



COMMONWEALTH OF AUSTRALIA

# SENATE

## Official Committee Hansard

ENVIRONMENT, RECREATION, COMMUNICATIONS  
AND THE ARTS LEGISLATION COMMITTEE

**Reference: National Transmission Network Sale Bill 1997  
National Transmission Network Sale (Consequential Amendments)  
Bill 1997**

THURSDAY, 5 FEBRUARY 1998

CANBERRA

by authority of the Senate

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**SENATE**

**THURSDAY, 5 FEBRUARY 1998**

**ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS  
LEGISLATION COMMITTEE**

**Members:** Senator Patterson (*Chair*), Senator Schacht (*Deputy Chair*) Senators Bartlett, Eggleston, Lightfoot and Lundy

**Participating members:** Senators Abetz, Allison, Bolkus, Boswell, Brown, Calvett, George Campbell, Carr, Bob Collins, Colston, Coonan, Cooney, Crane, Harradine, Hogg, Faulkner, Ferguson, Mackay, Margetts, Murphy, Neal, O'Chee and Tierney

**Senators in attendance:** Senators Colston, Patterson, Schacht and Tierney

Matters referred by the Senate for inquiry into and report on:

National Transmission Network Sale Bill 1997

National Transmission Network Sale (Consequential Amendments) Bill 1997

**WITNESSES**

**CROWE, Ms Maureen, Head of Resources, Special Broadcasting Service, 14 Herbert Street, Artarmon, New South Wales 2065 . . . . . 1**

**McGARRITY, Mr Ian, Head of Development, Australian Broadcasting Corporation, 700 Harris Street, Ultimo, New South Wales 2007 . . . . . 1**

**SOOTHILL, Mr David, Director, Communications and Planning, Special Broadcasting Service, Locked Bag 028, Crows Nest, New South Wales 2065 . . . . . 1**

**WALKER, Ms Judith, General Manager, Legal and Copyright, Australian Broadcasting Corporation, 700 Harris Street, Ultimo, New South Wales 2007 . . . . . 1**

**CORKER, Mr John Simon, Manager, Legal Section, Australian Broadcasting Authority, PO Box Q500, Queen Victoria Building, Sydney, New South Wales 1230 . . . . . 14**

**GREENEY, Mr Robert Scott, Director, Planning, Australian Broadcasting Authority, PO Box Q500, Queen Victoria Building, Sydney, New South Wales 1230 . . . . . 14**

**CAMERON, Mr Ronald John, Director, Telecommunications Policy Coordination, Australian Competition and Consumer Commission, 470 Northbourne Avenue, Dickson, Australian Capital Territory 2602 . . . . . 14**

**SPIER, Mr Hank, General Manager, Australian Competition and Consumer**

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<b>ALSTON, Senator Richard, Minister for Communications, the Information Economy and the Arts, Parliament House, Canberra 2600 . . . . .</b>	<b>27</b>
<b>BUETTEL, Mr Rohan Nigel, Assistant Secretary, Legal, Parliamentary and Coordination Branch, Department of Communications and the Arts, Canberra, Australian Capital Territory . . . . .</b>	<b>27</b>
<b>EDWARDS, Mr Alan, Acting Assistant Secretary, Public Broadcasting Branch, Department of Communications and the Arts, GPO Box 2154, Canberra, Australian Capital Territory . . . . .</b>	<b>27</b>
<b>JONES, Mr Vic, General Manager, National Transmission Agency, Level 6, Blue Building, Benjamin Offices, Belconnen, Australian Capital Territory . . . . .</b>	<b>27</b>
<b>STRETTON, Dr Alan, First Assistant Secretary, Film, National Broadcasting and Intellectual Property Division, Department of Communications and the Arts, Canberra, Australian Capital Territory . . . . .</b>	<b>27</b>
<b>HUTCHINSON, Mr Michael James, Chief Executive, Office of Asset Sales and IT Outsourcing, PO Box 4271, Kingston, Australian Capital Territory 2604 . . . . .</b>	<b>27</b>

**Committee met at 10.11 a.m.**

**CROWE, Ms Maureen, Head of Resources, Special Broadcasting Service, 14 Herbert Street, Artarmon, New South Wales 2065**

**McGARRITY, Mr Ian, Head of Development, Australian Broadcasting Corporation, 700 Harris Street, Ultimo, New South Wales 2007**

**SOOTHILL, Mr David, Director, Communications and Planning, Special Broadcasting Service, Locked Bag 028, Crows Nest, New South Wales 2065**

**WALKER, Ms Judith, General Manager, Legal and Copyright, Australian Broadcasting Corporation, 700 Harris Street, Ultimo, New South Wales 2007**

**CHAIR**—I declare open and welcome you to this public hearing of the Senate Legislation Committee on Environment, Recreation, Communications and the Arts on the National Transmission Network Sale Bill 1997 and the National Transmission Network Sale (Consequential Amendments) Bill 1997. The committee has before it submission No. 4 from the Australian Broadcasting Corporation, and submission No. 10 from the Special Broadcasting Service. Are there any additions or alterations to the document that you would like to make at this stage?

**Ms Crowe**—No.

**CHAIR**—The committee prefers that evidence be given in public but, should you at any stage wish to give you evidence or part of your evidence or answers to specific questions in camera, you may ask to do so and the committee will consider your request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. Do you wish to make an opening statement?

**Ms Crowe**—Yes.

**Mr McGarrity**—We would both like to do that.

**Ms Crowe**—Senator, we are delighted today to be sharing a panel and we have come to the conclusion that perhaps my colleague Mr McGarrity, might talk for about five minutes and go through the submission that the ABC has made, then I will talk for about five minutes about the SBS and perhaps open up to questions. Would it suit you if we proceeded in that way?

**CHAIR**—Yes, thank you.

**Mr McGarrity**—What I would like to say is really clarification, if you like, or a summary of the central tenets of the ABC submission, rather than go through it in detail. The central objective for the Australian Broadcasting Corporation in terms of terrestrial transmission services for some time has been effectively to gain responsibility for them and control of them, which inevitably meant being provided with full funding so that we could purchase such services in a competitive environment.

We therefore, in a most simple way, wish to be able to operate in the terrestrial transmission services marketplace exactly as we do with satellite transmission services. In the satellite transmission area, we some 12 years ago received in our base funding from government sufficient money to enable us to purchase the services then from Aussat which we required to fulfil our service obligations. In the time since then we have been a true customer of Aussat and subsequently Optus and, as competition has emerged, of Panamsat, Intelsat and Telstra as well.

We believe that the bills that are in front of the parliament generally predispose the achievement of the ABC's central objectives—provided, however, that the compact between the ABC and the federal government and the contract between the ABC and the prospective owner or owners of the National Transmission Network are successfully negotiated. At this time the signs are, in the negotiation process, that we will be to achieve satisfactory outcomes to the corporation in those negotiations.

Notwithstanding the predisposition of the bills to achieve the ABC objectives, we have some specific concerns with the legislation that is before the parliament. Those concerns are particularly spelt out in our submission. Without going through them at this time, we of course welcome the opportunity to give senators a better understanding of those concerns we have, and Judith Walker and I would obviously welcome the opportunity to expand on those concerns, should you wish us to.

Notwithstanding those concerns in the legislation, it would be wrong of me not to say that the consultation with the various other stakeholders in terms of this matter has been extremely close and comprehensive. Since this process in a way began in April 1996 we have had a very good access to those who are making the decisions, and our views have been listened to, and the consultation has been comprehensive and consistent.

Finally, I would like to say that the ABC has never seen the actual sale of the National Transmission Network as a primary objective of ours. Our objectives are fundamentally to achieve control of, and responsibility for, our transmission services. However, the ABC is quite comfortable with the concept of sale. When the McKerlie report, which was provided to the previous government, produced 10 non-exhaustive models for the structure of the way terrestrial transmission services could be delivered to the national broadcasters, we in the end favoured three—all of which, it just so happened, would finally lead to the sale of the National Transmission Network. It was not a primary aim of ours; it was a consequential effect.

We are also experienced, to some extent, in transmission services providers moving from public to private ownership, because in 1985 we dealt with Aussat, which was a government instrumentality, or subsidiary company—I am not exactly sure of the specific structure, but it was certainly in public ownership—and Aussat in 1991-92 moved into private hands. Our comfort with the sale of the facilities, albeit that it is not a primary aim of ours, in part leads from no problems having emerged from the movement of Aussat from public ownership to private ownership; and, in many ways, our relationship with that provider has been fairly transparent to that significant change. Thank you for the opportunity to make those opening remarks.

**CHAIR**—Thank you.

**Ms Crowe**—Senator, thank you for the opportunity to talk with you today. Over the past decade, SBS has been exploring changes to the arrangements relating to the transmission of our terrestrial radio and television signals. SBS has contributed to various reports and inquiries during the period, including a report conducted by Price Waterhouse in 1991, an inquiry by the Australian national auditor in 1990 and the report that my colleague refers to, the McKerlie report, in 1995. Subsequently, SBS has worked with a departmental working group, following the minister's decision to appropriate funds to the national broadcasters to enable us to purchase our own transmission services. Throughout that time, SBS's position has evolved to one where, for the past five years at least, it has been our very clear aim that we, like the ABC, want to ensure that there is a service provider model in place. Similarly to the ABC,

we do not particularly have an aim of sale of the NTA, but we very much support a purchaser provider model.

The sale, as it is proposed at the moment, clearly suits our needs. It provides a purchaser provider opportunity for us. It would certainly have the support of SBS in that it would help us to achieve the aims that we have had slowly evolving over 10 years but crystallised for the last five years. Just to make this quite clear for the record, our aim is the establishment of a purchaser provider model for the transmission of our broadcasting services.

We welcome the opportunity to be able to negotiate the delivery of our services with a service provider in the future. We particularly welcome the opportunity to provide what we would call a seamless service to our audiences. At the moment we are responsible for production. We are responsible in the way that Mr McGarrity talked about, through our contracts with Optus and more recently Telstra and Panamsat, for satellite delivery of our services. Then we have a situation where our signal goes outside of our control before it reaches the audience. It has always been our aim to have a seamless delivery of service, from production to the audience who is receiving it.

I would stress that our audiences do not really understand the difference between an NTA, for example, providing terrestrial services and SBS. So when there are problems with transmission, it is almost invariably SBS, or the ABC, that will be contacted by a viewer or a listener to solve those problems.

We also particularly welcome the first steps in what we see as a more flexible delivery opportunity for us. We are heading into an era of digital transmission. We are heading into an era of other forms of delivery that do not particularly necessarily require the terrestrial structure that we currently have. We would see the current move as a very good first step in freeing us up in being able to choose not only what programs we put to air but the way in which they are received by our audiences.

In saying all of that we would absolutely commit that existing audiences should be in no way disadvantaged. We would also commit that the quality and the output of service that we currently provide to our existing audiences should remain. We believe that that has been covered both through the legislation and the draft contract that we have been working on, which will be the contract between us as the broadcaster and a potential purchaser.

There is a range of other things I could talk about but, given the time limit that we have, I just want to say a couple more things. Like Mr McGarrity, the SBS is firmly of the view that the consultation during the development of this sale process has been exemplary. I cannot really evidence for you any particular item where SBS has raised a concern which has not been taken very seriously, both by the legal people in the department who have drafted the legislation and by the advisers to the Office of Asset Sales. We have been very pleased with the input that we have had to the development of the legislation, the contract and the compact which is being drafted between government and the broadcasters.

Finally, to sum up our fairly brief submission, we have a couple of minor problems, which are evidenced in our submission. They are truly quite minor drafting problems, we think. To sum up generally, we believe our role is to deliver services to the community and it is increasingly difficult to do this without control of our production and delivery processes.

**CHAIR**—Thank you. Senator Schacht, have you any questions?

**Senator SCHACHT**—Yes. It is in both your submissions and it has been well known for a long time that both the ABC and SBS wish to have more control over the transmission

services. That is understandable in a number of ways. You make it clear that if the NTA is privatised, this would give you, at least after the five-year period where you have to use the privatised NTA, that flexibility in a contestable market. I am just wondering whether you would prefer not only to have control over the transmission licences, the transmission signal itself and the facility, but also over the equipment.

From time to time I have heard stories that there have often been disputes between the NTA staff and the ABC and SBS staff over maintenance, engineering issues, et cetera. Even with a privatised NTA and ultimately a contestable market, certainly for the first five years, you are going from having a public monopoly to a private monopoly. I am not sure that a private monopoly is automatically going to be any more sensitive to some of these issues than the present NTA public monopoly. Have either the ABC or the SBS given consideration at any stage to saying that they would like to have ownership of the equipment as well as control of the transmission?

**Mr McGarrity**—I will answer that by splitting the equipment into two different sections: equipment which is customer specific—that is, is only used for the ABC—versus equipment which is common and will be used by many people on the site. With respect to the common site equipment—the masts, the antennas—it is ABC policy at the moment that we do not seek to own those. With respect to our own customer specific equipment, provided we get full funding we would have the ability to decide to own our own transmitters or not, depending on what we felt was the best strategic way to go.

**Senator SCHACHT**—In terms of equipment—if you can explain this for us lay people—if you go up to the ABC tower on Mount Lofty, in my own state of South Australia, there is a tower with the antenna that is owned by the NTA. The small building there, which has some form of transmitting device in it for the wire that goes up the mast, is what you would want to keep, subject to adequate funding, and still own. Is that correct?

**Mr McGarrity**—When you said ‘want to keep’, no, we are quite comfortable with our existing transmitters passing to the ownership of the privatised entity. But remember, if we receive sufficient funding, as we hope the compact will provide to us, then at future times we will be able, if we seek to, to purchase and own our own transmitters on those sites, just as every commercial television sharer of those sites in Australia currently does. It is a decision which we can make in an ad hoc way, according to our own strategic perspective, as and when the occasion presents itself.

**Senator SCHACHT**—Does the government agree, in the discussions so far on the development of the compact for both you and SBS, that it is a reasonable ask that you be provided with the money to give you that flexibility?

**Mr McGarrity**—I think people you will question this afternoon would be more adequate to provide that response, but my understanding is that the funds that would be disbursed as a result of this process are the funds that are marked down in the forward estimates of the government for expenditure on this matter anyhow. What we are fundamentally doing is splitting to different parties the amounts of money that were already earmarked for such purposes in any case.

**Senator SCHACHT**—Just for the record, can you tell me what those forward estimates figures are? We will get them from DoCA this afternoon.

**Mr McGarrity**—I really do not have them in my head.

**Ms Crowe**—I would just say that SBS does not want to own its own equipment. We have no particular interest in doing that. With respect to the first part of your question about the monopolistic arrangements, I guess the major difference would be that we would have a commercial contract in place with this provider which would have certain penalties for non-provision of services or non-performance.

**Senator SCHACHT**—You did not have those arrangements with the NTA?

**Ms Crowe**—No.

**Senator SCHACHT**—I ask both of you: what is the figure that you have asked for in the negotiations? Have you put forward to DoCA and the government what you think is a fair figure to cover the range, including the option of purchasing the equipment where you think it is necessary?

**Ms Crowe**—With respect to the SBS, we have not put forward any figure to purchase equipment because that has not been our policy.

**Senator SCHACHT**—Okay. Without that, what is your figure?

**Ms Crowe**—The figure that would be transferred to the SBS is still something that is under negotiation. I am not prevaricating there. It is a question of, at this stage—

**Senator SCHACHT**—It is under negotiation—I accept that—but you must have put a bid.

**Ms Crowe**—No—

**Senator SCHACHT**—You have not put an ambit claim in?

**Ms Crowe**—No. Because we are not purchasing—

**Senator SCHACHT**—You have not even put in a figure to test the water?

**Ms Crowe**—It would be very much dependent, as I understand it, on the existing budget for the NTA and on the purchase price and cost arrangements of the contract from the commercial providers. At this stage it is not a matter of us putting in a bid; it is a matter of us ensuring that when that money is resolved, when those quantum are resolved, we are confident that it will be sufficient for us to be able to pay for those services.

**Mr McGarrity**—Senator, I will just confirm the sentiment I mentioned before: the negotiations that Maureen Crowe mentioned and that I mentioned with respect to the compact are really negotiations about how to split what is the pre-existing cake. The total expenditure is going to remain the same; it is just that the organisations who are purchasing the services will alter. So, in many ways, if it was adequate in the forward estimates, it is adequate now. If it was inadequate to the forward estimates, it is inadequate now.

**Senator SCHACHT**—If negotiations can continue about how it is split, with all due respect, DoCA may have a view that it should be split a different way so that some of the crumbs fall into their lap rather than into yours. Knowing bureaucracies—how they work—that is not an uncommon feature.

**Mr McGarrity**—Again, they can answer for themselves. But from the broad indications we get—and it is the consultants who are coordinating this; the consultants to the Office of Asset Sales as opposed to DoCA—

**Senator SCHACHT**—I am even more suspicious if you start quoting them.

**Mr McGarrity**—The words and sentiments we get from them are that the sums of money that would remain with DoCA—they can speak for themselves—are pretty immaterial in terms of the total amount that is there to be split.

**Senator SCHACHT**—Subject to this report, this bill goes into the parliament to be debated, according to the government, sometime in late March or in April. Presumably it wants to get it through, if the Senate agrees, before the budget session. But once the bill is through and the arrangements are set, if you then find that there is not an agreement or that there are some loose ends about how much money you get under the compact, you really are hung out to dry as far as how much money is provided to you.

I would have thought the ABC and SBS interest is to actually have this compact agreed to before the legislation passes the Senate—or does not pass the Senate. Your position would probably be enhanced because at least the Senate can then determine what the two national broadcasters—yourself and SBS—are going to receive. It is a bit like the Senate being asked to buy a pig in a poke here: we do not know what you are actually going to get. All you say is that the forward estimates are available; they are adequate. But you cannot define for us how those forward estimates may be broken up and may be changed.

**Ms Crowe**—Our understanding is that the existing pool of money is the pool of money that will be disbursed to the national broadcasters. Our preliminary understanding is that the break-up of those funds will be in a proportional arrangement to the nature of the services that are currently being provided. Already there is a notional break-up in the financial statements of both the ABC and SBS of services that are provided by the NTA. I am not suggesting that that notional break-up is the one that we would want to be held to. But there are indicative figures already available as to the proportion of the overall bucket of money that would come to SBS and to the ABC.

**Senator SCHACHT**—But have those indicative figures been agreed to by the government?

**Ms Crowe**—Not at this stage—and that is the negotiation that we are still involved in.

**Senator SCHACHT**—That is what I am getting to.

**Ms Crowe**—My understanding—again, I would have to defer to my colleagues this afternoon—is that the overall bucket has been agreed to by the government. What is there now is what—

**Senator SCHACHT**—You can find devils in the detail. You agree to the bucket, then you find that the bucket has been bent a bit at a later stage and, after the bill, if it is passed by the Senate, then it will be crying over spilt milk.

**Ms Crowe**—There is, I guess, a further avenue of protection that we feel: in the contract that has been developed for the first five years essentially any commercial provider who wants to purchase the network will have to be assured that its cash flow for that first five years will be adequate. So I guess we are a little bit comforted by the fact that, as a second string to the bow, that commercial provider would want to see—

**CHAIR**—Isn't there also a commitment to maintain the services as they are?

**Ms Crowe**—Absolutely.

**CHAIR**—So that in the contract the purchaser will assume there will be that much transmission going on—

**Ms Crowe**—Yes, that is true.

**CHAIR**—It would be inane, I presume, not to have the money to pay for that when you enter into a contractual arrangement.

**Ms Crowe**—I would think so, Senator, yes.

**Mr McGarrity**—I think that the compact, one way or another, will spread the existing sum of money in accordance with what I believe will be in the end an agreed split between the ABC and the SBS, and that initial contract with the privatised owner will have the ability to be extended for two further terms at the unilateral option of the SBS and the ABC on the same terms.

**CHAIR**—Two five-year terms?

**Mr McGarrity**—Yes. So, effectively, you could have 15 years tie-in to that level of funding, adequate or inadequate, in terms of the returns to the new owner. The other thing I could say is that because we all anticipate, due to the level of development of the existing costing systems with the NTA, that the initial allocations percentage split between the SBS and the ABC might not be totally accurate, I think we are also looking for a mechanism for reviewing that, consultatively, at about the third or fourth year.

**Senator SCHACHT**—The contract is signed under the compact. You get your compact for five years. Contracts are signed with the new privatised NTA for five years to provide that service. That is a fixed five-year period. The submissions the government have made say that for the five years, with the NTA being run by private enterprise, it will be more efficient. Does that mean that if it becomes more efficient they get the full benefit of the savings rather than going back to the taxpayer via reduced payments; that you—and therefore the taxpayer—actually get some of the benefit of the savings? So if they start making big savings—if that is what the government believes it will do—that just means the privatised company will make a bigger profit and there is no adjustment allowed for. Is that right?

**Mr McGarrity**—Again I perhaps could refer to our previous experience with Aussat. With Aussat, in 1985, we signed a five-year contract which was a fixed contract and we had a set sum of money from the government which we paid to Aussat. In many ways, whilst that would appear to be a relative straitjacket, the fact that we had a true supplier-customer relationship actually led, even in that period, if not to efficiencies in finances emerging, certainly to efficiencies in the flexibility and the quality and range of services provided.

I think, as I see the development of the contracts, there are going to be, on the face of it, no savings emerging back to us within the first five years from the contract with the privatised owner. But I believe there will be considerable scope for increased services to us or increased quality of services, increased knowledge from us of the services that are being provided and the quality there being provided, and an ability for us to influence that environment in a way that we have not been able to before.

**Senator SCHACHT**—That is good for the ABC and the quality of service, but it does mean that, if there is improvement in the cost structure, that will flow to the privatised company—and they have locked you into a five-year contract. There is no ability within the five-year contract to say, ‘You have done pretty well here. How about some of that efficiency in financial terms coming back to us, so you have in your budget more flexibility to do other things?’

**Mr Soothill**—May I just add to what Mr McGarrity said? In that particular Optus instance, or Aussat as it was at that time, about four years into the five-year contract, the ABC renegotiated the contract for a further two-year extension at reduced prices.

**Senator SCHACHT**—Was this when Aussat was then owned by Optus?

**Mr Soothill**—No, it was when Aussat was Aussat, Senator.

**Senator SCHACHT**—It is a bit different when you have a fully privatised company. The shareholders on the board of a privatised company may well not have the same view of Aussat, which had a number of other problems.

**Mr Soothill**—We have subsequently, both SBS and ABC, negotiated further contracts with Optus, which have brought significant benefits certainly to SBS and I believe to the ABC.

**Senator SCHACHT**—In the annual report of the NTA which was dealt with at estimates last year, they gave some pretty encouraging figures that over the last five years since the establishment of the NTA there was, I think, a 40 per cent improvement in productivity and major savings for the government, et cetera. Do you believe that they have about reached the limit on the cost side of their efficiencies or do you think that the only way they can improve the cost side efficiencies is to privatise?

**Ms Crowe**—Senator, I am not sure we are in a position to answer that. One of the difficulties that we have is that we do not actually know what the costs are per service for any of our services. We really are not privileged to have very much detailed knowledge of the cost saving measures that the NTA—

**Senator SCHACHT**—Information in the NTA annual report, as far as you are concerned, may be good publicity material in the broad but is not good enough in detail for you to get a grip on—

**Ms Crowe**—Absolutely.

**Senator SCHACHT**—I see. Have you discussed that with the NTA?

**Ms Crowe**—I think we have over a number of years.

**Senator SCHACHT**—What is their answer to your view that the publicity is very good, but you would like to see some detail?

**Ms Crowe**—Senator, I am not sure I would have said that my view was that publicity was very good. I just would add that we have over a number of years been attempting to have a greater understanding of the cost structures that operate within the NTA. To this stage we have been relatively unsuccessful in achieving that. One of the measures that is actually built into the contract that the SBS will have with the provider is that by the third year of that contract detailed costings must be made available to us on a service by service basis and a site by site basis.

**Senator SCHACHT**—That is a site by site basis?

**Ms Crowe**—Yes.

**Mr McGarrity**—Could I answer very briefly on one of the points. I think the NTA and the ABC have both in the past operated in accordance with the structure that was set up. The NTA rightly saw the minister as their customer, not the ABC, and it was to the minister that they would reveal the information about the innards of their workings, not to the ABC. So I think it was the structure rather than the people or the performance that created the problems that have been there.

**Senator SCHACHT**—SBS said they do not want anything to do with owning equipment but you in the ABC said you want the flexibility. If you got the flexibility in the contract, or the compact, to buy equipment and then you chose not to, that means you actually would have in your compact ended up with some spare cash?

**Mr McGarrity**—I have no doubt that the compact, and the contract, would allow us to purchase transmitters at some future date but the money we get to pay for those transmitters

is not a cash amount; it is an accrued amount year by year. The person with whom we contracted to provide those transmitters would be the one raising the cash in a purchasing sense to buy that transmitter. Our yearly lease fees would be allowing them to pay off that loan. There is no question in the discussions we have had as to whether we would have the ability, should we seek it at some time in the future, to use our money so as to own some of our customer specific equipment. The money that is available in the first instance from the forward estimates would cover that and would not leave us with spare cash one way or the other.

**Senator SCHACHT**—There is a long history—and it was raised in estimates committees many years ago—about getting control of the operation of transmission licences. As a result of this opportunity, now the NTAB is being privatised, have you in conjunction with the SBS or separately thought of putting together a venture company to buy the transmission licences direct for the ABC?

**Ms Crowe**—About four or five years ago we did canvass that quite seriously within the SBS and in conjunction with some colleagues at the ABC. We wisely came to the conclusion that it was not something that was directly aligned with our charter and that we probably did not have the size, experience or expertise to actually carry out a joint venture of that sort.

**Mr McGarrity**—Since our response to the McKerlie report, it has been ABC policy not to be in the business of owning or operating common site facilities or the sites themselves. When the government announced its decision to privatise the National Transmission Network, we did look at whether we should reopen the issue and decided not to. Also, I think it is worthwhile saying that the Office of Asset Sales has written to us saying that it would not be appropriate for the ABC to be part of a consortium bidding for the facilities.

**Senator SCHACHT**—They have, have they? I see.

**Mr McGarrity**—And that is a position which we have not had a problem with.

**Senator SCHACHT**—Okay. For both the ABC and the SBS, when the compact for five years runs out—I know you have the option of another five years—what confidence do you have in the ABC and the SBS that the funding you are getting for five years from the government under the compact will not have a large section sliced off and readjusted by the demons of Treasury and Finance as a savings measure in five years when the world changes drastically? I know you have got the option of another five years and you have still got the option of bailing out completely and putting your whole operation out to tender. People purchasing who want to bid for the NTA have got to take on board that they have only got five years of guaranteed business.

**Ms Crowe**—We will have in place a compact between the SBS and government. Part of that compact will be an ongoing set of principles and part of it will be the specifics of funding that will form a document that is an agreement between the government and SBS. As well as that, we will have the normal budget processes whereby the funds that are appropriated to our baseline will flow on through the forward years and presumably there will be a rolling forward estimate at the end of five years.

But having said all of that, of course it is within the power of government at any stage to make reductions. If that were to be the case then of course our response would have to be to evaluate where those service reductions would have to take place.

**Senator SCHACHT**—Are you arguing in the SBS that the funding under the compact gets written into triennial funding, into the base?

**Ms Crowe**—Yes, we would be proposing that. We are currently—

**Senator SCHACHT**—So it is your position then to jack it up as high as possible to get it into the base forever and a day. Is that right?

**Ms Crowe**—I do not think so, Senator, no.

**Senator SCHACHT**—You would be a mug if you did not, I would have to say.

**Ms Crowe**—The compact does—

**Senator SCHACHT**—I am sure the ABC have got a view about this. The old bureaucracy will be grinding the wheels out now about how to get this written into the base forever and a day.

**Ms Crowe**—The compact does actually make reference to triennial arrangements and, yes, they would be linked.

**Senator SCHACHT**—Has the government agreed to put it in the triennial funding base for the SBS?

**Ms Crowe**—Not at this stage, except for a reference in the draft compact to the triennial funding base. But we are not at the stage of review of our triennium at the moment.

**Senator SCHACHT**—Do you have any objection—

**CHAIR**—Mr McGarrity wants to make a comment.

**Mr McGarrity**—Senator, let me just try to deal with those. I think that all of those issues are much the same but perhaps there are slightly different nuances between the organisations. Firstly, in the first five years—and we have not seen any demurral about this from the government's side—we seek a separate line appropriation for the next five years dealing with this funding. We would see it being rolled into the base or not being determined in the five years or three years following that.

**Senator SCHACHT**—At the end of the five years?

**Mr McGarrity**—Yes. So discussions relating to whether it remains separate line or gets rolled into the base we see as being off into the future.

**Senator SCHACHT**—Is that a Treasury and Finance view that it should not be rolled into the base before five years?

**Mr McGarrity**—It was our view. I think it is shared, or happy to be shared, by the other stakeholders. The other thing is about the certainty of funding—because it is an important issue—beyond five years. We are no more certain of the funding that will come from the government after five years in a privatised NTA situation than we are of the funding that would come from government to an NTA in its current state. I do not see that there is a difference. We do not have a guarantee of NTA funding six years from now from government; neither, in a sense, will we have on a piece of paper exactly what the dollars will be six years from now when we sign the compact.

**CHAIR**—Who does have a guarantee for six years down the track with any government?

**Mr McGarrity**—Sorry?

**CHAIR**—Who does, with any government, have a guarantee for six years down the track? I am agreeing with you.

**Mr McGarrity**—We do not see ourselves being put into a more adverse situation as a result of the changed structure in terms of lack of certainty of funding for the transmission element.

**Senator SCHACHT**—I do not want to be too partisan about this, but the last two years with this government's funding arrangements for the ABC would not give you great confidence

that you would not get a whack around the head in the near future if this government continues in office. But that is a partisan comment.

**CHAIR**—At least we have not had to borrow to do it, Senator Schacht. As you are being partisan, I will just add my twopence worth.

**Senator SCHACHT**—I just make the comment that the ABC confidence in this matter is really stretching the rubber band a fair bit. Ms Crowe, you mentioned the draft compact document. Do you or the ABC have any objection to that draft document being made available to this committee either openly or in camera before we complete our reporting time, which is 10 March. I will put the same question to DoCA and to the Office of Asset Sales—they may have it—but from the ABC point of view and the SBS point of view, do you have any qualms about making it available to us? DoCA and the Office of Asset Sales may, but that is a different issue.

**Ms Crowe**—The SBS has no problem at all in the compact being made available to the committee, but I would just suggest to you that right at the moment it is at a level of development that does not quite reflect the more recent changes that the SBS has been seeking. That is just a matter of timing. Our position would be that the document, as it stands today, would be probably more misleading to the committee than helpful. But certainly, when it is in a good draft—

**Senator SCHACHT**—Would you anticipate that during February it would be developed into a more reasonable structure?

**Ms Crowe**—Yes.

**Senator SCHACHT**—I accept the fact that DoCA and the government may have a different view about this, but I am trying to get onto the record that, subject to it being tidied up a bit—

**Mr McGarrity**—One of the things which DoCA would be much better able to comment on than us is the extent to which those documents would form part of the data room for the due diligence process for prospective purchasers. If they do, then there is a time scale in which they have to be sufficiently developed for the people who are actually going to pay the money, so I would think the time scales are okay.

**Senator SCHACHT**—The matter I am getting to—which is not your problem—is that this committee is taking a bit of a stab in the dark. If we do not see some of this material before the legislation is debated and voted on in the Senate, it is a bit hard making some judgments about it. A lot of people would argue that they would like to see the commitment in the compact for the funding arrangements for the ABC and the SBS clearly available to the Senate when a vote is taken, because it may affect some senators' judgment—it may not.

**CHAIR**—I noted your concerns in the submission, and one of them is with clause 15(2), which relates to the scope of protected access to the national broadcasting services. You say that this is limiting and should cover broadcasting and ancillary services. The bill has a lot of guarantees in that it protects your key charters for the SBS and the ABC—this was in the ABC submission. Can you explain to me why you think your ancillary services should be protected when in fact they are on a commercial basis? Shouldn't they be treated like other commercial services? Shouldn't they be on the same footing as other commercial services?

**Ms Walker**—We are looking at a broader definition not only for ancillary but also in particular I think for open narrowcasting, which would not be a commercial service.

**CHAIR**—Sorry, I am having trouble hearing you.

**Ms Walker**—We are looking in particular for an extension to cover services such as open narrowcasting, which would not be a commercial service and for which there would be no subscription fee, for something that we may choose to do in the future, such as a specialist children's narrowcasting service.

**Ms Crowe**—I could also add to that, from SBS's viewpoint. There were just two fairly minor issues that add to Ms Walker's statement. We were referring to ancillary services as being carriage of data and things like Teletext that we carry with our broadcasting signal. Technically it is impossible to split them, anyway; so we have access because they are with the broadcasting service, but we would like that defined. The other minor point is that some of those ancillary services are actually fed into the signal at the NTA site. What we are trying to ensure—and it is a matter of tidiness for us at least—is that those ancillary minor services that go with our major broadcasting signal are protected in the same way as the broadcasting service is. The ABC has a view about narrowcasting which is not ours, but that is adding to the ABC's view on narrowcasting.

**Ms Walker**—I would add one other ancillary service and that is closed captioning.

**CHAIR**—So you are not talking about additional services that would compete with commercial broadcasting but you are talking about add-ons like subtitles and stuff to your current—

**Mr McGarrity**—They are things which are really of the nature of public and national broadcasting but which at the moment are just not captured by that definition. People would regard an open narrowcast service that was aimed at children as something which should be protected under the access provisions. I think people would also regard the closed captioning for the hearing impaired as something which was just as much a part of the national broadcasting service as was the service itself.

**CHAIR**—Your children's argument does not grab me as much as your argument about captions. There might be a commercial organisation that wanted to do a similar service with children's narrowcasting. But I might ask the department a question about the other ancillary services.

You also mention on page 2 that the ABC would like to access technical information for third parties who may wish to tender for the provision of new services at NTN sites. I am not too sure whether that is what we were talking a bit about before. I did not think so; but I said to someone that maybe if I had a choice about what I wanted to do today it would not be to sit and talk about transmission towers, since I could have spent my whole life not knowing about them, and I would not have been any less happy when I went to my grave. But I am here and I have to try to learn about it. It seems to turn Senator Schacht on, but it is something that I have to learn to live with!

**Senator SCHACHT**—God knows that I wish you had not proceeded with the bill!

**Mr McGarrity**—It is turning them on that is our problem!

**CHAIR**—You would have had to sell it. You should have sold it when you were in government to pay off some of your debts, Senator Schacht.

**Senator SCHACHT**—We straightened it out.

**CHAIR**—Wouldn't you admit that this information is commercially valuable and important to a new owner of NTN?

**Mr McGarrity**—Consistent with our overall aim that we want to be able to purchase services in a genuinely competitive environment, I could pose to you that Maureen Crowe

represented the new NTN and that Judith Walker was somebody proposing to provide competitive operations and maintenance services. Say that I was going to extend Triple J to a city which did not yet have it, and I wished to use the site that Maureen owned but I also wished Judith Walker to be able to tender for the provision of the service. For Judith Walker to do that, she is going to have to get certain information about common site facilities and how she might interconnect with them in order to be able, in our view, to properly compete with Maureen in putting forward a proposition and a specification for the service. It is an area which we cannot assert that the bill does not cover. But in our discussions with the department at the moment it does not appear certain to us that the information necessary to interconnect with the common site facilities would be available to a third party to enable them to properly compete with the NTC in the provision of such a service.

**Senator SCHACHT**—You are not surprised, are you? It increases the value of the sale for the NTA, if people in their due diligence can see that the weight is with the new entity about keeping such information to itself, which makes it almost impossible for someone to bid competitively or contestably for the provision of that service.

**Mr McGarrity**—I would suggest that, if we cannot get reasonable satisfaction in the legislation, we will certainly be seeking it in the contract. Of course, the contract is a two-sided document.

**Senator SCHACHT**—But the contract is that for five years you are with the new entity, which means that your bargaining position for five years is not exactly full of a handful of aces. It has maybe a couple of sixes and sevens.

**Ms Walker**—Our preferred position is obviously that it could be guaranteed in the legislation.

**Senator SCHACHT**—That is one amendment you would like to see in the legislation?

**Ms Walker**—Yes.

**Senator SCHACHT**—Pardon my ignorance, but did you actually—

**Mr McGarrity**—If it is so proved that the legislation is not already certain on it; but in our—

**Senator SCHACHT**—Do you believe that your advice is—

**CHAIR**—Could you let Mr McGarrity finish?

**Mr McGarrity**—In our discussions with the department and the consultants—which, on the basis that the deadline for these submissions was up to 12 January—we were not sufficiently certain that the legislation did cover this for us not to put it in the submission. But it could be that on more detailed legal advice to this committee, and within the confines of the discussions that are going on with the various stakeholders, we will be satisfied that the legislation does indeed provide the safeguards for that competitive aspect.

**Senator SCHACHT**—Madam Chair, I wonder whether we could suggest to the ABC and to SBS—which I presume probably has a similar view about this, do you?

**Ms Crowe**—We are less concerned on that aspect than the ABC is, Senator.

**Senator SCHACHT**—In your submission on pages 2 and 3 you raise this issue. Although you mention the various clauses, you do not propose an actual amendment to cover your concern. Can I ask, Madam Chair, whether we can ask the ABC to submit what they think would be an amendment to the bill that would cover their concern? It will make it easier for us to throw that back at DoCA, obviously not today but at a later stage during the month.

**CHAIR**—Also, I know there are officers from DoCA here. I will ask them when they come to the table to respond to those two questions that I asked.

**Ms Walker**—We would be happy to provide something for the committee.

**CHAIR**—They are sitting out there behind you. I hope your back is protected! In case I forget, I want them to respond to that when they come to the table after lunch.

**Senator SCHACHT**—Mr McGarrity, on pages 3 and 4 of your submission you deal with the issues of the Trade Practices Act, et cetera. Could you explain a bit further about your view on this issue of conditional access and so on—the access regime, which the Trade Practices Act deals with? Do you believe that that will lead to your being further disadvantaged?

**Ms Walker**—Senator, our particular concern is in subparagraph (c) at the top of page 4. It is not a concern at the moment, but it may become a concern if, for example, the NTC became a carrier. In those circumstances—

**Senator SCHACHT**—Do you mean a telecommunications carrier?

**Ms Walker**—Yes. In those circumstances, we would like to be assured that we would be treated equally with the NTC. Those sections of the Trade Practices Act that have been deleted would guarantee that equality of treatment.

**Senator SCHACHT**—The deletion would guarantee it, do you mean, or do you want them put back?

**Ms Walker**—No, the deletion does not guarantee it. We would like it put back.

**Senator SCHACHT**—Can I suggest again that you provide us with what you think those amendments are?

**Ms Walker**—It would be very simple, I think; just a deletion from the bill. Yes, certainly.

**Senator SCHACHT**—To identify that for us makes the committee's work easier. I want to get this straight about becoming a telecommunications carrier—and once they are privatised, there is nothing to stop them from becoming a carrier under the deregulatory regime of that other monster bill that this committee dealt with at this time last year, the Telecommunications Act. Your concern is that some of the facilities that you would be using under contract would somehow be drifted off into some other activity or would affect your transmission operation. I want to try and get a fix on this. If they became a carrier—and there is nothing to stop them and no way they can be stopped from becoming a carrier—could that actually impinge on your transmission activities?

**Mr McGarrity**—I do not see how it could impinge on our current services, because our current services will be covered by a contract which the new owner or owners have to provide. I guess it is possible that, in the case of new services, if indeed the spare capacity available on the common site facilities has been used up by telecommunication companies or commercial broadcasters or whomever, it could be that, as and when we have a need for a new service, there may not be room on the common site facilities, and you would then—

**Senator SCHACHT**—Do you mean on the tower?

**Mr McGarrity**—Yes, or in the building. That is a potentiality, but it is equally a potentiality now; and I am not absolutely sure that we could imagine legislation saying that nothing should be on those sites or those towers that might interfere with a possible future ABC service until such time as it is proven that the ABC is not going to have a service.

**Senator SCHACHT**—Could I put it another way around? With this increasing talk about provision of digital licences, I do not know whether this means that on those existing towers

they are going to have to bring more equipment up there to have another 16 or 24 digital licences for transmission going out in a metropolitan area like Sydney or Melbourne. That is, I am told, the sort of a potential. Could the devices to increase the digital broadcasts to up to 24 separate signals take off enough area of the tower so that you will not yourself be eligible and so, when you want to go digital for some extra capacity, you might be frozen off the tower?

**Mr McGarrity**—As I understand the access provisions as they apply to us, even under the digital environment we have guaranteed access under the access regime to the sites and to the common site facilities. However, as I read it—and this could be commented on by the department and my colleague—if at the time we ask for such a service there is just physically no room there because of what has happened and what has been sold and the use that has been made of it, there is no way we can magically produce more space.

**Senator SCHACHT**—After the five years are up you might choose to go somewhere else if it is contestable, and then some other company may choose to build towers; or, if towers are available, Telstra with its own microwave towers might say, 'We can give you a lot of things on our towers; you do not have to use the NTA.' When you start doing that, wouldn't it be a response from the NTC in five years time to say, 'ABC, you have gone off and found a cheaper way; but, by the way, we have got other customers wanting to use our towers.' At that stage you would accept that the access regime for what is at the moment a natural monopoly no longer exists, and you should take your lumps as they appear?

**Mr McGarrity**—The access regime in respect of the aspect that I mentioned—that is, access to the telecommunication towers, which are the common site facilities and the sites themselves, remains beyond five years. It is for the life of the act. Irrespective of what we happen to have done with our business, that access regime protects us for whatever time we seek to put such facilities on that site. But I repeat, as far as I read it, nothing is guaranteeing that, at the time we ask for a new service to be put on a site, that space will absolutely be there.

**Senator SCHACHT**—Can I turn to one aspect of the facilities of the NTA, which is Radio Australia and particularly Cox Peninsula—which is now on a care and maintenance basis. With any of your funding arrangements for the operation of the NTA, under the compact for the provision of transmission services, do any of those include a figure that would enable Cox Peninsula to be reactivated?

**Mr McGarrity**—As discussions are occurring at the moment, we will be including the services from Brandon in Queensland and the services from Shepparton in Victoria of RA in the contract and funding for them in the compact. At the moment, because there are no services from Cox Peninsula, it does not fit into the compact or the contract, and I suspect any further developments on that would depend on further government decisions in relation to Cox Peninsula.

**Senator SCHACHT**—But is the reason is that you so far have not the money to run Cox Peninsula, right? The operational expense of Cox Peninsula—

**Mr McGarrity**—It is not running.

**Senator SCHACHT**—But the money was cut.

**Mr McGarrity**—As I understand it, there is no appropriation to the NTA for the funding of transmission services from Cox.

**Senator SCHACHT**—Under this new five-year compact, you are not putting a suggestion to the government that another couple of million a year—which might be \$80 million, \$90

million or \$100 million—would be very useful to reactivate Cox Peninsula, so that even the existing restricted Radio Australia broadcasting signal can get into a better range into South-East Asia.

**Mr McGarrity**—Senator, the purview of our discussions on the compact and the contract is about what is happening now. By definition, it is about current services. Any discussions that might be going on between the ABC and government and other parties on other services are happening elsewhere.

**Senator SCHACHT**—That is right. That means Cox Peninsula is out because of the timeslot we are now in and the government's previous decision at the last budget. What about over the next five years? Have you put into this compact any discussion about extending the broadcasting of Triple J and ABC Classic FM transmitters to extend to meet the demand that is out there, particularly in regional Australia, to get access to those broadcasts?

**Mr McGarrity**—The compact will describe the mechanism for the funding of expanded services. I do not anticipate it will go to the detail of what those expanded services might be. It will cover the process for the funding and decision making, but not the detail of what extra services might be. As I read it, that means that expansion of our services will fundamentally be on the same basis between the government and the ABC in future as it has been in the past. That is, it is a government decision. We may lobby for it and articulate arguments for it, but it will be a government decision.

**Senator SCHACHT**—So will that all have to be an extra component?

**Mr McGarrity**—Yes.

**Senator SCHACHT**—The mention before about the contract with Aussat over five years was that, after three years, there was some suggestion you had renegotiated the contract. If after three years, because of the supposed success of the NTA as a privatised body, there are actually financial savings available and part of them go back to you, that means extra cash. Are you then able to make a decision on where that cash would be spent on provision of extra services or would you have to give that saving back to our good old friends in Finance and Treasury?

**Ms Crowe**—I think it unlikely that there would be that review taking place within the life of the five-year contract. The notion for—

**Senator SCHACHT**—That goes back to my first point: that you are stuck with it.

**Ms Crowe**—Not stuck with it, but that would be the negotiated position for that five years. The notion of extensions of services is, for example, roll-out of SBS. As Mr McGarrity has said, that will require us to go to government or for government to initiate those extensions and new funding be provided.

**Senator SCHACHT**—The SBS has a program whereby a small local regional community which wants to get an SBS service can raise the money themselves and put the money into SBS for the capital cost for the small transmitter of the range of usually about 10 or 15 kilometres for a small outback country town. I think a few of them have been put in successfully and you pick up the recurrent cost. Is that right?

**Ms Crowe**—No, Senator.

**Senator SCHACHT**—Have I got that wrong?

**Ms Crowe**—You are referring to self-help groups. We have a lot of them that pick up SBS signals in that way, but SBS contributes no financial contribution to those groups. We certainly

provide support and the expertise in the form of experience from David Soothill and others, but it is only in an advisory capacity. We provide no funding for them.

**Senator SCHACHT**—Do you not provide even recurrent expenditure for the cost of the transmitter once it is up?

**Ms Crowe**—No, none at all.

**Senator SCHACHT**—Who owns those transmitters? Do the local community own them as a result?

**Ms Crowe**—Yes.

**Senator SCHACHT**—How many of those out there now are not in the purview of the NTA and SBS?

**Ms Crowe**—That are not in the purview of the NTA?

**Senator SCHACHT**—They are not controlled; they are actually not part of the NTA like your other transmitters are.

**Ms Crowe**—They are.

**CHAIR**—It will not be like a private sale.

**Mr Soothill**—I think there are 55 communities at this time that have funded their own SBS re-transmission services through the self-help scheme. Of those, one is radio and all the rest are television.

**Senator SCHACHT**—Are there 55 out there?

**Mr Soothill**—I believe that is the number.

**Senator SCHACHT**—We know they are separate from the NTA and even separate from the SBS.

**Ms Crowe**—Yes.

**CHAIR**—After the sale, how do they get the transmission? How do they get guaranteed they will get the community transmission facilities?

**Mr Soothill**—The present arrangement is that, in most cases, they pick up our service directly by satellite and rebroadcast it themselves. Those arrangements would not change. We are still responsible for the satellite delivery of our program.

**CHAIR**—Are they not dependent on NTN now?

**Mr Soothill**—For some services and sites there will be some dependence because they have existing site sharing arrangements with existing NTA sites. Those contracts would be transferred to the NTC, the future owner of the network.

**CHAIR**—Will they be guaranteed that there will not be increased costs for them as a result of that over a five-year period? Are they somehow protected in that?

**Ms Crowe**—We would have to defer that for this afternoon, Senator. My understanding is they are protected, but I cannot give you the detail right now.

**Senator SCHACHT**—Are they protected from having a mandatory or a capricious increase in cost?

**Ms Crowe**—My understanding is that is so, but I do not have the detail with me.

**CHAIR**—If DoCA can answer that when they come to the table, I would appreciate that.

**Senator SCHACHT**—Could SBS provide us with those transmitters, under the self-help scheme, that are getting direct satellite transmission, which means that is in your full control and has nothing to do with the NTA?

**Ms Crowe**—Absolutely.

**Senator SCHACHT**—And provide that compared with the numbers that do have a shared facility in some form or another?

**Ms Crowe**—We will provide that, Senator.

**Senator SCHACHT**—With a shared facility with the NTA, so we know which ones are which for that.

**Mr McGarrity**—I just suggest that, since self-help organisations do not have to apply to us to rebroadcast our signal, it is probably better that the ABA provides that information in respect of the ABC purely because they will have better records.

**Senator SCHACHT**—There is the audit somewhere for next time up, so they can take that on notice. It is suggested that one of the main bidders for acquiring the NTA could be a company called Broadcast Communications Ltd, a division of Television New Zealand Australia which is majority owned by the New Zealand government. Does the ABC or SBS have any concern that we sell our national asset to a company controlled by a government of another country?

**Mr McGarrity**—Senator, as individuals we might have a view, but as the ABC we leave that to the government.

**Senator SCHACHT**—Are you making any bid to buy New Zealand transmission facilities?

**Mr McGarrity**—I suspect indirectly we would be prohibited from putting in a bid for TVNZ.

**Senator SCHACHT**—But are they not prohibited from putting in a bid for ours, according to this here?

**Mr McGarrity**—I suppose the BBC sold its facilities to an American corporation.

**Senator SCHACHT**—Did you have no indication in the discussions whether the government has taken a policy decision that the company that would buy the NTA has to be majority Australian owned?

**Mr McGarrity**—We have had no discussions on foreign ownership aspects of the sale, nor do we seek to have them.

**Senator SCHACHT**—So you have not proffered a view about it. Have any potential purchasers, apart from BCL, made direct approaches to ABC or SBS to discuss, in preparation for their due diligence of a bid, getting information?

**Ms Crowe**—In the very early days of discussions of this, a number of players in the industry contacted us. But for some time now, the SBS has been committed to not discussing with any future bidders any of the details of the sale. If we receive any such inquiries now, we refer them to the Office of Asset Sales. We have entered into an agreement to protect confidentiality.

**Senator SCHACHT**—I understand that. Is it the same with the ABC?

**Mr McGarrity**—There is a protocol which, in draft form, was suggested by the Office of Asset Sales and IT Outsourcing and, in the broad, that is being adhered to.

**Senator SCHACHT**—The material we have been provided with from the consultants, from Arthur Andersen, suggested that the depreciated value of the NTA is around \$400 million. I do not know if I have that correct. Does that ring a bell?

**Mr McGarrity**—We are not sure but I think that was the figure that was mentioned in the last Senate estimates.

**Senator SCHACHT**—Because of changes in technology, the investment the community has made through the NTA means that this depreciated value is going to go down rapidly. Technology is changing. Equipment dates rapidly, I presume. Would you require the new company, the NTC or whoever took it over, to make an investment in new technology in the capital works side, or are they just going to sit for five years and keep stretching the rubber band more taut around the existing infrastructure and be more interested in getting a return on their initial investment rather than consider long-term investment?

**Mr McGarrity**—The nature of the contract that I believe will emerge between us and the prospective buyers is one which is service related. In other words, it will say, ‘You shall provide this service from this site at this level of reliability and at this level of quality. How you choose to do it, whether you use 10 transmitters that are old or one transmitter that is new, whether you use 10 people on the site or none, is really your decision, but you must produce the service that we require,’ which is the equivalent to the service that was provided previously.

**Senator SCHACHT**—You put in a bid publicly to the government and to the parliament for the digitalisation program of the ABC of between \$30 million and \$50 million over the next five years. Has any of that money—take the bottom figure, \$30 million—been earmarked on the facility side for transmission?

**Mr McGarrity**—I would like to take that on notice because I was not a part of that particular submission, but I can provide you with the answer.

**Senator SCHACHT**—Does that mean that if the ABC took a decision to go into the full digitalisation of its equipment, its studios, et cetera, as well as these new signals, that you will be required to provide that money and material to the new body? Does that mean you will be making the capital expenditure and they will just provide the facility of maybe an existing tower and existing land, or will they provide it and charge you accordingly?

**Mr McGarrity**—I will give you advice as to what we put in our submission, but in character with the relationship we would expect to have with the NTN and/or with other service providers, I would imagine we would be paying them an annual lease fee and that they would be facing the lumpy cash cost of purchasing the actual capital equipment.

**CHAIR**—What sort of cash cost? Did you say ‘lumpy’?

**Mr McGarrity**—If you buy a car you face a cost in cash terms of \$20,000 on the day you buy it.

**CHAIR**—I just did not hear the word you used. Did you say ‘lumpy’?

**Mr McGarrity**—Yes, because the capital is going to be, in cash terms, lumpy.

**CHAIR**—Okay. I thought that was what you said.

**Mr McGarrity**—We would be leasing services from them over a set period of time that would provide them with a return on the capital that they had invested.

**Senator SCHACHT**—When you say the capital they invested, is that the capital to put new digital transmission equipment on the existing tower?

**Mr McGarrity**—The concept will be much the same whether it is analogue or digital. If we require a service from a particular place for 10 years and somebody needs to make \$1 million worth of capital investment in order to produce that service, then the lease fee is going to be 10 times into \$1 million plus a profit margin plus a replacement value.

**Senator SCHACHT**—You are taking on notice the \$30 million minimum over five years and whether any of that will be for equipment in one form or another that would be put on the NTA privatised facilities.

**Mr McGarrity**—I will undertake from our submission to government in relation to digital to get you the information of what amount is related to digital transmission that would be in the purview of NTC.

**CHAIR**—Senator Schacht, I know you are mindful of the time but it now is 11.25 and we are going to be moving on soon to the ABA.

**Senator SCHACHT**—In view of the time, if I have further questions, I will put them on notice to the SBS and the ABC.

**Ms Crowe**—I would like to clarify in respect to the SBS because we similarly have sought digital capital funds.

**Senator SCHACHT**—What have you sought?

**Ms Crowe**—We have, in the same way as the ABC, sought funds from the government for conversion of our production equipment, et cetera, to digital. I just wanted to make it quite clear that in our submission there is absolutely none of those funds related to transmission equipment.

**Mr McGarrity**—I have just had passed to me information that says it is the same with us.

**Senator SCHACHT**—So none of that money is for digital transmission?

**Mr McGarrity**—That is correct.

**CHAIR**—I have a final question. You talked at the beginning about the consultation process, and it was nice to hear people able to make that sort of positive comment. You talked about the increased flexibility that you will have and the positive aspects, and you listed some concerns. Do your concerns outweigh the positive aspects so that you are not in favour of it? I would like you to reiterate that again. My impression from the submissions was that you do not have an overall objection to the sale.

**Ms Crowe**—The SBS has no overall objection to the sale and we would see it as one of the ways of achieving that purchaser provider model that we have been seeking.

**CHAIR**—What about the ABC, Mr McGarrity?

**Mr McGarrity**—As I said in my opening remarks, we believe that the proposal that has been put forward predisposes the achievement of our objectives. I think it is a little bit difficult to say positives and negatives but I think that is how I should leave it. We see the bills in front of you as certainly predisposing the achievement of the objectives that we have had for several years.

**CHAIR**—Thank you very much for your attendance. I have been advised that you will be here for the rest of the hearing. Thank you.

[11.29 a.m.]

**CORKER, Mr John Simon, Manager, Legal Section, Australian Broadcasting Authority, PO Box Q500, Queen Victoria Building, Sydney, New South Wales 1230**

**GREENEY, Mr Robert Scott, Director, Planning, Australian Broadcasting Authority, PO Box Q500, Queen Victoria Building, Sydney, New South Wales 1230**

**CAMERON, Mr Ronald John, Director, Telecommunications Policy Coordination, Australian Competition and Consumer Commission, 470 Northbourne Avenue, Dickson, Australian Capital Territory 2602**

**SPIER, Mr Hank, General Manager, Australian Competition and Consumer Commission, 470 Northbourne Avenue, Dickson Australian Capital Territory 2602**

**CHAIR**—I welcome witnesses from the ABA and from the ACCC. The committee has before it submissions No. 3 and No. 9. Are there any additions or alterations to the documents that you would like to make at this stage?

**Mr Greeney**—Not on behalf of the ABA.

**CHAIR**—Thank you. Do you wish to make a short statement before we proceed to questions?

**Mr Greeney**—Not on the part of the ABA.

**Mr Spier**—And likewise.

**CHAIR**—Thank you very much.

**Senator SCHACHT**—The ABA's submission mentions that the ABA undertakes the planning process in close consultation with industry and the community. How do you see this continuing with a privatised NTA, particularly on the issue of looking after consumer satisfaction over issues of standards et cetera?

**Mr Greeney**—I think it will continue as it has in the past. The organisation which is maintaining and installing the national transmission facilities will still have a role, together with the national broadcasters whom it will be building facilities and maintaining facilities for. I do not see any diminution of that consultative role between the ABA and the people who are operating the National Transmission Network on behalf of the national broadcasters.

**Senator SCHACHT**—As you say in your own submission, the bill outlines a new role for the ABA to investigate any complaints referred by the minister about the degradation of a transmission signal which have not been able to be satisfactorily resolved by the ABC or SBS. If there is a problem with the signal, they get the first phone call from irate viewers even today and even if it is not their fault. Are you going to provide a dedicated officer or officers in the ABA to deal with that and build up the expertise?

**Mr Greeney**—Within the ABA we have limited resources. This is a new role and, to the best of my knowledge, there are no additional resources provided for us to undertake the new role. But as with anybody in the position of responsibility such as we are, something will have to be done. In fact, what is done at the moment is that we do have officers who are able to take complaints and we do our level best to try to handle those complaints within the resources we have. But depending on the size of this new role, we would be expecting that there would be some recognition of the resource costs to the ABA.

**Senator SCHACHT**—At the moment, if someone complains about the signal and it goes to the ABC or SBS and the NTA, you do not have anything to do with it?

**Mr Greeney**—Not necessarily, but—

**Senator SCHACHT**—If you get a complaint and someone rings you up by mistake or something—

**Mr Greeney**—Occasionally people do call us directly. They go straight to their telephone directory and it says, ‘Australian Broadcasting Authority’ and there is an assumption that we are the people who will fix it for them.

**Senator SCHACHT**—Would you at the moment refer them on?

**Mr Greeney**—We would discuss it, naturally, with the people who are responsible for that service.

**Senator SCHACHT**—Amongst the existing staff, are you confident that you have already got technical expertise to handle a dispute over the degradation of a transmission signal where there might be a dispute between the privatised body and the ABC or the SBS?

**Mr Greeney**—Absolutely. As the ABA was created, you may remember there was a time when, in each capital city, there were state broadcasting engineers. This is a little bit of history, I am sorry, but it helps to understand.

**Senator SCHACHT**—That is all right.

**Mr Greeney**—At that time we had officers in place in the mainland capital cities and in Hobart who were able to investigate complaints of interference. That role was not given to the ABA but some of those officers have stayed on and worked within our planning branch. Those people certainly have the skills and from time to time we have worked with the NTA and with the ACA as well in investigating complaints of interference.

**Senator SCHACHT**—At the moment, you could only have a stab in the dark about how many complaints you will get?

**Mr Greeney**—I am afraid so. We do not have a statistical database of the complaints that might be going to the ABC, to the SBS or to the NTA. We would have to ask them what they would estimate to be the numbers of complaints they receive each year.

**Senator SCHACHT**—It says in your submission you will investigate the complaint referred by the minister. When you have investigated it, will you report back to the minister and apportion blame for the problem and say who is responsible for fixing it?

**Mr Greeney**—At the moment there does not seem to be any feedback loop on that reporting and in the future we would have to determine how that is going to be done and what, in fact, we would expect as an outcome of an investigation. Currently, commonsense prevails because broadcasters who are affected are doing their utmost to remedy a problem. In the case of the national broadcasters, the NTA has a very expert team, which you could call a flying squad, if you like, who actually go to some of the sites and the areas of problems. The ABA, in its liaisons with the NTA, in particular, and with the ABC or SBS, does its utmost to negotiate an agreed resolution of the problem.

**Senator SCHACHT**—If there is a formal ministerial reference, will that report back to the minister be confidential to the minister or will you automatically make it a public response?

**Mr Greeney**—Mr Corker will answer that question, Senator.

**Mr Corker**—The act provides that any directed investigation by the minister requires the ABA to provide a report to the minister. That report is then the minister’s report and he decides whether or not it is released publicly or whether it would remain confidential.

**Senator SCHACHT**—Pardon my ignorance, but does the act actually specify that you can direct an outcome, if you have a—

**Mr Corker**—At the moment it is only empowered to investigate the complaint and report.

**Senator SCHACHT**—And report? If it is to be rectified, is that a matter for the minister making some decision or giving some direction under the act?

**Mr Corker**—I would expect so, as there are no provisions as to how it would be rectified. It depends on what the problem might be.

**Senator SCHACHT**—I do not want to labour the point, but could you take that on notice and come back to me with what you think. If you make a recommendation to the minister that there has clearly been a breach of standard or some problem that is the fault of the ABC or the fault of the NTA, will you be able to give the minister a recommendation of what ought to be done to fix it, whoever is responsible? Is it clear that you will be able to do that?

**Mr Corker**—I think it is implicit in the legislation. It would then be a matter for the minister to decide whether or not he adopts that recommendation.

**Senator SCHACHT**—What I want to get down to is, and I hope you do it this way, when there is a dispute on which you cannot get a mediated settlement or agreement which, I suspect, 9½ times out of 10, you will, and someone is digging their heels in, will you take the opportunity to say, 'We've investigated it. This is clearly the fault of the NTA' or 'This is clearly the fault of the ABC' and the one whose fault it is should fix it.

**Mr Corker**—I would expect that would be the way that the ABA would carry out that function.

**Senator SCHACHT**—Does this new role of undertaking complaints referred by the minister and the general operation of a privatised NTA mean that you will have a greater role in setting technical standards on broadcasting and service delivery, such that you hope that for only one per cent of every million broadcast hours, there is an outage or something like that? Will you be involved in setting those sorts of standards and telling the broadcasters and the privatised NTA that these are the minimum levels that you expect?

**Mr Greeney**—That is already covered in our technical planning guidelines—minimum levels of service which must be provided in the context of what is specified.

**Senator SCHACHT**—I am looking for the ABC at the moment.

**Mr Greeney**—No, it is not automatic.

**Senator SCHACHT**—That is what I am getting at.

**Mr Greeney**—For the national broadcasters, we make it a condition of the licence that they will meet the particular provisions in the technical planning guidelines. I think your question was whether we would make that mandatory. That would require change to the legislation and that would be a matter which we would have to consider with government, of course.

**Senator SCHACHT**—So you would anticipate that the technical guidelines—the book you produce, et cetera—for the commercial sector would be what you would use to tell the privatised NTA that this is what you think is a minimum level of service?

**Mr Greeney**—Yes, I think that is an appropriate way to go. In fact that is what we are doing now through conditions on licences.

**Senator SCHACHT**—Are there conditions on commercial licences?

**Mr Greeney**—No, it is mandatory. It applies automatically to commercial broadcasters and to community broadcasters through the Broadcasting Services Act but, for national broadcasters, the act does not directly apply to the technical planning guidelines. We take the appropriate areas from the TPGs and apply that as a condition on the transmitter licence that the transmitter will be operated in accordance with the following condition.

**Senator SCHACHT**—The transmitter licence in the NTA at the present time?

**Mr Greeney**—Yes.

**Senator SCHACHT**—And you think that will be more than adequate to continue?

**Mr Greeney**—I think it has been adequate to date, and I do not see that it would be any different under a new ownership of the National Transmission Network.

**Senator SCHACHT**—Will you, if necessary, report annually, in the annual report, on this and give details of the complaints received in this area?

**Mr Greeney**—I would imagine so. That is the sort of thing that the ACA reports. It is the sort of thing that I would imagine we would report. We already do that in terms of program conditions, codes and conditions et cetera.

**Senator SCHACHT**—Have you had any submissions or discussions with the community broadcasting sector? They have expressed a concern to me, privately some of them—we have some submissions here also—that, where they are using their facilities and paying a fee, a privatised NTA may change that and that they may be in a more vulnerable position in the future.

**Mr Greeney**—I have not had any discussions and nor have officers in my branch. I think they are the sorts of discussions that the community broadcasters would be having with the NTA and with the department on the drafting of the bill, and how the sale of the network might affect them.

**Senator SCHACHT**—Can I just go to the ACCC. Mr Spier and Mr Cameron, you heard the previous evidence about the access regime et cetera. The ABC has raised some queries and they are going to send what they think are reasonable technical amendments to cover their concerns, which are not great concerns but are on the edge. Do you have any response to their concerns?

**Mr Spier**—I will ask Mr Cameron to add a few things in a minute but I suppose our comment is that we administer the Trade Practices Act. We do not set the policy but we would certainly be interested to see the proposed amendments, to make some comments and to see whether they would meet some of the concerns of the ABC. We also have some detailed comments to make.

**Mr Cameron**—My understanding is that some of the amendments to the XIC access regime under the Trade Practices Act are directed towards removing provisions relating to telecommunications carriers which would not be factors to take into consideration with broadcasting services.

**Senator SCHACHT**—Mr McGarrity talked about the possibility of the privatised NTA becoming a telecommunications carrier, and I think they can become a carrier, pretty simply. There is no longer a massive licence arrangement or whatever as long as they accept the obligations of being a carrier. Would that change your view about what the relationship would be?

**Mr Cameron**—My understanding is that in those circumstances, in a jurisdictional sense, the access dispute would arise between a carrier and a service provider in terms of a declared service not in terms of the nominated services provided by an NTC, in which case all of the criteria would apply that currently exist in part XIC.

**Senator SCHACHT**—So that would apply to the relationship between the ABC and the NTA, if it became a carrier?

**Mr Cameron**—That is right. If the NTC was a carrier and the service was a declared service under part XIC and the access seeker was a service provider, the access dispute would fall under the current part XIC access provision.

**Mr Spier**—It might help if we explain what the current access regime is under the communications regime.

**Mr Cameron**—Part XIC of the Trade Practices Act sets up an access regime for telecommunications services which can be declared by the ACCC. Those declared services are required to be provided by access providers, being carriers, access to their services. Those provisions only operate once a service has been declared by the commission. There are certain standard access obligations that apply in relation to the provision of those services.

In arbitrating any disputes between an access seeker and an access provider, the commission must take into account certain factors which are set out under the current part XIC relating to the definition of what are the long-term interests of end users and other factors. Some of the amendments in relation to the sale of the NTA bill remove some of the criteria that the commission has to take into account in determining what is a long-term interest of an end user.

However, in the circumstances of when an access provider is a telecommunications carrier all of those criteria that the commission is required to take into account under part XIC would apply. Those criteria are not taken into account in any access dispute in circumstances where the access dispute is between an NTC and a nominated customer for a nominated service.

**Senator SCHACHT**—Part XIC of this bill removes certain obligations on the access regime for the NTA, is that right?

**Mr Cameron**—No.

**Senator SCHACHT**—Were the access regime rules weakened as a result of the amendments in the bill?

**Mr Cameron**—They were changed to reflect the different commercial arrangements that would exist between a broadcaster and a facilities owner as compared to a telecommunications carrier and a service provider.

**Senator SCHACHT**—What is the difference in the legislation to take account of the difference between a broadcaster and the NTA, and a telecommunications provider and a carrier and a service provider?

**Mr Cameron**—Let us go to section 152AB, which is concerned with the long-term interest of end users. Under the current part XIC, the commission is required to take into account. The proposal is to remove some subsections. For example, one which addresses the objective of achieving any to any connectivity in relation to carriage services that involve communications between end users, those services would not apply in a broadcasting context.

**Senator SCHACHT**—What were those services again? Just speak up a bit.

**CHAIR**—I keep complaining and one day I will strike because it is impossible to hear in this room. It is not you. It is everybody that comes into this room. You need to speak up very clearly and loudly because it is hard to hear. There is something wrong with this particular room.

**Mr Cameron**—Okay. One of the amendments to part XIC is the deletion of a subsection in those criteria that the commission must take into account in determining long-term interests of end users that relates to the objective of achieving any to any connectivity. Achieving any

to any connectivity is a criterion that is used in a telecommunications sense rather than a broadcasting sense.

**Senator SCHACHT**—So that was taken out because it was purely a telecommunications issue—right? It is a telecommunications technical arrangement, is it? What did you call it?

**Mr Cameron**—Any to any connectivity. We will speak English later.

**Senator SCHACHT**—We are now off beyond Mars or somewhere with this language. But nevertheless, that is a peculiar telecommunications access regime issue. That has been deleted because it is not relevant to what would be a broadcaster's relationship to the NTC, as it would be called. Is that correct?

**Mr Cameron**—That is right.

**Senator SCHACHT**—Are the changes in the Trade Practices Act to bring this about to deal with the fact that they are excluding what are purely telecommunications issues, and they are not weakening the access rules for a broadcaster in its relationship to the NTA?

**Mr Cameron**—There are two questions. The first one is not strictly correct. There are some other amendments that do not relate purely to telecommunications, but they reflect the different commercial arrangements that would exist between a nominated customer and a broadcaster. That is my understanding from reading the explanatory memorandum. There is also the deletion of the ability for the minister to determine pricing principles for access, and they do not exist in the broadcasting context.

**Senator SCHACHT**—So if there is a dispute over pricing in telecommunications, the minister ultimately has some power in telecommunications—

**Mr Spier**—Not over the individual dispute, but the minister can set pricing principles.

**Senator SCHACHT**—Principles. But in this—

**Mr Spier**—But he has not done so.

**Senator SCHACHT**—But one day he might.

**Mr Spier**—He may.

**Senator SCHACHT**—But in this case he can never set a pricing principle for the relationship between NTC—as it will be called when privatised—and the broadcasters?

**Mr Cameron**—That is my understanding in terms of the ministerial pricing principles in part XIC. There may be some other avenues available for a minister to intervene.

**Senator SCHACHT**—In your job, Mr Cameron, would you set pricing principles for the NTC relationship with broadcasters?

**Mr Cameron**—The commission has published a guide on access pricing principles in telecommunications and—

**Senator SCHACHT**—I know. But this is broadcasting.

**Mr Cameron**—I imagine that the core principles in that document would apply in relation to access under the—

**Senator SCHACHT**—Has the ACCC provided that view to the Office of Asset Sales as part of the preparation for due diligence that buyers beware? Will you produce a document outlining the pricing principles as a guideline?

**Mr Cameron**—We have not provided that notice.

**Senator SCHACHT**—You have not?

**Mr Cameron**—No.

**Senator SCHACHT**—Could I suggest that you should in due diligence to the people who are going to bid for the NTA? I do not want to labour it, but if there are going to be pricing principles between the broadcaster and the NTC, in due diligence that should be noted by the people purchasing, bidding, or tendering to purchase. Otherwise they might find to their horror some time down the track that you are going to go whack and say, 'Here are the pricing principles.' And they might say, 'We did not know that this was going to happen to us.' Is that a fair comment of mine, or am I overstating it?

**Mr Spier**—Certainly we will take that point on board. Of course, we have dealt with the Office of Asset Sales on the sale of the Telstra shares and in other areas. They know our public statements and our documents.

**Senator SCHACHT**—We are dealing with a broadcaster, right?

**Mr Spier**—I realise that.

**Senator SCHACHT**—There are some differences. The ABC said that there are some differences.

**Mr Spier**—There are some differences. A lot of the principles will be common, but there are some differences.

**Senator SCHACHT**—Could you provide—and you might say that you have already done it, but I do not think you have—more detail to the committee? Could you provide a table specifying the differences in the pricing principles? How do you see them for the legislation for a telecommunications carrier and service providers, and for the NTC and broadcasters?

**Mr Spier**—We will come back to you on that. But it is not so much the pricing principles, but some of the factors that we have to take into account. That is actually in the explanatory memorandum, but not in a table form.

**Senator SCHACHT**—When I read the explanatory memorandum—which I have to say was some weeks ago now, probably before Christmas—this material was not clear. If you were doing a due diligence, you might go and hire some good QCs to explain this all to you. But if you are an ordinary layman, such as myself, that is not something that is really clear, and I think that it is very important.

**Mr Spier**—It is something that we will certainly take on board and we will talk to DoCA about this, too. Their policy department released this and we have been dealing with them on that.

**Senator SCHACHT**—We all understand that in the various deregulatory regimes that are now coming, the role of the ACCC and the institutional operation of the ACCC in a proactive way are pretty relevant to how the relationship will operate between the NTC—as it will be called—and the broadcasters.

**Mr Spier**—Certainly.

**Senator SCHACHT**—Mr Cameron, in the ACCC will you have an officer designated to look after this particular area?

**Mr Spier**—Not exactly designated. We have a significant number of staff working on the new telecommunications regime. A lot of the skill base will be similar and we have staff working on broadcasting matters—but not necessarily permanently, only on broadcasting. We have the staff.

**Senator SCHACHT**—Can I put it around another way? The SBS has got a problem in the access regime with the NTC. They will know that with a little bit of investigation there is a particular officer they should consistently ring that will handle these issues and that will have the institutional memory growing about how to handle it.

**Mr Spier**—Certainly once this regime is in place we will publicise it, in any case, along with our normal operations, and there will be contact points. Access issues are a very important part of the ACCC's work, not just, of course, in these industries, but in gas, and you name it.

**Senator SCHACHT**—Can I just go back to the ABA? Has the government sought your view at all about whether there ought to be a limit on foreign ownership of any of the bidders for the NTA? Has there been any view from you on whether there are some national interest implications about why a body like the NTA should be maintained under an effective Australian control?

**Mr Greeney**—I do not believe so, Senator.

**Senator SCHACHT**—You have not proffered a view either?

**Mr Greeney**—No.

**Senator SCHACHT**—I think that is all I have.

**CHAIR**—I have a question for the ACCC. Mr Spier, do you see any advantages of this bill in terms of competition and, maybe, reducing price or costs?

**Mr Spier**—Senator, we really do not know. In terms of privatisation, of course, that is very much part of the government's policy. We are more concerned about issues like access and whether there is a proper access regime, and we are fairly comfortable. Access regimes should make the market more competitive, more contestable.

**Senator SCHACHT**—Can I just follow through on that question from Senator Patterson? In metropolitan areas of Australia, one can easily see that there will be plenty of people who may be willing to contest the provision of transmission facilities, and so on, because it is a profitable market—Sydney, Melbourne, capital cities, millions of people. Out in the regional and rural areas of Australia where the provision of the service is probably by the NTA at the moment, they would not claim that it is a great profit earner in their overall revenue. Yet those facilities are very important. They provide a service into regional and rural Australia.

Will there be a problem that that market will not be contestable, that someone will say they cannot make a profit out of it but they will do it by having just a cost-plus arrangement because they know that no-one else is particularly interested? Is there going to be a problem about getting contestability across the whole of the network?

**Mr Spier**—Of course the marketplace is not perfect. In some areas, yes, they will not be contestable because there is just not the population base or the commercial impetus. Perhaps it is something you may ask DoCA this afternoon. It is more a policy issue than anything else.

**Senator SCHACHT**—In our system of broadcasting in Australia we have three segments. There is commercial broadcasting, national broadcasting—ABC and SBS—and community broadcasting. Community broadcasting provides another level of diversity and some competition and it particularly gives local communities a chance to have their own facilities and to broadcast their own material, which, in one sense, is adding to competition. Do you think it is an issue under the access regime that, to get and maintain that plurality and that diversity, they can come to you under the access regime to make sure they are not put out of

business by having a private monopoly basically saying, 'This is the price for your access to our tower. Take it or leave it'?

**Mr Spier**—I presume that is part of the basis of the access regime.

**Senator SCHACHT**—It is not a competition model on a dollars and cents basis; it is an issue of the broader diversity of the broadcasting system. If prices start going up on the provision of services to transmission facilities that presently the NTA provide, and if that sends broke and wipes out a number of these community broadcasters, that actually limits competition in the broadcasting market. Isn't that an issue you would also have to weigh in the balance, though it is not an actual dollars and cents argument?

**Mr Cameron**—That is right; it is. The long-term interests of end users, as we have explained in a number of documents that we have released in relation to work that we have done on part XIC, take into account the three dimensions of competition, which include price, higher quality of service and a wider range of products. My understanding is that some of the amendments to the long-term interest of end user criteria would give the commission the opportunity to expand on the range of factors it could take into account for what is the long-term interests of end users.

**Senator SCHACHT**—End users are the people—not just the ABC and SBS—listening and viewing the programs?

**Mr Cameron**—That is right.

**Senator SCHACHT**—That is your description of end users?

**Mr Cameron**—It is also the explanatory memorandum's description.

**CHAIR**—I thank the officers from the ABA and the ACCC for their presence today.

[12.05 p.m.]

**FALLOW, Mr William Darryl, private citizen**

**MELVILLE, Mr Barry Lloyd, Policy Development Officer, Community Broadcasting Association of Australia, PO Box 564, Alexandria, New South Wales 2015**

**STEFANIK, Dr Heinrich, Member of Executive, National Ethnic and Multicultural Broadcasters Council Inc, PO Box 1144, Collingwood, Victoria 3066**

**CHAIR**—I welcome Mr Fallow and witnesses from the Community Broadcasting Association and the National Ethnic and Multicultural Broadcasters Council. The committee has before it submission No. 2 from Mr Fallow, submission No. 6 from the Community Broadcasting Association and submission No. 11 from the National Ethnic and Multicultural Broadcasters Council. Do any of you wish to make a short opening statement before we proceed to questions?

**Mr Melville**—I wish to.

**Dr Stefanik**—Yes.

**Mr Fallow**—Yes.

**CHAIR**—You realise that your statements reduce the time we have to ask you questions, so could you be as succinct and as brief as possible. Assume that we have read the submission, so your opening statement should really be additional to the submission.

**Mr Melville**—I will try to edit on the run because I had prepared a five-minute address. I will try to taper that down.

**CHAIR**—That would be 15 minutes if everyone took five minutes, so if you can just reduce that it would be helpful. Thank you.

**Mr Melville**—Our position is that it is vital for the government to continue to recognise the contribution of the community broadcasting sector. We are concerned that the legislation under consideration would raise the prospect of exposing community broadcasters to commercial rates for site access fees, even when the explanatory memorandum to the bill recognises that the national transmission network has a monopoly character.

The explanatory memorandum for the bills in one breath stresses the importance of continuing to meet community service obligations and lists community broadcasters and a number of categories of service providers, and in the next breath the terminology changes to the government's social policy obligations.

The truth is that the community broadcasting sector is generally not being offered any concessions, while other parties, including some commercial operators, are. I want to cite in contrast to the explanatory memorandum the Arthur Andersen corporate finance report on the NTA, which I obtained from the Internet, which states:

With the exception of an obligation on the purchaser of the NTC to provide sharing and maintenance of site facilities and infrastructure at pre-determined rates to some emergency service organisations and existing self-help operators, no community service obligations will be transferred.

Community broadcasting is sustained by the efforts of 15,000 volunteers and 350 staff. Our aggregate revenue for the whole sector is around \$25 million across Australia. Only about five per cent of this is derived from government. The rest of it has to be derived from the local communities that we serve.

Getting back to the problems of the bill, we do note that the bill provides for an access regime. As we have heard from the ACCC, though, it is as if the access provisions of part XIC of the Trade Practices Act apply. It is a circumscribed version of the telecommunications access regime. It really only applies to a discrete set of nominated customers, which includes the ABC and the SBS, and it includes community licensees and self-help stations. But I want to put on the record that it does not include narrowcasters. To date, five of our community television stations are operating as open narrowcasters.

Just to cut to the chase, the kernel of our concern is that the ABC and the SBS will be funded to meet access and carriage costs regardless of who owns the network. Other nominated customers who will continue to enjoy social policy benefits include remote commercial television services and self-help transmission services. It is an irony that licensed community service providers—our licensees—are ineligible to receive any particular benefits, but will be exposed to a commercial pricing formula.

I have one small point on contestability. In many premium transmission locations around Australia the national transmission network supplier will effectively maintain a site monopoly. We are concerned whether, in the absence of effective competition in supply, these rates can be fair. There are a number of other problems that I will not deal with unless questioned.

To round off, looking into the future, it is a matter of considerable concern that with the onset of digital transmission there could be undue cost pressures with the NTC or its successor trying to recoup capital expenditure costs. There could also be an increased demand from broadcasters seeking access to a national digital transmission supplier.

**Dr Stefanik**—The NEMBC is, in principle, opposed to the sale of the NTN. We do not see it as benefiting the community ethnic broadcasting sector either in the short term or in the longer term. However, if the sale proceeds, we believe the bill needs to be significantly

improved in certain areas to provide at least a safety net to community broadcasters, of which the community ethnic broadcasters form an important part.

I would like to set the urgency of our request in some context and give you a couple of facts and figures on the community ethnic broadcasting sector. We are a sector that provides information and some entertainment in languages with which many Australians—as many as 15 per cent of the population—feel most comfortable. For many of them, particularly ageing people, the ethnic language is very often the major link back to the Australian community, so we provide basic access. We have a very important role, particularly outside Sydney and Melbourne, because in many locations around Australia community ethnic broadcasting is really a minimal service. In some locations half an hour a fortnight is considered to be ethnic broadcasting. Typically, communities having one hour a week think that they are well off in providing for information needs and the whole gamut of current affairs, et cetera, to their communities.

Some languages that we provide are available only through the community ethnic broadcasting sector and are not available on the SBS networks. For example, Romany is a language that is available only in the community broadcasting sector. Other languages that we make available are available at much more accessible times. For example, for a community such as the Slovak community, access on SBS national radio late on a Sunday night is not what you would call a very good opportunity to keep the community informed.

We are a voluntary sector. It was outlined that most of the money does come from community sponsorship. We actually have a non-profit making requirement in terms of our licensing conditions. If we do go for sponsorship, we are limited to four minutes per hour for sponsorship money raising.

As it stands, the bill leaves the community broadcasting sector, and particularly the ethnic communities, insecure. There are lots of aspirants waiting to come onto the scene and lots of languages are catered for in only a very minimal way. We have the whole question of digital broadcasting and the possibility of simulcasting where there would be a real spike in costs.

We believe that affordable rates need to be guaranteed and the choice for listeners should widen and not be narrowed, at least for local ethnic broadcasting. It is of concern to us that overseas material is quite readily available. All you have to do is have a dish pointed at, for example, Asia Sat-2 and you have a plethora of information in different languages from overseas. We believe that this process does very little to strengthen the multicultural fabric of Australian society. I would like to stop here and answer any questions.

**CHAIR**—Thank you.

**Mr Fallow**—Basically, I do not have any problem with the government's approach in selling the network to retire public debt. However, as a taxpayer, my concern is that it represents good value and is in the national interest. The sale would also give the national broadcasters increased responsibility and control over transmissions of their program—and I have no problem with that. As has been pointed out earlier, I think that objective could be achieved without selling the network.

Another concern that I have is that privatisation of the national transmission network should not result in any monopoly situation that might disadvantage other broadcasters, especially community broadcasters or self-help groups. The details of my concerns have been expressed in the written submission.

**CHAIR**—Thank you.

**Senator SCHACHT**—This is to Mr Melville or Dr Stefanik. In the last year or so, have members of either of your organisations had any significant charges or any increases in charges from the NTA?

**Mr Melville**—The way it pans out in our sector is that there are some 135 licensed community radio stations. I think there are 24 community radio stations which are customers of the NTA, so it is a minority of our sector. Five of those are RPH services which the government has differentiated because the government has actually made arrangements with the NTA for their transmission costs to be met. Those 19 remaining community licensees—community stations—are pretty much on a basis of user pays with the NTA or reaching agreements to achieve user pay rates.

**Senator SCHACHT**—What is the definition of user pays? Can you give me an idea? Does this mean they are paying \$5,000 or \$50,000 a year?

**Mr Melville**—You would probably have to ask the NTA. It differs from station to station and it differs from situation to situation. In some cases it might only be for access to an NTA tower. It might even be that the community service has its transmitter on a piece of adjoining land that is not related to the NTA and simply feeds a wire onto an NTA site and onto the transmitter array. In other cases, a service provider might have an arrangement with the NTA to have access to building and equipment. It really does vary.

**Senator SCHACHT**—Have you any anecdotal information of any increases of this user pays in the last year or so?

**Mr Melville**—We have had a number of stations facing significant increases, in the vicinity of sometimes 50 per cent to 100 per cent of the fees they had paid. It is a significant impact with very small stations having to pay up to 16 per cent of their revenue in NTA fees. That is the worst case example.

**Senator SCHACHT**—You say it may be up to 100 per cent. Is that a fee going from something like \$4,000 or \$5,000 a year to \$7,000 or \$8,000 a year or is it \$10,000 to \$20,000? I just want to get the perspective.

**Mr Melville**—Again, we have had difficulty getting hold of this data from the NTA. We only have anecdotal evidence from a minority of our stations. It might be a better question for the NTA.

**Senator SCHACHT**—I was going to ask whether you could provide a complete list of the 19 stations?

**Mr Melville**—We would be able to generate one but we do not have one to hand.

**Senator SCHACHT**—Could I ask you to take it on notice to contact those 19 stations and just give us what each of them has been paying each year over the last three or four years and also a description of the type of service so that, if it is just an adjoining wire going to an adjoining block of land compared with going up an NTA tower and a transmitter in one of their rooms or whatever, we get some idea of that cost? I accept the fact that saying community broadcasters run on the smell of an oily rag is no overstatement, that even small increases, even only a few thousand dollars, maybe \$2,000 or \$3,000, can drastically affect the annual budget.

**Mr Melville**—Across the whole sector, as I said, it is a minority of our sector that use NTA facilities,

**CHAIR**—Can you just give us a figure?

**Mr Melville**—The cost increases that we have faced this year would be about \$33,000, relying on department of communications information, and that might be on a base of around a couple of hundred thousand dollars—I do not have an accurate figure of what the preceding fees were, but it would be in that order. We are certainly not talking multimillion dollars, but we are talking a significant hike on station budgets that run on a very scale.

**CHAIR**—That could happen with the NTA now, before privatisation. You are not guaranteed a fixed capped cost.

**Mr Melville**—That is right. For a number of years we have been seeking government endorsement of a concessional arrangement or a capped cost.

**CHAIR**—The other thing is, you said it is only a small proportion. Do you know what proportion it is? Is it 10 per cent?

**Mr Melville**—No, it is—well it is 24 stations including the print handicap stations.

**CHAIR**—We will take out RPH because they are a different category.

**Mr Melville**—Then it is 19 stations out of about 130.

**CHAIR**—Nineteen out of 130, and the other 110 or so survive in the commercial world and are able to manage?

**Mr Melville**—No, they have other arrangements. They are not necessarily in the commercial world.

**CHAIR**—What do you mean other arrangements?

**Mr Melville**—The typical situation is that they might get free access to a block of land provided by their local council and they buy their own transmitter and set it up. The reason why the 19 community stations are on NTA sites is that they have little other choice. It depends on the local topography and the local availability of sites. In fact, you might surmise that if you can avoid getting on an NTA site it might well be better not to use those services.

**CHAIR**—Do any of the other 110 or whatever there are of them use commercial sites—not using their own or not—

**Mr Melville**—Some of them share facilities with commercial broadcasters. Some of them have their own stand alone arrangements.

**CHAIR**—And they manage that?

**Mr Melville**—Yes.

**CHAIR**—Thank you.

**Senator SCHACHT**—In your dealings with NTA over the last five years you have been seeking some arrangement or agreement for the community broadcasting sector about pricing arrangements, have you—those 19?

**Mr Melville**—It is more accurate to say we have been making representations to government about it. On an individual basis stations have been negotiating their contracts, and as part of the due diligence process I believe they want to conclude those contracts by April. Some of those negotiations have broken down and been very difficult. In fact legal advice to certain of the stations has been, ‘Do not sign these contracts because ultimately they are open ended on price.’

**Senator SCHACHT**—They are existing NTA contracts?

**Mr Melville**—Yes.

**Senator SCHACHT**—Has there been any indication, since the government made the announcement in July of last year that they would be proceeding to sell the NTA, that there has been delay in reaching agreement to sign contracts—the NTA has not been able to sign contracts for commitments of two or three or four or five years ahead because this could affect the sale process?

**Mr Melville**—I think I would rather take that one on notice. I think the impetus has been to actually try to complete those contracts.

**Senator SCHACHT**—Complete those contracts. You are saying the offered contracts are open ended.

**Mr Melville**—The legal advice is that you agree to a certain price, you agree to a certain term of contract, but there are no legal guarantees within the individual contract that other costs will not be added in through time.

**Senator SCHACHT**—During the time of that contract?

**Mr Melville**—Yes—within that contract.

**Senator SCHACHT**—Has the Office of Asset Sales, which is in charge of all this, had any consultations with the community broadcasters?

**Mr Melville**—I am sorry, I do not know.

**Senator SCHACHT**—Could you just take that on notice and check with the association?

**Mr Melville**—There has certainly been contact between individual stations—Arthur Andersen—and there have been negotiations between us and the department, and we have made representations to the minister.

**Senator SCHACHT**—I was just wondering: in the process of consultation with all the stakeholders, and you are a stakeholder, in the services provided by the NTA, have community broadcasters had any formal discussions with Arthur Andersen on behalf of the Office of Assets Sales?

**Mr Melville**—There have been formal discussions with the solicitors operating for the government. I am not sure whether they are operating for the Office of Asset Sales. There have been consultations through Gilbert and Tobin in about the middle of last year, I recall.

**Dr Stefanik**—There would be a differential impact on the community ethnic broadcasting sector, because our strongest stations are in metropolitan areas where the new regime would apply more strictly in terms of access being required through designated sites. Just on a further point, we have had the experience where the NTA has been reluctant to follow up proposals, because it was going through a phase of uncertainty.

**Senator SCHACHT**—Dr Stefanik, Mr Melville has said there are 19 community broadcasters in his association, excluding RPH, that use NTA facilities in one form or another for transmission. Does that 19 include members of your association?

**Dr Stefanik**—Yes; when we mention the global figures, that does include the community ethnic broadcasting sector.

**CHAIR**—Do you have any of your sector outside of that, not using NTA?

**Dr Stefanik**—Our sector, as an ethnic broadcasting sector, is divided along the lines that we have some full-time stations in some metropolitan areas and we also have access through general community broadcasters around the country. Again, how that is organised depends very much on local conditions.

**CHAIR**—But would any of your members have been included in that group that are not the 19, in the other 110 or so?

**Dr Stefanik**—We do not have full-time ethnic radio stations outside the metropolitan areas at this stage, but some of the aspirants waiting for the next round of licence allocations are ethnic broadcasters.

**CHAIR**—Just answer the question that I asked you. None of your members is included in the 110 who are not using NTA?

**Dr Stefanik**—Yes, they are included, because they are members of those community broadcasting stations. So they are not separate, but they are integrated in different ways within general community broadcasters.

**Senator SCHACHT**—How many broadcaster members do you have in the ethnic broadcasters association?

**Dr Stefanik**—More than 70 stations are members of the NEMBC. As I said, there are different regimes. In some places, and this is what I wanted to outline, the service is very minimal: it may only be three to four hours per week. In others, they are full-time stations.

**Senator SCHACHT**—Are all of those 70 also members of the Community Broadcasting Association?

**Dr Stefanik**—You could say almost all of them.

**Senator SCHACHT**—What number did you say, Mr Melville?

**Mr Melville**—There are about 135 licensed community stations in Australia.

**Senator SCHACHT**—So your 70 would be part of the 135?

**Dr Stefanik**—Yes.

**Senator SCHACHT**—So we are not double-counting?

**Dr Stefanik**—No.

**Senator SCHACHT**—Dr Stefanik, do you have any knowledge of what the average price is for those of your members that are using NTA facilities, and of what their charges are per annum?

**Dr Stefanik**—We do not have figures, for the same reason that the situation varies considerably; but we know, for example, that 3ZZZ is collectively involved in the Melbourne area with 3MBS and 3PBS. We know that they would, under the current arrangements, face an increase of \$3,000.

**Senator SCHACHT**—\$3,000 on top of how much?

**Dr Stefanik**—That I do not know at this stage.

**Senator SCHACHT**—Could you provide more information for us on what those increases are for your own members in the ethnic broadcasting area? They obviously overlap and might be the same as what Mr Melville has, and so you could work together to provide that to us. We will certainly try to seek it from the NTA.

**Dr Stefanik**—If I may say so, the background has been that a lot of broadcasters have been able to come to some sort of arrangement with the NTA—a whole range of arrangements—and a lot of them have been quite acceptable. Our general concern is that, if the rules now change, a lot of the acceptability that was there in the past will evaporate.

**Senator SCHACHT**—Mr Fallow, in your submission you make a number of suggestions that a better way to proceed with the NTA, rather than privatising it, is to create new structures which the ABC and the SBS, as national broadcasters, would be involved in. I do not know whether you heard the ABC evidence today, but it was pretty clear that their main issue is to get control of their own budget over the cost of transmission. Does that evidence change any of your views in your submission?

**Mr Fallow**—I can understand the ABC or a broadcaster wanting control. Any models that I suggested were ideas to put up for consideration. I think the key point here that I am making is that, as far as control goes, there are other methods apart from the sale. The sale will achieve that, but there are other methods, apart from the sale, that could achieve the same ends.

**Senator SCHACHT**—You are an employee of the NTA: is that correct?

**Mr Fallow**—That is correct.

**Senator SCHACHT**—But you make it quite clear in your letter that you are here as an individual—

**Mr Fallow**—That is correct.

**Senator SCHACHT**—Exercising your democratic right, which is fine. In your submission you make the point that the NTA, over the last few years since it was created, has made substantial increases in efficiency. On the first page of your submission, you say that over the last three years the NTA handed back to the government over \$80 million in savings. Can you just expand on how that figure of \$80 million was arrived at?

**Mr Fallow**—I am glad you have raised that, Senator. There is a slight error in the text, and I have an amendment to the submission to table. That part should read that, over a three-year period, the NTA would hand back \$80 million in savings. From published information, savings would accrue of around \$20 million annually, due to the operations and maintenance contracts. In addition, published information also reveals that the cost of operating the network was reduced permanently by some \$26 million per year in 1996-97. There would be other savings—and I am not sure whether they are included in that figure of \$26 million—possibly resulting from the closure of facilities at Cox Peninsula. I imagine that competitive tendering would have produced some savings as well. So ‘over the last three years’ is incorrect. Over a three-year period, that figure would, I believe, be close to correct.

**Senator SCHACHT**—I presume the staff in the NTA, such as yourself, are rather proud of that achievement of being able to get this efficiency, even though some of it has been imposed on you and there have been redundancies, et cetera.

**Mr Fallow**—Yes; there have been some pretty good challenges put up to us, and the organisation now, after five years, is substantially different from the public service environment into which I entered.

**Senator SCHACHT**—In the submission that DoCA makes on behalf of the government, and the minister’s own second reading speech, it is asserted that there will be further efficiencies in the NTA just because of the fact that it will be run by a private company and it will be a privatised body. From your knowledge of the nature of the NTA itself, do you think there will be significant further savings available to an NTA providing the range of services that it has to for at least five years to the ABC and SBS?

**Mr Fallow**—It is hard to say. There have been substantial savings. There is no doubt about that. It has been pointed out by our general manager that it is hard to see where further savings could be made. Of course, you can always refine things. There is no doubt about that. If the

organisation is of a similar size and privatised, I guess that is up to the individual organisation. But efficiency within most organisations tends to be a function of their size in any case, so I could not be sure. But I think it unlikely, if we are doing as well as we are; it would be cutting away the edges.

**Senator SCHACHT**—Let me put it another way. Can you think of any area of the existing operation of the NTA that could be changed to provide significant ongoing savings? All the maintenance is basically outsourced under contestable tenders, isn't it?

**Mr Fallow**—Yes.

**Senator SCHACHT**—The size of staff has been reduced. A private enterprise manager might make marginal improvements here and there, like with any organisation, but where else do you think there might be a big hit?

**Mr Fallow**—I cannot personally think of any areas that I could identify that would be classed as a big hit. Of course, as you point out, people coming in from the outside may have different ideas and different ways of doing things, and that may result in some efficiencies.

**Senator SCHACHT**—Do you as an NTA official see the way the NTA operates providing up to 1,500 facilities around Australia in one form or other? Is there a cross-subsidy arrangement informally, such that those that may not be as profitable in providing services to outback and regional Australia have their services and overheads covered by the profitable areas of the cities? Is that arrangement obvious?

**Mr Fallow**—I am not sure that I can comment on that. I am not aware in any detail of financial arrangements within the organisation. It is not an area in which I work. As far as cross-subsidy goes, I could not comment on that.

**Senator SCHACHT**—Okay. During your time on the NTA and particularly in the last five years, have any companies made private company approaches or indicated their interest in buying a privatised NTA?

**Mr Fallow**—Apart from the organisation that was mentioned previously, I am unaware of any other people. I personally am certainly not aware of any direct approaches. I guess one hears speculation of who may or may not be, but I have no concrete evidence at this stage.

**Senator SCHACHT**—You have argued in one sense philosophically that there is no need to sell the NTA, as it is operating efficiently. Are there other national interest reasons why the NTA should be maintained in public ownership, going on providing the service that it is and looking at always being a good organisation, like all should be, and improving efficiencies and savings? Are there any other broader issues as an employee in the NTA that you think are a wider issue that parliament should consider?

**Mr Fallow**—No; the only exception I can think of—and I do not know that the matter has yet been resolved—relates to the short wave broadcasting facilities. I personally think they are very specialised facilities and could be of some strategic importance to the country. I believe that there the question really is that, if you have ownership, you probably have more control. It is a question for the government, but that is my view.

**Senator SCHACHT**—That is what we call the Radio Australia Cox Peninsula section, et cetera?

**Mr Fallow**—That is correct.

**Senator SCHACHT**—As a staff member—and you may choose to not answer this, because you are still a full and loyal staff member of the NTA—what have you been informed by the

management or DoCA or the government is the future of staff such as yourself after 1 July this year, if the bill is passed and it is privatised?

**Mr Fallow**—As I currently understand it, options are open. All I know for sure is that, at that date, the employment of officers in the NTA will terminate. There may be opportunities after that, perhaps with either the national broadcasters or with the buyer. But certainly, as far as I am aware, nothing is guaranteed.

**Senator SCHACHT**—Has there been any suggestion that whoever is the successful bidder would make offers to some of the staff to continue, because of your expertise and knowledge?

**Mr Fallow**—Not in a formal sense, although I guess that it is always possible that that could happen.

**Senator SCHACHT**—So everybody is accepting the fact that on 1 July they might not be in a job?

**Mr Fallow**—That is a distinct possibility for a number of people.

**Senator SCHACHT**—Are the standard arrangements for Public Service redundancy, et cetera, being made available to the staff?

**Mr Fallow**—I believe so.

**Senator SCHACHT**—But nothing special?

**Mr Fallow**—No, nothing special.

**Senator SCHACHT**—Your colleagues at the desk at the moment from the community broadcasters and ethnic broadcasters have raised the issue of 19 of their stations continuing to use the services. Does the NTA treat those 19 as reasonable customers or are they treated as a bit of a nuisance that have to be put up with so that the community broadcasters get access to getting the signal out in the local community?

**Mr Fallow**—Once again I do not think it is an area I can comment on. It is not an area in which I am involved. That question might be more appropriately directed to the department.

**Senator SCHACHT**—So you are not aware of whether the NTA has a particular policy to assist community broadcasters by saying, ‘Our facilities are available and we can work out a reasonable price to use the facility’? As far as you are aware, there is no known policy in that area?

**Mr Fallow**—The policy, whatever it would be, would be that which is put up by the Department of Communications and the Arts.

**Senator SCHACHT**—You made mention in your submission of the value of the NTA in the Arthur Andersen material. I used the figure before. I think it is about \$400 million depreciated value. Is that right?

**Mr Fallow**—I believe that figure was mentioned last year in proceedings before Senate committees.

**Senator SCHACHT**—Do you believe that value will be maintained? Unless there is recapitalisation and new equipment bought in, will the value go down?

**Mr Fallow**—I do not believe that to be the case just on the basis of the equipment itself. A lot of the network is reasonably new. I am not sure what percentage but certainly there has been a significant replacement of capital assets. I would say overall it is probably in a fairly good state. Of course, it has been raised here that the value could change depending on new technologies. The only comment I would make there is that existing technologies may go on

for some time. We have had FM come in and we still have AM running. It is hard to say but I see no reason why they should be devalued significantly.

**Senator SCHACHT**—I have no further questions.

**ACTING CHAIR (Senator Tierney)**—Thank you very much for attending today.

**Proceedings suspended from 12.43 p.m. to 2.06 p.m.**

[2.06 p.m.]

**ALSTON, Senator Richard, Minister for Communications, the Information Economy and the Arts, Parliament House, Canberra 2600**

**BUETTEL, Mr Rohan Nigel, Assistant Secretary, Legal, Parliamentary and Coordination Branch, Department of Communications and the Arts, Canberra, Australian Capital Territory**

**EDWARDS, Mr Alan, Acting Assistant Secretary, Public Broadcasting Branch, Department of Communications and the Arts, GPO Box 2154, Canberra, Australian Capital Territory**

**JONES, Mr Vic, General Manager, National Transmission Agency, Level 6, Blue Building, Benjamin Offices, Belconnen, Australian Capital Territory**

**STRETTON, Dr Alan, First Assistant Secretary, Film, National Broadcasting and Intellectual Property Division, Department of Communications and the Arts, Canberra, Australian Capital Territory**

**HUTCHINSON, Mr Michael James, Chief Executive, Office of Asset Sales and IT Outsourcing, PO Box 4271, Kingston, Australian Capital Territory 2604**

**CHAIR**—I welcome the minister and officers of the Department of Communications and the Arts, and the officer from the Office of Asset Sales and IT Outsourcing. The committee has before it submission No. 8 from the department and submission No. 5 from the Office of Asset Sales and IT Outsourcing. Are there any additions or alterations to the document that you would like to make at this stage?

**Dr Stretton**—No.

**CHAIR**—I have been advised that the minister has to leave by 2.45 p.m., so we will deal with any questions that we have of him before then. We are due to finish at 3.30 p.m.

Before we start, there were some issues that were raised, Mr Buettel, right back at the beginning and I did signal that I would like a response from the department to those. Could we deal with those couple of issues first. One was about ancillary services with the ABC and technical information for third parties who may wish to tender for the provision of new services at NTN sites, and there was another issue as well.

**Mr Buettel**—I will start with the issue about whether the access regime should apply to the ABC and the SBS for the purposes of carriage of open narrowcasting services. The access regime is intended to apply to the core national broadcasting services that the ABC and SBS supply to the Australian public.

The access regime will apply to an open narrowcasting service if the service would properly be characterised as a national broadcasting service. The example the ABC gave in their submission was of a specialised children's channel, and I think there would be no difficulty in coming to the view that it could quite properly be classed as a national broadcasting service. The mechanism exists in subsection 13(3) of the Broadcasting Services Act 1992 for the

minister to specify such a service as a national broadcasting service by means of a *Gazette* notice. Such a notice is a disallowable instrument.

However, it is not certain that all narrowcasting services that the ABC may wish to provide should be classed as a national broadcasting service. For example, if the ABC were to come up with the idea of providing some sort of racing service, it may not be seen as a core charter service.

In summary, the ABC should be given access rights in relation to services that are properly classed as national broadcasting services, and that judgment should be made in the light of the particular circumstances of the service concerned and how central the service is to the fulfilment of the ABC's charter obligations. The ABC should not have automatic access rights in relation to any open narrowcasting service it may provide.

The second issue that the ABC raised was: should the access regime give the ABC protected rights for ancillary services? The ABC seeks access rights in relation to ancillary services such as data services supplied using vertical blanking interval of a television broadcasting signal or using an FM subcarrier frequency of an FM radio broadcasting service. The services that they supply generally would not be seen as core national broadcasting services. In most cases, a decision by the ABC to provide such services would be seen as a commercial matter for the ABC, and any negotiations with the National Transmission Company to provide those services should really occur on a commercial basis.

However, during the course of the ABC's evidence this morning, they gave the example of a closed caption service for the hearing impaired. I think that raises a different issue because it is more in the nature of a community service than a commercial service. Clearly, we would have to consider whether there should be access rights for this kind of service. We will go back and discuss this further with the ABC.

**Senator SCHACHT**—On ancillary services, the example they put was that they wanted contestability on, say, the maintenance and so on—I think that was one of the issues they put—about whether they could get enough information—

**Mr Buettel**—That is the third issue I am just coming to.

**Senator SCHACHT**—I am sorry; I have jumped ahead of you.

**Mr Buettel**—The third issue was: should the ABC have access to technical information relating to sites and common site equipment for the purpose of putting to tender the provision of terrestrial transmission services on national transmission network sites? Part 3 of the bill will give the ABC rights of access to transmission services and sites and towers for the purpose of providing national broadcasting services.

The terms and conditions upon which access is supplied would be able to deal with provision of technical information relating to sites and common site equipment where this is necessary for the provision of the national broadcasting services concerned. In a situation where multiple sites are available, there would be no difficulty in the ABC asking the various site owners to tender to locate ABC facilities on their site.

However, the ABC wants access to technical information for a further purpose, and that is to decide whether they want the NTC or someone else to do work on the NTC's site for them. What the ABC is really seeking here is benefit from the use of valuable commercial information which would normally be confidential to the National Transmission Company.

The ABC, if they had that access right, would effectively be able to pre-empt any opportunity for the National Transmission Company to itself make commercial use of the information.

The general issues about access to information have been dealt with at length in the telecommunications environment in the negotiations about dealing with access to carriers' towers. The draft facilities access code prepared by the ACCC for the purposes of the co-location provisions in the Telecommunications Act provides a set of rules about the provision of confidential information by one carrier to another for access purposes. The code seeks to balance the interests of both parties.

I am concerned about the ABC's suggestion because it does not seem to recognise the legitimate interests of the NTC in maintaining the confidentiality of its information. I am not aware of any other access regime which provides an access seeker with the benefit of confidential commercial information which the access seeker can then make freely available to third parties.

**Senator SCHACHT**—But does not the ABC have to use them for the first five years? You are not dealing with a normal competitive model; you are dealing with one where the ABC must use them for five years. There is a difference from the telecommunications regime. One provider does not have to use Telstra, Optus or Vodafone, but the ABC must use the privatised NTC, as it will become, for five years. Therefore I think there is a different relationship. Anyway, it is more of a comment. It is something that we have to further explore.

**Dr Stretton**—Can I just make a comment on your comment? The ABC is required to use the NTC for the first five years for existing services, but for new services, which is probably where they would want that information that they are seeking, they can go to any other supplier that they want. So that is why—

**Senator SCHACHT**—Yes, but if they were going to put that service on an existing site for the NTC, they might like to get some idea of what those other costs are for the NTC on that site—such as Mount Lofty, in Adelaide, where they have got the transmitter for the ABC. They might like to get other information before they put it out to tender, even as a new service. I understand Mr Buettel's comment. I am not sure that the argument from telecommunications is exactly analogous because of this five-year contract. I do accept the fact that new stuff is eligible to be put out. But they are locked in to accept the costs of the NTC for existing arrangements for five years.

**CHAIR**—Have you finished, Mr Buettel?

**Mr Buettel**—Yes, unless there are any other questions.

**Senator SCHACHT**—Mr Buettel, I don't know who this goes to. We raised with the ABC and SBS whether they would have any objection to providing to the committee either openly or in camera the draft compact between them and the government. Their view was that there was a draft but it is probably going to have to be updated in the next few days. I just wondered whether, Minister, you or DoCA have any objection to that being provided to the committee before we report for the debate. I think this is germane to the issue of the debate in itself about the guarantees to the ABC for funding for five years.

**Senator Alston**—I would not have thought it was desirable in principle to be making public what might ultimately be the basis for commercial negotiations—or if not commercial then sensitive negotiations. In due course I could see the government and the national broadcasters making clear to the public what the essence of the agreements was about. But I do not think

there is any compelling public policy reason for releasing either the draft or the compacts. We may take a different view down the track, but certainly in terms of drafts I do not see that it is desirable.

**Senator SCHACHT**—Are you saying that, if the NTC was sold and you got your legislation through, even after a compact is reached it will not be publicly available to find out what the government has promised to provide to ABC and SBS over five years of funding?

**Senator Alston**—All I am saying, out of an abundance of caution, is that I think it is important that the principal elements of that document be made known to the public, but whether every element of a binding legal agreement needs to be made public is another matter upon which we would take advice.

**Senator SCHACHT**—Minister, I am never dogmatic about the issue of commercial-in-confidence. I have to say I think it is not unreasonable that, by the time the debate takes place in the Senate, the amount of money the compact has in the guarantee for five years to the ABC and SBS, and how it has been arrived at, should be known. Otherwise you are going to find it will be belaboured around your head a fair bit in the Senate—that we are buying a pig in a poke here.

**Senator Alston**—We anticipate that it will fall into place by the time the legislation is considered. Precisely how far we go in disclosing the actual document is something that we would probably want to reflect on.

**Dr Stretton**—I think the issue here is one of commercial-in-confidence. Obviously there are ways of dealing with that which we would need to discuss, but I am sure that we could.

**Senator SCHACHT**—Minister, you said you will reflect on it. We have to report by 10 March. It would be useful if we could have some indication of those outlines because that will be useful information and then the Senate will not debate it. I do not know when you going to get it into the Senate—late March, early April, whatever. There are things in commercial-in-confidence and it would not be really necessary. But the amount of money and how it is broken up and arrived at would be useful. When it comes around to estimates, we will be asking legitimately how much there was in the budget and why was it provided and so on.

**Senator Alston**—Most of that is commercial. We will go as far as we can within the constraints.

**Senator SCHACHT**—I just want to ask about another side of it. We had a representative of the ABC here today. There is a rumour going around Parliament House that you are about to announce the appointment of Mr Michael Kroger to the board of the ABC. Is that correct?

**Senator Alston**—Yes. It is certainly correct that it is a rumour.

**Senator SCHACHT**—I will wait and see until late in the afternoon. It was in one of the papers this morning. It was speculated.

**Senator Alston**—But if you want to draft your supportive release, we would be more than happy for you to proceed on that basis.

**Senator SCHACHT**—I have already taken the opportunity to prepare a few contemporary notes about the appointment.

**Senator Alston**—You should not have long to wait.

**Senator SCHACHT**—We raised it early today with a number of the submissions. They all said, quite rightly, this is a government policy issue. Has the government decided whether they will allow foreign ownership for the NTC and, if they do, to what level? In some of the

briefing notes we have received it is mentioned that a company that may well be substantially government owned—the New Zealand broadcasting corporation—could be a major bidder. Some people might say it is a bit odd that we sell our asset to a New Zealand government controlled organisation. Does the government yet have a policy on foreign ownership levels for the tenderers?

**Senator Alston**—The bill leaves it open to any level of foreign ownership, subject to FIRB requirements. That is pretty much in line with the policy you adopted for the radio industry.

**Senator SCHACHT**—I have to say this is a bit different. Not all the radio industries ended up in the hands of one foreign company. We got the National Transmission Agency which provides for five years. It is a virtual monopoly, privately owned. Has there been any discussion in government about the foreign ownership levels? I know that it is through FIRB and it is a Treasurer decision in the end. Is that a consideration for the government?

**Senator Alston**—We are not apprehensive about the prospect of foreign ownership.

**Senator SCHACHT**—Even a majority foreign ownership?

**Senator Alston**—Yes.

**Senator SCHACHT**—Thank you for making that clear. Can the OAS give us an indication yet of how many interests have been expressed in purchasing the NTC?

**Mr Hutchinson**—We have around 70 initial expressions of interest who sought the information brief that we distributed. It is quite usual at this stage of the process to get a fairly large number of parties who want to read the brief without necessarily being interested in making the acquisition. But within that 70 we know there are a number of people who are potentially substantially interested in an acquisition.

**Senator SCHACHT**—Are you telling these people who have expressed an interest that they are purchasing ability to tender, if they want to, subject to legislation passing the Senate?

**Mr Hutchinson**—The process goes through an expressions of interest stage and there will be a stage at which a limited number of parties are given access to confidential information. We have not yet produced that limited number of parties and that list; we do not have the number down yet. When the sale process proceeds, depending on the stage at which the parliament deals with this legislation, it will be our intention to proceed with the sale subject to the passage of this legislation.

**Senator SCHACHT**—But will the short list, providing people with the due diligence and the confidential information, take place irrespective of the passage of the bill?

**Mr Hutchinson**—It will take place provided the passage of the bill is still pending.

**Senator SCHACHT**—Still pending?

**Senator Alston**—Has not passed.

**Mr Hutchinson**—Has not passed.

**Senator SCHACHT**—So they will get the information but they will be warned that the bill has to take its chances in the Senate?

**Mr Hutchinson**—The bill is before the parliament, yes.

**Senator SCHACHT**—Surely a man of your perspicacity, Mr Hutchinson, would probably make some comment to them that the vagaries of the Senate are not yet known?

**Mr Hutchinson**—To the extent that the major parties have made any particular policy position clear, and to the extent that the report to this committee sheds any light on those

matters, they will be very formally disclosed to bidders as part of the information disclosure provision necessary to ensure that bidders are fully informed about the process as well as about the opportunity. So, yes, we will be sending bidders in with their eyes wide open to do their homework.

**Senator Alston**—Having said that, it would be extraordinary if they were not aware that the bill had not in fact passed.

**Senator SCHACHT**—There is a difference if a bill has not been passed but everyone knows it is going to get passed because there is clearly publicly admitted majority support—

**Senator Alston**—I suppose if they are from Iceland and they have not read the papers for six months that might be so.

**Senator SCHACHT**—All right. Mr Hutchinson, have you been asked to give a briefing to any of the other parties in the Senate to explain the background to the sale process?

**Mr Hutchinson**—Personally no. I will just check with my colleague here. Aside from the briefing we gave to the chair of the committee, there have been no briefings yet sought by any of the other parties.

**Senator SCHACHT**—Apparently the ACCC has advised you to alert potential buyers to the possibility of the sale raising issues under section 50 of the Trade Practices Act. Has this been done in the expressions of interest?

**Mr Hutchinson**—The complete regulatory regime will be described in the documentation made available to bidders in the data process, but we have not yet provided the briefing packs to bidders because we are not yet at that stage. We have certainly been in dialogue with the ACCC and will ensure that their perspectives are fully reflected in what the bidders get.

**Senator SCHACHT**—Will the Cox Peninsula Radio Australia facility, now under a care and maintenance arrangement, be sold with the total package of the National Transmission Agency or will that be sold separately if there is an appropriate bid or expressions of interest made separately?

**Mr Hutchinson**—The position of the Cox Peninsula installation is not yet settled. At the moment we anticipate it will not be part of the integrated package that we are selling as part of the main sale, because of the particular circumstances that apply to Cox Peninsula.

**Senator SCHACHT**—Does that mean that OAS will take charge of a separate sale process for Cox Peninsula?

**Mr Hutchinson**—If the government were to decide to pursue a sale of the assets of Cox Peninsula as a business, then we would expect to carry that sale. If some other form of disposal of that site was settled on, then probably we would not.

**Senator SCHACHT**—Minister, has the government made a decision on what it is going to do with Cox Peninsula? Is it going to put it out for sale, or sell it for scrap, or break it into pieces, or sell it off to another organisation, or whatever?

**Senator Alston**—We are still looking at a threshold decision about who should be eligible to use these facilities—whether, indeed, they ought to be available to foreign operators, whether they ought to be available using Australia as a base into a third party. Until we make that decision we are not able to take the matter further at this point. We have always said that we were prepared to explore the possibility of selling. We assume that once we have clarified that initial issue there is likely to be some commercial interest.

**Senator SCHACHT**—Do you have any idea of the timetable for when those issues of possible foreign involvement, et cetera, will be clarified and you will make a decision?

**Senator Alston**—Mr Hutchinson says in the fullness of time. I am more generous than that; I say sooner rather than later.

**Senator SCHACHT**—With your ‘sooners’ that could be any time between now and the turn of the century.

**Senator Alston**—All right—in the fullness of time. You win!

**Senator SCHACHT**—On Cox Peninsula, do you have any expressions of interest from a foreign radio broadcaster? There was one last year that put up their hand or showed some interest. Are any others still around?

**Senator Alston**—I do not have any direct knowledge. I think there was one other. But I would imagine that any interest would substantially be on hold pending this decision.

**Senator SCHACHT**—We await with some interest what happens to that site. Mr Hutchinson, apparently there has been some advice that some sites may be subject to native title claims. Do you have any evidence of that? If so, will that be in the documentation?

**Mr Hutchinson**—The Cox Peninsula site is subject to a Northern Territory Aboriginal land claim. To the extent that the other sites are open to native title claim then they remain open to native title claim. I do not have specific details before me now of the nine hundred and something sites and which are and which are not subject to various forms of claim. There is a process under way at the moment which we refer to as title remediation.

The National Transmission Agency, within the Department of Communications and the Arts, had a range of title arrangements for the properties it occupies which had to be regularised in a way so that they were capable of being sold. That process is under way, and that is the process that will indicate the title status of all the land. Whatever the title status is will be accurately recorded in the sale documentation made available to bidders, so they can know what is happening.

**Senator SCHACHT**—If the bill does not go through, is the government open to any liability?

**Mr Hutchinson**—There are two parts to the answer to that question. If the bill does not go through, the government is not open to any liability arising out of the sale process other than a modest liability to terminate the engagement of our advisers, who were proposing to see the sale through under the legislation, unless the government decides—I do not believe the government has yet considered this—on a less efficient, alternative sale process that does not rely upon special enabling legislation.

**Senator SCHACHT**—Just out of curiosity, can you give me an idea of what that alternative process would be? Less efficient you called it but how would you dispose of it less efficiently?

**Mr Hutchinson**—The assets and titles belong to the Commonwealth and it is open to the Commonwealth to arrange for the disposal of its assets. It just would be done in a less efficient way because some of the deeming provisions in the legislation are there to expedite a sale and there will be some complexities that we have not fully analysed. We have not fully analysed it because at the moment we have not faced the problem. But, in principle, we can see a way forward to proceed without the legislation were the government to ask us to do so. I stress it has not yet asked us to do so.

**Senator SCHACHT**—That is useful information. I know you are very hopeful that the Senate will vote for your legislation but is this policy about the sale of the NTA so firmly in place that, if the legislation did not pass the Senate, you would look at the option, as Mr Hutchinson has outlined as a very even-handed bureaucrat explaining all the options to you?

**Senator Alston**—We live in hope. We are proceeding on the basis that we will get the legislation through. It is therefore not necessary at this stage to look at alternatives. But, if we did, we obviously have to take advice on the implications.

**Senator SCHACHT**—So it is not ruled out? The policy to sell the NTA is a decision taken?

**Senator Alston**—Yes, that is right.

**Senator SCHACHT**—You think legislation is the cleanest way to do it but, if that does not work, you do have the option of going a non-legislative route, as Mr Hutchinson—

**Senator Alston**—We are not contemplating that.

**CHAIR**—Just the cleanest or most economical route as well?

**Senator Alston**—For all sorts of reasons, I think it is much tidier to do it that way. It sounds as though Senator Schacht is looking for a re-run of Telstra. We managed to get that through without exploring alternatives.

**Senator SCHACHT**—It is similar. You may have been pleased to note that Senator Colston turned up here this morning.

**Senator Alston**—I read that.

**Senator SCHACHT**—And I thought this may be ominous for me.

**Senator Alston**—I trust he is in good health. You didn't set him back at all, did you?

**Senator SCHACHT**—I thought it may be ominous for the Labor Party that Senator Colston showed an interest and turned up. Nevertheless, he did not ask any questions to tip his hand on what he is thinking on these matters. I now turn to some questions to DoCA because I think they are handling this issue about the compact. I go back to this compact. Do you have a figure, other than what we were told today by the ABC that is in the forward estimates, as to the amount of money that would be guaranteed to the ABC and the SBS over the next five years?

**Mr Edwards**—The government has agreed that the ABC will get sufficient funds to cover the costs of its contract.

**Senator SCHACHT**—Of the contract they are about to sign?

**Mr Edwards**—The contract which they sign, which would be in place prior to the sale and will be transferred to the new owner. So those costs will be known and it will be out of the total funding pool, which the government has agreed will not exceed the NTA forward estimates.

**Senator SCHACHT**—We will get this clear with OAS as well. So is it right that the contract for the SBS and ABC, on what they are going to pay for the next five years, will be clearly available to all the potential short-listed tenderers?

**Mr Edwards**—That is correct.

**Senator SCHACHT**—When that is made available to them is that a commercial-in-confidence document only to those tenderers?

**Mr Hutchinson**—That is certainly the case.

**Senator SCHACHT**—Will the compact that the government signs with the ABC and SBS to provide money over five years, which is signed as a contract to the entity and then transferred to the new entity, be made available to the short-listed tenderers in commercial-in-confidence?

**Mr Hutchinson**—Yes, because it is a material fact related to the security of the contract that they would be acquiring as part of the sale process.

**Senator SCHACHT**—I come back to the issue of how much of that could be provided to the committee.

**Mr Hutchinson**—I think the minister has dealt with that already.

**Senator SCHACHT**—This morning we asked the ABC and SBS about this. If, over the period of the five-year contract, there were a substantial improvement, which is one of the justifications given in the documentation from DoCA of the advantages of selling the NTA, the private sector will be more efficient and therefore costs will presumably come down. The ABC is locked in to pay that amount of money even if the NTA—or NTC, as it would be—is able to improve its profit. It keeps all the extra profit through that change. None of that flows back to the ABC or SBS.

**Mr Hutchinson**—Senator, the way the economics of that works is that, to the extent that the bidders can foresee that they can make a better buck out of this system than the NTA has been able to do, they will be able to factor a portion of the efficiency improvements into their sale price in order to improve the competitiveness of their bid. Therefore, the Commonwealth, in aggregate, will capture the economic gains that the bidders expect to make by way of both improved efficiencies or additional revenue. That will be captured up-front by the Commonwealth to the extent that the compact will fully compensate the ABC for the costs they have to bear in the five-year contract.

To the extent that those efficiencies are entrenched and ongoing, they will be apparent to the Commonwealth and to the ABC from the financial arrangements we enter into with the successful bidder. Therefore, the ABC will be well positioned with five years notice concerning what the renewal or next competitive tendering for the contract might be at the end of five years.

**Senator SCHACHT**—So the money goes out of one pocket and into the other. What the ABC may lose, you will get back as an increased sale price.

**Mr Hutchinson**—The ABC does not lose anything because the—

**Senator SCHACHT**—The taxpayer pays the money into the compact through the allocation for five years. You saying that, if the private sector think this is too generous a bid, because they are competitively tendering they will boost their price for the sale.

**Mr Hutchinson**—That is the way the economics should work competitively.

**Senator SCHACHT**—Is that the way Hutchinson economics works?

**Mr Hutchinson**—That is the way the competitive tendering appears to work.

**Senator Alston**—He has most of the textbooks on his side.

**Senator SCHACHT**—Who? Mr Hutchinson?

**Senator Alston**—Yes.

**Senator SCHACHT**—I just want to get that clear because that was not explained this morning and it was not their job to explain it. In the compact to DoCA, is it the case that whatever the amount of money in there—there was a figure in the forward estimates—is the

maximum they are going to get? Or are the ABC and SBS able to negotiate and say, 'There are other things in here that the normal figure for the NTA does not cover that have to be covered now; therefore, that figure in the forward estimates is not the correct figure that is useful for us'?

**Mr Edwards**—The government has agreed that the total level of funding for the post-sale arrangements will not exceed the existing NTA forward estimates. From within that total bucket will be met the costs of the contracts, which we will know in advance. In addition, the ABC will get funding for the additional planning and contract administration functions that it will have under the new arrangements. We expect they will also have some funding for minor infills.

**Senator SCHACHT**—Funding for what?

**Mr Edwards**—Minor infills. For improving black spots in transmission within existing coverage areas and that sort of thing—a function that the NTA currently performs.

**Senator SCHACHT**—When I asked them, the ABC said today that there would be nothing for them in this figure for expansion of, say, the Triple J and SBS networks and ABC FM fine music, et cetera. That would all be an extra allocation if the government agreed.

**Mr Edwards**—As it is at the moment, the government would increase the appropriation.

**CHAIR**—Senator Schacht, Senator Alston needs to go. Have you any other questions for him?

**Senator SCHACHT**—No. He is going to leave anyway. It is no use me trying to argue.

**Senator Alston**—I always prefer to leave voluntarily.

**CHAIR**—I have one question that the officers may be able to answer. There was one question that was asked before about ABA. The ABA indicated that they were not being funded, that they had resource implications if the rate of complaints increased. Has that been taken into account, and what will happen if the number of complaints increase? How will they deal with that financially? Can you answer that, Dr Stretton? Minister, if Dr Stretton can answer that, you can be excused.

**Senator Alston**—I have every confidence.

**Dr Stretton**—The expectation, Senator, is that the vast majority of complaints will be handled by the broadcasters themselves. The ABA option is there only if that avenue does not sort out the problems. We are not expecting a large number of complaints.

**CHAIR**—That was a concern they had. What happens if it does increase?

**Dr Stretton**—Then that is something that we would have to consider at the time in the normal way that the department considers the running costs of all our agencies.

**CHAIR**—Thank you.

**Senator SCHACHT**—I have a question to DoCA regarding the efficiencies that the NTA have made over the last four or five years, and there are various figures in their annual report—for instance, there has been a 40 per cent increase in productivity. One submission today said that they had probably saved, over three or four years, \$80 million of expenditure. Does DoCA have a view about those levels of increased efficiency and savings that the NTA have made since they became the present organisation five years ago? We know that Hutchinson would never agree.

**Dr Stretton**—I am not quite sure what you expect me to say. The NTA was fulfilling the role that it was set up to do, which was to gain greater efficiencies by introducing contracting

out of their capital works program and then their O&M contracts. They fulfilled those objectives very well as those figures show. That is not to say that further efficiencies may not be possible. It is not to say that more effective utilisation of the assets is not possible.

**Senator SCHACHT**—If DoCA says that these things may be the case, why aren't you telling the NTA to do them?

**Dr Stretton**—In part, the government did provide that guidance in terms of the fact that the NTA was expected to contract out the capital works program and then the O&M, and in a sense that was the order in which it was decided that it was the most effective way to take that forward.

**Senator SCHACHT**—Dr Stretton, you are a very considerable expert in this range of matters, being a senior officer of reasonable experience. Can you tell me one area where you still think there are considerable savings and efficiencies in the existing NTA that the present body is not able to deliver but a private sector owned body would deliver? After you have a go, I will ask Mr Hutchinson because he is the ideological warhorse on all this stuff.

**Dr Stretton**—I am quite happy to leave it to the ideological warhorse.

**Senator SCHACHT**—I am just saying that you are a very competent, efficient, well experienced officer with all the good DoCA balances, et cetera.

**Dr Stretton**—Clearly, the advice from the business advisers to the sale is that they think that further efficiencies are available. I am sure Mr Hutchinson can add further to that. The other area seems to me—

**Senator SCHACHT**—But you do not have from DoCA the view that there is a thing standing over there that—

**Dr Stretton**—I do not know. This is an issue on which we would get advice from our colleagues. The area where it seems to me you might expect greatest efficiencies is perhaps in greater utilisation of the assets.

**Senator SCHACHT**—Why can't the existing management of NTA make greater utilisation of the assets? What is in the atmosphere or the water that they are taking that means that they cannot make the same decision?

**Dr Stretton**—The profit motive is very strong.

**Senator SCHACHT**—I see. It is the Gordon Gecko argument, greed.

**Dr Stretton**—Greed? I do not see profit as greed.

**Senator SCHACHT**—Mr Hutchinson, that would be your view, wouldn't it? Greed is the only thing that motivates people in society.

**Mr Hutchinson**—It is actually not my view, Senator. In fact, greed is not really a very good motivator at all, but that is a different discussion. My view is that the NTA, in the period since it was established, has done an excellent job. Had they not gone through the structural changes, the organisational operating changes and the cultural changes that the present management have taken them through, we would not be on the springboard from which would be within reach those additional efficiency gains that our advisers have told us are available. I just want to add that I have had some association with this group in various lives over the past decade.

**Senator SCHACHT**—Are you going to claim credit for the establishment of the NTA?

**Mr Hutchinson**—No.

**Senator SCHACHT**—Okay.

**Mr Hutchinson**—I was giving them credit for their achievements.

**Senator SCHACHT**—That is fine.

**Mr Hutchinson**—I was just indicating that I have been in a position to observe them make some of those achievements for a period of years. Secondly, the next opportunities for efficiency gains lie much more in the flexibility and agility that the private sector can bring, because that is very difficult to bring into the public sector, with issues such as commercialisation of potential revenue streams and commercial arrangements—particularly with commercial broadcasters and other commercial potential users of these sites, who are intrinsically reluctant to do business with a government owned agency. From that point of view, I see the maximisation of the uses of the assets as being driven best in the private sector, in the commercial sector, for those reasons. The motivation is not greed; the motivation is the drive within the private sector for efficiency, which I think is a drive that the private sector, when it comes to commercial use of assets, is far better placed to realise than is the public sector.

**Senator SCHACHT**—Efficiency is not an end in itself. Efficiency is to increase the profit, to put more dollars in the shareholders' pockets. Some people might say that is greed—I don't know. Efficiency is not an end in itself. It is there to make a bigger profit. Some people might say profit and greed are the same thing.

**Mr Hutchinson**—No. I would argue that profit is the by-product of the drive for efficiency and the motivator for it, but I think the drive for efficiency in the economy is the fundamental public policy rationale for doing these things.

**Senator SCHACHT**—That is your view as a public servant in terms of the broader societal issue. Back here in the NTA, you have now talked about better use of assets. Can you give me a simple example—that is an accountancy term, 'better use of assets'—something I as a lay person could understand? Give me an example of where the assets are not having maximum utilisation in the NTA?

**Mr Hutchinson**—There are large land areas and large capacities on towers and on sites for there to be additional radio communications types of activities on those sites—activities that are presently not on those sites. There are a large number of broadcasters, be they commercial or community, who have opted to set up separate sites rather than to share the NTA sites.

**Senator SCHACHT**—But that was a decision taken before the NTA was established. That goes back to the dreadful old days of the PMG when you would have to be locked up, in some ways, to go and try to do a deal with that. That was a culture of 30 years ago. We are talking about the past five years.

I want you to give me an example of where somebody has turned up and said, 'No, no; this mob is hopeless! We are not going to put our transmitter facility on the acre of land that they have got. We want to share it with them.'

**Mr Hutchinson**—I do not have examples from the last five years. I have not been working with them for the last five years. It may be that DoCA has some more concrete—

**Senator SCHACHT**—Has DoCA got an example where you know of someone saying, 'We would not want to get into bed with the NTA and share an acre of land at the top of Mount Lofty?'

**Dr Stretton**—I am personally not aware of anyone saying that, Senator.

**Senator SCHACHT**—Perhaps we can ask Mr Jones to join the table and tell us.

**Mr Hutchinson**—I understand there was some evidence given this morning by the community broadcasters, who indicated that they were not very keen on doing business with the NTA.

**Senator SCHACHT**—Who? The community broadcasters were very keen to do business.

**Mr Hutchinson**—My understanding of the evidence this morning was the reverse, that they were not keen to do business with the NTA. I do not know; I was not here.

**Senator SCHACHT**—They were saying, ‘Do not sell it.’ They may be not keen to do business but they were not saying that the consequence was to sell it. They were saying the opposite. They would like to see some improvement in the NTA, but I do not think they believe that a commercial organisation will not attempt to jack the price up on them.

**CHAIR**—Why don’t you take that question on notice, if nobody can answer it here?

**Senator SCHACHT**—I would appreciate it if you could give us an example of missed opportunities in the last four years. I agree with you that, if you go back 20 years with the PMG, there was in those days quite a different culture, but the evidence over the last four or five years is a bit different, I think.

**Mr Hutchinson**—I think you are grasping for something that you may not find, because—

**Senator SCHACHT**—No, no. I am not grasping. You are the one who asserted it. You said that there is not proper use of the capital assets. I am asking you to give me some examples of where people could use it, and you say that commercial people would want to come and use the site.

**Mr Hutchinson**—I guess the position I am trying to put is that with private sector, flexible, commercial ownership of the assets those owners have the incentive to go and look for users and to go and create business opportunities, to develop initiatives, and to innovate to find ways to use those assets. At the moment, I would guess that the NTA probably work much more along the lines that you have outlined: they sit and wait until an opportunity comes along and then they seek to create that opportunity, but they do not go out beating the bushes and suggesting deals that would be to the mutual advantage of—

**Senator SCHACHT**—You were a senior officer of DoCA before it was DoCA, when it was the Department of Communications—

**Mr Hutchinson**—No, it was still DoCA.

**Senator SCHACHT**—As assistant secretary—seeing that you have the view that they were not going out—did you, in policy seminar discussion as a senior official, discuss and raise with them that this was what they should be doing?

**Mr Hutchinson**—At that time there was certainly an interest in cultivating commercial opportunities, but there is a limit to what the Public Service can fund in the way of business development for an asset that is not charted for business development. I mean that the Public Service is not a business operation: it is a public administration operation.

**Senator SCHACHT**—Were you not involved in the development of corporatisation plans of various GBEs?

**Mr Hutchinson**—Many of them.

**Senator SCHACHT**—Wasn’t that the policy that was supposed to make them more hungry and flexible, and weren’t you one of the people up at the top directing them to be so?

**Mr Hutchinson**—Certainly I was involved in encouraging them to do so, and I would say from that experience and the experience subsequently of selling a number of them that there

are clear limits to how far any entity can go in the public sector in terms of commercialisation, and an administrative unit of a government department, which is what the NTN is, is very limited as to what it can do commercially.

**Senator SCHACHT**—I have to say, Mr Hutchinson, that this is the first time that actually you have implied that you are not as effective as we have all accused you of being! You were not able to get them to go—

**CHAIR**—Mr Hutchinson is saying that he has been as effective as he can be within the gamut of the Public Service. That is a very different thing from your interpretation, Senator Schacht.

**Senator SCHACHT**—The whole point of this is that one rationale that is put in here for the sale of the NTA, other than reducing public debt, is improved efficiency. That is what I read in the government submission. But when we get right down to it we cannot identify, other than in the broad view, where there will be new efficiencies appearing.

I think those efficiencies could come irrespective of whether it is a public or a privately owned asset. I am finding it a bit difficult to discover a genuine finger on the button that says, 'This mob is beyond the pale. They are not performing anything near what they ought to. If we do not sell them, they are going to fall over.' That is not the case. Therefore, Mr Hutchinson, is it the view of the government that the real reason for selling the NTA is an ideological position to sell public assets and pay off debt?

**Mr Hutchinson**—I think that question, in the way that it is couched, would be best answered by the minister. My understanding is that the policy position—

**Senator SCHACHT**—Your minister and not Senator Alston?

**Mr Hutchinson**—I suspect either minister would give you the same answer but I am not about to give you a minister's answer. I believe the government's policy position has much more to do with a pragmatic recognition of the fact that commercial assets and commercial services can only be taken so far within the framework of the public sector and, in particular, within the framework of a department. In order to free them to operate more commercially and maximise the use of the assets, they need the introduction of private sector capital and private sector management techniques afford the best opportunity. It is not an ideological position; it is a pragmatic and practical position.

**Senator SCHACHT**—You almost make the ability of the private sector sound mystical. Have a look at the stock market: there would be a few companies of that private sector ability about whom you would say, 'Don't let them anywhere near me, they have made some dreadful decisions.' Their shareholders have taken a hell of a belting. For every good example, you can find a different one in the private sector. You might have an argument to say that at least it is not public money that they are dropping down the black hole.

**CHAIR**—Senator Schacht, you are testing me a bit. Can you just move on? I think we all understand the point you are making. I think we understand the point Mr Hutchinson is making. We are labouring it now, so to speak.

**Senator SCHACHT**—I may be labouring but this is the point: why are they selling it? Asset sales for the sake of asset sales is one reason given and the other one is efficiency.

**CHAIR**—The ABC said, 'More flexibility.' The SBS said, 'More flexibility.'

**Senator SCHACHT**—The ABC says, 'We don't care who owns it; just give us enough money so that we can make our own judgment so that in five years, whoever owns it, we will be competing with it.' In the end, the ABC may be a loser out of it—or the community. I don't

know whether this next is for DoCA or OAS. If the bill is passed, and the changeover takes place, there is no guarantee for any existing staff of any further employment prospects in the public sector—isn't that right?

**Dr Stretton**—The government has agreed that a clean break approach will apply. That will ensure that staff have the option of a voluntary redundancy or redeployment in the APS, as you would be aware.

**Senator SCHACHT**—So they do have the option of redeployment?

**Dr Stretton**—Of course. Normal Public Service procedures will apply in that case. The department obviously will be providing all efforts to redeploy staff, provide career counselling, financial planning assistance et cetera.

**Senator SCHACHT**—How many of the staff of the NTA have got specialised engineering qualifications relating to broadcast transmission, et cetera.

**Dr Stretton**—About 40.

**Senator SCHACHT**—About 40. Can you give me an idea of where they can be redeployed into the Public Service to have those skills effectively used?

**Dr Stretton**—For those who are involved in planning, the ABC and the SBS will now be undertaking a lot of those planning functions so they may well be interested in them. I do not know whether you regard that as the Public Service but I think broadly speaking that is—

**CHAIR**—What about communications in the Antarctic division? There are jobs for communications people with those skills in the Antarctic division in Mawson, in Hobart and wherever else. There are lots of places, Senator Schacht.

**Senator SCHACHT**—I knew Hutchinson was tight but I never thought that even he would agree to send the poor buggers down to the Antarctica for a job career.

**CHAIR**—Maybe that is where we could send you, Senator Schacht.

**Senator SCHACHT**—I know there are colleagues in the Liberal Party who would say that is a good place for me but I am a bit surprised, Chair, at that suggestion.

**CHAIR**—Just one possibility.

**Senator SCHACHT**—The—

**Mr Hutchinson**—Senator, can I just interject on behalf of my colleague engineers who presently work in the NTA? It is not axiomatic that, just because one has an engineering qualification, one is limited to the area of public administration in which to work. An engineering qualification and training equips you to do all sorts of things.

**Senator SCHACHT**—And you are a living example. Have you budgeted for redundancy packages?

**Mr Hutchinson**—Certainly that is the case.

**Senator SCHACHT**—How much for?

**Dr Stretton**—I cannot give you the exact figure. We do not know the exact figure at this moment.

**Senator SCHACHT**—I know that, with give and take, some will get jobs and some will not. But you must have been planning for this and given some idea of what the budget would be for you.

**Dr Stretton**—I will get the range for you, Senator. It is between \$5 million and \$8 million.

**Senator SCHACHT**—Does the sale cost come out of the budget? It is out of DoCA's budget.

**Dr Stretton**—Ministers are yet to make a decision on that, but the clear expectation is that will be offset by the sale price.

**Senator SCHACHT**—I wish you well on that one.

**Dr Stretton**—I am sure we will succeed on that one.

**CHAIR**—You would expect some of them to move over to the new company. Would you expect some of them to be taken up?

**Dr Stretton**—It is very difficult to know, Senator.

**Senator SCHACHT**—Not the way Hutchinson has described them—

**Dr Stretton**—That is really an option for the new owner. In part it will depend on the new owner's background experience. It may well be that they come into Australia with very few staff in Australia and, therefore, may well be interested in a number of NTA staff. Alternatively, they may be already well established in a similar type of industry in Australia and, therefore, the demand for NTA staff would be a lot less. That is a decision which the new owner would need to make at the time.

**Mr Hutchinson**—Senator, we have sold—and are selling—a number of business units of the Commonwealth government that have used this clean break policy approach to handling the Public Service staff involved. In each case, a significant number of the staff in the business, prior to sale, have accepted job offers from the buyer after sale.

**Senator SCHACHT**—Does DoCA have no objection to the NTC becoming a telecommunications carrier under the new deregulatory model that we have for telecommunications?

**Mr Buettel**—That is entirely a matter for the NTC.

**Senator SCHACHT**—If they did become a carrier, do you see any policy implications conflict of interest between their role as a broadcaster and their role as a telecommunications carrier?

**Mr Buettel**—Not necessarily, Senator.

**Dr Stretton**—They would not be a broadcaster. They are just transmitting.

**Senator SCHACHT**—No, they are providing the facilities for transmission of broadcasts as well as providing the facilities infrastructure in one form or another for telecommunications. Mr Jones, are any of the present facilities of NTA being used, leased or hired out to any of the existing carriers or service providers in telecommunications?

**Mr Jones**—I would say that is so to all of the carriers already.

**Senator SCHACHT**—All those carriers. Dr Stretton or Mr Buettel, can you see any conflict of interest emerging if they were a carrier and also providing service to other carriers?

**Dr Stretton**—No, the access regime which this bill puts in place ensures that currently the NTA's assets—the network—must be used to provide the transmission services for those nominated customers such as the ABC and SBS. They do not have the option, if this is what you are concerned about.

**Senator SCHACHT**—No, if they become a carrier.

**Dr Stretton**—But even if they become a carrier it does not mean that they can use those assets for telecommunications purposes at the expense of the broadcasting purposes.

**Senator SCHACHT**—You say that is clear in the act.

**Dr Stretton**—That is clear in the act.

**Senator SCHACHT**—If they are using them as a carrier and they have got other carriers using the facilities they have inherited, the telecommunications regulations, I presume, would keep that access open and there would be no gazumping? Is that correct Mr Buettel?

**Mr Buettel**—Yes, Senator. It is correct but they will all be under access obligations to other carriers which seek access.

**Senator SCHACHT**—I asked before about Cox Peninsula, which is clearly going to be separated. Mr Hutchinson said that. What about the other Radio Australia short wave at Shepparton and Brandon? Are they in the pot with the NTA or are they sold separately as a short wave facility?

**Mr Hutchinson**—From a sale point of view they are in the pot with the NTA because they will be covered by the compact in the contract and therefore there will be a revenue stream attached to them. Therefore they are saleable.

**Senator SCHACHT**—Have you made any estimation of how much the possible value of the sale has been reduced by not being able to have Cox Peninsula in the pot?

**Mr Hutchinson**—We do not believe that the Cox Peninsula issue is highly material to the estimated sale proceeds—that is, the variance in the estimated sale proceeds using different techniques for us to measure the likely proceeds. The uncertainty in the estimate exceeds the value of Cox Peninsula.

**Senator SCHACHT**—Mr Jones, how much have we invested as taxpayers in Cox Peninsula?

**Mr Jones**—In recent years we have spent nearly \$11 million up there but the actual facility has probably cost about \$40 million.

**Senator SCHACHT**—Most of it was rebuilt after Cyclone Tracy, was it not?

**Mr Jones**—It was built not long before Cyclone Tracy. It was a relatively new station then.

**Senator SCHACHT**—It flattened it. Then it had to be rebuilt, so it is basically 20 years old or less?

**Mr Jones**—Yes, and since then it has been upgraded.

**Senator SCHACHT**—Upgraded with \$11 million in the last few years. Mr Hutchinson, you are saying that that asset, if it were being used by the ABC for Radio Australia, would not add materially to the value of NTC?

**Mr Hutchinson**—If it were being used by Radio Australia and Radio Australia were paying a fee that represented a fair price for the operation and capital involved in its operation, then yes it would make a—

**Senator SCHACHT**—Was Radio Australia paying a fair fee for Shepparton and Brandon?

**Mr Hutchinson**—Under the compact Radio Australia will pay a commercial fee for Shepparton and Brandon.

**Senator SCHACHT**—Yes, and the ABC will be funded for it.

**Mr Hutchinson**—Yes.

**Senator SCHACHT**—So if Cox Peninsula were still operating, before the crazed decision of the government to knock it over last year, close it down, the NTC would get a reasonable amount of money commercially to make that a valuable asset?

**Mr Hutchinson**—Yes, Senator; my answer to your earlier question was predicated on the basis that the Cox Peninsula is not operating and does not therefore have a revenue stream.

**Senator SCHACHT**—Yes, I know, but if it were operating it would add more than some value. It is the best short wave operating base out of Australia, surely?

**Mr Hutchinson**—Whether it has a value as such would depend entirely upon the deliberations of the government concerning the allowable future uses. The minister dealt with that.

**Senator SCHACHT**—But if it were operating normally as Radio Australia, what the ABC would be able to pay NTA would be a reasonable revenue stream, surely.

**Mr Hutchinson**—My understanding is that the way the accounts have worked in the past has been that the cost of operating Cox Peninsula was largely the annual operating cost. There were no capital charges made in respect of the depreciation, because that money was just appropriated on an annual basis.

**Senator SCHACHT**—That is the same for Shepparton and Brandon, surely.

**Mr Hutchinson**—The purpose of the compact and the contracts is to translate the past arrangements into a reasonable commercial charge and to have that commercial charge flow through to the capital value of the business, as it is sold.

**Senator SCHACHT**—I think you are doing a very good job of ducking and weaving around a bad government decision to close Cox Peninsula down. Under the Trade Practices Act or general competition policy would an existing commercial television operator or broadcaster be able to bid to buy the NTC?

**Mr Hutchinson**—The sale legislation provides that any acquisition of the NTC is subject to section 50 of the Trade Practices Act, which means that, in the event that that acquisition were to lead to a substantial lessening of competition in that or another market, the courts could prevent that acquisition.

**Senator SCHACHT**—But that is a decision the Trade Practices Commission or the ACCC would have to rule on.

**Mr Hutchinson**—It is a decision under the Trade Practices Act, which is—from my recollection—a court matter, is it not?

**Mr Buettel**—Yes, it is a prohibition in part IV of the Trade Practices Act.

**Senator SCHACHT**—Yes, but that means that the ACCC takes it to the court to win the prohibition.

**Mr Buettel**—Yes.

**Senator SCHACHT**—That is their decision; it is not an OAS or DoCA decision.

**Mr Hutchinson**—That is correct.

**Senator SCHACHT**—Has there been any advice given about whether, if one of the commercial networks did try to buy it, they would have difficulty with the ACCC and ultimately the court?

**Mr Hutchinson**—Our position on that is that any buyer should talk to the ACCC independently, because the ACCC is an independent regulatory body. That is the course we adopt in all our sales.

**Senator SCHACHT**—Have you had to refer anybody to the ACCC on that matter?

**Mr Hutchinson**—We are not in a position yet where we have pre-qualified or short-listed buyers in receipt of such advice.

**Senator SCHACHT**—Mr Hutchinson, after the five years of the compact are up, and leading up to the five years, do you think it is reasonable that the ABC and SBS get their funding for the compact added into their triennial funding base, as in the finance department now?

**Mr Hutchinson**—Senator, I would be delighted to answer your question but, unfortunately, it is a technical matter. I do not work in the Department of Finance and I therefore have to refer that question to my colleagues who do.

**Senator SCHACHT**—What does OAS do?

**Mr Hutchinson**—The OAS is an executive agency of government that reports direct to the Minister for Finance, outside of the Department of Finance. I have no remit or authority to speak about appropriations or budget matters at all.

**Senator SCHACHT**—I see. You stumped me on that one; I'll give you that one.

**CHAIR**—Are we nearly there, Senator Schacht?

**Senator SCHACHT**—Yes, we nearly are. This is your legislation, Madam Chair. There is one question I should have asked DoCA earlier. During the operation of the first five years, do you think that there will be a development of some sort of a claim for a community service obligation on the operation of the NTC in the provision of services?

**Dr Stretton**—I am sorry, but I do not understand the question.

**Senator SCHACHT**—We will have to go back one step. It is probably clear that, in a commercially operated, vigorous entrepreneurial arrangement that Mr Hutchinson has described so enthusiastically, some of those same people say that having a transmitter and providing services out in western New South Wales—the backblocks of the Flinders Ranges and so on—is not really marginally meeting profit targets of 12 per cent per annum, or whatever it is, and that they are going to increase the service, including the site plan of the ABC or the SBS. The lease is going to have to go up whereas they say that they can actually lower the price in the metropolitan area where there is a broader range of potential broadcasters, et cetera, who may be willing to come on board as a result of these new people that Mr Hutchinson has described. But that in the end leads to the whole issue of telecommunications and Australia Post. Unless there is some re-balancing, you are going to have an infrastructure that is overwhelmingly directed towards the cities, rather than towards regional Australia.

**Dr Stretton**—Thank you for clarifying that. There are two sides to the answer of that question. Firstly, the access regime applies to all existing assets, so that the new owner must continue to provide access for those national broadcasting and other CSO types of purpose, for both regional and metropolitan areas.

**CHAIR**—So that guarantees the same coverage?

**Dr Stretton**—Exactly. Secondly, the contracts which the various broadcasters and CSO users will have with the new NTC will also cover off, in detail, a level of service that is expected

to be provided at each of the sites. Those contracts, as you are aware, are for five years initially, but with the option to renew for two additional five-year periods.

**CHAIR**—So if I am living in remote New South Wales or Tasmania or Victoria and I am able to get the service now, I still should be able to expect to get that under the new arrangement—ABC and SBS, that is?

**Dr Stretton**—Certainly, that is what the whole access regime and the development of the contracts is to achieve, yes.

**Senator SCHACHT**—That means that you do not expect in the first five years, in the compact period, that the new owners will at some stage front up to the government and say, 'Look, if you want to provide this service—to continue this service—it is not profitable for us; therefore, you have got to put the subsidy in.' They have made it very clear that they have to find the money to keep it.

**Dr Stretton**—The contract which the new owner must have with the ABC and SBS—radio for print handicapped, et cetera—will all be part of the sale agreement. So the new owners are going into this knowing that this is an obligation which they must meet and they will have a contractual and legal obligation to do so.

**Senator SCHACHT**—Those existing 19 community broadcasters that are using, in various forms, the NTA at the moment do not get covered by the same arrangement, do they? If the NTC in the next first five years wanted to change the charges, et cetera, that is a commercial discussion.

**Mr Hutchinson**—Senator, the intention of the sale price is that the existing contracts between the NTA and non-national broadcaster users will be formalised prior to sale and will be novated to the purchaser. So whatever the contractual arrangements that are in place between Mr Jones's organisation and the community broadcasters will be turned into contractual form, novated to the purchaser and the purchaser will be then contractually obliged to respect those contracts.

**Senator SCHACHT**—For five years?

**Mr Hutchinson**—For whatever the term of the contract is?

**Senator SCHACHT**—Unless someone in the community broadcast sector is very lucky and has got a 50-year contract signed up—and I doubt it very much. I do not think even your lack of entrepreneurial people and the NTA would fall for that one, would they?

**Mr Hutchinson**—It is possible and I do not know the detail. It is possible that Mr Jones has in place some contracts that will expire in two years time. That expiry date will be novated.

**Mr Edwards**—The intention is that all community broadcasters will be given the opportunity to have contracts in place for a period of at least three years beyond the sale date. I might also add that the community broadcasters—

**Senator SCHACHT**—That is the 19, is it?

**Mr Edwards**—That is the 19, yes. In addition, all community broadcasters will have, under this legislation, the right of access to sites and facilities which arguably is an improvement over their current situation, albeit on commercial terms, which can be adjudicated by the ACCC.

**Senator SCHACHT**—Just as we conclude, Madam Chair, yesterday I received a letter from people representing 3MBS FM, which is the Music Broadcasting Society of Victoria, saying

that they need to renew the contract with the NTA before its sale goes through; otherwise they could be left out in the cold, as it were, by whoever buys the NTA. They are having difficulty completing the arrangement. They are wondering whether this is a result, Mr Hutchinson, of the fact that the sale process has put such contracts on the skids or just freezing them until after the sale is completed.

**Mr Hutchinson**—Quite the reverse. It is our intention in the sale process to encourage people in the position you have just outlined to finalise their contracts. If you wanted to refer them to us, we would be quite happy to—

**Senator SCHACHT**—Mr Jones, are you aware of this one?

**Mr Jones**—Yes, I am.

**Senator SCHACHT**—What is happening with it?

**Mr Jones**—There are actually 22 rather than 19, because the people who were here only represent the radio side of things. There are three community television operators as well. There are 22 groups who share our facilities. Out of the 22, 10 have already agreed fees on a commercial basis and the contracts are either in place or shortly will be in place. The other 12 are ‘actively under negotiation’, to use some words from a television show. The difficulty in every case where agreement has not quickly been reached is the fee, and that is the case with 3MBS as well.

**Senator SCHACHT**—So it is a simple matter of an argument over the fee?

**Mr Jones**—Absolutely.

**Senator SCHACHT**—They say in their letter to me:

On 16 October last year our legal advisers sent a detailed response to the draft contract proposed by the Agency. To date we have had no reply and we cannot get the NTA to respond. Meanwhile, Arthur Andersen, corporate finance advisers to the government on the sale of NTA, have written to us saying we have to have our contract finalised by 30 April.

**Mr Jones**—That is getting a contract in place pre-sale. It cannot be left till the day that we are supposed to hand over.

**Senator SCHACHT**—Are you saying that their complaint about delay in getting the contract signed is purely to do with you wanting to charge them more and them wanting to pay less?

**Mr Jones**—That is absolutely right. I could introduce you to at least one person in the NTA who would have expired at the suggestion that no-one is trying to settle it! He has been working on that very hard.

**Senator SCHACHT**—I am just reading the letter. I am not editorialising about it.

**Mr Jones**—You would get a similar story, I guess, from most of them. The fee increases we are looking at range from almost nothing to very significant percentage increases, but they are very significant because the present fees in some cases are minimal.

**Senator SCHACHT**—Are those fees you are now setting actually a reasonable cost recovery on the service provided?

**Mr Jones**—Absolutely: using the same formula that has been used with every other public broadcaster, and that is used with commercial broadcasters as well.

**Senator SCHACHT**—So those fees are in line with what the commercial sector would charge? If Channel 9 had a transmitter, is it what they would charge if someone wanted to use them for a community broadcast?

**Mr Jones**—Yes. The people who are coming to us are clearly getting a better deal from us than they got from the alternative; or, in some regional areas, we are the only show in town.

**Senator SCHACHT**—And you are not using your only show in town as a bit of monopoly?

**Mr Jones**—No; we have a standard way of calculating the fees, and every element of the fee is negotiated with the broadcasters and justified.

**Senator SCHACHT**—Dr Stretton, are you confident that, under a privatised NTA, they will not have a private monopolist attitude on these things?

**Dr Stretton**—If the community broadcaster—or any other user, for that matter—who has rights on the access regime thinks that, then they have the right to go to the ACCC.

**Senator SCHACHT**—What about a new community broadcaster turning up and wanting to have access to the facility, and it is the only hill in town that has a transmitter on top?

**Dr Stretton**—They still have rights under the access regime.

**Senator SCHACHT**—They have rights under the access regime.

**CHAIR**—How are you going, Senator Schacht? We have got 2½ minutes.

**Senator SCHACHT**—Stumps, with one minute to spare.

**CHAIR**—Thank you very much. I would like to thank the officers from DoCA and OAS. I declare the committee hearing closed.

**Committee adjourned at 3.29 p.m.**