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Andrea Griffiths
Secretary
Australian Senate
Environment, Communications, Information
Technology and the Arts, Legislation Committee
Parliament House
CANBERRA ACT 2600

By email: www.ecita.sen@aph.gov.au

Dear Ms Griffiths,

Thank you for your invitation to provide a submission to the Committee's Inquiry into the Trade Practices Amendment (Telecommunications) Bill 2001.

Optus' primary views on the Bill are contained in the joint carrier submission that has been lodged with the Committee on behalf of Optus, APPT, Primus and Macquarie Corporate Communications.

In that submission we make two fundamental and interrelated submissions in relation to the Bill:

(a) The price for PSTN interconnection through to 2002 should be either legislated in the Bill, or the Committee should recommend that the Minister issue such a pricing determination, based on the prices determined after extensive inquiries by the ACCC.

(b) The current merits review of ACCC Part XIC arbitration decisions be abolished.

The purpose of this letter is to provide Optus' view on the provisions of the Bill should the appeal right to the ACT be retained.

As a general rule, the ACT should only have regard to information previously given to the Commission or referred to by the Commission. However, we are concerned that section 152DOA(1) overly limits the information to which the Tribunal should have regard.

Optus believes that:

(a) Third parties joined to the ACT proceedings should be entitled to present their own evidence. For example, Optus has been joined to the Telstra ACT appeal in relation to determinations made in disputes between Primus and Telstra, and AAPT and Telstra. Given that Optus was not previously a party to the arbitrations, Optus should be entitled to present evidence to the Tribunal which we have necessarily not had the opportunity to present at arbitrations to which we were not a party.

(b) The ACT should be able to have regard to information deliberately withheld from the Commission during an arbitration. For example, there may be internal transfer pricing information held by a party to the arbitration which was not disclosed to the Commission but which the Tribunal believes is relevant and should be disclosed.

Attached at Annexure A is a suggested additional subsection to insert in section 152DOA. We note that subsection 152DOA(1) already commences "Subject to this section" so there is no need for an amendment to that subsection.

Alternatively, the Tribunal could be granted some discretion to admit evidence which it considers appropriate, having regard to the principles suggested in the current drafting of the Bill.

We would appreciate the opportunity to elaborate on the matters contained in the joint industry submission and in this letter at the Committee's hearing into the Bill on 12 September 2001.

Yours sincerely

David McCulloch
General Manager, Government Affairs

Annexure A

New Subsection 152DOA(2):

"Despite subsection (1), if:

(a) a third party is joined in any review proceedings, the third party may introduce such evidence as it sees fit, and the Tribunal may have regard to that evidence; or

(b) on the application of a party, it appears to the Tribunal that:
- *(i) evidence available at the time of the Commission's determination was deliberately withheld from the Commission by another party to the proceedings; and*
- *(ii) such evidence would (in whole or in part) have had a material bearing on the Commission's determination; and*
- *(iii) a party would or might suffer hardship as a result of the withholding of that evidence,*

the Tribunal may have regard to that evidence.