

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 10th NOVEMBER
2000 AT 10.30am.

MR. HANRATTY CONTINUED TO EXAMINE MR. CURLEY AS FOLLOWS:

MR. HANRATTY: Good morning, Mr. Curley?

A. Good morning.

1 Q. The principal matter I'd like to ask you about this morning, Mr. Curley, is in relation to the provision of transmission services and the progressive implementation of coverage. Before I do that there is one or two small matters. At page 5228 there was a document which was produced by you, entitled "Considerations arising out of Recent Ministerial Directive" and obviously this was produced by you after the directive. It was produced on the 23rd March. There is just one matter that I'd like to ask you to deal with particularly and that's at point 9 on page 5229, where you say "The payments stipulated by the Minister for Access are less than those paid by other minor users having minimal access and facilities and in no way reflect the value of access."

Is that factually correct?

A. Yes. That's very correct. But possibly could I just, Sir, make one possible correction to the statement yesterday. When I actually looked at my documentation, I had overlooked what was a typographical error and in fact it's a minor point, I was appointed Assistant Director of engineering in 1986 not 1988.

Now, in relation to the other matter. We had already, as

I explained yesterday, taken on board, as it were, at our stations, minor users with communications equipment.

These would be health boards, people of that nature and what they were actually paying per annum for absolute minimal access, no way getting in on our system or anything else, would be approximately ú3,000 each. So that if you took the 16 sites, you are already talking about 48,000 pounds.

2 Q. Yes.

A. That was for minor access.

3 Q. And you were just drawing the comparison between that and the figure for access for Century which was 35,000?

A. Yes.

4 Q. Now, on the 6th April 1989, page 5233, you wrote a letter to Mr. Stafford in connection with the directive. Now, you have heard the various criticisms that Mr. Stafford has made about what, I suppose, generically we could describe as the "heel dragging" which he alleged against RTE. Just in general terms, do you agree with that proposition that there was any kind of reluctance or "heel dragging" on RTE's part in proceeding pursuant to the directive to implement the directive and subsequently the terms of the contract.

A. No. In fact, I think that was totally at variance with the actual situation, where in fact, managers in engineering and technical staff generally were prepared to bend over backwards in order to get Century on the air as quickly as possible. There was absolutely no case of that I was aware of, of anybody in any way impeding that. In fact everybody was certainly -- I think what they actually

achieved in a very short timescale was remarkable and no other contractor would have been in a position to do the same.

5 Q. Well now in this letter you say,

"Dear Mr. Stafford, we refer to the Ministerial Directive to RTE issued under Section 16 of the 1988 Broadcasting Act and the subsequent meeting between the Minister and the RTE Authority. In order to proceed with the acquisition of the necessary transmission equipment, we wish to agree on the equipment to be acquired for Century Communications Limited and the financing of same.

.
In order to expedite the matter, I would be pleased if your technical consultants would contact me to arrange an early meeting to discuss their proposals in relation to systems design and the necessary equipment.

.
And RTE Coordinating Committee has been set up for this purpose.

Yours faithfully,

C. Curley, Director of Engineering."

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In fact, is it the case that a Coordinating Committee had been set up for this?

A. Very much so. Because we were very anxious to proceed immediately.

6 Q. And at page 5236, there are minutes of a meeting which took place on the 12th April 1989. Which was attended by Mr. Stafford, Mr. Barry, yourself Mr. O'Brien, Mr. McGrath and Mr. Branigan. And it's noted under the heading "Purpose

of the Meeting" that this meeting was being held at the request of the RTE?

A. That is correct.

7 Q. Is it the position that RTE at that point in time was endeavouring to advance the matter and to make the necessary preparations?

A. Yes.

8 Q. Now, there are a number of detailed points dealt with in that note of the meeting and it does appear that there was a certain, shall we say, misunderstanding on a Century's part in respect of certain matters?

A. Yes. Century were still -- once the directive I have issued, we read the directive, we had certain clarifications and we were proceeding on the basis as we understood the directive to mean. But when Stafford came into this meeting, he was trying to go back over ground which, to your our opinion, had already been overtaken by events.

9 Q. And was this, in your opinion, helpful in advancing the matter and in getting things done?

A. Well, it would be difficult to say whether it was helpful or unhelpful insofar as at the meeting we would be dealt with those particular issues when they were raised and I doubt very much in fact if it delayed things further than that. It may have prolonged the meeting but I doubt very much it had all that much effect.

10 Q. Turning to the question of transmission. The position was, I think, that after the directive various meetings were held, one of which we have just referred to. Ultimately, a contract was signed between RTE and Century

called a transmission contract in July of 1989?

A. That's correct.

11 Q. And while it was originally envisaged that this would be on air on the 1st May, subsequently the 1st June. Ultimately they went on air on the 4th September?

A. Yes.

12 Q. From RTE's point of view, they considered it wouldn't be possible to provide the transmission system until a contract was signed?

A. That's very true because in fact, in line with the cooperative policy in that the board of management meetings we had covered this subject very adequately. If you remember yesterday I had a position statement where I was clear, very clear on what the position was. So we would have felt that in fact until there was actually a contract signed we had no security whatsoever and therefore, while we went on with all the preparatory work and a lot of work, planning had already been done. Really until you actually had a contract signed, you couldn't incur RTE in expense beyond that.

13 Q. Just taking, before we get down into the detail of it,. Taking a broad overview of it. Clause 7 of the contract, I think was the one which imposed the obligation in connection with the provision of transmission system and Clause 7, in turn, referred to a schedule annexed to the contract which provided the detail of the coverage that was to be provided, isn't that so?

A. Yes, that's true.

14 Q. Now, I think the coverage was to be provided was the coverage envisaged on a permanent basis?

A. This was very true. It was very obvious from our first meetings with Century and in discussion with them, it was agreed that in fact what their priority was that in fact they get on the air as rapidly as possible. The only way they could get on the air was by means of temporary installations and effort which otherwise would have been to achieve the contract schedules, had to be diverted with their agreement to putting in temporary installations which were far less reliable and far less satisfactory from an RTE point of view.

15 Q. Undoubtedly. Am I correct in thinking had RTE stuck to the strict letter of the contract, there is no conceivable way they would have been on air on the 4th September?

A. That's absolutely correct.

16 Q. Now, if we just look at one document, for example. It's not your own memorandum but I think you are probably familiar with it, on page 4950. It is signed by Mr. Gahan and it says under the heading "Contract",
" negotiations were concluded by RTE as quickly as Century permitted- delays due to their insistence on a very detailed legal document and delays in getting their team together. It is understood similar delays were experienced by the IRTC which contract had to be completed before the Century/ RTE contract could be completed.
Century signed contract with RTE on the 21st July of 1989 then Century signed contract with RTE on 28th July 1989."
Under " Installation", he says "RTE had first Century signals on air on the 4th September- less than six months later. This was done using RTE standby equipment and putting the RTE services at some risk."

Is that factually correct, that it was done using RTE standby equipment?

A. Yes, this is correct.

17 Q. "The cooperation and speed of the RTE installation was the subject of compliments in speeches the Chairman, Director and Executives at Century at the launch reception on the 4th September." I think that is also the case?

A. Well, I wasn't at that particular launch so I wouldn't have direct knowledge of it.

18 Q. "It was clearly understood by all that RTE was reacting positively to the Century need to be on air quickly to match their commercial competitors, particularly in Dublin and Cork and that these temporary installations would be replaced as soon as the Century equipment was received and put in place.

RTE has now achieved 74 percent coverage of the country for Century and this figure will rise to 82 percent by the end of March. This is a unique performance in eight months and well ahead of the contract schedule." Are you in agreement with that statement; that it was, in fact, well ahead of the contract schedule?

A. Certainly I'd agree with that statement. I wouldn't be absolutely sure without looking at the detail coverage figures, whether the 74 or the 82.

19 Q. We'll look at those in a moment. In passing while we are on this document, there has already been evidence that Mr. Stafford told the bankers to Century at the beginning of December that they'd actually achieved 75 percent coverage at that point in time?

A. Well, as I say, looking at the --

20 Q. Perhaps we'll leave that over until we look at the documents. Before we do, could we just have a quick look at what Century said in their submission to the IRTC which was submitted on the 16th December 1988. This is page 5712 and turning to the bottom of the page under heading D, "Rate of Development of Coverage." This was what Century were telling the IRTC they were going to do in terms of progressive implementation of their coverage. They say "We assume that it will be possible to reach agreement with RTE as described above. On that basis we propose that the network should be developed according to a phased timetable to ensure a healthy income base as quickly as possible and thereafter to invest in the further extension of coverage out of cash flow. On the advice of RTE, with which our consultants concur, we propose the following first phase: Three Rock, Mullaghanish, Cork City, Maghera. .

We understand that this would achieve coverage of something like 63 percent of the population and could be provided within five months of instruction to proceed for the first three stations, Maghera, coming into service in month eight. In addition we would commission, as soon as possible the MW/ AM stations in Dublin and Cork.

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The rate of build up of the coverage in the later phases would need to be the subject of further discussion with the Commission and RTE but we accept the principle that it should aim towards the total replication of the coverage achieved by RTE themselves. We would undertake to achieve

that within four years of commencement of the service."

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It's clear that they are envisaging and proposing to the IRTC, as part of their submission for franchise that they would have 63 percent coverage after five months. Isn't that right?

A. Yes, that's very true.

21 Q. Now, can we just turn to the contract --

A. And on the -- could I just add on the basis of the stations actually listed, certainly if you look at the coverage figures produced by RTE, they nowhere came near 63 percent.

22 Q. Which ones?

A. The first ones which would have been -- that they were proposing to install because they would have known at that time that there was no way they could install permanent ones. So it would be temporary ones so the coverage figure would you look at in that case would be the first coverage figure which was produced, which was a much lower figure than that.

23 Q. That was around 35, 40 percent?

A. It would be 32 or something like that, percent.

24 Q. In fact, there doesn't appear to be much dispute that that was the figure that was achieved as and from the 4th September and as we'll see later, the sales literature, as it were, seemed to be suggesting that they had actually got 66 percent at that stage.

A. Yes.

25 Q. Now, if we can look at the schedule to the contract which is the actual contractual obligation, in terms of coverage,

that was imposed upon RTE. It's at page -- if you just bear with me Sir, while we get a pagination page for this. We have an internal contract pagination page of 64 but we need a page which has been circulated. We'll just scan a page in in the meantime but we will get the pagination number for future reference of the parties. We are looking at this obviously, Mr. Curley, in the context of again the criticisms which Mr. Stafford made, one of the principal ones of which was that RTE were in some way deficient in the manner in which they provided coverage to Century and that his attribution of this alleged "heel dragging" in the matter of transmission to the problems which Century had.

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While we are waiting on that document to come through the scanner, we might move on to another document at page 4943, which was a letter written by you on the 11th December 1989 to Mr. Laffan, the Managing Director of Century Communications Limited and in that letter, under the heading "Provision of Transmission Facilities for Century Communications" you say, "It is worthwhile summarising what has been achieved to date. As can be seen from the attached schedule, RTE has not only honoured its commitments but has, in fact, provided radio coverage ahead of the time scales agreed on the 28th July 1989 in the formal Century/ RTE agreement. It is important that any public statement reflect the actual position. In addition to the installations agreed in the formal agreement, RTE has delivered staff and facilities in order to respond to additional requests from Century, even though this has

caused serious disruption on occasion to RTE's own activities and services" is that in fact the case?

A. That is very correct.

26 Q. Going back to the first paragraph, you attach a schedule which you say demonstrates not only had Century honoured its commitments but has, in fact, provided coverage well ahead of its contractual commitments?

A. Yes. If I remember correctly, none of the contractual were referring to 1989. They were referring to 1990 and if I remember correctly, about the third quarter of 1990.

27 Q. Well if we just, before we look at the schedule to that letter, we look at the second schedule to the contract which is the document which has just been scanned in and as you can see from that, there are headings across the page. It's entitled "Installations schedule for FM. Commencement date site, site power category and building requirements".

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Now you set out in detail the schedule for FM and AM. So we'll take the FM ones first. It envisages the third quarter 1990 Three Rock medium power, that was the time at which that was to be provided. Maghera was to be provided by the third quarter of 1990. Mullaghanish for the third quarter of 1990. Kippure for the fourth quarter of 1990. Spur Hill for the first quarter of 1991. Truskmore the second quarter 1991. Mount Leinster, third quarter of 1991. Claremont Carn, fourth quarter 1991. Hollywell Hill on the fourth quarter of 1991. Achill second quarter 1992. Then Cahirciveen second quarter 1992 and Fanad, third quarter 1991 Castletownbere, third quarter 1992. Clonmel on

the fourth quarter of 1992."

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So that is the installation schedule and the contractual obligations which RTE had, isn't that correct?

A. That is correct and that was changed significantly by the fact that they wished to bring different stations on rather than this particular schedule.

28 Q. We'll come to that in a moment. But just for the sake of completeness while we are on this document it also contains the installation for AM and you have the commencement date for programme service. The first quarter of 1991 you were to bring in Dublin bow Monday and in the first quarter of 1992 you were to bring in Cork balance newer. It's noted at the bottom this. "The commencement date, site and building requirements. The first quarter 1991, Dublin-Beaumont. Then first quarter 1992, Cork- Ballinure. " The commencement dates contained in the schedule are subject to events occurring which are outside the control of the RTE, including weather conditions, delays in delivery of machinery and equipment, labour disputes and such other matters as may not strictly come within the heading of force majeure.". Subject only to that, those were the actual contractual obligation that is RTE had?

A. Yes.

29 Q. As you have already pointed out, none of them imposed any obligation of any kind on RTE to give any kind of coverage in 1989 whatsoever?

A. That's correct.

30 Q. But in fact, you did have them up and running and broadcasting on the 4th September?

A. Yes. And to do so we had to use some of our own equipment we made available as well.

31 Q. If you go back to that letter of 11th December and the schedule attached to it, in particular, to the letter.

This is page 495. What you do here is a comparison of what you were contractually obliged to do with what, in fact, you did?

A. Yes.

32 Q. In terms of getting coverage for Century on a progressive basis. And the Three Rock Station which you were contractually obliged to have in by the third quarter of 1990 you had a temporary " on air" date opt 4th September 1989. Similarly, with Spur Hill, which you were contractually obliged to have commissioned on the first quarter of 1991, you had also a temporary " on air" date on the 4th September 1989. Mount Leinster, you were obliged to have it in by the third quarter of 1991 and you had a temporary " on air" date in November of 1989. Maghera, didn't have to be in until the third quarter of 1990 and you had a temporary " on air" date of November 1989. Mullaghanish you make a note that it was to be agreed at the end of March 1990 was a likely date but the contractual date was the fourth quarter of 1990. Limerick City wasn't actually specified in the agreement at all but you had them on a temporary " on air" transmission on the 4th September 1989 and similarly Woodcock Hill, there was no specification at all in the contract for that and you expected to have them " on air" in mid-January of 1990.

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Now you do make a note in relation to Mullaghanish that the

decision by Century that RTE should not go ahead with temporary installation due to late delivery of essential combiner equipment." That is, in fact what happened, isn't that right?

A. That is correct.

33 Q. And you note that " the FM installations in the purchase of combining... 16th November of 1989."

A. Correct.

34 Q. We might come back to the AM situation a little later.

Just in general terms that seems to demonstrate that in the case of Three Rock, Spur Hill, Mount Leinster, Maghera, you had them in commission well in advance of the contractual obligation date?

A. Yes.

35 Q. In the case of Mullaghanish, Century, you say, decided that they wouldn't proceed at that point with that transmitter, is that right?

A. Correct.

36 Q. Was it then on Century's instructions that you didn't proceed with that?

A. It would come out of the meetings that were held between my managers and Century.

37 Q. And could you briefly describe the circumstances in which you provided cover in Limerick City and Woodcock Hill, particularly given that they were not provided for at all in the contract?

A. Well, my understanding is that at the time and I didn't agree this directly with them myself, but my managers would have agreed with them, they wanted a presence in Limerick and in order to get the presence in Limerick they agreed

that -- we agreed, I think, that we would put a very low power medium wave transmitter in the middle of Limerick City itself. Now, in no way was this adequate to provide quality coverage but it did provide a presence.

38 Q. But you have heard Mr. Stafford actually criticised RTE for the quality of the coverage in Limerick.

A. Well, I mean automatically if you put in temporary low power installations with low gauge antennas within the middle of an urban clutter, there is no way you can get anything but substandard coverage in some parts of Limerick. It did provide quality coverage in other parts of Limerick. I mean it's nearly automatic that if you go for low power coverage, you are not going to get the final result.

39 Q. Well do you think the criticism of RTE in relation to Limerick was a reasonable criticism?

A. No, I think it was unjustified. I think, in fact, they would themselves have been totally familiar or certainly their consultant would have been totally familiar with the consequences of putting a low power in a low altitude site.

40 Q. Why was it, just as a matter of interest, that there wasn't any provision in the contract for Limerick?

A. I have no idea.

41 Q. But in any event that's what it said?

A. Yes.

42 Q. And in respect of Woodcock Hill, again that wasn't specifically provided for in the agreement. Where is Woodcock Hill?

A. Woodcock Hill is a hill overlooking Limerick City. It would be a good transmission site but again we had an

accommodation problem there in that we had very restricted accommodation for our own equipment and to accommodate Century in that would require first of all temporary arrangements. I think, in fact, but here I would not be absolutely sure, we also had to erect a new mast in order to accommodate Century.

43 Q. So do you confirm then that all of the data and information contained in this document is factually correct?

A. Well it certainly -- I would have got it at the time and I was quite happy it was correct then.

44 Q. And this appears to show that in the case of Three Rock, Spur Hill, Mount Leinster and Maghera, you had them on a temporary transmission well ahead of the contract schedule and in the case of Limerick City, Woodcock Hill, at the request of Century, you provided transmission facilities at places which were not provided for at all in the contract?

A. Yes.

45 Q. Now, just before we leave that letter of the 11th December in the last paragraph, this is page 4943, you record the fact that " it's desirable that regular review meetings be continued between Century and RTE concerning the provision and maintenance of transmission facilities. I have asked T. Keenan, Manager Engineering Administration to liaise with you concerning these meetings."

This was part of your effort to move the thing along?

A. Very much so and in fact, not only had you these particular meetings, but the progress at Century in or in respect of the Century project would have been discussed at our group head meetings in engineering anyway. So not only had you these specific meetings but it was always under discussion.

46 Q. If I could ask to you look at page 3065. It's another transmission schedule and I am trying to identify the document. In fact, I wonder can you assist us with that?

A. I have a funny -- I have that one I think in my file, so if I have a closer look at -- I don't know if there is a date on it.

47 Q. There doesn't appear to be a date on it?

A. I imagine this would be one that in around September of '89 --

48 Q. Do you see -- there is a fax imprint on it and it seems to be the 29th September?

A. Yes, in fact that would be my memory; that this would have been in response to Century asking for detailed coverage maps and detailed coverage figures and at one of the review meetings, RTE promised to provide this information.

49 Q. It appears, on the face of it, to be a schedule for the temporary "on air" dates, that would be a fair reading of it?

A. Well --

50 Q. For example, if you see the 29th --

A. Yes, it does. It's a low power transmitter and it's 4 dipoles.

51 Q. It uses the word again Spur Hill, for example, "temporary", which I take to be "temporary" --

A. Yes, this would have been in respect of Century asking for coverage figures for what was actually installed.

52 Q. Well, of course if the document was produced in September, nothing had yet been installed for December obviously?

A. Yes.

53 Q. So would this be Century looking for coverage figures on

the basis of what the temporary installations were going to be?

A. It looks very much like that to me, but I have no direct memory, recall of that particular document.

54 Q. I follow. Well take it go for what it's worth it does indicate that what the document at least envisages is that by the 9th September 1989 there would be 45.6 percent coverage, isn't that right?

A. Yes. Now, there is one thing there that -- the 1st December '89 has mat Ray, mind you it has it at full power, but it has it into a temporary aerial, so that again would be a temporary installation. It would be the final maybe transmitter but it would be a temporary installation.

55 Q. So the document then envisaged for the 24th November 1989 there would be 49.9 percent. For the 1st December 1989 there would be 56.6 percent. And by the 15th December 1989, there would be 68.3 percent coverage.

A. Yes.

56 Q. Now, on the 2nd February of 1990, you had occasion to write to Mr. Laffan in connection with the deferment by Century of the purchase of certain equipment, isn't that right?

A. Yes.

57 Q. We know from the evidence at this particular point in time, Century Communications Limited was in very extreme financial difficulties.

A. That's correct.

58 Q. You say in your letter under the heading, "Request by Century to RTE to defer ordering transmission equipment. Dear Mr. Laffan, RTE is very concerned at the review meeting held on the 31st January 1990. Century asked RTE

to defer ordering high power transmitters for Mount Leinster, Truskmore, Claremont Carn and Kippure sites licence as this has major implications for the extension of national coverage and makes it impossible to achieve the dates agreed in the formal Century/RTE agreement."

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Now, first of all, do you confirm that they did, in fact, defer the ordering of this equipment?

A. Yes.

59 Q. And that this did, in fact, disrupt the schedule in the contract?

A. Yes.

60 Q. Did they at the time give you any reason why they wanted you to defer these particular orders for these particular sites?

A. I can't remember offhand that they gave particular reasons. But they just -- I think it was a case they would not confirm the orders as opposed to actually deferring them and --

61 Q. You had advised them what the equipment was that was required and specifications?

A. That we wished to proceed with, the order of.

62 Q. You say in the third paragraph, "By deferring orders for transmission equipment with minimum delivery times of from two to four months, the installation plan for the summer months has to be postponed until the winter period, when access to the mountain sites can be severely restricted and result in longer insulations times.

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As stated in my letter of the 11th December 1989, RTE has

not only achieved agreed time scales but has, in fact, provided radio coverage ahead of the timescales agreed. In view of the public statements made by Century about coverage, it is particularly important that Century accept that deferral of orders for essential transmission equipment will delay implementation of full national coverage and that this be reflected in any public statements made by Century. When the embargo on placing orders is lifted by Century RTE will supply an updated implementation schedule. No dates can now be given for the provision of full coverage as for stations affected by deferral of orders the original schedule no longer applies.

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The review meetings are important and I have asked manager engineering administration to ensure that they are held regularly. They have resulted in a friendly professional relationship."

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So it seems that in this letter you were drawing Century's attention to the consequences of their deferral of these orders?

A. Yes.

63 Q. And in particular to the fact that in certain cases it would bring you into the winter period where installation in some of the sites would be more difficult because of weather conditions?

A. Yes.

64 Q. You also again draw their attention to the importance and necessity of having these regular review meetings?

A. Yes.

65 Q. And does that letter accurately reflect the position, as you saw it, in the light of the deferral by Century of the purchase of the transmission equipment?

A. Yes.

66 Q. Now, on the 14th February 1990, did you also have occasion to send a fax to the Secretary of the Department of Communications in connection with the schedule for implementation of Century's coverage?

A. I certainly remember sending a fax to him, but --

67 Q. You can see page 4948.

A. Yes.

68 Q. And this describes -- is this the fact that you sent to Mr. McDonagh?

A. This would be to Mr. Grant.

69 Q. I am sorry, to Mr. Grant, the Assistant Secretary?

A. That's correct.

70 Q. And is this your fax?

A. It would be, yes.

71 Q. And it's headed "For the attention of F.M. Grant, Department of Communications. Implementation details for Century... By RTE, 14th February 1990." And then you set out, in effect, the contractual schedule with comments.

A. Yes.

72 Q. And you indicate the position for Three Rock, Spur Hill. You show in the case of Three Rock the contractual obligation date which was the third quarter of 1990. You had a temporary "on air" date of the 4th September. Similarly, with Spur Hill which was supposed to be not up until the first quarter of 1990. On Mount Leinster you had

them on a temporary transmitter. In November of 1989 although you didn't have to until the third quarter but you comment "It was not possible to give an implementation date for presumably the permanent installation, yes you head it the final installation due to the deferral of Century forth the order of transmission on the 31st January 1990. So on. You continue down on the page to deal with may Ray, null niche, Limerick City and Woodcock Hill. You informed him you put in temporary transmitter in Limerick City and Woodcock Hill. You inform him about the consolation of the Mullaghanish equipment as well.

A. Yes.

73 Q. Does that accurately reflect the position as of that time?

A. It does, yes.

74 Q. There are two notes to the fax on the next page, page 4949. You say "1. Century requested RTE not to go ahead with temporary installation at Mullaghanish but to proceed with temporary installation at Maghera instead.

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2. Temporary frequencies allocated by the Department of Communications used for temporary installations until new frequencies allocated. Frequencies changed at Maghera, Mount Leinster and Spur Hill on 5th of February 1990." This was another complicated factor the fact that frequencies were changing?

A. Yes.

75 Q. They started off with one frequency and then they had to change in February of 1990 to other frequencies?

A. This is correct.

76 Q. What effect did that have?

A. The effect would have that you would have to retune particular equipment and this, of course, would require time and effort and it also meant, in fact, that you had to ensure that this was in conformity with the agreements with the UK broadcasters because whenever you change frequency of necessity, we would communicate with our colleagues in the UK.

77 Q. Could I just ask you to look at a document. It's not your document. It's in fact a Century document produced by Michael Laffan on the 6th December 1989. Page 3381, and at paragraph 1 of that, he says "Less than 40 percent national transmission coverage from 4th September to 45 percent by 29th September", which is roughly in accordance with the schedules "only developed to 50 percent by the end October 1989. These figures contrast with the pre-launch publicity stated expectation of 66 percent national transmission."

What he is saying here, in effect, is that the Century pre-launch publicity stated an expectation that they would have 66 percent national coverage at launch in September. Now, was there ever any question of Century having 66 percent coverage on the 4th September of 1989?

A. No, it was an impossibility.

78 Q. And can you confirm that there was never any agreement by RTE to provide 66 percent coverage or any other level of coverage by the 4th September 1989?

A. Not to my knowledge.

79 Q. I think on the 18th May 1990 Mr. Ray Hills wrote to the Director General, Mr. Finn, indicating that they were contemplating invoking the Arbitration Clause, do you

remember that?

A. Yes, I remember Mr. Finn passed it on to me for attention.

80 Q. And it's at page 5293. He says, "Dear Mr. Finn, I was retained by Century Communications Limited to advise them in relation to certain difficulties which have arisen regarding the transmission contract currently in force between RTE and Century. As you are aware, my clients are contemplating the necessity of invoking the Arbitration Clause contained in the agreement. In order promptly to advise them, I need the answers to the following questions and I should be grateful if they could be provided as soon as possible. You will separately have received from Century an appropriate letter of authority to put these letters to put these questions to you." And he sets out a long series of questions to RTE which carry, I think, perhaps implications that RTE mightn't have done what it was contractually obliged to do. Certainly that's one possible interpretation?

A. That is correct.

81 Q. And this letter was passed over to you to deal with?

A. Yes and I replied to Mr. Hills.

82 Q. I think you replied to it by letter of the 23rd May 1990, page 5312. You say, "Your letter of the 18th May 1990 to the Director General has been passed to me for attention. I am surprised that Century Communications Limited are contemplating the necessity to invoke the Arbitration clause contained in the agreement as RTE has met all contractual obligations to date". Is that factually correct.

A. Yes.

83 Q. "In relation to your queries on coverage, it is important to point out that RTE has no function or obligation in relation to frequency or coverage planning as the contract relates to the provision and maintenance of a transmitter system which is operated in conformity with the licence issued by the Department of Communications." That's an important distinction I think you felt you wanted to make at that point?

A. Yes. Because otherwise, in fact, it would imply that we had a contractual obligation to achieve a certain coverage figure. Whereas in fact, the coverage achieved would depend entirely on the speed with which they were prepared to finance the roll out of equipment.

84 Q. You go on to say, "RTE agreed in discussions with Century Communications Limited to supply outline maps showing the approximate coverage likely to be achieved from the transmitting installations. No charge was made for the provision of these maps. The coverage maps are based on the coverage achieved with RTE's own transmitting installations."

Then you say, "Given the available resources, the requirement to provide temporary facilities in order to get Century on the air in Dublin, Cork and Limerick within six weeks of signing the agreement required the diversion of resources and put back both RTE project time scales and the feasible time scales for the Century permanent installations. Delays were also caused by the failure of Century to expedite the necessary ordering and clearance for essential equipment. The detail and time scales for the temporary installations were discussed and agreed at

the Century/ RTE liaison meetings and is a matter of record. The temporary installations were provided as soon as was practicable. Unfortunately, transmitter and antenna projects have been affected by the necessity to divert staff to deal with storm damage following the prolonged period of stormy weather. This makes it necessary to consider options such as contracting staff in to complete exist projects and monies due for the installation of Century temporary transmitting facilities can be used to fund additional costs required to expedite the Century projects.

.

I hope the above puts the matter in context."

.

In essence you are giving him the history which we have just briefly gone through, as you have told it to us, that the reasons for the delays were, that you were requested by Century to provide these temporary " on air" facilities which were not provided for in the contract. That there was disruption of the contract schedule because of this and that there was further disruption of the contract schedule because of the deferment of orders by Century.

A. Yes.

85 Q. And in one case there was a question of weather interfering as well?

A. Yes.

86 Q. Can you just give us the extent of that?

A. The extent of the weather?

87 Q. Sorry, the extent the interference in the contractual schedule?

A. You'd have been talking about a number of weeks probably, something in the that order, but once you had diverted staff, I am not sure exactly how long it would have been deferred at that time, but it would be quite conceivable it could be a few weeks.

88 Q. So what was the upshot then of that letter?

A. The upshot was I got no reply.

89 Q. So there the matter rested?

A. There the matter rested.

90 Q. As far as you are concerned is the situation as outlined in that letter and particularly in the fourth paragraph of that letter factually correct?

A. Yes.

91 Q. I think on the 20th July 1990, page 5317, you wrote to Mr.

Barry. You said "Dear Mr. Barry, referring to your fax dated 19th July of 1990 to the Director General, a series of -- " this was this -- yes, sorry, a fax from Mr.

Barry -- "A series of formal liaison meetings... To agree and document the provision of technical services and facilities and the records of these meetings adequately cover points raised by Mr. Hills as stated in my reply to Mr. Hills, dated 23rd May 1990." Which we have just dealt with. "In order to progress this matter I have asked Mr. Keenan to... At which all points raised can be adequately discussed and the factual position established". And was that, in fact, done as far as you can recall?

A. As far as I can recall, yes.

92 Q. Is that an instance where a problem was raised where you suggested you had a meeting with Century to try and resolve it as soon as possible?

A. Yes.

93 Q. Now, on the I think it's 27th August, although the date is indistinct, of 1990, page 5319, I think you wrote to Mr. Colin Walters, the Chief Executive then of Century Radio under the heading "Provision of Transmission Facilities by RTE." And you say, "Dear Mr. Walters, reference my letter dated 20th July 1990 and subsequent requests by T. Keenan, Manager Engineering and Administration for a liaison meeting. I am very concerned that this meeting has been deferred at Century's requests". Is it the position that there was, in fact, a liaison meeting deferred at Century's request?

A. Yes.

94 Q. You say, "From an early stage RTE had identified the need for regular liaison meetings. At the seven meetings already held, there was agreement on what services has been provided and agreement that mutual problems had been ironed out. Century had been provided with liaison meeting minutes and following these minutes appropriate invoices were raised and forwarded to Century.

.

Had the meeting proposed for July been held, RTE is confident this they could have dispelled any reservations or doubt about the extent and level of service provided.

Under the terms of the agreement, RTE is fully entitled to payment for these services (the amount for which invoices have been issued and for which no payment has been made is ú340,111).

.

As the meeting was deffered at Century's request and RTE

have conformed with the agreement any further delay in payment for these services is unjustified.

.

Another matter of major concern is the failure by Century (see my letter of 2nd February see my letter 1990 to Mr. Laffan) to authorise the acquisition of transmission equipment for Mount Leinster, Truskmore, Claremont Carn and Kippure sites as this makes it impossible to achieve scheduled transmission dates for these sites.

.

Liaison meetings are important and a friendly professional relationship was established. It is important that such a relationship be maintained. Yours sincerely,

Mr. J.C. Curley, Director of Engineering". That was copied to the Director General, Assistant... Secretary of the Department Mr. Connolly in the IRTC, /ET /45ED# of net..."

Obviously you considered that it was important to put on the record your position at this point in time?

A. Very much so.

95 Q. Did anybody dispute the accuracy of anything stated in that letter?

A. Not to my knowledge.

96 Q. Now, on the 16th May of 1991, page 5330, there is a memorandum from you to the Director General under the heading "Century Communications contract" and you say "RTE provides a transmission... And the time scales agreed with Century Communications where Century have provided the necessary funds to purchase the required equipment... Gives a signal on the paragraph of RTE signals as for example in

the areas served by... Allegations are being made by Senior Century Communications personnel that RTE is providing and inferior service... Century are being adversely affected.

This is completely contrary to the facts and warrants a strong reaction from RTE. Has fully honoured the terms of its agreement with Century... Signal it the best possible signal and when insulations are finalised the... By deferring the acquisition of equipment necessary to complete the final installation at all stations in the plan, Century themselves have to take full blame for any authority falls in the service being provided.

Installation /PR-S been deferred at..... Where a temporary lower power installation is operating and coverage is naturally severely restricted in these areas. In other areas which will require relaying... Century Communications have postponed indefinitely the acquisition of the necessary equipment and until equipment is acquired to fully complete the network... Provided will be on a paragraph with the existing RTE FM services." Then you go on to deal with maintenance. But at the end of it you also note that "Regular liaison meetings are held with Century representatives and the minutes of these meetings clearly establish that any shortfalls in the Century FH service are not due in any way to RTE failing to meet its contractual obligations". Is that, in fact, the position?

A. That is correct.

97 Q. What's puzzling I suppose is that Century, we are now in 1991 and somebody obviously from Century, is making allegations as you refer to them in the second paragraph. Why would Century be making those allegations, do you

think?

A. I have no idea but I know it was a matter of concern to me and in fact a matter of considerable irritation as well, that you would have meetings of my staff with Century representatives at which one position was clearly identified to be the position and then public statements by Century would come out as if such meetings had never taken place and that Century had never been informed. So I can only imagine it was to somehow make RTE negotiations some way libel or something of that nature, but I couldn't give you any explanation.

98 Q. When you are referring here to allegations, are you talking about allegations which were made in public?

A. Yes.

99 Q. In the media?

A. In the media.

100 Q. But not at these liaison meetings?

A. No, the minutes of these liaison meetings are very workman-like minutes, where they talk with the actual fundamentals of put nothing a project into place; recognising the difficulties and recognising the fact that delays, if they did occur, were totally unavoidable. Whereas, the statements by Century imply that somehow RTE was dragging its heels, which in my experience was certainly not the case.

101 Q. Who was attending these liaison meetings on behalf of Century?

A. Oh I think in fact, what you would have would be one of their accounting people would attend.

102 Q. Would that be Ms. Hynes?

A. Ms. Hynes. She would be one of the persons that attended,
if I could check on the notes --

103 Q. Please do?

A. I could give you some of the other people that would be
attending. Yes, here you would have, sorry, I have one of
them, I suppose it would be indicative of the normal
attendance. You'd have Peter Branigan, who would be at
that time would be head of Engineering Design, you'd have
John McGrath, who was head of network, you would have Frank
Hand who was a Project Manager within engineering, and you
would have Tom Keenan, who was Manager Engineering/
Administration which would be a very powerful RTE team and
then you'd have maybe Michael Laffan of Century, and --

104 Q. He was the Chief Executive?

A. Yes, and Noreen Hynes.

105 Q. Who was Head of finance?

A. Yes.

106 Q. And as far as you can recall it, was there essentially any
disagreement between the RTE side and the Century side in
relation to the essential facts as outlined in this memo
and the previous correspondence?

A. Well, certainly the minutes of these meetings gave no
indication of this and certainly the reports I was getting
back from my managers gave no indication of it and I had no
communications from, if you like, Mr. Laffan either. I
assumed and I think quite rightly so, that everything was
going forward at maximum pace with full RTE cooperation.

107 Q. But yet you found yourself, from time to time, dealing with
allegations which appeared in the public media and appeared
to be coming from Century that RTE in some way?

A. Yes, it almost appeared at times, there was total separation within the Century set up between the people we were dealing with on a regular basis and the directors of Century.

108 Q. Was it your understanding that these allegations were coming from the directors of Century?

A. Yes. Generally speaking that was my assumption, correctly or incorrectly.

109 Q. I see.

A. But there was certainly no other explanation at the time.

110 Q. I understand.

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Now, there is just two other documents that I'd like to ask you about, if I may, Mr. Curley. There is a document at page 2544. This is a document which was produced by Mr. Hills. It's in his writing and it appears to be some kind of an analysis and I wonder if you could assist us with it at a costing of a national transmission network .

First of all, are you familiar with the document?

A. Yes, I saw it, in fact, during Gerry O'Brien's evidence.

111 Q. I understand and can you just give us your description of it? What would you call it?

A. I would say, in fact, it was programme distribution. In other words, it was a link network that would actually supply the Century signal delivered from, if you like, their studios to all the transmitters.

112 Q. It was a costing for linkage, is that right?

A. Yes.

113 Q. Is this the item in respect of which agreement was for £90,000 provided in the --

A. There was two items in that. You had the telemetry remote control and you had the link element. The link element was ú30,000 per annum. On this one you can see that up at the very top on the right-hand column you have the two letters " BT", which I assume to be mean British Telecom. So this would not be even an Irish quote. I imagine the Telecom Eireann rates at the time might even have been higher. But it obviously go for a BT quote for links which would be spanning certain distances which are the distances between our particular sites. So it would be, if you like, a BT cost within the UK for providing a suitable link network.

114 Q. Yes, and it's clear that he has come up with a costing for all of that of ú74,000?

A. 78,000 of the --

115 Q. For the United Kingdom.

A. This would have been their rates. Yes.

116 Q. And then at the exchange rate of 1.2 he makes that ú93,000. That's based on --

A. Then you have a station cost -- yes, in fact, it comes up with a very high cost. I hadn't seen this part of the document previously but, obviously they are talking about a number of communication channels. They may very well be looking for contribution links as well.

117 Q. But is all of this, including the second page on page 2545 for the provision of a transmission system? Does it appear to be a costing? As you can see on paragraph 2.2 at the top of the second page, they are amortising capital at 7 percent?

A. It seems to be much more related to, -- annual rental for

network -- if I could scroll back a bit to the previous one, maybe in fact -- no -- here, station cost -- this looks much more like the cost of transmitters, FM transmitters. And I would say Three Rock size, that would be correct, 7 Spur Hill size --

118 Q. 4 Kippure size?

A. Yes, so it looks much more like, in fact, a rough transmitter costing.

119 Q. In fact, including linking costs?

A. Well, the link costs, whether they are up on top. So this looks very much like -- yes - it looks rather like that.

120 Q. If you look at the bottom of the first page, I think the hard copy might be more recent. You have one there, at the bottom of the first page it says "At exchange rate of 1.2 Irish punts. He comes up with capital cost United Kingdom of 1,190,400. Revenue, United Kingdom 580,800, the Irish equivalent of the revenue.

A. Yes, and then he goes on to bring up the famous 7 percent rate again.

121 Q. Yes. Well, the bottom line is that he comes up with a figure of ú744,000. Am I correct in thinking or am I correct in thinking that that is a costing by him for what it would cost based on the figures contained in this document --

A. It looks very much like it to me.

122 Q. And he rounds it up to ú750,000?

A. Yes.

123 Q. So, Mr. Hills has done a detailed costing based on the various, a breakdown of the various constituents, including linkage and comes up with a figure of ú750,000

approximately?

A. Yeah, it looks very like that.

124 Q. Now, another document I want to refer you to at page 547

2. Unfortunately, the copy which we have is somewhat indistinct and obscure in places. But it bears your signature at the end of it. It's dated the -- it's a visit of something -- visit of 9th and 10th February of 1989. Visit to IBA I think, is that right?

A. Yes, that would be correct.

125 Q. It's headed confidential. Presumably, this is a

memorandum by you of your meeting with the IBA, is that so?

A. It would be my record of the particular meeting because I note I identify who it was with and that it was in response to an invitation.

126 Q. Now, just to put it in its context. We do know that by

that time figures had been agreed between RTE and the Department of Communications in respect of both AM and FM?

A. Yes.

127 Q. And we know that the FM figure was subsequently reduced by

agreement, in fact, subsequent to this particular, the date of this particular visit. But if we could just sort of take us through that document and -- I think you were examining the basis of costing the United Kingdom, is that right?

A. Very much so. In fact -- well there were two things.

One would be that it would be normal to just have a meeting to discuss matters of mutual interest and on this particular occasion obviously a major concern of mine would be to get as much information on their charging mechanisms for other users as possible. And this would have been why

I would have responded to the invitation.

128 Q. You say," the IBA regarded other users as a valuable source of revenue in that both ILR" what's ILR?

A. Independent Local Radio.

129 Q. At paragraph 2, it says "They adopt a different... a Robin Hood approach" this was what was referred to yesterday --

A. Yes.

130 Q. "Is adopted to ILR operators and for the future a tariff system based on top coverage... Adopted with a facilities rental charge and a service charge and a very complex arrangement is adopted for calculating the facilities rental which takes length of access role position and space occupied on mast"?

A. Yes, I found it an extremely complex arrangement that they were applying. In other words, if you went up high on a mast, you paid more than if you were down low on a mast.

131 Q. You take the point in paragraph 3 that an approach rather similar to RTE is adopted?

A. Yes, in that we would have -- this would be say for other users where we would already have communications links on our site and the fact that they went on our mast. Where we would differ is that we tended to try and get a simple formula based on, if you like, averaging the cost of facilities over all our similar transmitter sites and just apply it because we didn't want complex administration.

132 Q. So is it the position that the basis of charging of the IBA was, in fact, not dissimilar to the RTE basis of charging?

A. That is very correct and they would charge for access to the site. They would -- it depended whether people put up their own building or whether they accommodated their

equipment in their building and there were a whole list of things which would provide additional costs and additional revenue.

133 Q. All of which would have to be regarded as ingredients in the mix to come to the bottom line?

A. Yes.

134 Q. You do recall I take it Mr. Stafford's evidence where he sought to rely on the IBA as a basis for suggesting that there should be no access charge whatsoever?

A. Yes. I know he actually made that, if you like, claim, but in fact I wasn't aware there was any evidence at any time that the IBA had actually provided such a statement to him.

135 Q. No, they didn't. That is true. What Mr. Stafford said was originally he said that they signed off on a figure of 375 and it appears from the evidence to date and subject to anything else that they did not sign off on any figure. He said that they were the ones who gave the breakdown of the 375, there has been no document produced indicating that the IBA ever gave any breakdown of 375. The thrust of his evidence, and I hope I am not misrepresenting him, essentially was that he was adducing the IBA and support for the IBA in support of his proposition that there should not be any access charge at all and he took a point of principle in relation to it?

A. I know certainly coming back from this particular meeting that I just assumed that, in fact, any statements to this effect that were being made had no basis whatsoever.

136 Q. I see. Well then going further down to the document. Could you possibly read Paragraph 4, because I am afraid I

can't. It's quite obscure.

A. Oh, "In the future the IBA will not own the independent local radio transmitting facilities and will have to transfer existing assets to an independent local radio operators whilst retaining many sites".

137 Q. These facilities were provided by the IBA and all costs --

A. Have already been repaid as the annual monies paid in the IBA --

138 Q. To the IBA?

A. To the IBA and the ILR companies took all costs -- including design and development into account."

139 Q. So all those were factors into the costs?

A. Yes. I certainly remember coming back feeling, look, here is rather a parallel approach to that which I knew to be in fact to be followed by other broadcasters anyway.

140 Q. So, is it the position that what you found out from speaking to the IBA is that it was quite a similar approach that they were adopting to the approach that RTE had come up with vis-a-vis not only Century but the other independent operators in this country?

A. Yes. The only difference I found between our two situations was that the IBA, generally, tended to go for lower level sites than the RTE one with sites closer together. So they would have more sites, but they would be in more benign if you like, locations. Whereas in the case of RTE, we went for high altitude sites which gave you very large coverage but also gave you difficult conditions which required engineering over and above that which would be required on the IBA sites. So our structural costs would be higher.

141 Q. And in fact one of the comparisons that was wrong I think in fact around the beginning of February 1990 was in relation to Downtown Radio in Northern Ireland. But I believe that the position there was that they had a relatively small number of lower powered sites?

A. They had and I mean, the ILRP's would be lower and that type of thing. But I can't remember the exact detail for that.

142 Q. We have a memorandum from Mr. Grant after a conversation he had with a person in Downtown whose name escapes me at the moment, but essentially -- Mr. Tinman, essentially the point that he appeared to be making was that you were not comparing like with like?

A. No way.

143 Q. And is that because of the smaller number of sites and the fact that each of those sites in Northern Ireland were very low powered sites?

A. They would be low powered sites and I am quite sure as well they weren't nearly as high in altitude or anything else.

144 Q. It says at the top of the next page. This is 5473, "If an ILR operator refuses to accept the IBA maintenance package, then it will be necessary for the operator to provide his own combination and remove his equipment from the IBA building, whilst being given access to the mast for his antennas and charged an annual facilities rental."

So again there is no question of free access?

A. No, and in fact what I understood very clearly by access was because the national plan, frequency plan identified sites that, if you like, the necessary access was access to the site, and because it wouldn't be practical to put a

mast, a separate mast or a separate broadcast antenna up, although it would have been practical to put a separate antenna on a separate mast, I considered the Act only referred to giving access to the site.

145 Q. And in paragraph 6, it really gets to the nub of the matter I think so as far as this query is concerned because you are aware that Mr. Stafford said that on the basis of what he was being told by the IBA, the appropriate approach for Century was they should be charged on a marginal cost basis, do you remember that evidence?

A. Yes.

146 Q. What's recorded by you here in paragraph 6 is "A marginal costing approach is not regarded as being appropriate and all costs including management and engineering overheads are taken into account in arriving at charges for other users. Overheads came to approximately twice direct labour costs and this was regarded as normal for the provision on a telecommunications service. Where a total service is provided the facilities rental is approximately 33 percent of total charge."

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So, are you recording here that the IBA do not consider a marginal costing approach as appropriate?

A. Yes.

147 Q. And is that what they told you?

A. That's exactly what they told me. You will notice the document is regarded as confidential.

148 Q. Yes.

A. And I would have got this information which was primarily for my own purpose, but it certainly confirmed me in my

understanding that what RTE was doing was not very different from what they were doing.

149 Q. Did it surprise you to hear Mr. Stafford give evidence to this Tribunal that on the basis of his suggestion, the IBA he was putting forward a marginal cost approach as the appropriate method of charging Century?

A. I think on the basis of what I heard Mr. Stafford saying previously, I wasn't surprised at anything he said.

150 Q. You say in paragraph 7, "Nothing in the IBA approach undermines the approach adopted by RTE and there is a concern with getting realistic payment for service provided." I think you were looking back over the Irish sea at this stage.

A. Yes.

151 Q. "The Home Office have appointed Price Waterhouse as consultants charged with drawing up an implementation plan for the UK government White Paper on broadcasting. The IBA have engaged consultants to advise them on dealing with these consultants."

At paragraph 9 you say, "It would be unrealistic to assume that the IBA's own approach is reflected in the Century's submission". In fact, you are saying that the century submission is not and does not in any way reflect the IBA approach, is that right?

A. Yes.

152 Q. And you say at 10, "J. Stafford has engaged IBA consultants to advise him on the provision of transmission of facilities. This was welcomed by me and I stated we would welcome their involvement." And was that your view at the time, that you would have viewed the involvement, if

they were in fact involved, as helpful?

A. I certainly would, because we had had previous experience with them. They knew our capabilities. We knew their capabilities. You would immediately be able to identify any difficulties and accept them as reasonable or unreasonable or whatever. So we were very keen to deal with competent people and they were competent people.

153 Q. Finally, in the document you record "The most important consideration is providing, I don't know if you can make out the last word on that line?

A. "Is to get the --

154 Q. Providing perhaps facilities --

A. Get the principles right and get the overall approach to these principles -- I think the point you are making is to try and get consistency between what RTE is doing and what the IBA are doing?

A. Yes.

155 Q. "Something elements may have to be adjusted to ensure that a consistent approach is adopted to both Century and other independent broadcasters."

A. Yes, I was concerned that we already in fact had approaches from other independent broadcasters and the fact did not distinguish between the national and the others, so the other broadcasters, we didn't want to be in fact then having charges on one that would be, weren't reflected in the charges on the other.

156 Q. Very good. Well, just before the break, or during the break Mr. Curley, I'd like to if I may look at the minutes of these liaison meetings just to ensure -- I think we may already have them. I don't know if we have got

pagination, we could possibly check that over the break.

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I wonder would this be a convenient time, Sir?

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CHAIRMAN: Yes. Say twenty minutes, five past.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT TIME AND RESUMED AS
FOLLOWS:

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MR. HANRATTY: I apologise for the delay Sir, but it was necessary to have these documents, which are the minutes of these liaison meetings between Century and RTE photocopied and distributed. You will recall, Sir, before the break I referred to this document, dated 16th May, which is a memorandum from Mr. Curley to the Director General. At the end of which he says "Regular liaison meetings are held with Century representatives and the minutes of these meetings clearly establish that any shortfalls in the Century FM services are not due in any way to RTE failing to meet its contractual obligations. "Those minutes that are being circulated and with your permission I would like to terminate this witness with, if you like, putting these minutes on the record.

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There is a hard copy before you.

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Mr. Curley, I am not going to read the full text of these minutes. I just want to, as it were, walk you through them to identify them, if that's all right. The first

document is, I should point out Sir, these documents are not yet paginated. They will be circulated also to Mr. Stafford who, apparently, isn't present, either by himself or counsel, together with a copy of today's transcript, but we'll just deal with them by date. On the first document there is a letter of the 11th December 1989 from Mr. Keenan to Ms. Hynes, enclosing a copy of the liaison meeting of the 8th December 1989. Do you have copies of these before you?

A. No, in fact I gave my copies to be copied. So, in fact I don't have them in front of me at the moment.

157 Q. We'll get you a hard copy in a moment. But -- I think they are going to appear on screen, in any event.

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Essentially all this minute sets out is, as it were, a progress report on what is, what the arrangements are for each of the various transmission sites, isn't that so. They usually just were very ordinary project progress meeting reports.

158 Q. Yes. There is no indication in that minute of any dissatisfaction of any kind by Century and it looks like essentially a business-like sort of a meeting?

A. Yes.

159 Q. At the back of that in fact there is a letter from Noreen Hynes to Mr. Branigan, where, under the heading "Combiners for Cork and Dublin. She says, "Dear Peter, we have decided to postpone any decision re purchase of the above combiners. We are anxious that the FM sites be installed before the 28th November 1989, as agreed at our meeting on the 8th Novemer 1989 so that test transmissions can

commence from that date." I take that that's the temporary sites. "The telegraphic transfer has been sent to SIRA. Thank you for your revised schedule. A point to note in relation to the schedule is that we decided at the meeting to immediately send a letter of intent to CTT with a delivery date and subject to satisfactory installation". That's the kind of issues that were being dealt with on an ongoing basis.

The next meeting on 18th September 1989, attended by yourself, Peter Branagan, John Mc Grath Frank Hand, Tom Keenan. From Century Colm Walters, Bob Hopkins and Tony Nolan." Again, essentially dealing with various progress issues regarding the transmission. Colm Curley welcomed the new members of the Century team. He outlined the general approach of this particular group and referred to the progress achieved to date within that forum." Again a fairly business-like meeting. Everything was dealt with fairly briskly, no dissatisfaction on either side with the manner in which things were progressing?

A. Yes.

160 Q. The next one is in handwriting. It's dated 22nd September 1989. Without going through the full text, it's similar document, similar in content and tone. Is that so?

A. That's it, yes.

161 Q. And the next of these is the meeting of the 31st January 1990. And before -- again that minute deals with the position up to date position of various sites which, presumably, was again was given you by them. There is a letter at the front it have from Ms. Hynes to Mr. Keenan in

which she says "With reference to the minutes of the meeting held on Wednesday 31st January 1990, reference point 8. We have decided not to go ahead at present with the order for modules ref. Order number 20023 on the understanding that it does not delay the Maghera installation."

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Then the next of these meetings that we have in this series is the 18th September 1990 which was attended by Mr. Walters, Mr. Hopkins and Mr. Nolan again, by yourself Mr. Branigan, Mr. McGrath, Mr. Hand and Mr. Keenan. At this time it's referred to as the "Coordinating Group", but it's the same thing. It's a liaison meeting, is that right?

A. Well, the purpose certainly is the same anyway. The objective.

162 Q. And again there is nothing of any consequence in that. There is updates about various transmission sites and in particular, no controversy or disagreement between the participants at the meetings of --

A. No, in fact the feedback I was getting from all my managers was that it was progressing with maximum speed and really that everybody accepted what was happening.

163 Q. Yes. And is it, just to take a global overview of the position, that at none of these meetings was any of the complaints such as you saw or allegations such as you saw appearing in the public media voiced at any of these meetings?

A. Well, I haven't got all the notes of all the meetings, but certainly I cannot recollect any feedback which suggested

in any way that they were other than progress meetings at which everybody was intent on making progress. And certainly no recriminations or anything else were conveyed to me.

164 Q. Thank you very much, Mr. Curley. If you wouldn't mind answering questions put by my colleagues.

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Before that, Sir, could I just refer you to the second schedule to the contract. If you I recall when we put it in evidence first, we didn't have the page number. The page number is 5879. Thank you Mr. Curley.

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CHAIRMAN: Now, any person want to raise any questions?

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MR. O'HIGGINS: I have just one or two very brief matters, if I may.

MR. O' HIGGINS CROSS-EXAMINED THE WITNESS AS FOLLOWS:

165 Q. Just if I might have page 4950 on the screen a moment. I think that if we can just scroll down to " installation", I think. Mr. Curley, if you look at the first article under " installation", RTE had first Century signals on air on 4th December -- less than six months later --

A. That's September.

166 Q. 4th September, I am sorry. In relation to that, is it correct to say that the word "Months" is a misprint?

A. It certainly would appear to be as certainly my recollection would be something like six weeks.

167 Q. I think that the period relates to the period between the signing of the transmission contract and the getting of Century on air on the 1st September -- the 4th September, is that correct?

A. Well yes. Certainly in relation to the contract, it's certainly six weeks. Or something -- well in fact -- yes I recollect something of that order, very close to it.

168 Q. Now, the second matter I just wanted to ask you about, in general terms, is this: It seems that there were a certain number of choppings and changings, if I might put it that way, in the requirements of Century in the course of the installation of their equipment, is that so?

A. That's correct.

169 Q. Had that any effect on project management schedules, project management costs and so on?

A. It certainly would have, because very often in fact the RTE staff were also engaged in RTE projects and in maintenance functions as well. So anything which, any change which occurred would obviously change the scheduled plan for particular areas.

170 Q. Yes. I take it that that was never costed in any particular way, is that so?

A. No. At this particular time I think we had pretty well accepted that in fact the dye was cast as far as any costs we were going to get, that we had fixed at standard rate for temporary installations and so on. So that really, there was no point in trying to even track costs. We were fully occupied with just getting on with the project.

171 Q. Now, two other matters. One of them, there has been, in the distant past during evidence, some reference to primary

and secondary coverage associated with given transmitters, can you say what are those terms applicable to?

A. Well, normally the primary service area is defined by a certain field strength concourse, which is how the strength that your signal will have at a certain distance and within that area, you'd say that at the edge of the service area, 50 percent of locations would have what you would regard as a first class signal and 50 percent would not, but that's just at the edge of the service area. So it was taken as a convenient way of defining the primary coverage area, an area within which the majority, a great majority of people would actually have satisfactory coverage. Outside that particular area, it would depend precisely on the location, the nature of the terrain, and there would be an increasing percentage that would have unsatisfactory coverage.

172 Q. So in other words, although these are broad definitions, it would appear that there is a coverage area which is considered satisfactory and that outside that, there will be accidental or incidental coverage but not what would be considered to be satisfactory coverage within the definition of, a definition acceptable to broadcasters as being of an appropriate standard, is that so?

A. No. In fact the -- in planning a service, one plans on, if you like, primary coverage covering the whole country. So you actually, to a certain extent -- now you may not be able to do it in every case, and you will rely sometimes on secondary coverage where it's uneconomical completely to provide primary.

173 Q. But in essence, coverage means primary coverage, is that correct?

A. Yes, this would be our normal practice.

174 Q. Then just one last thing. In dealing with the maintenance requirements for sites, I wonder can you say were there distinctions between the requirements for maintenance in one site as opposed to another so to speak? How complex was the maintenance issue?

A. Well, you had sites from which you had a lot of telemetry information which gave you much more information than you could in fact plan scheduled maintenance to it. You had other sites which would be much more remote and where one had to- literally- you would have planned maintenance but your primary concern was in responding as quickly or as rapidly as possible to any reported outage of your service. So the primary function in setting up the function network maintenance area staffs if you like, was to be able to achieve minutage rates, so that you had to literally -- you also had a consideration that you required a minimum of two people to go to these sites on safety grounds. So you literally would require the same team to go up to say the north of Donegal and go over to Achill, for example, so they had to cover very wide areas and you had to have backup teams, maybe in other areas or maybe in the same area.

175 Q. I wonder if we could briefly have Page 5193 please. I think this is the schedule for the cost of maintenance at the various areas, is that correct?

A. That is correct.

176 Q. I notice that, for example, the eastern area cost ú348,505 approximately to maintain in 1989, whereas the western area cost ú549,000, very very significantly more, is that so?

A. Yes, that is correct.

177 Q. Can you say how many listeners would be broadcast to in one area as opposed to the other?

A. Well, certainly I mean you are talking about in one case you are talking about down in the low teens and in the other case you are talking about something that would be up in the, I would imagine, much more between 40 and 50 percent.

178 Q. Yes, so is there any equivalence between the cost of maintenance necessarily and the number of listeners to whom a broadcast is being made?

A. None whatsoever. For instance, the transmitter that would get the greatest degree of coverage is a relatively, a medium powered transmitter on Three Rock, which is easily accessible. Whereas, in fact you might only get a few thousands listening to a transposer in the most remote part of the country and if you like the maintenance cost may not be any different between the two.

179 Q. I think that in one of Mr. Laffan's letters, it's perhaps the letter of the 19th May 1989, I am not sure if it matters, but the observation is made that since one station is broadcasting from Three Rock for ú40,000 a year, that somehow Century's charges should be judged by a multiplication of the Three Rock transmission cost and maintenance cost multiplied, as it were, by the total number of FM stations. Has that any validity, in engineering terms?

A. Absolutely not.

180 Q. Just a final question, just in graphic terms, what kind of machinery, what kind of arrangements are necessary to

access and deal with maintenance at the remote and more weather exposed stations?

A. Well, there were two levels of maintenance really. We have already mentioned the number of areas. Say you would have five television areas and one medium wave area in the middle of the country, but to service these, we had mobile maintenance teams. For quite a period of the year, they could use normal transport, normal vehicles, but for other periods of the year, we had to have snow tracks in standby, housed in convenient locations. They could be transported to any site that became snow bound. So one had to have, even though one was not using it all the time, one had to have backup which would allow you to gain access to these very high sites, where the winds may be gusting up to 200 miles an hour.

181 Q. Yes. I take it that these had to be maintained, stored and kept in good condition, despite the fact this they would be used only sporadically?

A. Yes. In fact the fact that they were used sporadically, in other words nearly imposed a greater strain on them. If they were in regular use, the -- maybe the, one would at least know they were working every day. Here you had to check that they were still in good condition.

182 Q. This was all part of the business of, as it were, maintaining your fire brigade service, although fires may not break out, except on a very occasional basis?

A. Yes, if you had a particularly good year, you might only use this facility maybe on a few occasions.

183 Q. But you still have to check it?

A. Yes.

184 Q. Thanks very much, Mr. Curley.

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THE WITNESS WAS RE-EXAMINED BY MR. HANRATTY AS FOLLOWS:

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MR. HANRATTY: Just one thing, Mr. Curley. I asked you about this memorandum of your meeting with the IBA. Just for the record, can you tell us who it was you were dealing with in the IBA?

A. Would I need to go back -- I think he was the Assistant Director of Engineering.

185 Q. It was Mr. Chambers?

A. It would have been Mr. Chambers, yes.

186 Q. There is a reference to his name at the beginning of your memorandum?

A. Yes, that would. Because I'd normally record who the meeting was with. Now I think I also would have met some of my colleagues possibly as well, but not for the full duration of the meeting. I think Bob Elbrook, who wrote to me subsequently, reaffirming the Robin Hood principle would likely, I would likely have met him as well.

187 Q. But would it be true to say that your main dealings were with Mr. Chambers?

A. Yes.

188 Q. I see. Thank you very much, Mr. Curley.

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CHAIRMAN: Thank you very much Mr. Curley for coming down. You have been of great assistance.

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THE WITNESS THEN WITHDREW

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MR. HANRATTY: The position, Sir, is that there are two remaining RTE witnesses. The first one is Mr. Gahan. The former Assistant Director General. We do not now propose to call that witness because we have been able to identify anything in his statement or in his evidence that has not been otherwise covered by some other witness. But if any of the other parties would like him to be called for any particular purpose, then can be called if they so indicate to the Tribunal.

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The other RTE witness will be an extremely short witness, should finish within an half an hour or so. His name is Mr. Brannigan. We could call him today, but unfortunately Mr. Barry isn't here and there is a particular issue which affects Mr. Barry which we feel he ought to be here for. So we are proposing to call that witness, if it's suitable to the RTE team on Tuesday and subject to that then we propose to move into other evidence now.

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CHAIRMAN: The only thing I say about the Tuesday is we will be starting at ten o'clock, not half past ten.

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MR. HANRATTY: Yes --

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CHAIRMAN: I am just noting that.

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MR. HANRATTY: Assuming that that's suitable to the RTE team then. We would propose to call Mr. Branigan on Tuesday.

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MR. O'HIGGINS: We are quite happy to comply with any arrangement that Tribunal finds convenient.

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CHAIRMAN: We'll try and fit him in at ten o'clock because obviously we don't want to detain him.

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MR. EAMON GRIFFIN WAS SWORN AND EXAMINED BY MS. O' RAW AS
FOLLOWS:

189 Q. Good afternoon, Mr. Griffin. Mr. Griffin, you are a
Chartered Accountant, I believe?

A. Yes.

190 Q. And you were a partner in the firm of Quinlan and Ryan
during the period late '87 early '88, is that correct?

A. Yes.

191 Q. And prior to that I think you were an Inspector in the
Revenue Commissioners?

A. I had left the Revenue in 1983 and trained as a chartered
accountant subsequent to that.

192 Q. Did you train in Quinn and Ryan?

A. No. I trained in John Woods in Blackrock.

193 Q. How long were you qualified when you became a partner in
Quinn and Ryan?

A. Almost on the day. I had worked with Quinn and Ryan in
Woods and we were ex Revenue colleagues.

194 Q. I think it's true to say that you were involved with
assessing the Century -- the financial aspects of the
Century application?

A. Yes.

195 Q. First of all, can you tell me when you were initially
approached or when Quinn and Ryan were initially
approached?

A. The initial approach came through my partner Derek Quinlan
at the time, who gave, one of our clients and I think
Oliver Barry and Gay Byrne had a friendship and through
Derek and Oliver Barry I was introduced to the firm and

that was the background to the connection. I didn't know Oliver Barry prior to that or I had no dealings with him in the ordinary course.

196 Q. When was this, approximately?

A. '87/88, I would say. I can't be quite definite in my mind.

197 Q. Somewhere around late '87 early '88?

A. Yes.

198 Q. It was initially Mr. Barry that was introduced to you?

A. Yes, James Stafford was introduced subsequently but the first contact through Derek Quinlan was Oliver Barry.

199 Q. Was Mr. Mulhearn introduced at any stage?

A. Mr. Mulhearn -- I met him once maybe twice in the early part. Maybe spring/summer of 1988. Never heard or mention of him since.

200 Q. Was he present at meetings?

A. He was present, I think, they are the two occasions I can remember. My recollection was that he had a broader business background than Mr. Barry or Mr. Stafford. But other than that, he didn't figure.

201 Q. And what was your understanding of his relationship in relation to this project?

A. He just knew Oliver Barry and James Stafford. He had no other role that I could identify before or since.

202 Q. He wasn't identified as someone who was providing funds to Mr. Barry or Mr. Stafford or?

A. No, no.

203 Q. Providing any funds for the venture?

A. The only shareholders I was ever aware of was Oliver Barry and James Stafford until they were going to bring in

outside investment.

204 Q. When Mr. Barry initially came to the firm of Quinlan and Ryan, can you tell me what was the project that was identified at that time?

A. The project was to review the Irish radio sector and to form an assessment of the advertising revenue market, its buoyancy and so on with a view to assessing an opportunity for independent radio. That was the background and that was if you like, phase 1 of the assignment.

205 Q. And phase 1.

A. Phase 2 then became the Century -- the national licence application and all the work that went into that.

206 Q. Well in relation to phase 1 then, was that assessing local radio as well national radio?

A. Yes it was. It was an overview of the market itself and then if I remember rightly, a breakdown then of what local radio might look like in that environment and the national radio service. Local radio at the time was very much in the hands of higher rate radio, therefore you were trying to gauge what it might like look on the back of evidence you could pick up from connections in that sector. Derek Quinlan would have known people in that sector, so we had some information as to, you know, what they were doing and what kind of advertising revenues they were generating and so on. It was very much kind of, I won't say black economy, but it was certainly grey in terms of its structure and its returns.

207 Q. Well pirate radio was illegal at the time, I think?

A. Well --

208 Q. When the parties asked you to assess the local as well as

the national radio station, was it first of all an approach to do local radio and then national or was it at the same time?

A. Not really. It was really at the same time. It was a kind of either- or kind of thing. Just to take an overview of the sector.

209 Q. And in relation to local radio, was there any specific area that they asked you to focus on?

A. No, it doesn't stay in my mind at all, local radio, quite frankly.

210 Q. Can I ask you had you ever been involved in any type of project where you would assess a market set up and green field situation like that previous?

A. Not in radio. But in other businesses yes, because a firm like Quinlan and Ryan would have been involved in start ups and advising in start up stations so that wasn't unusual. The radio market in Ireland was opening up at the time or was mooted to be opening up so therefore, it wasn't strange to take on an assignment in that sector.

211 Q. That was the firm of Quinlan Ryan. But were you yourself the person who dealt specifically or was in charge of this particular project?

A. Yes, within the firm, yes. Because of Derek's relationship with Gay Byrne at the time it was probably felt it would be better if I dealt with this side of the matter.

212 Q. Kind of a Chinese wall situation?

A. Yeah.

213 Q. And had you yourself carried out any such projects of this nature?

A. No. This was the first one. I had spent a lot of time exploring the UK, independent radio sector, that's where the research was all done and meeting with representatives of that industry. That was the foundation stone for subsequent work.

214 Q. We'll look at that in a minute. But of this the first such project of this nature that you had looked at?

A. In the radio sector, yes.

215 Q. Had you looked at other projects?

A. Yes, software projects, other type of start up projects. Hotel projects. Things like that.

216 Q. How long were you qualified at this time when you were doing this particular --

A. About year and a half.

217 Q. I see.

A. I was about 36, 37 at the time, in terms of age.

218 Q. And your experience in doing these types of analyses and projects, would that be confined to that year, year and a half?

A. Basically yes, because prior to that, my area see was in the area of taxation. Therefore the time would have been spent on taxation rather than business planning, but there would have been some business planning.

219 Q. Did you have much discussion in Quinlan and Ryan about the projection and the project you were doing or was it because, was there a Chinese wall that you didn't discuss?

A. We would have had discussions. Staff would have been allocated to me at the time to assist in all of this and there would have been ongoing discussion. Chinese wall with a small "C", I would say. We were a small firm so

therefore you couldn't have massive resources available where you could delegate all your staff to one project.

It wouldn't make sense.

220 Q. Would you have had any supervisor or anyone that you could bounce ideas off?

A. Not really, no.

221 Q. So you were mainly the person who headed up this project?

A. Mmm. With my own qualified staff at the time.

222 Q. Initially the project was to look at the local and national radio scene and what did that entail?

A. It entailed basically an understanding of the radio market, advertising in particular. How the revenues were generated, what sources, what kind of listenership figures you were looking at. The range of audiences and so on and then try to get some handle on the pirate radio sector at the time to enhance those figures.

223 Q. And what sort of variables determined advertising revenue?

A. It seemed to me to be a combination of time of the day and then the type of programming for that particular time of the day. There seemed to be a wasteland after seven o'clock at night, if I remember rightly, when radio disappeared and television took over. Prior to that there was core times when programming in RTE was the only immediate business at that time that you could relate to on an ongoing basis, whether Radio 2 and Radio 1.

224 Q. And to what extent did the value set down in the rate card determine the level of advertising or did you determine at that time?

A. Not really no. It was very much a function of the popularity of programming. If you had good strong

programming, like Gay Byrne in the morning, then your rate card would demand premium prices. If you are on at seven o'clock at night and nobody listens to your radio station, it wouldn't.

225 Q. You weren't dealing with indigenous product that everybody was selling that by selling the rate card you could attract consumers?

A. No.

226 Q. It's very much programme dependent?

A. Very much so. It still is. People would take any programme. They would have preferences as to where they would like to be slotted in. That's the salesman job so trade that high quality programming or his listenership programming with other programming to fill out your profile.

227 Q. You initially had meetings with the promoters, Mr. Barry and Mr. Stafford. How frequent were these meetings?

A. I can't recall, to be honest with you. In the early stages it was quite frequent, because it was an assessment process. Therefore there would have been an exchange of views or you'd might up memoranda or whatever, but I can't put a time on it.

228 Q. And what sort of detail or what were you being asked at that time?

A. Mainly to work up models on the basis of my research in the UK, and independent searches,. What the key criteria were in relation to radio station, advertising revenues, cost structures, all that, investment type stuff.

229 Q. And all of this was done phase 1 before you put together --

A. No, it was done, they had straddled across. Once they had

moved out of phase 1. Then the same information then was honed down in the context of a national radio licence application.

230 Q. So there was, that research was ongoing?

A. Absolutely.

231 Q. So then during that phase 1, can you tell me what were the main headings of work that you did?

A. The main headings of work would be assessing the strength and depth of the advertising market.

232 Q. What did you find?

A. I can't recall, I have retained no papers from that time so I can't tell you offhand at all. No, I just can't, there is no point in trying to have a false memory, I can't.

233 Q. Your research that you did, you looked at the UK market and did you visit stations, did you collect their rate cards?

A. Yes, there was a lot of work done in terms of brokerage reports. There is a lot of stations I say at the time in the UK were quoted shares, share stocks were quoted. You had access to broker reports and in-depth analysis and I visited at one stage in particular I recall a station in Newcastle was a very successful station. They were very helpful to me in determining information flows.

234 Q. Now the UK situation, as I understand it, is first of all, you are dealing with a much larger population?

A. Absolutely.

235 Q. And then secondly, you are not dealing with any national operator. At least from a commercial point of view, commercial operators, none of them operate nationally, is that the case?

A. That was the case at the time, yes.

236 Q. Well then how would they work as comparators with the --

A. To understand the rate. You are moving into a situation where the only other party to speak to was to RTE, yet you were going to compete with RTE. It was very difficult to set up a chain of conversation with a competitor. Secondly, if you were getting understanding of good practice in the sector, the UK seemed a logical place, rather than the United States of America. That was the reason for why the UK was taken as a reasonable introduction to the sector and the financing mechanics of the sector, technology and so on.

237 Q. But from a financial point of view, looking at the cost, looking at the revenues that were available, would you say that the UK was a good comparator or was it a case that it was the only comparator?

A. It's probably the only comparator. It was reasonable so far as it gave you a handle on what type of cost structures, investment criteria you'd have to meet and in terms of better run station or more prosperous stations, why were they more successful than others, if they had broadly the same population space to work in. It was useful in that context.

238 Q. But none of them were national operators?

A. No, not in the least no,.

239 Q. And therefore, wouldn't have the same costs that a national operator would have?

A. No. It was more an understanding of ratios and things like that.

240 Q. If we move on then it the second phase. And was Mr. Mulhearn at all involved in this second stage?

A. No.

241 Q. It was just at the initial phase?

A. Yeah.

242 Q. Well how many meetings did you say he was --

A. I would reckon two. There was only two in my mind, but I don't know.

243 Q. Can you recall his contribution?

A. Not in the least.

244 Q. And who was present during those meetings?

A. Derek Quinlan I would think, Oliver Barry, possibly Gay Byrne, I don't know, some of our own team.

245 Q. Well then if we move on --

A. Meetings don't stand out in my mind, I must say to you.

246 Q. At the second phase then, this is when the parties decided to go for the national application, is that right?

A. Yes, that would be the latter part of '89 I think it was -- '88 rather.

247 Q. The latter part of 1988. Approximately when, do you recall?

A. I would have thought September/October, but I can't be certain.

248 Q. Well we know the submission document was put in in December, the 16th December. So it was a couple of months before that?

A. Yes. That would be fair to say.

249 Q. I see. And I think it's also fair to say that there were a number of advisers working on different elements?

A. Absolutely.

250 Q. And can you tell me about the level of contact you had with those other advisers?

A. Not that much. The advisers that stand out in my mind are, apart from the promoters and who are very strong figures in their own right, Mr. Ray hills, and Muiris MacNeill are the two that stand out in my mind, as well as the legal people. IBA people don't stand out in my mind at all and I think no studio expert stands out in my mind. But that's as I recall. I can't put a face to any -- to certain of the advisers at this juncture, Ray Hills stands out in my mind certainly.

251 Q. What were the major costs that you assessed that a national applicant would incur?

A. The major costs were, as you can see the IRTC application were in news, programming, staff overheads. Studio facilities and then transmission, two other areas as well are royalties and agency commissions and also the fee to the IRTC itself. So there is a range of issues, leaving aside the issue of the advertising market and how and in what circumstances you would gain a share of that.

252 Q. Well, did you sit down, for example, with the adviser in relation to studio facilities to talk about the costs that would be incurred there?

A. Yes. They had prepared their own independent papers as far as I know and they were largely channelled through James Stafford as I remember. We would get together occasionally in a larger group, but it was very much in a split kind of structure.

253 Q. In relation to the transmission costs, can you remember sitting down with Mr. Hills and members of the IBA --

A. Not particularly, no. Mr. Hills had very strong opinions in this area as I recall. But I have no working papers to

fallback on so I have no memoranda to assist me in this matter. Overnight I have seen a letter which would indicate his strong views in this area and they would come across at meetings.

254 Q. Well, were there ever any meetings where the two of you sat down together to look at your costs?

A. I don't recall is the answer. I don't recall.

255 Q. In general, how did meetings take place, was it all of the advisers together with the promoters or?

A. No. It was smaller groups. Once or twice when larger groups would emerge and certainly towards the end of the preparation period, when you were trying to pull the document together in a holistic way, prior to that I would say Muiris MacNeill would have met once or twice to. That it wasn't an ongoing conference where large numbers of people trundle in and out of an office on a regular basis. It wasn't like that, in my memory.

256 Q. Well, what I want to focus on for the moment is the transmission costs and your involvement in assessing those transmission costs. When did the issue of transmission costs first arise? When did you first talk about it?

A. October, November would be the best guess I could make. The promoters had engaged the IBA and Mr. Hills at that point in time. That was the first I had any contact with people in that area of the business that they were proposing to get into.

257 Q. Well, during your phase 1, had you been involved in assessing transmission costs?

A. It didn't arise at that point, as I recall. I just don't remember, is the honest answer.

258 Q. It didn't arise?

A. I don't remember.

259 Q. You don't remember. Well, I know you say you don't remember, but when you were looking at the UK stations, can you remember thinking- well how do they facilitate their transmission? You would have taken as part the running costs, because of the differences in the two countries, you simply take it as a cost figure and then in time you'd have to work out from there with your own expertise, which was what Mr. Hills was there to provide. So, you had a total cost of the UK model, but there was total costs, you didn't segregate them during your phase 1 and to the various different costs?

A. Insofar as you could extract it from accounts and financial information, yes, but to the extent that you couldn't, they would be just left in as general overhead.

260 Q. So you couldn't extrapolate then the difference in transmission costs in the UK and Ireland?

A. No, without the guise of someone like Mr. Hills, the answer was no or the IBA depending on who was making the background names or information available.

261 Q. So then phase 2, you were analysing the various different costs, transmission cost was going to be one of these. Can you tell me about the level of negotiation that was going on between yourself and Mr. Hills about these transmission costs?

A. It wasn't a negotiation between myself and Ray Hills. I didn't have that function in this. My function was very much to pull the numbers together in some sensible fashion. I didn't have a negotiation role. Again I

would say to you that the James Stafford and Oliver Barry were very much their own men in all of this. This was crossing in many ways and James Stafford would be the satellite connection or background was very much in the technical issues. They weren't your average in that sense where someone like myself would be wheeled out to bat. That would not have arisen in that context. Ray Hills would be coming to me rather than the reverse, if you could see it like that.

262 Q. In what way?

A. Insofar as he was their team. He was their man in this matter and therefore his views were paramount.

263 Q. And you took what he was saying. For example, if he says right if a transmission cost is going to be X amount, did you query that?

A. No. I would have taken it that that was his expertise, that James Stafford was satisfied that he was satisfied by Ray Hills that these were the figures and we worked from there. I wasn't in the business of second guessing, direct expertise such as Ray Hills would have had. A transmitter to me is a transmitter, it didn't have any special significance.

264 Q. I see. When the transmission costs were being discussed at these meetings, were they discussed to any great extent in front of yourself?

A. I don't recall. I recall two things. One is a high degree of mistrust of RTE's figures and that permeated I think there was a lot of thinking on the promoters' side and the residual effect was there for quite time. It didn't go away. That coloured a lot of their attitude to

what the figures would be for transmission and the advice they were getting. It was fairly robust advice, would be the best way to say it.

265 Q. Do you remember being told what the RTE figures were?

A. I have a million pounds and a 1.1. Million. That's the figure. You kindly provided me with the paper last night that gave me a break gown. That's the figure I have in my head. 1.2 something.

266 Q. If we can have a look at some of those documents. If we have a look at page 804 please. And this is a document from RTE, dated 1th November 1988. It's at the first yellow --

A. I have changed your colour scheme, sorry.

267 Q. And this is the first document which gives the figure of 1.14, the first quote I think from RTE. And this is for the " all in" service.

A. Yes.

268 Q. And by year 3, we have this figure of 1.14. Do you remember seeing that document there?

A. No is the answer. But again it's such a long time ago, I just can't -- it didn't ring any bell last night. The figure rings a bell but not the detail.

269 Q. And then on the 2nd November, page 5146 please, Mr. Barry and Mr. Stafford attended a meeting at RTE and we know that they were shocked at the costs that were being described to them by RTE and later that day, page 195, Mr. O'Brien sent a letter to Mr. Stafford giving a breakdown of those costs and we have at page 2539, and 2540 that breakdown of costs into capital, maintenance, running costs, overheads and so on. The second page, equipment costs. Can you remember

seeing those figures?

A. No.

270 Q. Mr. Hills, on the 4th November, 1988, page 807 please, he has received copy of the RTE letter, we know that that was faxed to him. And he is looking at the RTE figures and giving various comments about them and criticising them and in various different ways and one of the things he talks about -- well, first of all, in paragraph 1 he says, "I assume the RTE figures are in Irish pounds. My previous estimates to you are in UK pounds." Do you remember seeing estimates provided?

A. I don't recall. The tone of this letter would sum up, I think very well, the attitude of Mr. Hills towards RTE at this time, and by extension, Mr. Stafford.

271 Q. Do you recall seeing this letter of Mr. Hill's?

A. No. I don't recall any documentation of that time quite frankly.

272 Q. When you say you don't recall. Is it a case that you may have seen it but you can't remember or you didn't receive?

A. I don't remember any -- I don't remember, full stop.

273 Q. You don't remember?

A. No.

274 Q. Well do you remember discussing previous estimates of Mr. Hills' with Mr. Hills in November?

A. My recollection of Mr. Hills is in November and the attitude I think that comes across in this letter which I have read overnight, was very much that the RTE numbers were incorrect. They were overstated. There was padding. And therefore, if you look at his comments, it seemed that he was trying to get back to what he thought

was a more acceptable figure and the promoters very much relied on that at the end of the day. That's all I can say on that. The opinions were very strong. Very strongly held. They weren't by any means sort of you know a split the difference attitude or something like that. It was quite strong and quite robust, as I say. Now that may have suited the Stafford/Barry view of the world.

275 Q. That I have --

A. Suited because they certainly were -- they did not you know, how shall I put this, it may have been you know what they wanted to hear on their side of the argument as well. If there was not happiness with RTE.

276 Q. Well, you didn't see estimates provided by Mr. Hills around about this time?

A. I don't recall.

277 Q. You don't recall?

A. I honestly have no recollection.

278 Q. Were you doing projections?

A. I was. And at meetings and so on the projections would be laid out on the table and they would be amended or the figure would stay put, depending on the context and the figures that stayed put remained in the model and other figures varied depending on additional information or whatever.

279 Q. How early on can you recall did you put in a figure for transmission costs?

A. I can't is the honest answer. I can't. I have no working papers or no models that pre-date the IRTC application, so I am at a sort of disadvantage in trying to gauge a transformation of thought on any category of the

projections. Not just the transmission, but advertising revenue or staffing costs, I can't -- I don't have a time frame of changes of assumption or changes of opinion in any direction, I am sorry to say.

280 Q. I see. The second paragraph, Mr. Hills is talking about the amortisation of the capital works and he talks about the amortisation over five years of various capital equipment. Can you recall looking at lease periods at that time?

A. No. The capital issue -- my recollection of that in discussion was that this was equipment that had a life of fifteen/twenty years whatever, therefore that would be the basis to take. It's also fair to take that in the IRTC application- one of the key elements, I think, on the summary page was that it was the second period of the licence was when this thing began to become more profitable and so on. So people saw it as a 14 year plus. It was never seen as a 7 year, 5, 7 year kind of investment or a business of that duration. So the input from Mr. Hills of a 20-year life fitted that view of what they were getting into.

281 Q. But here --

A. And therefore any figures done would reflect that as well.

282 Q. But here we are talking about the purchase of capital equipment and the leasing of capital equipment at that time and you may have heard some of Mr. O'Brien's evidence, I don't know whether you did or not?

A. No.

283 Q. And the one of the methods that was going to be used at that time would be capital would be leased and the period

for which leasing rates would be quoted would be periods of 5, 7 or at a stretch, 10 year periods. Now, would you agree that they would have been the leasing periods that would have been available?

A. Well, maybe so. But as I say, Ray Hills and the promoters' view was no, that a longer period was more appropriate and you see that in this letter.

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CHAIRMAN: I think we might go into that aspect of it after lunch.

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MS. O' RAW: Thank you, Sir.

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CHAIRMAN: A quarter past two.

THE TRIBUNAL WAS THEN ADJOURNED TO 2.15 P.M.

THE TRIBUNAL RESUMED AT 2.15 P.M AS FOLLOWS:

MS. O' RAW: Mr. Griffin, did you ever have an opportunity to critically analyse any of the figures that Mr. Hills was putting forward?

A. I don't recall is the answer to that. I have, as I said earlier, I have no working papers to fallback on, so I have no memoranda or aide memoirs to assist me in giving you a reply to that. I don't recall.

284 Q. Well, can you recall any dispute you may have had over his method of assessment?

A. It's not so much a dispute. It's like everything he was. There was a range of assumptions built into the business plan and all of them from time to time would come in under scrutiny or discussion. Whoever had most input at that point in time would raise any issue of concern then. Mr. Hills would be one of those. If he felt a figure was reasonable then, you know, subject to anybody else having any view to the contrary that view would be taken, just as in programming or news.

285 Q. Did you ever have any contrary views?

A. I don't know. I don't know is the answer. It may well be because certainly in going to any business plan, you are trying to assess where figures are out of line, high or low figures, what the implication of that might be.

286 Q. Well is your main recollection that you took the figures that he was giving at face value?

A. Indeed yes, because he had given his expertise and his background and so on. It was reasonable to take what he

would regard as a fair figure.

287 Q. But Mr. Griffin, he is an engineer. You are the accountant. You are the financial adviser.

A. No. At the end of the day, I say expertise, he had costings, he had his own view as to what this -- what the price was for this and what was the view that was adopted by the promoters at the end of the day.

288 Q. Yes, but in the submission document, he is put forward at the engineering consultant, you are put forward or sorry I should say, Quinlan Ryan were put forward as the financial advisers? .

A. Yes.

289 Q. So isn't it the case that it would have fallen upon you at the end of the day, to be able to support the figures?

A. Indeed, yes and the notes on the financial projections and the notes in the IRTC application make it quite clear the background to those figures, I believe, insofar as they indicate the preference to go to the RTE route. They indicate the direct costs and so on adds the recovery mechanism and that's the best you can could say at that point in time.

290 Q. When there was such a vast difference between the RTE figure and the figure that was being put forward by Century in its calculations, did you not do any type of analysis as between those two to find out which one is a truer figure or were you just taking Mr. Hills' figure as the true figure?

A. We would have taken Mr. Hills' figure as the true figure at the end of the day.

291 Q. And you wouldn't have considered the RTE figures or looked

at the basis of those?

A. I can't recollect the basis, but I would also say that

Mr. Hills was the chosen expert on our side.

292 Q. Did you, as the financial adviser, assess the RTE figures?

A. I can't recall.

293 Q. Well, do you remember raising any disputes about the RTE figures?

A. Yes indeed, so far as I can recall the gap was quite wide but again we were -- we would have been assured that the figure proposed was reasonable in the circumstances.

That's all I can say.

294 Q. Who would have assured you?

A. Mr. Hills in particular would have been the only party who could give that assurance, supported by the promoters that's all they were prepared to pay.

295 Q. The figure of 375?

A. Yes, that was the final figure signed off, as I recall.

296 Q. Now, Mr. Hills has given his evidence and he says the figure of 375 wasn't one which he derived.

A. I don't recall. I didn't hear his evidence. I have no idea.

297 Q. And going back to the RTE figures, had you any input in looking the basis of their charges at all?

A. I was not part of any team involved at RTE at any stage at all before or after the submission.

298 Q. So where RTE may have been saying that we believe the basis of our costs are correct and they had been giving their basis based on replacement values etc., you had no input there on looking at them or judging whether or not it was a valid argument that they were making?

A. No, no I wasn't asked to do so.

299 Q. I see. And in relation to this figure of 375, you didn't go behind that figure of 375 at all?

A. No. The nearest I can recall is in this letter from Mr. Hills where he outlines his concerns about the RTE figure, but again that's a memory because of the attitude to RTE at the time internally in the company.

300 Q. Well, Mr. Hills gave his evidence the 375 figure wasn't one derived by him. Do you recall the promoters discussing the 375 figure?

A. It would have been discussed round table but that's all I can say. I can't recollect any one party. It was a round table discussion, like you'd have here.

301 Q. Do you remember the promoters giving the basis of that 375?

A. No, no. I will say to you that the promoters were strong figures and definitely had very strong views in conjunction with Mr. Hills as that what they were prepared to take.

302 Q. They had firm views as to what they would pay?

A. And what they thought was reasonable in the circumstances.

303 Q. But you were the financial adviser. You never had an opportunity of discussing or did you ever have an opportunity of discussing with them how they came up with that figure?

A. I can't recall.

304 Q. Or the implications if it was later decided that that wasn't an appropriate figure?

A. That that was not an appropriate figure, the financial model indicated that it would have an impact on their profitability in future years but no more than any other assumption in the model at that point in time.

305 Q. Well, I think if we have a look at page 5719 please. It will come up on your screen now -- this is the pink tab, the second tab in your folder. This is the submission document itself and it's actually page 44 of the submission document and it's paragraph 5.3.8 of the submission document. This is actually the financial element now. I know there is an appendix that has the financial projections but this is the financial element of the submission document. Can you tell me did you prepare this financial element of the submission document.

A. It would have been based -- it would have been a summary of the financial projections which were in the appendix as I recall and extracted out and put into more user form in the application.

306 Q. Would you mind Mr. Griffin, speaking into the microphone. It's --

A. It would have been extracted from the financial projections and would be brought in in user format, if you like, into the body of the document.

307 Q. But did you write this section?

A. We would have been prepared this summary chart certainly.

308 Q. The summary chart.

A. Yes.

309 Q. This paragraph in between the figures paragraph?

A. Yes, yes.

310 Q. But did you prepare the text, the remainder of it, can you recall?

A. I don't, is the answer.

311 Q. You don't recall?

A. I don't recall, no.

312 Q. You don't know whether you did or not?

A. No, I can't say. I don't have any draft with my own notes on it, so I can't say.

313 Q. If we have a look at that particular table of figures, which you say you were a party to writing and we see that one of the things it says is, "profit and loss before transmissions charges and levies/ profit and loss after transmission charges and levies". Then isn't it a case where you say "transmission charges" were only one assumption. Transmission charges were actually a significant element?

A. Among others, if you start at the very top of the possible projections, the penetration of the advertising market was also a very significant figure. It was a range of key figures of which transmission was simply one.

314 Q. Well --

A. Any of which could have impacted on the profit and loss account as projected.

315 Q. If we have a look at page 5720, the following page and after the starred paragraph, the asterisk paragraph, we come down to the next paragraph and the second last sentence of that, "The financial projections assume that for 978.5 percent national coverage the transmission charge will be ú375,000 per annum. This figure is considerably less than those proposed by RTE in discussions to date." Then if we look at page 5723 please and the last paragraph there, the sentence beginning "However, the viability of our plan rests on the cost of access to the market and our success in reaching a satisfactory agreement with RTE to use their transmission facilities on an agency basis."

So, certainly from the submission document, the charges that were going to be levied in relation to the transmission facilities, they are saying here, it's not just one of the assumptions, but it affects the viability of the whole project?

A. Well again, from my perspective as financial adviser, there was a clear cleavage between the RTE figure and where Century, the promoters of Century and their advisers on the business plan. So it was fair and reasonable in the IRTC application to point that out and to indicate the sensitivity of the figure, not just ignore it. And I thought that that was not unreasonable conclusion to draw and to point out to people in looking at the figures, so that if they were to, in reviewing these at IRTC level were to extrapolate some other figure, they would see what the implication was very immediately and that presentation was meant to be of assistance rather than anything else.

316 Q. But it seems to put a great deal of significance on transmission charges?

A. I think it's fair to say that the promoters were obsessed by transmission charges.

317 Q. The promoters were obsessed by transmission charges?

A. Very much so. It was very much in their mind but, having said that, from my perspective it was one of only several key assumptions that had to be made in preparing the financial plan.

318 Q. When you say the promoters, what was the word you used, were "obsessed" by transmission charges.

A. Yes.

319 Q. Why do you make such a comment?

A. Because it appears several times in the IRTC document, more than any other item if I can recall in the financial projections.

320 Q. They had very strong views about them?

A. Yes. I think so. It may well be because by then they had at least one meeting with RTE, according to the notes you provided me, so that may well have been on their mind.

321 Q. They had a number of meetings with RTE at the time. But, what you are saying is you didn't have an opportunity to assess the RTE figures, to test the validity of those figures, to test the validity of the 375 that was being put forward?

A. No, there was a clear impasse between what RTE sought and what the advice on the Century side was and that's where it lay at the date of that application.

322 Q. But you, as the financial adviser, in relation to this submission document, you had no opportunity to assess the validity of any of the arguments being put forward?

A. I can't say that. Because I don't recall the workings --

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CHAIRMAN: I wonder might I just intervene here. Look at page 5720. You see the paragraph which reads, "The financial adviser" I presume to be you -- "To say company has reviewed the above financial projections and their letter of the 16th December is attached at appendix 4."

A. Yes, page 5796.

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CHAIRMAN: 5320. Under the heading "Projections." What I want to know from you as the financial adviser who has reviewed, did it occur to you to inquire into the make up

of the figure of 375?

- A. The answer is yes, but I cannot recall and I have no record of the make up of that figure.

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CHAIRMAN: Well, now the make up of it. It depends on what figure we are talking about, the 962 figure I think was the figure you'd be talking about in the end -- 959 --

MS. O' RAW: 914 was, I think, the figure at this stage.

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CHAIRMAN: That's the ultimate one. That is in fact broken down so far as I recall from the documentation and you would have the component parts of that. Did it occur to you to contrast the component parts of that and inquire from the promoters whom you were advising, as to what were the component parts of 375?

- A. The answer is undoubtedly the queries were raised. I can only say that the answer would have been provided by Mr. Hills very much in the format that he would have reviewed the RTE figures himself. I can't say more than that, I am sorry to say.

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CHAIRMAN: After all, you were the financial adviser. You were "the figures man". You were the man to make the contrast and say, these two units and if you look at their composition have items which are either justifiable or not justifiable?

- A. The line being taken internally by Century was that the lines, the figures were not justifiable and the contrary figure was to be taken.

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CHAIRMAN: So there was no breakdown and you never heard of a breakdown of 375?

A. With due respect, I can't recall.

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CHAIRMAN: Would you not think that it's something that you would recall if you knew the breakdown of the 914?

A. At this remove, eleven years on, I can't say that.

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CHAIRMAN: Then on what basis, as an adviser, did you give the advice?

A. The basis was that the technical advice and engineering advice presented to the meeting was as Mr. Hills and the IBA, I can't recall the IBA function in this. That was the basis on which the decision was taken at the end of the day, that it was acceptable.

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CHAIRMAN: So that was the degree of advice you were offering to --

A. It was the only reasonable advice to give, in my view insofar as that was what our team leader had said. I can't say any more than that at this time.

MS. O' RAW: Who was your team leader?

A. Mr. Hills would have been the leader on that side as I would have seen it.

323 Q. You said the line being taken internally by Century was that the lines, the figures were not justifiable and the contrary figure was to be taken.

A. Yes.

324 Q. Who were the people within that group who were saying the

figures were not justifiable and the contrary figure was to be taken?

A. The basis of that and if you look at Mr. Hills letter, the 4th November, you will see in fair outline as he saw those figures and that didn't change very much in the following weeks.

325 Q. Well, we know that that was Mr. Hills' view.

A. Yes.

326 Q. But we know that he was the engineering adviser and you were the financial adviser.

A. No, his letter is more widespread than that. His letter goes into the costings. He goes into what his overheads should be and so on. It's a bit more than saying the equipment is X, Y, Z.

327 Q. I appreciate that he does go into the costings. But he is not a chartered accountant. You are?

A. Again he has a technical expertise as to those costings and what in his experience is right-hand and I think that's not unfair to take that on board.

328 Q. Absolutely and very definitely he would have experience in that area. He would have found out how much this equipment would cost and so on but the basis of charging, analysing the amortisation rates, analysing the repayment rates, analysing interest rates, that is not a function of an engineer.

A. Well, as I say, my recollection of Mr. Hills and his input was that it was more extensive than that and I think his letter of November would confirm that.

329 Q. Well, if we move on, we can have a look at page 5794 please and if we have a look at the financial projections that

were -- could I just ask you, Mr. Griffin, did you know where or have you seen or can you recall at any stage Mr. Hills coming up with a figure of 375?

A. I can't recall.

330 Q. You can't recall at all?

A. I can't recall, I have no recollection at all. There were so many meetings going on that I can only presume it came out of one of those meetings, but I can't do better than that for you, I am sorry to say.

331 Q. But you recall the parties discussing the 375?

A. Absolutely, because certainly it had to be the final phase of the IRTC's application, submission. All paragraphs of various descriptions were gone over by various parties at the meetings at that point in time, you know, to wrap it and finalise it.

332 Q. Do you recall the promoters ever coming up with figures for various different elements?

A. I can't say. I can only say that James Stafford as a personality was, you know, a very intrusive personality. He had a good handle on numbers and technology. He was very much a prime mover in all matters to do with the application. He was a very studious and as I say intrusive promoter. Nothing would have got past him that he didn't know of and understood. He was very forceful in that sense.

333 Q. Was Mr. Barry as intrusive?

A. Perhaps. He doesn't stay in my mind as strong a figure. In fairness to Mr. Barry, that's no disrespect to him.

334 Q. We have seen in further minutes of meetings with the Century lawyers, were you ever in attendance at any of

those?

A. No.

335 Q. We have seen at one stage a note to the effect that 375 was

"a steal" and 520 was something that could be afforded.

Do you recall ever hearing figures of that nature?

A. No, not at all. I wasn't at any of those meetings.

Certainly if you wanted my view on the numbers, 520 was manageable because of the financial projection would indicate that that was a doable figure, but other than that, I have absolutely no involvement whatsoever, other than a comment like that to you now.

336 Q. Do you ever recall any discussion of any nature whatsoever

between anyone to the effect that 375 was "a steal"?

A. No, no, it's a word I wouldn't have used. I would hope to remember it, but it's not my language.

337 Q. What was the perception of the figure of 375?

A. It was a fair figure to pay and reasonable in the circumstances, but it was in early days of the negotiations so it was arguable the figure could increase by a number. What that number would be no one could guess until a real situation of a broadcast licence was in place and then people would have to concentrate on getting an answer.

338 Q. Well, was it your view that 375 was very much a negotiating figure then?

A. There was nothing to indicate that -- it became written in stone to some extent with the promoters in their head. With my perspective, given the financial projections, there was room to manoeuvre and it would have been financially reasonable to be able to financially move. I wouldn't have objected to that if it was £500,000 later, if people

were happy with what they were getting for ú500,000. It was a judgement call at that point in time and wouldn't be -- would be commercially prudent to get it sorted and get on with the process of implementing your radio station.

339 Q. If we have a look at your financial projections and at page 5811 please. You have a note on the transmission charges and it says, "It is assumed that a rate of charge will be agreed commensurate with direct capital cost and a marginal operations and maintenance costs thereafter with a reasonable profit element to RTE." You don't mention there at all the figure that RTE are suggesting at that time?

A. No.

340 Q. And you don't give any critical analysis as to why it may be incorrect or ill- conceived or the basis on which it is calculated may be incorrect?

A. No.

341 Q. Well, looking at that particular paragraph if you had carried out such an analysis and given that there is such concentration throughout the document, as you said the promoters seemed to be obsessed with the transmission charges, given that, if you had carried out any critical analysis, do you think you would have incorporated it into your comment there?

A. No. In notes of this type, it's fair to say you put down in very simple format the basis of your own assumption which was direct capital cost, marginal operation and maintenance cost and a profit margin. You wouldn't go into detail. That might be something that may be worked

on later or if requested, expanded in detail. I am not aware that happened.

342 Q. Likewise in the rest of the submission document where it's possible that you could make such arguments, no such arguments are made about the invalidity of the RTE charges?

A. That's a fact.

343 Q. Well would that be indicative that you didn't carry out --

A. Not in the least. This is an application made by Century Communications. It represented what their view of the world was and no more and no less. It represented their views on programming, on the value of the advertising market and so on. So it was no mar -- this was their document. It was their view expressed in fairly straightforward language on as many topics as were relevant to the application. That's all I can say.

344 Q. In relation to input into the submission document, would you -- to what extent would you say the promoters were the main figures in drafting it up or the -- did they lead?

A. Very much so.

345 Q. At the level of discussion that was between the parties?

A. Would have taken place, but you are dealing with very strong promoters here.

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CHAIRMAN: Stafford particularly had a passion for detail and for documentation and a passion also for the legalities of that you will these things so. He was a very strong figure in the process, as I recall.

346 Q. Had they strong views?

A. Most definitely, about many issues.

347 Q. Did you contradict any of those views at any stage?

A. I would have pointed out to them my own view. I would certainly speak up for myself if that's what you are implying, but at the end of the day, the call was the promoters. I would have to resign -- you wouldn't put in a dissenting set of financial projections I would say.

348 Q. Absolutely not. But was there ever a case where you argued over any of the financial projections?

A. There would have been an argument. We had an argument as to how the business might grow. There would have been an argument as to why and in what circumstances you could achieve profitability and so on and what time arising you were looking for pay back and so on. That would be fairly normal in designing a business plan.

349 Q. Were there difference of opinion?

A. I would take a concerted view as to how revenues would grow. Others might be more bullish in relation to that.

350 Q. In relation to this particular project?

A. Yes. In any project but this one as well, if there is elements there that people feel that, you know, they can run before they can walk, or that they can hit the road at such a pace and therefore the revenue stream would be strong very early on. I would, you know, have taken that down a notch or two. I would have thought in my own contributions and let people build up a brand and take a steady approach rather than a view that kind of you know, we will hit the airwaves and there will be a fortune made overnight. It wouldn't be like that.

351 Q. Well, was that the type of view that was being held?

A. It's not quite correct to say that, but certainly any promoter going into things, tends to be more optimistic

than a financial adviser. It's the nature of this.

352 Q. I don't mean to interrupt you but I want to specifically find out about this particular project. Was it the case that the parties believed that they were going to run before they could walk?

A. There was certainly an element that the market was ready for an alternative to RTE and therefore you know, they would have -- I won't say an easy path to a substantial revenue, but that certainly they could make their presence felt very quickly and in my view, as I recall, I was more keen that you know, to take a slower approach and not assume that would happen, perhaps as quickly as others might have felt. That was just my sense of it.

353 Q. Well one of the phrases that was used during one of the parties for the Century presentation, you were at the Century presentation in the National Concert Hall on the 12th January?

A. Yes indeed.

354 Q. And I think you may recall a taped presentation that was made to the IRTC?

A. Yes.

355 Q. And one of the comments I think that was made during that by a party who wanted to find out about Century Radio and this was on the tape during the presentation, was well, is this a licence to print money? And I think Mr. Stafford's comment in that presentation back to the person making the inquiry was, well, not initially. Was it the view or something of that nature -- was it the view that eventually this would be a licence to print money?

A. I can't say a licence to print money. The view,

commercially, was that if they were to be successful in the first phase, their first licence period, they would continue to hold the licence and at that stage, significant profitability could be generated because they would have a proven brand, a proven market and so on. In that context, if people thought it was a licence to print money, it had to be a long view such as that. It wasn't going to happen in a very quick space of time.

356 Q. Were the promoters over optimistic in your view?

A. The financial projections as in this document were reasonable in that the lead time required to break into profitability and there was no excess profitability in the early years, as I recall from the projections.

357 Q. Leaving aside the financial projections, were the promoters over optimistic in your view?

A. I think not, certainly not in the early phase of what they saw as a long-term project. That was again after the discussion and pointing out to them that you know, if you were over optimistic in your numbers, the -- was all the great.

358 Q. In the initial stages were they over optimistic?

A. Maybe so, yes, because I think again, if you look at it it was a market that hadn't opened up to deregulation, if you want to call it that. So clearly from meetings I would have had with which will con hash knell and so on, there was an appetite there for anality at this to RTE. People could have been carried away by that. That wouldn't be unusual.

359 Q. Your view was take the a much slower pace?

A. Absolutely, it was safer.

360 Q. I see. Looking at your financial projections, page 5797 please and your turn over.

A. Yes.

361 Q. And various turn over figures.

A. Yes.

362 Q. Where did you derive those figures could I ask?

A. From analysis of the advertising market. I think if you look at notes later on -- give me one second please --

363 Q. I think you had RTE figures of something in the region of 1917 --

A. I think they are in the body of the IRTC document and there was a percentage worked out as to what would be a reasonable prospect to take of that market in the first year or so and then try and grow the market thereafter.

364 Q. Well, I think initially the view is that by the end of year one you'd have 10 percent of the advertising spend, at the end of year two, you'd have 15 percent. At the end of year three, 20 percent and the end of year four, you'd have obtained 25 percent, a quarter of the advertising spend.

A. Yes.

365 Q. And were they your figures and your estimates?

A. They were figures arrived at after discussion of the pros and cons of how the market would generate. There was two aspects to the share. One was that the market itself would grow and secondly, that Century's presence in the market would also attract volume so they are the two forces came together in deriving that model.

366 Q. But in assessing those figures, what was your input into it and what was the input of the promoters?

A. The input of the promoters was to assess for

themselves -- was to assess for themselves the market and how much of that market they wanted or expected to achieve in fair weather, so to speak. My function was to assess that and say it's reasonable or it's not reasonable or take a longer time frame and grow sort of in a steady manner and that's the logic to that.

367 Q. Was it you who came up with the figures of 10 percent, 15 percent, 20 percent and 25 percent?

A. They work backwards out -- the turnover, they were interrelated the their market and the revenues would be interrelated because clearly if you were to say we have a turnover 1 or ú2 million. Then what did that represent in market terms? So they kind of related to each other that way.

368 Q. Was it you who calculated those figures?

A. I would have yes, because that's the only way in which they had to be put together in the format in which you see them today.

369 Q. And you estimated by the end of year four Century would have had 25 percent of the market share.

A. That, on the basis of the advertising market as it was forecast and the revenues of that level. Essentially that's what their market share would have been.

370 Q. But you have said at the beginning of your evidence one of the most significant factors and possibly the determining variable in estimating market share was the programming and programming content?

A. Absolutely.

371 Q. So although these were your predictions, were they predictions that you had great confidence in?

A. They were predictions that were made on the basis of the programming, the rate card and input from the likes of Wilson Hartnell as to what was reasonable to charge if you went with such a programming strategy. That was the content verification, if you want to call it that, into the rate card and so on, because clearly you couldn't -- you had to have a rate card that would be acceptable and I think you will see references to rate cards and so on in the body of the IRTC document itself.

372 Q. But as you have said in the beginning of your evidence, regardless of the value of your rate card, it makes no difference if you are giving advertising away for free, if your programming isn't there and the audience aren't following?

A. You will see there were extent I have programming notes in the IRTC application as well on the back of which it was hoped these numbers would be achieved. That's all one could say because until you got on air you couldn't -- you couldn't assess in reality. A drivetime programme might be spectacularly successful and then again it may be a morning programme, so you didn't know. All you could engage were programming experts to devise a schedule that would be attractive to an audience. That's what was in that document, as I recall.

373 Q. Again at page 5797, if we have a look at the transmission charges, he wee is that the 1990 they are 160,000 in 1991, 240,'92, 320, '93 375,' 94, 375, can I ask you, where did you obtain that breakdown of 160, 240, 320 and then eventually coming to 375?

A. I can only assume that's tied to coverage aspect. I think

that's referred to the body of the IRTC application as well
and a stepped coverage.

374 Q. It related to that?

A. I think so, yes.

375 Q. Eventually, on the 11th January and this was the day before
the presentation to the IRTC, we know that agreement was
reached between the Department of Communications and RTE as
to charges that were to be levied in relation to the
transmission facilities that were to be provided. Could I
ask you to turn to Page 5179 please. This is at the green
tab, the next tab. Now, we know that these documents were
faxed to Mr. Hills on the 13th January. Could I ask you
did you ever see these figures?

A. No, certainly not that close to the IRTC application, as
far as I recall the IRTC application went ahead --

376 Q. We don't actually know the precise date at which -- I think
it was Mr. Oliver Barry who faxed them to Mr. Hills?

A. What date was this again?

377 Q. These were faxed to Mr. Hills on the 13th January 1989.

A. Right.

378 Q. This --

A. Sorry, that's after the IRTC submission.

379 Q. That's when they were faxed. We don't know when Mr. Barry
first obtained these?

A. I would have no knowledge of that.

380 Q. But you didn't see them?

A. I don't recall them, no.

381 Q. If you had seen these figures of 492 being the annual
charge for FM figures and the 112 being the annual charge
for AM facilities for Dublin and Cork and the phasing in

for FM that's on the following page. If you had seen those figures, do you think it may have had any bearing to the presentation made to the IRTC?

A. I would have thought that if those figures were to be signed to be agreeable to the Century promoters, they would have had to disclosed to the IRTC at that point in time.

Again I am not aware of the figures, so I can't say.

382 Q. These were agreed between the Department.

A. I don't deny that. But the extrapolation back out to Century, I have no information on that at all. This doesn't ring a bell so late before the presentation. I wasn't aware of it at all.

383 Q. Can I ask you what was your contribution on the day of the hearing?

A. There was no contribution by any of the advisers, as I recall on the day. The format was very strictly the promoters only who had were to make any statements or reply to any questions of the IRTC and the only I thing I recall, apart from that was the tape you referred to earlier on. No advisers, as far as I know, spoke at all on that date.

384 Q. You say that was the format. Was that agreed before you went in?

A. Yes, there was a rehearsal before that.

385 Q. And none of the promoters were to speak?

A. No, none of the advisers were to speak.

386 Q. Sorry, none of the advisers were to speak and the rehearsal, where was that held?

A. I think in the Shelbourne Hotel.

387 Q. Was that on the same day?

A. No, it was a few days earlier.

388 Q. A few days earlier on?

A. Yeah. I think if I remember rightly the IRTC hearing was held in the morning.

389 Q. Yes, I think it was 11.30 in the morning when Century made their presentation?

A. I don't know. As I said, certainly the rehearsal was several days earlier. How many days earlier, I can't say.

390 Q. And was it agreed during the course of that discussion --

A. Agreed --

391 Q. That had --

A. Agreed would be too strong a word. Instruction from the promoters were to be that the only speakers had to be themselves.

392 Q. The instruction from the promoters was that the only speakers were to be themselves?

A. Exactly.

393 Q. And what if the Chairman of the Commission said, "Mr. Griffin, tell me about the transmission charges, seeing as such weight has been put in the submission document"?

A. I can't answer that is the honest answer. My understanding is that all questions were to be dealt with by the promoters, no more and no less and we were not to have any input at that level.

394 Q. I see. In relation to --

A. I remember distinctly because we were all lined up and yet you know, there was no contribution to be made by us which is a bit unusual given the format that was adopted of a single long table, as I recall and yet nobody speaks.

395 Q. In relation to the transmission charges, did you know

whether or not they were going to be discussed at the presentation?

A. I had no idea of what format the presentation would take or what questions were likely to be asked. I didn't know is the honest answer. And I certainly had no knowledge that you know, you ask what happened, what would happen if I had been asked questions. I couldn't answer that is the honest answer. Not now. It was a de novo situation for us all.

396 Q. Could I ask you to have a look at page 302 please and this is a letter dated 17th February 1989. It's on the -- just behind the pink tab. And it's a letter from Mr. Oliver Barry and Mr. James Stafford to Mr. Justice Henchy. The attachment to that document which is on the following page gives a breakdown of the €375,000.

A. Yes.

397 Q. Did you ever see that breakdown?

A. I don't recall. The correspondence in '89 talks about going on transmission. I wouldn't have much input into that at that stage.

398 Q. Can you recall a breakdown of the 375 being shown to you at any stage?

A. I can't is the answer. I see this page now, but it doesn't have any sort of framework for me to be frank with you now.

399 Q. Well this is, as I said, in February, the 17th February.

A. It wouldn't be inconsistent with what the input from Mr. Hills prior to that, so but the breakdown, I just don't have a shape in my head.

400 Q. Well also on the 20th February Mr. Crowley writes to Mr.

Justice Henchy. That's on the next page in your- actually at page 34. And again, there is another breakdown of the 375 but as Mr. O'Brien from RTE has pointed out to us, on the 17th February, the breakdown for the 375 is a breakdown for FM services only.

A. Right.

401 Q. Whereas exactly the same figures are provided in the document of the 20th February, but these are for FM and AM services.

A. I would have had no input into that.

402 Q. You would have had no input into that?

A. No. I think I met Mr. Crowley once at one stage and that's the only connection I have had with him in all of this process.

403 Q. Do you remember any discussion as between FM and AM?

A. No.

404 Q. If I can bring you on then to the yellow tab in your folder and this is in relation to accounts kept by Griffin & Company. Can you tell me after the submission to the IRTC and the presentation to the IRTC, did you remain on as an adviser to Century?

A. The role changed. Quinlan Ryan dissolved in late April 1989 I think it was and prior to that, the impetus was very much on Century putting its own management team together. The role was very much, as I say, to say "there is the IRTC application and explain the model that went on". Subsequent to that it was a question of bookkeeping and providing the rudiments of a record system in order to provide, as you see here, monthly reports until such time as the Financial Director came on board and was fully on

board and could take over this function in their own department. It was as basic as that. The other area of work we would have done would have been to advise people coming back say from the UK to take up employment with Century, as to the Irish tax system and so on and also to review contracts for employment and so on.

405 Q. Yes, I think there is quite a considerable amount of documentation in relation to advice provided in relation to contracts.

A. Yeah, there is no -- that's all I can recall to be frank with you.

406 Q. At that stage you were operating as Griffin & Company?

A. Yes, we had -- the three of us had gone our separate ways and for, I would say, convenience of Century this followed myself. But as I say, the element of input at that stage was quite low, so it was just for consistency and safe keeping of records more than anything else.

407 Q. And you were the main bookkeeper, were you, --

A. My staff provided bookkeeping services.

408 Q. Your staff of course, were the main bookkeepers, would have controlled the cheque books or the bank accounts?

A. No, no, no.

409 Q. Would you have had held them?

A. No.

410 Q. Where were these held?

A. My recollection is they were held in Century's own offices. I don't recall anybody ever signing cheques other than the promoters themselves. It wasn't that there was that level of tight control internally. It wasn't as if -- we have had other clients where we would have

retained cheques against payments of credits. Nothing like that happened here. It was very much a self contained structure within Century. We were very much on the outside of it looking in and simply reporting on a monthly basis as to what happened in terms of payments and receipts and so on.

411 Q. Was it your view right from the beginning of this project that the promoters had a tight control over --

A. Absolutely. Absolutely.

412 Q. And were very "hands on" and involved, is that the case?

A. Absolutely, no doubt in the world about it.

413 Q. If we have a look at page 5593 please. This is a letter from yourself to Ms. Noreen Hynes on the 11th August 1989. I think at this stage you were handing over the bookkeeping --

A. Yes, I think Noreen would have been fairly ensconced at that stage, so this was part of the final reporting -- I think May, June and July were the three accounts periods referred to here. And that was then we were out of the picture after that.

414 Q. Well, if I can take you down to a matter you have raised in this letter. "Please note that I have included under current assets a suspense item in the amount of 26,250 pounds. This represents cheque number 5 which emanated from Oliver Barry's office, Patricia from Oliver Barry's office has informed me these he will speak to you directly in relation to this matter. Prior to that, on the 28th July 1989, page 5999". Again you write to Ms. Noreen Hynes and you are enclosing the draft management to accounts for the month ended 30th June 1989 and you say, "Please note

that I have included under current assets a suspense item in the amount of 26,250 pounds. This represents cheque number 5 which emanated from Oliver Barry's office. Patricia from Oliver Barry's office is making inquiries in relation to this." It appears that you had raised queries in relation to this figure?

A. It was a cheque that was written in the amount of 26,250 and we didn't know what it was for. Hence it was treated as a suspense item until clarification was given by Oliver Barry. As it happens that clarification, if it was given, was never given to ourselves.

415 Q. It was never given to yourselves?

A. No. And that's why we drew attention, Noreen Hynes attention to it, I think in the August letter you will see that Oliver was undertaking to speak with her directly in the matter.

416 Q. Well, if I can refer you to page 6009.

A. Yes.

417 Q. This is, I think it may be a cheque payments journal, is it?

A. It looks like that.

418 Q. And --

A. It's a spreadsheet of opening balances and then payments and so on, yes.

419 Q. And line 5 down we have suspense account 26,250.

A. Yes, that's an occupying balance at that point in time coming from June.

420 Q. Can you tell me was that your handwriting or the handwriting or somebody in your office?

A. Somebody in my office. It's not my handwriting.

421 Q. In relation to that 26,250, were you ever given any explanations as all?

A. No, no.

422 Q. But you had raised queries in relation to it?

A. Yes, it was a significant payment. If you look at the -- sorry if you look at the management account, you will see that most big items were identified and this was a large item and it wasn't identifiable other than as a large item. Everything else in payments made, you know, the backup notes I referred you to, would indicate clearly you know when we knew about something, we said what it was. This was something that we didn't know what it was. I had to draw Noreen Hynes' attention to it as a matter of course.

423 Q. Apart from Ms. Noreen Hynes. What queries did you raise in relation to it?

A. We had no queries to raise. We would have asked what it was for. The first letter, you will see, came from Oliver Barry's. It's his signature on the cheque which I see from her file. The question is what was it for? The first letter indicates clearly that it's Patricia, whoever Patricia was, presumably someone in his office was to find out for us. By the time July came along, we still hadn't got an answer and it remained as an open item, effectively. Hence the two letters to Noreen Hynes continuing to draw attention to it in the second letter and clearly you see as you have read it out, that Oliver Barry was to speak to her directly in the matter and that's where it lay when we handed over the files.

CHAIRMAN: We might break there for a very short break.

THE TRIBUNAL WAS ADJOURNED FOR A SHORT TIME AND RESUMED AS
FOLLOWS:

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MS. O' RAW: Mr. Griffin, just before the break we were
discussing the matter of this 26,250. I think you said
you had never been informed the nature of it?

A. No.

424 Q. Have you ever informed the promoters of Century were ever
interested in put nothing a licence for a local radio
station?

A. No.

425 Q. Or anything that have nature?

A. No. No. I would have been surprised to hear that given
the phase 1 assignment we spoke of earlier before lunch.

426 Q. I see. Were you ever informed about any political
contributions?

A. No.

427 Q. To anyone of any nature?

A. No.

428 Q. I see. Could I refer you please to page 5995 and this is
the receipts and payments account?

A. Yes.

429 Q. For month ended 31st July 1989.

A. Yes.

430 Q. First of all, can I ask you, in relation to the preparation
of these accounts, from whom did you receive the majority
of information?

A. It would have come from the company, Noreen's department as

an embryo, but I really can't recall did you.

431 Q. Well prior to Ms. Hynes being put in place?

A. Oliver Barry's office I think would have been provided us with a chequebook or whatever, whatever information was available for invoices and so on and the receipts and payments and so on would have been built up on that basis and any invoices unpaid would have been reflected in accruals and so on. You will see in the working papers behind it, you will see a break out of the computer equipment and that kind of stuff. That would have come from the raw data of the company itself, invoices and so on.

432 Q. Mainly from Mr. Barry's office?

A. I think so, as far as I recall he had really more a business office than Mr. Stafford had. But I really can't be certain.

433 Q. Do you ever recall receiving any information from Mr. Stafford's office?

A. Not that I can recall. I can't swear to it, no. Going through the working papers here as they are, but you can't detect the source of the information here. We have our summaries and that's what we are doing and putting it into proper format that you could understand how much money had been spent and where it had gone. Hence the significance of 26, 250 because it was an item that couldn't be clarified.

434 Q. In relation to that page 5595, under "Receipts", there is, "loan capital 140,334 pounds". It's a slightly odd figure for loan capital -- it's not a round figure. It's not a 25,000 or 100,000 or anything like. Were you ever

given any indication why a figure of that sum was being put into the loan capital?

A. No. Not in the least. At this point in time, if memory serves me right, it was a question of the promoters, namely Stafford and Barry, providing finance to the company to pay its bills and whatever bank overdraft was in place. The capital structure as such of the company would have been complete at that time. As far as I can recall, and therefore a loan capital meant, when they put their share capital structure in place and all that, then it could be converted to shares or repaid and then put back in by way of share capital. It would have been a degree of flexibility to the promoters, but in terms of amounts, I had no input or control over any of that.

435 Q. Or did you ever see the source of the funds, the cheques coming in?

A. I can't recall. All I can see is money in the bank account and it couldn't have come from anyone other than the promoters because there was no sales, revenues at that point in time.

436 Q. So the money would have gone directly into the bank account and you wouldn't have received the cheques to lodge in the bank account?

A. We have no function in that matter no,.

437 Q. You had no function in that matter?

A. No.

438 Q. You weren't given any explanation as to the 148,334?

A. Not in the least no,.

439 Q. Just in relation to one last matter, if you could turn please to the blue tab. This is the Davys information

document, it's dated 22/8/89, page 428. Would I be correct in saying that you received a copy of this?

A. I was surprised last night when I read the documents to see my name at the back in 1990 as referred to as somebody who received. That I have absolutely no recollection of it, good, bad or indifferent. Even though I was well removed at that stage and was not involved in the preparation of that document and I am not referred to in the document, I would have thought that if I read it and received it from just my own perusal alone I would have compared it with the work that was done six or nine months earlier. I was amazed to see that last night. That I had received a copy. I have no recollection good, bad or indifferent.

440 Q. Well, we can see from page 477, the letter from Davys to Mr. Stafford --

A. That's the letter I referred to, but even in the context of the letter, I don't even quite understand.

441 Q. This is in relation to people who were circulated with the document and I think you are one of the names of those --

A. I am, and I knew no other name on the page, so I can't explain it. I can't explain why it was written in 1990 either.

442 Q. So you can't recall receiving?

A. Not in the least, no, because my recollection was that we had no involvement in the document per se. We were not referred to anywhere in the document as I recall, and also, we were at no presentation by Davys or the promoters regarding any share placing, so it's a mystery.

443 Q. Do you remember Davys contacting you?

A. No, not in the least.

444 Q. That's why I say to you I got a surprise when I read Hugh Mc Cutcheon's letter last night. I said in my statement that I didn't recall it at all and I don't to this day.

445 Q. Did Davys contact you about the preparation of that document?

A. No, no.

446 Q. But Davys were, you knew, were preparing such a document?

A. Yes, but I would have picked up from the likes of Noreen Hynes in chat chat when we were handing over something. I had no involvement with Davys and I don't recall being approached by Davys to become an investor or to procure investment in Century. Didn't I say to you the letter from Hugh Mc Cutcheon of Davys is totally out of the blue. And I can't recall even the context of the letter of why I was on the list, given that I had no involvement even in taking up shares.

447 Q. Well, in relation to the financial projections that Davys have in the document. I think they are at page 431.

A. Yes.

448 Q. Would it be fair to say that they appear quite radically different to the projections that were in the submission document?

A. On the basis of last night's review of this file, they certainly are different but I can't say why or how, why they are different, other than they are different. As I say I had no involvement with them, so I have no input to give you.

449 Q. If we look, for example, at the turn over figures and turnover would be mainly advertising revenue, would that be correct?

A. Yes.

450 Q. If we have a look at your 1990 figure, you have 1,910,000 pounds whereas the Davys figures is 5 million pounds and then the 1991 figure you have ú2,900,000 whereas the Davys figure is 5.5 million pounds.

A. Yes.

451 Q. So certainly it appears for, at least advertising, that there seems to be a radical difference between the figures that you projected and the figures that Davys had projected?

A. I agree.

452 Q. You'd agree with that?

A. Yes.

453 Q. Can you -- from just your own personal view, could you give any explanation why you think there would be such a radical difference?

A. I can't. The team to deliver the business plan is Century and who prepared these numbers in the context of this plan were in place. I can only assume they had a different view of the world than myself nine or ten months earlier.

454 Q. They had a different view?

A. Yeah. They were in place, you had a sales director and so on, so clearly they had a view of their business and the work they had done in the previous six or eight months because they are on board from early 1989 as far as I recall. So I just can't say. It was never discussed with me.

455 Q. Just that comparison of the 1990 figures, the Davys figure is more than twice the figure you projected?

A. I accept that, but as I say, I have no -- I had no input

into this and it wasn't discussed with me even by way of comparison, so I can't help at all on that.

456 Q. It wasn't discussed with you by way of comparison?

A. No.

457 Q. You had no input in any nature whatsoever?

A. No. I was very much out of the picture. That's why I say the Hugh Mc Cutcheon letter came as quite a surprise to me last night. A worry to me because you know, failing memory is a bit frightening to see it come at you so sharply. As I say to you, no, and we were not in the picture at that stage.

458 Q. I see. That's all the questions I have for you, Mr.

Griffin. But My Friends may have some other questions if you wouldn't mind staying where you are.

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MR. FOX: I would have some questions, Chairman. But I think Mr. O' Higgins might want --

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MR. O'HIGGINS: I don't know which of us should go first. I presume Mr. Fox should go first.

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CHAIRMAN: I think Mr. Burke should go first -- Mr. Burke's counsel.

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THE WITNESS WAS CROSS-EXAMINED BY MR. FOX AS FOLLOWS:

MR. FOX: Mr. Griffin, I think that you said that there were a number of meetings initially in late 1988 concerning the Century proposals?

A. Yes.

459 Q. To embark on this venture?

A. Yes.

460 Q. You said you mentioned obviously Mr. Barry and Mr. Stafford were involved in those meetings and you mentioned that there were some advisers?

A. Yes.

461 Q. In that context I think that you mentioned Mr. MacNeill, as one of those people you mentioned. You also mentioned Mr. Gay Byrne?

A. Not Mr. Gay Byrne at that point in time.

462 Q. At that point in time?

A. No.

463 Q. But can I ask you now, what was Mr. Gay Byrne's position at that point in time?

A. I don't know. He wasn't involved at that point in time as far as I recall. When I say "advisers", he was never an adviser at that level.

464 Q. But I mean, did he become involved at a later point?

A. No, not that I am aware.

465 Q. But he was involved in Century's plans at some point?

A. Very early on, yes.

466 Q. I think it has been established and I think he said in his own evidence he was a friend of Mr. Barry's?

A. Yes.

467 Q. Am I correct in saying then that he would have been somewhere in the background if not the foreground?

A. He may well have been, I can't say. When I say "advisers", I mean the advisers as listed on the opening pages of the IRTC application where you have a transmission, engineering. You had programming, myself on finances, my firm on finances. So there was a range of advisers listed out. That's what I mean by advisers at that stage. Mr. Byrne would have had no input or involvement whatsoever.

468 Q. Very well. But at the same time, he had some involvement with Mr. Barry. I think he acknowledged that himself?

A. Perhaps.

469 Q. And you would have been aware --

A. Not really, I was never -- if you recall this morning, I had no great dealings with Mr. Byrne. That was one of my other partners who was primary financial adviser so I would have in day to day involvement with Mr. Byrne.

470 Q. I accept that. But I think in response to Tribunal counsel, the Tribunal counsel introduced a phrase of Chinese walls in relation to dealings in your accountancy firm?

A. Yes.

471 Q. And Mr. Byrne was a client I think of Mr. Quinlan, is it?

A. Yes.

472 Q. So in that context, he would have had a certain amount of familiarity?

A. Who, Mr. Quinlan.

473 Q. Mr. Byrne, about what was going on?

A. Perhaps. The whole idea was so as to ensure that the work

that I was doing was self contained as possible but we were a small firm, so bear that in mind.

474 Q. In any event, Mr. MacNeill was an official adviser?

A. He was on the list of the IRTC advisers.

475 Q. He would have been at some, perhaps all of these meetings?

A. He was certainly at some meetings because, there had to be input on the programming side to, if you read the IRTC submission, you will find good detail about the programming type, programming methodology that was in mind and in the application and Mr. MacNeill would have been helpful, because that was his forte.

476 Q. He would have been at meetings in your office and perhaps he would have been --

A. Not so much in my office. I don't recall a meeting in my office. I recall meeting him in Mr. Stafford's office.

477 Q. Perhaps I will rephrase that, that he was at meetings where you were involved?

A. Absolutely.

478 Q. I think that following on from that when you were talking about these meetings, you mentioned then at a later point when you were talking about these meetings and other meetings involving Mr. Stafford and Mr. Barry and perhaps others, you mention that there was a high degree of mistrust of the RTE figures, isn't that correct?

A. Yes.

479 Q. Now, can I ask you, did mistrust of the RTE position, did it permeate or become an issue at these meetings involving --

A. I don't understand your question, sorry.

480 Q. Was it an issue, it was a live issue at these meetings

involving Mr. Stafford, Mr. Barry and the advisers of course of Century?

A. I can't recall who the other advisers were there at that point in time, but there have a live issue. It was the key line in the financial projections so therefore it had to be discussed and talked about and a figure had to be settled upon in order to complete the application.

481 Q. And of course, Mr. MacNeill would have been involved to some extent?

A. I don't recall Mr. MacNeill having any involvement in that at all. He doesn't spring to mind at all in relation to transmission.

482 Q. Nonetheless, I was an adviser in the background?

A. In the later days of the application, Uncle Tom Cobbler and all his advisers were around. You were trying to pull together a very comprehensive document so you couldn't have it on a piecemeal basis, where everybody came in and out of the room, the equivalent of Lannigan's Ball. So I think to that extent he may have been there, but I have no recollection of making any contribution to the discussion.

483 Q. But am I correct in saying speaking of my own knowledge at this stage, I think a matter of public record, Mr. MacNeill had a long history of involvement with RTE?

A. I don't know.

484 Q. I don't know about RTE at that time. I think he had retired, I think he had a long association with RTE?

A. I can't say.

485 Q. And I think that's perhaps a matter of fact. But obviously at that particular point in time he may have been retired or whatever?

A. Well he is down as an independent consultant, as far as I can recall.

486 Q. He was a consultant to Century?

A. If you look at the IRTC application I think you will find him listed there quite clearly in his own name. I don't think there is a company name attached.

487 Q. If I put it like this, considering that Mr. MacNeill had a long history of involvement with RTE and --

A. Sorry, if I may you will see him listed as adviser/consultant. He is under the heading of "programming".

488 Q. Considering the long history of involvement of Mr. MacNeill with RTE and obviously he had then come on board, he was not consultant, he was involved in the Century project and also considering the indepth knowledge he would have had over that period of time of RTE's affairs and secondly considering the position of Mr. Gay Byrne vis-a-vis Mr. Barry and the knowledge he would have had about RTE and obviously Gay Byrne would be an acknowledged expert on RTE and he is one of the main names from RTE over the years, but when one considers that position vis-a-vis the adviser Mr. MacNeill and Mr. Byrne indeed and then considering what you have outlined in your own evidence, that there was this mistrust of RTE's figures, would I be right in saying that mistrust, that would have become Century's official stance at some point in time? I mean they had a mistrust -- that was their position towards RTE, isn't that right?

A. The position of Century was that they didn't agree with RTE figures and their technical adviser was at the bulwark of that. There is no connection between that and introducing

Mr. Byrne and Mr. MacNeill into the discussion in my view.

489 Q. Well, am I not right in saying that nonetheless Mr. Byrne and Mr. MacNeill had an involvement with Century and it's a matter of public record. It's a matter of fact they had a long association with RTE?

A. You are quite right. But I must point out to you in the relation to transmission costs and so on, I have no recollection of either gentlemen being involved. The man who stands out most in my mind is Mr. Hills.

490 Q. In relation to this issue?

A. Absolutely.

491 Q. Nonetheless isn't it fair to say that Mr. Barry particularly and Mr. Stafford would have had access to other knowledge concerning RTE, considering the position of Mr. MacNeill and Mr. Byrne?

A. Perhaps.

492 Q. They had access to expert knowledge concerning RTE?

A. I can't answer that. I didn't move in the Barry/ Stafford circle. I still don't move in their circles. I have no idea who they would talk to --

493 Q. You have no recollection?

A. Not in the least.

494 Q. I am making certain deductions here which are quite apparent, I have to say. Considering then that at some point in time, considering the background of the people who were involved in the Century project, and considering your evidence is that there was a mistrust of the RTE position in relation to figures, I mean that was your own evidence, do you think then there is any reason to suppose that the Department of Communications or the Minister of the day

should have had any reason to trust the RTE position any greater than the Century people themselves who had associations with certain individuals --

MS. O' RAW: I am sorry Sir --

A. I really can't answer that.

MS. O' RAW: I don't think that's a suitable question for this witness.

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MR. FOX: I have to suggest, I have to suggest, Chairman nonetheless, that Mr. Burke's position as Minister and the Department of Communications in dealing with this issue, there is no reason to suppose that (A), they should have had any greater level of trust vis-a-vis RTE's figures than the people involved in the Century position itself, than the Century project itself? .

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CHAIRMAN: That's not a proposition that this witness can adjudicate on. I am disallowing the question.

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MR. FOX: I am making it as a suggestion Chairman. I am not necessarily making it as a question.

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CHAIRMAN: We are asking questions at the moment. Not suggestions.

MR. FOX: Very well. Thank you very much, Mr. Griffin.

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THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O' HIGGINS.

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MR. O'HIGGINS: Just one or two questions, Mr. Griffin.

Perhaps I should just ask you, first of all, have you any independent knowledge of any matter which would allow you to comment usefully on the issue of transmission costs?

A. Sorry.

495 Q. Have you any independent knowledge of any matter which would allow you to comment usefully on the issue of transmission costs?

A. No, all I can relate to you is the feeling of the promoters and their advisers prior to the application. That's all I have said.

496 Q. And whether that was right or wrong or is right or wrong, is something of which you can offer no comment either way, is that correct?

A. For quite a while today you know, I have been convinced that an engineer knew nothing about numbers. In other words, I know nothing about engineering. I couldn't comment on that.

497 Q. You may feel safe because I know nothing about either?

A. Happy man --

498 Q. Well, if I could just ask you perhaps about one matter to which you may be able to apply your expertise. It's the comment which was recited, I am not sure which particular document was produced but it came up on several occasions, that Mr. Hills felt that 20-year finance should be given rather than finance over a much shorter period and I don't want to go into the implications and suggested that should be at a rate of 7 percent as it was suggested RTE had offered it. If I told you and I think this is the evidence, that the DIBOR rate at the time varied between 8

and a half and 9 percent, can you, as an accountant comment on the likelihood of a 7 percent rate being available for 20-year finance or 14 year finance to an organisation such as Century?

A. I can't. All I can -- DIBOR is a spot rate if I recall.

There is long-term finance rates as well which would reflect variation in interest rates. I don't have a table of rates twelve years ago.

499 Q. Would it be fair to say that in general, the longer term for which you are borrowing at a fixed rate, the higher the interest rate is likely to be?

A. It's the devil's market that makes the interest rates and I venture to suggest when you are speaking of long term interest rates I would not be an expert on how to play the interest market. It's a call you have to make on fixing an interest rate and I would have thought that was subject of negotiation.

500 Q. Mr. Griffin, do you think that in 1989 or late 1988 it is likely that 7 percent finance would have been available on any basis short or long-term?

A. I have no recollection of financial rates at that point in time.

501 Q. So you are not in a position to comment on it?

A. Not today, no.

502 Q. Are you in a position to comment as to whether borrowing at 1 and a half to 2 percent under the DIBOR rate for a commercial event prize is likely to have been achievable?

A. I can't say. I can only say that in relation to RTE there were several comment parts so I can't focus on one aspect of a costing structure.

503 Q. If you could borrow at 2 percent under the DIBOR rate, wouldn't you be better off getting out of law, accountancy or broadcasting and borrowing from one bank and making 2 percent on what you borrowed by lending it to another one?

A. People have made money on that premise at the time, in independent -- jurisdictions.

504 Q. Are you suggesting this was done extensively in 1989 at 7 percent? Perhaps if you can't comment Mr. Griffin, I won't put it further.

A. I can't comment.

505 Q. Very good. I wonder if you could then -- I think you commented on the fact that \$375,000 was a figure which might operate as one from which negotiation might take place, is that so?

A. If you took a commercial view and wanted to make progress rapidly, then clearly you couldn't stay -- if you wanted to stay at your 375 figure, you were free to do so. But commercial constraints would suggest that if a reasonable proposal had been put together you'd avail of it, if possible.

506 Q. Did you anticipate negotiation, Mr. Griffin?

A. I had no involvement at all in that side of Century's affairs, so I had no feeling for you know, how, for the personality and how they might be resolved and whether the level of goodwill that might be needed to bridge the gap. That's all I'd say to you on that.

507 Q. In fact, it appears that no negotiation ever took place.

Is that a matter of which you are aware of?

A. Not in the least. I was out of that entirely.

508 Q. Just the last thing I'd like to ask you about is page 853,

if we could have that please. That, you will see, Mr. Griffin, is communication from Mr. Hills, sorry, yes, to Century Communications and Mr. Stafford and it's from Mr. Hills written on the 13th January 1989 which, I think, was the day after the oral presentation in the National Concert Hall, is that correct?

A. I presume, if you have the date of the IRTC hearing, fine. I don't have it offhand.

509 Q. And he is talking about a meeting which he had with IBACS, which was the Independent Broadcasting Association consultancy on that afternoon and he is telling Mr. Stafford about the nature of that meeting and about a brief which he had given them to develop the costs of the transmission issue and the breakdown of that issue. Can you see that?

A. I do, paragraph 3?

510 Q. Yes.

A. Yes.

511 Q. Now, can I draw your attention to paragraph 3.D, "ensure that the bottom line is of the order of 375,000", which was the figure in the business plan.

A. Yes.

512 Q. Would you regard that as a conventional manner in which to find out what should be in the business plan in the first place?

A. I don't understand your question, Sir.

513 Q. Does it appear that what the consultants were anxious to do was to find a justification for a figure which anticipated what the consultants had to come up with?

A. I don't agree. I think 375 precedes this fax, as far as I

recall. It may well be the brief was that 375 was the number and that was it but again, if this is negotiation, it's a robust stance to take.

514 Q. I am sorry, Mr. Griffin, maybe we are at cross purposes but this is Century's own advisers speaking to Century?

A. Yes and the brief they are working on is to agree a composite arrangement and 375 is what it cost.

515 Q. In other words, can I suggest to you that irrespective of the advice which might otherwise be given, the requirement is that a figure of 375 be produced?

A. No. I think 375 is what Century were prepared to pay.

516 Q. And on that basis, an argument had to be made to support it, is that correct?

A. Presumably so.

517 Q. Thanks very much, Mr. Griffin.

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CHAIRMAN: Thank you Mr. Griffin.

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THE WITNESS THEN WITHDREW.

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MS. DILLON: The next witness this afternoon, Sir, is Mr. John Mulhearn. He is represented by Hugh Mohan, Senior Counsel, instructed by Mr. Dominic O' Dowd, Reddy Charlton Mc Knight. They are seeking representation.

It's anticipated his evidence, in direct, will take approximately an hour. Subject then to cross-examination, Sir, I don't know if you are prepared to sit, or what the situation is.

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CHAIRMAN: I think we should start him. I don't intend to go much beyond four o' clock.

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MR. MOHAN: Obviously --

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CHAIRMAN: Any progress is good progress. That's the answer to that.

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MR. MOHAN: We would like obviously to get the testimony over and done with as soon as possible but subject to the usual constraints. I should say I am looking for limited representation and I am leading Mr. Gerry Charlton, my Junior.

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CHAIRMAN: On what basis do you say you are entitled, I am not being difficult about this, I am just knowing the premise on which you seek representation? Aren't you a witness of facts?

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MR. MOHAN: I don't think it's as simple as that in the sense that we have over the past while been certainly dealing with my opposite number in the Tribunal in relation to those issues in relation to the furnishing of documents and indeed in relation to various matters that arise, for example, in discussing today what we believe are relevant to the Terms of Reference and what aren't relevant to the Terms of Reference. I can assure you my client would much rather not be here giving evidence.

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CHAIRMAN: All right, I will grant you limited

representation.

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JOHN MULHEARN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MS. DILLON:

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MS. DILLON: Good afternoon, Mr. Mulhearn. You are the major shareholder and a director of a company called Clayton Love Limited, is that correct -- Clayton Love Distribution Limited?

A. That's correct.

518 Q. I think that you, together with Mr. Oliver Barry and Mr. James Stafford became an investor in a company called Century Communications in or around 1989?

A. That's correct.

519 Q. And I think it was envisaged that at that stage you would be one third, one third, one third investors at that point in time?

A. On some basis, yes.

520 Q. On some basis. We'll come back to the basis on which that was agreed in a little while. Can we go back in time, Mr. Mulhearn and can you indicate to the Sole Member of the Tribunal, who it was and when it was that the idea of this investment or getting involved in radio franchising first arose?

A. It arose on the 8.30 train to Cork reading in the paper that there were going to be commercial licences and it was just that Mr. Barry happened to be on the train and we talked about it. That was the first time it was ever discussed.

521 Q. So the first person you discussed it with was Mr. Barry is that correct?

A. Yes.

522 Q. Can you tell us, approximately, what year that was, when that was?

A. It must have been '88.

523 Q. Is it possible that it might have been earlier than '88?

A. I doubt it. It might have been January or February of '88.

524 Q. Were you involved at all with Mr. Griffin the previous witness who gave evidence here this afternoon?

A. I attended one meeting in Mr. Griffin's office.

525 Q. Do you remember when that was?

A. I would think that was in '88 also.

526 Q. Do you know any reason why Mr. Griffin's services might have been retained in late 1987?

A. I mean, you are talking about sectors of times I couldn't fit into -- it might have been late '87 we met.

527 Q. After Mr. Barry and yourself had had this discussion on the train, did that concern national or local radio?

A. I don't think we were -- we specifically -- we just talked about the possibility that there should be competition in the radio area and a State enterprise shouldn't have a monopoly.

528 Q. And subsequently somebody contacted Mr. Stafford?

A. Yes, I introduced Mr. Barry to Mr. Stafford.

529 Q. So you had known both Mr. Barry and Mr. Stafford for a long period of time?

A. A long time.

530 Q. Was it you then that put the triumvirate together in relation to this project?

A. Well, we three met and discussed it and Mr. Barry and Mr. Stafford liked the sound of the possibility and they took

up the baton and they ran with it.

531 Q. And was it Mr. Barry's view, as expressed to you in those early conversations, that there should not be a State monopoly in radio and that there should be competition?

A. I would think so, yes.

532 Q. And was he firmly of that view?

A. Yes, because he was no longer on the RTE Authority at that stage.

533 Q. When you first decided to get involved with the three of you, was your involvement in relation to the national radio or was it in relation to local radio?

A. I think it was in relation to a national licence.

534 Q. And did you set the wheels in motion then in relation to obtaining experts, getting advice, and all of the rest of that?

A. Correct.

535 Q. Did you do anything about the local situation, about a local licence?

A. Later in the discussions, somebody addressed the possibility that we mightn't get the national licence and that maybe we should have a fallback position and have an interest in a local licence.

536 Q. Well, who was the person who came to the view that you should have a fallback position and should apply for a local licence?

A. I am not sure.

537 Q. Mr. Stafford said that Mr. Barry and yourself came to him with the idea about the local licence?

A. Well, he may very well be right.

538 Q. And that you had some work or preparation done in relation

to applying for the local licence at the time that you came to him?

A. I couldn't are sure of that, but he may be right.

539 Q. And when you say it was "a fallback position". Do I understand that you were running two simultaneous applications before the IRTC, one for the national licence and one for the local licence?

A. Yes.

540 Q. And was the interest of Mr. Mulhearn, Mr. Stafford and Mr. Barry disclosed in relation to the application for the local licence?

A. I don't believe it was.

541 Q. And can you explain to the Sole Member why that was so?

A. Because it was probably would be deemed to be impertinent.

542 Q. Impertinent?

A. Mmm.

543 Q. I am afraid I don't understand you, Mr. Mulhearn. How or in what circumstances could the disclosure of the persons who were behind the company applying for the local licence be deemed to be impertinent?

A. The matter at the time was very delicate in terms of the people who had an interest in being involved in broadcasting and if you were trying to look for two bites of the cherry, that mightn't be possible and if you could have a small bite of a successful cherry, you might be better off.

544 Q. Were you aware of the provisions or the requirements of the IRTC, that persons who were investing or who were investors in companies who were applying for licences had to be disclosed and shareholdings had to be disclosed to the

IRTC?

A. I was aware of that subsequently, yes.

545 Q. And at this time, had you retained or were there retained on behalf of Century Communications, solicitors and other legal advisers?

A. I am sure there were, yes.

546 Q. And in preparing the application for the local licence, was full disclosure made?

A. For the local licence?

547 Q. Yes.

A. I never saw the application for the local licence.

548 Q. And in relation to the application for the national licence, was full disclosure made?

A. I believe it was, in as much as I wasn't identified in it because Mr. Stafford and Mr. Barry wanted to vote all the shares.

549 Q. They wanted to vote all the shares?

A. All the shares.

550 Q. But the agreement between, as I understand your evidence, between Mr. Mulhearn, Mr. Barry, and Mr. Stafford was that you were going to have a one third interest in whatever the venture was?

A. Correct.

551 Q. So would it be fair to say then that as and of the date of the application and the public hearing, you were a one third investor in Century Communications?

A. I had an investment equal to either of theirs.

552 Q. And even though you were prepared and happy for Mr. Barry and Mr. Stafford to vote your shareholding and to run the company in the manner they saw fit, insofar as the

shareholding was concerned, you had a one third interest?

A. Whatever share they ended up with individually down the line, and we are talking about five, ten years from that point, I was going to have an equal share with the two of them.

553 Q. And was your shareholding or your investment in Century Communications disclosed to the IRTC?

A. I don't believe it was.

554 Q. And can you explain to the Sole Member of the Tribunal why it was and who it was that made the decision that that disclosure would not be made?

A. You would have to ask Mr. Stafford that.

555 Q. Did you make the decision?

A. No.

556 Q. Were you consulted about this?

A. I was told.

557 Q. By?

A. By Mr. Stafford.

558 Q. And what were you told by Mr. Stafford?

A. He thought it would be necessary for he and Oliver to have a position of power and vote all the shares. I was quite happy with that I was dealing with two friends at the time.

559 Q. But in the context of the requirement for disclosure to the IRTC, Mr. Mulhearn, was this matter ever adverted to by either Mr. Barry or Mr. Stafford?

A. I wasn't aware of any condition prior to the submission being made. I wasn't involved on a day to day basis. I didn't want to be involved. I didn't have time to be involved.

560 Q. You did attend one meeting in the solicitor's office,

apparently, on the 14th February 1989?

A. So they say.

561 Q. And you have, apparently, I think seen the documentation that indicates you were present?

A. I have absolutely no recollection of ever being in Arthur Cox's office.

562 Q. Are you saying that the note is incorrect, that indicates that you were there?

A. I am not sure.

563 Q. We'll have document, page 2300 please. And if we could just very briefly look at 2301, which is the following page and you will see that this is a hand written memorandum, dated 14th February 1989 and if we go back to 2300 which appears to be a list of persons who were at the meeting.

A. Mmm M.

564 Q. And Mr. Stafford, Mr. Barry, Mr. Crowley, Mr. John Mulhearn, Terry Wogan, Mary Finan, I think Ms. Finan was a member of Wilson Hartnell, the PR agency?

A. Well I would have thought that if I was ever in Cox's office and was present with those luminaries, that I might remember it, but I have no recollection of it whatsoever.

565 Q. And Mr. Fanning and Mr. Duggan?

A. I don't ever believe that I met them.

566 Q. So do you think that that's a mistake --

A. I may well have been there. I may have been asked to be there for some particular reason, adding weight to some argument, I don't know.

567 Q. You were aware that Cox's were the solicitors to Century Communications?

A. I thought Enda Marren --

568 Q. Also Mr. Marren was also the solicitor to Century Communications?

A. Mm-hmm M.

569 Q. And this advice was available to you obviously any time that you wanted it if you needed it had?

A. If you wanted to be involved. If you had wanted to be involved you could have been involved 24 hours a day. I didn't want to be involved. I didn't have time to be involved.

570 Q. What reason did Mr. Stafford give you for trying to keep your involvement in Century Communications secret?

A. The argument was that he needed to be in a position in terms of the institutional shareholders etc., that he and Oliver were voting a major share.

571 Q. A major share being 51 percent?

A. I think about that.

572 Q. So that Mr. Stafford's concern was retaining control?

A. No. I think not initially.

573 Q. I am trying to --

A. He wanted as many major investors as he could get, but he wanted to be in a position that if there were players that it would be advantageous to involve that he had a big enough shareholding to split with them.

574 Q. At 51 percent, -- with 51 percent of the company held between yourself, Mr. Barry and Mr. Stafford, there was control?

A. At the outset, that's correct.

575 Q. Right, so on the basis that a simple agreement between the three of you not to dilute your joint shareholding below 51 percent would have kept control?

A. No, I think Mr. Stafford had it in mind that if there were enough investors, our share would reduce.

576 Q. This is institutional investors?

A. But he wanted to be in a position to deal with that.

577 Q. And all that -- and that could be dealt with by not reducing the shareholding held by Mr. Barry Mr. Mulhearn and Mr. Stafford under 51 percent?

A. It could be reduced as long as we ended up with the same equal shares, that's what he was trying to achieve.

578 Q. And Mr. Stafford's desire to keep control of the company, how did that -- how was that achieved by keeping your shareholding secret?

A. I don't believe it was. He wanted to -- we are dealing with a control minded person here. He liked to control and to drive things his way and that's what he asked for and I was happy to concede that.

579 Q. But an application was being made on behalf of Century Communications to the IRTC for the national licence, one of the requirements for which was that the investors or the financial backers of Century Communications would be disclosed to the IRTC.

A. I have said that previously and I explained to you that that was down to him, whatever he wanted to do. I wasn't aware of that being a precondition, I wasn't involved in the day to day dealings with the thing and I didn't wish to be.

580 Q. And you were happy or were you agreeable that your involvement or your investment in Century Communications and your interest in the national franchise would be kept secret?

A. It didn't make any difference to me. If it was a success, that was fine. If it was a failure, you wouldn't want to be involved in it.

581 Q. Did you impose any conditions to an agreement with either Mr. Barry or Mr. Stafford that you would be kept out of it?

A. No.

582 Q. So you would have no difficulty with it being disclosed on a confidential basis to the IRTC?

A. It wouldn't have made any difference to me.

583 Q. Or it being disclosed to your bankers?

A. That wouldn't have made any difference either.

584 Q. Or the bankers of Century Communications?

A. That didn't concern them and it didn't concern me.

585 Q. Well, it might have been a matter that might have been of concern to Century Communications bankers, that you were an investor?

A. Well, if I read the previous evidence, the evidence given by the banks witnesses here, it didn't seem to concern them. All they were concerned about was getting the money.

586 Q. And in fact, I think Mr. Barry did, at a much later stage, indicate to the Bank of Ireland that you were a shareholder or a director of Century Communications but you were to be described as "A.N. Other" and your involvement was to be kept confidential?

A. You'd have to ask him about that.

587 Q. You have no knowledge of that?

A. No.

588 Q. Insofar as your investment, your financial investment in Century Communications was concerned, you made an

investment in 1989 and a subsequent investment in 1990? .

A. Correct.

589 Q. And the investment in 1989, I think, you have seen the bank statements from which the two withdrawals were made in 1989?

A. You showed me those on a previous occasion.

590 Q. Could we have please, page 5627. That shows a withdrawal of ú66,666.67, a cheque of ú66,666.67, drawn on a bank account of the 14th April 1989. Does that represent one of the investments you made in 1989 --

A. The first portion of an investment. Yes.

591 Q. If we could have page 5268 please. You will see there a cheque in the sum of ú233,333.33?

A. That's correct.

592 Q. And taken together. That represents an investment of ú300,000.

A. Correct.

593 Q. Was it your understanding that Mr. Barry and Mr. Stafford were also putting in ú300,000?

A. I assumed so.

594 Q. Well, was that your understanding that you were all putting in the same amount?

A. What would you think?

595 Q. I don't know, Mr. Mulhearn. I wasn't there.

A. I assumed that they were.

596 Q. All right. Could we have document 99, page 99. This is a document, Mr. Mulhearn, that was prepared on the 8th May 10990, it shows the 1989 investment in Century Communications. The second figure dated 31st March 1989, apparently represents your first investment. But you will

note from the document we have just looked at that the cheque for 66,666.67 was written on the 14th April.

A. Mm-hmm M.

597 Q. So was it the position that Mr. Barry or Mr. Stafford was putting in funds for you and you were reimbursing them?

A. They may have been done.

598 Q. Well, what exactly was your arrangement, Mr. Mulhearn, in relation to this?

A. When they required money from me, they asked for it and I sent it to them.

599 Q. And did you have any reconciliation or accounting or any sorting out of this?

A. I was dealing with two friends. I assumed that my interests would be looked after.

600 Q. By Mr. Barry and Mr. Stafford?

A. Correct.

601 Q. The second investment that's represented, appears to be represented by you is the investment there of the 18th August 1989, in the sum of ú233,333 and that was credited to the share capital account of Century Communications on the 18th August and you wrote your cheque on the 22nd August?

A. I didn't produce this. I can't tell you how that comes about.

602 Q. Did you have an arrangement with Mr. Barry or Mr. Stafford to place their funds in the share capital account and you would reimburse them?

A. There was no such discussion and I can't tell you how that document arises or for what purpose it was produced. I can only tell you what I produced. That was the cash on

the days when I was required to do so.

603 Q. And it was your understanding that all parties were paying
ú300,000 at this stage?

A. Correct.

604 Q. Were you aware or did you have any agreement with either
Mr. Stafford or Mr. Barry in relation to the payment of
ú35,000 to Mr. Burke?

A. No.

605 Q. When did you first become aware that such a payment had
been made?

A. Sometime subsequent to the payment.

606 Q. When the payment -- do you know when the payment was, Mr.
Mulhearn?

A. It was in May or June of '89.

607 Q. And how long after that did you become aware?

A. Some considerable time after. I mean, it could have been
months, it could have been weeks.

608 Q. After that, would it be safe to say that by the end of 1989
you were aware that Mr. Burke had been paid ú35,000?

A. Yes.

609 Q. Who told you that Mr. Burke had been paid ú35,000?

A. Mr. Stafford.

610 Q. And you are aware that Mr. Stafford has told this Tribunal
he did not become aware until March of 1991 that ú35,000
had been paid to Mr. Burke?

A. I can't -- I am aware that that's been said.

611 Q. In any event, Mr. Stafford told you that ú35,000 had been
paid to Mr. Burke?

A. Correct.

612 Q. Did he indicate on whose behalf that money had been paid?

A. I think it was assumed that it had been paid on behalf of Century.

613 Q. Was it your understanding, as a result of your conversation at that time with Mr. Stafford, that the €35,000 payment to Mr. Burke was on behalf of Century Communications?

A. That's as I understood it.

614 Q. Did he tell who, in fact, had made the payment?

A. He told me that Mr. Barry had made the payment.

615 Q. Did he indicate to you the form the payment had taken?

A. He may not have done on that occasion, but subsequently I was made aware of it.

616 Q. Mr. Barry, apparently, will tell the Tribunal that there was an agreement in relation to the €35,000 to be paid to Mr. Burke on behalf of Century Communications prior to the money being paid and that you agreed and Mr. Stafford agreed?

A. Well, that is not my recollection.

617 Q. You are saying that you knew of the payment to Mr. Burke prior to the end of 1989 and you were told by Mr. James Stafford?

A. I think so, yes.

618 Q. Did you subsequently discuss the payment with Mr. Barry?

A. I may have made some reference to it. I wouldn't have been very happy about it. But once it was done, it was done, I couldn't change it.

619 Q. Why wouldn't you have been happy about it?

A. Because I wouldn't approve of that size of a political donation.

620 Q. Why?

A. Because I come from a different school.

621 Q. Different school to whom?

A. Mr. Barry.

622 Q. And what school does Mr. Barry come from?

A. He likes politics. He is involved in politics. And he has always been involved in politics of many hues.

623 Q. When you discussed the \$35,000 payment to Mr. Burke of Mr. Barry, did you express that view with him?

A. I am sure I did.

624 Q. And Mr. Barry would have known that you didn't agree with the payment?

A. This was an infant business. In my opinion it couldn't afford that sort of largesse.

625 Q. And insofar as Mr. Stafford was concerned, did Mr. Stafford indicate to you that he had known about the payment prior to it being made?

A. I don't think he had known about it prior to being made but he knew about it sometime, some considerable time before he mentioned it to me.

626 Q. He had told you about the payment prior to the end of 1989?

A. Correct.

627 Q. And it's your opinion from your recollection of your conversations with him, that Mr. Stafford knew about it for sometime before he told you?

A. Yes.

628 Q. Do you think or are you deducing that he knew about it almost from the time the payment was made?

A. I would think soon afterwards. I mean, it's a very sizable sum of money for an infant business.

629 Q. Were Mr. Stafford and Mr. Barry in the habit of discussing all matters to do with Century Communications?

A. With me?

630 Q. No, with each other?

A. Oh yes, I mean they were involved in it daily.

631 Q. And overseeing the business on a daily basis?

A. I think so. They were both very involved in it.

632 Q. And your involvement was at more arm's length?

A. Absolutely.

633 Q. And how often would you have met Mr. Barry and Mr. Stafford to discuss these matters?

A. Maybe every six weeks or whatever. Whenever they wanted to pick your brains about something, they would arrange a lunch or a dinner and we'd have lunch or dinner and they'd be discussed.

634 Q. And did Mr. Stafford keep you updated?

A. No.

635 Q. Did he communicate with you by fax, for example?

A. You are aware that there are a number of faxes that he sent to me, but I mean I didn't want to be updated and I didn't have time to be involved in the daily machinations.

636 Q. That may be Mr. Mulhearn, but did he send you the faxes?

A. He sent me some faxes on occasions to a fax number that I don't even recognise.

637 Q. But do you have a recollection of receiving faxes from Mr. Stafford?

A. I have a recollection of seeing the faxes that you showed me.

638 Q. Do you have a recollection of seeing them before you saw them at the Tribunal?

A. No.

639 Q. So do you think that it's likely you never received these

faxes?

A. I never received them because the numbers they were sent to don't mean anything to me. None of them are my telephone numbers.

640 Q. The initial faxes in January of 1989, I wonder were you abroad at that time Mr. Mulhearn?

A. In January, I might have been, yes.

641 Q. And that the fax number that's there is a foreign fax number I think. If we could have document 706 please. You see the fax number is 16230? Brackets.

A. That is.

642 Q. 532989. It appears to be an international fax number?

A. It's very possible at that time of the year. I usually go on holidays at that time of the year.

643 Q. When you say you don't recognise the fax number to which those faxes were sent, that could mean that you were receiving faxes while you were on holiday?

A. I had never seen that fax before you produced it. I mean, the content of it is such that it would stick in your mind.

644 Q. Maybe we are talking about two different faxes. If the screen could be moved so that Mr. Mulhearn could see the content of this fax. It says, "Please telephone immediately."

A. The chances of doing that would be nil.

645 Q. Of you contacting Mr. Stafford?

A. I wouldn't phone him anyway. If I was on holidays, I wouldn't phone.

646 Q. Do you have a recollection of receiving that fax?

A. I don't ever remember seeing any of those faxes.

CHAIRMAN: Would you like to stop there?

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MS. DILLON: I am quite happy to proceed --

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CHAIRMAN: You just seem to be at a watershed. You are obviously going to inquire -- .

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MS. DILLON: I'd be approximately another half an hour.

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CHAIRMAN: I'd prefer to do it on Tuesday.

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MS. DILLON: You have specially fixed an RTE witness Mr. Branagan for 10 o'clock on Tuesday and we are scheduled to take three IRTC witnesses and Mr. Moody from Ulster Bank also on Tuesday. If we could suggest to Mr. Mulhearn if it suits him half ten on Tuesday.

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MR. MOHAN: My client indicates he may have a problem on Tuesday.

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CHAIRMAN: Tuesday is not suitable?

A. THE WITNESS: Unfortunately not for me, Sir.

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CHAIRMAN: If it's not suitable, we'll have to try and find one that's suitable.

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CHAIRMAN: What about Wednesday?

A. Wednesday would be fine.

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CHAIRMAN: Wednesday morning at 10.30.

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MS. DILLON: Yes, Sir, or the alternative is to try and finish Mr. Mulhearn this afternoon? .

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CHAIRMAN: We will break for five minutes and we'll carry on for half an hour.

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THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

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MS. DILLON: Just in relation to the €35,000, Mr. Mulhearn, were you ever asked by Mr. Barry to reimburse him in relation to that money?

A. No.

647 Q. Did you understand that it would be an expense that when you found out about it, that would be deducted from Century Communications or paid by the company?

A. I think that's what he assumed.

648 Q. That's what Mr. Barry assumed?

A. I think so.

649 Q. Insofar as the donation was explained to you by Mr. Stafford, it was in the context of Century Communications making a political donation?

A. That was the case.

650 Q. Can I ask you, do you know Mr. Dermot Desmond?

A. I do.

651 Q. And how long have you known Mr. Desmond?

A. 20 years.

652 Q. Do you know Mr. P J Mara?

A. I do.

653 Q. And how long have you known him?

A. Similar time.

654 Q. Have you ever made aware that Mr. Desmond had any interest in becoming involved as an investor in Century Communications?

A. No.

655 Q. Did anyone ever indicate to you that Mr. Mara had expressed and interest in either some position in Century Communications or in becoming an investor?

A. No.

656 Q. Did you ever have any discussions or conversation with either Mr. Stafford or Mr. Barry, concerning Mr. Mara?

A. There was a rumour that you are aware of between the two of them about some meeting and subsequent to that I heard about it.

657 Q. This is a meeting in Mr. Dermot Desmond's office?

A. That's right.

658 Q. Did Mr. Stafford indicate to you that he had been at such a meeting or did Mr. Barry?

A. I think normally when there was a whinge, you heard it from Mr. Stafford.

659 Q. Mr. Stafford indicated to you that he had been at a meeting in Mr. Dermot Desmond's office and that concerned Mr. P.J Mara?

A. I think among other things, yes.

660 Q. And did he indicate to you what he understood that meeting

to be about?

A. P.J. I think, I laughed at his version of what was discussed.

661 Q. Tell us what Mr. Stafford's version was?

A. He seemed to think that Mr. Mara wanted a job.

662 Q. Mr. Stafford seemed to think --

A. That was the tenor of the meeting.

663 Q. That Mr. Mara wanted a job?

A. Mmm.

664 Q. You are aware that Mr. Stafford has given evidence to this Tribunal in relation to those meetings, that meeting in Mr. Desmond's office?

A. Mmm.

665 Q. That his understanding of the matter was that Mr. Mara required a payment of £30,000. Do you have any recollection of Mr. Stafford discussing that with you?

A. No. That would have been a short conversation.

666 Q. Why was that, Mr. Mulhearn, if that conversation took place, why would it have been a short conversation?

A. Because it would have been a very abrupt answer.

667 Q. Mr. Stafford also told the Tribunal that he discussed the matter with you after the meeting took place and that you made a connection between that and some earlier gossip that had been floating around about licences being for sale?

A. Well I mean, if he said that, perhaps -- I have no recollection of that conversation.

668 Q. But you do have a recollection of discussing with Mr. Stafford a meeting that had taken place in Mr. Desmond's office at which Mr. Mara was present?

A. Which I couldn't influence in any way.

669 Q. At which you were not present?

A. Correct.

670 Q. So far as Mr. Stafford recounted that meeting to you, he indicated that he had been present, Mr. Barry had been present. Mr. Desmond had been present.

A. Mmm.

671 Q. And Mr. Mara had been present?

A. That's as I understood it.

672 Q. And your understanding then was that the meeting was about a job or a position for Mr. Mara, is that correct?

A. That's what I was told.

673 Q. Did you understand that there was to be a payment of any kind to Mr. Mara?

A. Other than a salary situation, that's what I thought they were talking about.

674 Q. Did you have a view or did you express a view to Mr. Stafford that there was something improper or irregular about this?

A. Well, I just wouldn't have thought that at the time it would have been in the best interests of an emerging company to take on such a high profile person.

675 Q. At this time in 1990, when this meeting is alleged to have taken place, you would be aware of course that Century Communications was in very severe financial difficulty at that stage?

A. All the more reason why it couldn't afford expenses.

676 Q. And do you remember figures being discussed at all?

A. No. I tried not to get involved in any detail because if he started, he would go on for a very long time, so I just tried to avoid getting involved. Any time we met, if

there was a whinge, I tried to dismiss it as quickly as possible, because you couldn't influence it and there was no point in getting involved in it.

677 Q. So is it possible that Mr. Stafford discussed with you that he had been asked to pay somebody €30,000?

A. I assumed that that was the salary.

678 Q. You assumed it was the salary?

A. Yes.

679 Q. So you do have a recollection of discussing with Mr. Stafford a request for €30,000?

A. He mentioned that had he was looking for a job.

680 Q. Do you have a recollection of a discussion about money?

A. A figure of €30,000 was mentioned.

681 Q. And it was your understanding that --

A. That was a salary.

682 Q. That was the salary that have being sought?

A. Mm-hmm.

683 Q. Or the payment that was being sought?

A. Which the company couldn't have afforded.

684 Q. Do you recollect ever having a discussion with Mr. Stafford about licences being for sale or monies that would have to be paid for licences?

A. No, I have read a great deal about it you know, since this.

685 Q. Mr. Stafford said in his evidence in relation to this issue, that Mr. Barry and he had a general conversation about rumour that was abroad about licences for sale and that you were probably present but he put it no higher than that?

A. I doubt it.

686 Q. Do you have any recollection of any such conversation?

A. You would remember something like that. I mean it's so outrageous that you would remember it.

687 Q. Were you aware that Century Communications had made two other political donations in 1989, ú5,000 to Fianna Fail and ú2,000 to Fine Gael?

A. I am not surprised.

688 Q. Do you recollect having a discussion with Mr. Stafford or Mr. Barry or both and agreeing that those monies would be paid?

A. Well, I wouldn't have agreed anyway, if a discussion did take place I wouldn't have agreed, because I wouldn't have thought that a company setting out on the road it was on, could afford that sort of thing.

689 Q. Mr. Stafford again said in evidence that it was a policy or a group or an agreed decision between yourself, Mr. Stafford and Mr. Barry that these two sums of money would be paid. Do you agree with Mr. Stafford's recollection?

A. My attitude to life is if you are having duck for dinner. First get the duck. You can spend money when you have earned it, but until you have earned it, you can't spend.

690 Q. Your advice would have been not to pay such a sum?

A. Absolutely.

691 Q. Would you have created any difficulty if the money had been paid?

A. I wasn't in a position to.

692 Q. Is it likely that such a conversation took place and you expressed the view that it shouldn't be paid but they went ahead and paid it anyway?

A. Absolutely. That's what they were doing.

693 Q. Did you have any knowledge that Mr. Dermot Desmond might

have had and interest in -- might be interested in
acquiring an interest in Century Communications?

A. No.

694 Q. Is that the sort of matter that yourself and Mr. Stafford,
and Mr. Barry would have discussed?

A. I would have thought if there was an approach, that it
would have been discussed.

695 Q. If I could ask you to look at the fax that was sent to the
same -- this is page 714 please. The 17th January 1989
and it's sent to the same fax number that we looked at,
which appears to be an external fax number.

A. This is the following day.

696 Q. This is the following day. And it says "O B" -- Oliver
Barry -- "rang DD" -- that is, apparently,
Mr. Desmond -- "told him we could only consider his
client's interest in participation after we had a
decision. DD said that was not good enough and he would
now seek participation in another runner before Friday."

A. What could I do about that? Nothing.

697 Q. Why would Mr. Stafford have felt the necessity to update
you with this kind of detail?

A. He may have produced the fax for somebody else's vision,
not for me.

698 Q. I don't really understand that, Mr. Mulhearn. If you
could explain that?

A. I mean, we are talking about a rare bird here. He may
have wanted to influence Oliver to do something else and he
would produce that and say, "I sent that to JM today" and
thinking that might get him somewhere. I wouldn't know
what he would do.

699 Q. You are also aware that probably perhaps, or maybe you knew at the time, that Mr. Barry and Mr. Stafford made an approach in December 1989 to Mr. Ray Burke?

A. Made an approach to him?

700 Q. Yes.

A. In relation to?

701 Q. Ultimately capping RTE's income?

A. Mm-hmm.

702 Q. Were you aware in 1989 that such an approach was being made?

A. Well, I wouldn't have been surprised in as much as I mean, the RTE ogre was always with us in terms of any time you met, you always heard the hard word about RTE.

703 Q. Were you aware that Mr. Barry and Mr. Stafford requested Mr. Burke to meet with Century Communications bankers and that Mr. Burke, in fact, did do so?

A. I heard that subsequently.

704 Q. How close after the enter did you hear it?

A. I couldn't tell you how close, but I did hear it that it had happened.

705 Q. Was it months later, weeks later?

A. It might have been a couple of months later.

706 Q. And what was your view of that --

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MR. WALSH: I think that's a matter for you. I don't think it's a matter for Mr. Mulhearn.

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CHAIRMAN: I think we are entitled to hear from the witness.

A. I would have thought it was very unusual.

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MS. DILLON: It would appear, Mr. Mulhearn, that there was a certain level of contact or communication between Mr. Barry and Mr. Burke. There have been references to meetings and diary extracts and matters of that sort. Was that a matter that Mr. Barry was keeping you updated on?

A. No. No. I mean, when things were going the way they wanted them to go, I didn't hear from them very much. Only if they started to disagree with something a venue and a restaurant might be selected and we would go and see if we could find some peace.

707 Q. And when Century Communications got into serious financial trouble and certainly by December 1989 Century Communications was in serious financial trouble, did you have one of those meetings?

A. We may have done, we may have done.

708 Q. Do you remember being at any meetings with your co-investors at which the difficult financial future that was facing the company was discussed?

A. Any time there was a financial problem, we would probably, I would hear from them.

709 Q. And you would discuss presumably the nature of the financial problem and how it would be sorted or solved?

A. That was it. Afterwards, the result would be you know, it's down to you, you are running the show. You know, I can't do that.

710 Q. Did Mr. Barry or Mr. Stafford ever discuss with you that one of the solutions might be the capping of RTE's advertising?

A. I mean I wouldn't have thought that that was possible.

711 Q. Do you ever remember it being discussed?

A. It may have been discussed because I mean, I was -- our business was in advertising so I would have had an interest in advertising.

712 Q. And were you able to advise Mr. Barry and Mr. Stafford about advertising matters?

A. I mean, if they thought there was something that I could help with, they would ask.

713 Q. And were you ever requested by Mr. Barry and Mr. Stafford to approach anybody?

A. No.

714 Q. For assistance for Century Communications?

A. No.

715 Q. Were you ever asked to approach Mr. Charles Haughey, for example?

A. Absolutely not.

716 Q. Are you sure about that?

A. I am certain.

717 Q. All right. Throughout the time that Century Communications was in financial difficulty until capital investment -- Capital Radio invested in the late summer of 1990, were you aware of communication or contact between Mr. Barry, Mr. Stafford and Mr. Burke?

A. I wasn't particularly aware of it, no.

718 Q. Would Mr. Barry, in the normal course of events, indicate to you, "I have spoken to the Minister or I have made approaches or I have made representations or"?

A. No. He wouldn't.

719 Q. Were you aware that there was correspondence passing

between the Minister and Mr. Stafford?

A. I wasn't aware of it, but I would assume that if they had a problem, they would go to the Minister.

720 Q. Why?

A. Because that's what people do.

721 Q. Were you aware of or did Mr. Stafford ever discuss with you a proposal to close down Radio 2FM?

A. No.

722 Q. Do you ever remember that being discussed at all?

A. Not particularly.

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CHAIRMAN: May I intervene here at this moment. Why do you think, why do you say, "if they had a problem, they would go to the Minister" -- sorry, your answer was, -- "Were you aware or did Mr. Stafford -- were you aware that there was correspondence passing between the Minister and Mr. Stafford? . I wasn't aware. Do you ever remember that being discussed? ? And I think -- I haven't found the actual question -- your answer was, if they had a problem, they would go to the Minister, they would naturally go to the Minister or words to that effect?

A. They would, Sir.

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CHAIRMAN: Why?

A. Because that's the sort of bodies that they are. 2FM being discussed, it was a new regime at the time. There had been no competition in the area and I would think that they would go anywhere that they were free to go.

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CHAIRMAN: Well actually what you said was, if they had a problem, they would go to the Minister, they would naturally go to the Minister or words to that effect. Sorry, that's my question --

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CHAIRMAN: He said because that's what people do. That if they had a problem, they would go to the Minister, was the exact statement, I beg your pardon. Why would a commercial man go to the Minister, I mean two people who are in the world of commercial or a particular exercise?

A. If your major competitor was a State-owned operation and you had a problem in the same way that if the farmers have a problem, they go to the Minister. It has become a way people do things. If you have a problem you go to the Minister if the State are involved in the area. It's not a practice that I would be in favour of myself, but that's what happens.

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CHAIRMAN: Thank you.

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MS. DILLON: If I could ask you, Mr. Mulhearn, about the second investment that you made in Century Communications s, which was an investment I think you have said in your statement, of ú310,000, in late 1990?

A. Mm-hmm.

723 Q. And I think you indicated that that was probably a cheque drawn on the Ulster Bank account of Clayton Love.

A. Mm-hmm.

724 Q. It appears you may have been incorrect in the fact it was paid in one cheque?

A. So it seems.

725 Q. And that certainly a cheque in the sum of 230,000 pounds was drawn on that account. I will just get it on the screen and you can confirm that, 5629, please. That's a cheque in the sum of £230,000 drawn on the 27th September 1990.

A. Mm-hmm.

726 Q. Do you recollect at this time it was necessary for the three investors to put in place bank guarantees in the sum of £230,000 as a precondition to capital radio's investment in Century Communications?

A. My recollection is that I was asked for £230,000.

727 Q. And did you inquire at all from, it was Mr. Barry asked you for the money?

A. I believe it was Mr. Stafford.

728 Q. Mr. Stafford. Did you inquire at all from Mr. Stafford why you were now paying £230,000?

A. Oh I think I -- the only question that I asked him was, "were we throwing good money after bad".

729 Q. That was the only inquiry that you made?

A. I think so.

730 Q. You have indicated in your statement that the amount of your investment in Century Communications at this time was £310,000?

A. Mm-hmm.

731 Q. Are you in a position to assist the Tribunal as to where the balance £80,000 came from?

A. I am not in a position today, but I mean, I was confused when Mr. Mohan explained to me that it wasn't visible, but I would have thought it should have been visible from the

information that you would have had from Mr. Barry because

I think that all the payments I made, I gave to him.

732 Q. All the payments you gave to Mr. Barry?

A. Would you not be able to verify that from his figures.

733 Q. I am afraid you can't ask me questions Mr. Mulhearn. You gave the payments to Mr. Barry, is that correct?

A. Mm-hmm.

734 Q. Did you, in the normal course of events, make out this account out to Mr. Barry or Century Communications?

A. I think I made them to Oliver Barry.

735 Q. Mr. Barry, presumably, would have then dealt with them the way he considered appropriate?

A. Correct.

736 Q. Are you satisfied you did invest in the years 1989 and 1991, ú310,000 in Century Communications?

A. I think that's correct.

737 Q. If it were to be established that any lesser figure had been invested, you'd be surprised?

A. I would, but there was some evidence given here by some people from the Bank of Ireland which led me to believe that I had over subscribed.

738 Q. That you had paid more than Mr. Stafford and Mr. Barry?

A. So it seemed.

739 Q. And you are absolutely clear that you did make that payment of ú310,000?

A. Absolutely.

740 Q. So there should be in existence a separate cheque of ú80,000?

A. Or cheques amounting to that.

741 Q. Or cheques amounting to that?

A. Yeah.

742 Q. How was this investment recorded in the books of account of Clayton Love?

A. It was just an investment.

743 Q. Was this an involvement that you were making on your own behalf personally or was it an investment by Clayton Love?

A. It was an investment by Clayton Love.

744 Q. And the main beneficiary of Clayton Love is yourself?

A. Correct.

745 Q. So that if Century Communications were to come good in the fullness of time, your one third interest would be benefiting you?

A. Clayton Love, yeah.

746 Q. And did you ever make any arrangement as to how the shareholding, that was your shareholding, was to be held or by who with Mr. Barry and Mr. Stafford?

A. Yes. No, there was no formal arrangement.

747 Q. Did you make any kind of agreement or trust arrangement or document in writing of any description in relation to this investment?

A. Not that I can recollect.

748 Q. You were happy to invest ú310,000 by giving cheques to that value to Mr. Barry to invest in Century Communications and you were happy to leave the running of that investment to Mr. Barry and Mr. Stafford? .

A. That's correct.

749 Q. And you did not wish to have any control or participation in how the company was doing?

A. You can't run a business by committee, no.

750 Q. How were you protecting your investment of ú600,000, Mr.

Mulhearn?

A. They were protecting it.

751 Q. Mr. Barry and Mr. Stafford?

A. Mm-hmm.

752 Q. How were they doing that?

A. I would presume if they were protecting their own, they were protecting mine also.

753 Q. Did you put in place any written agreement or stop gap provision or anything to protect your investment other than you have described to us?

A. No.

754 Q. So it is quite possible I suggest, Mr. Mulhearn, I am not suggesting that he did do so, but that Mr. Barry could have taken your money?

A. Well you have enough information available to you to -- you can answer that for yourself. I can't tell you.

755 Q. You are not able to assist at all with the ú80,000 Mr. Mulhearn?

A. I probably will be, but I didn't see the papers until today.

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MR. MOHAN: In fairness, Mr. Chairman, there are a series of further points which Ms. Dillon and I have further discussed. It's not possible to get cheques from the bank. There are amounts which would correspond with 80,000, in or about that time from the particular bank account but because the bank doesn't have the cross referencing of the cheques Ms. Dillon is aware of, it's not possible to pinpoint that issue.

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MS. DILLON: That is correct Sir, we have had agreement from Mr. Mulhearn to go to his bankers, who were able to obtain copy cheques due to the lapse of time. There is clearly confusion on the receiving end of these funds and it has not been possible for the Tribunal to date to isolate this ú80,000 in the accounts of Century Communications and that's why we are seek the assistance of Mr. Mulhearn in relation to the first time it was adverted to was when Mr. Mulhearn objected to his statement he made a second investment of ú310,000.

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CHAIRMAN: Do I understand what the situation is that the cheques, when I use the words " cheques", I mean -- are not available or that it will take time to get up the microfiche --

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MS. DILLON: As I understand it the copy cheques are not available and as far as Ulster Bank are concerned, they are unable to date to provide us with microfiches but we are still dealing with that. It's an ongoing matter but we have been unable to date, despite two months of inquiries in relation to the matter, to obtain copies of the cheques or the microfiches from Ulster Bank. That is an ongoing matter.

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CHAIRMAN: Again, do I understand what the witness is saying is that Clayton Love, which is a public --

A. A private company, Sir.

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CHAIRMAN: Which would be audited, it's a company whose accounts would be audited as such, had to be audited.

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MS. DILLON: And this ú310,000 is dealt with in the audited accounts.

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MR. MOHAN: It's dealt with in the audited accounts.

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MS. DILLON: It's dealt with, Sir, as a loss --

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CHAIRMAN: Obviously we are not going to solve this problem this afternoon.

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MR. MOHAN: In fairness, Ms. Dillon and I are not in disagreement. We have given every cooperation. We have allowed the Tribunal to search with the Bank. It's simply just been unable to pinpoint which of the 80,000 was in fact the amount because there were I think one or two or three in or about that time. But the amount, the entire amount has been dealt with in the audited accounts. What my client was wondering, I don't know whether this is possible to cross reference it from the other end, as it were, to see where it came through to Mr. Barry.

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CHAIRMAN: Well, I cannot give a view on that obviously. I am not that close to the affairs of various individuals. What occurs to me is, is there another topic which you want to deal with Ms. Dillon and perhaps we

could --

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MS. DILLON: I am finished.

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CHAIRMAN: Adjourn the matter, make the inquiries and at a suitable date to the convenience of Mr. Mulhearn, return to it.

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MS. DILLON: Yes, Sir. I would suggest, I am finished with Mr. Mulhearn now and that, I anticipate there will be very little cross-examination of Mr. Mulhearn. If that would be the case that, could be dealt with now. If it's then subsequently found necessary to recall Mr. Mulhearn on the question of the ú80,000 investment or any other matter, it can be done, but it might be better to bring finality so far as Mr. Mulhearn is concerned.

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CHAIRMAN: That sounds a reasonable approach to the matter.

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MS. DILLON: In that case, I have no further questions.

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CHAIRMAN: Does anybody else have any questions? .

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MR. WALSH: We have no questions.

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CHAIRMAN: . So, it's good afternoon, Mr. Mohan.

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MR. MOHAN: Thank you, Mr. Chairman.

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CHAIRMAN: Perhaps, if this matter requires your further attendance, we will try and arrange it at a time convenient to you.

A. Thank you, Sir.

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CHAIRMAN: Thank you.

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THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 14TH NOVEMBER
2000 AT 10am.

