement on standards for both broadcasters and equipment manufacturers. I'm not too sure how that is going yet; I think there's still a way to go, particularly in the equipment manufacturing side.

MR CAVANAGH: I think it's probably worth noting also from a programming point of view that we are very conscious of the fact that in the early years of digital the take-up rate could be quite modest, so we're certainly not looking at a migration of services from our primary analog service onto a secondary - - -

MR SIMSON: No, it would be - - -

MR CAVANAGH: In some cases it will be simulcast but it will be mainly for additional services rather than migrating our existing, for example, World Watch programs onto a digital channel and disenfranchising existing viewers.

PROF SNAPE: If you are broadcasting say a French and a Turkish news service at the same time, as I think you were foreshadowing with the multichannelling, then the people who want to receive it of course will have to be able to select one or the other and if they've just got analog sets, as would generally be the case, then you'll need a basic box which can be unscrambling that, and you would have an incentive to get that basic box very widely distributed very quickly.

MS SHARP: Certainly we would hope that SBS and the ABC will be allowed to multichannel and would be seen as providing incentive for the take-up of digital equipment by viewers, but we would also, we suspect, be seen by the commercial free-to-air stations in that as providing some kind of - "loss leader" is not quite the right word, but some kind of experimentation in the early stages of digital which, hopefully, would be inexpensive.

MR CAVANAGH: Multichannelling by the public broadcasters obviously would add to the consumer benefit of conversion to digital.

PROF SNAPE: Yes. You see, what we've been exploring with some of the free-to-air channels - stations, networks - is in fact the possibility of getting very wide distribution very quickly of a very basic box, or as it might become a chip, in a set, so that the people would be able to receive these digital signals on the analog set very quickly, and the context in which we've been exploring this is that, if one could get that pretty well throughout the community in some way very early in the process, then one would be able to drop the analog transmissions.

MS SHARP: An enormous benefit to all the free-to-air broadcasters because of the cost, the huge cost, of simulcasting, yes.

PROF SNAPE: That is one aspect of it, I think, which is something like 30 million a year but, on the other hand, what goes with that is the assurance that there are no competitors and it's been not at all clear to us which is of more value to them - that assurance that retaining the spectrum, the analog spectrum for the time in which they have to simultaneously broadcast the two, which is an advantage to them of retaining that spectrum so other people can't use it, as against incurring \$30 million per annum of simultaneously broadcasting, and it's a good question as to which is the more valuable. We have had varying success in getting responses to that question but, from your perspective, as you would want to be multichannelling for the purposes that you're saying, it would be a very big incentive for you to have that sort of basic box available to everyone very very quickly.

MS SHARP: Yes.

MR CAVANAGH: There is no doubt that SBS would be a beneficiary of a rapid take-up of the new technology, although from our own plans from a programming point of view there is no way that we would be seen as being a driver of the new technology, because clearly our program intentions are quite narrowcast in nature, and wouldn't be a mass market driver of the new technology. So we'll be contributing to it, certainly, but largely we would be the beneficiary of a rapid take-up across the industry.

MR SIMSON: As would the ABC.

MR CAVANAGH: Indeed.

MR SIMSON: You can imagine a situation also, perhaps in the early period, where ethnic communities at their clubs and so on could get one set-top box. You know what I mean. There would be ways of accessing your multichannelling services, perhaps in groups or in community centres.

MR CAVANAGH: Yes.

MR SIMSON: Just while we're on this area, datacasting, what are the plans there?

MS SHARP: We have no plans, to be honest, at the moment. We have taken a position in our submissions to government of recommending a fairly hands-off approach in terms of regulation because our view is no-one actually has very firm views of how that is going to pan out, and the more potential it offers the better, I suspect, to Australian consumers.

PROF SNAPE: Your connections with the indigenous sector, how are they shaping up in terms of the new technologies and the opportunities there? Is this opening up opportunities for you with the indigenous sector?

MS SHARP: I would have to say, in terms of developing, for instance our on-line services, at the moment we are looking at the augmentation of our services across all

the communities and interests we serve. But it has to be said that SBS more than any other broadcaster has particularly looked at the provision of services or provision of programming about and for indigenous communities. Peter can expand particularly on our ICAM programming.

MR CAVANAGH: I think the simple answer to the original question is that the change to digital transmission probably won't open up additional opportunities. The conversion and the introduction of digital production equipment makes it more accessible to a wider number of people to produce television programs and brings the unit cost down. So we do have a very strong track record of developing and encouraging indigenous filmmaking and television program-making through our SBS Independent. We were involved in a number of initiatives there ranging from documentaries to drama series. We have our own weekly news and magazine program, ICAM, but I think what the new technology will do is make it more accessible to indigenous communities to involve themselves in their own filmmaking because the equipment is simpler and it's cheaper to obtain.

PROF SNAPE: And which would feed into your regular programming perhaps.

MR CAVANAGH: We would see that as providing additional opportunities for programs like ICAM, and also additional opportunities for those communities, for example, to involve themselves in documentary filmmaking through SBS Independent which would find its way on to our primary service.

MR SIMSON: So is it possible that a group such as NIMAA, for example, could in effect pick up one of your multichannels, and in effect get a piggyback ride?

MR CAVANAGH: I don't know about that.

MS SHARP: I don't know about NIMAA. We already are picked up by channels like Imparja.

PROF SNAPE: The NIMAA members, we were meaning.

MR CAVANAGH: Remote area broadcasters.

PROF SNAPE: Yes.

MR CAVANAGH: They currently do have access to our signal, and they do retransmit a range of our programs supplemented by their own programming sources.

MR LUU: In radio in fact we do have some sort of informal arrangement with NIMAA as (indistinct) radio programs for indigenous Australians, pick up and rebroadcast in part by NIMAA members, but our difficulty insofar as indigenous Australians are concerned is that for non-metropolitan regions we don't have the network to cater for their needs for the time being.

MR SIMSON: Could I just turn to the funding issue? I would just like to build a picture as to how you were funded and, just to try and un-complicate this, I would be happy initially at least just to focus on the TV side. If that's not practical you can obviously pick me up on that, but could you just tell me how in a PNL sense you survive or not survive; how you operate and build at the moment; where your money comes from?

MS SHARP: At the moment, our appropriation from government is about 87 million a year, and that covers all our services, and that includes an amount of around 4 and a half million per annum for SBS Independent which is part of our appropriation and goes into the SBS television budget.

MR SIMSON: And sponsorship revenues?

MR CAVANAGH: Commercial revenue is currently of the order of about \$15 million a year. So it's a relatively minor proportion of our overall funding pool.

MR SIMSON: So in a nutshell, in terms of the year-to-year operation at the moment, you're running on a budget of - I take it it's not running at a loss - a little over 100 million on the television side.

MS SHARP: No, that's for radio and television. That's for everything.

MR SIMSON: Is it possible, just for illustrative purposes, to strip out the radio element of that for the moment?

MR LUU: In radio we have a budget of about \$17.5 million a year. That would include a very small proportion of radio revenue, 1.5.

MR SIMSON: So the TV element is about 85.

MR CAVANAGH: No, not exactly. The actual television divisional budget, which is a little misleading, is around the \$50 million mark but that's primarily for program purchase and production. We have another divisional area of SBS called the resources division which carries a lot of the shared costs of the corporation, including the usual services of computing and finance and human resources and those sorts of issues, plus capital costs.

MS SHARP: And about 20 million in capital costs.

MR SIMSON: In depreciation and - - -

MS SHARP: And rights payments and paying off our building - - -

MR SIMSON: So we're talking of something over 100 million on TV?

MR CAVANAGH: No. The actual budget for television production and program purchase is 50 million, and then there is a substantial amount of money which covers the corporate costs, I guess, of television and radio, building costs, capital costs and those sorts of things.

MR SIMSON: I'm sorry, I didn't need to get into the detail of it, but if your total revenues are 87 from government and 15 million from sponsorship, and then you're getting 4 million from the SBSI - - -

MS SHARP: That's included in that 87.

MR SIMSON: Yes, okay, and I think it was indicated that the radio expenditures are around about 15.

MS SHARP: 17.

MR LUU: 17.5.

MR SIMSON: I think we're talking about a figure for television, assuming that you're balancing your budget each year, at about 85.

MS SHARP: We're talking about, if you like, the peculiarities of the way in which our budget is divided between the major divisions of radio, television and resources covering our corporate costs, including rights and our ongoing overheads.

PROF SNAPE: That figure included corporate costs as well as the - - -

MS SHARP: So television stand-alone as a budget item sits at around 50 million, but of course that is not apportioning the corporate overheads.

MR SIMSON: I also note that in terms of Australian content that you were purchasing overseas programming at a cost of about \$6000 per hour, supplemented by a limited amount of Australian-made product.

MR CAVANAGH: That's correct.

MR SIMSON: Where I'm heading here is that for a figure clearly of less than \$100 million dollars, more than 50, depending how you amortise your overheads, you're running a TV station. You're running and operating a TV station, which rates well to your audience. Would you agree with that?

MR CAVANAGH: It's successful with a niche audience, not successful in commercial terms, I suppose, but approximately 4 per cent of the market share.

MR SIMSON: It's clearly a national television. Incidentally, just in terms of audience share, what is your overall rating?

MR CAVANAGH: Our average audience share would be around the 4 per cent mark.

MR SIMSON: So around about 4 per cent.

MR CAVANAGH: We tend to measure our success or otherwise by a reach measurement, which is the number of different viewers who would watch us over a period of time.

MR SIMSON: And what's that?

MR CAVANAGH: Our audience reaches about 5 and a half million a week.

MR SIMSON: So it's not insignificant. You're funded in the main from the public purse, but nonetheless you can run a pretty good TV station to a particular audience for somewhere between 50 and 75 - however we do the overheads. I'm raising this because we've heard quite a bit of evidence this week about the costs of starting up a fourth free-to-air licence, the extent to which that would fragment the advertising marketplace, the cost of entry, the cost of a start-up, and most importantly I suppose from your perspective that there's not room to actually be able to start a station and focus on a particular target audience.

The argument is put by the free-to-airers that inevitably it must fragment the existing advertising pie. I don't know off the top of my head what the costs are of running one of those free-to-air networks, but it would clearly be a multiple - the sort of numbers that we're talking about. I'm just wondering the extent to which your experience and your costs and the way you run yourselves does indicate that you can actually build a successful station, admittedly running at a loss, because you're getting 87 from the public purse, maybe a little bit more, but you're not having to spend hundreds of millions to run a national TV station.

MR CAVANAGH: I think the starting point for that sort of discussion is to understand that SBS is quite unique as a broadcaster, not only in the Australian industry but internationally, and not directly comparable to the normal operations of other television networks in this country or in others. When we look at our costs, and you have already mentioned a figure that we pay for most of the overseas purchased product, I have to say that in anyone's language that is a pittance. The reason that we can pay that sort of money is that we have a number of very strong relationships, largely with other public broadcasters in other parts of the world.

We are bidding for a product for which there is not really a competitive marketplace in Australia, and therefore we can buy a great deal of what we consider to be very high-quality product really at a nominal price. There are also large slabs of our schedule, as I mentioned before, that are taken up by the World Watch programs, and these are programs that are largely provided to us free of charge; again, largely by other public broadcasters as part of that exchange of programming that we put to air

as a community service for the Australian population. So we're not in the market of bidding to buy commercially competitive product. We have a wide range of very good relationships that allow us to supply our programming at nominal or no costs in some circumstances.

MS SHARP: As Peter has pointed out, a large part of why we run so cost-effectively is the result of why and how we were set up, but it also needs to be mentioned that we are not a real competitor in terms of advertising revenue, and I suppose that goes with the fact that if you ran SBS commercially it couldn't survive as we are currently broadcasting.

MR SIMSON: If you had absolute freedom in terms of being able to go into the advertiser marketplace - at the moment I think you're limited to sponsorships, aren't you?

MR CAVANAGH: No, we take advertising with some restrictions, and that is that we have advertising between programs and in natural breaks, not in commercial ad breaks as such, and we're restricted to five minutes per hour.

MR SIMSON: But hypothetically if that was deregulated, for want of a better term, you don't believe on your reach and frequency numbers that you would be able to pick up that 87 million you get from the public purse?

MS SHARP: No, absolutely not. The only way you could survive as a commercial operation would be to look much more like a commercial operation. We couldn't go on being SBS.

PROF SNAPE: Make sure that that line of questioning is not suggesting that the SBS should be thrown to the market, but rather exploring the possibility of a niche marketing for a free-to-air channel, not necessarily in the same niche as you are but just in a niche.

MR CAVANAGH: The way we currently operate in terms of commercial revenue is that we have a very fixed policy that we do not - never do, make a programming decision based on its commercial potential or its audience potential. The programming decisions are based on the SBS charter objectives. We schedule the network the way we believe it should be scheduled to satisfy the objectives of the charter and then we make it very difficult for our sales force and ask them to go out and sell what we deliver with the programs that we want to transmit, and that often makes them not commercially viable.

PROF SNAPE: That framework included South Park?

MR CAVANAGH: It did, absolutely. It's interesting to note with South Park - and I think with the phenomenal success of South Park in more recent times, that some of the history of South Park has been forgotten. South Park was actually a program that was identified by SBS at a time when it was almost unknown as a television program

internationally. We were the first television network anywhere in the world to schedule the program in prime time and when we ran the first series of the program, I think it's peak rating for the entire season of the first series was a four or a five, certainly well below any commercial threshold. It also attracted, I have to say, a wide range of differing views, we might say, in the community.

PROF SNAPE: It always helps, doesn't it?

MR CAVANAGH: It wasn't until the second series of South Park and that the program became better known - better understood, I guess - as a program that actually battled against antisocial views with - proposed pro-social views with antisocial behaviour, that the program started to build an audience and became what was and is quite a valuable commercial property. I have to say that the South Park program is now delivering a strong revenue stream to SBS which is, in turn, being used to subsidise our other charter-driven activities.

PROF SNAPE: Yes. And presumably, you don't get it at \$6000 an hour?

MR CAVANAGH: Not any longer, sadly.

MR SIMSON: Could you provide an opinion or a comment, please, on what you see as the key trends in television programming in Australia?

MR CAVANAGH: That's a very big question.

MR SIMSON: I'll narrow it down. On Australian drama, quantity, good, bad, mediocre, the trend there; the trend in news, information and current affairs - those two.

MR CAVANAGH: Well, I think the trend in recent years has demonstrated there is a very big consumer demand for quality Australian drama. I think that's drama that has evolved over a number of years, perhaps from a point at which networks weren't quite as convinced of its market acceptance and commercial viability, but audiences clearly embrace quality Australian drama in very large numbers, and I think the general standard of the production of Australian drama is very high across all networks at the moment and I think there would continue to be a demand for that. Unfortunately, SBS isn't funded and perhaps doesn't have the market position to get involved in that high-end Australian drama. We are looking at some innovative ways of getting into drama at a lower end, a much lower end, and we'd hope to contribute to the overall Australian drama slate in the next couple of years.

In terms of news and current affairs, I think all networks are battling with some, in some ways, disturbing viewing trends over recent years of perhaps a declining interest or habit for watching quality news and current affairs. Certainly in SBS's terms, however, we've managed to go against that trend ourselves in the last couple of years. We've had quite a dramatic increase in the number of people accessing our own world news services, particularly since we introduced a second mid-evening

bulletin about 12 months ago. That's effectively more than double the number of different Australians who watch the SBS world news service over that time and we're very conscious of the performance of our current affairs programs. We have two of those each week, one which deals with domestic issues, which is Insight, and our long-standing international current affairs program, Dateline.

Both of those programs are performing quite well, but we're very conscious of the fact that it's a very tough market out there at the moment and audiences, for whatever reason, appear to be drifting away from serious quality current affairs.

MR SIMSON: Thank you.

PROF SNAPE: You have a share, I think, in World Movies.

MS SHARP: We do.

PROF SNAPE: Do you have any other pay television presence or aspirations?

MS SHARP: No. We're a 40 per cent partner in a company called Pan Television, which operates World Movies and it operates independently - well, not independently but it has a separate board and directs its commercial activities slightly to one side of SBS - at arm's length, I should say.

PROF SNAPE: But that's it, as far as pay TV is concerned.

MS SHARP: That's it.

PROF SNAPE: I would like to explore a little bit more, I think, the radio side of it and the thinking about the conversion to digital, which of course is going to be very difficult in radio, I think, and in some dimensions perhaps more difficult than on television, but could you tell us what new opportunities might or might not be occurring with the conversion to digital in radio and again perhaps, amongst other things, the consideration of the indigenous side of it?

MR LUU: Thank you, commissioner. The obvious question is that it depends on the response by the listeners. Like on television, if the receiver is too expensive, then it might not be possible for our listeners to buy the receivers and in that sense, we will be broadcasting back to a smaller - initially, at least - number of listeners, but I understand the government decision is that for us to broadcast digitally, we would also have to broadcast at the same time on the analogue network, at least for eight years, I think. That certainly would create some technical problems for us, as I said earlier, because in Sydney and in Melbourne we have two frequencies and in the capital cities outside Sydney and Melbourne, we have only one frequency, and we don't have any in the rural and regional Australia.

If we broadcast digitally - and we would like certainly to broadcast under a multichannelling mode - then our programs being broadcast on the DRB would be

much more air time than the program to be channelled back to the analogue system. That is one difficulty. Apart from that technical difficulty in terms of marrying the two technical systems at the same time, we say it would help to be able to broadcast digitally, of course, on a multichannelling mode. The more difficult part of the whole exercise is the capacity, once you increase our air-time capacity, we must also increase our capacity for production and at this stage, we certainly would not have much hope in terms of getting much more funding to increase our capacity for production. By the way, I'd like to add that so far as SBS radio is concerned, all of our programs are locally produced in the sense that it's all Australian produced.

We're not buying any programs from anywhere else, apart from the feed from international agencies; that is not our difficulty. You mentioned also the question of indigenous Australian, we very much like to cover indigenous Australians as part of our listenership. The difficulty, of course, is that in other states we don't have the regional network to cater for them, because most of them are living outside capital cities and, insofar as digital broadcasting, DRB, is concerned, if and when we do broadcast DRB, then that largely depends on whether indigenous Australians living outside capital cities can have access to our signal - that's number 1. Even if they theoretically can have access to our signal, depends on a capacity to buy the receiver I'm just grabbing a situation where there are many hurdles that we need to overcome and that depends on the capacity of our listeners to buy the receiver and at this stage, we all know that a receiver is still very expensive for radio purposes.

PROF SNAPE: I think that exhausts our questions, unless there is anything that you would like to add at this stage.

MS SHARP: No, I don't think so.

PROF SNAPE: If you have more thoughts, then we would be very interested in having supplementary submissions. We thank you very very much for your submission and for your attendance.

MS SHARP: Thank you.

PROF SNAPE: Next on our program is the Presbyterian Women's Association in Victoria and it doesn't look as if they're present yet, so let's break and have a cup of tea or coffee and resume in a quarter of an hour or so.

PROF SNAPE: Let's resume. We have with us the Presbyterian Women's Association of Australia in New South Wales. Thank you for your submission and we would now ask that each of you could separately identify yourselves for the transcription service, please.

MRS SMITH: I'm Marion Smith, who is the convener of the social issues committee of the Presbyterian Women's Association, which represents more than 200 branches throughout New South Wales. I am also a member of the state council which meets every month and we are the elected representatives of those branches.

PROF SNAPE: That's fine, thank you very much.

MRS PORTER: Jennifer Porter from Newcastle and I'm a committee member of the same organisation as Mrs Smith.

PROF SNAPE: Okay.

MS PLAYSTED: Merilyn Playsted from Lismore. I'm a Presbyterian Women's Association member of state council and I am the northern rivers presbytery group representative of that organisation.

PROF SNAPE: Thank you very much. Mrs Smith, I think you're going to lead off and if you would like simply to identify what the major points are in your submission, thank you.

MRS SMITH: We really don't believe that Australian broadcasters would address the objectives of the legislation if there were no regulations. If competition and profits, that is the market, is the regulator, the public interest would not be served. We think this has been demonstrated already. Diversity is increasingly hard to find, humour seems to have become stupidity and drama is about disjointed stories, which too often the warning of violence and some coarse language and sex - perhaps any reduction in complaints is because people are not watching who would complain. TV and radio see their role as promoters and manipulators of change, pushing the boundaries of what is acceptable, particularly in humour. Talkback sessions allow presenters to manipulate public opinion and give publicity to unbalanced viewpoints.

Many years ago, when the Broadcasting Tribunal had a children's program-type of committee, they produced a book, *The Child Audience*, which was very interesting and highlighted the importance of high-quality children's programs. It contained this memorable thought:

Children learn to like what they continually hear and, disturbingly, they appear to learn the wrong things more easily than the right things.

Now, to us, that has the ring of truth, particularly as parents and grandparents. This is the same, whether it's language, behaviour or music, and because so many children are listening and learning from television and videos, peer pressure further

reinforces these behaviours. This belief makes us very concerned at the quality of children's programs and certainly commercial material on television which, despite the children's codes, is targeted at children's ability to influence the buying power of the parents. The quality of what is available would further decline if there were no regulations. The supposed high priority of protection of children is not evident. Lucky Lottery ads and those which show young people enjoying a win on gambling of one kind or another show that young people are the target, and we feel this is not a good thing.

It's impossible for parents to be the sole arbiters of what's acceptable. The new technologies pose even greater challenges than TV and radio. It's apparent to most adults that the media is the greatest censor of content when it selects what is to be used from the mountains of available news and information. Without regulations Australian content would not be kept up. The cheapest price is a tempting standard, which competition is not always able to combat, particularly if we're to have even more concentration of ownership or even of foreign control. Australian ownership already is too concentrated and should be bound by limits to cross-media control. The challenge of the new technologies to achieving Australian social objectives is very great. The social imperatives are the most important one, quite without regard to any competition. Our social objectives should be very, very important. Legislation is required to do this.

The self-regulatory approach of the Broadcasting Services Act is a failure as far as we can see. A Standards Regulation Act maybe would make standards enforceable, no longer self-regulating. This would make complaints more effective. Universal standards should apply to all providers regardless of what their technology is. Advertising standards have certainly deteriorated and a general system of standards should be devised from the many inquiries that have already researched community opinions. We've had so many, we're tired of writing to them.

The complaints process is not sufficient or effective. Individuals who may complain are told the matter complies with the code, but unfortunately the code is so worded by language experts to mean whatever is required. Individuals do not go further to the Press Council or to the ABA; it's all too difficult. Surely it's possible for media managers to reject matter which is offensive or discriminatory in advertising or in programs and to know what they would like their children or their families to see or hear. Do these people have no regard for this situation?

Government legislation is required to stop what is happening now through the use of ambiguous language codes and the lack of support for restraint in all facets of the media. The Internet of course is a great difficulty for control, but it should be attempted at least, and only yesterday I think I received in the mail the report of the senate inquiry into the thing and they too think it's possible to control it. If we can make technology we must be able to control it, and to say that just anything goes is nonsense. We have a police force to ensure that some effective means of redress can be done when people break the law. We must have some means of controlling - because what's happening now is just not any good for the whole community.

I don't know that I've covered all the points, but I'm very happy to be asked questions, thank you.

PROF SNAPE: Thanks very much, Mrs Smith. That's helpful. We are of course in this inquiry required to pay particular attention to balancing the social, cultural, and the economic dimensions, so what you are mentioning to us is within the ambit of what we are concerned with. We, I suppose, are concerned with regulatory structures, particularly the way in which community standards, however they are defined - and we are not in the business of trying to define them, that's for the politicians - but nevertheless we are in the business of trying to think of regulatory structures which would be appropriate, appropriate regulation for meeting the objectives which the government sees as appropriate, so it's very much within our terms of reference.

Now, you are saying that the code approach, or the existing codes are in fact inadequate. What would you want to be substituted for that? Would you want for the ABA to make sure that those codes were not ambiguous, or would you want for the government to be in fact legislating more specific requirements?

MRS SMITH: I think the codes would be sufficient if they were legislated as being sufficient, not just self-regulatory. There are children's codes, but even those are sort of bent. There should be a monitoring, quite apart from complaints, to find where people aren't complying with the codes. What's happening now is they make up all these wonderful codes and say this is what they will follow, but they don't really bother because there's no-one who's going to say, "You didn't do the right thing, mate."

PROF SNAPE: What sort of regulatory structure would you see as appropriate there. You're saying that the complaints mechanism is not satisfactory because it doesn't get anywhere.

MRS SMITH: That's right.

PROF SNAPE: Perhaps what you're meaning is that there should be complaints to a body which makes it work. What sort of body would you be envisaging?

MRS SMITH: There should be a monitoring of these things. There should be some way that other than ordinary individual people say, "Look, I don't like what that is." There should be someone else in a position to say, "This does not comply with the codes." How it is when you rely on complaints is people write in and say, "Look, that's dreadful. It shouldn't be on television," and they write back and say, "But we have to comply. We have to cater for everyone's tastes, and just because you're offended, you know, it doesn't really apply, and we're doing everything within the code," and there's not really anyone else. The ABA doesn't want to know. The Press Council doesn't want to know. They say, "Oh, but that's not really all that important."

PROF SNAPE: Is it more an ombudsman that you're looking for?

MRS SMITH: It should be someone who is responsible to the government and knows the codes. The whole thing is I might know some of the codes, but everybody in the street doesn't bother to read up those things. I mean, they're flat out just reading the paper.

MR SIMSON: Just so I'm clear on this, Mrs Smith, the actual codes, if in your view they were properly enforced, would be adequate.

PROF SNAPE: The existing codes?

MR SIMSON: The existing codes if they were properly enforced in your view - - -

MRS SMITH: Probably, yes.

MR SIMSON: - - - would be adequate.

MRS SMITH: Yes.

MR SIMSON: And in the case particularly of self-regulatory codes, those that have been devised by the industry, as you were just indicating to Prof Snape, if there was a better way of monitoring, of providing some adjudication, that would go some way to satisfying your concerns.

MRS SMITH: It would be better, but there needs to be - you shouldn't be relying on those people who complain, because, like me and a lot of other people who are sick to death of these eternal inquiries into what sort of codes you want and what sort of language you're going to use, we're tired of that. We just turn it off.

MR SIMSON: But at the end of the day if the codes are okay in letter, it must be then in spirit that there's a problem.

MRS SMITH: That's right.

MR SIMSON: And in spirit the implication of that is that the ABA is not properly monitoring sectioning the codes.

MRS SMITH: But the ABA doesn't monitor it.

MR SIMSON: I think it has to have an oversight of the self-regulatory codes, does it not?

PROF SNAPE: I think that the use of a complaints thing is first complain to the station.

MRS SMITH: That's right.

PROF SNAPE: And then if you don't get satisfaction, to go to the ABA, I think the process is.

MRS SMITH: Yes.

MR SIMSON: You would have obviously gone through that process.

MRS SMITH: I have in the past. I haven't done it for a long time because there's no point. It's purposeless.

MR SIMSON: Why do you say that?

MRS SMITH: Because when it is done there's nothing comes of it.

MRS PORTER: They send you back a brochure and a letter and that's all.

MRS SMITH: Yes.

MR SIMSON: Sorry, what does the letter say?

MRS PORTER: The letter just says, "These are the guidelines and this is as it is, and we are complying with them."

MRS SMITH: That's the stations, when they - - -

MR SIMSON: We'll need to check with the ABA as to exactly what happens when they receive - - -

PROF SNAPE: That's from the stations.

MRS SMITH: That's from the stations, because you can't go to the ABA until you've gone to the stations. But then they say, "Well, we've complied with the code and therefore, you know, you haven't got a complaint, and we've got to cater for everyone and therefore, you know, you're just being picky."

MR SIMSON: In terms of the summary you gave at the start in your submission, what are the major concerns that you have in terms of quality standards at the moment, just so that we can get our heads around it, but the most important things that are on your mind?

MRS PORTER: The chief one that comes to me is that on most programs, without exception, no matter what type of a story it is, there are two approaches always put forward: you either hit out with your fists or else you run away, and they are the two approaches that seem to go through children and adult productions, no matter which;

you either - - -

MR SIMSON: So stereotyping.

MRS PORTER: Yes, you either respond by hitting someone on the nose or else you walk off and refuse to either talk or make any - this sort of idea comes through very much. The other thing is, which I have noticed with my own grandson, is this increase in comic-type approach to life, no matter what the subject, so that it is very difficult for him to actually discern what is reality and what is actually comic, and I think this comes out later on when they grow up. When these people are doing these crimes of violence I honestly don't believe that they think other people feel anything, because they've become so sort of insensitive to this sort of thing that it seems to be continued in their mind that they can't make the break between reality and fiction, and that seems to be the thing that they don't seem to be able to do.

MR SIMSON: Perhaps those two examples you've given are pretty difficult to regulate, even in a self-regulatory way, because it's very much in the eyes of the beholder.

MRS SMITH: That's right.

MRS PORTER: Yes.

MR SIMSON: Perhaps I was searching more for things which are easier to pick - I mean, whether you had a concern, for example, about just sheer violence, or - - -

MRS SMITH: Yes.

MR SIMSON: It's matters perhaps more closely related to the letter of these codes as opposed to perhaps more subjective judgments that you just come to, that perhaps we could get our heads around.

MRS SMITH: I don't know whether it's possible to do. One thing is now there's the Bold and the Beautiful on commercial air. There are appalling moral and personal standards in that, and yet the kids come home from school and switch it on. They're hopping in and out of bed together all the time and they're changing partners and doing all sorts of things which absolutely destroy young people and you wonder why they're on drugs and they're out on the street and at loggerheads with their parents, because they watch these things and they think this is how people live, and people who have any sort of a life don't live like that.

PROF SNAPE: Is that an Australian production, or is that - - -

MRS SMITH: The Bold and the Beautiful, I don't think it is, but there are others. Now, Friends, that's on the ABC. That's another one with similar sort of things. That's an Australian one, and there were others. There are Australian productions that have gone overseas that have been very popular, and some of those are appalling.

I've watched them in the past. Now, what is it - - -

MRS PORTER: Even the Simpsons are the same. The subject - - -

MRS SMITH: Yes, now, that's an American one.

MRS PORTER: I know, but they watch it. It's very catching.

MRS SMITH: The standards of behaviour and the standards of all sorts of things are not - but the codes don't really cover that.

MR SIMSON: No, that's right.

MRS SMITH: And it's not possible to cover that.

PROF SNAPE: So is it possible to have a regulatory structure, which of course is the sort of thing that we're trying to look at, which can address that type of attitudinal aspect to which you're referring?

MRS PORTER: It probably goes to the actual marketing before it even gets as far as the screen. Probably it's when they go to these places where they choose these. The salesmen must go and buy these things for this channel; somewhere or other they are buying them and saying that they're okay before we even see them.

PROF SNAPE: But again, I mean - - -

MRS PORTER: They're trying to find the - - -

PROF SNAPE: We are trying to find a regulatory structure.

MRS SMITH: That's right.

PROF SNAPE: We can't get a regulatory structure that says that salesmen should be choosing this program rather than that program.

MRS SMITH: No, we realise that, but there must be a way, even with the present codes, where people are not following - even just the advertising. I'm sure there's more advertising than the code actually says, but to sit down and time actual half minutes of all sorts of things is practically hopeless for someone who's not being paid to sit there and do it.

MR SIMSON: I think what could be helpful to us is if you or any of your members were able to put before us - not today, but later - examples, specific examples, of things that have occurred that you believe are in breach of the code, codes, and where you have followed through in your view without a satisfactory response from the station or ultimately by the ABA. It's difficult for us to deal with these - - -

MRS PORTER: In a vacuum.

MR SIMSON: - - - in a general way. If we can get some examples of these sorts of things it will enable us in our discussions with other participants to throw them up to them and get some feedback.

PROF SNAPE: I might say we're not regulators and we are not able of course to be pursuing individual cases. But what Mr Simson is getting at there is to say that you can show us through specific examples of what you would regard as regulatory failure in the terms of process, then we can think of regulatory frameworks which might be able to address that failure.

MRS PORTER: One of the things I found in our writing is that we talk about the Australian culture. Now, we don't define that, and so as Christians, as a Christian organisation, we are coming from the Judaeo-Christian perspective, but half of the - well, more than half - population is not doing that. So what offends us maybe doesn't offend some other people and we're fully aware of that, but at the same time if we look back to our history we didn't get those regulations in the first place without them being fought for, and many of our ancestors had to fight for a decent living standard and a culture, if you like, for want of that word, and we seem as though we're just letting it all go. We just seem as though we're just - - -

PROF SNAPE: Thank you. We're having quite a bit of trouble of wrestling with the concept of culture.

MRS PORTER: Exactly.

PROF SNAPE: Of course it is, as you point out, a multicultural society in many dimensions, including the dimension that you just mentioned, and one needs to find a concept of the Australian culture, the Australian identity which embraces these and which we are required - and the government is talking about - to find ways of promoting. But until it's defined it's very difficult to say how to promote it.

MRS SMITH: The whole thing is that all the cultures that have come here, from whatever religious background, have similar standards of family and morality to the Judaeo Christian and they're just as offended as we are by a lot of the things that go on. And especially there's the matter of the language that's used on a lot of these films; it's just appalling.

PROF SNAPE: Okay. I would say that I think that if you could reflect on what we were saying and perhaps put in a supplementary submission which would address that sort of regulatory structure so that we can address that, then that would be a very useful supplement to your existing submission.

MRS SMITH: Okay, thank you. But it's the complaints, that relying on complaints you're not going to get the right balance. You've got to have someone who has the

regulations in front of them, which we don't always have as individuals. I might have them in my records and all, and I mean I look it up and then the thing has gone. You've got to have someone whose job it is to say "These are the regulations. They will be complied with." And while ever the producers and the people know that regulations are just there for window dressing they're not going to bother, they're not going to worry. And they can fob us off and say "It doesn't really matter. You're just one little old lady."

PROF SNAPE: You might want to reflect on the telecommunications area a little bit, where there is the telecommunications ombudsman as I understand, as to whether that structure you feel might be appropriate.

MRS SMITH: Yes.

PROF SNAPE: But thank you very much for coming, and for your submissions.

MRS SMITH: All right, thank you.

PROF SNAPE: Our next participants are ASTRA, the Australian Subscription Television and Radio Association. Do we have them?

MR SIMSON: Yes, we do.

PROF SNAPE: While we're assembling I might mention that the transcript from the first day of the Sydney hearings is I think on the Web already. The Brisbane transcript from last week's hearings should be on the Web quite shortly. So we're doing pretty well. There might be a slight delay I think on yesterday's transcript in that apparently it missed a collection. But it probably won't be delayed too much. So those transcripts are getting on the Web and so those who are wanting to chase them up can read them there.

PROF SNAPE: Welcome to ASTRA, and we have three representatives from them and we'll ask each of you if you would be so kind as to identify yourselves for the transcription service. Thank you.

MS RICHARDS: Debra Richards, executive director ASTRA.

MR KEELY: Chris Keely, deputy chair of ASTRA.

MR MARQUARD: Jon Marquard, vice-president business and legal affairs from Fox Sports.

PROF SNAPE: Okay, but today you're wearing an ASTRA hat.

MR MARQUARD: I'm wearing an ASTRA hat.

PROF SNAPE: Yes.

MS RICHARDS: Mr Keely as deputy chairman will deliver some opening remarks, if that's okay.

PROF SNAPE: I'm sorry, yes. Would you like to speak to the major points of the submission?

MR KEELY: Certainly, yes. I also hope that my colleagues will take part in this submission on particular points should that become necessary. First of all I'd like to thank you for the opportunity for ASTRA to participate in this inquiry. Our organisation, the Australian Subscription Television and Radio Association, represents subscription multi-channel television, or pay television as it's otherwise known, distributors, channels which provide programming to pay television, narrowcast television operators and channels and narrowcast radio as well. We're just a relatively new organisation, having been formed in September 1997.

As the industry association representing what effectively are what we hope are vigorous new players in the broadcasting industry following the introduction of the Broadcasting Services Act back in 1992 we represent the competitors to traditional incumbent broadcasters, and it's our submission that we have added diversity and choice for Australian consumers. And the key element of our services is that we provide service that Australians want and, in the case of significant members in the case of pay television, are willing to pay for.

Our submission makes some brief comment on regulatory policy and a significant point that we're making is that there are a number of major regulatory hurdles for pay TV; and then, in addition to that we comment on issues facing narrowcast services and in particular narrowcast radio, and there will have been some other separate submissions relating to that; and secondly, issues affecting the whole pay TV sector, and we're looking here at anti-siphoning regime, codes of practice, Australian content, retransmission, piracy and finally some background in ASTRA's

involvement in the digital issues. There are a couple of housekeeping amendments but we might circulate those to commission members separately, if you'd bear with me on that.

PROF SNAPE: As long as they haven't changed any of your major recommendations.

MR KEELY: Not at all. One that we're very proud of is that the number of subscribers for subscription pay television has increased. We reflected our then figures of 920,000 in our submission but we're very happy to note that those have in the interim increased to 970,000. So of course we're very close to the one million mark, so that will be certainly a time for celebration in what is a very new industry.

Just for a little bit of background, I thought it might be worthwhile very quickly in acquainting you with some broad details about the industry. Essentially what we're about in subscription pay television is extending audience choice in terms of range and diversity of programming. A few key facts about the industry. If you include distribution mechanisms it's our assessment - a rough one at that - that the subscription pay television industry has invested around about \$6 billion in Australia in building this new industry including the distribution mechanisms. Secondly, we currently employ, if you look at the distributors and the channels and excluding sales staff and the many others whose jobs are created by our industry indirectly, around about three and a half thousand jobs, and most of these jobs are jobs for mainly younger people in the creation of Australian television.

As I've noted there, already we have around about 970,000 subscribers and, while it's commonly thrown at the industry that we haven't been a successful industry to date, those figures, that take-up percentage is, when looking at comparative countries, one of the fastest take-up rates in the world. And if you look at comparable nations the UK had a four per cent penetration rate after a similar period and in New Zealand it was around about 10 per cent, and I think on our figures we're around about 13 per cent that we currently have hooked up. On figures that we've received from A.C. Nielsen our reach is around about three million people on the basis that each pay TV household has around 3.4 members in it, which I think is slightly larger than your average household. So there's more people to enjoy the diversity that we're bringing.

Just finally, a point that I would like to make is relating to Australian programming. Another of the myths relating to pay TV that is floating around the media and the community is that Australian pay TV does not have significant Australian content. On our reckoning there is over 620 hours of Australian programming - that's drama and non-drama - broadcast over the three pay TV platforms each week. And an astounding figure is that in the past two years sports channels have broadcast over 75,000 hours of international and local sports programming, and I think the statistics that we've received from Fox Sports - and Jon Marquard to my right representing Fox Sports - is that there's a daily average of 11.24 live hours of sport every day. So there's a vast amount of Australian

programming, and that's one of the myths that we very clearly wanted to dispel.

PROF SNAPE: Just before you go on from there, could you tell me how that's calculated so as Fox Sports puts the same program over Austar as is over Foxtel?

MR KEELY: We do. Our channels are provided directly to both Foxtel and Austar.

PROF SNAPE: Is that double-counting in the 620?

MR KEELY: No, it's not double-counting.

PROF SNAPE: Right.

MR KEELY: The figure was based on I think - that particular one we looked at it back in March, and the figures are certainly comparable for April and May, if not greater because of other live sport we're doing. But it averages out because we're averaging roughly about 350 hours of live sport per month at the moment.

MR SIMSON: And I had an identical question for the previous figure you gave with regard to total Australian programming across the three platforms. Do we need to divide those hours by three? Is it a total number of hours across all three platforms?

MR KEELY: Yes.

MR SIMSON: Are we double-counting there?

MR KEELY: I might just check with my colleague Debra Richards on that one.

MS RICHARDS: No, my understanding is it would be what is being produced and shown by the channels themselves.

MR SIMSON: Okay.

PROF SNAPE: It's the channels rather than the platforms.

MR KEELY: It's looking at a channel-specific view. The channels are producing 340 hours of live sport.

PROF SNAPE: Yes. I'm sorry to interrupt you.

MR KEELY: No, certainly if we can make that clear we're very happy to do that. As I said, there's another element of housekeeping relating to one of our codes - that we'll just ensure you get a copy of that. Just to wind up an introduction before members of the commission follow up any issues that are raised by our submission or

this presentation, what I wanted to do was very quickly focus everyone's minds on some of the regulatory hurdles that the subscription pay TV industry in particular faces.

We go back consistently to the design of the Broadcasting Services Act, which in its design reflected modern trends. The central core of the act in respect of regulating broadcasters and others was that the greater degree of regulation was to match the influence of a service. A central submission of subscription television is that at this early stage of development of the industry and because of the particularities of the subscription television industry - that at this stage the level of influence that we have is not matched by the very heavy regulatory burdens that we face. And I'd just run members through a number of those before I conclude my address.

First of all, in the initial period of the industry there was a ban on advertising until 1 July 1997, which in our submission was further protection for the incumbents, who were concerned about their advertising revenue being eroded. Secondly, a ban on R-rated material. This is a sensitive question but there is currently a ban on R-rated material on subscription broadcast. The act has been amended a number of times to deal with this and other issues, but it's worth noting an R is allowed on pay narrowcast television.

There is an Australian content expenditure requirement. What we would note is that this was introduced at a far earlier period than Australian content regulations were introduced for free-to-air television. Notwithstanding this the industry is very proud to take part in the Australian production industry and reflect Australian television with Australian programming as well as overseas programming, and absolutely critical is the anti-siphoning legislation which bans pay TV from acquiring rights to listed sporting events.

Just finally two points, which is the ABA's conservative view of narrowcasting, which we believe stifles growth of that sector, and finally the fact that the government has decided to appoint the incumbent free-to-air broadcasters as the gatekeepers to Australia's digital future. With that list of regulatory issues, which we would particularly like to draw the attention of members to, I will close my opening address and invite any questions that the members might wish to put to myself or my colleagues.

PROF SNAPE: Thank you very much for that introduction. You have a system where, as you say, you've got 970 active subscriptions?

MR KEELY: That's our current reckoning and the numbers are growing all the time so we reckon that it's possible to give that figure. What happens, professor, is that the number of subscribers who join our services grows from time to time and occasionally, which we regret, those subscribers can churn. So on a daily basis there is an ebb and flow but on our best analysis that figure is the current figure, and as we say we believe it's growing day by day.

PROF SNAPE: We have an estimate in another submission which suggests that the churn rate is such that perhaps only - if one takes Foxtel and Optus together and leaves Austar out of it, but Foxtel and Optus - somewhat like half of those who have got the cables to their houses are still currently subscribing.

MR KEELY: Am I right in understanding you're suggesting that there's really only, let's say 500,000 active subscribers?

PROF SNAPE: No, what I was trying to find out is if the 970 are actually active subscribers.

MR KEELY: That is our view, yes.

PROF SNAPE: But there would be perhaps, not quite twice but perhaps 70 per cent more actual connections than there are actual subscribers?

MR KEELY: But not active connections.

PROF SNAPE: Yes.

MR KEELY: I suppose there's a detailed answer to that which is that there are a very significant number of Australian homes which are cabled, if that's the focus of your inquiry.

PROF SNAPE: I don't mean going past the front door. I mean coming up to the house, who have actually been connected and to have churned.

MR KEELY: I would be surprised if the figure was that high but it's certainly something we could examine and see if we could provide you an answer. It is a detailed question.

PROF SNAPE: That estimate was in another submission. I think it's the Fairfax submission. No, it wouldn't have been in the first part of the submission; it would have been probably in the second part of the submission. You may wish to have a look at that and see whether you judge that to be an accurate estimate of the churn rate.

MR KEELY: We will certainly examine that.

MS RICHARDS: Certainly my understanding is the 970 is the active subscribers.

PROF SNAPE: Is the active subscribers.

MS RICHARDS: But we will certainly give you some response on the churn rate.

PROF SNAPE: It was suggested this morning by Mr Fist in one of his two submissions that a connection rate could have been much higher if in fact it was a basic cable - talking of cable in this case - with a basic service that was being connected rather than having to take a package, and he instanced the United States where perhaps you can get a basic service on a cable for \$5 a month, US dollars I guess, but still pretty cheap \$5 a month, and then you had many more options thereafter on what packages one could take. I think fairly typically you would have a minimum subscription amongst your three providers of perhaps 35 to 40 dollars a month and then premium packages thereafter. Why wasn't this other strategy of a very basic cable service chosen when one might have imagined that you would have got a very much quicker take-up on that service rather than the way that you've got?

MR KEELY: I think, professor, in examining the comments that were made to you you have to examine the history of subscription television in Australia, which is that many other jurisdictions received cable television and the history of cable television, I guess in the US in particular where it was given birth to, essentially, was a slow growth over some decades and built on effectively retransmission of services in places where service was hard to receive from terrestrial broadcasters. So in Australia we have entered an era where the operations have had to focus on the benefits of the service that were available.

If you were to look at some of the packages that are offered at very modest rates I guess a judgment was made in the early days of the industry that the premium packages would be put forward and we don't believe that the pricing is in any way excessive. We believe it's a very modest pricing in order to make more attractive to Australian subscribers, who have had very good television over the years, our services and to differentiate them. I mean it's frequently said that Australian audiences have had the benefit of very, very good television, indeed comparable to the best in the world, and in that context the subscription industry had to provide a service that was a premium service.

It's worth noting too, professor, that in terms of the Optus service there is a basic package available and some of the packages are very modestly priced indeed. So that isn't true from across the whole of the industry but I think the comments that I made, and in terms of the buying strategies of Australian subscribers, reflect that they do want a premium service.

PROF SNAPE: Yes, they may want it but they haven't been given, to the same degree, the option of not having it, and what we're talking about really is two things here. One is consumer choice of being able to take packages other than the ones that you are packaging together, in other words you saying, "You can have this package, this package and this but you can't have that one. You can't take that option," because you haven't unpacked it enough, whereas in many countries they have unpacked it much more so that I could take one sports channel and a news channel and that's all, for example - I'm not sure if I've got the right examples - you probably haven't given me that option.

The other thing is by unpacking it more and offering a basic cable without the premium-type service that you're describing then you may have got a much greater take-up, and so therefore that cable connected to many more houses, and would have been available for a variety of other things, such as substituting for transponders in the Sydney area and freeing up spectrum for other things. So there are two points: one is choice; one is the roll-out.

MR KEELY: Were you making reference there to retransmission issues?

MR SIMSON: No, it was referring to the black spots, the fill in, where much more spectrum, for example, has to be used in the Sydney area because of the topography of the Sydney area.

MR KEELY: But this would relate to retransmission of free - - -

MS RICHARDS: Yes, because cable doesn't use - - -

MR KEELY: Sorry, correct. I apologise, Chris.

MS RICHARDS: Cable doesn't use that transponder or the spectrum.

PROF SNAPE: No, perhaps ignore that last point just for the moment and concentrate on the other two.

MR MARQUARD: Sorry, if I can just add to that, I would have thought that's a question of degree, I mean even using the example that was given to you this morning. The question of what basic package is being offered is one which, on my understanding and years of experience, is that certainly there are things which are packaged up by individual cable operators as a basic package in America but that what is offered as a premium service may depend on particular places and certainly the example here, as Chris has said, is that people are being offered basic packages, and again my understanding is that the majority of people are electing to take a premium package which includes some of those other tiered services in preference to the basic package.

So it would seem to be, not an absolute question but one of degree, and that would come down to a subjective notion of what you're going to put in basic and what you're going to put as a tiered package anyway. Certainly there have been some movements amongst the cable operators and Austar as to how they did package things initially and it has not been a static thing since the inception of the industry.

MR KEELY: I mean it's certainly true from the experience of Optus that where basic packages were offered the marketing information that in my assessment the decision relating to packages was made on was absolutely spot-on, in that in seeing the basic packages compared to the premium packages a significant majority of subscribers took the premium package which was offered to them.

MS RICHARDS: I think you've also got to look at the fact that the Australian audience was devoid of that choice for a long period of time and we have an incredible high take-up rate of VCR and video, so what we need to provide is a competitive service, and I think even in evidence given by Austar yesterday they said that only 5 per cent of their subscribers take the basic; they are more likely to take the basic plus the one or two tiers on top of that.

PROF SNAPE: Yes, I guess that's the choice. My point is simply that it may be that most people buy a Ferrari but perhaps they should also be given the option of buying a Volkswagen.

MR KEELY: I guess I don't want to restate it, and obviously I'm with Optus Television, but Optus Television does have a basic package and we found the premium package is what is required. So that service is offered at least with one of the carriers but I think the experience we've had shows what subscribers want.

MR SIMSON: It's important we get a picture of where your business is going and you've said today that your subscriber numbers are up to 970,000. Foxtel recently launched a satellite service which we hear is going well and there are other similar alternatives being opened up. Could you please just provide us some best-guess projections as to - and I don't mind whether you do this in terms of household penetration or absolute numbers of subscribers on a two or a three-year basis. You must have some figures that you toss around as a group that help us get our heads around where we may be on a two, three, four-year time-frame in terms of penetration numbers, please?

MR KEELY: Short of examining business plans of all three operators which I guess, as you would be aware, is commercial-in-confidence, it's not information that I know or am at liberty to give to you.

MR SIMSON: Sure.

MR KEELY: I guess broadly speaking we're very confident about the future of subscription television in Australia and we believe that we've only really begun to tap the broader market having close to 1 million subscribers at this stage. We would anticipate that as the broader population follows earlier adopters that the number of subscribers will exceed that many times.

MR SIMSON: So it would not be unrealistic to expect that on a five-year time-frame, for example, something approaching 40, 45 per cent of Australian households could have signed up to a pay television service?

MR KEELY: Those figures are effectively figures slightly lower than the American penetration level. I guess it's worth noting that, while that's a very optimistic proposition, an estimate, it took the American cable and satellite industry 35 years to reach those figures. While we have, amongst the various operators, optimistic predictions, it would be very optimistic to imagine that we would reach the

penetration of the United States in such a short period.

MR SIMSON: About a five-year turnaround.

MR KEELY: I guess you could say we are optimistic and we would dearly love to have that number of subscribers in the time period.

MR SIMSON: But clearly, as you indicated in answer to the previous question, it's going to be some multiples of where you are at the moment.

MR KEELY: We have no doubt about that.

PROF SNAPE: How would that be affected by a fourth free-to-air commercial channel?

MR KEELY: That's certainly a tricky question in the sense that what we are aware of is, that we do have a competitor that is a very vigorous competitor in Australian free-to-air television; it is a good service. We believe our services are significantly better. We offer the choice and diversity that an increasing number of those in the Australian community are taking up. Beyond that, short of any of my colleagues having a comment, I guess it's a question that we'd have to do detailed analysis of.

MS RICHARDS: I suppose our subscriber driver is really choice and it would depend on what that fourth commercial network was offering. If it was the same as the three commercial networks, then I would see it's not going to have the huge substantial impact that may be if it was offering the same sort of services that we, as multichannel television, are providing.

MR SIMSON: Could I ask a similar question to my previous one, but this time in the context of your share of the advertising cake. If, as you said, your audience or your household penetration audience reach - however you want to look at it - is going to increase by some multiples of where it is at the moment on a five-year time-frame, what is your anticipation in terms of the share of dollars going into - your share of advertising dollars that your sector will attract? For example, what is it at the moment in terms of - what share of advertising dollars going into television is going into pay TV?

MR MARQUARD: It's minuscule right now.

MR SIMSON: What, a couple of percentage points?

MR MARQUARD: Less than.

MR SIMSON: Less than?

MR MARQUARD: Of the overall television percentage, yes.

MR SIMSON: If we take that as a starting base and we look at what you think might be happening to your audience reach, could you give us some feel as to where you might be in a few years in terms of the advertising dollar.

PROF SNAPE: Remembering that it's less than two years since you've been able to carry any anyway, so you haven't been able to build the market yet.

MS RICHARDS: And also not all our channels carry advertising and there's a limit on the amount of that advertising.

MR SIMSON: However you need to define it.

MR MARQUARD: I can speak as an individual channel which does carry advertising, we expect that as our audience gets larger, we will have an increasing interest by advertisers in advertising on the channel, but as far as the erosion of the free-to-air side of things or as far as how that impacts on the percentage point of the overall television pie, I think the best illustration of that is the US experience, which is that the pie itself has got bigger over the last 10, 15 years and that there has not been the erosion that may have been feared by the terrestrial networks in the United States, but that the pie itself has got bigger, as advertisers have turned to pay television. They've kept their advertising spent with the terrestrial networks, but have just added to it by spending with cable and satellite.

MR SIMSON: In fact, you've largely pre-empted my next question. Has that been at the expense, in your knowledge, in the American situation of, spend that otherwise would be going into other media, such as newspapers or whatever?

MR MARQUARD: I'm not actually aware. I can't answer that, I don't know.

MR SIMSON: But your basic proposition is that the advertising spent on pay television will grow and it's your belief that it will not grow overwhelmingly at the expense of the spend on free-to-air.

MR MARQUARD: Yes.

MS RICHARDS: Television.

MR SIMSON: On free-to-air television.

MR KEELY: I guess if you look at the nature of the diversity that subscription television offers, there are a vast number of niche markets that pay television can offer to the community and to advertisers and we believe that as well as gaining broader national advertisers - as increasingly we have been doing - we will offer an opportunity for advertisers to reach the niche markets that we cover, the diversity that we provide for our subscribers.

MR SIMSON: Perhaps the analogy is national advertisers advertise in newspapers,

but they then advertise in niche magazines or they advertise in magazines to reach particular markets, and the magazine market has flourished and the spend in newspapers continues to grow also, as I understand it. Is that a fair analogy?

MR KEELY: I think it's a fair analogy.

PROF SNAPE: I wonder if we could turn to what was the subject of our previous participants for a moment and talk about code of standards and the handling of complaints. I think that they were mainly concerned with free-to-air, but I'm sure that pay TV would be within their area of interest as well. Could you talk about the formulation of the codes of standards, regarding content in particular, and how you go about ensuring that they're adhered to and how you go about handling complaints.

MR KEELY: Certainly. I might ask Debra Richards to brief you on those matters.

MS RICHARDS: As you probably know, we made a point in our submission that the codes of practice for our subscription broadcasters have just been accepted for registration by the ABA and those pay TV codes, for want of a better name, cover issues such as classification of program material, placement of programming, advertising, complaints handling, matters such as billing and fault repair, those sorts of issues that must be covered and they're set out in section 123 of the Broadcasting Services Act. So those codes for broadcasters and, indeed, the codes for narrowcasting, both radio and TV, which were developed back in September 97 and registered by the ABA - well, actually not just September, but over a period of time - they go through a public process of development in that we develop a draft to cover the issues that should be covered because they're mandatory, and we put that out for public consultation and take submissions on the content of those codes and take on board the comments that are made.

Sometimes we amend the code in light of those comments, sometimes we think there are already appropriate community safeguards or that the code already covers the matter. For our pay TV codes, we put those out for public comment for a period of time and then put a submission to the ABA in light of the submissions that we received. The ABA received all the submissions, plus our comments on the code. In light of those submissions, we made some changes in terms of matters such as vilification, etcetera, and presented that to the ABA and the ABA, of course, has to judge those codes in terms of whether there are appropriate community safeguards, whether there has been adequate opportunity for comment and, indeed, whether there has been endorsement by the majority of the sector.

PROF SNAPE: When we're talking about the implementation or ensuring adherence to this, where is the onus? Is it on Foxtel, Austar and Optus or is it with the content providers?

MR KEELY: The channels.

PROF SNAPE: The channels.

MS RICHARDS: In a sense, it's on both, but as the licensee - the buck stops with the licensee, that being the operator, but it's both the operators and the channels that actually develop the codes in terms of the things that need to be covered and the channels need also take responsibility in terms of the content that is provided.

PROF SNAPE: But in a sense, as Foxtel and Optus won't really know what's coming through the channel at any time - I mean, they'll know the program, but they won't know the content, so is that the appropriate place for the buck to be stopping?

MS RICHARDS: The first instance for when there are complaints is to the channel themselves, because they're putting together the channel, they know what's happening and how it's being put together. If there is an inadequate response - and there has not been an inadequate response - then it would go further.

PROF SNAPE: The next step is to come to the Foxtel or the Optus, or the next step is the ABA?

MS RICHARDS: The way it operates in practice, is if the complaint is about a Foxtel channel or a Foxtel issue, such as billing and fault repair, then it goes to Foxtel.

PROF SNAPE: I meant content.

MS RICHARDS: If content, then it would go to the ABA.

PROF SNAPE: Okay. What sort of mechanism is there - let's suppose that it's something that's come through Foxtel. Maybe it's playing on Austar as well, but there's some program in which there is something rude done or whatever and you get a complaint, what happens? What's the process?

MR KEELY: From the ABA?

MS RICHARDS: From the ABA or from the channel themselves?

PROF SNAPE: From the channel. How is it handled by the channel?

MR KEELY: I would say it depends on the particular nature of the complaint and whether it can be suitably addressed. Obviously, as Deb has said, to the extent it's not suitably addressed, it's something which can then be taken up by the ABA directly with the operator and then, in turn, back to back, if you like, with a particular channel. But I think it's worth noting that the system - and Deb can attest to this - is that the ABA has itself noted, when it registered our codes, that there was an extraordinarily low level of complaints about the subscription television industry, so that the system itself - you would say that the regulatory system is working.

PROF SNAPE: Well, the previous participants suggested that there were few complaints - and we're speaking about television in general and not just pay - few

complaints because it wasn't worth complaining. It might be difficult to get any satisfaction.

MR KEELY: I did hear that and I thought that was about the free-to-air networks.

MS RICHARDS: You also need to remember that we have a direct relationship with our viewer, in that they are the subscriber and if they don't like what's being offered to them, then they not only turn the channel, but they churn, so it's that direct relationship more than the free-to-air has, but certainly in terms of the ABA's view of the complaints that they've received about pay TV, the only unresolved complaints have been two, I think do-in complaints from competitors. They weren't about content, they were about other issues.

PROF SNAPE: What if I think that I've been misrepresented in a news service, not the one that's supplied by anyone in close proximity here, but by a news service that - and, for example, it was said that I was participating in a brawl, when it was not me, but someone else? Would you carry a correction the following day?

MR KEELY: I suppose really what you're suggesting there is something that has a number of ways of being addressed. Of course, there are common law and criminal law rights in relation to representation of - - -

PROF SNAPE: So I'd have to take you to the courts?

MR KEELY: I'm not suggesting that, no. I say there are a number of ways in which it can be addressed and the process is in addition to the complaints which, of course, escalate through to the Broadcasting Authority. There are a number of other means for these issues to be addressed.

MR MARQUARD: In the example I just gave you, would you put a correction on the news service the following evening.

MR KEELY: If it was valid, I don't think I would have any problem in respect of our channel if there was something on our sports news service. It would seem to be the neatest way. It would just come down to the particular thing. It's one of these - I would suggest it's quite difficult to do in an academic or hypothetical sense.

PROF SNAPE: Unless there was a blanket rule of no corrections.

MR MARQUARD: I don't think there are any blanket rules of no corrections.

MS RICHARDS: There's certainly no blanket rule of no corrections.

PROF SNAPE: Or a blanket practice of no corrections.

MR KEELY: I think the subscription broadcasters are very well aware of their duties of complying with the new codes of practice and the number of complaints that

have been received by the ABA - which is very easy to contact and provides a very good service, in our view - reflects the fact that this isn't an issue.

We're very concerned about our customer service. We're very aware that the relationship we in subscription television have to our viewers is a different relationship to that of the terrestrial free-to-air broadcasters, because our viewers are entering into a contract to pay for our service and we jealously guard the relations that we have with our subscribers. I think if you look at the scenario to date, notwithstanding concerns about complaints being difficult to be made, if there is a response that a viewer is unhappy with there is a very, very public and vigorous watchdog in the ABA that pursues these matters.

MR SIMSON: Could I just turn to the question of Australian drama, pay television, page 15 of your submission, "to enforce the current 10 per cent Australian drama expenditure condition". On the basis of the numbers that you were talking about earlier - that is, over the next few years we're going to have multiples of where we are at the moment on household penetration and audience reach - and, as Mr Marquard and others pointed out, you'd expect to be getting more advertising dollars and growing the overall pie. What's going to happen to your expenditure on Australian drama?

MR KEELY: It will significantly increase, and the situation to date, where there is effectively a voluntary Australian content requirement, has shown that the subscription TV industry in these difficult early days as the services build up, suppliers, number of subscribers, etcetera, that there has been a remarkable level of compliance with Australian content requirements, and there was recently announced by the ABA figures which showed that of programming expenditure for drama for 1997-1998 the industry as a whole achieved around about an 8 per cent figure compared to the voluntary figure of 10 per cent.

But the industry is absolutely working hand in hand with the broadcasting authority, with the production industry, and with the government to achieve the highest possible levels. It's been difficult in the early years to achieve those levels as we built up our service and built up our suppliers, but as the new system which we're discussing with the government comes into place, we're very confident that the record we've set of an 80 per cent compliance when it's a voluntary compliance is one that we will better, because we take the responsibility very seriously.

We believe that Australian viewers will require Australian elements in programming. If you look at the vast number of hours of programming that subscription TV delivers to subscribers it's going to be difficult to measure our compliance with Australian content and our contribution in the same way that is done for other broadcasters.

MR SIMSON: One is dollar based and the other is hourly based.

MR KEELY: That's right.

MR SIMSON: However, could you foresee a situation where within the next few years your business will be sufficiently vibrant to be able to commission high quality Australian drama?

MR KEELY: We already do that. I won't cite the specific examples; we can provide those to you through Debra Richards. But as the industry begins to find its feet in terms of suppliers, either in-house or through commission production, which tends to be the bulk of the Australian production industry, there are already a significant number of examples across the movie channels and the carriers where we have been integral in getting a whole series of productions up.

MR SIMSON: Sorry to interrupt, but it's been put to us clearly by some of the interests in the free-to-air area that in the foreseeable future really pay television is not going to be sufficiently viable as a business to be able to afford those programs where it may cost 2 to 3 hundred thousand dollars an hour to produce.

MR KEELY: There's an issue as to the volume and the pricing of programming. So where we have a monetary figure it's easy to see that if we were able to produce a more limited number of higher-budget hours we would be able to do that, and already there are examples of this taking place.

MR SIMSON: Sorry, just repeat that last one. I'm not saying I misunderstood you, but I just want you to repeat it for me again.

MR KEELY: It's a question of volume as opposed to - I guess the volume of programming that can be produced looking at the production values and the budget of the programming. Commonsense says if a particular channel or platform wants to produce a high quality miniseries, for instance, the cost of that will be quite high. As a consequence that will mean that other programming elements in the drama area may not be produced because a very high-cost miniseries or feature film or ongoing series is produced. So I don't quite understand the argument that is put.

Already, as I've said, there have been significant investments by the movie channels and platforms in feature films, programming, and indeed in - an announcement recently relating to the miniseries on the Fine Cotton affair, where there will be a very significant contribution by Optus Television. But that masks a greater issue which we think needs to be focused on and it is the vast number of hours of Australian content across all the platforms that are being produced at this time as the industry is in its beginning years, and I think the figure was around about 650 hours.

PROF SNAPE: 620 hours per week.

MR KEELY: 620 hours per week, which is a very, very substantial figure, given the cost of production, and it's a diversity of shows - from the John Laws show, from Beauty and the Beast, to this proposed miniseries, and feature films.

MR SIMSON: I accept that, but my question was specifically to Australian drama, because as you'd appreciate that has particular potency in the arguments of the free-to-air in terms of what they contribute and in terms of therefore the total regulatory regime and support that they provide - - -

MS RICHARDS: For the film and TV productions.

MR SIMSON: Exactly. Could I just say that in the feedback we've also had from SPAA and independent film producers they don't see you - I hope this is not exaggerating - on a medium-term time-frame as being a major player in terms of commissioning; giving them business, as it were.

MS RICHARDS: The very nature of our condition, while it's unenforceable, it's based on our total program expenditure, so it's 10 per cent of our total program expenditure on drama. Total program expenditure can only increase because a lot of that is based on subscription, and so as our penetration increases our total program expenditure on drama will increase and therefore that pool of money will increase because it's 10 per cent of that pool.

MR SIMSON: That's only if you increase the number of channels, because it's drama expenditure that's 10 per cent of your total expenditure, isn't it? It's not related to your subscription revenues.

MS RICHARDS: No, it's expenditure on drama, predominantly drama channels, but what I'm saying is the expenditure on those channels relates to subscription.

MR SIMSON: They must just increase their profits. They're not compelled to keep spending more money.

MR KEELY: The way that programming operates within the subscription television sector is that significant expenditure, a significant portion of the expenditure, is focused on drama channels. So Australian films and series, foreign films and series, are expensive. Many of the programming deals are focused on amounts per subscriber, so as a number of subscribers are added to the platform the programming expenditure increases, and this is detailed very thoroughly in the ABA's analysis of the Australian content issues.

MS RICHARDS: And the contribution we would make.

MR KEELY: So the ABA I think in its findings - and I hope I'm not misquoting them - reflected that there would be a very significant increase, and this was based on our briefings relating to how the industry operates here in Australia and, we believe, in most parts of the world. So that when we buy premium product those who provide it to us will in most cases in the drama area require that we pay per subscriber. So there is an absolute - - -

PROF SNAPE: Escalation is what - - -

MS RICHARDS: Yes.

MR KEELY: There is an absolute escalator as the number of subscribers go up.

MR SIMSON: So what do you say when you're just having discussions with SPAA and some of these other independent producers in terms of the extent to which you'll be contributing to their livelihood in the next few years?

MS RICHARDS: We've made that point already in terms of our contribution will only increase as our subscriber numbers increase and have encouraged them to be subscribers as well so that they can contribute in that way.

MR KEELY: I think this actually focuses on one of the very critical issues that we raised earlier in our submission, which is to the extent that the subscription television industry has the very heavy regulatory burdens that it currently has - and I'm focusing on particularly the sports anti-siphoning list. It is very difficult for us to assist the production industry while we are so hampered by regulatory burden. That means that we, for instance, are very restricted in the amount of Australian live sport and other international live sport that we're able to broadcast on our networks, which means that while we are hampered by government policy from providing our subscribers with what they clearly want we will always have to put in extra work to achieve those additional subscriber numbers, and this is something where I think Jon Marquard might like just to give you a little bit more detail.

MR MARQUARD: Sure. Yes, it is a very difficult proposition for us because, as we said in our submission, the anti-siphoning list is so broad and encompasses so many different types of events that we are placed in an inferior bargaining position. There's a current example which I can give you this week which indicates to us the lunacy of the anti-siphoning provisions: every single tennis match at the French Open is protected by the anti-siphoning list. Now, as it happens there is a free-to-air network which has acquired the rights, and that's the Nine Network. The pay rights have also subsequently been acquired by us, but the free-to-air network, Channel 9, has not programmed in any of the first week's matches at all. There's nothing - from the start of the first week, which was Monday, through till Sunday this week - in the program guides of the French Open which is being broadcast. Now, I'm not sure what they're planning on broadcasting in week 2 but we await it with eager anticipation.

PROF SNAPE: But you are broadcasting it of course.

MR MARQUARD: We are broadcasting it, but the point about it is that the whole concept of the anti-siphoning list and the whole regulatory regime is that it was set up to ensure that there was no migration away from free-to-air television on the fundamental premise that this material was appearing on free-to-air television.

MR SIMSON: It didn't have to appear.

MR MARQUARD: The point is it was set up because there was this fear that there was going to be a migration from terrestrial free-to-air television to pay television, and the point is if it's not appearing on free-to-air television how can there actually be a migration?

MR SIMSON: I think in this particular week Nine may have a problem in that there's also the World Cup Cricket on and they're not multichannelling yet.

MS RICHARDS: And every match of the World Cup Cricket is on that list as well.

MR MARQUARD: But every match in the World Cup Cricket is on.

MR SIMSON: But I think the free-to-air would probably argue that the example you've just given actually shows it's working in that the fact is you've been able to show Patrick Rafter last night.

PROF SNAPE: They haven't stopped you showing it.

MR SIMSON: You can still show it.

MR KEELY: The point I suppose needs to be made that they can do that, and in a large number of instances that is the case. The list is as long as anyone's arm, and those sports - - -

MR MARQUARD: But you have a layer of regulation here which doesn't fit, because you're setting up a regime in which they have not only at first an advantage, but an advantage in relation to the way in which we can acquire the rights and thereafter entrenching them because we are not at any time able to acquire those rights unless they themselves have them. So because you've got 31 different sporting events you've got - this is what we come up against every single time there is an event.

MR SIMSON: I appreciate that, but in this case again they would argue - as they have argued to us - that so long as they pass it on to you and don't hoard, and there may be instances of that, but apparently they haven't hoarded this week anyway in the case of the tennis - and I think you're also showing some cricket matches, are you not, that they don't wish to show?

MR MARQUARD: We certainly are. We are showing those matches, but that does not detract from the underlying thing, which is that this is a regulatory burden imposed on us, and it entrenches them until 31 December 2004, which is a long time away, and there have been a number of regulatory changes and other things since then. It does make our job a lot harder and the number of times we have had to approach the minister to have events delisted in the last year is - and done that quite often, as has our main competitor in the sports environment.

The point about that though is that we say that the list should not be maintained, if you're looking at it from any sort of competitive analysis. It impedes the free competitive nature. At the end of the day without having the list you can still ensure that there is free-to-air television coverage. The best people to do that are the custodians of the sports. Sporting organisations will ensure that sporting coverage is made available on free-to-air.

MR SIMSON: You know their argument, the free-to-air's argument is that would fracture the sponsorship or the advertising dollar, whatever it is in that particular case, and they would then say it was inevitable that the major sports would migrate to you.

MR MARQUARD: We do know that argument, but again it just doesn't back up. We don't see the free-to-air's backing away from premiums for its programming. The NRL grand final was live on pay television last year as well as being on free-to-air television, so was the recent FA Cup Final. There has been a lot of World Cup Rugby which is going to be simultaneously live. The Australia-Scotland match was not so long ago. It just does not stack up, and in any event, I thought that the anti-cycling list was not there to protect the free-to-air's advertising revenue. It was there to ensure that there was consumer benefit in that events would be available on free-to-air television.

MS RICHARDS: Certainly the events that Mr McAlpine talked about like the Melbourne Cup and the AFL grand final, then naturally you would see those as national events of national importance and cultural significance. I might also add that not all sports on that list want to be on that list. The Netball Association have fought hard not to be on that list but they are because they're the only women's sport. They want the ability to be able to negotiate and get a better deal for their sport.

PROF SNAPE: I notice the arguments you have and at the end you come to dual split rights in your submission. Is what you're saying there in fact simply a non-exclusive deal that in fact - is what you're arguing that neither free-to-air nor pay television should be able to have an exclusive arrangement for any sport?

MR MARQUARD: That is certainly one alternative. That is the way that the United Kingdom now operates in respect of a number of key sports.

PROF SNAPE: Why does one need a list? Why couldn't one just see say any sport from tiddlywinks through the AFL grand final? Could that not be acquired on an exclusive basis?

MR MARQUARD: As you know, we have proposed that as an alternative means of regulation. As long as that was consistent across the board, we don't necessarily think that is an unworkable proposition because we would then go out and acquire those events which we actually wanted to broadcast, as with the free-to-air's be able to acquire for free-to-air television. As I say, that is something which we have certainly canvassed in the past and have done so here, in our submission, as well.

PROF SNAPE: I wasn't quite sure the way it was written.

MR MARQUARD: There are two alternatives to that. One is to say yes. All we did note about that though was it would require as a corollary of us not acquiring the free-to-air rights but the free-to-air networks could not acquire any subscription television rights, and we were suggesting that that wasn't, if you like, an added regulatory layer which would need to be added to the act.

PROF SNAPE: It would simply mean that neither free-to-air nor pay television, nor presumably the Internet would be able to acquire exclusive rights.

MR MARQUARD: That would be the nub of it, yes.

PROF SNAPE: And a very simple expression.

MR KEELY: Which we believe would allow the market to operate subject to that principle which we do not disagree with, that there ought to remain available for the community significant sports on free television, and our submission is that we ought to be able to gain the right to acquire sports, notwithstanding that, for subscription television.

MR MARQUARD: Absolutely.

MR KEELY: Which we would imagine would result in more dollars going back into the coffers of Australian sports to allow the development of sports throughout Australia.

MR SIMSON: Datacasting. In the case of the major operators, Foxtel, Optus and Austar or the operators, what activity is there proposed in this area?

MR KEELY: I don't think I can really - through ASTRA that we can focus on the commercial plans of the operators.

MR SIMSON: Is that because really there is no obstacle to you because you're not using Spectrum. You're using either a cable or a satellite and so it really is a matter for the individual operators if they wish to, for want of a better term, bundle some datacasting services with their existing service. Is that the position?

MR KEELY: I guess there are a number of aspects to this, and the point you make is well made, but in fact the point we make principally as an industry is the monopoly that has been given to our competitors in respect of datacasting. The major point that we wish to make relates to how the prohibitions that the federal government has put in place which deliver a monopoly to other competitors in the broadcasting industry, and I might ask Debra Richards to focus on that.

MS RICHARDS: I haven't really got much more to add unless you have a specific

question.

MR SIMSON: No, and I think I've clarified the point with regard to datacasting, which was my specific question. Thank you.

MS RICHARDS: I think Austar spoke in their submission about some other plans it may have.

PROF SNAPE: I assume that an early lifting of the requirement that free-to-air television be in analog as well as in digital, through the way I'm not sure if you've been at other sessions where we've been exploring this that by some set-top boxes or cards which enabled the existing sets to be able to receive a digital signal on free-to-air, albeit onto an analog set, so that therefore the requirement to continually broadcasting in analog would no longer be there because all the sets would be able to receive the signal broadcast digitally on the analog sets. If one was to find a way that that could occur and occur generally throughout the community so no longer would it be required that the analog simultaneous broadcasting was necessary, that would then free up a great deal of analog spectrum. That would enable a whole lot of new spectrum to be available for a variety of other services. That would in fact mean more competition for pay television. So therefore you wouldn't perhaps be too keen on an early solution to that. It would suit you, in other words, to have that spectrum tied up for as long as possible broadcasting analog so that other competitors would not be - which would be competitors for you, in some dimensions, would not be able to use the spectrum. Is that true?

MR KEELY: I don't think the subscription industry is in any way afraid of competition. What we have focused on is that there is a vast amount of competition which is essentially for the community's leisure hours or part of them, and while I can't answer in detail the issue that you've raised, our broad view is we are a very competitive industry. We very firmly believe in competition because that is the basis of our success. Our competitors are many for those leisure hours of the community. There's radio, books and magazines, Internet, free television, sport, and there's any number of those. We believe that the reason that we will achieve the level of success that we hope we will is because we're offering choice and diversity to Australian subscribers for the first time.

MS RICHARDS: The issues we have in terms of what you're sort of talking about, I know it's been proposed that you would have these simple sort of standard set-top box that would enable all these services to be available to consumers, but we have found in the process of implementation that we have to have a very loud voice within forums where there are technical standards being set for transmission and for receivers and for service information tables and all those sorts of issues, and what we've been saying is we're actually in the field with set-top boxes. We have a particular technical standard. It's DVB, and we would like the terrestrial broadcasters to take that into account, the fact that we already have set-top units out there and that we are DVB compliant.

We've found in those technical standards forums that we have to shout very loudly about them taking into account that this is not just about terrestrial television, but this goes right across the broadcasting spectrum.

PROF SNAPE: So I think maybe having heard the discussion or heard some of the discussion I know that has been going on this week around this subject, around set-top boxes, and perhaps having read the transcripts when it comes out around this subject, if you had further thoughts about set-top boxes, because obviously you're the ones with them at the moment, albeit non-interoperable - compliant, of course, non-interoperable, I meant. It may be helpful if you could give us some more submissions relating to this.

MR KEELY: Certainly.

MR SIMSON: In terms of access issues for prospective new datacasters who are not free-to-airers. I'm talking about perhaps the newspaper companies or other businesses, some of the Internet service providers who may wish to be datacasters, correct me if I'm wrong but do they not need to facilitate, in the case of people who are subscribers to pay television, access to the set-top box with you in order for their service to be available or to be able to be seen by their viewers in a situation where the cable comes into the home because of the retransmission arrangement? I appreciate there's some controversy under that, but under the retransmission arrangement as it exists, I can watch my commercial stations on it on the same TV as Foxtel or Optus, whoever I subscribe to. I also want to then get datacasting services from OzEmail or Joe Bloggs, but I don't want to put another set-top box in. What's the industry's position in terms of helping to facilitate and streamlining access for prospective new entrants to those set-top boxes that are already in place in 970,000 homes?

MR MARQUARD: I might ask Debra to examine that. I don't think we can comment on that. I don't think the industry, as an industry, has a view because I would have thought that it's individual, at this stage - - -

PROF SNAPE: It might be something that you might like to think about and formulate a view, because it seems to us that the set-top boxes, in these early days of our thinking, are tremendously important, and the interoperability of them or not is very important. We've started this whole system up with two boxes which are not interoperable. So if I want to switch to Optus from Foxtel or the other way around, in fact I have to have a new cable come in. I have to have a new box put in. It's not as if one box came in and it would simply be a new chip or a new adjustment or something like that in it. It's a completely new thing.

Obviously we don't want a system that has got 25 boxes hanging on the wall, because there isn't interoperability, and yet any one supplier might want that because that shuts out its competitors and makes turning or switching very difficult. It may be that there are those who are trying to press for such systems because it might protect either an existing position or protect a foreshadowed position. Now, we would like you, if you could, to give this some consideration, and if there is an industry position

on this - because it would seem that at least in one part of our inquiry this is at the heart of contestability and competition.

MS RICHARDS: Certainly within the digital debate ASTRA has highlighted the issue of interoperability, so we would be happy to take that on board and give you some response. Also I think the ACCC is looking at access issues as well; they are in the middle of an inquiry there.

MR SIMSON: The access issue has been put to us in some other submissions - six at least. There are points: in the context of cable households or households that have a satellite service, one is getting in on the cable and the other then is getting through the box and, as Prof Snape has pointed out, the cables are basically proprietary systems, but the set-top boxes are proprietary systems. But that's the issue - interoperability - wanting to switch from say Optus to Foxtel or whatever. But the issue I was coming at, in addition to that, is the issue of the prospective new datacasters who want to have access also.

MS RICHARDS: So it's more the interoperability of functions?

MR SIMSON: It's the interoperability of access. It's access between existing pay television operators, but it's also interoperability in providing access through your members' cables and their boxes to the new datacasters. It's for people who want to access those new datacasters on your set-top boxes and through your cables without having to make alternative arrangements.

MS RICHARDS: Certainly, yes, they are our boxes. I mean, that's a condition on our licence that we have to offer them for lease and all those sorts of things.

MR SIMSON: As Prof Snape said, if you wouldn't mind addressing that issue specifically in the case of the new datacasters, we would appreciate that.

MS RICHARDS: Certainly.

MR KEELY: We will certainly examine that.

PROF SNAPE: Just to briefly return to one of your favourite subjects - and that's anti-siphoning - it's been put to us, as you know, by the free-to-air that if the same sporting event is being shown on pay TV with few advertisements or no advertisements and on free-to-air with lots and lots of advertisements, that everyone will switch over to the pay TV. Is that your perception of the world?

MS RICHARDS: If they subscribe.

PROF SNAPE: At least if they're subscribers.

MR KEELY: The short answer to that is probably yes. It probably says a lot about how much advertising there is on free-to-air television, however.

PROF SNAPE: You had a fair bit last night on your cricket, I must say, even though it was Zimbabwe!

MR KEELY: Therein lies the rub. Taking that to the extension that I know the free-to-air have - and that is, if you're going to have it on both channels simultaneously it will fall away from free-to-air television - I just don't believe that's the case. Overseas experience clearly demonstrates that's not the case. In our submission we do highlight the fact that in the United States they don't have any concept of anti-siphoning. The last time the FCC looked at it they found absolutely no evidence of a migration from terrestrial television to pay television. In fact they found the converse in the case of ice hockey in the United States, which is a very big sport there, it had been something which now has a lot more terrestrial free-to-air coverage, partly because it had built up by pay television.

Sports organisations, in our view, will be the best measures of ensuring that things are available on terrestrial television. It doesn't migrate of its own accord, terrestrial television will continue to play an important part, but the point is we should not have a scheme which operates in the way it does right now, irrespective of the number of ads that are on free and pay at the time. We certainly do have a philosophy of trying to have less ads, and I take it on board now that we've got somebody who says we've got too many.

MR MARQUARD: It is worth noting that if you look at the nation that has a very, very advanced cable and satellite subscription television industry, that the terrestrial networks continue to grow in number, and they continue to be profitable and vigorous after all the years of cable in the United States, which is around about 35 years. I think that any comments that other commentators might care to make about the detraction from free-to-air by cable and satellite need to be seen in that context.

MR SIMSON: The retransmission issue, please. We threw this question to FACTS a couple of days ago. I've got to say in my mind I can't understand why there should be a debate about this, but the free-to-air indicated to us that with regard to the retransmission issue, that is being discussed actively, and I don't think it's unfair to say that they indicated it would be resolved. Is that your understanding on it as well? Because it is an issue that you've raised specifically in your submission, and clearly we'd be interested if people were not able to access the free-to-air channels off the same device.

MS RICHARDS: Yes, I think that's a major concern for government as well, because just informing subscribers about the likelihood that that would happen, that their screens might go blank - there was a sort of overwhelming e-mail concern and campaign about making sure that we still get to see those retransmitted signals. Currently we can retransmit under the current law. The government has proposed legislation which was introduced in the Senate, and I think still needs to be reintroduced following the election last year, which brings in a consent regime. The idea of that consent regime is that we can't retransmit unless we get the consent of the

free-to-air broadcasters.

Some of those broadcasters I understand are in negotiation with some of the pay TV, some are not. Our concern, if this legislation is introduced, is that it be fair to us, and to bring in that fairness we're advocating that there should be some sort of arbitration mechanism so if we do get to a point where there may be blank screens, it could go to an arbitrator. We'd certainly ask for a transition period, too, which is currently not within the proposed legislation.

MR SIMSON: The free-to-airers argue that it's their signal, it's their content, and it should not be an automatic right that anybody can just go and stick it on a bunch of other channels and piggyback it for the convenience of their viewers.

MR KEELY: The contrary argument is that what we are offering the many people in the community who receive poor or non-existent free-to-air terrestrial television is that we can offer them a clear signal in accordance with a practice that has emerged around the world and has provided service to so many people. Because the economics of the free-to-air industry are based significantly on advertising revenue, one would have argued that we're assisting the free-to-air operators by virtue of getting advertisements - - -

MR SIMSON: That might be so, but at the end of the day they point out that it's their content, it's their signal, and so there should be a regimen around the principle of consent. Just for the record, do you argue with that? Are you in agreement with the principle or the philosophy of consent with regard to retransmission?

MS RICHARDS: No. Their argument has won the day in terms of the government deciding to introduce a consent regime. Our argument has always been that this is a consumer benefit, and we're just another form of delivery of that signal.

MR MARQUARD: Yes, and the current law has provided for that.

MS RICHARDS: That we can do that.

MR MARQUARD: It says that you're entitled to do that under the copyright law.

MR KEELY: We are arguing for a fair system that says in the event that the parties are unable to agree over this issue - which we believe is a community interest issue - that an arbitrator is appointed by the federal government through legislation and is able to come in and protect that public interest.

MS RICHARDS: Because we can't do it unless we get their consent. That is the proposed regime.

PROF SNAPE: Could I refer to something that is in the Fairfax submission. I'm not quite sure whether this is appropriate put to you in your joint capacities, or whether it should be put to you separately when you're speaking from your own company

perspectives. No doubt you'll tell me the latter, but let me try it. I would like to talk about access questions and the declaration of access to cable. Shall I continue?

MR KEELY: I think the perspective of the industry association is that that is an issue which is for the individual companies.

PROF SNAPE: Okay, so if I was to be talking - - -

MR KEELY: Am I right there?

PROF SNAPE: - - - about carve-out rights, then you would say, "Put it to Foxtel", would you?

MR KEELY: I wouldn't nominate any particular company, but - - -

MS RICHARDS: We're happy to take on board the question.

PROF SNAPE: Okay. Well, let me continue with the question. I'm quoting from the second part of the Fairfax submission, page 7:

The new access regime carved out rights called protected contractual rights which predated the announcement of the regime in September 1996. In other words, new grants of access cannot overturn any person's pre-existing rights. As disclosed in Telstra's prospectus, Foxtel enjoys rights of exclusivity on the Telstra cable for its home video entertainment services -

and then there's something in brackets as well, but I'll leave that out.

Foxtel also has protected contractual rights relating to unbundling. If Telstra provides a broadcasting access service to others, it must include certain unbundled functionality (there are no protected contractual rights known to apply to Optus's cable).

In other words, even if one is to be declaring the Foxtel cable and declaring access to it, there are certain protected things with respect to that. Can you elaborate on that?

MS RICHARDS: I'm afraid I couldn't, no.

MR KEELY: I can't either, no.

PROF SNAPE: Okay. I was going to ask for details as to those exclusive rights and the contracts which preceded that time, but obviously I'm in the wrong forum.

MR KEELY: Yes. As I said earlier, I believe that's an issue to be focused on by individual companies, and I don't mention any of them in particular, but I think it's not an issue that ASTRA, as an industry association, has dealt with. I may say that in the

brief period that we have been formed, we have dealt with a vast plethora of issues that the community and the federal government have put to us, and that is not one of them.

PROF SNAPE: Okay. Well, it's good to introduce something that's new.

MS RICHARDS: Thank you so much!

MR SIMSON: I'm done.

PROF SNAPE: I think I'm done, too. You'll be pleased to hear that. Thank you very, very much for your helpful submission and also the discussion of it. We're very grateful for that and for the details you've given us.

I now turn to those assembled with my usual invitation, which is to invite any persons present to make oral presentations, should they wish to do so. No, I'm still not getting any takers - except Ms Richards.

MS RICHARDS: Should we formally table this? There are a couple of changes. I forgot to include two of my members in one of our appendices, and to just indicate that we have now been informed by the ABA that our final narrowcast code has been approved.

PROF SNAPE: I think the best way to do that is to make it a supplementary submission, because your submission is already of course in the public domain as it is. So make it a supplementary submission, and it will get listed and so on. The staff will look after that.

MR KEELY: Thank you very much. We certainly appreciate the opportunity to make this submission.

PROF SNAPE: Thank you very much. It's been very helpful for us. I will now adjourn the proceedings for today, and we shall be resuming at 9 o'clock in the morning, and first cab off the rank is 3V/Merlin Integrated Media. Thank you.

AT 4.58 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 27 MAY 1999

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