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## **TRANSCRIPT OF PROCEEDINGS**

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### **PRODUCTIVITY COMMISSION**

### **INQUIRY INTO RADIOCOMMUNICATIONS**

**DR D. ROBERTSON, Presiding Commissioner**  
**DR N. BYRON, Commissioner**

### **TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON WEDNESDAY, 24 OCTOBER 2001, AT 10.30 AM**

**Continued from 23/10/01**

**DR ROBERTSON:** Good morning. I'm pleased to reopen this hearing for the Productivity Commission on the inquiry into the management and radiocommunications spectrum and the management by the ACA. As you know, my name is David Robertson and I'm the presiding commissioner, and my colleague Neil Byron is here too. I won't go through the spiel that we're supposed to go through because there's such a small audience. Most people were here yesterday apart from yourselves. So what I will do is hand it over to you. If you wouldn't mind, would you just say who you are as you begin to speak so that it gets picked up on the recorder; so we're all ears.

**MR KENNEDY:** My name is Sean Kennedy. I'm the manager of regulatory policy and with me is Peter Stiffe who is group manager for regulatory in Vodafone Pacific, and Ian Wilson who is a senior policy analyst for Vodafone Australia. If you would like, we'd just like to make a few comments before launching into the detailed questions.

**DR ROBERTSON:** Sure.

**MR KENNEDY:** Vodafone Australia welcomes the opportunity to discuss our submission to the commission. We broadly support the overall legislative framework of the radiocommunications acts and the allocation in management of spectrum by the ACA. This includes the licensing system with allocation of the type of licence to be based upon the spectrum use and the promotion of market based allocation mechanisms for spectrum licences. However, there are a number of reforms that can be made to the current regime that will improve outcome for industry and society.

Firstly, there is a need for reform of the roles and responsibilities of the ACA, the responsible minister and the ACCC. Changes should be made to the current arrangement to correctly align functions with the party that is best able to meet the objectives of the acts. In particular, the minister's role should be focused on establishing and directing the broad regulatory framework with regard to social and economic outcomes. The role the ACA should be focused on are key technical and operational tasks of spectrum management and the ACA should have chief responsibility for decisions about whether competition rules are required when spectrum is allocated.

There is also a lack of consistency between the objectives of the act and the management of spectrum in practice. Regulators should have regard to the principles of efficiency, certainty, consistency and transparency at each step of the allocation and management process. Industry-specific regulations regarding spectrum allocation and management should be removed and replaced with generic provisions that should apply to all spectrum users. This would promote a consistent approach to the management of spectrum for all users and minimise market distortions in an environment of increasing technological convergence. Vodafone Australia recognises that such a move towards generic regulation requires a transition period whereby current arrangements can run their course. However, the government should begin this transition process to a generic regulatory environment as soon as

possible.

Reform to the radiocommunications acts and the role of the regulators should promote efficiency of allocation and management of spectrum, certainty and consistency of regulation for all spectrum users and transparency of process and decision-making. Such reforms will maximise the public benefit derived from the use of radiofrequency spectrum. So we're now keen to elaborate on any details of the submission that you may have and thanks for the opportunity to present.

**DR ROBERTSON:** Thank you. Of course we've had your submission so we've been able to read it and we wish everybody was as efficient in getting it in as you've been. Now, there are one or two things I think we should take up. It's clear that you and some of your other competitors are very concerned about the minister's role increasing that apparatus charge last year. Now, am I right in thinking that that in fact was a five-year licence that was - - -

**MR STIFFE:** Yes, it's an apparatus licence so it was set up under the old regime and I suspect if that spectrum was allocated today, the first time, it would be done under a spectrum licence.

**DR ROBERTSON:** Yes. But in fact had there been any increase in price before that? I think that was the second one. Is that right? There had been one - - -

**MR STIFFE:** There was an allocation of some additional spectrum a couple of years ago and there was a lump sum paid for that. Also we're subject to price increases to reflect CPI movements and in our view that was appropriate and expected.

**MR KENNEDY:** It was actually part of the original allocation.

**MR STIFFE:** But we certainly didn't expect increases of the nature that were required this year and in fact we're still not aware of the form of reasoning behind the increase, so it was neither transparent nor consistent, and certainly not consistent with our expectations when we originally bid for and won a licence to operate a mobile network back in the early 90s.

**DR ROBERTSON:** I think there's a tendency to concentrate on that one incident. I understand why, but it is just one so far and we hope with certain changes that are already being mooted that that wouldn't happen again, frankly.

**MR STIFFE:** The concern for us is that the rules as they still apply would allow it to happen again. We have no certainty at all that a similar increase won't be applied next year if there is a budget shortfall, or some other reason for the government to want to earn or gain some more funding. One of the figures that Vodafone has made public recently is that of the approximately \$2.7 billion that Vodafone has invested in Australia, it is yet to actually take any money out of Australia. So all of that has gone into the network as our investors haven't been paid back and nearly 25 per cent of that money has gone to the government and telecommunications-specific

regulatory fees of some sort or another including spectrum licensing fees. We don't think that's a good outcome for either our shareholders or Australian society.

**DR ROBERTSON:** Do you have any other ideas about how maybe the system could be improved - I mean, apart from muzzling the minister, which is something that's very difficult for anyone to do. Could you think of changes to the system that would make it more market oriented perhaps?

**MR STIFFE:** There are already mechanisms available through spectrum licensing and to have market based allocation of spectrum, so I think some of those mechanisms are there. But in our view, in terms of things like fee setting and so on, it shouldn't really be a ministerial decision, it should be something that - the framework ought to be put there for the ACA to be able to set fees within a reasonably constrained framework and predictable framework.

**MR KENNEDY:** One of the things we emphasise in our submission is that the way you allocate spectrum should be tied very closely to how it's going to be used in practice. Now, again as Peter said, if this 900 spectrum was allocated again now, it probably would have been bid to an auction process where you would have an up-front payment and a 15 or 20-year licence, which is a much more effective way of allocating this sort of white area type of spectrum where you want the flexibility to be able to use it in different ways over time.

**MR STIFFE:** Having said that, we're not advocating that that particular spectrum ought to be auctioned out.

**DR ROBERTSON:** No, I didn't think you were.

**MR STIFFE:** - - - as it has already been allocated.

**DR BYRON:** Just changing the subject very slightly, we've had discussion with a number of parties about the pros and cons of time-limited tenure, you know, one-year, five-year licences, 15-year spectrum licences, as opposed to - well, not necessarily perpetual but indefinite term, forms of tenure or access right, which are not time limited. I was wondering if I could get some comments from you on what you see as the pros and cons. From the submission it seems to me that you are quite happy with the time-limited forms of licensing. One of the corollary points that sort of part beg the question is whether or not a longer or indefinite tenure would be more conducive to having an active secondary market in spectrum. But given that the submission seems to be quite happy with the existing time-limited forms of licensing, could you just sort of spell out why you don't think it's necessary to have indefinite or perpetual licensing?

**MR KENNEDY:** I think there's a couple of points there you're making. I think our overall view about time-limited spectrum is it allows some sort of review process. We don't know how the market is going to develop or our technology is going to develop into the future. One of the potential pitfalls of an indefinite licence is it may well provide a stickiness in terms of if you need to free up that spectrum in future to

clear a band for a new technology, and at least with the time-limited licence reflecting how the spectrum is actually going to be used and practised, therefore you may well have quite a long time-limited 20-year licence. But at the end of that process, have a public benefit test, which we recommend, which may well come up with the view that that licence should simply be rolled over to the existing incumbent, without a need to re-auction it or reallocate it.

At least some sort of review process will allow some sort of checking of whether that spectrum is still fulfilling the purposes or the objectives of the act. In terms of secondary training though, we still think secondary training is a key feature or a key function of the current regime and support it. Just because a lot of secondary training hasn't actually occurred doesn't mean that it's not effective and it won't be effective in the future.

**DR BYRON:** I guess what I was thinking, that in other forms of property or assets where the crown sort of alienates indefinitely or - like freehold, it doesn't become a major impediment to somebody else coming in and deciding that a major use purposes change should occur and if the incumbent is sitting on a valuable asset and not earning very much, then they're very likely to be displaced by somebody who comes in with a new and better application for that asset, so that thinking outside of, you know, the radio or telecom area in terms of land and water resources and so on, there are all sorts of examples where there are rights for the compulsory resumption for government priority purposes, or where the marketplace simply buys out those who are using the resource least efficiently and comes in with a more efficient application.

**MR STIFFE:** I guess a couple of points: one is the initial term of the licence if it is set, so if it's 15 years we think that's the minimum period required for something like that. For example, in New Zealand they have 20 and management rights, which we think may be more useful. But having a fixed initial period means that investors can invest with some certainty that they will have the use of the spectrum for that period. I think one of the risks perhaps, if you went to an indefinite licence with the possibility of resumption, is that you'd need to be very clear in terms of what circumstances might lead to a resumption of the licence, because that could otherwise lead to further uncertainty.

**DR BYRON:** At the moment, as I understand it, with the spectrum licences, at the end of year 15 we just start again with a blank sheet of paper. So there's an interesting question of whether there is a right of renewal, an automatic right of renewal, or what you're just talking about, a review process prior to the end of the licence, a right to match the best alternative offer and so on. It seems to me that there's a great deal of uncertainty as to what happens at the end of year 15 at the moment.

**MR STIFFE:** Indeed, and that's I guess what we're proposing to try and rectify through having a public benefit test. We recognise that there is uncertainty and there needs to be a mechanism to determine what will happen at the end of the licence period. Our suggestion would be that the incumbent user of the spectrum - there

would be a public benefit test to determine whether that is the best use of the spectrum. There may be some significant technology or market changes that - for example, back in the old days with analog networks, they would need an awful lot more spectrum than digital networks do.

So arguably it might be more efficient for some of that spectrum to be given up or made available for repurchase in a competitive sense, so that there are a whole lot of issues I think that need to be tested and what we would propose is that there would be a form of public benefit test. If that test resulted in the existing use being the best use, then the existing user would continue to be able to use the spectrum. If it concluded that there may be a better use put to the spectrum, then you would again allocate that spectrum through a market based process. But the incumbent user would still be able to bid for that spectrum through whatever process was being put forward. So they wouldn't necessarily lose it but there would be an opportunity for Australia as a society to determine whether the best use of that asset was sitting with the same conditions that used to apply to it 15 or 20 years ago.

**DR ROBERTSON:** Can you elaborate on your public benefit test a bit?

**MR STIFFE:** I think the test would - and it's a very broad term, but it would include some elements in terms of evaluating what international standards now apply to that spectrum. There are cases where the use category for spectrum changes over time so you'd include that. You would include a test to see whether, given the market conditions of the time, if someone had 30 or 40 megahertz of spectrum to operate a network where only 10 was needed and that was actually preventing further market entry, then it may be in the best interests of Australia to reduce the amount of spectrum that was automatically available to the incumbent user.

This is a difficult and complex set of issues and from Vodafone's perspective, it's one where globally nobody has the answer yet. But we don't think the answer to it is simply granting a perpetual licence with the government retaining right of resumption. We think there needs to be some better defined understanding with the incumbent user having some presumption of continued use, if it is still in the public interest for it to do so.

**DR BYRON:** I guess I was leading to paragraph 8.4 on page 12 of your submission. There's a statement that says:

The licence holder may be able to artificially increase the price of the spectrum in secondary trading by controlling the supply and timing of release.

It would seem to me that that sort of market manipulation could only occur if it was a very, very thin market and that therefore leads me to ask how do we have a more active, thriving, liquid secondary market for spectrum, and that's one of the reasons why I was asking the question, if it was a longer-termed or indeterminate-length licence, would that encourage a more active, more liquid market so that that sort of manipulation couldn't occur?

**MR STIFFE:** I guess our experience to date is limited in secondary market trading with spectrum, but we wouldn't expect that the current term of the licences is limiting secondary market trading. I guess also provided you have a clear mechanism for what you do at the end of a term - and that mechanism would apply to any subsequent purchaser of spectrum, as if they were the initial purchaser - then they should provide certainty in terms of a secondary market. Having a perpetual licence with some sort of right of resumption doesn't really provide the secondary market with any more certainty.

**DR BYRON:** I was just thinking it seems to work for things like real estate and the stock market.

**MR KENNEDY:** But there's no right of resumption there.

**DR BYRON:** In the stock market?

**MR STIFFE:** There are different rights of resumption, I suppose.

**DR BYRON:** If it's not the duration of the licence which is an inhibiting factor on the secondary market, can you spell out a bit more on what you see is the inhibitions to a more active secondary market at the moment. Is it simply because all the major spectrum-holders have bought the quantities that they need for their purposes and therefore they're neither buyers nor sellers?

**MR STIFFE:** We can't really speak on behalf of other players, but Vodafone's position is that there's exactly that. We've bought sufficient spectrum to meet our anticipated needs, and aside from some capital gains tax issues about rejigging about 1800 licences, we are not in the business of buying and selling spectrum.

**MR KENNEDY:** One of the benefits of living in Australia compared to living in Europe is that you have the same amount of spectrum here as you have over there, but there's less people to service. Both here and in New Zealand, there's heaps of spectrum to go around. That may well change over time as new entrants come into the market or there's new ways to use that spectrum. So the ability to trade certainly will allow potentially - and the way I think about it is if there is a new player coming into the market but has not yet prepared their business plan or has not yet got off the ground when an auction comes up, if there's the ability to trade after that auction, then they may well efficiently delay their entry and wait and pick up spectrum some years down the track, whereas if it's just a winner-takes-all type auction process, it may create some sub-optimal outcomes, either preventing entry or allowing some entrants to build up spectrum and actually not be able to offload it efficiently over time.

**DR ROBERTSON:** Effectively what you're saying is that the market isn't there for secondary trading at the moment. Is that right?

**MR KENNEDY:** There's certainly not the demand at the moment, but as Peter

talked about, there is a tax issue as well.

**DR ROBERTSON:** Yes. Can we come back to that because I think those are important, that's to say, stamp duties and capital gains tax.

**MR STIFFE:** I think secondary trading is also to an extent a function of time. It hasn't been available for many years and it may well be that we see more of it over the not-too-distant future and I think examples of One.Tel perhaps - if their administrators were not able to sell that spectrum, then that would diminish the value of that asset. So I think there are examples where being able to trade spectrum is very, very valuable, even if you don't see many examples of it today.

**DR ROBERTSON:** You think it's there in the background and influencing behaviour anyway.

**MR STIFFE:** I think it perhaps is and that over time - because often when spectrum is purchased, from Vodafone's point of view, a purchase of spectrum is a long-term decision. So we wouldn't expect to buy spectrum on a speculative basis. We would expect to buy it based on our anticipated needs for the future. Over time they may change but it's not going to happen within six months or a year.

**MR KENNEDY:** There's a useful example of spectrum secondary trading in New Zealand quite recently, where Telstra decided that - and they'd bought spectrum in an auction in the early 90s and decided after a review of their business that they weren't going to build the network, and sold spectrum to Bell South who are now Vodafone at the end of 97. So there's an example of actually why you want secondary trading. If a business decides that they no longer want to be in that space, it allows them an out.

**MR STIFFE:** Yes. You may also want to talk, I guess, to AAPT who originally bought spectrum and then decided consequently not to build a network. I don't know what their plans are for the spectrum that they purchased, but I suspect they would at least appreciate the ability to be able to recycle if they choose to.

**DR ROBERTSON:** That's an interesting way of looking at the secondary market, plus a number of people have suggested that the reason it's not working is because capital gains tax and stamp duties are getting in the way, and that was your point I think, Peter.

**MR KENNEDY:** I think it's an element.

**MR STIFFE:** That's a specific problem relating to a specific set of circumstances. I think if someone just goes and owns some spectrum and then sells it to a third party, then it should be like any other asset. But in this particular case I think we're swapping like goods that we've perhaps efficiently allocated through the initial auction process, and some special regard needs to be given to that.

**DR ROBERTSON:** But you haven't had trouble with capital gains tax or stamp

duties?

**MR STIFFE:** Yes.

**DR ROBERTSON:** You have?

**MR STIFFE:** Yes. I think, like any other purchaser of GSM 1800 or a 1800-megahertz spectrum, we have been unable to get an efficient contiguous allocation of spectrum because of the costs that would be incurred through capital gains tax.

**MR KENNEDY:** All we're looking to do is, say, swap - it's not actually having any more spectrum than we have now, it's just providing a more efficient allocation of it so we can use our network better and the competitor that we're swapping the spectrum with can do the same.

**DR ROBERTSON:** I'm still confused. I mean, it's probably because I don't understand the system tax in terms of capital gains tax. If you bought a piece of spectrum and there was another piece that's adjacent to it that's bought by somebody else and you two agreed that the second one would sell to you, let's say, you're saying that the tax element would be such that it would block that particular process.

**MR KENNEDY:** Yes.

**DR ROBERTSON:** But supposing, for example - this is probably not a good example, but supposing One.Tel wanted to sell a piece of spectrum that you wanted to buy, One.Tel paid a high price for it but one wouldn't expect, in the present set of circumstances, that they could get anything like the price they paid, and if the administrator decided to sell it, you would get it for a much lower price. Why would you be subject to capital gains tax?

**MR STIFFE:** You wouldn't in that situation.

**DR ROBERTSON:** You wouldn't?

**MR STIFFE:** No. There's a specific set of circumstances around the auctions of the 1800 spectrum. We actually spoke to our tax manager and, if you like - - -

**MR WILSON:** If I can just bring out a slight bit of advice.

**DR ROBERTSON:** Yes, please do.

**MR WILSON:** The prices paid for spectrum in the 2000 auction were much higher than those paid for spectrum in the 1998 auction. Consequently it's likely that the Australian Tax Office will determine that the current market value of any 1998 spectrum is higher than its original purchase price. If a carrier chooses to swap spectrum obtained in the 1998 auction for another piece of spectrum from either the 98 or 2000 auction, that carrier will be deemed to have sold its piece of spectrum for

its current market value and will therefore have a capital gain that will be subject to taxation. Whilst the spectrum the carrier receives in return may now have a deemed higher purchase price to be depreciated over time, there can still be significant time and mismatch between being assessed on the capital gain and obtaining a reduction on the new spectrum. So I think it was a timing issue.

**DR ROBERTSON:** Yes, and it's the deemed bit that's significant. I mean, clearly if they deem the values of 2000 that led to the increase in the levies on the licence - I mean, I don't believe the Tax Office is necessarily economically rational on this because clearly prices will have fallen in the present economic climate. It would be quite silly to say 1998 is equal to 2000. 2000 was a bubble.

**MR STIFFE:** But that's the debate that we, along with other carriers, are having with the ATO to try and resolve it. So it is something that we're trying to resolve, but it is certainly an issue that at least to date is preventing us being able to swap pieces of spectrum that, to all intents and purposes, look the same and do it without incurring significant - - -

**DR BYRON:** But if there was an active, thriving, current market that revealed today's value of that spectrum, you wouldn't be relying on what was the price at the last auction in year 2000 for setting that, so the fact that the ATO resorts to the 2000 auction as their benchmark is precisely because there isn't a current sort of spot market price which, you know, may even show that if you sold the 1998 spectrum you were actually making a capital loss on it, compared to today's spot market price. You know, it's the benchmark that they're using at the peak of the bubble that creates the anomaly. Is that right?

**MR STIFFE:** I think that's part of the problem, but I think to the extent that - if you've got two identical things that you just want to swap, then should the swapping of those actually mean that you pay the Australian Tax Office millions of dollars, because even if the current market price today could be assessed in some way, if it was higher than the 1998 price, then there would still be a capital gains tax on it.

**DR BYRON:** Yes. The question is whether or not a swap is a CGT event.

**MR STIFFE:** Yes, and it is, because it is deemed to be a sale, a purchase and sale of - - -

**DR ROBERTSON:** The ATO comes out of it pretty well because they tax both sides, even though all you've done is a swap.

**MR STIFFE:** And if you look at it in a broader context, the government comes out of it pretty well because it has actually sold spectrum at two different auctions. But as it turned out, the allocations weren't efficient so that there's a desire between the parties to try and maximise their efficiency and then they get another lump of revenue through the Tax Office.

**DR BYRON:** That explains that one.

**DR ROBERTSON:** What about stamp duty, does that come into it?

**MR WILSON:** It's not something I've focused on. I haven't really discussed that particular issue with the tax manager. I've focused on the section - - -

**DR ROBERTSON:** Most of us only come across stamp duty when we sell our house and we don't do it very often.

**MR WILSON:** Indeed.

**DR ROBERTSON:** But apparently that's another item in there that could be an impediment to the secondary market. What you've effectively said is that CGT blocks the secondary market, even though it's only a swap.

**MR STIFFE:** I think it is blocking that particular sort of trade, where it is carriers trying to just swap goods amongst themselves. But if we have bought spectrum and then wished to dispose of it to an entirely new player, we don't get any spectrum back so we're actually truly disposing of the spectrum, then we would expect the normal rules of business to apply to that. I don't think we have any problem with that. I think one of the potential remedies that is being looked at by our tax people is to try and get a perpetual rollover of the capital gains tax liability, so while the liability may actually be set up, we don't actually have to pay the tax unless we subsequently sell the spectrum at a later date.

**DR ROBERTSON:** Thank you. That's interesting because that clearly explains why having these non-contiguous bits is not being resolved by swapping, and it's interesting, as you said, that the cause of it is probably the way in which the lots were put together for the auction.

**MR STIFFE:** It was the way that I guess in a perfect world people would have bought spectrum in 1998 and 2000 in such a way that they ended up with contiguous allocations. Auctions are a pretty good mechanism but they're not perfect.

**MR KENNEDY:** Or they would have bought 98 spectrum knowing that there was another lot of spectrum coming up for auction in two years' time and they'd only buy 10 megahertz a year knowing that they could get the extra five later. There's not so much certainty that exists in this industry and you sort of need to grab everything you can when you get a chance.

**MR WILSON:** I think the dynamics of the 2000 auction were different. It was more competitive. As you were saying, it's at the sort of height of the boom, and I'm just putting it in terms of simple numbers and these aren't actual numbers but I like to think of it - I mean, if you purchased 98 spectrum at say \$1 million and 2000 was something like 20 million, even if you could assess the market value now at say 10 million, you're still talking about some significant transaction cost for what is effectively just a swap of the same sort of spectrum.

**DR ROBERTSON:** Yes. Good, thank you for that. One thing you pick up is the idea that there's artificial scarcity created by the way in which these lots were actually put on the market, and I think, if I remember correctly, you use the example of the ABA and their spectrum, which is administered differently. Do you think that applies more generally or do you think it's really just this aberration of having a lump of spectrum which is handled by a separate body?

**MR KENNEDY:** Certainly the spectrum that we have access to through the ACA - I think the ACA does quite a good job in terms of trying to establish whether there's a demand for spectrum before it goes on auction - because that's the key decision point. You're not going to put spectrum on the block that's not going to be taken up, because that's just an inefficient allocation. I think there's a broader point that increasingly as the markets between broadcasting and telecommunications and media converge, our competitors aren't going to be telecommunications companies. They're potentially going to be broadcasters or media players that can use potentially the same tools that we use but operating under a completely different regulatory regime which may well provide them with benefits or costs - it's unsure - but I think given that in terms of what the consumer gets it may well be the same, our view is that we should be moving towards a more generic regime. That's our broad point. Now, I'm sure there's a lot of detail that sits behind that that we're quite happy to explore, but that's the way we think about it. We certainly see our competitors as being a much broader range in the future than Telstra and Optus.

**DR BYRON:** That whole issue of technical convergence and the implications that has for regulatory convergence I think is a point that is recurring in this inquiry. I should stress that this is not an inquiry into the Broadcasting Services Act or the ABA, but a number of issues that have been raised with us seem to me to be about how the ABA allocates, and prices within the broadcasting services band, and then there's a whole different set of questions about how much of the total spectrum has been allocated to the broadcasting services band. So there are people who are saying, "Irrespective of what happens in it, it's too big overall. It's far bigger than it needs to be and therefore some of that could be clawed back or reassigned to other purposes."

With the comments that you make about different regulatory regimes for different parts of the spectrum, are you focusing on the first or the second of those types of issues about the way things happen within the broadcasting services as opposed to the rest or on the overall size of broadcasting services band being bigger than it needs to be?

**MR STIFFE:** I think both issues are a concern. The first issue is that if there are different licensing mechanisms and charging regimes that provide broadcasters with an advantage over the existing telecommunications companies, then that's not a good outcome. So that's the first issue. The second issue I think is, to the extent that you have two bodies that are allocating spectrum from a common pool, that it would be unfortunate if competition effectively between the two bodies ended up with less than optimum spectrum allocations, so that perhaps if there was a single body that was responsible, you would get maybe more objective decisions made and someone

would have responsibility for the whole picture rather than just a piece of it.

**DR BYRON:** I don't think there's anything else on that.

**DR ROBERTSON:** Let me put a philosophical point to you. I have some qualms about the idea that the government owns the spectrum. It's a national asset. Should the government make money out of it or should the resources be made available to the community? You could have a once-off payment to the people purchasing the spectrum and then just leave the market to run from there, which would leave companies like yours probably managing spectrum, in other words, renting bits out or selling bits to other users, so after the initial step of bidding in order to get the spectrum, the spectrum would then be in private hands, if you like, and then the market would run freely. Obviously this would appeal to you in terms of that price increase for the 800, but do you think that it might be a better way of running spectrum that in the long run, we, as it were, sell lumps for a one-off gain and then after that leave it to the market?

**MR STIFFE:** We've got some experience of that in New Zealand where the government there sells management rights, and so Vodafone in New Zealand self-license as spectrum users. In fact, in a couple of instances I think Vodafone licenses third parties to use spectrum within that because they've been there forever. So that sort of system can work and I think can work reasonably well, but even there the term of the management right is 20 years, so society, if you like, gets an opportunity to have another look at it, at whether that is the best use of that spectrum.

**DR ROBERTSON:** Do you think New Zealand is big enough, the market, to really get a feel for whether that can work, thinking from our point of view rather than theirs?

**MR STIFFE:** I think New Zealand is a curious example that clearly does work. I think some comments from the Ministry of Economic Development there have been made that in some circumstances the management right holder may not be sufficiently expert in radio spectrum to be able to do a good job of self-licensing, so I think there are some issues there that they are thinking about. I don't know if it's an issue with market size, I think it's just a different philosophical approach to how they ought to deal with it, and I think it has many similarities to the spectrum licensing regime here.

**MR KENNEDY:** A useful analogy again in New Zealand is to do with numbers, telephone numbers, where the government has no role to play in terms of the management of the numbering plan. It's all done by an industry body which we support because that's an industry resource or a key tool for our business, whereas in Australia there's a whole regime set up run by the ACA called managing numbers and charging for numbers. The New Zealand approach, I think, is to, where possible, push it out.

**MR STIFFE:** Into the industry, yes.

**DR ROBERTSON:** Do you think there would be enough people here that would be interested in that kind of spectrum management or do you think companies like your own would say, "No, we'll stick to our own last," as it were?

**MR STIFFE:** We're pretty relaxed with the current approach here, generally speaking. Again, if putting it into private hands meant that that became a permanent circumstance, I think living in Australia I'd be a bit uncomfortable about that, knowing the way the technology changes, and that management of spectrum is important to deliver a lot of other economic benefits to the country. I'm, from a philosophical point of view, pretty much in favour of the free market but I think there are some areas where the government rightfully has a role to play.

**DR ROBERTSON:** And you would say that that was generally true across the spectrum? I can understand it if we're talking about community services, however you define them, but you'd want to have some spectrum available to fire services and police and so forth that you may not necessarily want to pay the full price on the market for, although even that's an arguable case. But you don't think there would be enough competition really in the private sector to ensure that you get a good market price?

**MR STIFFE:** I think technology changes so much over time that a decision on how much spectrum, for example, to allocate to a community service as opposed to a private firm might change over time. Also, the band that is used changes over time as well. There's a move for some bands that have traditionally been used for broadcasting to be used for mobile network services. If those bands remained permanently with broadcasters, that may not provide the best outcome for the country. They may have a similar value to the owners or the holders of the spectrum, to someone that wants to offer telecommunications services, but it may not be the best outcome for society. I don't know.

**DR ROBERTSON:** But don't you think the changing technology - I mean, that's something we live with all the time. Wouldn't that be reflected in prices?

**MR STIFFE:** Perhaps. Forever is a long time.

**DR ROBERTSON:** Yes, I know. In the long run we're all dead, but this seems to be an alternative model to the one where one of your concerns might be met, that's to say, the idea that the minister has too much control over pricing by arbitrarily imposing a rent tax.

**MR STIFFE:** But you can deal with that through the spectrum licensing regime.

**DR ROBERTSON:** But there is another way of doing it which is that you put it into the hands of the private sector and let them manage it. But you obviously aren't too sure, Sean, that this would work.

**MR STIFFE:** I know that the management rights regime in New Zealand does work and has been shown to work in New Zealand.

**DR ROBERTSON:** Yes.

**MR STIFFE:** But again there's a knowledge that the management rights do expire after a time and again that's still wrestling with what do they do at the end of the management right period?

**DR ROBERTSON:** Which can't be far away.

**MR STIFFE:** And some of them expire around 2011, 2012, so that's quite near.

**DR ROBERTSON:** Okay, thank you.

**DR BYRON:** Just on that notion of having a big hunk of spectrum and deciding that there's a small segment of it that is surplus to current requirements and maybe you could sublet, sublicense, subcontract, which is sort of like what happens in New Zealand, as I understand it, the ability to do that, say for a fixed-link point type of service that wasn't going to interfere with your core business in any way, the amount that you would get for, you know, allowing somebody else to use that bit of surplus for five years while you don't need it, that price would be, I imagine, fairly dependent on what the ACA charges for apparatus licences.

**MR STIFFE:** Yes.

**DR BYRON:** So that if the - - -

**MR STIFFE:** Or the costs change, if someone has traditionally been using that spectrum.

**DR BYRON:** But nobody is going to pay you a million dollars for the right to operate a fixed link between A and B if they can go down the road to the ACA and get it for a tenth of that, so that what that suggested to me is there's a linkage between the willingness to, if you like, optimise the financial returns from your whole spectrum band that you bought at licence - the ability to do that is not independent of what the ACA does with its apparatus licences. Would that be right?

**MR STIFFE:** I would guess so. I think if the ACA ended up competing, if you allocated some spectrum for self-licensing through a market based process and then the ACA ended up being a competitor, I'm not quite sure what outcomes that would lead to, but they don't sound all that flash. But I think in terms of things like fixed links, we've suggested that they are appropriately licensed through apparatus licences and the ACA allocate those. But one of the issues I suppose for a private holder of spectrum and then subletting it or licensing other users is that if it is not your core business to do that, then the transaction costs for the firm can be quite high.

I guess if we can look at another example of subletting things in the industry, perhaps cell sites is a good example. There was a lot of criticism I think of carriers through not allowing co-allocation on cell sites and I know that there were a lot of

accusations that firms wouldn't allow it because they wanted to restrict the entry of their competitors. In talking to our own engineering staff, one of the key restricting factors I think was not wanting to keep your competitors out. It's just that it wasn't our business and it was a hassle, and what Vodafone ended up doing was selling a good portion of its cell sites to another private firm whose business it was to manage and sell space in cell sites, and they have an - absolutely to try and get as many players on it, and I think there's a risk as well with spectrum, that if you just put it all out into the market willy-nilly, that unless there are players in the market that are specifically in the business of managing spectrum and ensuring that it is used efficiently and getting maximum return, then you may not get efficient outcomes.

**DR BYRON:** But the incentive for you or any other company to go through all those transactions costs, to be able to sublet a certain piece, depends very much on how much you're going to get paid for that. Now, if there's an upper ceiling on how much anybody is going to pay, is set by the ACA's apparatus fees, then you would want to make sure that the apparatus licensors were basically charging full market price. I mean, obviously you wouldn't incur all the transactions - glossing over all the trouble - if you were only getting \$1.50 a year out of it, so that whether or not it's worth the effort of doing that depends very much on the value of that service or that fixed link or whatever is desired to be - - -

**MR KENNEDY:** But there is a difference, a practical difference between an existing fixed-link operator and a new one that comes along and it can choose wherever they want to go. If they're an existing fixed link that they're getting an operation for 10 years or so, and say we buy a chunk of spectrum where they operate, if they wanted to choose somewhere else, they actually have to get new kit, you know, have to buy a new kit and move to a new - so there may well be a larger cost than just actually a new spectrum rider's licence with the ACA.

**DR ROBERTSON:** Have you read the ACA's submission on our Web site?

**MR STIFFE:** We certainly had a look through it, yes.

**DR ROBERTSON:** Yes, I know. It takes a while to read these things. I'm just curious as to what you think about this idea of having a single licence with different sets of conditions.

**MR KENNEDY:** Yes. I think we've talked about this and we're open to anything that makes the system easier and simplified, and one of the issues with the 900 licence fee is potentially to convert licences (indistinct) licences to spectrum licences. But there is an awful lot of hoops and hurdles yet to jump through to get that through the legislation. Potentially an added flexibility of just having one licence where you have conditions may well provide a greater range of flexibility and make the ACA's job easier. I mean, we haven't got any views either way but if it could be made simpler and easier to understand then we're all for it.

**MR STIFFE:** I think the key thing for us is to try and get investment certainty so that the rules are clear and the rules are clear up-front and they don't change, so that

if we make an investment in something, then our original investment assumptions are likely to hold for the period of the investment.

**DR ROBERTSON:** I guess that bothers me a little bit, the certainty of investment. I mean, you must have gone through some hoops with the changing in the price of spectrum, particularly around 2000. I mean, your initial investments were made - what, 93 to 97 or something - on the basis of the licences you had then and then suddenly the market value appears to shoot up, which would then mean you would presumably review some of your investment decisions. Is that right?

**MR STIFFE:** I guess we would decide and did decide whether or not to purchase additional spectrum, based on the price that the market seemed to be (indistinct) for. We're not concerned about that because we can either choose whether or not we buy that spectrum to expand our business or not. Our concern is when we do buy spectrum, that the rules surrounding that purchase change subsequently, then that is an issue for us. But markets change and we're used to that and can deal with that. But if you buy something, it should stay bought.

**DR ROBERTSON:** When you say "certainty", in fact you mean the conditions surrounding the licence.

**MR STIFFE:** The licence, yes.

**DR ROBERTSON:** Obviously an arbitrary change in the cost that you had to endure is quite different from the fact that One.Tel and Hutchison and others were paying a lot of money, because that meant you'd probably felt you had a bit of a margin in the investment.

**MR STIFFE:** I don't think that is necessarily the case because when you make your initial investment then - well, we also invested a lot of money outside of buying spectrum and whether the spectrum licence created a margin or not I'm not sure.

**DR ROBERTSON:** Okay. So you have no objections to this proposal but you're not clear as to how it could get through.

**MR KENNEDY:** Give us some more information about it.

**DR ROBERTSON:** That's a reasonable request. Neil, do you have any more questions?

**DR BYRON:** Can I ask about the auction process. You've made some comments in the submission about the reserve prices and, as I understand it, you're not complaining about the fact that there were reserve prices but simply the reserve prices were set higher than they might have been. Is that right?

**MR STIFFE:** Yes. Our view is - and I think this particularly relates to the third generation spectrum that was sold recently - that the reserve price was more reflective - essentially to set the final outcome as to - - -

**DR BYRON:** A larger number of parcels were sold at reserve.

**MR STIFFE:** Yes, and I think to the extent that some sold above reserve, it was more reflective of just some coordination issues in terms of getting the right lots. So it's more reflective of, in our view, government budget requirements rather than necessarily the value that the market would have placed on the spectrum at that time.

**DR BYRON:** We've had a couple of comments in the submissions from various people that they thought that the simultaneous auction process was a bit difficult, a bit overly complicated for new players or that those that were big and experienced coped with it very well and, you know, set up (indistinct) rooms and it worked well for them. But for some of the other players it was a bit of a struggle. Do you have any comment on the auction process itself?

**MR STIFFE:** I think the feedback that we've had internally is that the auction process was a very good one. It is reasonably complex but then you're dealing with pretty high-value items. So I don't think the cost of participating in the auction was excessive from that regard.

**DR BYRON:** In terms of auction process - I mean, we've got a very sophisticated and complex sort of process and at the other extreme you've got, you know, the most naive sort of auction you can have of single open outcry, English auction. Do you think that there's a need for a wider range of weapons in the ACA armoury, apart from the very sophisticated and the very naive, that there might be a need at times to have some other form of auction?

**MR STIFFE:** Certainly from our perspective we wouldn't see a need for a range of auction approaches. I guess I'm using again New Zealand as an example. They tried to have a more simple approach to their auction and it took an extraordinarily long time. The transaction costs being involved in that were huge and they basically messed it up and I think in comparison that the Australian auction system was predictable. It was understandable and worked really well.

**DR BYRON:** From what I've seen of the international comments on the Australian spectrum auctions, they seem to be fairly widely acclaimed. You'd agree with that?

**MR STIFFE:** Yes.

**DR BYRON:** State of the art.

**MR STIFFE:** We talk about these sorts of things throughout the Vodafone group globally. I think the Australian auction system is highly regarded. I think there remain concerns about - there are some ways for the government to skew the outcome, for example, by setting very high reserves. But Australia is not alone in that and in fact skew the outcome an awful lot less than some other governments do.

**DR BYRON:** The limit rules, you mentioned in your opening comments about the

role of the ACCC and trying to shape the market. It has been suggested to us that it's not always entirely consistent between the limit rules that are applied ex ante and what might be done ex post, after an auction when the mergers and acquisition provisions in the Trade Practices Act were to apply. Is that one of the concerns that you were alluding to in that submission in the opening comments, or are you just concerned about the government trying to pre-ordain the number of players in the marketplace?

**MR KENNEDY:** I think the key point here is that competition rules should only be applied in certain cases. They shouldn't be applied at every auction, because the only reason you want a competition rule is because you think that post auction the Trade Practices Act - it would be difficult to apply the provisions of the Trade Practices Act in terms of any competitive behaviour. With the 3G auction, uncertain then and it's still uncertain now how the market is going to develop for 3G services and whether you can actually define a market at that present - so our concern both here and in New Zealand was the need for some sort of spectrum caps to ensure that there's not some sort of foreclosure of the 3G market which is undefined, and therefore you couldn't take any action potentially under the Trade Practices Act. So those sorts of decisions about whether you need a competition or not is appropriately done by the ACCC, not by the ACA. While the ACA has an important role to play in terms of the technical arrangements, I think our view is the ACCC should have the chief responsibility for deciding in what instances, in what circumstances, a rule should be applied.

**DR BYRON:** But from what you were just saying about defining a market, there's a whole raft of questions right there, isn't there, so the ACCC has to look at the market and judge about the degree of competition, but the definition of the market - - -

**MR KENNEDY:** But it's a different decision or a different judgment about whether you're actually selling extra 900 spectrum to the marketplace now. There's already a market operating in practice for second generation, so we would propose there's no need for any competition rules there for that auction because if people act anticompetitively they're going to get caught through the Trade Practices Act. It's where markets are difficult to define that there is potentially a role or a competition role.

**MR STIFFE:** For example, in the third generation auction, if it was considered that there was just a single mobile services market and that there was no special characteristic about third generation markets, it may have potentially been possible for one firm to have bought all of the third generation spectrum without lessening competition in the existing mobile services market because of the amount of 900 spectrum in the market, the CDMA 800 spectrum and the 1800 spectrum that's there. But if it turned out that there was a separately definable market for 3G, then having a single player buy it all would be a very bad outcome indeed. So we've supported the use of a competition rule for that because of the uncertainty. But, as Sean says, if it was just some weight and some more 900 spectrum that was going to be sold for what is already a well-known and well-understood market, then you'd use

the Trade Practices Act, and our view is that the ACCC is probably in the best place to make a judgment about which way to go in any particular circumstance.

**DR BYRON:** But what the ACCC has to decide in that case is whether the third generation mobile telephony is a discrete market from all other mobile telephony. I think that could be a difficult judgment for anyone to make.

**MR STIFFE:** Indeed, or whether there is sufficient uncertainty to warrant playing it safe, I guess. We wouldn't expect the ACCC to make that decision in a vacuum. The ACA has clearly got an important role to play in that, as would other interested players in the market like ourselves. We'd certainly have a view on whether we think it might be a separate market or just another piece of the existing mobile services market.

**DR ROBERTSON:** I think at the moment I'm right in saying that the ACCC's advice goes to the minister and the department, doesn't it, rather than being made public?

**MR STIFFE:** It would depend on the circumstances and the decision that they were making.

**DR ROBERTSON:** But you would presumably prefer that any advice that was made, you were made aware of it.

**MR STIFFE:** We would certainly want to see an open and transparent process, and in other circumstances the ACCC - - -

**MR KENNEDY:** And opportunities to provide a view.

**MR STIFFE:** Yes. The ACCC generally operates pretty open processes and seeks advice from interested parties.

**DR ROBERTSON:** Yes. Is there anything you'd like to add to your opening comments or something you suddenly thought of?

**MR KENNEDY:** Not yet. We're looking forward to providing more comments as the inquiry develops though.

**DR ROBERTSON:** Sure. The draft report should be out in February and then there will be a chance for a second round probably late March, April or something. Thank you very much for your - sorry, Neil.

**DR BYRON:** I was just going to say, there's also the opportunity if you follow the Web site, either new submissions that are coming in or something that happens in the transcript next week in Canberra or something - you do have the option of putting in supplementary comments, whether it's just a page or two, if you see something that you want to endorse or respond to, if you feel you've been unfairly vilified. You do have the option to continue even prior to the draft report.

**MR STIFFE:** Yes. Thank you for that. Thank you very much.

**DR ROBERTSON:** Okay, thank you. The meeting is adjourned.

(Luncheon adjournment)

**DR ROBERTSON:** Welcome back and welcome to representatives from New South Wales. This is a reopening of the Productivity Commission inquiry into the Radiocommunications Act and the ACA. Now, when you start to speak, would you mind introducing yourselves so we've got it on the tape please; over to you.

**MR GATES:** My name is Tony Gates. I'm the director of operations with the New South Wales Department of Information Technology and Management, which is the New South Wales government agency responsible for communications policy and spectrum management and those sort of issues within the New South Wales government. We've prepared a response to the Productivity Commission which incorporates the views of a number of other government agencies and has been considered by the New South Wales government. So we're speaking on behalf of the government. Do you want an introductory?

**DR ROBERTSON:** I think probably the best thing is if you pick out the key points you want to say.

**MR GATES:** That's what I was going to do.

**DR ROBERTSON:** Then we can deal with the other things in discussion.

**MR GATES:** Okay. I guess we really wanted to make three major points. Firstly, how the federal government deals with the industry is largely a matter for the federal government. The constitution identifies that as their responsibility and our major interest is things that affect the ability of the New South Wales government to deliver services to the population of New South Wales, particularly in those areas for which the New South Wales government has a specific responsibility beyond what the federal government has. I guess three key issues that we're interested in is firstly, we want to make sure that government agencies - particularly public safety which have a responsibility in times of emergency and danger to the public - and organisations such as transport, public education, which provide government services to the community that is expected to be provided by the state government to the community, we want to make sure that they have access to adequate and appropriate amounts of spectrum, to deliver those services for government purposes, and we recognise that the federal government has made a determination to auction spectrum in the commercial environment and I guess our submission argues that while that's an acceptable process to some extent, price is not the only determinant of spectrum.

Many of the services that we have to deliver are delivered in areas where it's simply not commercially viable to deliver radio services at an economic price and therefore it's difficult for us to get commercial services to deliver and it's also difficult for us to draw a distinction about where we use commercial services to provide services and where the government sets in. In a lot of cases it's more convenient for us to provide a single service across the whole of the state government boundaries.

Now, clearly the area of interest there is primarily radio communications, but also goes to things like datacasting and other things where the spectrum might be.

Mobile telephone services is not something that the government tends to get involved in because by and large, the commercial providers deliver a service adequate for those needs and we can fill that in with mobile radio. So that's our first interest, to make sure that we get access to spectrum. We're not asking spectrum to be provided for free. We recognise that there are costs associated in the management and delivery of services.

But we're arguing that the price is not the only determinant and if we can get access to spectrum in defined areas, particularly where it can be spectrum delivered for public safety or education purposes common across the country, we can introduce things like trunking and other things to deliver or to minimise the demand for spectrum. So we're not asking for spectrum to be delivered free and we're not asking for unlimited amounts of spectrum. We're asking for an access to amounts of spectrum for necessary government purposes to a reasonable level and at a cost and a funding arrangement that recognises that a lot of these services are delivered for public safety purposes and that which don't generate a profit. So that, I guess, is the first issue.

Secondly, as I said earlier, we're not particularly keen to run an argument here in relation to the way the federal government relates to the commercial sector. That's their responsibility. Our only interest as a government is to support any federal government initiatives, to make sure that in dealing with the commercial sector that there's competition because clearly, competition assists the lowering of prices. If there's competition in the market, the government wants to be able to use - where it does use commercial services, particularly mobile telephone - the New South Wales government obviously has an interest in making sure that there's competition in the industry. So in our submission, we support an ongoing role for the ACCC in ensuring that there is competition within the commercial sector.

Thirdly - and I guess this is something where the New South Wales government working with the other states and with the federal government in recent months has tried to take a national approach to the way public services use radio and other like services - we've been working with the ACA and with other state and territory governments to pursue this idea of harmonisation. Again that goes to the efficient use of the spectrum. Currently, as you would be aware, the Australian spectrum in many ways for radio in particular is aligned with the US structure and obviously there are emerging technologies in Europe and there are attempts by some agencies within state governments and territory governments in Australia to try and get access to that European spectrum. But at the moment there's not a harmonisation of spectrum. Our spectrum doesn't align with European spectrum in some ways and that cuts a proportion of the market out for us. So we want to work with the federal government.

We are, with other states, to try and promote this concept of harmonisation spectrum, which again goes to the basic fundamental argument that we're trying to run under this whole submission, that the New South Wales government wants to be able to get access to a range of technologies to deliver essential public services at a price environment and a supply environment that means we can deliver those

services to the people of New South Wales, which is our sort of interest, and the other states will have interest in their own states, and that's the underlying part of our submission.

In terms of the ACA, we have a good relationship with the ACA. We've made some comments in the submission in relation to their corporate plan. We think that their current corporate plan - while our relationships with the ACA are very good, their current corporate plan, we would submit that it underlies our fundamental concerns and it talks in there a lot about the commercial environment we managed in introducing auctions et cetera et cetera to set a certain environment in terms of the way spectrum is managed, whereas one of the objectives that the Radiocommunications Act is talking about - if I can just refer to it, I think it was objective (b):

make adequate provision of spectrum for use by public or community services -

we would argue that while our relationships with the ACA on a day-to-day basis are fairly good, we don't see that objective, objective (b), really finding its way into the ACA's corporate plan, which we downloaded from the Web when we wrote our submission. So that's basically the summary of our submission.

**DR ROBERTSON:** Thank you. Does your colleague wish to speak?

**MR SIMON:** My name is John Simon and I'm from the state government. Just a couple of points: in a sense, what we're asking in terms of the spectrum issue is to treat government spectrum for this state as if it was like defence, have an allocation to broaden and to provide long-term strategic planning from the national and the state level. We refer to harmonisation that promotes competition by allowing a number of service providers to maximise the efficiencies of technologies to save on spectrum. So in a sense what we're saying is that maybe one of the issues about licensing could be going down that path, where we say that not only is there a sort of - call it the three classes of licence around now, but a government licence to use for these sort of benefits and do a long-term allocation and harmonisation on that.

Another point I just want to add to was in terms of commercial competition, we endorse it, particularly as it applies now, but there is an issue that we see coming up and that's camping on unused spectrum for periods of time, precluding other users. That's a significant issue. Now, that can be of particular significance in regional and rural Australia and New South Wales because there may be service providers that may wish to provide services to the New South Wales government or its agencies and is essentially precluded because someone else holds the licence. Fundamentally the ACA might need a bit more input from governments at the sort of space level. Previously under the Austel regime and so on they seemed to be much more interactive. At the moment, from my perspective at least, it isn't as interactive as it could be, both on the short-term and long-term strategic angle, but that's just a comment. That's all I've got to say.

**DR ROBERTSON:** Okay, thank you. I think one of the things that bothers me about your submission is the assumption that somehow the RCA and the ACA, the Radiocommunications Act - - -

**MR SIMON:** Sorry, there's a bit of background noise.

**DR ROBERTSON:** Sorry?

**MR SIMON:** There's a bit of background noise, that's all.

**DR ROBERTSON:** Yes, I'm sorry about that - that the act and the ACA are somehow impeding progress on public service provision, whereas in fact, as I read it, it's much more that the emergency services and a lot of public service proposals can't get their act together, so they can't actually agree on what they want from the ACA or from the Commonwealth government. Now, is that a fair comment?

**MR GATES:** I think historically that is a fair comment if we look across all the states and the territories and if you look at what we've done in recent years, or in recent months as a matter of fact - and I think it's fair to say that while it was a corporate view gathered by a group of emergency services representatives from across all of the states back in 2000, New South Wales was asked to take the lead on that and we've done that with the support of the other states and with the ACA to try and get together to look at this thing in a strategic long-term plan. I guess what we're trying to say is that we concede some of those things, that there has been some difficulties in the past, but obviously the nature of the spectrum is getting more competitive now.

I mean, our submissions talked about a lot of the emphasis on mobile telephones in mobile telephone spectrum in recent years and that has been right and proper. But we're seeing now, with that sort of pressure, that we need to focus to make sure that we get access to spectrum and our submission is really looking to the future to say that whatever changes you make to the Radiocommunications Act or that you recommend, whatever changes you recommend to the way the ACA operates - or the federal government - we wanted to make sure that we continue to get access to spectrum but it's done in a consultative environment. I guess what we're saying is that price is one way of determining how you get access to spectrum. But some strategic planning between the governments to meet essential needs is another way to do that. Price is not the only way of doing it and we've had this discussion before on this. But we would like to see some strategic planning between the states, as is going on now, and I guess what we're trying to say is that we want to see that sort of process locked in as an essential part, so that we really give an impetus to that objective (b), that we do make sure that spectrum is reserved for essential purposes and is done in a way where the spectrum that's reserved is adequate without being excessive and that it's done in a consultative fashion.

I guess that was the point that John was trying to make, that we need to see a lot more consultative discussions on this, and one of the things about harmonisation which will have to be addressed some time is in Europe, the public safety spectrum

operates in areas where defence operates. So that's going to be an issue that we're going to have to address and there's no point, particularly in the environment we're in now, of individual states trying to argue for access for parts of the defence spectrum, unless there is a cooperative approach between the states and the Commonwealth about where we position ourselves. I mean, these services, as you realise - and the same as for whether it's state governments or the private sector. These services, you know, need some long-term planning and we need to make sure that we've got a strategic plan, that we are deciding where we're going to go jointly and that we're moving in a common process to deliver things in the future, which in a changing technological environment we concede is hard to pick, but we need to make that effort.

**DR ROBERTSON:** What you're really saying though is that there's not a problem with the ACA. I mean, they're consulting with you and the other states, so there is a mechanism in place to ensure that you get what you want.

**MR GATES:** Yes. We said in our submission, and I said earlier, that we don't have a major problem with the ACA. We see a potential for conflict, even though that conflict is not particularly there at the moment. We see a potential conflict where the corporate plan is looking at the emphasis on the commercialisation of spectrum and auctions and those sort of things, and not giving a really strong emphasis on that objective (b). That hasn't been a feature of the past. We want to make sure that it's protected in the future, that we are giving some attention to that objective about reserving spectrum for public safety and proper government requirements.

**MR SIMON:** Could I add to that. It's particularly significant, that latter issue, that we are moving from one type of service arrangement that government requires through the use of radio to another type which is data, and data is spectrum hungry and we'd need to sort of work on that a lot more because the longer-term strategic move will influence the types of services available and the positioning of them within the spectrum and within the commercial and public sphere. There are those areas, the metropolitan areas that can be addressed quite reasonably through commercial matters. But when you look at the regional areas, most service providers and the positioning of those services aren't readily available.

The demand for that type of service requirement will go up in time, because no matter what people say, data requires larger band widths and therefore spectrum, and that needs to be addressed in the longer term. But I think once the ACA recognises some of that a little bit more - I mean, it just seems to be cyclic, it's not a long-term issue, I think - then we will be much more significantly better off, collectively I'm talking about now. That's all that I've got.

**DR BYRON:** I was just thinking while you were talking that there are actually two types of concerns that you've mentioned about getting the sort of spectrum - assuming that we've got harmonisation between states and so on, your first concern is that the prices that mobile phone companies are willing to pay might put certain spectrum out of reach, but in the sense of the fact that the Defence Department wants

certain spectrum because the US Defence Department needs it and that precludes you from using European technologies that occupy the same spectrum or work with the same spectrum, that's not a commercial decision. It's not that the Defence Department is going to outbid you in a dollar sense; they're going to claim that their aspect of national security is more important than your aspect of national security. I mean, some of the problems in getting the spectrum that you want are not because the price of spectrum that Defence uses is outrageously high.

**MR GATES:** No. I guess there are two issues. Firstly, public safety doesn't necessarily need to occupy the same spectrum as defence. We were giving an example there that, if you look at the European spectrum arrangements, both defence and public safety occupy that 380 to 400 band for services. Those services, those technologies, the tetratechnologies that deliver that, also operate in the 410 to 430 band. The problem we have in Australia - and it primarily tends to affect the two larger states, New South Wales and Victoria. I'll let the Victorians speak for themselves, but in New South Wales, the Western Australian government for police has looked to introduce a tetratechnology to service their needs, and that's fine. That's a decision that they make, and that's in that 420 to 430 band.

There's I guess a fundamental disagreement - or not a disagreement but it's been argued that it hasn't been proved that there's enough, but it also hasn't been proved that there isn't enough, and we're actually going through that process now. But if we go to that sort of spectrum within the Australian book to deliver tetra there in that 420 to 430 band, we don't believe we can deliver that for a whole of government approach within that 420 to 430 band. If we can look at the 410 to 430 band, which is the band provided in Europe, then we can possibly deliver that. Now, we've got to have that discussion. We've got to have that analysis to see what we can deliver, but the expectation is that the larger states will not be able to provide sufficient spectrum to deliver a whole of government approach on that current band.

Delivering a whole of government approach is something that both governments and the federal government and the ACA want to do, because whole of government approaches based on trunking technologies actually conserve spectrum. I guess the point that we're trying to make is that while the federal government has to give an intention to commercial interests - clearly mobile telephones is something commercial service providers provide. They're trying to introduce competition there and that's something we support because state governments will use that mobile phone technology. But we've also got to have a plan so that the radio services that we have to deliver as state and territory governments, to deliver essential services, that there are reservations for that, and the two have to go hand in hand. That's why we're talking about having some sort of strategic plan and agreement between the various players about who's going to go where and that there are sufficient blocks of spectrum identified so that we can deliver those trunking services on a whole of government approach to meet that side of the objective without getting it cut up the way it tends to be at the moment.

We have to have that discussion about whether we go for 410 to 430 or whether it's better to go to 380 to 400 or whether we should go for 700 or 800. areas

occupies or potentially unoccupied in the future by television stations, whether that's a more appropriate area of spectrum. There are big technical issues that have to be discussed here.

**DR BYRON:** Just on the 410 to 420, assuming if you wanted to go to 410 to 430, for example, with the problem of getting 410 to 420, who's the competing user for that? Is it Defence or is it - - -

**MR GATES:** No, it's other commercial providers, and the argument - - -

**DR BYRON:** That's all I was after.

**MR GATES:** But the argument that we've tried to use is that state governments occupy considerable amounts of that 403 to 420. Obviously we recognise that with the ACA, a lot of discussion and negotiation has to go on and that, but clearly if you want to do some reorganisation, it pays to get some agreement between that area of the environment, typically state governments that occupy a significant proportion of the spectrum. If you can get some agreement from them about where to go, then you're in a position to make some adjustments that you wouldn't be in if you didn't have any agreement.

**DR ROBERTSON:** But have you cleared this with ACA? They know who's in that spectrum now.

**MR GATES:** Those discussions are now ongoing. That's what I said. As a result of a meeting held by public safety agencies in New Zealand in 2000, New South Wales was asked to organise some discussions, which we did. While we had some concerns from the ACA about, you know, "We've tried this before," and that, we've managed to get agreement, but no matter how many times we try these things, we need to get some sort of strategic plan in place that determines where government are going to go, and we're in the process now, with the support of the ACA and all of the other state and territory governments, about having that process of discussion. A lot of what we're saying is not negative, that we want the whole system changed. What we're saying is that we're seeing some movements to get some harmonisation within states, we're seeing some movements to get harmonisation across states. There are some very good reasons to do that. There are also very good reasons to put spectrum aside for commercial needs, and we need to balance that all out. While price might be one factor of doing that, we would argue that it's not the only factor and the broader spectrum has to be taken into account.

**DR BYRON:** I was just going to ask you about that, because there's statements in the submission like:

Price alone should not be the sole determinant of managing access to spectrum -

and on page 4:

The government has concerns if price is the only avenue by which demands are rationed.

Are you saying that that is the case at the moment, that "price is the only avenue by which demands", or are you afraid that it might be going that way? Is that the situation at the moment or are you just afraid that it will become the situation?

**MR GATES:** No, it's the concern for the future. We've seen the federal government, for reasons, as we've said in the thing, as perfectly proper and valid, to attempt to commercialise parts of the spectrum, and there is justification for doing that, but there are other areas and other endeavours where that might not be appropriate, and I guess it's to make sure that we continue to get access to spectrum. We concede we have to do our bit of that, going for trunking systems and forgetting coordination and all that, but it's no good us doing that unless there's a commitment on the other side to meet those requirements with existing spectrum. I guess our concern is concern for the way changes might be made in the future, given what we've gone through over the last few years.

**DR ROBERTSON:** Most of the auctions that have been held, the sale of spectrum for commercial use - that's to say, spectrum licences - have been in spectrum ranges, it seems to me, which don't interest you anyway.

**MR GATES:** That's true.

**DR ROBERTSON:** And the other kinds of licences, like apparatus licences in particular, there may be some in that range, I don't know. I mean, who would know unless you were an expert on the ranges. But it seems to me that if you've talked to the ACA about this range - 400 to 430, if you like, the whole bet - and they've said, "This is fine, we can clear that," presumably because they may have to resume some apparatus licences that may have been granted; on the other hand, if it is Defence, then the ACA is in a very difficult position. It can't satisfy both of you. So the first step, it seems to me, is to find out whether you can get that spectrum and then try and harmonise, rather than say, "We're going to harmonise and then go and tell them what we want."

**MR GATES:** I concede that. I need to say a couple of things. First of all, there's no commitment from the ACA to clear - and I need to make that point. We have no commitment from the ACA to clear any area of spectrum and I don't want to send a message to any of the commercial environments that there's some secret government deal that we're going to start clearing out areas of spectrum. That's not the case. What the ACA have said - and I guess this is a chicken and egg syndrome which is the point you're making - is that they're not going to even consider where they might start clearing spectrum unless they get some broad agreement across governments about where they might want to go. We don't have any problem with that. I mean, we as a government don't have any major problem with that thinking.

What we're trying to do is to develop a consultative environment where state governments are trying to coordinate their needs across boundaries. For example,

after the 1994 cyclone - the cyclone that affected Darwin - there was an area of spectrum in the 450 to 470, 64 channels which was set aside for police and emergency services. For reasons lost in time, the police tended to dominate that and set up a national police network. That was fine for the time but in recent years we've seen state governments in their efforts to try and maximise this use of spectrum and to go for trunking, organise within their own boundaries, as is their constitutional rights, I guess, to organise whole of government networks within state boundaries. They haven't always been in the same area of spectrum and that's a matter that we know concerns the ACA.

What we want to see is that we need to make sure that there is some strategic plan which identifies the area of spectrum which public safety and other agencies - transport, education needs or whatever - are going to locate so that we can get some vertical integration within states and the agencies within states and some horizontal integration in the country. We tended a few years ago to go one way and then we moved into another way. What we need to do is coordinate that because clearly there is a need for both the emergency services and the education services and the other transport or whatever providers within states to operate together, and clearly where cross-border arrangements come in, particularly in police interests and national security, counter-terrorism and all those sorts of things. So there is a coordinating across states.

The only way we're going to get that is to have some strategic plan in which there's a broad agreement about where we're going to go. That has to take into account the commercial needs, the technologies, the sort of applications that the New South Wales government and others want to pursue.

**DR ROBERTSON:** What sort of time frame do you think - just suppose we're living in fairyland and that you got agreement between the states on emergency services and police, what sort of time horizon would you think they would work for?

**MR GATES:** My answer to whether we're in fairyland or not is the same; I don't know. The reality is we're not in fairyland. It's not for the New South Wales government to dictate to other states where they should move or if they should move. We've never seen this whole process of getting together as something that can be solved very quickly or very easily. It is a long-term issue. It's going to take probably, you know, years to do this and there may have to be some short-term locations by various states into different areas of the spectrum so that we can move to a common area of the spectrum in the long range. I mean, we don't even know at this stage whether the international telecommunications union can even seek some sort of worldwide agreement about where we should go.

I mean, that's something that's way beyond my capacity to answer. That's something I'm sure the ACA will talk long about, about the chances of getting America and the western hemisphere to agree with Europe and how the rest of the Asia-Pacific fits in that. I mean, these are long-term strategic decisions that have to be made and I don't know how long it will take but I know it won't be done overnight because - I think as your question reflected - we're not living in fairyland. We are

living in an environment where there is already a considerable level of investment by commercial operators and state governments in particular areas of the spectrum. We're not trying to sort of dump it on the commercial providers. We're not trying to dump it on the other states or the federal government. What we're trying to say is that these things are complex. They are long term and they need a strategic plan behind them, and we've seen the start of that and we want to encourage you to continue.

**DR ROBERTSON:** When I posed that question I was carefully trying to keep it to a narrow range, emergency services and police, and I think you're right, that will take a long time too, partly from things you've told me before. But if you expand that and say, "What we need is access for all public and community services," then it becomes, in my opinion, extremely difficult. I mean, data processing and education, for example, there are a lot of arguments one could put there about, "Well, surely somebody ought to know what it's costing." You don't just provide the service and say, "We'll pay whatever." You need to know what it's going to cost, so you need to have some idea what the opportunity costs of spectrum used in data processing, datacasting or education is going to cost, from the point of view of the state budget if nothing else. So I think we've got to narrow this down, which is why I tried to do it, to the emergency services. If you start going and saying all community services should have access to spectrum, then you're putting a huge burden on the ACA in terms of spectrum distribution.

**MR GATES:** Yes, I can see that. We're not trying to be dictatorial about this. We're trying to set a principle and say that principle has to be talked through. I mean, the ACA is encouraging states to coordinate their internal processes as much as they can and we've been encouraged to go down the trunking process, which we've done to various degrees of success and we need to continually look at that as the technology evolves. I can't provide a really short-term answer to this because these are complex and difficult problems to resolve. No-one is denying that.

But I think, as the old Chinese proverb goes, the journey of 1000 miles begins with a single step, and what we're trying to argue is that those problems have to be recognised and we want to make sure that in any discussions that emerge from this process, that the need to have those discussions, those interstate and inter-agency within state discussions, is ongoing and that there is a plan in place to try and accommodate that to the fullest extent possible. Whether we can accommodate everybody - spectrum is a finite resource - I don't know. I don't know the extent to which that can be accommodated, but we've got to make that effort to try.

**MR SIMON:** If you want to step through it in terms of technology, currently the turnover of radio technology is becoming ever shorter - that's the best way to put it. We have two state governments, quite apart from ours, that are in the process of installing or well on their way to installing brand-new systems. Those systems in technologies can be expected to have at least a commercial life around 10 years or more, possibly 15. So no matter what you do today, if you're just looking at that benchmark it will give you an indication where the police and emergency service organisation - just outside of New South Wales - are looking at, so it's at least

15 years away.

The other thing we haven't catered for explicitly here is we seem to focus on a band when it's in spectrum to deal fundamentally with voice, which is by and large what is currently in the environment. But what we have to cater for in the longer-term planning, especially in a strategic sense, is to deal with data because there has been a movement to data. Now, that will conserve voice spectrum in the longer run. You have examples of that with the tax industry and use of dispatch systems and so on. But in the short term you don't get it. You have the dual systems, and in an emergency service situation you will be reliant on that. So there has to be some sort of strategic planning for the 10 and 20-year time frame and from the five to 10 years out. So at least we have some way of guiding, on a unified basis, and this is why we need to be talking to the ACA, to even look at that technology delivery but certainly the service level.

No matter what we do, whether it be an indication from the ambulance service, the police, that there is an ever increasing need for larger amounts of data to deal with their dispatch, that cannot be accommodated easily within the 410 to 420 spectrum as it stands today. So these are the sort of broad indications on a micro level, if you want to call it, on what you're dealing with.

**DR ROBERTSON:** Using your analogy about the journey of 1000 miles, the first step has to be made. The problem is that I see 100 steps. It's 100 different interests all going forward one step at the same time and that's where it seems to me that you need to have proper pricing of spectrum as well as the equipment - I mean, there are all sorts of costs involved - to decide what it's in the interests of the community to have, because you can't have everything, and that's why I would start with the emergency services and police and cast some doubts on to the cost of these other services, which seem to me to be likely to be very expensive to introduce and you wouldn't want them introduced without an economic question being asked.

**MR GATES:** No, that's true. State governments go through that process. We go through business cases and we do economic appraisals to justify those things. But I guess the concern is that a lot of these services, whether they be education or health purposes or public safety or security, are issues in which there's no profit in it. The government has to raise the funds for them and yet they're essential services. I mean, you know, if we have fires, people's lives are at risk. We ask our firefighters, we ask our policemen, we ask our ambulance officers, from the public safety point of view to put themselves often in life-threatening situations and I think we've got an obligation to provide them with equipment. We've got an obligation to provide them with radios. We've got an obligation to provide them with a whole range of occupation and health and safety things, and those things all cost money, and money in those areas is very difficult.

The days in which we charge people for putting out fires are long gone and state governments have limited amounts of money to deliver on those services, and they've got to deliver a whole range of other services for education purposes and transport needs and those sort of things to deliver essential services. This is an

argument, you know, that goes right into the whole economics of it and as I said to you at a previous meeting, I'm not going to try and tackle you on those issues. But I think it's a slightly different environment where you're delivering services for which people are prepared to pay a price to get access to those services and are prepared to pay a value for every phone call they make and whatever. It's a lot easier to do an economic analysis and determine whether those things are economically viable, and to do it for public safety is a bit harder. Now, we can model that sort of thing but I think it's a slightly different consideration.

**MR SIMON:** Could I add to that. The opportunity cost in education, let's say it was an education-type service, if you're introducing datacasting and you say, "Okay, what's the opportunity cost for governments not using, at least to the point of trialling or piloting something that may be effective and benefit the nation as a whole?" it's very, very difficult because it's really an esoteric argument. You can't always apply a pricing to something that's largely unknown or unknowable at this stage. So the ACA then says, "How do you actually ascertain what the opportunity cost is?" and probably you'd have to have a principle in place that says if you're going to open it up for the commercial sector, you might care to reserve part of that for government use, to trial it, and then put an opportunity cost or a cost of that at a later stage when you have a better feeling for it. You could run that argument for the non-emergency service situations but that's only a hypothetical discussion.

**DR ROBERTSON:** Look, I don't want you to misunderstand me. I'm not saying that there aren't certain services that should be provided, and fire and police and emergency services are clearly one. But there are various points in your submission where you refer to all sorts of other services as if a spectrum should be provided for those also without any charge. The worry I have with this as an economist is if you start providing things for free they will be abused. So you have to say, "Well, we've got this list of priorities and we put at the top, emergency services, police," and then we come down to other things, some of which could be provided by the private sector, or might be provided by the private sector with a government subsidy. I mean, there are all sorts of ways of doing it. I can understand that you want to have spectrum available for the emergency services.

But when you get down the list you have to say, "Wait a minute. Do we really provide access to spectrum free for that, and we don't do it for something that's in the private sector?" So the real problem is you need to have a spectrum of interests in free access to spectrum - I shouldn't have used that word, but you have to have a range of interests, if you like a numerical list, that says, "All these things we think are absolutely essential," and emergency services would obviously be at the top of that list along with the police. But then down the list there are other things where you say, "Well, we want the spectrum and at least nominally we should pay for it."

**MR GATES:** I don't think we're too far apart here and I'd like to just reiterate one thing, and I've said it here; we've said it in the submission. I don't think, or I hope that you haven't drawn the conclusion that we're asking, for every state government, it needs to be given free. We tried to avoid that issue. We recognise that there is a price. The price is a means of determining these things. I mean, no-one is arguing

that the sort of fees that emergency service agencies or the education agencies now - we're not arguing and saying that they pay a price, they pay a licence fee or whatever now and that should be got rid of. We're not saying that. What we are saying is that there are certain services for which just selling it to the highest bidder is not an appropriate way to do it. There are other considerations.

We're not asking that, and I hope that that hasn't come through in this. We're not saying that every government need is sacrosanct and therefore should be given for free. What we're saying is that price is one way of rationing these but there are other considerations that we have to take into account about where the services should be located, whether they should be reserved for public safety purposes to avoid clashes with the commercial environment or whatever. We're not trying to say that we will look after government needs first and everybody else's needs second. That's not what we're trying to say. We are not arguing that all spectrums should be given to the government for free. That's not in our submission. It's not what I've tried to say here and if that's what I have said, then I apologise because that's not what we're trying to say. We're simply saying that price is one determinant.

There are other matters that have to be taken into account and we're not saying that the federal government has a plan or has intimated or anything else that all spectrum is going to be auctioned to the highest bidder. That hasn't been said at all. What we are saying is that the Radiocommunications Act recognises in objective (b) that there are certain needs that need to be accommodated. We are saying that the federal government, for reasons that we can support, has shown a willingness to commercialise areas of the spectrum and we don't argue that.

All we are trying to say is that there's a limit to which that is a way of achieving the best benefit to the community and needs to be taken into account, and needs balances, and that can be best come by giving a greater level - even though it's going on now - of discussions between state government, the federal government and the commercial sectors to work out how we can best allocate the spectrum to make sure that all the various needs, those that can generate a profit and those that don't generate profit, can be accommodated in some balanced way - and yes, some compromises will have to be made; that's not at argue. The reason why we come to that is that the minister in data casting, which is not directly relevant to this but has some relevance, the New South Wales minister for information technology has consistently argued about needs to access certain data casting for state government needs and has tended to - the feedback from the federal government has tended to be towards the commercialisation of the spectrum and how that emerges when the data casting decision is made is yet to be determined.

But it's that sort of feedback where there is a concern that the commercialisation might be taken to a point where essential public services can't compete and the community suffers from that. At the end of the day what you're arguing and what we're arguing is that there is a whole range of needs out there that have to be met, that have to be delivered, whether that's the need for telephones or radios or data casting or television or whatever, and we wouldn't like to see one way of allocating those being the only way that's considered when it might not be

appropriate across the whole spectrum.

**DR ROBERTSON:** Our interest, I suppose, in this inquiry is, how does what you're saying affect the ACA and the allocation of licences and the auctioning of licences? My point is really that we have to be careful we don't try and overdo it.

**MR GATES:** And we would agree with you. We're not asking that the baby be thrown out with the bath water, but it goes back to what we said before. You ask specific questions towards the end of this as to how does the key performance PAS, key performance targets or whatever, of the ACA's corporate plan relate to the RCA. We went through that and we looked through those things and we looked at the one which we're interested in, which is objective B, "Make adequate provisions for spectrum for use by public or community services," and while we're not saying that the ACA hasn't met that objective B - and it has been cooperative in terms of the way the states have gone to try and have this discussion about where we go, so it is looking to do that - we're also saying we don't see it reflected in the PAS from the corporate plan.

I guess what we're trying to say is that we concede that there are commercial needs and that they have to be met, and we're not arguing that commercial providers shouldn't be allowed to make a profit and we're not arguing that the state government wants to occupy areas that can be provided on a commercial basis. What we're simply saying is that there are uses which can't be provided on a commercial basis, and if they were the state government wouldn't be in this. The state government would not be - I don't think any state government would be - in there building radio services for needs if the commercial environment could deliver them or was prepared to deliver them.

In doing that, in a lot of cases the commercial environment can deliver those things, but our concern in terms particularly of public safety, the major issue there, is that in a time of emergency - and I was with the rural fire service during the January 94 fires where communications were critical. We had 23,000 firefighters and other personnel, police and other emergency service workers in the field at any one time, and for many of those workers the radio became the sole means of communication as the commercial publicly available systems clogged up because of the demands of a whole range of people outside that, legitimate demands to see how family and loved ones were, to conduct business, whether it be the news media or whatever. They were trying to conduct their legitimate business, but in trying to conduct their legitimate business the commercial networks were clogged and that could have caused major problems and put lives at risk for emergency service workers if the state government didn't have their own radio services. So we need to take that into account, and that's the issue that I guess we're trying to sort of say.

**MR SIMON:** Let me add to that. We had discussions and to my understanding there was what they called steering of the networks in the commercial sphere to assist us during those fires, but public networks by their very nature are what you call essentially non-discriminatory, so they can't actually throw off common users very easily and to deal with ESOs. Now, emergency service organisations have now had

a habit, because the means of radio spectrum, to start using commercially available services in an appropriate means. They can fail and they will cause loss of life. On the other hand, when we're talking about the other areas, we've got to recognise the fact that, while technology is one issue here, the other one is the actual service that's carried over the top. That is going to be the fundamental drive in the longer term, I believe, in terms of how these services operate, because not only do they have to have in emergency service situations voice communications but they will get data.

That I think was clearly demonstrated in New York recently, where they wanted information on what was actually flying around from the aftermath of the buildings collapse. That's put down in real time. It's no longer voice. It's no longer good enough to say one size fits all in terms of the service delivery. So we've got to be aware of that.

If you're talking about now the range of service or agency types, the police, health and that are quite critical, but in the longer term we've got to address the fact that there's an opportunity to deliver benefits to the country at large when new services like datacasting come into being, and there should be some recognition, particularly at the beginning, that governments need, at least for the purpose of trialing or piloting at that stage access to that spectrum, whether they use it themselves or they have other arrangements in place, and certainly to deal with it in the longer term. This is going to be an evolving need and this is more clearly demonstrated over the last 10 or 15 years with for example the demands on the mobile, the movement away from voice now to large scale systems. We've got GPRS coming in in commercial environments. Again those sorts of services are limited to by and large high-density areas, and where you're getting low-density areas you've got to provide an equivalent service - who does that now and what sort of technology?

So we've got to start picking up on that. I don't think it's simply good enough to say emergency services have got high priority, the rest get held over. There's got to be some recognition that governments as a whole have a responsibility to ensure that the betterment of the nation, and in this specific area you're dealing in now, health and education, they may have to, certainly at the outset, have access to spectrum for trialing if nothing else and possibly longer-term use, but that's something that's got to be sorted out. All we're asking for is recognition. Pricing is not the only issue. Pricing is an outcome at the end of the day of people's wants, not the thing that drives them.

**DR BYRON:** Just on the subject of datacasting, has the New South Wales government applied for a datacasting licence or are you planning to or did you try and get knocked back?

**MR GATES:** There's been ongoing discussions between the federal government and all the states through the on-line council and other forums. The New South Wales minister has consistently argued that state governments need to have access to that sort of service, and while there has been a recognition in discussions in a verbal sense, there's been a concern by the departments who have advised the minister that

it seems that there is a position coming from the federal government that's looking to see those things provided commercially and then state governments just to use the commercial services. I guess there's a concern for the same reason there, and to be fair the federal government I guess has a similar view. All governments, be they state, local or territory, are looking to try and deliver a fair go to all the citizenry in relation to access to telecommunications, and that's why there is an emphasis at all levels of government to make sure that rural and regional New South Wales and rural and regional Australia gets access to telecommunications at a fair and reasonable degree both in terms of price and in terms of quality of service.

I guess that from our point of view the federal government has particular interests and particular responsibilities under the Constitution to manage the commercial aspects, whereas the New South Wales government and other state and territory governments has a similar interest in delivering services to rural and regional Australia but in a different area in terms of public safety and education and whatever. I guess it's the fact that the different areas of responsibility are there that causes the various levels to think about these things and how they're delivered in a slightly different way, even though at the end of the day I think all state governments and federal governments and local governments are looking for that underlying principle of getting equitable, cost-effective, quality services in an equal sense to all parts of New South Wales, be they metropolitan Sydney and Melbourne or the remotest parts of central Australia.

**DR BYRON:** Can I change the subject slightly - completely?

**DR ROBERTSON:** Sure.

**DR BYRON:** You've got a few very interesting statements in the submission about, "The ACA should be truly independent and free of ministerial control," and on page 21 you make the observation that the minister has significant influence and control over ACA's activities. In another part you say ministerial discretion on the SAT increases or that there could be appeals to the minister against increases in the SAT. That's on page 11. We've had a lot of comment about the role of the minister and the amount of statutory independence of the ACA, and on the suggestion there about appeals to the minister against increases, what if it was the minister who actually directed the increase in the spectrum access tax? Do you see a problem there or a potential tension between the independence of the authority and the amount of ministerial discretion, including in allocation and pricing? You've commented on both sides of that sort of problem about how does the role of minister fit into all of this.

**MR GATES:** That's a perennial problem, I think, and I think when we put the submission together we tried to make the observation that there are things on which we've sort of made some comments but weren't really sure what the answers were. With due respect to all concerned, we don't have an environment where everybody has a constant view. If we had all those things, then things like independence of ministers and those sorts of things are not an issue. I guess the point we were trying to make in terms of the independence is that we've got objectives of the RCA which

by their very nature are very broad. They have to be. If you start making them very specific, then they don't serve the purpose which they're there for. But because they're broad and because they're far-reaching, that gives the opportunity for them to be influenced at a ministerial level and that will change from one minister to the other.

In an ideal world, one would completely be independent of the other perhaps, but we were answering specific questions about whether the minister has an influence over the ACA, and to our appearance he does, he can. That's a fact of life. Whether it's the right way or not will depend on the decisions that he makes and whether you happen to be on the side that - a bit like going to court: the judge is a wonderful person if he decides in your favour, or a referee at a football match or whatever. I guess what we were trying to do there is reflect the question - if you're asking is the ACA an independent body, then we'd have to argue that because of the way it's set up there is a basis for questioning its independence.

What alternative there is, I guess if I could resolve that or if we could resolve that, then it would be resolved in a whole range of other areas of government. It's a question of striking a balance, I guess.

**DR BYRON:** Yes, exactly. I was thinking about how difficult it is, the situation that the ACA is in, not just between all the different commercial users, but when we were talking before about safety of life issues and police and emergency services, you've also got Air Services Australia and Maritime Safety. There's a whole lot of organisations that can all say safety of life issue - the Defence Department, the Bureau of Meteorology and CSIRO. The list of organisations that have very worthy claims for not only access to spectrum but possibly preferential pricing - I can understand why an independent relatively apolitical sort of statutory authority might seem like the right way to go, given that there are all these very difficult judgment calls. I agree with you completely, there's no simple answer to that.

**MR GATES:** And, look, to be fair, the ACA is under the same pressure as every minister of the crown, whether it be in New South Wales or anywhere else. I mean, they have to sit there and they have to resolve a number of competing interests, and sometimes the community will agree with their decision and sometimes they won't. This whole process isn't easy and we're not trying to be critical in this. What you asked us, you asked in that submission various things as to how independent was the ACA. You would have to argue that while ever there is a minister there who can exercise influence, then there is a loss of independence. Whether that's a good thing or a bad thing will depend on which side you sit, and even within one minister his or her decisions from time to time will affect one side or the other. I guess we weren't trying to propose an answer, we were just trying to answer a question, which is the dilemma that every minister of the crown, every premier or prime minister, has to address. I don't think we were trying to say it was easy; we were just trying to say that the facts are that this is the situation.

**MR SIMON:** Maybe openness and visibility should be something that the authority should be promoting even more so that it gives them a bit of perceived independence.

It's all a matter of perception.

**MR GATES:** That's why this process that we're going through now, where there has been - I mean, when we first started this process about having discussions, when the states and the territories got together with the view of having the ACA start a discussion on getting us to work together on this, we made the specific point that what we needed to present this was to be seen as state governments and federal governments discussing these or the relevant federal government agency, not individual agencies from the states because clearly the more people you have having a statement or having something to say, those things vary.

When the ACA wrote the letters, they wrote out to the Premiers Departments of each of the states to make sure that there was a state and territory view coming and not an individual agency view. We have the same problem in the department that we work for. We have police who are sitting there saying that they have certain requirements which on the face of it are all valid and all necessary. We have emergency services. We have transport. We have education, all with valid claims for particular needs and we've got to balance those. What I guess we're trying to do is we're going to say that at each level that balancing process has to be here and there's no one solution. I mean, making the ACA completely independent of all ministerial involvement may solve a whole range of problems but no doubt it will create a whole lot of other problems as well and I guess what we're trying to do is we're trying to have some input to say what we think - how it should be. If you get a whole range of other people agreeing with that view, then it's a view that sort of merits further consideration.

**DR ROBERTSON:** Is there anything you wish to add because we have our next group following?

**MR GATES:** No, I would just like to summarise again. We recognise that this is a difficult situation. We recognise that there is a lot of needs. We're not asking for free access to spectrum. We're simply saying that price is not the only consideration and there needs to be the sort of ongoing dialogue that has been going on and we need to raise that high level and make sure that New South Wales and the federal government and no doubt others are continuing to have a dialogue through the various forms, whether it be what my agency does or what our minister or the premier do, that process needs to be ongoing and open and I'm sure that we can deliver outcomes that the community expects us to outcome, to deliver, if we keep that in mind.

**DR ROBERTSON:** Thank you both very much.

**MR GATES:** Thank you for the opportunity to appear.

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**DR ROBERTSON:** Welcome. What we have now is the Federation of Australian Commercial Television Stations, FACTS, who are going to make, I trust, a short presentation of your key points, because we only got your submission this morning. I think that anyway is what we always suggest, that if you would like to pick out the key points then we can get on with the discussion and exchange views in a way that would be productive. So welcome to all three of you. When you speak would you mind announcing yourselves just so that we've got a record on the tapes, thank you.

**MS LONGSTAFF:** Thank you very much. Pam Longstaff of FACTS. On behalf of FACTS and its members we'd like to thank you for the opportunity to attend and thank you also for the extra time we've been allowed to put our submission to you. I confirm that you have copies?

**DR ROBERTSON:** Yes, I think we have one copy, actually.

**MS LONGSTAFF:** We can provide an extra copy if that's helpful.

**DR ROBERTSON:** Yes, it would be, thank you.

**DR BYRON:** The photocopier here has broken down apparently.

**DR ROBERTSON:** Just to add to the problems.

**MS LONGSTAFF:** We apologise that you have only received it this morning. We sent it yesterday but thank you very much for the extra time. I'll commence by just providing a brief overview of the points that we've made in our submission. As you know, FACTS represents the commercial television, free to air television broadcasters. The commission's issues paper raises a large number of issues relevant to radio communications and I would just like to start by saying that we have focused on those issues of importance to our members. We may not have addressed every question raised in the issue paper but that should be clear from our submission.

One of the issues that we have commented on is the role of the ACA and firstly we would like to comment on their role in the coordination of international spectrum management. The ACA has a very, very important role in international spectrum management and as you would be aware, this occurs by way of treaty. So in FACTS' submission it's very important that the government maintains direct control and expertise to undertake international negotiations in the ITU forum. The ACA has a consultative process on the domestic level and FACTS would just like to start by saying that that process has worked very well in FACTS' experience and that the role that the ACA undertakes in coordination of international spectrum management is a very, very important role.

One issue that we've identified in our submission is that as the demand for spectrum increases - and we're seeing that happen very clearly - that it is important that the ACA be adequately resourced with the expertise to deal with what is a crucial role. The issues paper raised questions about whether a private body could be appropriate in relation to issues of spectrum management and carrying on from what

I've been saying, the role of - I think in considering whether a private sector body could fulfil this role, it's important to realise what an important influence international coordination of spectrum issues has on domestic planning. It's FACTS' submission that the body that deals with domestic planning needs to have expertise in the international coordination and knowledge of technologies that may be applied internationally in frequency bands.

FACTS also makes the submission that planning requires long-term continuity for reasons of management of interference issues and also to maintaining investment in the spectrum that has been allocated. So we submit that because of the very long-term issues involved in spectrum planning that a public body, and specifically the ACA, is more appropriate than a private sector body. Similarly, spectrum planning involves policy issues. For example, broadcasting requires the contiguous allocation within a frequency band, of channels within a frequency band. It is important that any spectrum manager takes into account the policy issues involved in spectrum planning and again, taking into account those policy issues requires long-term planning. We submit it's also important that a planner is impartial. The ACA who fulfils this role at present and it's hard to see how a private body could fulfil the role of an impartial spectrum planner.

FACTS has made the submission that the role of the ABA in planning of the broadcasting services bands needs to be retained and developed. In practice, as you know, the ACA delegates to the ABA planning and licensing of broadcasting services in the broadcasting services bands. FACTS supports this regime but submits that the ABA should have full responsibility for planning of all services in the broadcasting services bands. Our submission identifies some problems which have arisen as a result of the interference between television broadcasting and other services licensed by the ACA in the broadcasting services bands. Roger Bunch, the director of engineering of FACTS will be able to discuss that in more detail with you.

We submit that the ABA is the appropriate body to be responsible for the administration of spectrum in the broadcasting services band. Amongst other things there's a very strong link in the broadcasting sphere between planning of the bands, broadcasting content and public interest factors. We believe these very strong linkages make the ABA the appropriate body. For example, if there is interference with broadcasting services it can impact on millions of Australians which receive television as their most accessible form of news, information, entertainment and current affairs.

We also note that in practice the ABA deals with the interference issues in the broadcasting services band and it is appropriate as the regulator of content in that band and the manager of interference issues that the ABA should have full responsibility for administering spectrum in that band. I'll now pass on to Paul Mallam who will address you on licensing issues, spectrum reallocation and charging issues.

**MR MALLAM:** Thank you, Pam. Paul Mallam. Firstly, to talk about licensing

there's an important distinction that needs to be drawn in the facts submission and that's between broadcasting services bands licences and general apparatus licences. As the members will know, broadcasting services bands licences are apparatus licences that are effectively stapled to a broadcasting licence, a television licensee or a radio licensee for that matter has an entitlement to the associated apparatus licence and in fact supports that system and submits that it should be continued. But for the balance of the comments regarding general apparatus licences, FACTS members are also holders of general apparatus licences and it does have some comments on those. I'll briefly address those.

Firstly, as the submission outlines, FACTS believes there should be greater security of tenure for apparatus licences. There are often important investment decisions associated with apparatus licences, and the current term of apparatus licences doesn't reflect the effect of those investment decisions. So FACTS submits that apparatus licences should be for a longer term and there should be more certainty of renewal. An allied submission is in relation to the process of spectrum reallocation and conversion, particularly in relation to apparatus licences where FACTS has had some experience, and that's outlined in the submission. But FACTS would say that again that's a process that needs to more directly reflect and correlate with the investment that is undertaken by incumbent licence-holders. So FACTS has submitted that, firstly, there needs to be a greater notice period and has submitted that the notice period should be increased from two to five years for a spectrum reallocation process.

Secondly, there should be a compensation model in relation to reallocation of incumbent apparatus licence holders. FACTS notes, for example, that is a model that the FCC had adopted in the United States. Thirdly, there should be a forum for the planning arrangements to be discussed in relation to a spectrum allocation including but not limited to questions of compensation, and in the absence of a successful outcome from that sort of forum which would be between incumbent users and new entrants that there should be some facility for ACA arbitration over compensation and other measures that need to be taken to ensure that the interests of both groups are properly reflected.

Finally, a short comment on broadcasting licence fees. The commission has asked a number of questions in relation to the charging regime. They have been addressed very briefly, save to point out that in addition to apparatus licence fees, the members of FACTS pay very substantial television licence fees which are of the order of about \$200 million per annum. We simply draw that to the commission's attention and point out when considering the use of spectrum by broadcasters those licence fees which are very substantial need to be taken into account. Those are our submissions. We're happy to take questions.

**DR ROBERTSON:** Fine, thank you. Perhaps, Roger, you'd like to say something about the point that Pam raised about interference.

**MR BUNCH:** Certainly. This is Roger Bunch. I'm director of engineering for the Federation of Australian Commercial Television Stations. The issues that Pam drew

your attention to were essentially interference management issues within the broadcasting services band that relate to licensing by the ACA of other technologies, specifically the difficulties that we've experienced with the implementation of the digital conversion scheme. That was in fact initially a program of public awareness that we did in conjunction with the Australian Broadcasting Authority of the potential interference to biomedical telemetry equipment used in hospitals. That is an area where the ACA applies a class licence. Secondly is the area adjacent to and sometimes within the broadcasting services band where trunk land mobile radio systems are used for general communication between vehicles and base stations. Indeed, problems occurred there with interference management again with the roll-out of the digital convergence scheme. The other issue that occurred recently was the allocation of a licence, a test licence in fact, for a trunk land mobile radio system within the broadcasting services band.

These issues have been in fact managed by the Australian Broadcasting Authority in conjunction with broadcasters. What the previous speakers have drawn your attention to is an increased coordination of that licensing through the Australian Broadcasting Authority.

**DR ROBERTSON:** Okay. I'm curious about this. I'm showing my ignorance too. How come these things were put into that band? Was it absolutely essential?

**MR BUNCH:** There are two reasons. One is the frequencies in which the biomedical telemetry equipment is applied internationally. It's applied on frequencies that have been made available, for instance, in the country of manufacturer, which may be the United States or may be within Europe. Secondly, one has to bear in mind that some of those frequencies, such as for instance in Europe, that may be VHF frequencies, are not used for television, so the technology is applied here. So you really need an organisation that's coordinating the spectrum and the applications within that particular band. The intermediate example that I gave you was largely the use of the land mobile systems in frequency adjacent to the broadcasting services band, but because of the high population density now of the broadcasting services band with the roll-out of digital television, these problems weren't encountered previously. Therefore you need an organisation which is intuitive to not only the needs of broadcasting but also the management of the broadcasting service band.

Lastly, I believe it was due to some international movement on the reallocation of channels and spectrum in the upper part of the broadcasting services television band for use by land mobile radio systems. This happened to be on the last channel at allocation, which was channel 69, for a test in Sydney and Melbourne of a system that was developed by the Motorola organisation. The licences were allocated for usage within the CBD and the suburban area of Sydney and Melbourne, and we drew to the ABA's and the ACA's attention the difficulties with which that technology might be applied in those other parts of the land. Indeed, in some parts of Australia now that channel, channel 69, has been allocated for digital services and indeed there are already existing analog services. There's one in Melbourne at Selby, a low-power translator, and there's one in fact at Forresters Beach on the central coast.

**DR ROBERTSON:** Okay, thank you. Neil, do you have a question?

**DR BYRON:** Yes, I have a number actually. On the question of licences, licence terms, licence renewals et cetera, I'm wondering if you can help me. It seems to me that there's a certain amount of ambiguity with the way we use the word "licence" and I can think at one extreme a one-year licence is something like a permit which is non-tradeable, readily revoked without any sort of compensation. At the other extreme we often use the word "licence" in the sense of a long-term perhaps perpetual or at least indefinite property right, where that property right is transferable, it's tradeable through markets. Because it's a long-term property right there would be compensation if the right was abrogated, revoked or cancelled, but what seems to happen if you have the equivalent of a 99-year lease, if somebody sees it being used efficiently they can come in and buy it and change the purpose of the use et cetera. So we're using the word "licence" to cover very short-term non-transferable through to what is sort of a long-term property right. I mean, a plumber's licence or an electrician's licence is very different from the sort of long-term trade and property right.

At the moment apparatus licences as I understand them tend to be short-term, one to five years. I think there's no compensation at the moment if they are not renewed but the occupation is given a sort of reasonable two-year lead time to vacate, sort of thing. If they're made longer-term or if there was an implied guarantee of renewal, then it moves more towards a perpetual property right and it would accompany that with compensation. If one has an understanding of a perpetual right, if it's taken away then you would expect compensation, whereas if your one-year permit is not renewed, there's much less basis for compensation.

That's a long-winded way of saying I'd like to explore further the implications of the suggestions in your submission about renewal rights, lengthening the term and compensation. Is that changing the whole nature of the issue from a sort of a short-term permit to property?

**MR MALLAM:** This might be something that Roger wants to comment on as well, but certainly you're absolutely right. From the point of view of apparatus licences there's an enormous range of different types of licence involved, different licence terms, licensing for different applications and uses, but even with a one-year licence, a one-year licence for example in the case of fixed links can be a licence that, whilst it's only for a year, there's been a tendency to renew it from time to time. In fact, even though it's only a licence for a year, the underlying investment in the equipment and infrastructure that is used for that licence is actually quite considerable. So there can be something of a mismatch between the legal instrument or the legal right which is a licence which, as you say, can be one year or five years, and what is actually involved.

So at the heart of our submission really is the point that you need to look at the underlying equipment, infrastructure and use and make sure that whatever licence you use properly models that, and at the moment, certainly in FACTS' experience, it

doesn't, for example, in the area of the fixed link licences, where there's a very substantial investment. Now, a number of those licences have had to be reallocated, so it's not just a question of for example compensation for a decline to renew the licence, but also compensation because the equipment might need to be reconfigured in other spectrum, and that has other consequences. I suppose one of the things we're saying is that, when looked at from an economic perspective, this need not be seen as an impost upon the government because in fact as we understand it what happens in the US is that, where there's been a reallocation for some other use, the new entrant is entering that spectrum and the incumbent is required to vacate and move elsewhere. But where that process is occurring without any compensation, then in economic terms what is happening is, the incumbent is, in effect, subsidising the new entrant because one of the costs of entry, there's a question of who pays it and at the moment it's the incumbent.

But clearly one of the costs of entry is not just paying the government, whether it's at auction or through a charging regime or otherwise, for the spectrum that is being reallocated. One of the costs is of dealing with the incumbent licensee. Now, at the moment the incumbent licensee is bearing those costs. But we would say, when you look at it in terms of economic efficiency, that should actually be something that the new entrant bears because that should be part of a process that they're involved in. So I mean, on the one hand I think the question you're asking is, "Well, what sort of compensation should be paid and how does it relate to the right that's granted?" and there's a bundle of different rights and we agree with that.

But we think the two fundamental points are perhaps that the right involved, the licence involved, needs to better contour the underlying use and equipment, and secondly, in terms of efficiency the cost of reallocation of an existing user is something that should be borne by an entrant, because the incumbent has been required to relocate for that use. Is there anything you want to add, Roger?

**MR BUNCH:** I would just say in the broadest sense, not necessarily focusing on the rights that are conveyed to the licensee, that a licence is influenced by the applicants for that licence and the technology of the licence. So it's not simply to categorise licences that are, for instance, class licences and a scheme for those to be applied, to one that might be applied to a particular technology in a particular frequency band, and that is perhaps the way that technology is applied, tends to influence the way that a licence might be applied to the applicant.

Now, one of the other large determining factors and the difference of applications of licences in, if you like, not a class area but in a professional area in Australia is geography, where Paul was referring your attention to the application of supporting technologies for television which are diverse and use large amounts of spectrum in regional Australia, and also in linking distribution systems and contribution systems for television broadcasting to satellite platforms. There is an enormous amount of infrastructure. So one needs to consider the infrastructure that is put in place by private participants, organisations that require large investment cycles, to deliver services that essentially can go, in the case of receiving apparatus for television, to not licensed equipment.

**DR BYRON:** I guess the point I was trying to make was that the value to a company of a licence that says - three different types - "a licence to do this for 12 months at the end of which you're on your own, everything's off. There's a licence to do this with a right of renewal unless something drastic happens, or there's a licence to do this for a year, which we promise will be repeated indefinitely and if we break that promise we'll guarantee to fully compensate you for out of pocket expenses." Now, the value of each of those three is very, very different because of the terms and conditions attached to them and yet we tend to just call them all a licence. One of the points I think you're making is that it's very important to make sure that the terms and conditions attached are synchronised with the hardware that's being used.

**MR BUNCH:** Absolutely.

**DR BYRON:** So you've got a 15-year life of the hardware. You don't want one of those licences where at the end of 12 months all bets are off.

**MR BUNCH:** Absolutely, and that's really the point about having a longer notice period for spectrum reallocations, because at the moment, I mean, the spectrum reallocation regime of the two-year notice period does apply in some cases to licences that, as you've described them, are only annually renewable licences. But the notice period will be gone through but, yes, that's exactly your point: some of those one-year renewable licences are attached to enormously expensive hardware, quite complex systems that do a range of things, probably because that was simply the custom, the way these licences have been granted over a long period of time.

**MS LONGSTAFF:** If I can just add to that point, I think it's not only a matter of considering the investment but also considering public policy objectives and in the case of free-to-air television it's a very strong public policy objective that regional and remote areas received a range of services, and in fact in the government's black spots program a lot of money has been invested by the government, ensuring that that policy objective is received. I think if you go to the very back of our submission there's actually a map of Australia which indicates each of the transmitter sites. Now, Roger will correct me if I'm wrong, but the fixed-link licences needed to transmit from each of those sites currently are only one year. So it's a question of the investment which is enormous but also the public policy objective, if a regional or remote area is receiving a range of free-to-air television services.

**DR BYRON:** Just to follow up that - Roger, you might correct me, but is it possible that fibre optical or some sort of cable or wired link for those fixed point-to-point services is, in some cases, a reasonable substitute? I mean, for delivering material between Cairns and Rockhampton could you do it by wire if spectrum wasn't available?

**MR BUNCH:** A two-part answer: in some areas of Australia there is sufficient band width and it is being taken up, but in large parts of Australia that we're referring to, and the parts where these fixed links are used largely for regional distribution,

they're not and the difficulty is band width and I'd refer you to the outcomes of the national band width inquiry, which identified areas in Australia where in fact fixed-link services, privately run fixed-link services, provide the only alternative. There are some regional locations, not far from here in Western New South Wales, where the only way in for a television operator, who gains very little return perhaps when providing a commercial service to those communities apart from the coverage of the programming content and some advertising revenue - the only way in is in fact their link system for the band that they require.

So that's one of the difficulties, that there is an alternative in some parts of Australia but in large parts of the remote and regional areas there isn't. The other difficulty of course is the topology of the alternative systems and the cost, is that it's not always a direct route to get there and additionally, in getting to that location if there is an alternative, it's the cost of competing services such as telephony.

**DR ROBERTSON:** Have you read the ACA submission to us?

**MR BUNCH:** Yes.

**DR ROBERTSON:** Does that not cover this problem you have with licences? I must confess I'm a little bit surprised that the ACA doesn't in fact relate licence periods to cost of equipment. I mean, it's clear the investment is the key factor in a lot of these things. You'd have thought there could be a - I've got to use that word again - spectrum or a range of different durations for the licence that could be related to the age of the equipment and the life of the equipment. That's not done?

**MR BUNCH:** The approach that appears to be taken at the moment is a general approach, rather than an approach that is specific to an application, as I indicated earlier, to an application or a particular technology. The fact is that technologies emerge and decline, and indeed so do uses for spectrum. I'm specifically talking about the fixed-link service areas and for instance ageing of equipment, and it's a very important area for broadcasters particularly to obtain tenure. Those licence arrangements that may meet the needs of broadcasters may not necessarily apply to another technology in another spectrum band. So I think what you're illustrating is a general approach to licensing rather than a very specific approach, which is effectively what we have currently and what we're indeed endorsing. But we're identifying that because of the investment cycles in Australia we need greater tenure.

**DR ROBERTSON:** But the latest ACA proposal would provide an opportunity, would it not, to have greater flexibility?

**MR BUNCH:** Can I just draw your interpretation out of what the ACA is - - -

**DR ROBERTSON:** The so-called generic licence system, which would mean that in effect you'd have a licence for, say, 10 years or 15 years that might be reviewable in certain periods of time, or indeed if it's particularly long-term technology then presumably you could say you'd have first option of refusal after 10 years, let's say. It seems to me that the proposal that the ACA has put up would meet a lot of your

problems with one-year licences.

**MR BUNCH:** You're referring to the spectrum licence as such?

**DR ROBERTSON:** Yes, but and apparatus, you see. They want to move towards one single kind of licence.

**MR BUNCH:** Yes, I understand. The difficulty with the spectrum licensing is the potential increase in costs. Now, when you're talking about the investment in link systems to feed and distribute return feeds for instance for regional use services, what might be achieved in that particular frequency band on a speculative spectrum licensing basis may not be achievable by the existing uses. In other words, if the spectrum licensing fee were to increase, were to inflate because of some expectation of what the 15-year spectrum fee charge may be, then the existing user may find some difficulty in moving to a spectrum licensing fee regime.

My colleagues have just drawn my attention to the fact that the other issue is that in regional areas spectrum licensing fees perhaps aren't appropriate. As I've said earlier, the most appropriate scheme for us to continue with is apparatus fees. The technology that is used by regional broadcasters, even the users of outside broadcast links and ENG distribution equipment tend to be specialist users of that particular frequency spectrum. The notion of spectrum licence certainly might give the security of the tenure of that spectrum, but in fact the number of users and the potential for sharing in that spectrum may be overlooked. Now, it's not quite clear to me as to how those sharing arrangements between users of a similar technology might be applied.

**DR ROBERTSON:** It's something we'll probably take up with the ACA when we see them in Canberra next week. I think it's in the detail of - - -

**MR BUNCH:** I'm just wondering whether my colleagues have anything more to add.

**MR MALLAM:** I think that certainly we would be interested in hearing the ACA's views. Certainly we welcome a longer licence term and maybe when you have taken it up, if we had the opportunity to respond very shortly that might produce a beneficial result.

**DR ROBERTSON:** As you know, the submissions all go on the Web and if there's something there you don't like you can always send us something else. It's an iterative process, in other words. There's one other thing that particularly bothers me I think, which is this idea of giving control over the broadcasting spectrum to the ABA and having two authorities running spectrum. It seems to me that this is going to create some tensions and given the conversion to digital which is going to release spectrum in the broadcasting bands anyway, you could probably make a case for saying that all spectrum should go back to the ACA and let them administer it rather than increase the amount of control over the broadcasting bands that the ABA has and just leave them to deal with the actual broadcasting content.

**MR MALLAM:** Roger might like to comment but I can probably offer a couple of comments. Certainly - and we refer to this in our submissions - looked at as a sort of historical development if you like - of course prior to 1992 when the current act came into force and the Broadcasting Services Act also there was a division of labour between planning and broadcasting content with the Australian Broadcasting Tribunal as it then was, being the regulator of content and in this particular case the Department of Transport and Communications, as it then was, doing the planning. That actually created quite a lot of tension because - and this is a point we make in the submissions - when there's a very strong link between of course planning in the broadcasting area and content, logically it regulates the number of services that you have, which is important in a number of areas, especially across regional Australia where a lot of new broadcasting services have been introduced. So at the basic level it regulates the number of services you have but it also regulates the quality of those services: interference, black spot programs and so forth.

So from FACTS' point of view, the situation that we've have post-1992 where a lot of the planning functions in terms of broadcasting planning have shifted to the ABA so that planning and content - in fact, I think when the Broadcasting Services Act was introduced the government stated that planning was to become the driver of the Broadcasting Services Act and that has certainly been the case and it has been successful because it has resolved the tension between content and planning and the relationship between the two by delegating a large number of those functions to the ABA and in FACTS' experience that has worked very well. So in relation to broadcasting services themselves, it's what happens now.

The second point is that it doesn't give rise to the problems that Roger was talking about where you end up with other services that for a variety of reasons end up in the broadcasting services bands and perhaps shouldn't be there. We're not saying that they can't be there at all but what we're saying is that the ABA should be the body that considers whether they should be there because it's the body that is looking at content and the number of broadcasting services and interference as between broadcasters and those kinds of issues. So we think that's an important point.

But thirdly, in relation to digital, I mean, while that's certainly a migration I think there's no doubt that it will be a phased migration, still a number of years out and what happens with the released spectrum, that's really still a matter to be decided. It may be that there are other broadcasting services. I don't think it can be assumed by anyone that that spectrum necessarily goes elsewhere. That's something that will need to be decided at the appropriate time. So what we see is that at least at the moment the current arrangements have worked well but they would work better if the ABA had full control and as to the future, which will be some years out, we may well find that those are actually the arrangements that would work well in the future as well, even with the migration to digital because it would really depend what use is made of the relinquished spectrum. Do you want to add anything, Roger?

**MR BUNCH:** Apart from saying that one of the activities that has worked very

well in conjunction with the ABA has been the digital channel planning process. We had a very difficult situation, as you're probably aware. We had a large number of what we considered taboo channels beside the existing analog allocations and the rollout of the digital channel planning process has been managed cooperatively between broadcasters and the ABA and other agencies very effectively. The other issue that perhaps should not be overlooked is that the ABA as well takes part in international representation on spectrum issues at the ITU so they're conversant and they have the expertise to manage the broadcasting services band. It seems apparent to us that perhaps it's just almost a given that the ABA's expertise should extend to a fuller role of managing the broadcasting services band.

**MS LONGSTAFF:** If I could just add to that, too. I think it's important to recognise that in creating the ABA back in 1992, what drove it was an underlying policy that broadcasting and the broadcasting services band should be separately administered by a body because that body needs to take into account a range of public policy issues in administering broadcasting in the broadcasting services bands. I think a number of them we've outlined today. One of them is that it's an important public policy objective that broadcasting services are received in remote and regional areas of Australia. That requires the allocation of contiguous bands within the spectrum and that is why interference is such a real issue when you have other services within the broadcasting services bands.

The other sort of public policy objectives are that the vast majority of Australians - I think it's nearly 80 per cent - still rely on free to air broadcasting for their most accessible source of news and current affairs and entertainment. Interference issues mean that potentially vast numbers of those people can be deprived of free to air television services if there is significant interference. I think the ABA has a very specialist role in administering broadcasting, spectrum and licensing, by taking into account those public policy issues.

**DR BYRON:** I was just going to say that the questions of allocations and pricing within the broadcasting services band, we could discuss whether that's best done through ABA or the ACA but those sort of - there's like a broader or more sort of macro question of how big should the broadcasting services band be and that's a question that requires, if you like, an overarching view of the entire spectrum and all the demands for all the services and an organisation that is only a regulator of what happens within one segment of the whole thing may not be best placed to decide the quantum of that segment. Even if we're in full agreement that the ABA is well placed to determine what happens within that segment once it's defined, this is a broader question of how big that broadcasting band needs to be or alternatively the drop-through question, if some of it is no longer required because of digital or - - -

**MR MALLAM:** That's true but that's something decided by the minister, not by the ACA. When the minister makes a reservation of the spectrum that will become the broadcasting services bands, he makes that reservation and we would think that would not have to change in any way and that's probably appropriate on advice no doubt from the department as well as the ACA and the ABA.

**DR BYRON:** Yes, but if you like that's the first order question of how big is the broadcasting services band relative to all other demand on the spectrum.

**MR MALLAM:** Yes.

**DR BYRON:** Then the next question is: okay, what's the optimal way of allocating the charging fees within that band once it's been defined.

**MR MALLAM:** Yes.

**DR BYRON:** You were talking before in your submission about the ABA as the spectrum manager for the broadcasting services band with full control and not reliant on a delegation from the ACA. That almost reminded me of the description of spectrum managers in New Zealand which are of course I think in some cases, most cases, private sector, yet in the submission you were saying that the manager for this piece of spectrum needed to be a public body and that it couldn't be a private sector spectrum manager. Have you any comment on the New Zealand experience, given that they do seem to have private sector spectrum managers?

**MR MALLAM:** We do and we must apologise because this is a result of us seeking an extension of time to lodge our submission but on page 11 of the submission - - -

**DR BYRON:** Did I miss that, sorry.

**MR MALLAM:** A third of the way down - to give it greater highlighting it should probably be indented but you will see one FACTS member which also operates in New Zealand advised its experience as follows. What you see on the rest of that page and over the page is in fact a direct quote from the general manager of engineering. I think the point that he makes dovetails very well with what we're saying because he talks about the way that New Zealand has approached spectrum management as you've pointed out and he discusses that in the first two paragraphs in relation to basically carriage applications and at the end of the third paragraph he says in the sort of very helpfully direct way that engineers have, "it works very well." But he then goes on and says, another paragraph down:

This approach does not work in the broadcast bands where frequencies are used again and again and at different locations by different methods. In this case the government has created these overarching management rights but these rights have remained with the government.

So even in New Zealand, New Zealand, so it would seem, has not adopted that approach. We would actually say that if anything that kind of experience is evidence for what we're saying, that really a different approach is required for the broadcasting spectrum. No matter what else is adopted for other spectrum, you're looking purely at carriage issues - when I say "purely at carriage issues", in the sense of a number of competing carriage demands for spectrum which are really different from broadcasting demands.

**DR BYRON:** Is the argument for special treatment of the broadcasting services band affected at all by the digital convergence that we had a long discussion about with an earlier presentation this morning, the fact that news, sports, stock exchange et cetera may well be received over mobile phones in the very near future and who knows whether it's video on demand or computer games or whatever else with third generation telephony? In the era of technological convergence it has been put to us that what we need is some sort of regulatory convergence to accompany that, that if similar services can be delivered across different parts of the spectrum and the distinction between a broadcaster and a telephone company tends to disappear, won't we within a short period of time need to have a much more generic regulatory framework rather than that's compartmentalised?

**MR MALLAM:** I would answer that by saying that it depends on the sort of regulation that you're talking about and the sort of convergence you're talking about, because both "regulation" and "convergence" are really deceptively simple terms that actually involve a number of layers. Of course, when you look at convergence you can divide that up into economic convergence, technological convergence, services convergence, and in actual fact when you start breaking "convergence" down into a number of questions you start to ask yourself the question, "What does convergence mean?" and likewise with regulation. Where does that take you? I think to a couple of key points. In many other countries of the world there's been a lot of discussion about breaking down regulation in order to facilitate convergence. That discussion, I would say, has by and large been completely irrelevant to Australia, and for that matter New Zealand as well. Why? For the very simple reason that when most of the international commentators have discussed convergence in international fora, in the past they've been talking about when we look at structural regulation.

In an area like the US you had a distinction between cable and telephony until 1996 and in a lot of areas they still operate as separate systems. We've never had that. In the UK there was a restriction on BT from providing various types of services until recently, including video on demand. We've never had that. We've never had economic or structural regulation which has prevented convergence. It can happen. Australia is a very open environment as far as structural or economic convergence is concerned. It's also a relatively open environment in terms of technological convergence, but when we talk about all these applications and you look particularly at content, then you rapidly come to a position of saying you need a regulator for content.

Someone might ask why. The simple answer is that the public want one. I mean, the public don't want children to be able to watch certain programs over free to air television, let alone the Internet or something else, and in fact when you look at what is happening in the area of convergence, what has happened in Australia but certainly globally as well, is that it has actually created a greater need for a content regulator. In Australia, of course, that content regulator has been the ABA and the government, because it already has skills in content regulation, has looked at the ABA taking up that role. That's logical, because the sorts of skills that you need to be an effective content regulator are completely different from the skills you need to

be an economic regulator or necessarily a carriage regulator. So whatever sort of convergence you have, the need, it seems, is greater for a content regulator. That proposition doesn't seem to be argued by anyone, because globally most governments are looking at this issue of how they regulate content and the public wants it.

Once you look at that, you also look at broadcasting and you say certainly while there are a range of other services, as Pam pointed out, broadcasting is and will remain, at least for the foreseeable future, the major source of a lot of content for Australians. Why is that? We know it statistically because there are studies of it and we and no doubt the commission has access to some of those independent studies of broadcasting. There are ratings and all sorts of things that show you that, but also because of the role that broadcasting plays, as Pam has pointed out, in regional areas. One of the challenges for Australia of course is to cover really the most sparsely populated continent in the world. It's very difficult for a lot of applications to do that. Some may in time, but broadcasting does that. It's important in regions. It's important for reasons of social equity, where you have something like 10 per cent of all Australian households living below the poverty line, which is a sad statistic, and that's even before you get to average weekly earnings, which is about a third of Australia, and that's not very much money either.

So there are all sorts of reasons, equity and other reasons, why broadcasting would remain important. So once you say there needs to be a strong content regulator, broadcasting will continue, at least for the foreseeable future, to be important in content terms, and you rapidly come to the conclusion that the content regulator should also be responsible for the planning of broadcasting services bands. We've outlined in the submission in a very basic way the sort of simple Aristotelian steps that take you to that view, but they're the sorts of reasons we've been articulating which are in the free to air sector. There's a very strong link between planning and content. You just can't have one without the other, and that's really what the 1992 reforms were intended to provide. They were intended to make that link much stronger and it worked.

So when people talk about convergence, this is a very long way of answering your question but it actually has a number of ways of meaning. But I think at the end of the day you end up with a proposition that you will still need a strong content regulator no matter what sort of convergence you're talking about, that that role is strengthening, that broadcasting will still be very important is a purveyor of content for all sorts of reasons, and that planning of free to air services and the effect of that planning on content clearly has a very strong nexus for the foreseeable future. I would add that in Australia we shouldn't be deceived by discussions internationally about convergence and how regulation needs to be changed, because what you really need to do is look at the international environment, which has actually never been like ours. We've always had a much more open system of regulation in terms of, for example, re-entry of telecommunications into broadcasting or pay TV or in any of those areas or other areas like online services. We've been much more open than in the United States, the United Kingdom or any of Europe since 1992. Is there anything that anyone else wants to add?

**MS LONGSTAFF:** I think I'd just add to that by saying in articulating that the ABA should have overall responsibility for planning of the broadcasting services bands, we've focused on issues of interference. Those issues are not changed by the fact of convergence. There's still an underlying issue that in order to have an effective free to air broadcasting sector, the broadcasting services bands need to be planned and threats of interference need to be minimised, because interference with broadcast undermines the sector, undermines the content, undermines the delivery of that to the Australian public, and that underlying fact is not changed by the fact of convergence, whichever sort of convergence we're talking about.

**MR BUNCH:** Could I just by way of clarification point out that what we're referring to in appendix A of our submission is the broadcasting services band, those frequencies that are identified by the subheading Terrestrial Television Broadcasting. It's not the range of other frequencies that we're referring to. Again, the point that I was making earlier with regard to licensing I think still holds with regard to convergence, and again, when you're talking about convergence and you're talking about digital applications, whether they be through information technology applications or whether they be broadcasting applications of digitisation, a lot of these applications are technology dependent.

As you're probably aware, the developments that you illustrated before with the new telephone systems, the third generation telephone systems, in fact have allocations that are quite outside the uses now by broadcasters. So they're not necessarily falling within the broadcasting services band. So I guess the point that I'm making is that they're perhaps not suited in those bands, but importantly, again a lot of the application of spectrum - and indeed the way that the ACA had been listed as the Australian radio frequency plan and the way that that plan was developed at the ITU identifies applications and uses of those bands.

**DR BYRON:** But would it surprise you to hear that some of the mobile phone companies are afraid that within 10 years with technological convergence the current broadcast users of what we now know as broadcast services band spectrum may well be competing with them on some new yet to be defined common ground where the distinction between a phone company and a TV company has basically disappeared and you're competing for the same market, the same advertisers, the same customers with a convergent technology and they're concerned that the allocation and pricing of spectrum to deliver these two converged products has been very different. If the distinction blurs in the future, we will wonder why we still have one regulator for telephony and one for broadcasting if the functional distinction disappears.

**MR BUNCH:** I think we make that point in our submission, that in fact again this is the difference between the applications and the differences between the technologies. Are you identifying that there may be interest within the broadcasting services band or we're competing for other areas of spectrum where they currently operate and we may currently operate?

**DR BYRON:** With digital TV, interactive TV and the ability to order a pizza from

your lounge room on the TV set rather than using your mobile phone, for example, it's quite conceivable - the technology doesn't yet exist but the distinction between what we now see as two completely different areas will blur significantly and yet the pathways to that conversion technology are very, very different and - I don't want to push it too far. It's all speculative.

**MR MALLAM:** I know, it is speculative. I can understand why various sectors would say that and I suppose people have been saying that for most - I mean I think conversions probably started to come to the fore as a term in about 1992 when the act we are discussing was introduced and we haven't really seen it yet, so it's some way off. But I suppose the other lesson that we have all learned is that technology provides or can facilitate applications, but what drives applications are people and uses. If you are drawing a comparison between mobile and television, I mean television is basically a fixed location activity. You can't watch a television and drive a car. You can't walk down the street and watch TV.

**DR ROBERTSON:** You can sit at the back of the car and watch TV.

**MR MALLAM:** Arguably you can sit in the back of the car and watch TV, but what I am saying is in terms of the applications, as you say, we don't have the technological platform at the moment. I wasn't trying to say it won't happen. What I was saying is there is a big question mark about how and when that happens, in the same way that no-one knew that was really going to initially drive the first wave of IT into the office was word processing. Once it took off it took off quickly, but it was word processing and no-one really knew that the thing that was going to kill the telex was the fax, but once it took off it took off quickly. So I suppose what I am saying is I can see why people would say that, because we may end up with the technology that facilitates that, but I think yes, I suppose I am agreeing with you, it is speculative, but we don't really know yet whether those applications are at all interchangeable, because it is not the technology that will drive that, it will be people's behaviours and applications of the technology.

**MR BUNCH:** Could I just add by drawing your attention to page 6 of our submission where we state within paragraph 3:

This is not to say for example that there is no public interest in having an efficient system of mobile telephony. Clearly there is, however, the planning considerations which underpin mobile telephony are generally similar to those for other services, all of which focus principally on carriage of communications. On the other hand, broadcasting is driven by public interest consideration which focus on content. Plainly decisions necessarily affect the nature of the services provided as a result on their content.

I think that is the thesis for what our submission has been saying, that the Australian Broadcasting Authority is the organisation that - you are focusing on applications and the Australian Broadcasting Authority is the organisation that focuses on content. A lot of the technologies that perhaps are emerging have a location that may

be not necessarily appropriate in one band, but appropriate in another. The other important issue and overriding issue within the submission is there needs to be a place for broadcasting services within a radio frequency spectrum. That is identified internationally at the ITU and Australia follows by treaty of those arrangements.

The notion that some other services might be identified within those bands has not been supported at the ITU. Indeed, the recent September meetings in Geneva of study group 6 identified that there may not be available spectrum for any other technologies within those bands, if at all. So I think the point we are wanting to make is there needs to be a place for television broadcasting and that is managed very adequately at the moment by the Australian Broadcasting Authority and the important point there that Paul has been making is the Australian Broadcasting Authority manages the content within that band. Some of the other technologies that you have been suggesting in fact are in other bands.

**DR ROBERTSON:** That's a very good point. Thank you for that. Anything you would like to say as a last word?

**MR BUNCH:** I would just perhaps like to identify that having been working with the ACA for a long period of time in their role of spectrum management, I appreciate the expertise and the resources that the ACA has under the act and we certainly would not like to see those resources diminished and in the coordination of some of the supporting bands that we use for contribution and distribution, we are very aware as many other users are, of the scarcity of spectrum and therefore we know as a result of the work that we do at the ACA of not only the competition within Australian for Australian spectrum, but from the competition from other users of that spectrum. So a vigilant and well-resourced ACA is very important I believe to the national interest.

**DR BYRON:** Thank you very much.

**DR ROBERTSON:** Thank you. I am supposed to say is there anybody in the audience who would like to say anything, but I'm afraid I have a plane to catch.

AT 3.52 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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